

## Rural Housing Service, USDA

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which is the land and improvements, and the real property, or property rights, being appraised.

(k) *Exclusion of rental units from valuation.* The Agency will provide appraisers with instructions and supporting information on any rental units that do not produce rental income at the time of the appraisal.

(l) *Non-contiguous sites.* When a housing project has real property located on non-contiguous sites, a separate appraisal must be developed for each site.

### §§ 3560.754–3560.799 [Reserved]

### § 3560.800 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

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- 3565.550 OMB control number.

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

SOURCE: 63 FR 39458, July 22, 1998, unless otherwise noted.

### 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

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incurred on a loan guaranteed under the program.

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

*Construction and permanent loan.* A loan which provides advances during the construction period and remains in place as a permanent loan at the completion of construction.

*Construction contingency reserve.* A cash reserve of at least two percent of the construction contract, inclusive of the contractor's fee and all hard and soft costs that must be set up and fully funded by the closing of the construction loan. This reserve will be held by the lender, and funds will only be disbursed for change order requests approved by the Agency and the lender. Unused funds from the construction contingency reserve will be held in the operating and maintenance reserve and cannot be released to the borrower until the project reaches an occupancy of 90% for 90 consecutive days. In addition the reserve accounts established in the conditional commitment must be fully funded prior to the release of the construction contingency reserve. These requirements remain in effect regardless of whether the lender has established a lease-up reserve in lieu of the occupancy requirement.

*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.

*Ginnie Mae.* Ginnie Mae is a reference to the Government National Mortgage Association.

*Government National Mortgage Association.* The Government National Mortgage Association (Ginnie Mae) is a government corporation within the Department of Housing and Urban Development. Ginnie Mae guarantees privately issued securities backed by mortgages or loans which are insured or guaranteed by the Federal Housing Administration (FHA), the Department of Veterans Affairs (VA), or the Rural

Housing Service (RHS) and certain other loans or mortgages guaranteed or insured by the Government.

**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.

**Holder.** A person or entity, other than the lender, who owns all or part of the guaranteed portion of the loan with no servicing responsibilities. When the single note option is used and the lender assigns a part or all of the guaranteed note to an assignee, the assignee becomes a Holder only when the Agency receives notice and the transaction is completed through use of an assignment guarantee agreement form approved by the Agency.

**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.

**Indian tribe.** Any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation, as defined by or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), that is recognized as eligible for the special programs and services provided by the United States to

Indians because of their status as Indians pursuant to the Indian Self-Determination and Education Assistance Act of 1975 (25 U.S.C. 450 *et seq.*); or any entity established by the governing body of an Indian tribe, as described in this definition, for the purpose of financing economic development.

**Interest credit.** A subsidy available to eligible borrowers that reduces the effective interest rate of the loan to the Applicable Long Term Monthly 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.

**Lease-up period.** The period of time that begins when the first unit in the project receives a certificate of occupancy until the time that occupancy of 90% of the units for a minimum of 90 consecutive days is achieved.

**Lease-up reserve.** A cash deposit which is available to a property to help pay operating costs and debt service at the initiation of operations while units are being leased to their initial occupants.

**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

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lender funds an individual portion of the loan.

*Loan-to-cost ratio.* The amount of the loan divided by the total cost to develop the project.

*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.

*Negligent servicing or origination.* Negligent servicing or origination is a failure to perform those services which a reasonably prudent lender would perform in servicing or originating its own portfolio and includes not only the failure to act but also the failure to act in a timely manner.

*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.

*Operating and maintenance reserve.* A cash reserve required of all projects of at least two percent of the loan amount held by the lender that is used for the up-keep of the project.

*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 permanent loan is defined as a mortgage loan usually covering development costs, interim loans, construction loans, financing expenses, marketing, administrative, legal, and other Agency approved costs. This loan differs from the construction loan in

that financing goes into place after the project is completely constructed and open for occupancy. It is a long-term obligation, generally for a period of no less than 25 years and no more than 40 years.

*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.

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*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.

[63 FR 39458, July 22, 1998, as amended at 67 FR 16970, Apr. 9, 2002; 70 FR 2930, Jan. 19, 2005; 76 FR 3, Jan. 3, 2011; 84 FR 55035, Oct. 15, 2019]

#### § 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 notify the public of the availability of assistance, changes in application requirements, or changes in the fee structure.

[84 FR 55035, Oct. 15, 2019]

#### § 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

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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.* Priority will be given to projects: In smaller rural communities, in the neediest communities having the highest percentage of leveraging, having the lowest interest rate, having the highest ratio of 3–5-bedroom units to total units, or on tribal lands. In addition, 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.

[63 FR 39458, July 22, 1998, as amended at 64 FR 32371, June 16, 1999; 84 FR 55036, Oct. 15, 2019]

#### § 3565.6 Inclusion of tax-exempt debt.

Tax-exempt financing can be used a source of capital for the guaranteed loan.

[64 FR 32371, June 16, 1999]

#### § 3565.7 Environmental review 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 under this part must comply with the environmental review requirements in accordance with 7 CFR part 1970.

[81 FR 11050, Mar. 2, 2016]

#### § 3565.8 Civil rights compliance.

(a) All actions taken by the Agency, or on behalf of the Agency, by a lender will be conducted without regard to race, color, religion, national origin, sex, marital status, age, income from

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public assistance or having exercised their right under the Consumer Credit Protection Act, and in accordance with the Equal Credit Opportunity Act (ECOA).

(b) Any action related to the sale, rental or advertising of dwellings; in the provision of brokerage services; or in making available residential real estate transactions involving Agency assistance, must be in accordance with the Fair Housing Act, which prohibits discrimination on the basis of race, color, religion, sex, national origin, familial status or handicap. 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.

(c) 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.

(d) 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.

(e) For guaranteed loans with “interest credit,” the following additional civil rights laws will apply and be enforced by the agency delivering this guarantee program: title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, Age Discrimination Act of 1975, and title IX of the Education Amendments of 1972.

(f) In accordance with title VI, borrowers will be subjected to compliance reviews for projects that receive interest credit.

[64 FR 32371, June 16, 1999]

### § 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 1970-I, ‘Intergovernmental Review,’ available in any Agency office or on the Agency’s Web site.

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

[63 FR 39458, July 22, 1998, as amended at 64 FR 32372, June 16, 1999; 76 FR 80731, Dec. 27, 2011]

### § 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

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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, and provided that such an exception is not inconsistent with any applicable law or statutory requirement.

[64 FR 32372, June 16, 1999]

### § 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

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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 eligible or approved lender, the Agency will commit to providing a guarantee for a permanent loan or a construction and permanent loan, subject to the availability of funds.

[76 FR 3, Jan. 3, 2011]

#### § 3565.52 Conditions of guarantee.

A loan guarantee under this part will be evidenced by a Loan Note Guarantee issued by the Agency. Each lender will execute a Lender's Agreement. If a valid Lender's Agreement already exists, it is not necessary to execute a new Lender's Agreement with each loan guarantee.

(a) *Rights and liabilities.* A guarantee under this part is backed by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the lender had knowledge at the time the lender acquired the guarantee or assigned the loan, or in which a lender participates or condones. The guarantee will be unenforceable by the lender to the extent any loss is occasioned by a violation of usury laws, negligent servicing or origination by the lender, including a failure to acquire required security, or as a result of a use of loan funds for purposes other than those authorized by the Agency. The acts in the previous sentence constitute grounds for the refusal to make full payment under the guarantee to the lender, and will not be taken until the Agency gives the lender notice of the acts or omissions that it considers to constitute such grounds, specifying the applicable provisions of the Statute, Regulations, Loan Note Guarantee, or Lender's Agreement; the lender has not cured the acts or omissions within 90 calendar days after such notice; and the acts or omissions can reasonably be expected to have a material adverse effect on the credit quality of the guaranteed mortgage or the physical condi-

tion of the property securing the guaranteed mortgage. If such acts or omissions cannot be cured within a 90 calendar day period, the 90 calendar day cure period automatically shall be extended so long as curative activities are commenced during the 90 calendar day period. At no time shall the curative period extend more than 270 calendar days from the expiration of the original 90 calendar day cure period. When a guaranteed portion of a loan is sold to a Holder, the Holder shall succeed to all rights of the lender under the Loan Note Guarantee to the extent of the portion purchased. The lender will remain bound to all obligations under the Loan Note Guarantee, Lender's Agreement, and the Agency program regulations.

(b) *Liability of the Holder.* The Holder shall not be liable for the actions of the lender including, but not limited to, negligence, fraud, abuse, misrepresentation or misuse of funds, and its rights under the guarantee shall be fully enforceable notwithstanding the actions of the lender, unless the Holder has knowledge of fraud, misrepresentation or misuse of funds when it becomes the Holder or condones or participates in such actions.

(c) *Types of guarantees.* The Agency may provide a lesser guarantee based upon its evaluation of the credit quality of the loan. Penalties incurred as a result of default are not covered by the guarantee. 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 Loan Note Guarantee. The Agency will not guarantee construction loans only. The Agency offers the following types of guarantees:

(1) *Option One.* The Agency may guarantee permanent loans subject to the conditions specified in § 3565.303(d). The maximum guarantee for a permanent loan will be 90 percent [unless the Agency establishes a different percent and announces this different percent through a Notice in the FEDERAL REGISTER] of the unpaid principal and interest up to default and accrued interest 90 calendar days from the date the

liquidation plan is approved by the Agency, as defined in § 3565.452.

(2) *Option Two.* The Agency may provide a guarantee which will cover construction loan advances (advances) during construction. The maximum guarantee of construction advances related to a construction and permanent loan will not at any time exceed the lesser of 90 percent [or the percent established by the Agency and announced through a Notice in the FEDERAL REGISTER] of the amount of principal and accrued interest up to default for amounts which exceed the original advance if for eligible uses of loan proceeds or 90 percent of the original principal amount and accrued interest up to default of the loan. The Agency's guarantee will cover losses to the extent aforementioned once all sureties/insurances and/or performance and payment bonds have fully performed their contractual obligations. A construction contingency reserve is required. This guarantee will be enforceable during the construction period but will cease to be enforceable once construction is completed unless and until the requirements for the continuation of the guarantee contained in the Conditional Commitment and this part are completed and approved by the Agency by the date stated in the Conditional Commitment and any Agency approved extension(s). The Agency will provide written confirmation to the lender when all of the requirements for continuation of the guarantee to cover the permanent loan have been satisfied. Any losses sustained while the guarantee is unenforceable (after the end of the construction period and, if applicable, before the continuation of the guarantee) are not covered by the guarantee. For purposes of this guarantee, the construction period will end on the earlier of:

(i) Twenty-four months from the closing of the construction loan, if the certificates of occupancy for all units in the project have not been issued by then, or

(ii) The date of the issuance of the last certificate of occupancy, if the certificates of occupancy for all units in the project are issued on or before 24 months from the closing of the construction loan.

(3) *Option Three.* The Agency may provide a single, continuous guarantee for construction and permanent loans. Only projects that have low loan-to-cost ratios, which will be defined by the Agency in a Notice published periodically in the FEDERAL REGISTER, are eligible for this type of guarantee. A construction contingency reserve is required. The Agency may require that a lease-up reserve, in an amount established by the Agency and announced through a Notice in the FEDERAL REGISTER, be set-aside prior to closing the construction loan. This lease-up reserve is an additional amount, over and above the required initial operating and maintenance contribution. The maximum guarantee of construction advances will not at any time exceed the lesser of 90 percent [or the percent established by the Agency and announced through a Notice in the FEDERAL REGISTER] of the amount of principal and interest up to default advanced for eligible uses of loan proceeds or 90 percent of the original principal amount and interest up to default.

(d) *Maximum loss payment.* The maximum loss payment to a lender or holder is as follows:

(1) To any holder, 100 percent of any loss sustained by the holder on the guaranteed portion of the loan and on interest due on such portion.

(2) To the lender, the lesser of:

(i) Any loss sustained by the lender on the guaranteed portion, including principal and up to 90 days of accrued interest as evidenced by the notes or assumption agreements and secured advances for protection and preservation of collateral made with the Agency's authorization; or

(ii) The guaranteed principal advanced to or assumed by the borrower and any interest and accrued interest up to 90 days due thereon.

(e) *Funding of reserves.* For each Option under paragraph (c) of this section, the lender must require an operating and maintenance reserve and provide the Agency adequate evidence of the funding of all required reserves.

(1) For Option 1 under paragraph (c) of this section, the funding schedule for the lease-up reserve and the operating

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and maintenance reserve must be included in the Agency-approved construction budget and be fully funded before the issuance of the permanent guarantee.

(2) For Option 2 under paragraph (c) of this section, the funding schedule for the lease-up reserve and the operating and maintenance reserve must be included in the Agency-approved construction budget and be fully funded before the issuance of the permanent guarantee.

(3) For Option 3 under paragraph (c) of this section, the operating and maintenance reserve must be fully funded before the issuance of the guarantee. The lease-up reserve must be funded 30 days before the first Certificate of Occupancy is anticipated.

[70 FR 2930, Jan. 19, 2005, as amended at 76 FR 3, Jan. 3, 2011]

### § 3565.53 Guarantee fees.

As a condition of receiving a loan guarantee, the Agency will charge the following guarantee fees to the lender. Changes to the initial and annual guarantee fees will be established by the Agency and will be published in a notice in the FEDERAL REGISTER.

(a) *Initial guarantee fee.* The Agency will establish and charge an initial guarantee fee of up to one percent of the guarantee amount. For purposes of calculating this fee, the guarantee amount is the product of the percentage of the guarantee times the initial principal amount of the guaranteed loan.

(b) *Annual guarantee fee.* An annual guarantee fee will be charged, as established by the Agency, each year or portion of a year that the guarantee is in effect. This fee is due no later than February 28, of each calendar year.

(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. If applicable, this fee will be charged in advance at the start of construction.

[63 FR 39458, July 22, 1998, as amended at 64 FR 32372, June 16, 1999; 73 FR 11812, Mar. 5, 2008; 84 FR 55036, Oct. 15, 2019; 85 FR 77986, Dec. 3, 2020]

### § 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

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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, Freddie Mac or Ginnie Mae to make multifamily housing loans that are to be sold to or securitized by 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:

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(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.

[63 FR 39458, July 22, 1998, as amended at 70 FR 2931, Jan. 19, 2005]

#### § 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, Ginnie Mae 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;

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(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.

[63 FR 39458, July 22, 1998, as amended at 64 FR 32372, June 16, 1999; 70 FR 2931, Jan. 19, 2005; 76 FR 4, Jan. 3, 2011]

### § 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.

[63 FR 39458, July 22, 1998, as amended at 84 FR 55036, Oct. 15, 2019]

### § 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 guar-

antee or holding a loan guaranteed under this program.

### § 3565.106 Construction lender requirements.

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

[63 FR 39458, July 22, 1998, as amended at 76 FR 4, Jan. 3, 2011]

### § 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 debarring 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.

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### §§ 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 orga-

nization 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 3560.63 (d) or successor provision.

[63 FR 39458, July 22, 1998, as amended at 69 FR 69176, Nov. 26, 2004]

#### § 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, as well as any applicable historic preservation and environmental review requirements in accordance with 7 CFR part 1970.

[63 FR 39458, July 22, 1998, as amended at 81 FR 11050, Mar. 2, 2016]



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### § 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, in-

cluding 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 shall be made for a period of not less than 25 nor greater than 40 years from the date the loan was made and may provide for amortization of the loan over a period of not to exceed 40 years with a final payment of the balance due at the end of the loan term.

[67 FR 16970, Apr. 9, 2002]

### § 3565.210 Maximum interest rate.

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

[84 FR 55036, Oct. 15, 2019]

### § 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(I)(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

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

[63 FR 39458, July 22, 1998, as amended at 70 FR 2931, Jan. 19, 2005]

### § 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 [Reserved]

### § 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

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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 rehabilitation of 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. The Agency will guarantee proposals for new construction or acquisition with moderate or substantial rehabilitation of at least \$6,500 per dwelling unit. The portion of guaranteed funds available for acquisition with rehabilitation may be limited.

[84 FR 55036, Oct. 15, 2019]

### § 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 review 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 mitigate adverse impacts to protected resources may require a change in site or project design. A site will not be approved by the Agency until the Agency has completed the environmental review process in accordance with 7 CFR part 1970.

[81 FR 11050, Mar. 2, 2016]

**§ 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. 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.

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

[63 FR 39458, July 22, 1998, as amended at 84 FR 55036, Oct. 15, 2019]

#### § 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 of environmental review requirements in accordance with 7 CFR part 1970; and

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

(c) *Guarantee during construction.* When requesting a guarantee on construction loan advances under § 3565.52(c)(2) and (c)(3), Options 2 and 3, the Agency will only issue a guarantee to an approved lender that the Agency determines is eligible under § 3565.106 of this part.

(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 one of the following protections:

(i) Surety bonding or performance and payment bonding acceptable to the Agency;

(ii) An irrevocable letter of credit acceptable to the Agency; or

(iii) A pledge to the lender of collateral that is acceptable to the Agency.

(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 of a permanent loan provided under § 3565.52(c)(1) or (c)(2) will be issued once the following items have been submitted to and approved by the Agency:

(1) Certification from the lender stating that the lender or its qualified representative inspected the property and found that the construction meets the Government's requirements for the standards and conditions for housing and facilities in 7 CFR part 1924, subpart A and the standards for site development in 7 CFR part 1924, subpart C, or its successor regulations;

(2) Cash flow certification—the lender certifies, in writing, the project's cash flow assumptions are still valid and depict compliance with the section 538 program's debt service coverage ratio requirement of at least 1.15, based on the lender's analysis of current market conditions and comparable properties in the project's market area;

(3) Documentation that either:

(i) The project has attained a minimum level of acceptable occupancy of 90% for 90 continuous days within the 120-day period immediately preceding the issuance of the permanent guarantee, or

(ii) Additional funds, supplementing the funds required under § 3565.303(d), have been added to the lease-up reserve in an amount the Agency determines is necessary to cover projected shortfalls.

(4) A new appraisal based upon completion of construction. Upon a lender's written request, the Agency may exempt a project from this requirement if requested by the lender and the project meets the following criteria:

(i) *Original appraisal*—the original appraisal that meets the Agency's appraisal requirements with a valuation date no older than 36 months;

(ii) *Valuation*—the appraisal's lowest valuation, regardless of valuation approach and rent restrictions considered, is greater than the section 538 guaranteed loan amount; and

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(iii) *Guaranteed loan balance*—the Agency's guaranteed loan's principal balance does not exceed 50 percent [unless a different percent has been announced in a Notice published in the FEDERAL REGISTER] of the project's total development costs.

(5) A certificate of substantial completion;

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

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

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

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

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

(11) An executed regulatory agreement;

(12) 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;

(13) Necessary information to complete an updated necessary assistance review by the Agency under § 3565.204(c); and

(14) 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.

(f) *Continuous Guarantee Compliance.* The continuous guarantee will remain in effect once construction is completed. In order to remain in compliance with 7 CFR part 3565, the following items must be submitted to and approved by the Agency. These items will be submitted to the Agency by the date stated in the Conditional Commitment and any Agency approved extension(s).

(1) Certification from the lender stating that the lender or its qualified representative inspected the property and found that the construction meets the Government's requirements for the standards and conditions for housing

and facilities in 7 CFR part 1924, subpart A and the standards for site development in 7 CFR part 1924, subpart C, or its successor regulations;

(2) Cash flow certification—the lender certifies in writing the project's cash flow assumptions are still valid and depict compliance with the section 538 program's debt service coverage ratio requirement of at least 1.15, based on the lender's analysis of current market conditions and comparable properties in the project's market area;

(3) Documentation that either:

(i) The project has attained a minimum level of acceptable occupancy of 90% for 90 continuous days within the 120-day period immediately preceding the issuance of the permanent guarantee, or

(ii) Additional funds, supplementing the funds required under § 3565.303(d), have been added to the lease-up reserve in an amount the Agency determines is necessary to cover projected shortfalls.

(4) An appraisal of the property;

(5) A certificate of substantial completion;

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

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

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

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

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

(11) An executed regulatory agreement;

(12) 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;

(13) Necessary information to complete an updated necessary assistance review by the Agency under § 3565.204(c); and

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

[63 FR 39458, July 22, 1998, as amended at 64 FR 32372, June 16, 1999; 76 FR 4, Jan. 3, 2011; 81 FR 11050, Mar. 2, 2016]

**§ 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 is to obtain borrower certification that the project is in compliance with local, state, federal laws and program requirements.

(a) *Regulatory agreement.* A regulatory agreement between the borrower and lender 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

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to the grievance and appeal rights contained in 7 CFR part 3560, subpart D 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 un-

able 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.

[63 FR 39458, July 22, 1998, as amended at 64 FR 32372, June 16, 1999; 69 FR 69176, Nov. 26, 2004]

### § 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

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(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) *Repurchase from Holder.* For securitized loans, the Holder may require the lender or Government to repurchase the security in accordance with the provisions of § 3565.405.

(b) *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



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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.

(c) *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.

(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.

(d) *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.

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

[63 FR 39458, July 22, 1998, as amended at 67 FR 16971, Apr. 9, 2002; 70 FR 2931, Jan. 19, 2005]

### § 3565.404 Transfer of loans or 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 Repurchase of guaranteed loans.

(a) *Repurchase by lender.* The Holder may make written demand on the lender to repurchase the unpaid guaranteed portion of the loan when the borrower is in default not less than 60 calendar days on principal or interest due on the loan; or the lender has failed to remit to the Holder its pro rata share of any payment made by the borrower within 30 calendar days of receipt by the lender. The Holder must concurrently send a copy of the demand letter to the Agency. The lender will notify the Holder and the Agency of its decision to repurchase within 10 business days from the date of the written demand letter by the Holder. The lender may agree to repurchase the unpaid portion of the entire loan from the Holder, even though the guarantee does not cover any unguaranteed portion of the loan held by the Holder. If the lender decides to repurchase, the lender has 30 calendar days from the date of the Holder's written demand letter to do

so. The guarantee does not cover any unguaranteed portion of the loan or the note interest to the Holder on the guaranteed loan accruing after 90 calendar days from the date of the Holder's demand letter to the lender requesting the repurchase. The lender may deduct the lender's servicing fee from the repurchase amount. The lender will accept an assignment without recourse from the Holder upon repurchase. The lender is encouraged to repurchase the loan to facilitate the accounting of funds, resolve problems, and to prevent default where and when reasonable.

(b) *Repurchase by Agency.* (1) If the lender does not repurchase the loan as provided in paragraph (a) of this section, the Agency will purchase from the Holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase, less the lender's servicing fee, within 30 calendar days after written demand to the Agency from the Holder. The guarantee will not cover the note interest to the Holder on the guaranteed loan accruing after 90 calendar days from the date of the original demand letter of the Holder to the lender requesting the repurchase. Holders of Loan Note Guarantees that have been issued prior to the effective date of this final rule may opt to adhere to the terms and conditions of the Loan Note Guarantee then in effect. In case of loan default, the Holder of a Loan Note Guarantee issued prior to the effective date of this final rule will stipulate, in a written demand for repurchase, its preference for repurchase in accordance with the Loan Note Guarantee issued prior to the effective date of this final rule. If the demand for repurchase does not stipulate a preference for repurchase in accordance with the Loan Note Guarantee issued prior to the effective date of this final rule, the Agency will process the demand for repurchase as stated in this final rule. The Holder must stipulate a preference for repurchase in accordance with the Loan Note Guarantee issued prior to the effective date of this final rule in the first demand for repurchase. The Holder of the Loan Note Guarantee issued prior to the effective date of this final rule cannot make a subsequent

demand for repurchase changing the preference stipulated in the original demand for repurchase.

(2) The Holder's demand to the Agency must include a copy of the written demand made to the lender. The Holder must also include evidence of its right to require payment from the Agency. Such evidence will consist of either the original of the Loan Note Guarantee properly endorsed to the Agency or the original of an Agency approved assignment guarantee agreement, properly assigned to the Agency without recourse including all rights, title, and interest in the loan. The Holder must include in its demand the amount due including unpaid principal, unpaid interest to date of demand, and interest subsequently accruing from date of demand to proposed payment date. The Agency will be subrogated to all rights of the Holder.

(3) The Agency will notify the lender of its receipt of the Holder's demand for payment. The lender must provide the Agency with the information necessary for the Agency to determine the appropriate amount due the Holder within 10 business days from the date of the written demand letter to the lender from the Holder requesting repurchase of the guaranteed portion. The lender will furnish a current statement certified by an appropriate authorized officer of the lender stating the unpaid principal and interest then owed by the borrower on the loan and the amount then owed to any Holder. Any discrepancy between the amount claimed by the Holder and the information submitted by the lender must be resolved between the lender and the Holder before payment will be approved. The Agency will coordinate the resolution of the discrepancy. Such conflict will suspend the running of the 30 calendar day payment requirement.

(4) Purchase by the Agency does not change, alter, or modify any of the lender's obligations to the Agency arising from the loan or guarantee nor does it waive any of the Agency's rights against the lender. As Holder, the Agency will have the right to set-off any payments the Agency owes the lender.

[70 FR 2931, Jan. 19, 2005]

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### §§ 3565.406–3565.449 [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 1970. Servicing actions as defined in § 1970.6 are part of financial assistance already provided and do not require additional NEPA review. However, certain post-financial assistance actions that have the potential to have an effect on the environment, such as lien subordinations, sale or lease of Agency-owned real property, or approval of a substantial change in the scope of a project, as defined in § 1970.8,

are subject to a NEPA analysis in accordance with 7 CFR part 1970.

[63 FR 39458, July 22, 1998, as amended at 81 FR 11050, Mar. 2, 2016]

### § 3565.452 Decision to liquidate.

(a) A decision to liquidate shall be made when it is determined that the default cannot be cured through actions contained in § 3565.403 or it has been determined that it is in the best interest of the Agency and the lender to liquidate. For interest accrual purposes, interest will accrue for 90 calendar days after the date the liquidation plan is approved by the Agency. If within 20 calendar days of the Agency's receipt of the liquidation plan, the Agency fails to respond to the lender's proposal or advise the lender to make revisions to the plan that was submitted, the liquidation plan will be approved by default, and the 90 calendar day period for interest accrual will commence.

(b) In the event of a default involving a loan to an Indian tribe or tribal corporation made under this section which is secured by an interest in land within such tribe's reservation (as determined by the Secretary of the Interior), including a community in Alaska incorporated by the Secretary of the Interior pursuant to the Indian Reorganization Act (25 U.S.C. 461 *et seq.*), the lender shall only pursue liquidation after offering to transfer the account to an eligible tribal member, the tribe, or the Indian housing authority serving the tribe. If the lender subsequently proceeds to liquidate the account, the lender shall not sell, transfer, or otherwise dispose of or alienate the property except to one of the entities described in the preceding sentence.

[67 FR 16971, Apr. 9, 2002, as amended at 70 FR 2932, Jan. 19, 2005]

### § 3565.453 Disposition of the property.

(a) Submission of the liquidation plan. The lender will, within 30 calendar days after a decision to liquidate, submit to the Agency in writing, its proposed detailed plan of liquidation. The Agency will inform the lender, in writing, whether the Agency concurs in the lender's liquidation plan. Should the Agency and the lender

not agree on the liquidation plan, negotiations will take place between the Agency and the lender to resolve the disagreement. When the liquidation plan is approved by the Agency, the lender will proceed expeditiously with liquidation. The liquidation plan submitted to the Agency by the lender shall include:

(1) Satisfactory proof of the lender's ownership of the guaranteed loan promissory note and related security instruments.

(2) A copy of the payment ledger or equivalent which reflects the current loan balance and accrued interest to date and the method of computing the interest.

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

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

(i) Obtaining an appraisal of the collateral;

(ii) Acquiring and disposing of all collateral;

(iii) Collecting from guarantors;

(iv) Setting the proposed date of foreclosure; and

(v) Setting the proposed date of liquidation.

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

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

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

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

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

(10) Estimated protective advance amounts with justification.

(11) Proposed protective bid amounts on collateral to be sold at auction and a breakdown to show how the amounts were determined.

(12) If a voluntary conveyance is considered, the proposed amount to be credited to the guaranteed debt.

(13) Any legal opinions supporting the decision to liquidate.

(14) The lender will obtain a complete appraisal report on all collateral securing the loan, which will reflect the fair market value and potential liquidation value, and an examination of the title on the collateral. In order to formulate a liquidation plan, which maximizes recovery, collateral must be evaluated for hazardous substances, petroleum products, or other environmental hazards, which may adversely impact the market value of the collateral.

(b) A transfer and assumption of the borrower's operation can be accomplished before or after the loan goes into liquidation. However, if the collateral has been purchased through foreclosure or the borrower has conveyed title to the lender, no transfer and assumption is permitted.

(c) A protective bid may be made by the lender, with prior Agency written approval, at a foreclosure sale to protect the lender's and the Agency's interest. The protective bid will not exceed the amount of the loan, including expenses of foreclosure, and should be based on the liquidation value considering estimated expenses for holding and reselling the property. These expenses include, but are not limited to, expenses for resale, interest accrual, length of weatherization, and prior liens.

(d) Filing an estimated loss claim. When the lender is conducting the liquidation and owns any or all of the guaranteed portion of the loan, the lender will file an estimated loss claim with the liquidation plan if the lender expects liquidation to exceed 90 calendar days. The estimated loss payment will be based on the outstanding loan amount minus the liquidation value of the collateral. For the purpose of reporting and loss claim computation, the loss claim will be promptly processed in accordance with applicable Agency regulations, as set forth in this section. The loss claim calculation will include 90 calendar days of interest accrual on the defaulted loan at the time the estimated loss claim is paid by the Agency. If the lender estimates that there will be no loss after considering the costs of liquidation, the lender submits an estimated loss claim of

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zero. Interest accrual will cease 90 calendar days after the date the liquidation plan is approved by the Agency.

(e) 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 in 7 CFR part 1944, subpart L or successor regulation.

(f) Accounting and reports. When the lender conducts liquidation, the lender will account for funds during the period of liquidation and provide the Agency with reports at least quarterly on the progress of liquidation, including disposition of collateral, resulting costs, and additional procedures necessary for successful completion of the liquidation.

(g) 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 elsewhere.

[70 FR 2932, Jan. 19, 2005]

### § 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.

In all liquidation cases, final settlement will be made with the lender after the collateral is liquidated, unless otherwise designated as a future recovery or after settlement and compromise of all parties has been completed.

(a) *Report of loss form.* An Agency approved form will be used for calculations of all estimated and final loss determinations. Estimated loss payments will only be paid by the Agency after it has approved a liquidation plan.

(b) *Estimated loss.* An estimated loss claim based on liquidation appraisal value will be prepared and submitted by the lender.

(1) The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss

payment paid by the Agency will be applied by the lender on the loan debt. Such application does not release the borrower from liability.

(2) The Government's written authorization is required for all protective advances in excess of \$5,000. Protective advances include, but are not limited to, advances made for property taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance. A protective advance claim will be paid only at the time of the final report of loss payment except in certain transfer and assumption situations with Agency approval.

(c) *Final loss.* Within 30 calendar days after liquidation of all collateral, except for certain unsecured personal or corporate guarantees (as provided for in this section) is completed, a final report of loss on a form approved by the Agency must be prepared and submitted by the lender to the Agency. Before approval by the Agency of any final loss report, the lender must account for all funds during the period of liquidation, disposition of the collateral, all costs incurred, and any other information necessary for the successful completion of liquidation. Upon receipt of the final accounting and report of loss, the Agency may audit all applicable documentation to determine the final loss. The lender will make its records available and otherwise assist the Agency in making any investigation. The documentation accompanying the report of loss must support the amounts shown on the report of loss form.

(1) A determination must be made regarding the collectability of unsecured personal and corporate guarantees. If reasonably possible, such guarantees should be promptly collected prior to completion of the final loss report. However, in the event that collection from the guarantors appears unlikely or will require a prolonged period of time, the report of loss will be filed when all other collateral has been liquidated, and unsecured personal or corporate guarantees will be treated as a future recovery with the net proceeds

to be shared on a pro rata basis by the lender and the Agency.

(2) The lender must document that all of the collateral has been accounted for and properly liquidated and that liquidation proceeds have been properly accounted for and applied correctly to the loan.

(3) The lender will show a breakdown of any protective advance amount as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper and that payment was actually made.

(4) The lender will show a breakdown of liquidation expenses as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper and that payment was actually made. Liquidation expenses are recoverable only from collateral proceeds.

(5) Accrued interest will be supported by documentation as to how the amount was accrued.

(6) Loss payments will be paid by the Agency within 60 calendar days after the receipt of the final loss report and accounting of the collateral.

(7) Should there be a circumstance where the lender cannot or will not sign a final report of loss, the State Director may complete the final report of loss and submit it to the Finance Office without the lender's signature. Before this action can be taken, all collateral must be disposed of or accounted for; there must be no evidence of fraud, misrepresentation, or negligent servicing by the lender; and all efforts to obtain the cooperation of the lender must have been exhausted and documented.

(d) *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.

(e) *Rent.* Any net rental or other income that has been received by the lender from the collateral will be applied on the guaranteed loan debt after paying operating expenses of the property.

(f) *Liquidation costs.* Liquidation costs will be deducted from the proceeds of the disposition of primary collateral. If

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changed circumstances after submission of the liquidation plan require a substantial revision of liquidation costs, the lender will procure the Agency's written concurrence prior to proceeding with the proposed changes.

(g) *Payment.* When the Agency finds the final report of loss to be proper in all respects, it will approve the form and proceed as follows:

(1) If the loss is greater than any estimated loss payment, the Agency will pay the additional amount owed by the Agency to the lender.

(2) If the loss is less than the estimated loss payment, the lender will reimburse the Agency for the overpayment.

(3) If the Agency determines that it is in the Government's best interest to take assignment of the loan and conduct liquidation, as stipulated in 42 U.S.C. 1490(i)(3), Assignment by Secretary, the Agency will pay the lender in accordance with the Loan Note Guarantee.

(h) *Date of loss.* The date of loss is the date on which the collateral will be liquidated 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.

(i) *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 of the property; and

(iv) 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.

(j) *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.

[70 FR 2933, Jan. 19, 2005, as amended at 76 FR 5, Jan. 3, 2011]

### § 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.

## Subpart K—Agency Guaranteed Loans That Back Ginnie Mae Guaranteed Securities

SOURCE: 70 FR 2934, Jan. 19, 2005, unless otherwise noted.

### § 3565.501 Applicability.

The provisions of this subpart apply when Agency guaranteed loans are used to back Ginnie Mae securities. In instances where this subpart applies, the provisions of this subpart prevail over any other provisions of this part.

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### **§ 3565.502 Incontestability.**

In the case of loans that back Ginnie Mae securities or loans that are acquired by Ginnie Mae as a consequence of its guaranty, the Agency guarantee under this part is incontestable except that the guarantee may not be enforced by a lender who commits fraud or misrepresentation or by a lender who had knowledge of the fraud or misrepresentation at the time such a lender acquired the guarantee or was assigned the loan.

### **§ 3565.503 Repurchase.**

Lenders and security Holders must comply with Ginnie Mae requirements regarding the repurchase of loans from pools backing Ginnie Mae guaranteed securities.

### **§ 3565.504 Transfers.**

(a) Loans and/or mortgage servicing on loans backing Ginnie Mae guaranteed securities may only be transferred to a Ginnie Mae issuer and may only be transferred with prior Ginnie Mae approval.

(b) Agency approval shall not be required for transfer of the servicing on the guaranteed mortgages to Ginnie Mae.

### **§ 3565.505 Liability.**

(a) Ginnie Mae shall not be liable for the actions of the lender including, but not limited to, negligence, fraud, abuse, misrepresentation or misuse of funds, property condition, or violations of usury laws.

(b) Ginnie Mae's rights under the guarantee shall be fully enforceable notwithstanding the actions of the lender.

## **§§ 3565.506–3565.549 [Reserved]**

### **§ 3565.550 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.

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### **PART 3570—COMMUNITY PROGRAMS**

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