

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.

§ 3565.303

7 CFR Ch. XXXV (1–1–23 Edition)

(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