

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

RIN 0575-AC14

**Guaranteed Rural Rental Housing Program**

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

**ACTION:** Final rule; adoption of interim rule with changes.

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

**EFFECTIVE DATE:** July 16, 1999.

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

**SUPPLEMENTARY INFORMATION:****Classification**

This rule has been redesignated from significant to not-significant since the publication of the interim final rule. This rule has now been determined to be not-significant for the purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

**Programs Affected**

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

**Discussion of Use of Final Rule**

Program funding levels are made public in a "Notice of Funds Availability" (NOFA) published concurrently with this final rule. Approximately \$74 million in guaranteed loans is available in this

fiscal year. Potential applicants are encouraged to apply as soon as possible.

**Civil Justice Reform**

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

**Intergovernmental Consultation**

The program is subject to Executive Order 12372 which requires intergovernmental consultation with state and local officials. Intergovernmental consultation has been conducted in accordance with 7 CFR part 3015, subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities."

**Environmental Impact Statement**

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

**Unfunded Mandates Reform Act**

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

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

**Paperwork Reduction Act**

The information and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and were assigned OMB control number 0575-0174, in accordance with the Paperwork Reduction Act of 1995. Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. This final rule does not impose any new information or recordkeeping requirements from those approved by OMB.

**Purpose and Program Summary**

The program has been designed to increase the availability of affordable multifamily housing through partnerships between the Agency and lending sources, as well as state and local housing finance agencies and bond issuers. Qualified lenders will be authorized to originate, underwrite, and close loans for multifamily housing projects to be guaranteed under this program. Projects may be for new construction or acquisition with substantial rehabilitation. The Agency will guarantee such loans upon review of the lender's underwriting package, appraisal report, appropriate certifications, project information, and satisfactory completion of the appropriate level of environmental review by the Agency. Lenders will be responsible for loan underwriting, management and servicing associated with these projects. The lender will be expected to provide servicing or contract for servicing of each loan it underwrites. In turn, RHS will guarantee the lender's loan up to 90 percent of total development cost and commits to pay up to a maximum of 90 percent of the outstanding principal and interest balance of such loan in the case of default of the loan and filing of a claim. In no event will the Agency pay more than 90 percent of the original principal amount. This means that the Agency will have a risk exposure under the GRRHP of approximately 80 percent of the total development cost. Any losses would be shared on a pro-rate basis between the lender and the Agency from the first dollar lost.

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

#### Public Comments

The Agency received the following comments as the result of the publication of the regulation as an Interim Final Rule in the **Federal Register** on July 22, 1998 (62 FR 39452).

The Agency received seven comments on the regulation. The commentators represented the following:

- Mortgage Banker and User of Program.
- Developer.
- Interest Group.
- Public Body.
- Private consultant.
- Two Tenants' Rights Group.

Many of the comments related to the how things will be done (e.g. "How will interest credit be calculated and paid?"). Such questions are addressed in the Guaranteed Rural Rental Housing Program Origination and Servicing Handbook (HB-1-3565) which was not available during the comment period. The Handbook was made available to the public on December 18, 1998. It provides the reader with instruction on matters such as the Agency's internal processing procedures. The Handbook will not be published in the **Federal Register**, but is available to the public at no cost. The Handbook can also be found on the Internet at <http://rdinit.usda.gov/regs/>.

The comments that we adopted in the regulation are as follows:

1. Two commentators recommended extending the construction/permanent loan period from 12 to 24 months.

2. Two respondents commented that a Regulatory Agreement is typically not recorded of record. The requirement to have the Regulatory Agreement recorded was removed because the requirement to maintain the property in affordable housing will be recorded in the deed.

3. Two commentators responded on the exclusion of tax exempt bonds in the program. Since tax exempt bond financing is now authorized by legislation passed in August 1998, the Final Rule has been changed accordingly.

4. Three respondents suggested that three of the priority items used to rank and score NOFA responses be included in the regulation (Namely priority for projects in smaller communities, low income communities, and Empowerment Zones/Enterprise Communities). These priorities will be included in the Final Rule.

5. Four respondents commented on the requirement for the lender to certify that the project is in compliance with local, state, federal laws and program requirements. This requirement will be changed to require the lender to obtain borrower certification that the project is in compliance with local, state, federal laws and program requirements.

The issues that we were not able to adopt are as follows:

1. Two commentators responded that rental assistance be provided to 538 projects. We could not consider this because rental assistance is not authorized by the Housing Act of 1949 (the Act).

2. One commentator believed that the amount of the loan guarantee should be increased to 100%. This is not permitted by the Act.

3. One commentator responded that the non-assumability or release of borrower provision be removed. This is not permitted by the Act.

4. One commentator suggested that the rural area definition be changed to allow places up to 50,000 population. This change is not permitted by the Act.

5. Several commentators asked for a more complete discussion of interest credit. This was not added to the Final Rule but was added to the Handbook.

#### List of Subjects

##### 7 CFR Part 1940

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

##### 7 CFR Part 3565

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

Accordingly, chapters XVIII and XXXV, title 7, Code of Federal Regulations are amended by adopting the interim rule published on July 22, 1998 (63 FR 39452) as a final rule with amendments as follows:

#### PART 3565—GUARANTEED RURAL RENTAL HOUSING PROGRAM

1. The authority citation for part 3565 continues to read as follows:

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

#### Subpart A—General Provisions

2. Revise section 3565.5 (b) to read as follows:

##### § 3565.5 Ranking and selection criteria.

\* \* \* \* \*

(b) *Priority projects.* Priority will be given to projects: in smaller rural communities, in the most needy 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 located in Empowerment Zones/Enterprise Communities 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. The Agency will announce any assistance set aside and selection criteria in the NOFA.

3. Revise section 3565.6 to read as follows:

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

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

4. Revise section 3565.8 to read as follows:

##### § 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 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.

#### **§ 3565.9 [Amended]**

5. Amend section 3565.9 to remove paragraph (e) and redesignate paragraph (f) as paragraph (e).

6. Revise section 3565.13 to read as follows:

#### **§ 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.

#### **Subpart B—Guarantee Requirements**

##### **§ 3565.52 [Amended]**

7. Amend the introductory text of section 3565.52 by revising the words "12 months" to read "24 months."

8. Amend section 3565.53 by revising paragraph (a) and the last sentence in paragraph (b) to read as follows:

##### **§ 3565.53 Guarantee fees.**

\* \* \* \* \*

(a) *Initial guarantee fee.* The Agency will charge an initial guarantee fee equal 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) \* \* \* This fee will be collected on January 1, of each calendar year.

\* \* \* \* \*

#### **Subpart C—Lender Requirements**

9. Add section 3565.103(d)(9) to read as follows:

##### **§ 3565.103 Approval requirements.**

\* \* \* \* \*

(d) \* \* \*

(9) The lender must certify that they have computer systems that comply with year 2000 technology.

#### **Subpart G—Processing Requirements**

##### **§ 3565.303 [Amended]**

10. Amend section 3565.303(d)(8) by revising the word "a" to read "an" and by removing the word "recordable,".

#### **Subpart H—Project Management**

11. Amend section 3565.351 by amending paragraph (a) to remove the words "which will be filed in the real estate records of the appropriate jurisdiction" and by revising the introductory text of the section to read as follows:

##### **§ 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.

\* \* \* \* \*

Dated: June 9, 1999.

**Inga Smulkstys,**

*Acting Under Secretary, Rural Development.*

[FR Doc. 99-15288 Filed 6-15-99; 8:45 am]

BILLING CODE 3410-XV-U