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DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3565

RIN 0575–AC28

Guaranteed Rural Rental Housing Program; Secondary Mortgage Market Participation

AGENCY: Rural Housing Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS) is amending its regulations for the Guaranteed Rural Rental Housing Program (GRRHP). Under the GRRHP, RHS guarantees loans for the development of housing and related facilities for low or moderate-income families in rural areas. RHS administers the GRRHP under the authority of the Housing Act of 1949. The GRRHP regulations are being amended to allow RHS, in the case of a default, to buy back guaranteed loans from investors, lower the minimum level of rehabilitation work when guaranteed loans are used for acquisition and rehabilitation, and clarify certain matters involving Ginnie Mae. These regulatory changes are made to increase participation by the secondary mortgage market in the GRRHP.

DATES: *Effective Date:* February 18, 2005.

FOR FURTHER INFORMATION CONTACT: Arlene Nunes, Senior Loan Specialist, Multi-Family Housing Processing Division, Rural Housing Service, USDA, STOP 0781, 1400 Independence Avenue SW., Washington, DC 20250–0781, telephone: (202) 401–2307.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be significant for purposes of Executive Order 12866 and therefore has been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act

The information collection requirements contained in this regulation have been previously approved by OMB under the provisions of 44 U.S.C. chapter 35 and this regulation has been assigned OMB control number 0575–0174, in accordance with the Paperwork Reduction Act of 1995. There is a slight increase in the collection requirements from those previously approved by OMB. The Holder of the guarantee will be required to submit a demand letter to the lender and Agency requesting payment if the loan goes into default and the Holder wishes to be bought out. This change has been approved through OMB.

Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (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.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, 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, RHS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final 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 RHS 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 objectives 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.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Programs Affected

The affected program is listed in the Catalog of Federal Domestic Assistance under Number 10.438, Section 538 Rural Rental Housing Guaranteed Loans.

Intergovernmental Consultation

For the reasons contained in the Final Rule related Notice to 7 CFR part 3015, subpart V, this program is subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials. RHS has conducted intergovernmental consultation in the manner delineated in 7 CFR part 3015, subpart V.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' It is the determination of RHS 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, Public Law 91–190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Public Comments

The Agency received the following comments as a result of the publication of the regulation as a Proposed Rule in the **Federal Register** on June 10, 2003, (68 FR 34552).

The Agency received thirteen responses on the regulation. The commentators represented the following:

- Mortgage Bankers and Users of the Program
- Attorneys
- Investment Firms
- Public Bodies
- Rating Agency
- Interest Groups

Recurring topics of discussion in the comments include increasing the interest accrual period, making payment on the guaranteed loan in a timely manner, addressing certainty of the guarantee, reducing servicing fees, increasing the percentage of the guarantee, clarifying the definition of ''Holder'' and the liquidation process, increasing the program size, changing the lender approval requirements, and integrating the Section 538 program with expiring Section 515 projects.

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

1. Two commentators suggested that the Agency revise the term ''bar'' in § 3565.52 because of the connotation of the term in the industry. The term was eliminated in this section.

2. Two respondents recommended including a timeframe for the lender to respond to a repurchase demand from the Holder. In § 3565.405(a) of the final rule the lender has 10 business days from the date on a demand letter to respond to the Holder's request for repurchase. The Agency believes that the lender will have made this decision long before the Holder demands repurchase.

3. Two commentators considered the Agency's right to declare the guarantee unenforceable in the case where negligent servicing or origination is involved as arbitrary. To address the issue, the Agency provides a definition of ''negligent servicing or origination'' in § 3565.3 and describes the circumstances and procedural actions that the Agency must take before the guarantee is rendered unenforceable in § 3565.52(a).

4. One commentator suggested that the Agency substitute ''eligible construction expenses'' with ''eligible uses of loan proceeds'' in § 3565.52(c)(2) because ''eligible construction expenses'' are not defined. The Agency accepted the recommendation and made the change in that section.

5. One commentator recommended clarification of § 3565.52(c)(2) on what happens if the required levels of occupancy are not attained and/or conversion to a permanent loan does not occur. This section was expanded to explain that the guarantee will cover a permanent loan if even the required level of occupancy is not obtained if an additional operating reserve equal to 2% of the appraised value of the project or total development costs, whichever is greater, is set aside prior to closing of the construction loan. This cash contribution is an additional amount, over and above the required initial operating and maintenance reserve contribution.

6. One commentator questioned why in § 3565.405(b)(3) the Holder is responsible for resolving disputes regarding discrepancies between the amount claimed by the Holder and the information submitted by the lender. The Agency can only coordinate the resolution of the discrepancy. The Agency does not have independent knowledge of the amount due. Language was added in § 3565.405(b)(3) to clarify this.

7. Four comments were received about the date that interest starts to accrue once a loan is in default. The final rule in § 3565.452 defines the date interest starts to accrue as the date the Agency approves the lender's liquidation plan. If the Agency fails to respond to the lender's proposal or advise the lender to make revisions to the plan within 20 calendar days, the liquidation plan is approved by default.

8. One commentator recommended clarification on when a lender can file an estimated loss claim. Section 3565.453(d) was amended to require the lender to file an ''estimated loss claim'' with the liquidation plan if the lender expects the liquidation to exceed 90 calendar days.

9. Two commentators recommended eliminating moderate or substantial rehabilitation of 15 percent of the total estimated replacement cost of the project and setting the threshold to $6,500 per unit in § 3565.252. They argued that moderate or substantial rehabilitation of 15 percent of the total replacement cost of the project could be a value equal to or greater than the current level ($15,000 in the current rule), thus defeating the purpose of lowering the threshold to $6,500. The Agency agrees. The final rule in § 3565.252 has been changed accordingly.

10. The Agency has been advised that certain provisions needed to be added to the proposed rule so that section 538 loans could back securities that are guaranteed by the Government National Mortgage Association (Ginnie Mae). Ginnie Mae is a government corporation within the Department of Housing and Urban Development. Ginnie Mae's mortgage-backed securities program is governed by the National Housing Act, 12 U.S.C. 1716 *et seq.*; by its regulations, 24 CFR 300 *et seq.*; and by the Ginnie Mae Mortgage-Backed Securities Guide. To ensure compatibility between GRRHP and Ginnie Mae's mortgage-backed securities program, a Subpart K has been added to the final rule. This Subpart K addresses requirements for Agency guaranteed loans that back Ginnie Mae guaranteed securities. By adding Subpart K to the final rule, a securitization option will be available to lenders through Ginnie Mae.

The issues that the Agency did not adopt are as follows:

1. Three commentators identified the need to reduce the annual servicing fee in § 3565.53(b). The Agency has considered decreasing annual fees and concluded that the fees charged by the program are within industry standards.

2. Five respondents recommended a change in § 3565.52(a) to reflect a government guarantee of 100% instead of the 90% guarantee. A 100% guarantee is not permitted by the authorizing statute (42 U.S.C. 1490 p–2).

3. Three commentators argued against a limitation on interest accrual in § 3565.52(c)(1) and (2). The Agency understands the fundamental financial concept of interest accrual on borrowing. However, the term limit on interest accrual serves as an incentive for lenders to expedite the liquidation process.

4. Two commentators justified the need to increase program size, citing the prohibitive costs of making small loans as a disincentive to participation in the program. The Agency is unable to independently increase the size of the program since Congress appropriates funds to all federal programs.

5. Two commentators have suggested that the Agency use the section 538 program to meet the section 515 program's rehabilitation and preservation needs. The Agency is reviewing this possibility but has not yet been able to develop a model that would keep section 515 rents within the affordable income range that its tenants can afford.

6. Two commentators recommended changing requirements for program lender approval in § 3565.103(d)(1). They argue that lenders should not be required to obtain a rating from a lender rating agency if the lender has demonstrated financial capacity and stability. The Agency uses lender rating

agency information to ascertain the financial capacity and stability of the prospective lender. Government use of lender rating agencies is a cost-effective means of assessing financial capacity and stability.

7. Two commentators proposed the expansion of the definition of ''Holder'' in § 3565.3 so that a bond issuer or trustee may demand repurchase directly from the Agency upon loan default. The Agency would not be able to identify payments to individual Holders of the guarantee if payments were made to an intermediary unless the Holder of the guarantee designates another entity to receive payment on his/her behalf.

Background

GRRHP is a relatively new program that is administered by RHS. The GRRHP was operated as a pilot program in 1996 and 1997 and has been a permanent program since 1998. The program has been designed to increase the availability of affordable multifamily housing in rural America through partnerships between the Agency and lending sources, as well as with state and local housing finance agencies and bond issuers. During the early stages of the program, barriers were identified that have limited the success of the program. One of the primary barriers has been the inability of lenders to close loans due to the limited interest of the secondary mortgage market. As a result, the Agency held a stakeholders' meeting in December 2000 to identify problem areas. The purpose of the following changes is to make the program more attractive to the industry without jeopardizing the best interests of the Government.

Allow for a timely payment to investors. In other Rural Development guaranteed programs, the security Holder may demand that either the lender or the Government buy out the guaranteed portion of the loan from the Holder if payments are delinquent by at least 60 calendar days, or if 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 its receipt. While the Holder is effectively taken out prior to liquidation of the loan, the lender must continue to meet all of its obligations to the Government under the Lender's Agreement and Loan Note Guarantee. The inclusion of this provision in § 3565.405(a) and (b) is important to investors because they do not want to wait for the lender to liquidate the collateral to be reimbursed for their investment, enabling them to put their money to better use elsewhere. By this rule change, the Agency is also adding definitions to § 3565.3 for the terms ''Holder,'' ''Negligent servicing or origination,'' ''Ginnie Mae,'' ''Government National Mortgage Association,'' and amending definitions for the terms ''Interest credit'' and ''Permanent loan''.

Define conditions of the guarantee. A common concern found among lenders reviewing the GRRHP were the policies on termination or reduction of the guarantee due to a performance failure of the lender. It was the consensus that these policies needed to be more clearly delineated. In § 3565.52(a), the Agency identifies under what circumstances the Agency will exercise its right to terminate the guarantee. In addition, the Agency clarifies in § 3565.52(c)(1) the items that are included in the maximum guarantee for a permanent loan. The maximum guarantee covers 90 percent of the unpaid balance and accrued interest up to 90 days after loan default. Penalties incurred because of loan default are not covered by the guarantee. Moreover, it is important for the regulation to make clear that the investor will be held harmless unless they are complicit with the lender in cases involving fraud or misrepresentation of fact. This issue has been addressed in the revision of § 3565.52.

Allow the accrual of interest for 90 calendar days after loan default. When the lender is liquidating a guaranteed loan and owns any of the guaranteed portion of the loan, it may request a tentative loss estimate. Currently, interest accrual terminates on the defaulted loan if an estimated payment of loss is made. This revision made in § 3565.452(a) allows interest to accrue for 90 calendar days after the date the Agency approves liquidating the loan. This interest accrual policy is consistent with other RD loan guarantee programs. Based on the weight of the factors used to calculate the program's subsidy rate, the impact of this interest accrual policy would be negligible.

In case of 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 allowing accrual of interest for 90 calendar days after loan default 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.

Lower per unit threshold for acquisition with rehabilitation from $15,000 per unit to $6,500 per unit. Lowering the per unit rehabilitation threshold in § 3565.252 affords new opportunities to preserve affordable housing in a rural community.

Eliminate the timeframe for liquidation, which is currently at 9 months. Eliminating the liquidation timeframe in § 3565.453(a)(9)(c) affords the lender the opportunity to sell the property for the highest and best price in accordance with market conditions.

Amend § 3565.212 by eliminating the word ''; and'' from paragraph (c) and adding a period in its place and by eliminating paragraph (d). This modification to § 3565.212 is necessary because paragraph (d) prohibits the Agency from guaranteeing a loan, which contains tax-exempt financing. Paragraph (d) of § 3565.212 contradicts § 3565.6, which allows tax-exempt financing to be used as a source of capital for the guaranteed loan.

Amend § 3565.103 by adding Ginnie Mae in paragraph (d)(1). This modification to § 3565.103 is necessary because lenders who are Ginnie Mae issuers must provide proof of their status as an issuer on a continuing basis when a lender becomes approved as a section 538 program lender.

Add Subpart K to final rule to explain the conditions under which Ginnie Mae will securitize Section 538 loans. To ensure compatibility between GRRHP and Ginnie Mae's mortgage-backed securities program a Subpart K has been added to the final rule. Subpart K addresses the requirements for Agency guaranteed loans that back Ginnie Mae guaranteed securities. By adding Subpart K to the final rule, a securitization option will be available to lenders through Ginnie Mae.

List of Subjects in 7 CFR Part 3565

Bankruptcy, Banks, 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 bonds.

■ Therefore, chapter XXXV, title 7, Code of Federal Regulations is amended to read 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. Section 3565.3 is amended by adding, in alphabetical order, a definition of ''Ginnie Mae'', ''Government National Mortgage Association'', ''Holder'', and ''Negligent servicing or origination,'' and by revising the definitions for ''Interest credit'' and ''Permanent loan'' to read as follows:

§ 3565.3 Definitions.

* * * * *

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.

* * * * *

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.

* * * * *

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

* * * * *

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.

* * * * *

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.

* * * * *

Subpart B—Guarantee Requirements

■ 3. Section 3565.52 is revised to read as follows:

§ 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 condition 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) *Guarantee percentage and payment.* Both permanent loans and combination construction and permanent loans are eligible for a guaranty subject to the following limitations:

(1) *Permanent loans.* The Agency will issue a permanent loan guarantee after a minimum level of acceptable occupancy of 90% for 90 consecutive days is attained or an additional operating reserve equal to 2% of the appraised value of the project or total development costs, whichever is greater, is set aside. This cash contribution is an additional amount, over and above the required initial operating and maintenance reserve contribution. In either case, the permanent guarantee will be issued when the 2% additional reserve amount is set aside prior to closing the construction loan or the minimum level of occupancy is attained prior to the expiration of the Conditional Commitment, including any extensions thereto. The maximum guarantee payment for a permanent loan will be 90 percent 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. Penalties incurred as a result of default are not covered by the guarantee. The Agency may provide a lesser guarantee percentage based upon its evaluation of the credit quality of the loan. The Agency liability under any guarantee will decrease or increase, in proportion to any increase or decrease in the amount of the unpaid portion of

the loan, up to the maximum amount specified in the Loan Note Guarantee.

(2) *Combination construction and permanent loans.* For combination construction and permanent loans, the Agency will guarantee advances during the construction loan period, which cannot exceed 24 months. The guarantee of construction loan advances will cover a permanent loan once the minimum level of acceptable occupancy of 90% for 90 consecutive days is attained or an additional operating reserve equal to 2% of the appraised value of the project or total development costs, whichever is greater, is set aside prior to closing the construction loan. This cash contribution is an additional amount, over and above the required initial operating and maintenance reserve contribution. The maximum guarantee of construction advances related to a combination construction and permanent loan will not at any time exceed the lesser of 90 percent 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 of the combination loan. Penalties incurred as a result of default are not covered by the guarantee. The Agency may provide a lesser guarantee percentage based upon its evaluation of the credit quality of the loan. Conversion to a permanent loan guarantee will become effective when the Agency provides the lender with written confirmation of the conversion date.

In addition, the lender shall require credit enhancements to protect the Government's guarantee. Acceptable credit enhancements include:

(i) Surety bonding or performance and payment bonding (the preferred credit enhancement);

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

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

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

(i) 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.

(ii) To the lender, the lesser of:

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

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

Subpart C—Lender Requirements

■ 4. Section 3565.102 is amended by revising paragraph (b) to read as follows:

§ 3565.102 Lender eligibility.

* * * * *

(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;

* * * * *

■ 5. Section 3565.103 is amended by revising paragraph (d)(1) to read as follows:

§ 3565.103 Approval requirements.

* * * * *

(d) * * *

(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);

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Subpart E—Loan Requirements

§ 3565.212 [Amended]

■ 6. Section 3565.212 is amended by removing the word ''; and'' from paragraph (c) and adding a period in its place and by removing paragraph (d).

Subpart F—Property Requirements

■ 7. Section 3565.252 is revised to read as follows:

§ 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 or a successor regulation. 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 in the annual Notice of Fund Availability.

Subpart I—Servicing Requirements

■ 8. Section 3565.403 is amended by redesignating paragraphs (a), (b), (c), and (d) as paragraphs (b), (c), (d), and (e), respectively, and by adding a new paragraph (a) to read as follows:

§ 3565.403 Special servicing.

* * * * *

(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.

* * * * *

§ 3565.404 [Amended]

■ 9. Section 3565.404 is amended by revising the heading to read as follows:

§ 3565.404 Transfer of loans or mortgage servicing.

■ 10. Section 3565.405 is added to read as follows:

§ 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.

Subpart J—Assignment, Conveyance, and Claims

■ 11. Section 3565.452 is amended by revising paragraph (a) to read as follows:

§ 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.

* * * * *

■ 12. Section 3565.453 is revised to read as follows:

§ 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 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.

■ 13. Section 3565.457 is revised to read as follows:

§ 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 collectibility 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 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 owning 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.

■ 14. A new subpart K, consisting of §§ 3565.501 through 3565.550 is added to read as follows:

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

Sec.

§ 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.

§ 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.

Dated: January 11, 2005.

Gilbert Gonzales,

Acting Under Secretary, Rural Development.

[FR Doc. 05–1034 Filed 1–18–05; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19078; Directorate Identifier 98–CE–17–AD; Amendment 39–13946; AD 98–20–38 R1]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company (Raytheon) Beech 200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) to revise AD 98–20–38, which applies to all Beech 200 series airplanes. AD 98–20–38 requires you to revise the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for and procedures for exiting from severe icing conditions. Part of the applicability of AD 98–20–38 includes the Raytheon