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DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3555

RIN: 0575-AD10

Single Family Housing Guaranteed Loan Program

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed Rule.

SUMMARY: The Rural Housing Service (RHS or Agency) proposes to amend the current regulation for the Single Family Housing Guaranteed Loan Program (SFHGLP) on the subject of Single Close Combination Construction to Permanent Loans. The Agency proposes to amend the regulation to provide increased flexibility in loan terms that affect the costs of interim construction financing and the viability of combination construction to permanent loans on the secondary market in a manner which will enable more lenders to make these combination construction to permanent loans to SFHGLP borrowers. Specifically, the Agency proposes to: allow and define a maximum interest rate for interim construction financing that is different than the underlying rate; allow for the escrow or reserve of regularly scheduled principal, interest, taxes and insurance (PITI) payments; and remove the requirement for loan modification or re-amortization once construction is complete.

DATES: Written or e-mail comments on the proposed rule must be received on or before [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER] to be assured for consideration.

ADDRESSES: You may submit comments on this proposed rule by any one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments electronically.

- Mail: Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Ave, SW., Washington, DC 20250-0742.

- Hand Delivery/Courier: Submit written comments via Federal Express mail, or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250-0742.

FOR FURTHER INFORMATION CONTACT: Kate Jensen, Finance and Loan Analyst, Single Family Housing Guaranteed Loan Division, STOP 0784, Room 2250, USDA Rural Development, South Agriculture Building, 1400 Independence Avenue SW., Washington, DC 20250-0784, telephone: (503) 810-6855, email is kate.jensen@wdc.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, Classification

This proposed rule has been determined to be non-significant and therefore was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Except where specified, all State and local laws and regulations that are in direct conflict with this rule will be preempted. Federal funds carry Federal requirements. No person is required to apply for funding under SFHGLP, but if they do apply and are selected for funding, they must comply with the requirements applicable to the Federal program funds. This proposed rule is not retroactive. It will not affect agreements entered into prior to the effective date of the rule. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 must be exhausted.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effect 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 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 the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least

costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This proposed 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.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1970, 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, Pub. L. 91-190, neither an Environmental Assessment nor an Environmental Impact Statement is required.

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 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.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) the undersigned has determined and certified by signature of this document that this rule change will not have a significant impact on a substantial number of small entities. This rule does not impose

any significant new requirements on Agency applicants and borrowers, and the regulatory changes affect only Agency determination of program benefits for guarantees of loans made to individuals.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

Executive Order 13175 imposes requirements on RHS in the development of regulatory policies that have tribal implications or preempt tribal laws. RHS has determined that the proposed rule does not have a substantial direct effect on one or more Indian Tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian Tribes. Thus, this proposed rule is not subject to the requirements of Executive Order 13175. If a tribe determines that this rule has implications of which RHS is not aware and would like to engage with RHS on this rule, please contact USDA's Native American Coordinator at (720) 544-2911 or AIAN@wdc.usda.gov.

Executive Order 12372, Intergovernmental Consultation

These loans are subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. RHS conducts intergovernmental consultations for each SFHGLP loan in accordance with 2 CFR part 415, subpart C.

Programs Affected

The program affected by this regulation is listed in the Catalog of Federal Domestic Assistance under Number 10.410, Very Low to Moderate Income Housing Loans (Section 502 Rural Housing Loans).

Paperwork Reduction Act

The information collection and record keeping requirements contained in this regulation have been approved by OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The assigned OMB control number is 0575-0179.

E-Government Act Compliance

The Agency is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Non-Discrimination Policy

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotope, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at http://www.ascr.usda.gov/complaint_filing_cust.html and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

- (1) Mail: U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW.,
Washington, D.C. 20250-9410;
- (2) Fax: (202) 690-7442; or
- (3) E-mail: program.intake@usda.gov.

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Background Information

In order to encourage new construction purchase opportunities for rural applicants and increase lender utilization of SFHGLP Combination Construction to Permanent Loans in rural communities, the Agency proposes to revise the regulation pertaining to combination construction permanent loans. The proposed revisions will align the Agency's construction to permanent loans with industry standards. Lenders would be able to recapture interest accrued on a warehouse or business line of credit during the course of construction. An additional option is for lenders to escrow or set aside in reserves regularly scheduled fully amortized PITI payments for the construction period.

Currently, a lender is restricted to using the promissory note rate for the life of the loan, including during the construction phase. The restriction discourages lenders from making combination construction to permanent loans because lenders may have difficulty covering the higher costs of construction or warehouse lines of credit associated with the construction phases. If a lender uses a warehouse line of credit in order to finance the cost of construction, the lender is responsible for any cost associated with the use of those funds. The proposed changes to 7 CFR 3555.104 will allow for a modified interim construction interest rate that is no more than 200 basis points above the underlying promissory note rate. After the construction period, the rate will revert back to the promissory note rate, or a lower interest rate. This practice is common in the traditional construction to permanent loan industry, and allows lenders to cover higher construction phase line of credit costs. The Agency will publish the maximum allowable interim construction interest rate in RD Instruction 440.1, available in any Rural Development Office) or online at:

<http://www.rd.usda.gov/publications/regulations-guidelines>. After construction is completed, lenders who used the interim construction interest rate must revert to the underlying promissory note rate or lower. The Agency also proposes to amend 7 CFR 3555.105(c) so that the cost of the interim construction interest rate may qualify as an eligible construction loan purpose.

Current regulations impede the ability to sell or transfer a loan to an investor on the secondary market at loan closing because lenders do not have a viable method to ensure that consistent, equal principal and interest payments are made to investors during the construction phase. Construction to permanent loans must be modified and re-amortized at the end of the construction period pursuant to 7 CFR 3555.105(d), and there is no authority for lenders to establish an escrow or reserve for payments of consistent, equal principal and interest payments to investors during the construction phase. To address this issue, the Agency proposes to amend 7 CFR 3555.105 by making post-construction modification or re-amortization optional, as well as allowing lenders to establish an escrow or reserve in an amount of up to 12 months of the fully amortized regularly scheduled PITI payments over the construction period. This provides lenders with the increased ability to place SFHGLP construction to permanent loans in the secondary market at loan closing. Please note that 7 CFR 3555.105(d)(4) already allows for the establishment of reserves for interest, taxes and insurance—the proposed amendment is for an additional principal reserve account in order to achieve a 30 year amortization of PITI payments.

The regulatory revisions will reduce the burden of construction financing on small and medium sized lenders, streamline the program,

encourage program utilization, and provide the lender the ability to quickly transfer closed loans to program investors.

Lastly, the Agency proposes to correct 7 CFR 3555.104(a)(4) to clarify that if the interest rate increases between the issuance of a conditional commitment and the loan closing, the lender must submit a new request for new conditional commitment. Current language states that the lender must note the increased interest rate in the closing loan package—however this is not consistent with the terms of the conditional commitment or current practice. Lenders do submit new requests for conditional commitments in the event of an increase in interest rate before closing.

List of Subjects in 7 CFR Part 3555

Home improvement, Loan Programs - Housing and community development, Eligible loan purpose, Construction, Loan terms, Mortgages, Rural areas.

Therefore, chapter XXXV, title 7 of the Code of Federal Regulations is proposed to be amended as follows:

PART 3555 - GUARANTEED RURAL HOUSING PROGRAM

1. The authority citation for Part 3555 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1471 et seq.

Subpart C - Loan Requirements

2. Amend § 3555.104 by revising paragraph (a)(4) and adding new paragraph (e) to read as follows:

§ 3555.104 Loan Terms.

(a) * * *

(4) If the interest rate increases between the time of the issuance of the conditional commitment and the loan closing, the lender must submit a new request for a conditional commitment with the updated interest rate.

* * *

(e) Combination construction and permanent loans. For the purpose of combination construction permanent loans:

(1) The lender may charge an interest rate for interim construction financing that exceeds the underlying promissory note rate by an amount determined by the Agency. The maximum allowable interim construction interest rate will be published in RD Instruction 440.1, available in any Rural Development Office or online at:

<http://www.rd.usda.gov/publications/regulations-guidelines>.

(2) After construction ends, the interest rate must revert to a rate that is no higher than the underlying promissory note rate.

3. Amend § 3555.105 by:

a. Adding paragraph (c) (2) (iv);

c. Revising paragraph (d) (1) and the first sentence of paragraph (d) (6) by replacing the first "will" with "may"; and

d. Adding paragraph (d) (7).

§ 3555.105 Combination construction and permanent loans.

(c) ***

(2) ***

(iv) An interim construction financing interest rate as provided for in § 3555.104(e).

(d) * * *

(1) ***. An interim construction financing interest rate may be used in accordance with § 3555.104(e).

(7) Lenders may establish a reserve for up to 12 months of the regularly scheduled (amortized) principal payments, to ensure full PITI payments during the construction period. In such cases, a loan modification or re-amortization is not required after construction is complete.

Dated: May 23, 2018

Joel C. Baxley
Administrator
Rural Housing Service

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