



BILLING CODE 3410-XV-U

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3565

RIN 0575-AD12

Section 538 Guaranteed Rural Rental Housing Program Notice of Funding Availability Elimination

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed Rule

SUMMARY: The Rural Housing Service (RHS or Agency) is amending its regulation to eliminate the requirement for the annual publication of Notice of Funding Availability (NOFA). Additionally, RHS will remove all references to the term NOFA in other various sections. The intended effect of this action is to allow the Agency to accept and start processing applications in a more fluid manner.

DATES: Written or email comments must be received on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: You may submit comments to this rule by any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and, in the lower “Search Regulations and Federal Actions” box, select “Rural Utilities Service” from the agency drop-down menu, then click on “Submit.” In the Docket ID column, select RHS-18-MFH-0025 to submit or view public comments and

to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.

- Postal Mail / Commercial Delivery: Submit written comments to Michele L. Brooks, Team Lead, RD Innovation Center – Regulatory Team, Rural Development, U.S. Department of Agriculture, STOP 1522, 1400 Independence Avenue, SW., Washington, D.C. 20250-1522. All written comments will be available for public inspection during regular work hours at 1400 Independence Avenue, SW., Mailstop 1522, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Monica Cole, Finance and Loan Analyst, Multi-Family Housing Guaranteed Loan Division, Rural Housing Service, U.S. Department of Agriculture, STOP 0781-Room# 1263S, 1400 Independence Avenue, SW, Washington, D.C. 20250-0781, Telephone: (202) 720-1251 (this is not a toll-free number); e-mail: monica.cole@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.

Authority

The Guaranteed Rural Rental Housing (GRRH) program is administered subject to appropriations by the U.S. Department of Agriculture (USDA) as authorized under the Housing Act of 1949 as amended, Section 538, Public Law 106-569, 42 U.S.C. 1490 p-2.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1970, Subpart A, "Environmental Policies." RHS determined that this action does not constitute a major Federal action significantly affecting the quality of the environment. In accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

The 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 on 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.

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. This rule does not impose substantial direct compliance costs on State and local Governments; therefore, consultation with States is not required.

Executive Order 12988 - Civil Justice Reform

This rule has been reviewed under Executive Order 12988. In accordance with this rule: (1) unless otherwise specifically provided, all State and local laws that conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National

Appeals Division of the Department of Agriculture (7 CFR part 11) must be exhausted before bringing suit in court that challenges action taken under this rule.

Unfunded Mandate Reform Act (UMRA)

Title II of the UMRA, Pub. L. 104-4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal Governments and on the private sector. Under section 202 of the UMRA, Federal Agencies generally must prepare a written statement, including 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 a Federal 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 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 for 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 collection requirements contained in this regulation have been approved by OMB and have been assigned OMB control number 0575-0189. This final rule contains no new reporting and recordkeeping requirements that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

E-Government Act Compliance

RHS is committed to complying with the E-Government Act by promoting the use of the Internet and other Information Technologies in order to provide increased opportunities for citizen access to Government information, services, and other purposes.

Programs Affected

The program affected by this regulation is listed in the Catalog of Federal Domestic Assistance under numbers 10.438 – Rural Rental Housing Guaranteed Loans (Section 538).

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on RHS in the development of regulatory policies that have tribal implications or preempt tribal laws. RHS has determined that the 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 rule is not subject to the requirements of Executive Order 13175. If tribal leaders are interested in consulting with RHS on this rule, they are encouraged to contact USDA's Office of Tribal Relations or RD's Native American Coordinator at: AIAN@wdc.usda.gov to request such a consultation.

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 loan in accordance with 2 CFR part 415, subpart C.

Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, 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, familial/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, audiotape, 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
Director, Office of Adjudication
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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I. Background and Summary of Changes

The annual publication of the NOFA is currently required by 7 CFR part 3565. While, Section 536 of the Housing Act of 1949, as amended (42 USC 1490p) (Housing Act) broadly requires a publication of the availability of funds, application procedures, and selection criteria in the Federal Register, it does not contain the annual notification requirement. RHS is amending its regulation to align with the Housing Act requirements, which will allow RHS to continue its application process under circumstances such as a Continuing Resolution.

The delay caused by requiring an annual NOFA also creates a disconnect, in regards to the timing of deadlines, with the application process of tax credit financed properties, which represent approximately 85 percent of the Section 538 portfolio. Of these properties that are financed with tax credits, the tax credit equity represents approximately 75 percent of the total development cost (TDC). Without the injection of tax credit equities, rents would not be affordable to low income tenants. When developers use the Section 538 program with tax credits, they are required to submit a preliminary eligibility letter from Rural Development together with the tax credit application. If the NOFA is published after the tax credit application deadline, the developer will not be able to use tax credits to finance the project.

In lieu of the NOFA process, the Section 538 GRRH program will follow procedures similar to other Rural Development guaranteed loan programs and accept applications on a continuous basis. The Agency will make an announcement to the public when funds are available. Rural Development will use the standards from the last NOFA as published in the **Federal Register** on December 21, 2017 (82 FR 60579). If Rural Development chooses to change the selection and/or scoring criteria or fees charged in subsequent years, it will inform the public of those changes through additional notices in the **Federal Register**. Both Empowerment Zone (EZ) and Enterprise Community (EC) Initiatives have expired, so reference to those initiatives will also be removed from 7 CFR part 3565.

List of Subjects in 7 CFR Part 3565

Conflict of interest, Credit, Fair housing, Loan programs-housing and community development, Low and moderate-income housing, Manufactured homes, Mortgages, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, RHS proposes to amend 7 CFR part 3565, 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

§ 3565.3 [Amended]

2. Amend § 3565.3 by removing the definition of “NOFA.”

3. Section 3565.4 is revised to read as follows:

§ 3565.4 Availability of assistance.

The Agency’s authority to enter into commitments, guarantee loans, or provide interest credits is limited to the extent that appropriations are available to cover the cost of the assistance. The Agency will notify the public of the availability of assistance, changes in application requirements, or changes in the fee structure.

4. Amend § 3565.5 by revising paragraph (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 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.

Subpart B – Guarantee Requirements

5. Amend § 3565.53 by revising paragraph (c) to read as follows:

§ 3565.53 Guarantee fees.

* * * * *

(c) *Surcharge for guarantees on construction advances.* The Agency may, at its sole discretion, charge an additional fee on the portion of the loan advanced during construction. If applicable, this fee will be charged in advance at the start of construction.

Subpart C – Lender Requirements

§ 3565.104 – [Amended]

6. Amend § 3565.104 by removing the last sentence.

Subpart E – Loan Requirements

7. Section 3565.210 is revised to read as follows:

§ 3565.210 Maximum interest rate.

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

Subpart F – Property Requirements

8. 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.

Subpart G – Processing Requirements

9. Amend § 3565.302 by revising paragraph (b) introductory text to read as follows:

§ 3565.302 Allowable fees.

* * * * *

(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:

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Dated: November 20, 2018

Joel C. Baxley
Administrator

Rural Housing Service

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