

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.

Background

The Guaranteed Rural Rental Housing Program (GRRHP) is a relatively new program that is administered by the Rural Housing Service (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 a lack of participation by the secondary mortgage market. As a result of this poor performance, we consulted industry and governmental experts in the loan guarantee field at a December 2000 stakeholders' meeting. Our main goal was to learn what we could do to close more loans. The regulatory changes herein are the result of meetings with industry stakeholders, including input from banks, housing finance agencies, and secondary market sectors. The meetings were held to identify program stumbling blocks and brainstorm solutions. The purpose of the following changes is to make the program more industry friendly while not 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 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 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. This provision 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 a definition of the term "Holder."

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 addition, 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, abuse, negligence or misrepresentation of fact. This issue has been addressed in the revision of § 3565.52.

Allow the accrual of interest for 90 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. Upon payment under the current policy, interest accrual terminates on the defaulted loan if an estimated payment of loss is made. This revision changes this policy to allow interest to accrue for 90 days after the date the decision is made to liquidate the loan in default. This interest accrual policy is consistent with other Agency 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.

Lower per unit threshold for acquisition with rehabilitation from \$15,000 per unit to \$6,500 per unit. The purpose of lowering the per unit rehabilitation threshold 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 affords the lender the opportunity to sell the property for the highest and best price in accordance with market conditions.

List of Subjects in 7 CFR Part 3565

Banks, Conflict of interests, Credit, Environmental impact statements, Fair housing, Hearing and appeal procedures, Low and moderate income housing, Mortgages, Real property acquisition.

Therefore, chapter XXXV, title 7, Code of Federal Regulations is proposed to be 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 "Holder."

§ 3565.3 Definitions.

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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 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.

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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 which a lender participates in or condones. The Guarantee will be unenforceable by the lender to the extent any loss is occasioned by fraud, misrepresentation or abuse, 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 proceeds by the lender for purposes other than those authorized by the Agency and permissible under this regulation. 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. These acts constitute grounds for the cancellation of the guarantee or refusal to make full payment under the guarantee. If in the judgment of the Agency these acts or omissions can reasonably be expected to have a material adverse effect on the credit