

quality of the Guaranteed Loan or the physical condition of the property securing the Guaranteed Loan, the Agency may cancel or modify a guarantee to the extent of the potential loss. The Agency shall give notice to the lender of the acts or omissions that it considers to constitute such grounds and give the lender a reasonable opportunity to cure the acts or omissions. Other violations or performance deficiencies of the lender may themselves be a basis to bar the lender from receiving further Loan Note Guarantees, but will not constitute grounds for cancellation or reduction of the guarantee or refusal to make a claim payment. 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 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 such actions 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.* A minimum level of acceptable occupancy as determined by the lender with Agency concurrence must be attained prior to the expiration of Form 3565-2 Conditional Commitment, including any extensions thereto, and the issuance of a loan guarantee for the permanent loan. The maximum guarantee for a permanent loan will be 90 percent of the unpaid principal and accrued interest 90 days from the date the decision is made to liquidate the loan. The Agency may provide a lesser guarantee 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 convert to a permanent loan guarantee once the required level of occupancy has been reached. 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 advanced for eligible construction expenses or 90 percent of the original principal amount of the combination loan. The Agency may provide a lesser guarantee based upon its evaluation of the credit quality of the loan. In addition, the lender shall require the borrower or the contractor to provide 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; and

(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 and interest 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 due thereon.

### Subpart C—Lender Requirements

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

#### § 3565.102 Lender eligibility.

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(b) Meet the qualifications and be approved by Fannie Mae or Freddie Mac to make multifamily housing loans that are to be sold to or securitized by such corporations;

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### Subpart E—Loan Requirements

5. Section 3565.212 is amended by removing the word “; and” from paragraph (c) and adding a period and by removing paragraph (d).

### Subpart F—Property Requirements

6. Section 3565.252 is revised to read as follows:

#### § 3565.252 Housing types.

The property may include new construction or rehabilitated 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 15 percent of the total estimated replacement cost of the project or \$6,500 per dwelling unit, whichever is greater. The portion of guarantee funds available for projects involving acquisition and rehabilitation may be limited in the annual Notice of Fund Availability.

### Subpart I—Servicing Requirements

7. 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.

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(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.

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8. Section 3565.405 is added to read as follows:

#### § 3565.405 Repurchase of guaranteed loans.

(a) *Repurchase by lender.* A lender has the option to repurchase the unpaid guaranteed portion of the loan from a holder within 30 days of written demand by the holder when the borrower is in default not less than 60 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 days of the lenders receipt thereof. The repurchase by the lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest less the lender's servicing fee. The holder must concurrently send a copy of the demand letter to the Agency. The guarantee will not cover the note interest to the holder on the guaranteed loan accruing after 90 days from the date of the demand letter to the lender requesting the repurchase.