

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

#### 7 CFR Part 3550

RIN 0575-AC81

#### Direct Single Family Housing Loans and Grants

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed rule.

**SUMMARY:** Through this action, the Rural Housing Service (RHS) is proposing to amend its regulations for the Direct Single Family Housing Loans by reinstating language to enable full repayment of the entire subsidy in event of foreclosure or deed-in-lieu of foreclosure (voluntary conveyance). This action will clarify that in the event of foreclosure or deed-in-lieu of foreclosure (voluntary conveyance) the RHS will recapture the full subsidy from the value of the property.

**DATES:** Written comments must be received on or before May 4, 2010 to be assured for consideration.

**ADDRESSES:** You may submit comments to this rule by any of the following methods: *Agency Web Site:* <http://www.rurdev.usda.gov/regs/>. Follow the instructions for submitting comments on the Web Site.

- *E-Mail:* [comments@wdc.usda.gov](mailto:comments@wdc.usda.gov). Include the RIN number (0575-AC81) in the subject line of the message.

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

- *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 Avenue, SW., Washington, DC 20250-0742.

- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or another mail courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department

of Agriculture, 300 7th Street, SW., 7th Floor, Suite 701, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street, SW., address listed above.

#### FOR FURTHER INFORMATION CONTACT:

Janet L. Carter, Senior Loan Specialist, Rural Housing Service, Stop 0783, 1400 Independence Avenue, SW., Washington, DC 20250-0783, Telephone: 202-720-1489.

#### SUPPLEMENTARY INFORMATION:

##### Classification

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

##### Paperwork Reduction Act of 1995

There are no new reporting and recordkeeping requirements associated with this rule.

##### E-Government Act Compliance

The RHS 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.

##### Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with that Executive Order: (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 the regulations of the National Appeals Division of USDA at 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

##### 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, 2 U.S.C. 1532, 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.

##### Programs Affected

The programs affected by this proposed rule are 10.410, Low to Moderate Income Housing Loans and 10.417, Very Low-Income Housing Repair Loans and Grants.

##### Intergovernmental Consultation

For the reasons set forth in the final rule related Notice to 7 CFR part 3015, subpart V, these programs are not subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials.

##### 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 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. This rule reinstates a requirement on Agency applicants and borrowers; however, the requirement of full subsidy recapture in event of foreclosure or voluntary conveyance will apply solely to the individual applicants and borrowers of Section 502

Direct Single Family Housing financing and will not apply to small entities. There will be no significant information collection, or regulatory requirements imposed on small entities under this proposed rule.

### Federalism

The policies contained in this rule do not have any substantial direct effect on States, 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 a substantial direct compliance cost on State and local Governments. Therefore, consultation with the States is not required.

### Background

In the event of a foreclosure or deed-in-lieu of foreclosure (voluntary conveyance), the original recapture regulation promulgated on October 1, 1979 provided for recapture of the full amount of subsidy granted in determining the balance owed. However, when the Section 502 SFH direct loan program was restructured on November 22, 1996, the revised recapture regulation, 7 CFR 3550.162, this provision was omitted. Therefore, because of the omission of the critical language in the regulation, full recovery is not currently supported by regulatory authority.

Foreclosure or deed-in-lieu of foreclosure (voluntary conveyance) is a last resort to protect the government's interest after all other servicing actions have failed. Recovery of some or the entire payment subsidy provided to direct single family housing borrowers or "recapture" is provided for by statute in 42 U.S.C. 1490a(a)(1)(D). The statute gives the Secretary broad discretion in determining the amount of the subsidy recapture.

Currently, there is no clear regulatory authority in 7 CFR 3550 for full recovery of the payment assistance subsidy that the borrower receives as was provided for in the original regulation. In addition, prior to the revision of the original recapture regulation in 1996, the Subsidy Repayment Agreement also provided that the full amount of the subsidy was repayable in the event of a foreclosure or deed in lieu of foreclosure (voluntary conveyance). The current Subsidy Repayment Agreement only provides for the formula calculation of the subsidy for repayment. Further, there was no discussion in the preamble implementing the proposed and final rules regarding an intent to change this provision. This rule will clarify the subsidy repayment requirement in event

of foreclosure or deed-in-lieu of foreclosure (voluntary conveyance) by restoring the original regulatory authority and policy of full recovery of the subsidy in these foreclosure situations. The current Subsidy Repayment agreement will be revised to reflect the language of the regulation once the proposed regulation is finalized. Recovery of the subsidy will only come from proceeds from the sale of the property. The borrower will not be personally liable for any deficiency in repayment of the full subsidy to the Agency as a result of this action and the Agency will not seek to recover unpaid subsidy from assets of the borrower other than the property which was security for the loan.

### List of Subjects in 7 CFR Part 3550

Administrative practice and procedure, Conflict of interests, Environmental impact statements, Equal credit opportunity, Fair housing, Accounting, Housing, Loan programs—Housing and community development, Low and moderate income housing, Manufactured homes, Reporting and recordkeeping requirements, Rural areas, Subsidies.

For the reasons stated in the preamble, chapter XXXV, Title 7 of the Code of Federal Regulations, is proposed to be amended as follows:

### PART 3550—DIRECT SINGLE FAMILY HOUSING LOANS AND GRANTS

1. The authority citation for part 3550 continues to read as follows:

**Authority:** 5 U.S.C. 301; 42 U.S.C. 1480.

#### Subpart A—General

2. Section 3550.162 is revised to read as follows:

#### § 3550.162 Recapture.

(a) *Recapture policy.* Borrowers with loans approved or assumed on or after October 1, 1979, will be required to repay subsidy amounts received through payment subsidy or deferred mortgage assistance. Amounts to be recaptured are due and payable in the event of foreclosure or when the borrower transfers title or ceases to occupy the property. The real estate that secures the loan is the only security for the repayment of the subsidy granted on the loan. The repayment of subsidy is not a personal obligation of the borrower and no amount attributed to subsidy shall be included in any deficiency sought to be collected from a borrower after a voluntary conveyance or foreclosure.

(b) *Amount to be recaptured.* (1) The maximum amount to be recaptured is

the amount of principal reduction attributed to subsidy and the lesser of:

- (i) The amount of subsidy received; or
- (ii) 50 percent of the value appreciation.

(2) Foreclosure or deed-in-lieu of foreclosure (voluntary conveyance). Notwithstanding the provisions of paragraph (b)(1) of this section the unpaid balance of loans being liquidated by deed-in-lieu of foreclosure (voluntary conveyance) to the government or foreclosure shall include the total amount of subsidy that has been granted on the loan.

(3) The value appreciation of property with a cross-collateralized loan is based on the market value of the dwelling and lot. If located on a farm, the lot size would be a typical lot for a single family housing property.

(4) Interest reduced from the promissory note rate to six percent under the Service member Civil Relief Act (SCRA) is not subject to recapture.

Dated: January 28, 2010.

**Tammye Treviño,**

*Administrator, Rural Housing Service.*

[FR Doc. 2010-4495 Filed 3-4-10; 8:45 am]

**BILLING CODE 3410-XV-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2010-0081]

RIN 1625-AA08

#### Special Local Regulations for Marine Events; Chester River, Chestertown, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish special local regulations during the reenactment portion of the "Chestertown Tea Party Festival," a marine event to be held on the waters of the Chester River, Chestertown, MD on May 29, 2010. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the Chester River during the event.

**DATES:** Comments and related material must be received by the Coast Guard on or before April 5, 2010.

**ADDRESSES:** You may submit comments identified by docket number USCG-2010-0081 using any one of the following methods: