

## Rural Housing Service, USDA

## § 3565.17

(d) *Historic preservation requirements.* The provisions of 7 CFR part 1901, subpart F or successor regulation.

(e) *Lead-based paint requirements.* The provisions of 7 CFR part 1924, subpart A, or successor regulation.

[63 FR 39458, July 22, 1998, as amended at 64 FR 32372, June 16, 1999]

### § 3565.10 Conflict of interest.

(a) *Objective.* It is the objective within the Rural Development mission area to maintain the highest standards of honesty, integrity, and impartiality by employees.

(b) *Rural Development requirement.* To reduce the potential for employee conflict of interest, all Rural Development activities will be conducted in accordance with 7 CFR part 1900, subpart D, or successor regulation by Rural Development employees who:

- (1) Are not themselves a beneficiary;
- (2) Are not family members or known relatives of any beneficiary; and
- (3) Do not have any business or personal relationship with any beneficiary or any employee of a beneficiary.

(c) *Rural Development employee responsibility.* Rural Development employees must disclose any known relationship or association with a lender or borrower or their agents, regardless of whether the relationship or association is known to others. Rural Development employees or members of their families may not purchase a Real Estate Owned property, security property from a borrower, or security property at a foreclosure sale.

(d) *Loan closing agent responsibility.* Loan closing agents (or members of their families) who have been involved with a particular property are precluded from purchasing such properties.

(e) *Lender and borrower responsibility.* Lenders, borrowers, and their agents must identify any known relationship or association with a Rural Development employee.

### §§ 3565.11–3565.12 [Reserved]

### § 3565.13 Exception authority.

An Agency official may request and the Administrator or designee may make an exception to any requirement or provision, or address any omission

of this part, if the Administrator determines that application of the requirement or provision, or failure to take action, would adversely affect the government's interest or the program objectives, and provided that such an exception is not inconsistent with any applicable law or statutory requirement.

[64 FR 32372, June 16, 1999]

### § 3565.14 Review and appeals.

Whenever RHS makes a decision that is adverse to a lender or a borrower, RHS will provide written notice of such adverse decision and of the right to a USDA National Appeals Division hearing in accordance with 7 CFR part 11 or successor regulations. The lender or borrower may request an informal review with the decision maker and the use of available alternative dispute resolution or mediation programs as a means of resolution of the adverse decision. Any adverse decision, whether appealable or non-appealable may also be reviewed by the next level RHS supervisor. Adverse decisions affecting project tenants or applicants for tenancy will be handled in accordance with 7 CFR part 1944, subpart L or successor regulations.

### § 3565.15 Oversight and monitoring.

The lender, borrower, and all parties involved in any manner with any guarantee under this program must cooperate fully with all oversight and monitoring efforts of the Agency, Office of Inspector General, the U.S. General Accounting Office, and the U.S. Department of Justice or their representatives including making available any records concerning this transaction. This includes the annual eligibility audit and any other oversight or monitoring activities. If the Agency implements a requirement for an electronic transfer of information, the lender and borrower must cooperate fully.

### § 3565.16 [Reserved]

### § 3565.17 Demonstration programs.

To test ways to expand the availability or enhance the effectiveness of the guarantee program, or for similar purposes, the Agency may, from time

to time, propose demonstration programs that use loan guarantees or interest credit. Toward this end, the Agency may enter into special partnerships with lenders, financial intermediaries, or others to carry out one or more elements of a demonstration program. Demonstration programs will be publicized by notices in the FEDERAL REGISTER.

§§ 3565.18–3565.49 [Reserved]

§ 3565.50 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0174.

**Subpart B—Guarantee Requirements**

§ 3565.51 Eligible loans and advances.

Upon approval of an application from an approved lender, the Agency will commit to providing a guarantee for a permanent loan or a combination construction and permanent loan, subject to the availability of funds. The Agency will not guarantee a construction loan that is not a combination construction and permanent loan.

§ 3565.52 Extent of the guarantee.

A guarantee of a permanent loan will be made once the project has attained a minimum level of acceptable occupancy as determined by the lender with Agency concurrence. The required occupancy level must be reached before the commitment for a loan guarantee, including any extensions, expires. For combination construction and permanent loans, the Agency will guarantee advances during the construction loan period (which can not 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.

(a) *Maximum guarantee amount.* The maximum guarantee for a permanent loan will be 90 percent of the unpaid principal and interest 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 guarantee document. The Agency will guarantee construction contracts not to exceed 90 percent of the work in place which have credit enhancements to protect the Government's guarantee. Acceptable credit enhancements include:

- (1) Surety bonding or performance and payment bonding are the preferred credit enhancement;
- (2) An irrevocable letter of credit acceptable to the Agency; and
- (3) A pledge by the lender of acceptable collateral.

(b) *Lesser guarantee amount.* The Agency may provide a lesser guarantee based upon its evaluation of the credit quality of the loan.

(c) *Cancellation or reduction to the guarantee amount.* In cases of fraud, misrepresentation, abuse, negligence, or failure to follow the terms of the guarantee or the note, the Agency may cancel the guarantee.

[63 FR 39458, July 22, 1998, as amended at 64 FR 32372, June 16, 1999]

§ 3565.53 Guarantee fees.

As a condition of receiving a loan guarantee, the Agency will charge the following guarantee fees to the lender.

(a) *Initial guarantee fee.* The Agency will charge an initial guarantee fee equal to one percent of the guarantee amount. For purposes of calculating this fee, the guarantee amount is the product of the percentage of the guarantee times the initial principal amount of the guaranteed loan.

(b) *Annual guarantee fee.* An annual guarantee fee of at least 50 basis points (one-half percent) of the outstanding principal amount of the loan will be charged each year or portion of a year that the guarantee is in effect. This fee will be collected on January 1, of each calendar year.

(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. This fee will be