

§ 3565.54

(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 charged in advance at the start of construction and will be announced in NOFA before loan approval.

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

§ 3565.54 Transferability of the guarantee.

A lender must receive the Agency's approval prior to any sale or transfer of the loan guarantee.

§ 3565.55 Participation loans.

Loans involving multiple lenders are eligible for a guarantee when one of the lenders is an approved lender and agrees to act as the lead lender with responsibility for the loan under the loan guarantee agreement.

§ 3565.56 Suspension or termination of loan guarantee agreement.

A guarantee agreement will terminate when one of the following actions occurs: (In accordance with subpart H of this part, use restrictions on the property will remain if the following actions take place prior to the term of the loan and RHS determines the restrictions apply.)

(a) *Voluntary termination.* A lender and borrower voluntarily request the termination of the loan guarantee.

(b) *Agency withdrawal of guarantee.* The Agency withdraws the loan guarantee in the event of fraud, misrepresentation, abuse, negligence, or failure to meet the program requirements.

(c) *Mortgage pay-off.* The loan is paid.

(d) *Settlement of claim.* Final settlement of the claim.

§ 3565.57 Modification, extension, reinstatement of loan guarantee.

To protect its interest or further the objectives of the program, the Agency may, at its sole discretion, modify, extend, or reinstate a loan guarantee. In making this decision the Agency will consider potential losses under the program, impact on the tenants and the public reaction that may be received regarding the action. Further, the Agency may authorize a guarantee on

7 CFR Ch. XXXV (1-1-05 Edition)

a new loan that is originated as a part of a workout agreement.

§§ 3565.58-3565.99 [Reserved]

§ 3565.100 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 C—Lender Requirements

§ 3565.101 Responsibility of lenders.

A participating lender must originate and service a guaranteed loan in accordance with the regulation and program requirements throughout the life of a loan or guarantee, whichever is less. When it is in the best interests of the Agency, the Agency may permit the transfer of servicing from the originating lender to a servicer.

§ 3565.102 Lender eligibility.

An eligible lender must be a licensed business entity or HFA in good standing in the state or states where it conducts business; be approved by the Agency; and meet at least one of the criteria contained below. Lenders who are not eligible may participate in the program if they maintain a correspondent relationship with a lender who is eligible. An eligible lender must:

(a) Meet the qualifications of, and be approved by, the Secretary of HUD to make multifamily housing loans that are to be insured under the National Housing Act;

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

(c) Be a state or local HFA, or a member of the Federal Home Loan Bank system, with a demonstrated ability to underwrite, originate, process, close, service, manage, and dispose of multifamily housing loans in a prudent manner;

Rural Housing Service, USDA

§ 3565.105

(d) Be a lender who meets the requirements for Agency approval contained in this subpart and has a demonstrated ability to underwrite, originate, process, close, service, manage, and dispose of multifamily housing loans in a prudent manner; or

(e) Be a lender who meets the following requirements in addition to the other requirements of this subpart and of subpart I of this part:

(1) Have qualified staff to perform multifamily housing servicing and asset management;

(2) Have facilities and systems that support servicing and asset management functions; and

(3) Have documented procedures for carrying out servicing and asset management responsibilities.

§ 3565.103 Approval requirements.

The Agency will establish and maintain a "list of approved lenders". To be an approved lender, eligible lenders must meet the following requirements and maintain them on a continuing basis at a level consistent with the nature and size of their portfolio of guaranteed loans.

(a) *Commitment.* A lender must have a commitment for a guaranteed loan or an agreement to purchase a guaranteed loan.

(b) *Audited statement.* A lender must provide the Agency with an annual audited financial statement conducted in accordance with generally accepted government auditing standards.

(c) *Previous participation.* A lender may not be delinquent on a federal debt or have an outstanding finding of deficiency in a federal housing program.

(d) *Ongoing requirements.* A lender must meet the following requirements at initial application and on a continuing basis thereafter:

(1) Overall financial strength, including capital, liquidity, and loan loss reserves, to have an acceptable level of financial soundness as determined by a lender rating service (such as Sheshunoff, Inc.); or to be an approved Fannie Mae, Freddie Mac or HUD Federal Housing Administration multifamily lender; or, if a state housing finance agency, to have a top tier rating

by a rating agency (such as Standard and Poor's Corporation);

(2) Bonding and insurance to cover business related losses, including directors and officers insurance, business income loss insurance, and bonding to secure cash management operations;

(3) A minimum of two years experience in originating and servicing multifamily loans;

(4) A positive record of past performance when participating in RHS or other federal loan programs;

(5) Adequate staffing and training to perform the program obligations; the head underwriter must have 3 years of experience and all staff must receive annual multifamily training;

(6) Demonstrated overall financial stability of the business over the past five years;

(7) Evidence of reasonable and prudent business practices for management of the program; and

(8) No negative information on Dunn & Bradstreet or similar type report.

(9) The lender must certify that they have computer systems that comply with year 2000 technology.

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

§ 3565.104 Application requirements.

Eligible lenders must submit a lender approval application, in a format prescribed by the Agency. The lender approval application submission must occur at the time the lender submits its first application for a loan guarantee, or its first application to purchase a guaranteed loan. The application must include documentation of lender compliance with § 3565.103. A non-refundable application fee will be charged for each review of a lender's application. The amount of the fee will be announced in NOFA.

§ 3565.105 Lender compliance.

A lender will remain an approved lender unless terminated by the Agency. To maintain approval, the lender must comply with the following requirements.

(a) Maintain eligibility in accordance with §§ 3565.102 and 3565.103;

(b) Comply with all applicable statutes, regulations, and procedures;