

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;

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(c) Inform the Agency of any material change in the lender's staffing, policies and procedures, or corporate structure;

(d) Cooperate fully with all program or Agency monitoring and auditing policies and procedures, including the Agency's annual audit of approved lenders; and

(e) Maintain active participation in the multifamily guaranteed loan program by initiating a new loan guarantee or holding a loan guaranteed under this program.

§ 3565.106 Construction lender requirements.

A lender making a construction loan, as part of a combination construction and permanent loan, must demonstrate an ability to originate and service construction loans, in addition to meeting the other requirements of this subpart.

§ 3565.107 [Reserved]

§ 3565.108 Responsibility for actions of agents and mortgage brokers.

An approved lender is responsible for the actions of its agents and mortgage brokers.

§ 3565.109 Minimum loan prohibition.

A lender must not establish a minimum loan amount for loans under this program.

§ 3565.110 Insolvency of lender.

The Agency may require a lender to transfer a guaranteed loan or loans to another approved lender prior to a determination of insolvency by the lender. If the lender fails to transfer a loan when required, the guarantee will be considered null and void.

§ 3565.111 Lobbying activities.

An approved lender must comply with RD Instruction 1940-Q (available in any Rural Development Office) regarding lobbying activities.

§§ 3565.112–3565.149 [Reserved]

§ 3565.150 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

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number. The valid OMB control number for this information collection is 0575-0174.

Subpart D—Borrower Eligibility Requirements

§ 3565.151 Eligible borrowers.

Guaranteed loans must be made to an eligible borrower whose intention is to provide and maintain rural rental housing. The ownership entity must be a valid entity in good standing under the laws of the jurisdiction in which it is organized. Eligible borrowers shall include individuals, corporations, state or local public agencies or an instrumentality thereof, partnerships, limited liability companies, trusts, Indian tribes, or any organization deemed eligible by the Agency. Eligible borrowers must be U.S. citizens or permanent legal residents; a U.S. owned corporation, or a limited liability company, or partnership in which the principals are U.S. citizens or permanent legal residents.

§ 3565.152 Control of land.

At time of application, the lender must have evidence of site control by the borrower (option to purchase, lease, deed or other evidence acceptable to the Agency). At the time of loan closing, the lender's closing docket must provide documentary evidence that the borrower owns or has a long-term lease on the land on which the housing is or will be located. The form of ownership or the leasehold agreement must meet Agency requirements. Notwithstanding any investment in the site, the site may not be accepted based on the Agency's environmental assessment.

§ 3565.153 Experience and capacity of borrower.

At the time of application, the lender must certify that the borrower:

(a) Has the ability and experience to construct or rehabilitate multifamily housing that meets the requirements established by the Agency, the lender and the loan agreement;

(b) Has the legal and financial capacity to meet all of the obligations of the loan; and