

Rural Housing Service, USDA

§ 3565.208

area of the residential units and common areas, unless a higher level is specifically approved in writing by the Agency; and

(iv) The commercial activity is compatible with the use of the project and that the income is not more than 10 percent of the total annual operating income of the project.

(11) Costs for feasibility determination, loan application fees, appraisals, environmental documentation, professional fees or other fees determined by the Agency to be necessary to the development of the project;

(12) Technical assistance to and by non-profit entities to assist in the formation, development, and packaging of a project, or formation or incorporation of a borrower entity;

(13) Education programs for a board of directors, both before and after incorporation of a cooperative that will serve as the borrower;

(14) Construction interest accrued on the construction loan;

(15) Relocation assistance in the case of rehabilitation projects;

(16) Developers' fees; and

(17) Repaying applicant debts in the following cases:

(i) When the Agency authorizes in writing in advance the use of loan funds to pay debts for work, materials, land purchase, or other fees and charges before the loan is closed; or

(ii) When the Agency concurs in writing with a determination by the lender that costs for work, fees and charges incurred prior to loan application are integral to development of the guarantee application and project.

(b) *Rehabilitation requirements.* Rehabilitation work must be classified as either moderate or substantial as defined in exhibit K of 7 CFR part 1924, subpart A or a successor document. In all cases, the building or project must be structurally sound, and improvements must be necessary to meet the requirements of decent, safe, and sanitary living units. Applications must include a structural analysis, along with plans and specifications describing the type and amount of planned rehabilitation. The project as rehabilitated must meet the applicable development standards contained in 7 CFR part 1924, subpart A or a successor regulation, as

well as any applicable historic preservation requirements. All proposed rehabilitation projects are subject to an environmental review completed in accordance with 7 CFR part 1940, subpart G or a successor regulation.

§ 3565.206 Ineligible uses of loan proceeds.

Loan proceeds must not be used for the following:

(a) Specialized equipment for training and therapy;

(b) Housing in military impact areas;

(c) Housing that serves primarily temporary and transient residents;

(d) Nursing homes, special care facilities and institutional type homes that require licensing as a medical care facility;

(e) Operating capital for central dining facilities or for any items not affixed to the real estate, such as special portable equipment, furnishings, kitchen ware, dining ware, eating utensils, movable tables and chairs, etc.;

(f) Payment of fees, salaries and commissions or compensation to borrowers (except developers' fees); or

(g) Refinancing of an outstanding debt, except in the case of an existing guaranteed loan where the Agency determines that the refinancing is in the government's interest or furthers the objectives of the program. The term and amount of any loan for refinancing must not exceed the maximum loan amount or term limits.

§ 3565.207 Form of lien.

The loan originated by the lender for a guarantee must be secured by a first lien against the property.

§ 3565.208 Maximum loan term.

(a) *Statutory term limit.* The lender may set the term of the loan, but in no instance may the term of a guaranteed loan exceed the lesser of 40 years or the remaining economic life of the project.

(b) *Prepayment of loans.* A guaranteed loan may be prepaid in whole or in part at the determination of the lender, and upon the lender's written notice to the Agency at least 30 days prior to the expected date of prepayment. The Agency will not pay any lockout or prepayment penalty assessed by the lender.

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The lender must certify the following in the notice of prepayment:

(1) The lease documents used by the borrower or its agent prohibit the abrogation of tenant leases in the event of prepayment; and

(2) The borrower has notified tenants of the request to prepay the loan, including notice of the prohibition against abrogation of the lease and the policy and procedure for handling complaints regarding compliance with the long-term use restriction as contained in subpart H of this part.

§ 3565.209 Loan amortization.

Each guaranteed loan shall be made for a period of not less than 25 nor greater than 40 years from the date the loan was made and may provide for amortization of the loan over a period of not to exceed 40 years with a final payment of the balance due at the end of the loan term.

[67 FR 16970, April 9, 2002]

§ 3565.210 Maximum interest rate.

The interest rate for a guaranteed loan must not exceed the maximum allowable rate specified by the Agency in NOFA. Such rate must be fixed over the term of the loan.

§ 3565.211 Interest credit.

(a) *Limitation.* For at least 20 percent of the loans made during each fiscal year, the Agency will provide assistance in the form of interest credit, to the extent necessary to reduce the agreed-upon rate of interest to the AFR as such term is used in section 42(I)(2)(D) of the Internal Revenue Code of 1986, 26 U.S.C. 7805, §1.42-1T.

(b) *Selection criteria.* The Agency will select projects to receive interest credits using any of such criteria as the Agency may establish for priority projects as contained in subpart A of this part.

§ 3565.212 Multiple guaranteed loans.

The Agency may guarantee more than one loan on any project if all guaranteed loans, in the aggregate, comply with these regulations, including without limitation:

(a) In the aggregate, loans do not exceed the maximum guaranteed loan

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amount and loan-to-value limits, as contained in §3565.204;

(b) In the aggregate, loans are all to be secured equally by a first lien as the Agency may, at its sole discretion, determine necessary to ensure repayment of the loans; and

(c) If different lenders originate the loans, each lender has executed an intercreditor agreement in form and substance acceptable to the Agency; and

(d) The loans do not contain tax exempt financing.

§ 3565.213 Geographic distribution.

The Agency may refuse to guarantee a loan in an area where there is undue risk due to a concentration in the market of properties subject to a Agency guaranteed loan. The Agency will consider the credit quality of the loan and overall market conditions in making a determination of undue risk. If any of the Agency guaranteed loans in the market are experiencing vacancy rates in excess of 15% and the vacancy is due to market conditions, the Agency will invoke this provision and not guarantee the loan.

§ 3565.214 [Reserved]

§ 3565.215 Special conditions.

(a) *Use of third party funds.* As a condition of receiving a guaranteed loan, the Agency, or the lender if designated by the Agency, must review the terms and conditions of any secondary financing or funding of projects, including loans, capital grants or rental assistance.

(b) *Recourse.* If required by the lender, loans guaranteed under this program may be made on a recourse or nonrecourse basis, or with any personal or special borrower guarantees on collateralization.

§§ 3565.216-3565.249 [Reserved]

§ 3565.250 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.