

§ 3565.254 Property standards.

(a) *Housing quality and site and neighborhood standards.* The property must meet the site and neighborhood requirements established by the state or locality, and those standards contained under 7 CFR part 1924, subparts A and C or any successor regulations.

(b) *Third party assessments.* As part of the application for a guaranteed loan, the lender must provide documentation of qualified third parties' assessments of the property's physical condition and any environmental conditions or hazards which may have a bearing on the market value of the property. These assessments must include:

- (1) An acceptable property appraisal.
- (2) A Phase I Environmental Site Assessment (American Society of Testing and Materials).
- (3) A Standard Flood Hazard Determination.
- (4) In the case of the purchase of an existing structure, rehabilitation or refinancing, a physical needs assessment.

§ 3565.255 Environmental requirements.

Under the National Environmental Policy Act, the Agency is required to assess the potential impact of the proposed actions on protected environmental resources. Measures to avoid or at least mitigate adverse impacts to protected resources may require a change in site or project design. A site will not be approved until the Agency has completed the environmental review in accordance with 7 CFR part 1940, subpart G or successor regulation.

§ 3565.256 Architectural services.

Architectural services must be provided for the project in accordance with 7 CFR part 1924, subpart A or successor regulation, including plan certifications.

§ 3565.257 Procurement actions.

All construction procurement actions, whether by sealed bid or by negotiation, must be conducted in a manner that provides maximum open and free competition.

§§ 3565.258–3565.299 [Reserved]**§ 3565.300 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 G—Processing Requirements**§ 3565.301 Loan standards.**

An approved lender must originate and underwrite the loan and appraise the subject property in accordance with prudent lending practices and Agency criteria addressing the following factors:

- (a) Borrower qualifications and creditworthiness;
- (b) Property, vacancy, market vacancy or collection loss;
- (c) Rental concessions and rent levels;
- (d) Tenant demand and housing supply;
- (e) Property operating and maintenance expense;
- (f) Property requirements as contained in subpart F of this part;
- (g) Debt coverage ratio;
- (h) Operating and long-term capital requirements;
- (i) Loan-to-value ratio;
- (j) Return on borrower equity; and
- (k) Estimated long-term marketability of the project.

§ 3565.302 Allowable fees.

(a) *Lender fees.* The lender is authorized to charge reasonable and necessary fees in connection with a borrower's application for a guaranteed loan.

(b) *Agency fees.* The Agency will charge one or more types of fees deemed appropriate as reimbursement for reasonable and necessary costs incurred in connection with applications received from lenders for monitoring or annual renewal fees. These fees will be published in NOFA. Agency fees may include, but are not limited to the following:

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(1) *Site assessment and market analysis or preliminary feasibility fee.* A fee for review of an application for a determination of preliminary feasibility.

(2) *Application fee.* A fee submitted in conjunction with the application for a loan guarantee.

(3) *Inspection fee.* A fee for inspection of the property in conjunction with a loan guarantee.

(4) *Transfer fee.* A fee in connection with a request for approval of a transfer of physical assets or a change in the composition of the ownership entity.

(5) *Extension or reopening fees.* A fee to extend the guarantee commitment or to reopen an application when a commitment has expired.

§ 3565.303 Issuance of loan guarantee.

(a) *Preliminary feasibility review.* During the initial processing of a loan, the lender may request a preliminary feasibility review by the Agency when required loan documentation is submitted.

(b) *Conditional commitment to guarantee a loan.* The Agency will issue a conditional commitment to guarantee a loan. This commitment will be good for such time frame as the Agency deems appropriate based on project requirements. The commitment to guarantee a loan, will specify any conditions necessary to obtain a determination by the Agency that all program requirements have been met. A conditional commitment can be issued, subject to the availability of funds, after:

(1) Completion by the Agency of an environmental review in accordance with 7 CFR part 1940, subpart G or successor regulation, and the National Environmental Policy Act; and

(2) Selection of the proposed project for funding by the Agency in accordance with ranking and selection criteria.

(c) *Guarantee during construction.* For combination construction and permanent loans, the Agency will issue an initial guarantee to an approved construction lender.

(1) This guarantee will be subject to the limits contained in subpart B of this part and in the loan closing documentation.

(2) In all cases, the lender must obtain a payment and performance bond

covering contract work or acceptable credit enhancement as discussed in § 3565.52(a).

(3) The lender must verify amounts expended prior to each payment for completed work and certify that an independent inspector has inspected the property and found it to be in conformance with Agency standards. The lender must provide verification that all subcontractors have been paid and no liens have been filed against the property.

(d) *Permanent loan guarantee.* The guarantee on the permanent loan will be issued once the following items have been submitted to and approved by the Agency.

(1) An updated appraisal of the project as built;

(2) A certificate of substantial completion;

(3) A certificate of occupancy or similar evidence of local approval ;

(4) A final inspection conducted by a qualified Agency representative;

(5) A final cost certification in a form acceptable to the Agency;

(6) A submission to the Agency of the complete closing docket;

(7) A certification by the lender that the project has reached an acceptable minimum level occupancy;

(8) An executed regulatory agreement.

(9) The Lender certifies that it has approved the borrower's management plan and assures that the borrower is in compliance with Agency standards regarding property management, contained in subparts E and F of this part;

(10) Necessary information to complete an updated necessary assistance review by the Agency; and

(11) Compliance with all conditions contained in the conditional commitment for guarantee.

(e) *Modification of guarantee amount after commitment.* The Agency may modify the guarantee amount or decline to issue a loan guarantee when a lender fails to honor obligations or to fulfill representations made under the guarantee commitment.

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

§ 3565.304 Lender loan processing responsibilities.

(a) *Application.* The lender will be responsible for submitting an application for a loan guarantee in a format prescribed by the Agency. Lenders may submit an application at the feasibility stage or when they request a conditional commitment.

(b) *Project servicing, management and disposition.* Unless otherwise permitted by the Agency, the originating lender must perform all loan functions during the period of the guarantee. These functions include servicing, asset management, and, if necessary, property disposition. The lender must maintain and service the loan in accordance with the provisions of subpart I of this part and Agency servicing procedures.

§ 3565.305 Mortgage and closing requirements.

It is the lender's responsibility to ensure that the loan closing statement and required loan documents are in a form acceptable to the Agency and included in the closing docket. The lender is responsible for resolving any underwriting and loan closing deficiencies that are found. The Agency's review of the lender's loan closing documentation does not constitute a waiver of fraud, misrepresentation, or failure of judgment by the lender.

§§ 3565.306–3565.349 [Reserved]**§ 3565.350 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 H—Project Management**§ 3565.351 Project management.**

As a condition of the guarantee, the lender is to obtain borrower certification that the project is in compliance with local, state, federal laws and program requirements.

(a) *Regulatory agreement.* A regulatory agreement between the borrower and lender must be executed at the

time of loan closing and contain the following covenants:

(1) That it is binding upon the borrower and any of its successors and assigns, as well as upon the lender and any of its successors and assigns, for the duration of the guaranteed loan;

(2) That the borrower makes all payments due under the note and to the required escrow and reserve accounts;

(3) That the borrower maintains the project as affordable housing in accordance with the purposes and for the duration defined in the statute;

(4) That the borrower maintains the project in good physical and financial condition at all times;

(5) That the borrower obtains and maintains property insurance and any other insurance coverage required to protect the security;

(6) That the borrower maintains complete project books and financial records, and provides the Agency and the lender with an annual audited financial statement after the end of each fiscal year;

(7) That the borrower makes project books and records available for review by the Office of Inspector General, Rural Development staff, General Accounting Office, and the Department of Justice, or their representatives or successors upon appropriate notification;

(8) That the borrower prepares and complies with the Affirmative Fair Housing Marketing Plan and all other Fair Housing requirements;

(9) That the borrower operates as a single asset ownership entity, unless otherwise approved by the Agency;

(10) That the borrower complies with applicable federal, state and local laws; and

(11) That the borrower provides management satisfactory to the lender and to the Agency and complies with an approved management plan for the project.

(b) *Management plan.* The lender must approve the borrower's management plan and assure that the borrower is in compliance with Agency standards regarding property management, including the requirements contained in subparts E and F of this part.

(c) *Tenant protection and grievance procedures.* Tenants in properties subject to a guaranteed loan are entitled