

## § 3555.7

or significant differences from provisions of this part.

### § 3555.7 Exception authority.

The Administrator of the Agency, or a designee, may make an exception to any requirement or provision of this part or to address any omissions in this part, when the Administrator, or designee, determines that application of the requirement or failure to take action would adversely affect the Government's interest. Any exception must be consistent with the authorizing statute and other applicable laws.

### § 3555.8 Conflict of interest.

(a) *Applicant or borrower responsibility.* The applicant or borrower must disclose to the lender any prohibited relationship or association with any Rural Development employee, and the lender must disclose that information to Rural Development.

(b) *Lender responsibility.* The lender must disclose to Rural Development any prohibited relationship or association it, or any of its employees, has with any Rural Development employee.

(c) *Prohibited relationships and associations.* Prohibited relationships and associations include the following:

(1) Immediate family members, including parents and children, whether related by blood or marriage;

(2) Close relatives, including grandmother, grandfather, aunt, uncle, sister, brother, niece, nephew, granddaughter, grandson, or first cousin, whether related by blood or marriage;

(3) Any household residents;

(4) Immediate working relationships, including coworkers in the same office, subordinates, and immediate supervisors; and

(5) Close business associations, including business partnerships, joint ventures, or closely held corporations.

(d) *Result of disclosure.* Disclosure of prohibited relationships and associations under this section will not necessarily result in applicant, borrower or lender ineligibility. Disclosures may result in reassignment with regard to the loan guarantee in question so that no prohibited relationships or associations exist between the Rural Development employees responsible for loan

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guarantee transactions and lenders, borrowers, or applicants.

### § 3555.9 Enforcement.

Rural Development will take such actions as are appropriate and necessary to enforce the provisions of these regulations. Such actions will include, but not be limited to, reduction of the loss claim payment; termination of a lender's or servicer's participation in the SFHGLP; suspension and debarment of participation in this or other Federal programs; and, any other appropriate administrative, civil, or criminal actions as allowed by law. Rural Development may assess civil monetary penalties pursuant to Section 543 of the Housing Act of 1949, 42 U.S.C. 1409s(b).

### § 3555.10 Definitions and abbreviations.

The definitions and abbreviations in this section apply to this part.

*Acceleration.* Demand for immediate repayment of the entire balance of a debt if the covenants in the promissory note, assumption agreement, or security instruments are breached.

*Adjusted annual income.* Income from all household members who live or propose to live in the dwelling as their primary residence for all or part of the ensuing 12 months. Adjusted annual income is used to determine whether an applicant is income-eligible for a guaranteed loan, or interest assistance, if applicable. Adjusted annual income provides for deductions to account for varying household circumstances and expenses. See § 3555.152(c) for a complete description of adjusted annual income.

*Agency.* The Rural Housing Service of the U.S. Department of Agriculture, Rural Development.

*Agency employee.* Any employee of the Rural Housing Service, or any employee of the Rural Development mission area who carries out SFHGLP functions.

*Alien.* See "Qualified alien."

*Amortization.* A gradual reduction of the mortgage debt through equal monthly principal and interest payments sufficient to fully repay the unpaid principal balance over the mortgage term.

*Amortized payment.* Equal monthly payments under a fully amortized mortgage loan that provides for the scheduled payment of interest and principal over the term of the loan.

*Annual fee.* A periodic amount that is based on the average annual scheduled unpaid principal balance of the loan and is paid by the servicing lender to Rural Development on an annual basis for issuance of a Loan Note Guarantee. The fee may be passed on to the borrower and included in the monthly mortgage payment of a borrower and is used when calculating payment ratios.

*Annual income.* The income of all household members calculated according to §3555.152(b). Annual income is used to determine adjusted annual income in §3555.152(c) for program eligibility purposes.

*Applicant.* An individual applying to a lender for a guaranteed loan.

*Area median income.* The median income in a specific locality, typically a county or Metropolitan Statistical Area (MSA), as determined by the Department of Housing and Urban Development.

*Assumption.* A method of selling real estate wherein the property purchaser accepts the liability for payment of an existing mortgage.

*Borrower.* An individual obligated to repay the loan guaranteed under the Guaranteed Rural Housing loan program.

*Combination construction and permanent loan.* A guaranteed loan on which the Rural Development guarantee becomes effective at the time construction of an eligible single family housing project begins.

*Community land trust.* A private non-profit community housing development organization that is established to acquire parcels of land, held in perpetuity, primarily for conveyance under long-term ground leases. See section 502(a)(3)(B) of the Housing Act of 1949, 42 U.S.C. 1472(a)(3)(B), as amended.

*Conditional commitment.* Rural Development's agreement that a proposed loan will be guaranteed if all conditions and requirements established by Rural Development are met.

*Condominium project.* A real estate project in which each owner has title to a unit in a building, an undivided in-

terest in the common areas of the project and sometimes the exclusive use of certain limited common areas. See §526(d) of the Housing Act of 1949, as amended.

*Debarment.* An action taken under 2 CFR part 180 or 417 to exclude a person or entity from participating in Federal programs.

*Disability.* See "Person with a disability."

*Dwelling.* A house, manufactured home, or condominium unit, and related facilities, such as a garage or storage shed, used or to be used as the borrower's principal residence.

*Elderly family.* An elderly family consists of one of the following:

(1) A person who is the head, spouse, or sole member of a household and who is 62 years of age or older, or who is disabled, and is an applicant or borrower;

(2) Two or more persons who are living together, at least one of whom is age 62 or older, or disabled, and who is an applicant or borrower; or

(3) Where the deceased borrower or spouse in a household was at least 62 years old or disabled, the surviving household member shall continue to be classified as an elderly household for the purpose of determining adjusted income, even though the surviving members may not meet the definition of an elderly family on their own, provided:

(i) They occupied the dwelling with the deceased household member at the time of the death;

(ii) If one of the surviving household members is the spouse of the deceased household member, the surviving household shall be classified as an elderly family only until the remarriage or death of the surviving spouse; and

(iii) At the time of the death of the deceased household member the dwelling was financed with a Guaranteed Rural Housing loan.

*Escrow account.* A trust account that is established by the lender or its servicing agent to hold funds collected from the borrower and allocated for the payment of real estate taxes, special assessments, hazard or flood insurance premiums, and other similar expenses.

*Existing dwelling.* A dwelling that does not meet the definition of "new dwelling".

*Extended-term loan modification.* A loan modification authorized under § 3555.304 of this part, in which the lender reduces the interest rate to a level at or below the maximum allowable interest rate and then extends the repayment term up to a maximum of 40 years from the date of loan modification, but only as long as is necessary to achieve the targeted mortgage payment to income ratio.

*Fannie Mae.* A private, shareholder-owned company with a charter from Congress to support the housing finance system, formerly officially known as the Federal National Mortgage Association.

*FEMA.* The United States Department of Homeland Security, Federal Emergency Management Agency.

*FHA.* The Federal Housing Administration of the United States Department of Housing and Urban Development.

*FHLB.* Federal Home Loan Bank.

*First-time homebuyer.* Individuals who meet any one of the following three criteria are considered first-time homebuyers:

(1) An individual who has had no ownership interest in a principal residence during the three-year period ending on the date of loan closing.

(2) An individual who is a displaced homemaker and who, except for owning a home with a spouse, has had no ownership interest in a principal residence during the three-year period ending on the date of loan closing. Displaced homemakers include any individual who is:

- (i) An adult;
- (ii) Unemployed or underemployed;
- (iii) Experiencing difficulty in obtaining or upgrading employment; and
- (iv) In recent years has worked primarily without remuneration to care for the home and family, but has not worked full-time, full-year in the labor force.

(3) An individual who is a single parent and who, except for owning a home with a spouse, has had no ownership interest in a principal residence during the three-year period ending on the date of loan closing. Single parents include any individual who is:

- (i) Unmarried or legally separated; and

(ii) Has custody or joint custody of one or more children, or is pregnant.

*Forbearance agreement.* An agreement between the lender and the borrower providing for temporary suspension of payments or a repayment plan that calls for periodic payments of less than the normal monthly payment, periodic payments at different intervals, etc. to bring the account current.

*Freddie Mac.* A private, shareholder owned company with a charter from Congress to support the housing finance system, formerly officially known as the Federal Home Loan Mortgage Corporation.

*Funded buydown account.* An escrow account funded by the lender, seller, or through a third party gift, from which monthly payments are released directly to the lender to reduce the amount of interest on a loan, thereby improving an applicant's repayment ability.

*Ginnie Mae.* Government National Mortgage Association, a Government-owned corporation within HUD.

*Household.* All persons routinely living in the dwelling as principal residence, except for live-in aides, foster children, and foster adults.

*Housing Act of 1949.* The Act which, in part, provides the authority for single family housing programs, codified at 42 U.S.C. 1471 *et seq.*

*HUD.* The United States Department of Housing and Urban Development.

*Interest assistance.* Agency assistance available to eligible borrowers that reduces the effective interest rate on the guaranteed loan. Interest assistance applied to borrowers whose loans were approved as a subsidized guaranteed loan between April 17, 1991, and September 30, 1991, and who entered into interest assistance and shared equity agreements at loan closing.

*IRS.* The Internal Revenue Service of the United States Department of the Treasury.

*Leasehold estate.* The right to use and occupy real estate for a stated term and under conditions which have been conveyed by a lease.

*Lender.* The entity making, holding, or servicing a loan that is guaranteed under the provisions of this part.

*Live-in aide.* A person who:

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(1) Lives with an elderly person or a person with a disability and

(2) Is essential to that person's care and well-being, and

(3) Is not obligated for the person's support, and

(4) Would not be living in the unit except to provide the support services.

*Loan modification.* A written agreement that permanently changes an original note term, such as the interest rate, monthly payment, and/or the principal balance due to capitalization of interest or advances.

*Low-income.* An adjusted income that is greater than the HUD established very low-income limit, but that does not exceed the HUD established low-income limit (generally 80 percent of median income adjusted for household size) for the county or Metropolitan Statistical Area where the property is or will be located.

*Manufactured home.* A structure that is built on a permanent foundation according to Federally Manufactured Home Construction and Safety Standards established by HUD and found at 24 CFR part 3280.

*Market value.* The value of the property as determined by a current appraisal made in accordance with the Uniform Standards of Professional Appraisal Practices.

*Maximum allowable interest rate.* For purposes of § 3555.304, the rate established by the Agency in a FEDERAL REGISTER notice describing how to calculate the maximum allowable interest rate. If the maximum allowable interest rate has not been established by notice in the FEDERAL REGISTER, the maximum allowable interest rate shall be 50 basis points greater than the most recent Freddie Mac Weekly Primary Mortgage Market Survey (PMMS) rate for 30-year fixed-rate mortgages (U.S. average), rounded to the nearest one-eighth of one percent (0.125%), as of the date the loan modification is executed. Weekly PMMS rates are published on the Freddie Mac Web site, and the Federal Reserve Board includes the average 30-year PMMS rate in the list of Selected Interest Rates that it publishes weekly in its Statistical Release H.15.

*Median income.* The area median income, adjusted for family size, as established by HUD.

*Moderate income.* The greater of:

(1) 115 percent of the U.S. median family income,

(2) The average of the state-wide and state non-metro median family income,

(3) 115/80ths of the area low-income limit adjusted for household size for the county or MSA where the property is, or will be, located.

*Modest housing.* For purposes of this part, "modest housing" is the housing that a low- or moderate-income borrower can afford based on their repayment ability.

*Mortgage.* A form of security instrument or consensual lien on real property including a real estate mortgage and a deed of trust.

*Mortgage credit certificate.* A certificate issued by an authorized State or local housing finance agency that documents a Federal income tax credit awarded to a first-time homebuyer and/or low- or moderate-income homebuyer. The Federal income tax credit reduces the applicant's Federal income tax liability, which improves his or her repayment ability.

*Mortgage payment to income ratio.* As used in § 3555.304, this ratio is the monthly mortgage payment (principal, interest, taxes, and insurance) divided by the borrower's gross monthly income.

*Mortgage recovery advance.* A mortgage recovery advance is funds advanced by the lender on behalf of a borrower to satisfy the borrower's arrearage, pay legal fees and foreclosure costs related to a cancelled foreclosure action, and reduce principal. Upon request, RHS will reimburse the lender for eligible mortgage recovery advances under § 3555.304.

*MSA (Metropolitan Statistical Area).* A geographic entity defined by the United States Office of Management and Budget.

*Net family assets.* The value of assets available to a household, as contained in § 3555.152(d).

*Net recovery value.* The amount available to apply to the outstanding unpaid loan balance after considering the value of the security property and

other amounts recovered, and deducting the costs associated with liquidation, acquisition and sale of the property. Net recovery value is calculated differently depending on the type of disposition, as contained in §3555.353.

*New dwelling.* A dwelling that is to be built is under construction, or a dwelling that is less than one year old and has never been occupied. A manufactured home is considered a new unit if the manufacturer's date is within 12 months of the purchase contract and the unit has never been occupied or installed at any other location as otherwise provided by Rural Development.

*Participant.* For the purpose of appeals, a participant is any individual or entity that has applied for, or whose right to participate in or receive a payment, loan guarantee, or other benefit, is affected by an Agency decision in accordance with 7 CFR 11.1.

*Person with a disability.* Any person who has a physical or mental impairment that substantially limits one or more major life activities, including functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working, has a record of such an impairment, or is regarded as having such an impairment.

*Planned Unit Development.* For the purpose of this definition, a condominium is not a Planned Unit Development (PUD). A PUD is a development that has all of the following characteristics:

(1) The individual unit owners own a parcel of land improved with a dwelling. This ownership is not in common with other unit owners;

(2) The development is administered by a homeowners association that owns and is obligated to maintain property and improvements within the development (for example, greenbelts, recreation facilities and parking areas) for the common use and benefit of the unit owners; and

(3) The unit owners have an automatic, non-severable interest in the homeowners association and pay mandatory assessments.

*Pre-foreclosure sale.* A sale of property in which the lender and borrower agree to accept the proceeds of the sale to satisfy a defaulted mortgage, even

though this may be less than the amount owed on the mortgage, in order to avoid foreclosing on the property.

*Primary residence.* See "Principal residence."

*Principal residence.* The home domicile physically occupied by the owner for the major portion of the year and the address of record for such activities as Federal income tax reporting, voter registration, occupational licensing, etc.

*Prior lien.* A lien against the security property that is superior in right to the lender's debt instrument.

*Qualified alien.* See the definition of the term under Section 401 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (8 U.S.C. 1641).

*Real estate taxes.* Taxes and assessments estimated to be due and payable on the property.

*REO (Real Estate Owned).* Property that formerly served as security for a guaranteed loan and for which the lender holds title.

*Repayment income.* Used to determine whether an applicant has the ability to make monthly loan payments. Repayment income may include amounts excluded for the purpose of determining adjusted annual income. See §3555.152(a) for a complete description of repayment income.

*Rural area.* The definition of "rural area" is found in section 520 of the Housing Act of 1949, as amended.

*Rural Development.* A mission area within USDA that includes the Rural Housing Service, the Rural Utilities Service, and the Rural Business-Cooperative Service.

*Scheduled payment.* The monthly installment on a promissory note, as modified by an interest assistance agreement or forbearance agreement, plus escrow payments.

*Secured loan.* A loan that is collateralized by property so that in the event of a default on the loan, the property may be sold to pay down the debt.

*Security instrument.* The mortgage, or deed of trust, that secures the promissory note or assumption agreement.

*Security property.* All the real property that serves as collateral for a guaranteed loan.

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*Settlement date.* The settlement date, for the purpose of loss calculation, is the later of the following:

- (1) Actual foreclosure date;
- (2) The closing date, if sold to a third party at the foreclosure sale;
- (3) The date the borrower sells the property to a third party in order to avoid or cure a default situation, with prior approval of the lender; and
- (4) When title is acquired to the security following the expiration of any state-required redemption or confirmation period.

*SFHGLP.* Single Family Housing Guaranteed Loan Program. The SFHGLP guarantees loans under section 502 of the Housing Act of 1949. Under the guarantee, the holder of the loan note may be reimbursed by Rural Development for all or part of a loss incurred if a borrower defaults on a loan.

*Short sale.* A type of voluntary liquidation (also referred to as a preforeclosure sale or short payoff) where a borrower and the lender who holds the mortgage on the property agree to sell the property at fair market value, but for less than the current outstanding debt (including any missing payments, late fees, penalties, and advances for taxes and the like).

*Supplemental loan.* A guaranteed loan made in conjunction with a transfer and assumption to provide funds to complete the transaction.

*Suspension.* An action taken under 2 CFR parts 180 or 417 to exclude a person or entity from participation in Federal programs for a temporary period, pending completion of an investigation of wrongdoing.

*Total debt to income ratio.* Total debt to income ratio is defined as the borrower's monthly mortgage payment plus all recurring monthly debt divided by the borrower's gross monthly income.

*Unauthorized assistance.* Any guaranteed loan or interest assistance for which there was no regulatory or statutory authorization, or for which the borrower was not eligible.

*United States citizen.* An individual who resides as a citizen in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the

Northern Marianas, the Federated States of Micronesia, the Republic of Palau, or the Republic of the Marshall Islands.

*USDA.* The United States Department of Agriculture.

*U.S. non-citizen national.* A person born in American Samoa or Swains Island on or after the date the U.S. acquired American Samoa or Swains Island, or a person whose parents are U.S. non-citizen nationals.

*VA.* United States Department of Veterans Affairs.

*Veterans' preference.* A preference in loan processing extended to a SFHGLP loan applicant who served on active duty and has been discharged or released from the active forces on conditions other than dishonorable from the United States Army, Navy, Air Force, Marine Corps, or Coast Guard. The preference applies to the service person, or the family of a deceased serviceperson who died in service before the termination of such war or such period or era. The applicable timeframes are:

- (1) During the period of April 6, 1917, through March 31, 1921;
- (2) During the period of December 7, 1941, through December 31, 1946;
- (3) During the period of June 27, 1950, through January 31, 1955;
- (4) For a period of more than 180 days, any part of which occurred after January 31, 1955, but on or before May 7, 1975;
- (5) During the period beginning August 2, 1990, and ending January 2, 1992, provided, of course, that the veteran is otherwise eligible; or
- (6) During any other period as prescribed by Presidential proclamation or law.

§§ 3555.11–3555.49 [Reserved]

§ 3555.50 OMB control number.

The report and recordkeeping requirements contained in this subpart have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0179.