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(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:

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(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:

(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.* When requesting a guarantee on construction loan advances under §3565.52(c)(2) and (c)(3), Options 2 and 3, the Agency will only issue a guarantee to an approved lender that the Agency determines is eligible under §3565.106 of this part.

(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 one of the following protections:

(i) Surety bonding or performance and payment bonding acceptable to the Agency;

(ii) An irrevocable letter of credit acceptable to the Agency; or

(iii) A pledge to the lender of collateral that is acceptable to the Agency.

(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 of a permanent loan pro-

vided under §3565.52(c)(1) or (c)(2) will be issued once the following items have been submitted to and approved by the Agency:

(1) Certification from the lender stating that the lender or its qualified representative inspected the property and found that the construction meets the Government's requirements for the standards and conditions for housing and facilities in 7 CFR part 1924, subpart A and the standards for site development in 7 CFR part 1924, subpart C, or its successor regulations;

(2) Cash flow certification—the lender certifies, in writing, the project's cash flow assumptions are still valid and depict compliance with the section 538 program's debt service coverage ratio requirement of at least 1.15, based on the lender's analysis of current market conditions and comparable properties in the project's market area;

(3) Documentation that either:

(i) The project has attained a minimum level of acceptable occupancy of 90% for 90 continuous days within the 120-day period immediately preceding the issuance of the permanent guarantee, or

(ii) Additional funds, supplementing the funds required under §3565.303(d), have been added to the lease-up reserve in an amount the Agency determines is necessary to cover projected shortfalls.

(4) A new appraisal based upon completion of construction. Upon a lender's written request, the Agency may exempt a project from this requirement if requested by the lender and the project meets the following criteria:

(i) *Original appraisal*—the original appraisal that meets the Agency's appraisal requirements with a valuation date no older than 36 months;

(ii) *Valuation*—the appraisal's lowest valuation, regardless of valuation approach and rent restrictions considered, is greater than the section 538 guaranteed loan amount; and

(iii) *Guaranteed loan balance*—the Agency's guaranteed loan's principal balance does not exceed 50 percent [unless a different percent has been announced in a Notice published in the FEDERAL REGISTER] of the project's total development costs.

(5) A certificate of substantial completion;

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

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

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

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

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

(11) An executed regulatory agreement;

(12) 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;

(13) Necessary information to complete an updated necessary assistance review by the Agency under § 3565.204(c); and

(14) 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.

(f) *Continuous Guarantee Compliance.* The continuous guarantee will remain in effect once construction is completed. In order to remain in compliance with 7 CFR part 3565, the following items must be submitted to and approved by the Agency. These items will be submitted to the Agency by the date stated in the Conditional Commitment and any Agency approved extension(s).

(1) Certification from the lender stating that the lender or its qualified representative inspected the property and found that the construction meets the Government's requirements for the standards and conditions for housing and facilities in 7 CFR part 1924, subpart A and the standards for site development in 7 CFR part 1924, subpart C, or its successor regulations;

(2) Cash flow certification—the lender certifies in writing the project's cash flow assumptions are still valid and depict compliance with the section 538 program's debt service coverage

ratio requirement of at least 1.15, based on the lender's analysis of current market conditions and comparable properties in the project's market area;

(3) Documentation that either:

(i) The project has attained a minimum level of acceptable occupancy of 90% for 90 continuous days within the 120-day period immediately preceding the issuance of the permanent guarantee, or

(ii) Additional funds, supplementing the funds required under § 3565.303(d), have been added to the lease-up reserve in an amount the Agency determines is necessary to cover projected shortfalls.

(4) An appraisal of the property;

(5) A certificate of substantial completion;

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

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

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

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

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

(11) An executed regulatory agreement;

(12) 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;

(13) Necessary information to complete an updated necessary assistance review by the Agency under § 3565.204(c); and

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

[63 FR 39458, July 22, 1998, as amended at 64 FR 32372, June 16, 1999; 76 FR 4, Jan. 3, 2011]

§ 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