

CHAPTER 4: LOAN GUARANTEE

APPLICATION PROCESSING

SECTION 1: AN OVERVIEW OF THE PROCESS

4.1 PURPOSE

This chapter describes the process to obtain a guarantee.

SECTION 2: THE NOTICE OF PROGRAM FUNDING PROCESS

Key Topics in this Section

- Notice is published in the **Federal Register**;
- Project applications are accepted by the Agency;
- Applications are reviewed by the Agency for eligibility;
- Selected borrowers receive a commitment from the Agency.

4.2 PUBLICATION OF GRRHP REQUIREMENTS

The Agency will publish a notice in the Federal Register as needed. The notice will state the application submission requirements, program and project requirements and priority criteria used to rank and score applications. A new notice will be published when program requirements need to be updated.

The Agency will post the Program’s funding amount(s) on the Agency’s website at: <https://www.rd.usda.gov/programs-services/multifamily-housing-programs/multifamily-housing-loan-guarantees#to-apply>.

The Agency receives applications on a continual basis. The Agency will announce annual funding in an electronic notice and will post the funding amount on the Agency’s website.

4.3 APPLICATION PROCESS

A complete application must be submitted to the Agency as outlined in the Notice published in the Federal Register which will include the lender's certifications, and the supporting documentation, exhibits and required forms.

Lenders must submit a complete application to the designated Processing and Report Review Branch based on the state where the proposed project will be located. The following link may be used to locate the correct Branch: [Multifamily Housing Loan Guarantees | Rural Development \(usda.gov\)](https://www.rd.usda.gov/files/RD-GRHLimitMap.pdf). Complete applications received will be scored based on the criteria set forth in the Notice to establish priority in the event there is insufficient funding. '

The Agency generally notifies the lender within 30 days of receipt of a complete application of the determination of award. Incomplete applications will be returned to the lender. The lender may reapply with a new and completed application in the future.

Lenders withdrawing their requests for a guarantee must notify the Agency in writing.

4.4 INFORMATION TO BE INCLUDED IN THE SECTION 538 GRRHP APPLICATION

Applicants must submit documents as a word or PDF attachment which will include the information detailed in this section.

A. Descriptive Information

1. *The Project*

- A brief description of the proposed location of the project, including town, county, state, and congressional district.
- A description of the property and improvements, including lot size, number of units, building type, type of construction, etc., including preliminary drawings, if available.
- The proposed development schedule.
- Total project development cost.
- The proposed rent structure and area median income (published AMIs can be found online at <https://www.rd.usda.gov/files/RD-GRHLimitMap.pdf>).
- Evidence of site control by the proposed borrower or a purchase option.
- Description of any environmental issues that may affect the project.

- Amount of loan to be guaranteed.
- Type of project (e.g., elderly or family).

2. *The Proposed Financing*

- Proposed loan amount and the proposed borrower's equity.
- Proposed financing option: Option One, permanent financing guarantee only; Option Two, construction advances and permanent financing guarantee; or Option Three, a single continuous loan guarantee.
- Proposed use of interest credit, if applicable. If the lender proposes to use interest credit, this section should include the maximum basis points the lender will charge the borrower for the project. Selection and scoring criteria that the project must meet to receive interest credit will be published in a Notice.
- Estimated development budget (total and cost/unit) and the proposed sources and uses of funds. This information should include all proposed financing sources – the amount, type, rates and terms of loans, tax credits, or grant funds. Letters of application and commitment letters should be included, if available.
- Estimated loan-to-development cost ratio for the guaranteed loan.
- Proposed Agency guarantee percentage for guaranteed loan (under no condition can the percentage exceed 90 percent of the loan amount).
- Guarantee Fee Structure Designation (See Chapter 6).
- Collateral. This is all the security, in addition to the real property, proposed to secure the loan.

3. *The Proposed Borrower*

- The name of the borrower and the type of ownership entity. List the general partners if a limited partnership, officers if a corporation, or members if an LLC (include organizational chart).
- Borrower's contact name, mailing address, phone and fax numbers, and email address.
- Evidence that the borrower or principals of the ownership are not barred from participating in Federal housing programs and not delinquent on any Federal debt.
- Borrower's unaudited or audited financial statements.
- Statement of borrower's housing development experience.

B. Lender Eligibility and Approval Status

The application must include evidence that the lender is either an approved lender in the GRRHP or is eligible to become an approved lender. If not approved, the lender may submit an application; however, the lender approval application must be received by the Multifamily Housing Asset Management Division, Risk and Counterparty Oversight Branch, RDMFH_RCOB_GRRHP@USDA.gov within 30 calendar days of the project application submission. The Agency will not issue a loan note guarantee until the lender is approved by the Agency.

In compliance with Agency guidance to determine the lender's (participants) eligibility, the Agency is responsible for screening lenders in the Do Not Pay Portal for the following: 1) Credit Alert System (CAIVRS); 2) System for Award Management Entity Registration Records (SAMENT); 3) System for Award Management Exclusion Records Restricted (Sam EXCL RES) and 4) Treasury Offset Program Debt Check (DBCK). If the lender is a non-profit, the Agency will also screen for Internal Revenue Service (IRS) Automatic Revocation of Exemption List (ARL). Screening will take place when the lender submits a complete application to the Agency. As part of the complete application package and in accordance with 2 CFR part 25, the lender must be registered in the System for Award Management (SAM) and include the Unique Entity Identifier (UEI).

Also, as part of the complete application package, the lender must provide a list of all the lender's principals in the organization. This information will be used to screen the lender's principals in the Do Not Pay Portal for SAM EXCL RES at the application stage.

As specified at 2 CFR 180.995, "Principal" is defined as:

- An officer, director, owner, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction; or
- a consultant or other person, whether or not employed by the participant or paid with Federal funds, who—
 - Is in a position to handle Federal funds;
 - Is in a position to influence or control the use of those funds;
 - or occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.

C. Competitive Criteria

The competitive criteria are defined as information that shows how the proposal is responsive to the selection criteria specified in the Notice.

D. Lender's Commitment Letter

The lender submits its signed commitment letter on its organization's letterhead, indicating that it will make a loan to the borrower for the proposed project, under specified terms and conditions subject only to the issuance of a guarantee by the Agency.

4.5 AGENCY REVIEW**A. Is the Borrower an Eligible Entity?**

Eligible borrowers shall include individuals, corporations, State or local public agencies or an instrumentality thereof, partnerships, LLCs, trusts, Indian tribes, or any organization deemed eligible by the Agency. The ownership entity must be a valid entity in good standing under the laws of the jurisdiction in which it is organized. Borrowers must be U.S. citizens or permanent legal residents, a U.S. owned corporation, an LLC, or a partnership in which the principals are U.S. citizens or permanent legal residents. Borrowers and principals must not be delinquent on any other Federal debt. In accordance with 2 CFR 180.300, the lender must verify and provide documentation to the Agency that the borrowing entity and the borrowing entity's principals; and the borrower's management agent and the management agent's principals are not excluded or disqualified by:

- a. Checking SAM Exclusions (<https://sam.gov>); or
- b. Collecting a certification; or
- c. Adding a clause or condition to the covered transaction.

B. Is the Lender Eligible?

Lenders requesting eligibility consideration (see, paragraph 2.3) and that have not yet received GRRHP lender approval must submit a complete lender application to: Multifamily Housing Asset Management Division, Branch Chief, Risk and Counterparty Oversight, RDMFH_RCOB_GRRHP@USDA.gov. Lender applications must be identified as "Lender Application – Section 538 Guaranteed Rural Rental Housing Program" in the subject line.

Information on the contents of an application for lender approval can be found in the published Notice and Chapter 2. If a lender is deemed not eligible, the application will be rejected and returned to the lender.

C. Is the Proposed Project Eligible?

The Agency will review the following evidence that the project meets basic program requirements.

- Is the proposed project located in a designated rural area as defined for all RHS programs? (See paragraph 1.6 for the definition.) Prior to submitting a complete application, lenders should verify eligibility at the website: <https://eligibility.sc.egov.usda.gov/eligibility> to determine whether the project site is located within a designated rural area.
- Are the proposed uses of funds for eligible purposes?
- Does the proposed financing comply with the requirements set forth in Chapter 3, Section 5 (including occupancy and rent limits, 207(c) limits, maximum loan term, interest rate, and loan-to-value ratios)?

SECTION 3: APPLICATION FOR THE GUARANTEE

Key Activities Discussed in this Section:

- Purpose of the Application;
- Interest Credit, if Applicable;
- Receive and Process Applications;
- Agency Review and Decision.

4.6 PURPOSE OF THE APPLICATION

In submitting a complete application for a loan guarantee, the lender is seeking a conditional commitment from the Agency. Before a conditional commitment can be issued, the Agency must determine if the project meets threshold requirements and is eligible for a commitment.

A. The Proposed Project Meets the GRRHP Threshold Requirements

To be approved for a guaranteed loan, proposed projects must be able to meet the threshold criteria. The application for a loan guarantee must clearly demonstrate that the following criteria are or can be met before the Agency issues a guarantee:

- Evidence that the owner and development team have the qualifications and experience sufficient to carry out development, management, and ownership responsibilities.

- Evidence that the property is located in an eligible rural area
[%20\(see,%20https://eligibility.sc.egov.usda.gov/eligibility/welcomeAction.do?pageAction=sfp&NavKey=property\)](https://eligibility.sc.egov.usda.gov/eligibility/welcomeAction.do?pageAction=sfp&NavKey=property)(see, <https://eligibility.sc.egov.usda.gov/eligibility/>).
- Evidence of readiness to proceed, including submission of a complete application for a guarantee, with evidence of at least a proposed conditional commitment from the lender for financing.
- Evidence of market and financial feasibility.
- Evidence the loan is reasonable for the given borrower.
- Evidence that the loan risk is reasonable, taking conventional lending practices into account.
- Evidence that the loan risk is reasonable given factors related to concentration of risk in a given market.

B. The Proposed Project is Eligible to Receive a Conditional Commitment

In addition to the threshold requirements, the following conditions must be met before a conditional commitment can be issued to the lender:

- The borrower and the lender are both eligible to receive a guarantee under the option selected.
- The lender has conducted its due diligence, and the results have been taken into consideration in the appraisal.
- The application fee is paid, if applicable
- The Agency has completed a satisfactory environmental review required under NEPA in accordance with RD Instruction 1970 and its associated RD Instructions.

4.7 APPLICATION FORM AND DOCUMENTATION

The lender is responsible for preparing an application that is complete and accurate. The lender must electronically submit the application to the designated Processing and Report Review Branch based on the state where the project is located. The directions on how and where to submit applications can be found on the Rural Development website: <https://www.rd.usda.gov/programs-services/multifamily-housing-programs/multifamily-housing-loan-guarantees#contact>.

The application must be submitted in accordance with the Notice published in the Federal Register. The lender is encouraged to schedule a meeting with the Agency prior to submission of the application to discuss transaction milestones and deadlines. Lenders may be directed to use Attachment 4-A of the Section 538 GRRHP Application Checklist as a guide to submitting the required documents that make-up the application. Lenders must review all regulatory and Agency guidance to ensure that they are operating within the parameters of the Section 538 GRRHP.

If the transaction includes a transfer of ownership and assumption of a Section 515 Rural Rental Housing (RRH) property, the complete 538 application and the complete Section 515 RRH transfer of ownership application must be submitted simultaneously on the same day to the Agency.

A. The Lender's Certification

The lender's certification will serve as assurance to the Agency that the borrower, the project, and the proposed financing meet the lender's standards for making the loan. The lender must certify that:

- The information contained in the exhibits is consistent with the lender's underwriting and loan making standards;
- The loan documents to be used at closing are the versions that have been approved by the Agency;
- The lender has completed its review (see, paragraph 4.19 for details) and has identified any significant findings in a narrative attached to this certification; and
- The lender agrees to make a loan to the borrower for the proposed project, subject to the Agency's issuance of a guarantee.

B. Exhibits and Supporting Information to the Lender's Certification

In addition to the submission of the certification, the lender must submit the supporting documentation outlined in this paragraph.

Because the application, in many cases, will be prepared before working drawings and an appraisal are complete, the lender must submit pro forma estimates at the application stage. Once the Agency issues a conditional commitment, the lender must submit complete documented information, as specified in that conditional commitment (see, chapter 3 for information about the requirements and documentation).

1. Forms Included in the Application Package

Form RD 400-4 "Assurance Agreement" (under Title VI Civil Rights Act of 1964). This form assures the U.S. Department of Agriculture that the Recipient is compliant and will continue to comply with Title VI of the Civil Rights Act of 1964, 7 CFR Part 15 and Rural Housing Service regulations.

Form RD 3565-1, "Application for Loan and Guarantee." This form is to provide information needed for the analysis and loan determination process.

Attachment 4-D, "Housing Allowances for Utilities and Other Public Services." This attachment shows the utility allowance for the proposed project and how it was developed.

Form RD 1944-37, "Previous Participation Certification." This document describes a borrower's prior experience with Federal assistance programs.

Form RD 3560-30, "Certification of No Identity of Interest (IOI)." This document describes the IOI relationships between the borrower and other businesses with whom the borrower may contract for goods or services.

RD Instruction 1940-Q, "Exhibit A-2, Statement for Loan Guarantees." The lender certifies that no funds have been or will be used in lobbying activities.

Form RD 3560-31, "Identity of Interest Disclosure/Qualification Certification." This document provides information on organizations listed in the *Form RD 3560-30*.

Form RD 1910-11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts." This document is a certification by the borrower that they are not delinquent on Federal debt.

2. Other Information Requested in the Application Package

- Borrower information:
 - ◇ Financial statements with certification(s) (newly formed entities applying for an Option Two or Option Three guarantees do not need to provide financial statements at the time of application).
 - ◇ Credit report for the entity and any guarantor.
 - ◇ For any type of partnership, all organizational documents, including but not limited to the partnership agreement. Agency requirements should be contained in one section of the agreement and their location identified by the borrower or their attorney in a cover sheet.
 - ◇ For any type of corporation, all organizational documents, including but not limited to the Articles of Organization and its Operating Agreement.

- If the borrower is a nonprofit organization:
 - ◇ Tax-exempt ruling from the IRS designating them as a 501(c)(3) or 501(c)(4) organization. If the designation is pending, a copy of the designation request must be submitted.
 - ◇ Evidence of organization under State law or copies of pending applications.
 - ◇ A list of board members.
- If the borrower is a public body:
 - ◇ The enabling statute or the State law of organization.
- Project information:
 - ◇ Project name, location, number and type of units, the development team, property manager, lawyer, and syndicator. The development team includes the developer (including all principals), architect, and contractor.
 - ◇ Appraisal.
 - ◇ Market Study.
 - ◇ Capital Needs Assessment (for rehabilitation loans only).
 - ◇ Reserve for Replacement Schedule.
 - ◇ State Clearinghouse comments or recommendations.
 - ◇ Certification that the lender has reviewed and approved the management plan and agreement and confirmed that they are consistent with Agency requirements.

Site plan, including contour lines.

- ◇ Plot plan.
- ◇ Floor plan of each living unit type and other type spaces.
- ◇ Building exterior elevations.
- ◇ Typical building exterior wall section.
- ◇ Description and justification of any related facilities and schedule of separate charges for related facilities, if any.
- ◇ Design development/working plans/construction specifications.

- ◇ Indicate if commercial space is associated with the project. (If the commercial space exceeds 10 percent of the gross floor area, an Administrator's exception will be required).
- ◇ Management plan and proposed management agreement.
- ◇ Management Review (see Attachment 4-A)
- Project financing information:
 - ◇ Lender's conditional commitment on the lender's letterhead with lender's signature specifying the GRRHP option under which the project loan is to be guaranteed.
 - ◇ Lender's narrative.
 - ◇ Sources and uses or comparable document.
 - ◇ A copy of the pro forma budget detailing the first year and a typical year's operation.
 - ◇ *Form RD 1924-13, "Estimate and Certificate of Actual Cost"*.
 - ◇ Type of utilities and utility allowances (Attachment 4-D), if applicable.
 - ◇ Interest Credit Request, if applicable.
 - ◇ Proposed Closing Date (Section 538 GRRHP loan).
- Required environmental information:
 - ◇ Most current version of the ASTM Standard E 1528-14, Phase I Environmental Site Assessment Process published by the American Society for Testing and Materials (ASTM).
 - ◇ Compliance with historic and architectural laws, if applicable.
 - ◇ Comments regarding relevant off-site conditions.
 - ◇ Land survey.
 - ◇ *FEMA Form 086-0-32, "Special Flood Hazard Determination."*

4.8 INTEREST CREDIT REQUEST AND DOCUMENTATION – IF APPLICABLE

Interest credit (when available) requests must be made in the application if interest credit is part of the proposed financing. Interest credit awards will be based on a numerical value earned on the scoring of priority

criteria identified in the Notice. Lenders will be notified if interest credit will be awarded. Lenders must justify the need for the interest credit award in the application package submitted to the Agency. Pro formas with and without the interest credit award will serve as justification for the interest credit award.

The Agency will not accept the resubmission of a project proposal with an interest credit request if the project has been previously submitted without an interest credit request and demonstrated financial feasibility.

A. Amount of Interest Credit Subsidy

The Agency may choose to regulate the maximum interest rate charged on GRRHP loans; if it does it will be announced in a notice published in the **Federal Register**. The process for allocating interest credit, when available, may be competitive in years when there are more requests than credits available. The Agency may give preference to proposals that require less interest credit subsidy.

B. Demonstrated Need

The interest credit justification must demonstrate why the interest credit subsidy is needed. The Agency will review the proposed rents and operating budget and give preference to applications that demonstrate that the interest credit will result in lower rents or in a higher level of services for tenants in the event that demand for interest credit exceeds available funds.

C. Limits on Allocation of Interest Credit

To fairly distribute the amount of credit available in a given year, the Agency may set a limit on the amount of interest credit allocated to a single project. The Agency expects to accomplish this by limiting the size of loans eligible for interest credit to an amount published in a Notice in the **Federal Register**. For highly ranked projects, the Agency may guarantee two parity loans- one with interest credit (up to the maximum amount), and one without interest credit.

D. Payment of Interest Credit

Lenders may only request and receive interest credit payments once a project is in its permanent financing phase and a permanent guarantee is issued. For Option Three guarantees, before the lender is eligible to request and receive interest credit, it must document and receive the Agency's written concurrence, that the project met all the requirements for a permanent guarantee.

The Agency is not obligated to fund the maximum allowable amount of interest credit. The use of the applicable federal rate to determine the interest rate has been eliminated by the enactment of the

Housing and Economic Recovery Act of 2008. The lender and borrower have the following two alternatives for calculating the rate to the borrower:

Alternative 1 – Apply the interest credit amount to a new loan note guarantee’s interest rate negotiated between the borrower and the lender. The lender may change the previously calculated effective interest rate to the borrower. The new effective rate may be higher than the previously negotiated rate.

Alternative 2 – Continue to process these deals with the existing loan note guarantee’s interest rate under the program guidance in effect at the time the conditional commitment was issued, thereby not changing the effective interest rate to the borrower.

The amount of the interest credit and the loan note rate are not locked until the closing of the loan. The interest credit is not used to reduce the rate on a loan until the date that amortization commences.

Of the total amount guaranteed, no project will receive interest credit on more than the amount established by the Agency in a notice published in the **Federal Register**. If the loan amount exceeds the amount established by the Agency in a notice published in the Federal Register, the lender is required to separate the loan amount that will receive interest credit from the loan amount that is not eligible for the interest credit award. A separate amortization schedule is necessary for each loan amount. Yearly payments of the interest credit award will be based on the declining balance of the amount established by the Agency in a notice published in the **Federal Register**.

Interest credit is established in accordance with *Form RD 1980-24, “Request Interest Assistance/Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender.”* *Form RD 1980-24* is due to the Agency no later than February 28 of each year. The calculation will be done in accordance with item 17, “Interest Payable.” The interest credit will be paid upon receipt and Agency approval of the form. The interest credit calculation and the request will be part of the project’s annual report (see, paragraph 7.7 C.) provided to the Agency. The interest will be calculated from the effective date of the permanent loan note guarantee until the end of the year, so interest credit will always be paid in arrears for interest credit accrued for the previous calendar year. The Agency will review the calculation for accuracy and then forward the document on to the Finance Office for processing. The formula for calculation is:

$\begin{aligned} & \text{Interest Payments Received +} \\ & \text{Accrued Interest at the End of the Period -} \\ & \text{Accrued Interest at the Beginning of the} \\ & \text{Period } \times \\ & \text{Interest Assistance Rate } \div \\ & \text{Effective Interest Assistance Rate } = \\ & \textbf{Interest Payable} \end{aligned}$

Interest credit will be paid to the lender. It is anticipated that the lender will use the interest credit to reduce the interest rate on the loan and therefore, enable the borrower to pass the savings on to the tenant in the form of reduced rents.

Due to the deferred nature of interest credit, an interest credit reserve must be established by the borrower prior to closing of the permanent loan (Option One), or the construction loan (Options Two and Three) (see, paragraph 3.10.C).

E. Cancellation of Interest Credit

The interest credit is tied to a specific loan. If a loan guarantee application is rejected or withdrawn, the interest credit application is similarly terminated. If the borrower defaults on a GRRHP guaranteed loan, the interest credit contract will be canceled no later than when the liquidation plan is approved by the Agency. Any unearned interest credit must be repaid to the Agency.

F. Closing of a Loan with Interest Credit

To assist the Finance Office in timely and accurate payments of interest credit, the Agency will complete only Blocks 1, 4, 7, 8, and 9 of Form *RD 3560-9*, “*Multiple Family Housing Interest Credit Agreement*,” as described below. The Agency should complete *Form RD 3560-9* as follows:

Block 1: Enter Borrower’s Case Number.

Block 4: Enter 241.

Block 7: Enter the Promissory Note Rate.

Block 8: Enter the Interest Credit Rate/ Reduced Loan Payment.

Block 9: Enter the difference between Blocks 7 and 8.

This form will be completed for the sole purpose of assisting the Finance Office in the tracking of interest credit and will, therefore, not be completed in accordance with the *FMI* or signed by the borrower. This form will be submitted to the Finance Office when the *Form RD 1980-19*, “*Guaranteed Loan Closing Report*,” is submitted as described in paragraph 4.16.

4.9 LENDER REVIEW OF THE BORROWER SUBMISSIONS

The lender must review all elements of the proposed project prior to submission of an application to the Agency for review. The lender must certify to the Agency that program requirements have been met and highlight significant information for Agency review.

A. Borrower Eligibility

The lender will review the following documents submitted by the borrower and assess whether they adequately establish that the borrower meets the eligibility criteria of Chapter 3, Section 3.

1. Acceptable Borrower Entity

The lender will determine whether the borrower is an acceptable borrower entity by reviewing the draft organizational documents. This includes the organizational documents or a Certificate of Good Standing if the borrower is an existing organization.

In accordance with 2 CFR §180.300, lenders must verify and provide documentation to the Agency that the borrowing entity and the borrowing entity's principals are not excluded or disqualified by:

- (a) Checking SAM Exclusions (<https://sam.gov>); or
- (b) Collecting a certification; or
- (c) Adding a clause or condition to the covered transaction.

2. IOI Disclosure

The lender will review the IOI disclosures to understand the borrower entity. *Form RD 3560-30* and/or *Form RD 3560-31* will be used.

3. Certification Regarding Debt Collection

The borrower must sign *Form RD 1910-11* to certify to their understanding of the collection policies that will be taken by the government to recover delinquent or defaulted debts. The lender must ensure that this form is included in the application and signed.

B. Project Eligibility

The lender must ensure that the property meets all program requirements.

1. Property Requirements

In reviewing the application, the lender must determine that any site or design issues and any issues raised by the due diligence report (relating to potential contamination from hazardous substances, hazardous wastes, and petroleum products) have been identified and resolved in a manner consistent with Agency requirements. If they cannot be resolved at the time of application, the lender must notify the Agency and propose an appropriate remedy.

The lender must submit the design development or final plans and construction documents to the Agency with the complete application. Prior to submitting the final plans to the Agency, the lender must review and approve the design development or final plans and include a lender certification documenting their review and approval within the application. The Agency's Architect will review and concur on the plans prior to issuance of an Agency obligation of funds.

2. Clear Title and Necessary Local Approval

The preliminary title report is a part of the application. The lender must make sure that it does not show any encumbrances to the title that would affect the lender's ability to obtain a first lien.

The lender must ensure that all the necessary State or local approvals have been obtained, including proper zoning and necessary utility rights.

C. Project Feasibility Analysis

The lender must carefully review the borrowers proposed cost estimates to ensure that project costs are reasonable and customary for the type of project.

1. Sources and Uses or a Comparable Document

The Agency must determine whether the projected income stream will match projected costs. The lender must conduct a feasibility analysis of the sources and uses in a document that the Agency will review. If the projected income and costs do not closely match, the lender or borrower must revise the project costs and rent structure to bring the two in line; otherwise, the project is not feasible.

2. Adequacy of the Operating & Maintenance (O&M) Reserve

All borrowers must contribute cash from their own resources prior to loan closing in an amount equal to at least two percent of the loan amount as O&M reserve (or provide the lender with a letter of credit, as provided by paragraph 3.10 C., in lieu of a cash contribution). The lender must provide the Agency with proof of deposit for the initial payment into the O&M reserve account, or proof of the letter of credit prior to or at closing. Agency staff should verify that the initial payment for O&M reserves has been made in accordance with the Reserve Account Agreement or any other mortgage document governing O&M reserve accounts. Agency staff will monitor the balance in the O&M reserve account on an annual basis or monitor the continued existence of the letter of credit from the lender's annually audited financial statements to verify consistency with the Reserve Account Agreement or other relevant mortgage documents.

The items that are typically funded by the O&M reserve amount include, but are not limited to, property and liability insurance premiums, fidelity bond premiums when the borrower is also the management agent, utility installation charges and deposits, maintenance equipment, lease forms, loan payments that may become due during construction, purchase of office equipment and furniture, community room furnishings, other movable equipment and furnishings, congregate items, advertising expenses, management fees, etc.

The O&M reserve funds will be kept in a separate account and held by the lender. The lender must ensure that the items are necessary for the project, and the costs are like other comparable projects in the area. The lender will authorize all disbursement of funds from the O&M reserve account as needed prior to utilization. The lender may release any remaining funds from the O&M reserve account only in accordance with paragraph 3.10 C.

3. Management Systems

The lender must certify that the borrower has adequate systems to manage the property successfully in accordance with Agency requirements. For an application to be approved, borrowers must show that they will provide professional management to ensure the successful operation of the project. The lender must evaluate the acceptability of the management proposed for the project by analyzing the management entity profile and the proposed management plan (see, chapter 8 for details on how to evaluate the management profile information).

4.10 AGENCY REVIEW OF THE LOAN GUARANTEE APPLICATION

The application review consists of eight parts as listed below.

A. Determination that the Loan Guarantee Application Package is Complete

The Agency will determine if the lender has submitted all the required application documentation and met the conditions in the Notice.

B. Environmental Review by Agency

The lender will provide the Agency with the information required for the environmental review process. The environmental review process must be concluded by the Agency in accordance with National Environmental Policy Act (NEPA) of 1969, 7 CFR part 1970, and its associated RD Instructions prior to

taking any official action on an application for a loan guarantee. The RHS processing office will begin the environmental review process as soon as supporting documentation is received from the lender and borrower. The required information that must be provided by the lender and borrower is listed under Paragraph 4.7 B.

C. Review of Other Federal Requirements

The Agency will determine that all Federal requirements, including intergovernmental review (RD Instruction 1970-I) and flood insurance requirements (RD Instruction 426.2), have been met prior to taking any official action on an application for a loan guarantee.



D. Decision on Interest Credit Subsidy Awards, If Applicable

The processing Agency will review any information justifying the request for interest credit and will determine whether interest credit will be reserved for the project.

E. Decision on the Guarantee Amount

The guarantee amount, up to 90 percent of the loan amount, will be negotiated between the lender and the Agency. Normally, to obtain a 90 percent guarantee, the property must meet all program requirements and be determined to be at least an average or better risk. Factors affecting this determination include but are not limited to:

- A construction period that is appropriate based on the type of construction contemplated, the market, and the number of units to be leased.
- A debt service coverage (DSC) ratio and a loan-to-value (LTV) ratio that is appropriate given the size and complexity of the project.
- The strength of the market, as indicated by a market vacancy factor appropriate for the market.
- A financially strong borrower and ownership entity.
- A lender that has originated and/or serviced 3 or more prior GRRHP loan guarantees.
- An owner or members with extensive experience in the operation of similar housing.
- Other factors as determined by the Agency.

If the lender has proposed a project, which is not qualified for a 90 percent guarantee, the lender may ask the Agency to consider a lesser guarantee.

F. Determination that the Loan is Acceptable for a Conditional Commitment

The lender must underwrite the loan and determine that it is a sound investment. The Agency will review the lender's underwriting and determine if the proposed guaranteed loan meets all program requirements. Such requirements include but are not limited to:

- The lender has certified that the proposed loan amount (for such part of the property that may be attributable to dwelling use) and the applicable maximum per unit dollar amount limitations under section 207(c) of the National Housing Act have not been exceeded;
- The proposed loan term, including construction, is not more than 40 years but not less than 25 years;
- The proposed sources and uses of funds comply with the use of proceeds and lien;
- The LTV ratio does not exceed program limits;
- The Agency guarantee percentage does not exceed 90 percent;
- The borrower has contributed at least two percent of the loan amount for O&M reserves (or provided the lender with a letter of credit, as provided by paragraph 3.10 C., in lieu of a cash contribution);
- If the Agency is providing a construction guarantee, a construction contingency reserve will be established and funded prior to or at the closing of the construction guarantee; and
- The proposed interest credit rate, if applicable, is set in accordance with the alternatives presented in paragraph 4.8 D.

4.11 AGENCY DECISION

The Agency will review, assess, and approve applications. An application, which the Agency determines to be acceptable for a guarantee, with any one of the following criteria, will be reviewed by the Senior Policy Advisor for concurrence after the Underwriting Branch's initial determination that the application is acceptable for a guarantee. These criteria include any one of the following: (1) congregate care facilities for any loan amount; (2) a property with a loan-to-cost (LTC) or LTV of 75 percent or higher; (3) an application for a loan amount greater than \$5 million; or (4) any application at the discretion of the Director. Applications that are sent to the Senior Policy Advisor for review and concurrence must be accompanied by the Underwriting Branch's written assessment of the application.

Decisions on applications will normally be rendered within 30 calendar days of receipt of a complete application. If an application is determined ineligible to receive a conditional commitment, it will be returned to the lender. In this case, the Agency will send to the lender his/her appeal rights along with the rejection letter explaining the reasons for rejection. Approved applications will receive a conditional commitment as discussed in paragraph 4.13.

SECTION 4: ISSUANCE OF A CONDITIONAL COMMITMENT

4.12 GENERAL REQUIREMENTS

The Agency may obligate funding and make a commitment to guarantee a loan (“Conditional Commitment”) upon determining that:

- The borrower and the lender are both eligible under the GRRHP;
- All other program requirements have been met;
- The lender has determined that the project is financially feasible and has made a conditional loan commitment;
- Construction has not begun on the project (plans and specifications for building construction must be submitted to and concurred by the Agency before any construction begins on the project);
- The Agency has completed a satisfactory environmental review required under NEPA, in accordance with RD Instruction 1970 and its associated RD Instructions; including concurrence from the State Environmental Coordinator and/or Processing and Reports Review Branch Chief; and
- The application fee has been paid, if required.

Form RD 3565-2, “Conditional Commitment” documents the agreement between the Agency and a lender in which the Agency agrees to guarantee the loan at a future date, if the conditions are met within the term specified in the Conditional Commitment. Prior to the issuance of a Conditional Commitment, the Agency will complete and execute *RD Instruction 1940-L, Exhibit A, Attachment 2 - Request for Reservation of FY 20XX MFH Funds and MPR Tools form* (this form is updated each fiscal year) for the proposed project. The Program Support Branch processes this form to request an obligation be recorded by the Agency for the corresponding Conditional Commitment.

4.13 TERMS OF CONDITIONAL COMMITMENT

A Conditional Commitment is valid for the length of time specified in the Form RD 3565-2. The initial Conditional Commitment term may not exceed 24 months.



Upon a lender’s request, the Agency may grant one or more extensions to a Conditional Commitment’s term up to a cumulative term of 36 months if the Agency determines that the project remains viable. If a lender requests an extension beyond a cumulative 36-month term, the Agency may grant an additional extension if it determines it is in the Government’s best interest. The Agency will document its analysis and rationale in a memorandum of record that will be kept with the project’s electronic file.

To request an extension, a lender must submit a written extension request to the Agency at least 10 business days prior to the expiration of the Conditional Commitment's term. The request must include:

- A justification for the extension identifying each condition that cannot be met;
- An explanation on how each incomplete condition will be satisfied;
- An estimated completion date for each incomplete condition; and
- A certification from the lender that:
 - The failure to fulfill the conditions was beyond the control of both the borrower and the lender;
 - That those conditions can be fulfilled by the end of the extended term; and
 - That all application documents have been updated and are current, including but not limited to the initial credit and financial underwriting of the borrower and the project.

Any changes or updates to the application documents must be submitted to the Agency for its review and approval before a lender requests an extension to a Conditional Commitment's term. The lender will also be charged a flat fee which will be defined by the Agency in a Notice published periodically in the **Federal Register** for each extension that is granted.

Please note that in cases where the Government has committed to issue an Option Two guarantee, an extension to a Conditional Commitment's term will not extend the construction guarantee period beyond the regulatory maximum of 24 months. While an extension will not extend the guarantee period for construction advances, it will extend the Government's commitment to issue a permanent guarantee once the conditions for a permanent guarantee have been met.

A. Subsidy Layering Review (if applicable)

Because the loan guarantee and interest credit assistance are government resources, the Agency must conduct a subsidy layering review on transactions that include interest credit. The Agency will examine the subsidy layering review prepared by the lender during underwriting with an updated review at the permanent loan closing. The Agency can also rely upon any subsidy layering reviews conducted by state housing finance agencies.

B. Guaranteed Rural Rental Housing Program (GRRHP) Fees

Fees for the GRRHP will be defined by the Agency in a Notice published periodically in the Federal Register (see, chapter 6 for information on Agency fees).

C. Transactions Backed by Ginnie Mae

Lenders who intend to have the GRRHP loan securitized by Ginnie Mae will inform the Agency of their intentions. Agency staff will include the limit acceptable to Ginnie Mae and the Agency in the Conditional Commitment. Ginnie Mae's limit may be found at http://www.ginniemae.gov/products_programs/Documents/chap31.pdf.

D. Termination of the Conditional Commitment

The conditional commitment will expire if the terms are not met or if the lender decides not to originate the loan.

Withdrawal of an Application. The lender must notify the Agency immediately of its intention to withdraw an application. In this case, the Agency will retain the loan application fee (if applicable). If funds have been obligated, the Underwriting Branch will prepare and send *Form RD 1940-10, Cancellation of U.S. Treasury Check and/or Obligation* to the Program Support Branch to request the de-obligation of funds. The Program Support Branch will de-obligate the funds to the project in the GLS and notify the Underwriting Branch once the de-obligation has been processed.

Lapse of a Conditional Commitment. If the loan guarantee is not issued within the period specified in the commitment letter, the commitment will automatically expire. On a case-by-case basis, the Agency may allow extensions of the loan commitment period following the procedure outlined in this section.

E. Substitution of Lender

There are some circumstances, such as bank mergers, which require a substitution of lender and a transfer of a Conditional Commitment from one eligible/approved lender to another eligible/approved lender. A transfer of a commitment is permitted if the transfer is approved by the Agency and the substitute lender agrees to the underwriting terms approved in the conditional commitment. The substitute lender must provide the Agency with written approval from the original lender for the substitution and the transfer of the application and supporting documentation. To obtain Agency approval, the borrower and substitute lender must certify that there are no changes in the borrower's ownership or control and that the loan purposes and all other elements of the application supporting the conditional commitment remain the same (see, paragraph 2.14 for a full description of the requirements for a substitution of the lender).

F. Lender's Agreement

The lender must execute *Form RD 3565-3, Lender's Agreement* prior to the issuance of the loan guarantee, unless a current *Form RD 3565-3* is already on file with the Agency. Once a lender has a signed Lender's Agreement with the Agency, a copy of *Form RD 3565-3* must be included in each subsequent submission of the application for proposed projects. Lenders who have been active for a long period of time may be required to sign an updated Lender's Agreement.

G. Loan Note Guarantee Agreement

Form RD 3565-4, Loan Note Guarantee is the only form used to execute the GRRHP guarantee. For guarantee Option One, the guarantee becomes effective upon execution of the form by the Agency and the lender. For guarantee Options Two and Three, the guarantee for the construction loan becomes effective when funds are first drawn down. Under Option Two, the construction and permanent guarantee, once the requirements for the permanent guarantee are met, the Agency gives written confirmation to the lender of the date the Agency deemed those requirements were met.

Even though the Agency provides a single, continuous guarantee for construction and permanent loans under Option Three (see, 7 CFR § 3565.52(c)(3)) the Agency requires confirmation from the lender when construction is complete, and its loan has transitioned from the construction financing phase to the fully amortizing permanent financing phase. The Agency will update the system with the date the conversion is completed for an option 3 and the closing date for an option 1.

SECTION 5: RESPONSE TO THE CONDITIONAL COMMITMENT AND LOAN CLOSING

4.14 GENERAL CONDITIONS TO THE COMMITMENT

Once a lender receives a conditional commitment from the Agency, the lender must respond to the conditions detailed in that commitment within 60 calendar days of receipt. When all the conditions are resolved and the other requirements outlined in Section 7 of this chapter and in 7 CFR § 3565.303(d) are met, the Agency will issue a permanent guarantee to an approved lender in good standing with the program.

Among the conditions specified in the Conditional Commitment, the lender must submit the following for Agency approval before loan closing occurs. For each state where the Agency is guaranteeing a loan by a lender, OGC must first review and approve the lender's documents. If a lender makes any changes to its loan documents for a state, it must notify the Agency and provide a redlined version for OGC to review and approve before the closing process begins.

- Final organizational documents for the borrower entity or Certificate of Good Standing (if applicable);
- An opinion letter from lender's legal counsel (see, Attachment 4-B); and
- A copy of the proposed closing documents (see, Attachment 4-C).

4.15 DEVELOPMENT OF THE REGULATORY AGREEMENT

A regulatory agreement governing the relationship between the borrower and lender must be developed by the lender and executed by both the borrower and the lender. The regulatory agreement must contain the provisions (see, paragraph 7.14 D.1 for the specifications). While the Agency will not be a party to the agreement, the agreement will state that the Agency may assume the role of the lender if necessary to force borrower compliance with the agreement.

As a part of the closing documents, the lender's attorney must certify that the regulatory agreement submitted for Agency review meets the requirements of the preceding paragraph. The lender will have the executed regulatory agreement recorded after closing separate from the restrictive-use deed.

4.16 LOAN CLOSING

Once the closing documents have been approved by the Agency, the lender should prepare a closing statement showing how funds will be disbursed and begin to coordinate and schedule the closing date for the loan. All conditions precedent in the executed Conditional Commitment must be fulfilled prior to the issuance of the Loan Note Guarantee. The lender will record a separate deed that restricts occupancy to low- and moderate-income households for the term of the original loan separately.

If the loan is an Option Two guarantee, then the requirements of Section 6 of this chapter will apply, and the construction guarantee will only cover advances for construction.

If the loan is an Option Three loan guarantee, the guarantee will be issued in accordance with the requirements of Section 6 of this chapter pursuant to 7 CFR §§ 3565.212 and .305.

If the loan is an Option One guarantee, then the guarantee will be issued in accordance with Section 7 of this chapter. In addition to the regulatory agreement, *Form RD 3565-3* must be executed prior to the issuance of the guarantee.

Once the loan is closed, *Form RD 1980-19* will be prepared by the lender, signed by both the lender and the Agency, and submitted to the Finance Office. If the loan will receive interest credit, *Form RD 3560-9* must also be completed and submitted in accordance with paragraph 4.8. *Forms RD 1980-19* and *3560-9* and the executed Loan Note Guarantee will be faxed or emailed to the Finance Office, ATTN: Guaranteed Loan Branch. Contact the Agency for the current fax number or email address.

SECTION 6: GUARANTEE DURING CONSTRUCTION

4.17 CONTINUOUS GUARANTEE AND CONSTRUCTION GUARANTEE AND RELATED RESERVES

In the case of Options Two and Three guarantees, the construction guarantee will go into effect with the first draw of the construction loan. The construction guarantee is only intended to cover construction advances under the construction contract.

Option Two Guarantee. The Agency provides a guarantee which will cover construction loan advances (advances) during construction. A construction contingency reserve is required. The maximum guarantee of construction advances related to a construction and permanent loan will not at any time exceed the lesser of 90 percent or the percent established by the Agency and announced through a Notice in the **Federal Register** of the amount of principal and accrued interest up to default for amounts which exceed the original advance for eligible uses of loan proceeds or 90 percent of the original principal amount and accrued interest up to default of the loan. The Agency will cover losses to the extent of its guarantee once all sureties/insurances and performance and payment bonds have fully performed their contractual obligations.

A construction contingency reserve is required. This guarantee will be enforceable during the construction period but will cease to be enforceable once construction is completed unless and until the requirements for the continuation of the guarantee contained in the Conditional Commitment and this part are completed and approved by the Agency by the date stated in the Conditional Commitment or the date approved by the Agency as part of an extension (7 CFR § 3565.303 (d)).

The Agency will provide written confirmation to the lender when all the requirements for continuation of the guarantee to cover the permanent loan have been satisfied. Any losses sustained while the guarantee is unenforceable (after the end of the construction period and, if applicable, before the continuation of the guarantee) are not covered by the guarantee. For purposes of this guarantee, the construction period will end on the earlier of:

- (i) Twenty-four months from the closing of the construction loan, if the certificates of occupancy for all units in the project have not been issued by then, or
- (ii) The date of the issuance of the last certificate of occupancy if the certificates of occupancy for all units in the project are issued on or before 24 months from the closing of the construction loan.

Option Three Guarantee. The Agency may provide a single, continuous guarantee for construction and permanent loans. Only projects that have low loan-to-cost ratios, which will be defined by the Agency in a Notice published periodically in the **Federal Register**, are eligible for this type of guarantee.

A construction contingency reserve is required. If the lender opts to set up the lease-up reserve (in lieu of 90% occupancy for 90 continuous days), the lease-up reserve must be funded 30 days before the first Certificate of Occupancy is anticipated. This lease-up reserve is an additional amount, over and above the required initial operating and maintenance contribution.

The maximum guarantee of construction advances will not at any time exceed the lesser of (1) 90 percent or the percent established by the Agency and announced through a Notice in the **Federal Register** of the amount of principal and interest up to default advanced for eligible uses of loan proceeds or (2) 90 percent of the original principal amount and interest up to default.

Under either Option Two or Option Three, the lender provides acceptable credit enhancements. Acceptable credit enhancements include any of the following:

- Surety bonding or a performance and payment bond acceptable to the Agency (the preferred enhancement);
- An irrevocable letter of credit acceptable to the Agency; or
- A pledge to the lender of collateral that is acceptable to the Agency.

For Options Two and Three the lender will require the borrower to establish an operating and maintenance reserve and provide the Agency adequate evidence of the funding of all required reserves. For both options the Construction Contingency reserve must be fully funded prior to or at the closing of the construction guarantee. For Option Two the funding schedule for the lease-up reserve and the operating and maintenance reserve must be included in the Agency-approved construction budget and be fully funded before the issuance of the permanent guarantee. For Option Three the operating and maintenance reserve must be fully funded before the issuance of the guarantee (see, chapter 5 for the requirements for a construction guarantee).

Chapter 5 provides additional details regarding the requirements for a construction guarantee.

SECTION 7: PERMANENT GUARANTEE

The requirements for issuing the permanent guarantee are identified below.

4.18 OCCUPANCY

The permanent guarantee may not go into effect until the lender has provided the Agency with copies of rent rolls showing occupancy levels at 90 percent for 90 consecutive days (90/90 test). The project must meet the 90/90 test in the 120-day period immediately prior to the issuance of the permanent guarantee. In lieu of meeting the minimum level of occupancy, borrowers may establish a lease-up reserve as outlined in paragraph 3.10 C.

To calculate the required lease-up reserve amount, add the monthly amount of the Operations and Maintenance expense, the monthly amount of the Debt Service, and the monthly amount of the Reserve Deposit, then multiply this sum by three.

The required lease-up reserve is a cash contribution and is an additional amount, over and above the required initial O&M reserve contribution which is defined in paragraph 3.10 C. The Conditional Commitment must state the permanent guarantee will not go into effect until either the lender provides RHS staff with copies of rent rolls showing occupancy levels at 90 percent for 90 consecutive days (90/90 test) or the lender fully funds a lease-up reserve using the calculation above.

If tax credits are used in conjunction with any of the GRRHP options, the borrower must meet any occupancy requirements in the tax credit partnership agreement before the permanent guarantee is issued.

4.19 DOCUMENTATION REQUIREMENTS

The guarantee of any permanent loan 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 § 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 90% occupancy 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:
 - (iii) *Original appraisal* - the original appraisal that meets the Agency's appraisal requirements with a valuation date no older than 36 months;
 - (iv) *Valuation* - the appraisal's lowest valuation, regardless of valuation approach and rent restrictions considered, is greater than the § 538 guaranteed loan amount; and
 - (v) *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;
- (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.
 - The cost certification establishes the actual construction costs incurred by the mortgagor and general contractor. If there is an identity of interest (IOI) between the sponsor and contractor, the cost certification must be performed by an experienced audit firm acceptable to the Agency.
 - Where low-income housing tax credits are a source of funding, the cost certification should be performed by the agency that awards the tax credits.
 - All IOI and State agency cost certifications must meet the standards of 7 CFR § 1924.13. All contracts must also indicate that when any IOI exists or comes into being, the contractor agrees to have construction costs as reported to the Agency on Form RD 1924-13 audited by a Certified Public Accountant or Licensed Public Accountant licensed prior to December 31, 1970, who will provide an opinion as to whether the Form RD 1924-13 presents fairly the costs of construction in conformity with eligible construction costs as prescribed in Rural Development regulations.
 - It is the responsibility of the lender to ensure that the borrower has properly completed a cost certification within 60 days of 100% final completion of the project.
- (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 of occupancy;
- (11) An executed and recorded regulatory agreement;
- (12) A lender certification that it has approved the borrower's management plan and assures that the borrower is complying with Agency standards regarding property management contained in 7 CFR Subpart 3565, Subparts E and F;
- (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.

The Agency will review all submitted documents and verify that the project is free and clear of liens prior to the issuance of the permanent guarantee.

The continuous guarantee will remain in effect once construction is completed. To remain in compliance with 7 CFR Part 3565, the following items must be submitted to and approved by the Agency. The date that these items are due to the Agency must be indicated in the Loan Note Guarantee. A reasonable timeframe for submission of these items is 24 months. 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 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 of 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 complying 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.
 - Evidence that the annual guarantee fee has been paid, if applicable.
 - A copy of the Option Three Loan Note Guarantee executed by the Agency with written confirmation from the Agency of the effective date of guarantee.

- An executed regulatory agreement, if applicable.
- A management plan that has been approved by the lender and is in conformance with Agency standards regarding property management.
- Compliance with all conditions in the conditional commitment for guarantee.

Under Option Three, the lender receives a commitment from the Agency for a continuous guarantee and all conditions of this commitment must be established and/or met at closing of the construction loan.

SECTION 8: TERMINATION OF THE LOAN GUARANTEE

4.20 REASONS FOR TERMINATION

Under any of the three options, if the GRRHP loan is terminated or if the lender fails to comply with the program requirements, the guarantee will be terminated or not issued. The guarantee will terminate under the circumstances identified below.

A. Repayment of the Loan

Once the loan note has been completely paid off, the loan guarantee will automatically terminate.

B. Payment of a Claim

Once a claim has been paid, the loan guarantee automatically terminates.

C. Voluntary Termination of the Guarantee Agreement by the Lender

If a guarantee agreement is voluntarily terminated by the lender, the program restrictions must remain in place unless approved by the Agency pursuant to Section 3565. 352 and paragraph 7.14 D. 2.

D. Non-compliance with Program Requirements

The loan guarantee may be terminated for non-compliance with the program requirements. The Agency will exercise its rights to cancel the guarantee only if:

- The Agency has given the lender notice of the acts or omissions that it considers to constitute such grounds, specifying the applicable provisions of the statute, regulations, Loan Note Guarantee, or Lender's Agreement,
- The lender has not cured the acts or omissions within 90 calendar days after such notice, and

- The acts or omissions can reasonably be expected to have a material adverse effect on the credit quality of the guaranteed mortgage or the physical condition of the property securing the guaranteed mortgage. If such acts or omissions cannot be cured within 90 calendar days, the 90 calendar-day cure-period automatically shall be extended so long as curative activities commence during the 90 calendar-day period. At no time shall the curative period extend more than 270 calendar days beyond the expiration of the original 90 calendar day cure period. The lender will remain bound to all obligations under the Loan Note Guarantee, Lender's Agreement, and the Agency program regulations. Non-compliance with program requirements includes, but is not limited to:

◇ *Negligent Servicing*

Failure to service the loan is a violation of program requirements (see Chapter 7). Negligent servicing is defined as the failure to perform services which a reasonably prudent lender would perform in servicing its own portfolio of loans. This includes not only the concept of a failure to act, but also not acting in a timely manner or acting in a manner contrary to that of a reasonably prudent lender.

◇ *Failure to Pay the Annual Guarantee Renewal Fee (if applicable)*

The guarantee may be reinstated upon payment of all past due annual loan guarantee fees. The Agency will charge interest penalties on any unpaid guarantee fee.

◇ *Improper Sale*

If the Agency determines that the loan has been sold or otherwise transferred without Agency approval, the guarantee may be terminated.

E. Fraud

If the Agency determines that fraud took place on the part of the lender in the loan application process, the Agency may terminate the loan guarantee.

In the event of termination, the lender is required to reimburse the Agency for any unused interest credit, if applicable. A termination is appealable under the adverse action procedures (see, paragraph 1.11).

ATTACHMENT 4-A

SECTION 538 GRRHP APPLICATION CHECKLIST

This checklist is a consolidation of required information contained in the GRRHP Origination and Servicing Handbook (HB-1-3565) for the completion of a GRRHP application.

The lender is responsible for preparing an application that is complete and accurate. The lender must electronically submit the GRRHP application to the Processing and Report Review Branch based on the State where the project will be located. The complete application must be submitted to the Agency as outlined in the Notice published in the Federal Register which will include the lender's certifications, the supporting documentation, exhibits and required forms.

(1) The lender's certification will serve as assurance to the Agency that the borrower, the project, and the proposed financing meet the lender's standards for loan making. The lender must certify the following on the lender's letterhead:

- The information contained in the application is consistent with the lender's underwriting and loan making standards (see, HB-1-3565, paragraph 4.7 A.).
- Current List of Lender's Officers and Principals.
- The lender has completed the lender's review as required by paragraph 4.9 of the GRRHP Origination and Servicing Handbook and has identified any significant findings in a narrative attached to this certification (see, HB-1-3565, Paragraph 4.7 A.).
- The lender agrees to make a loan to the borrower for the proposed project, subject to the Agency's issuance of an appropriate guarantee option (see, HB-1-3565, paragraph 4.7 A.).
- In accordance with 2 CFR 180.300, the lender must verify and provide documentation to the Agency that the borrowing entity and the borrowing entity's principals are not excluded or

disqualified; and the lender's borrowers must verify the management agent and the management agent's principals are not excluded or disqualified by:

- Checking SAM Exclusions (<https://sam.gov>); or
 - Collecting a certification; or
 - Adding a clause or condition to the covered transaction.
 - The lender must provide a certification to the Agency that their borrower verified the management agent and the management agent's principals are not excluded or disqualified.
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- The lender must certify that the proposed loan amount (for such part of the property attributable to dwelling use) and the applicable maximum per unit dollar amount limitations under section 207 (c) of the National Housing Act have not been exceeded (see, HB-1-3565, paragraph 4.10 H.).
 - The lender must certify that the owner and development team have the qualifications and experience sufficient to carry out development, management, and ownership responsibilities (see, HB-1-3565, paragraph 4.9 A.).
 - The lender must certify that if it is applying for a continuous guarantee, the project has the appropriate low loan-to-cost ratio as determined by the Agency [7 CFR 3565.52(c)(3)].
 - The lender must certify that the property is located in an eligible rural area (see, HB-1-3565, paragraph 4.5 C.).
 - The lender must certify that it has conducted due diligence, and the results have been taken into consideration in the appraisal (see, HB-1-3565, paragraph 4.7 B.).
 - The lender must certify that it has reviewed and approved the management plan and agreement and confirmed that they are consistent with Agency requirements (see, HB-1-3565, paragraph 4.7 B.2.).
 - Prior to the issuance of the guarantee, the lender must certify that construction meets basic construction requirements (see, HB-1-3565, paragraphs 5.3 through 5.12).
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- The lender must certify that the plans and specs have been reviewed and approved by the lender.

- The lender must certify that the appraisal and the market study meet the Agency's requirements and have been reviewed and approved by the lender.

(2) Exhibits and Supporting Information:

Forms to be included in the application package:

- Form RD 3565-1, Application for Loan and Guarantee (see, HB-1-3565, paragraph 4.7 B.1.).
- Form RD 3565-3, Lender's Agreement.
- RD Instruction 1940-Q, Exhibit A-2, Statement for Loan Guarantees (see, HB-1-3565, paragraph 4.7.B.1).
- Attachment 4-D, Housing Allowances for Utilities and Other Public Services (see, HB-1-3565, paragraph 4.7 B.1.).
- Form RD 1944-37, Previous Participation Certification (see, HB-1-3565, paragraph 4.7 B.1.).
- Form RD 3560-30, Certification of No Identity of Interest (IOI), if applicable (see, HB-1-3565, paragraph 4.7 B.1.).
- Form RD 3560-31, Identity of Interest Disclosure/Qualification Certification, if applicable (see, HB-1-3565, paragraph 4.7 B.1.).
- Form RD 1910-11, Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts (see, HB-1-3565, paragraph 4.7 B.1.).
- Management Entity Profile (see, HB-1-3565, paragraph 4.7 B.1.).

- FEMA Form 086-0-32, Special Flood Hazard Determination (see, 7 CFR 3565.254, HB-1-3565, paragraphs 4.7 B.2., 9.3, and 11.7 A.).
- Form RD 1924-13, Estimate and Certificate of Actual Cost (see, HB-1-3565, paragraph 4.7 B.2.).
- Form RD 400-4, Assurance Agreement, (see, HB-1-3565, paragraph 7.14 C.3.).
- Form RD 1924-25, Plan Certification Form, (see, HB-1-3565, paragraph 5.7).
- Compliance Statement.

Other Required Supporting Information:

Borrower information:

- Financial statements with certification(s) (newly formed entities applying for a construction/permanent guarantee do not need to provide financial statements at the time of application) (see, HB-1-3565, paragraph 4.7 B.2.).
- Credit report for the entity and any guarantor (see, HB-1-3565, paragraph 4.7 B.2.).
- Proposed limited partnership agreement and certificate of limited partnership (if applicable). Agency requirements should be contained in one section of the agreement and their location identified by the borrower or their attorney in a cover sheet (see, HB-1-3565, paragraph 4.7 B.2.).
- If a corporate entity, its Articles of Organization and its Operating Agreement (see, HB-1-3565, paragraph 4.7 B.2.).

If the borrower is a nonprofit organization:

- Tax-exempt ruling from the IRS designating them as a 501(c)(3) or 501(c)(4) organization. If the designation is pending, a copy of the designation request must be submitted (see, HB-1-3565, paragraph 4.7 B.2.).
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- Evidence of organization under State law or copies of pending applications (see, HB-1-3565, paragraph 4.7 B.2.).
- A list of board members (see, HB-1-3565, paragraph 4.7 B.2.).

If the borrower is a public body:

- The enabling statute or the State law of organization (see, HB-1-3565, paragraph 4.7 B.2.).

Project Information:

- An application fee, if applicable (see, HB-1-3565, paragraph 4.7 B.).
- An appraisal and market study (see, HB-1-3565, paragraph 4.7 B.2.).
- Project information including project name, location, number and type of units, the development team, property manager, lawyer, and syndicator. The development team includes the developer (including all principals), architect, and contractor (see, HB-1-3565, paragraph 4.7 B.2.).
- Capital Needs Assessment (for rehabilitation loans only) (see, HB-1-3565, paragraph 4.7 B.2.). Does the Capital Needs Assessment and Capital Improvement Plan call for a replacement reserve escrow that meets or exceeds the \$1,000/unit threshold by year three? If not, document underwriting explanation (see, 7 CFR 3565.254 (b)(4), HB-1-3565, paragraph 7.6 D.4.). Include a Reserve for Replacement schedule.
- State Clearinghouse comments or recommendations (see, HB-1-3565, paragraph 4.7 B.2.).
- Site plan, including contour lines (see, HB-1-3565, paragraph 4.7 B.2.).
- Plot plan (see, HB-1-3565, paragraph 4.7 B.2.).
- Floor plan of each living unit type and other type spaces (see, HB-1-3565, paragraph 4.7 B.2.).

- Building exterior elevations (see, HB-1-3565, paragraph 4.7 B.2.).
- FEMA Form 086-0-33, Elevation Certificate.
- Typical building exterior wall section (see, HB-1-3565, paragraph 4.7 B.2.).
- Description and justification of any related facilities and schedule of separate charges for related facilities, if any (see, HB-1-3565, paragraph 4.7 B.2.).
- Design development/working plans/construction specifications (see, HB-1-3565, paragraph 4.7 B.2.). Plans, specifications, and estimates must fully describe all of the work to be completed, including all landscaping, construction, repairs, and site development work. The plans must be clear and accurate with adequate dimensions and sufficient scale for estimating purposes.
- Indicate if commercial space is associated with the project. (If the commercial space exceeds 10 percent of the gross floor area, an Administrator's exception will be required).
- Technical data, tests, or engineering evaluations needed to support the design of the development must be included (see, HB-1-3565, paragraph 5.7).

Property Management Information:

- Management plan (see, 7 CFR 3656.351 for the requirements).
A complete management plan will include: Details for managing a project with scattered sites (if applicable); procedures for determining applicant eligibility; demonstrated capacity to manage the unique leasing occupancy restrictions of the guaranteed program; description of rent collection; lease provisions covering termination and eviction; provision of a copy of tenant protection and grievance procedures to tenants; description of security plan; plans for maintenance, repair, replacement, tenant work requests, management and maintenance staffing plans; detailed compliance with Federal and state environmental laws; description of energy conservation measures including recycling; detailed management and maintenance staffing plans; and information on staff training programs. The plan must include a
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statement confirming that it includes a provision for access to project's books and records by USDA staff, USDA-IG, GAO, and the Department of Justice; information on accounting, record keeping, data systems, and software. 7 CFR 3565.351 (a)(7).

- ❑ Management Review. The following are examples of documentation which can be submitted to the Agency to establish evidence of the management agency's experience:
 - Name of the Management Entity
 - Management Entity Type (Owner/Manager; Independent Fee Agent; Identity-of-Interest Agent; or Project Administrator)
 - Employer Identification Number (EIN)
 - Specify Organization Type (Corporation; Partnership; Individual; or Other)
 - Names, titles and Social Security Numbers of firm's principals (e.g., general partner, president, treasurer, etc.)
 - Provide mailing addresses for the Company's home office and if applicable, any branch offices involved in management of HUD-related multifamily projects. Specify the geographic area covered by each office.
 - If applicable, what year (yyyy) did the company begin managing: HUD-subsidized projects; HUD-related unsubsidized projects; and/or Conventional projects.
 - If applicable, estimate what percent of company's activities involve management of: Conventional projects; HUD-related projects; Commercial space; and/or Other.
 - If applicable, the number of projects the company manages (both rentals and cooperatives): HUD-unsubsidized; HUD-subsidized; and/or HUD-owned. Of these, how many have HUD-held mortgages; are non-insured; are subsidized co-ops; are unsubsidized co-ops and the percentage of elderly; family; owned by a non-profit or coop; core city; troubled neighborhood; suburban and rural area.

- Indicate where each of the following activities are administered. Use the following codes: C = central office; R = regional office; P = project site: Bookkeeping; landscaping; maintenance; purchasing; tenant application; certification/recertifications; regular monthly subsidy billings; and special claims subsidy billings.
 - Number of the company's full-time employees serving in the following supervisory or advisory roles (Owner-managers and administrators of projects for the elderly should provide this information on project employees): Engineers; maintenance supervisors; occupancy supervisors; training specialists; social service coordinators; regional property managers; indicate number and percentage of minorities serving in supervisory or advisory roles.
 - Identify any professional memberships, licenses, certificates or accreditations which are related to property management activities and are held by the company, company executives, or employees.
 - Describe any purchasing procedures you have implemented to control or reduce cost (e.g., bulk purchasing, paying early to take advantage of discounts, cost comparisons or bids, etc.)
 - List any companies which regularly supply goods or services to federally funded projects and have an identity-of-interest with the management entity or its principals (e.g., officers, general partners). Specify the type of goods and services provided.
 - Do any of the identity-of-interest companies listed function as "pass-throughs" -- i.e., does the identity-of-interest company purchase goods or services from another party and pass those goods or services through to the project? For each pass-through arrangement:
 - (1) Name the identity-of-interest company involved.
 - (2) Explain how the identity-of-interest company's compensation is determined.
 - (3) Explain why it is more advantageous for the project to use the pass-through arrangement than to purchase directly from the ultimate supplier.
 - What types of property management procedures or operating manuals are used by on-site or supervisory staff?
-

- What types of recurring written reports are prepared on project operations (e.g., maintenance, move-in/outs, payables, comparisons of budgeted and actual expenses)? Specify who (by position title) prepares the report, frequency of the report, and who reviews the report.
- Specify how frequently company executives or supervisory staff visit the projects the company manages and who (by position title) conducts the on-site visits or reviews.
- If the company manages subsidized projects, identify by job title who prepares and reviews the HUD-required documents and the frequency of their review for the following: HUD's Initial Certifications; Recertifications; Regular Monthly Subsidy Billings; Special Claims Subsidy Billings; Proposals to terminate tenant assistance payments; Proposals to evict; Monthly Accounting Reports; and Civil Rights Tenant Characteristics/Occupancy Reports.
- If applicable, describe how the home office supervises supervisory staff (e.g., property managers, occupancy specialists, maintenance supervisors), who operate out of branch offices.
- Describe how the company trains its employees in the areas listed below. Discuss both on-going training and initial training provided when the employee is hired. Specify the frequency and duration of the training and who/what organization conducts the training. Discuss training for both supervisory and front-line staff for the following: Property management practices; Financial and recordkeeping requirements; Civil rights and fair housing laws; and Occupancy requirements in HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs (if the company manages subsidized projects).
- If applicable, specify if an owner of a HUD-related project, at any time during the past three years, cancelled a property management contract held by the company and identify during the past three years, how many HUD-related projects have not renewed their management contracts with the company (Explain the reasons for any cancellations or failure to renew and identify the projects involved).

- If applicable, provide a list of all HUD Field Offices that have jurisdiction over the projects. For companies that operate in more than five Field Office jurisdictions, identify the five jurisdictions where the greatest number of your HUD-related projects are located.
 - List all State Agencies in whose jurisdiction you have managed or are managing State Agency-financed projects. For companies that operate in more than five States, identify the five where the greatest number of your State Agency projects are located.
 - List the location of all RD properties you have managed or are managing. For companies that operate in more than five RD jurisdictions, identify the five where the greatest number of your RD properties are located.
- Proposed management agreement.
 - Qualifications of the property manager.
 - In accordance with 2 CFR 180.300, the lender's borrower must verify and provide documentation to the Agency that the property management entity and the property management entity's principals are not excluded or disqualified by:
 - (a) Checking SAM Exclusions (<https://sam.gov>); or
 - (b) Collecting a certification; or
 - (c) Adding a clause or condition to the covered transaction.
 - The lender must provide a certification to the Agency that their borrower verified the management agent and the management agent's principals are not excluded or disqualified

Contractor Information:

- Demonstrated experience of the general contractor in building multifamily housing of the size design, scope, and complexity of the project. Note any exceptions (see, HB-1-3565, Chapters 4 and 5).
-

Financing Information:

- Lender's conditional commitment on the lender's letterhead with lender's signature specifying the GRRHP option under which the project loan is to be guaranteed (see, HB-1-3565, paragraph 4.7 B.2.).
- Sources and Uses, pro forma statement or a comparable document.
- Lender's narrative (see, HB-1-3565, paragraph 4.7 B.2.).
- A copy of the pro forma budget detailing the first year and a typical year's operation (Proformas with and without the interest credit award will serve as justification for the interest credit award.) (see HB-1-3565, paragraph 4.7 B.2.).
- Type of utilities and utility allowances (Attachment 4-D), if applicable (see, HB-1-3565, paragraph 4.7 B.2.).
- Confirm that Operating and Maintenance (O&M) Reserve is at least two percent of the total loan amount (not just guaranteed portion). Calculation of O&M reserve for congregate care facilities and larger projects should reflect absorption rates in the market study to cover shortfalls between estimated operating budget calculations and rent-up assumptions. Funds contributed as O&M reserves are contributed from the borrower's own resources or an irrevocable letter of credit and are not to be included as part of the total development cost calculation (see, 7 CFR 3565.402 (a)(2), HB-1-3565, paragraph 7.7 B and paragraph 3.10 C).
- Confirm that the construction contingency is equal to two percent of the construction contract, inclusive of the contractor's fee and hard and soft costs. This is to be funded at or prior to closing by the contractor (see, 7 CFR 3565.402 (a)(2), HB-1-3565, paragraph 7.7 B and paragraph 3.10 C.).
- Make sure that the loan is properly classified in accordance with the following:
Existing property _____ (see, 7 CFR 3565.252)
515 Rehab _____

New construction _____ (see, 7 CFR 3565.252)
Eligible rural area _____ (see, 7 CFR 3565.251)
General site requirements _____ (see, 7 CFR 3565.254)
General site standards _____ (see, 7 CFR 3565.254)

- Provide evidence of adequate insurance for the project (see, 7 CFR 3565.351, HB-1-3565, Chapter 9).
- Interest Credit Request, if applicable (see, HB-1-3565, paragraphs 4.7 B.2. and 4.8).
- Proposed Closing Date (Section 538 GRRHP loan).

Environmental Information:

- Most current version of the ASTM Standard E 1528-14, Phase I Environmental Site Assessment Process published by the American Society for Testing and Materials (ASTM), (see, HB-1-3565, paragraph 4.7 B.2.).
- Environmental Information in accordance with 7 CFR Part 1970 - Environmental Policies and Procedures.
- Compliance with historic and architectural laws, if applicable (see, HB-1-3565, paragraph 4.7 B.2.).
- Comments regarding relevant off-site conditions (see, HB-1-3565, paragraph 4.7 B.2.).
- Land survey (see, HB-1-3565, paragraph 4.7 B.2.).

Legal and Regulatory Items:

- Standard Regulatory Agreement approved by the Agency. (see, 7 CFR 3565.303 (d)(11)).
-

- Non-Standard Regulatory Agreement(s) containing provisions for transferability between lenders, binding on the borrower and their successors (see, 7 CFR 3565.351(a), HB-1-3565, paragraph 4.15 and 7.14 D.1.), and requires that the borrower: make all principal and interest payments under the note, maintain the project as affordable housing in good physical condition; maintain complete project books and records; and comply with all Federal Fair Housing requirements under the terms of the note (see, 7 CFR 3565.351(a)).

- Verify use of security instruments prepared, executed, recorded and/or delivered per program guidelines and in compliance with the terms of the conditional commitment (see, HB-1-3565, Attachment 4-C).

- Verify use of the construction contract based on standard AIA Document A-101. If this document is used, it should be modified as described in Form RD 1924-25 or similar form (HB-1-3565, paragraph 5.9) and submitted to the Agency.

- Verify use of contract specifications, documents and forms. Use Form RD 1924-6 “Construction Contract” or similar document as required by Executive Order 11246, Non-Discrimination in Employment by Construction Contractors (see, HB-1-3565, paragraph 7.14, Exhibits 7-5 and 7-6).

ATTACHMENT 4-B
SUGGESTED FORMAT FOR THE OPINION
OF THE LENDER’S LEGAL COUNSEL
(LEGAL OPINION TO BE RETYPED ON LENDER’S COUNSEL’S LETTERHEAD
INCLUDING THE RELEVANT PORTIONS OF THE LETTER)

To: (Name of Lender)

I have acted as counsel to [Lender’s legal name] in connection with a \$[initial loan amount] loan by the [Lender’s legal name] (hereinafter “the Lender”) to [Borrower’s Legal Name] (hereinafter “Borrower”), the terms of which loan are set forth in the Loan Agreement (hereinafter “the Loan Agreement”) executed by the Lender and Borrower on [date]. In connection with this loan, I have examined:

1. The corporate records of Borrower, including its organizational documents.
2. The Loan Agreement between the Lender and Borrower.
3. The Security Agreement executed by Borrower on [date].
4. The Guaranty (where applicable) executed on [date] by [personal guarantors].
5. Financing Statements executed by Borrower and the Lender.
6. Real Estate Mortgages dated _____ and executed by Borrower in favor of the Lender.
7. Real Estate Mortgages dated _____ and other security documents dated _____ executed by [personal guarantors] in favor of the [other parties].
8. The appropriate title and lien searches relating to Borrower’s property.

9. The pledge of stock and instruments related thereto.
10. Such other materials, including relevant provisions of the laws of this state as I have deemed pertinent as a basis for rendering the opinion hereafter set forth.

IN SOME CIRCUMSTANCES

11. Lease(s) between Borrower and (lessor's name) for the rental of (property being rented), (if real property, give the address of the premises; if machinery equipment, etc., give brief, precise description of property for a (length of lease) term commencing on (date)).
12. Lender for the Loan, will be subordinate to [first mortgage] given as security for a loan in the amount of \$_____ and the security interest in Borrower's [type of collateral, e.g., accounts inventory] given to [secured creditor] as security for a loan (state type of loan, i.e., revolving line of credit, if known) in the amount of \$_____.
13. This Replacement Reserve Intercreditor Agreement dated _____ executed by the Borrower and the Lender.

Based on the foregoing examinations, I am/we are of the opinion and advise you that:

1. Borrower is a duly organized _____ in good standing under the laws of the Commonwealth/State of (State).
 2. Borrower has the necessary _____ power to authorize and has taken the necessary corporate action to authorize the Regulatory Agreement and to execute and deliver the Note, Security Agreement, Financing Statement, and Mortgage. Said instruments hereinafter collectively referred to as the "Loan Instruments."
 3. The Loan Instruments were all duly authorized, executed, and delivered and constitute the valid and legally binding obligation of the Borrower and collectively create a valid (first) lien upon or valid security interest in favor of the Lender, in the security covered thereby,
-

and are enforceable in accordance with their terms, except to the extent that the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights. The restrictive-use provisions will be contained in the mortgage or deed of trust and the regulatory agreement signed by the borrower. The deed will be a separate document from the Regulatory agreement and must be recorded.

4. The execution and delivery of the Loan Instruments and compliance with the provisions thereof under the circumstances contemplated thereby did not, do not, and will not in any material respect conflict with, constitute default under, or contravene any contract or agreement or other instrument to which the Borrower is a party or any existing law, regulation, court order, or consent decree or device to which the Borrower is subject.
5. All applicable Federal, State, and local tax returns and reports as required have been duly filed by Borrower and all Federal, State, and local taxes, assessments, and other governmental charges imposed upon Borrower or its respective assets, which are due and payable, have been paid.
6. The Guaranty has been duly executed by the Guarantors and is a legal, valid, and binding joint and several obligations of the Guarantors, enforceable in accordance with its terms, except to the extent that the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.
7. All necessary consents, approvals, or authorizations of any governmental agency or regulatory authority or of stockholders which are necessary have been obtained. The improvements and the use of the property comply in all respects with all Federal, State, and local laws applicable thereto.
8. (In cases involving subordinate or other than first lien position.) That the mortgage/deed of trust on Borrower's real estate and (fixtures, e.g. machinery and equipment) and the security interest on (type of collateral, e.g., machinery and equipment, accounts receivables and inventory) both given as security to the Lender for the Loan, will be subordinate to (first mortgage) given as security for a loan in the amount of \$ _____ and the security

interest in Borrower's (type of collateral, e.g., accounts inventory) given to (secured creditor) as security for a loan (state type of loan, i.e., revolving line of credit, if known) in the amount of \$_____.

9. That there are no liens, as of the date hereof, on record with respect to the property of Borrower other than those set forth above.
 10. There are no actions, suits, or proceedings pending or, to the best of our knowledge, threatened before any court or administrative agency against Borrower which could materially adversely affect the financial condition and operations of Borrower.
 11. Borrower has good and marketable title to the real estate security free and clear of all liens and encumbrances other than those set forth above. I/we have no knowledge of any defect in the title of the Borrower to the property described in the Loan Instruments.
 12. Borrower is the absolute owner of all property given to secure the repayment of the loan, free and clear of all liens, encumbrances, and security interests.
 13. Duly executed and valid functioning statements have been filed in all offices in which it is necessary to file financing statements to fully perfect the security interests granted in the Loan Instruments.
 14. Duly executed real estate mortgages/deeds of trust have been recorded in all offices in which it is necessary to record to fully perfect the security interests granted in the Loan Instruments.
 15. (IN SOME OTHER CIRCUMSTANCES) The Indemnification Agreement has been duly executed by the Indemnitors and is a legal, valid, and binding joint and several obligation of the Indemnitors, enforceable in accordance with its terms, except to the extent that the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.
-

16. That the lease contains a valid and enforceable right of assignment and right of reassignment, enforceable in accordance with its terms, except to the extent the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.
17. The Lender's lien has been noted on all motor vehicle titles, stock certificates, or other instruments where such notations are required for proper perfection of security interests therein.
18. That a valid pledge of the outstanding and unissued stock and/or shares of Borrower has been obtained and the Lender has a validly perfected and enforceable security interest in the shares/stock of Borrower, except to the extent the enforceability thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors rights.

**ATTACHMENT 4-C
CLOSING DOCUMENTS TO BE SUBMITTED
AS PART OF THE FINAL APPLICATION**

After the conditional commitment for guarantee has been issued, the proposed closing documents will be prepared by the lender and forwarded to the Agency with the lender's counsel's opinion in the suggested format of Attachment 4-B. Prior to issuing the loan note guarantee, the Closing Branch will forward the loan docket including all required documents to the Office of the General Counsel (OGC) for review unless otherwise directed by OGC. After an administrative review, the Agency will include with the docket a letter of recommendation indicating any special items, documents, or problems that need to be addressed. The docket will be assembled by the lender for OGC review in accordance with guidance listed below and indexed and tabbed.

DOCUMENTS TO BE SUBMITTED FOR OGC REVIEW

- (1) Letter from Agency authorizing loan guarantee and containing conditions (if applicable);
- (2) *Form RD 3565-2*;
- (3) Promissory Notes;
- (4) Security documents - Real Estate Mortgage, Security Agreement, Financing Statements, Subordination Agreement, Replacement Reserve Intercreditor Agreement, and Leases (if applicable);
- (5) Personal or corporation guarantees with related security documents;
- (6) *Form RD 3565-3*;
- (7) *Form RD 3565-4*;
- (8) Opinion of Lender's Counsel in form prescribed by OGC (see, Attachment 4-B);
- (9) Regulatory Agreement with attached certification from the lender's attorney (see, paragraph 4.15); and
- (10) Deed Restriction or other Agency/OGC approved instrument(s) which declare that housing must remain available for occupancy by low- and moderate-income households for the original term of the guaranteed loan. The deed restriction (or Agency/OGC approved instrument) must be recorded and returned to the Agency along with other recorded documents in the post-closing package.

Do not submit for OGC review feasibility studies, title information, or the original application unless specifically requested to do so.

OGC will review the docket and furnish advice to the Agency on whether it may issue the loan note guarantee after the loan is closed. Such advice is for the benefit of the Agency only and does not relieve the lender of its responsibilities under Agency regulations. OGC at his/her option may attend the loan closing



ATTACHMENT 4-D
HOUSING ALLOWANCES FOR UTILITIES AND OTHER PUBLIC SERVICES

NAME OF BORROWER: _____

EFFECTIVE DATE: _____

LOCATION OF PROJECT: _____

PART I: PROJECT-BASED PAID UTILITIES AND SERVICES

MONTHLY DOLLAR ALLOWANCES

UTILITY OR SERVICE	0-bdrm	1-bdrm	2-bdrm	3-bdrm	4-bdrm	5-bdrm
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HEATING

Natural gas

Bottle gas

Electric

Oil

AIR CONDITIONING

COOKING

Natural gas

Bottle gas

Electric

OTHER ELECTRIC (LIGHTING,
REFRIGERATION, ETC.)

WATER HEATING

Natural gas

Bottle gas

Electric

Oil

WATER

SEWER

TRASH COLLECTION

OTHER (Specify)

TOTAL ALLOWANCE

Prepared by: _____

Borrower or Agent

Title

Signature

Date

PART II: ALLOWANCES FOR UTILITIES AND SERVICES BILLED AND PAID DIRECTLY BY TENANT

TO: _____
Address of Tenant

Number of Bedrooms: _____

You will be billed directly for utilities and service charges. Below are the allowances credited in your rent for the payment of utilities. You may be billed for more or less than shown below depending on your use of utilities.

UTILITY OR SERVICE	PER MONTH EXPENSE
Heating	\$ _____
Air Conditioning	\$ _____
Cooking	\$ _____
Other Electric	\$ _____
Water Heating	\$ _____
Water	\$ _____
Sewer	\$ _____
Trash Collection	\$ _____
Other (Specify) _____	\$ _____
_____	\$ _____
_____	\$ _____
TOTAL	\$ _____

Signature of Borrower or Agent

Date



ATTACHMENT 4-E
PLANNING MEETING AGENDA

The purpose of this meeting is to present and discuss USDA Rural Development (Agency) requirements for developing a Guaranteed Rural Rental Housing project. Topics marked with an asterisk (*) include procedures that apply only when an Agency construction loan guarantee is combined with a permanent loan guarantee. Additional information on the topics may be provided in Agency administrative notices, guides, and other documents. The Agency will document the meeting with a list of attendees and note whether it took place in person or via conference call.

	TOPICS	REFERENCES		COMMENTS
		Regulation	HB-1-3565 /Other	
1.	Sites			
A.	Location	3565.251(a) and 1924.106(c)	3.12 and 3.13	
B.	Services/facilities	No citation	3.13	
C.	Professional services	1924.105(a)(2)	3.14	
D.	Site standards	1924.107(a)(2) and 1924.108	3.14	
E.	Site density	No citation	3.15	
F.	Non-contiguous sites	3565.251(c)	3.16	
G.	Site control	3565.152	3.17	
2.	Environmental			
A.	NEPA process and responsibilities	3565.255 and 1970	3.18 and 5.8 and Chapters 4 and 11	
B.	Lender's Phase I ESA included in NEPA review	3565.254(b)(2) and 1970	3.18 and 5.8 and 11.5	
C.	FEMA Form 086-0-32	3565.254(b)(3)	11.5	
D.	Timing issues/scheduling	1970.11	Chapters 4 and 11	
E.	Parties involved from local and state agencies	3565.254(b)	Chapter 11	
F.	Lender documentation	3565.254(b)	Chapter 11	
3.	Design			
A.	Property standards	3565.254(a) and 1924.5(d)(1)	3.20 and 5.3	
B.	Drawings and specifications	1924.5(d)(2) and 1924.13 (c) and (d)	4.4 A.1., 5.6, and 5.7	
C.	Professional services	3565.256 and 1924.13(a) and (b)	5.6	
D.	Agency Reviews	1924.5(h)	5.7	

PLANNING MEETING AGENDA

	TOPICS	REFERENCES		COMMENTS
		Regulation	HB-1-3565 / Other	
E.	Plan certification	3565.256 and 1924.5(f)(1)	5.7 and 5.12	
4.	Accessibility			
A.	Americans with Disabilities Act (ADA) compliance	3565.251(d)	3.20 C. and ADA Accessibility Guidelines (ADAAG)	
B.	Van accessible parking space for on-site office and public spaces	No citation	ADAAG 4.1.2(5)(b)	
C.	Fair Housing Act (FHA) of 1988 compliance	3565.251(d)	3.20 C. and FHAG (Fair Housing Accessibility Guidelines)	
D.	All common areas accessible	No citation	FHAG / UFAS 4.1.3	
E.	All ground floor units adaptable	No citation	FHAG Sec. 5, Req. 4	
F.	Section 504 of the Rehabilitation Act of 1973	7 CFR 15b and 3565.251(d)	3.20 C. and Uniform Federal Accessibility Standards (UFAS)	
G.	5% fully accessible units	No citation	UFAS 4.1.4(11)(b) and 4.34	
H.	Front loading washers	No citation	UFAS 4.34.7.2	
5.	Construction			
A.	Contract documents	1924.6(a) and 1924.13(e)(1)(ii)	5.9 and Attachment 5-A	
B.	Pre-Construction Conference	1924.6(a)(11)	5.2	
C.	Debarment/Suspension	1940-M	5.5	
D.	Procurement	3565.257		
E.	Insurance *		5.14	
F.	Inspections	3565.303(c)(3) and 3565.303(d)(7)	3.20 and 4.20 and 5.10 and 5.20	
G.	Substantial Completion	3565.303(d)(5)		
H.	Warranty	1924.12	5.11 and 5.21	
I.	Sureties *	3565.303(c)(2)	5.15 and 5.16	
J.	Payments *	1924-A, and 3565.303 (c)(3)	5.17 and 5.20 and 5.21	
K.	Change orders *	1924.10(c)	5.18	
L.	Cost Certification	3565.303(d)(8)	5.21	
M.	Annual inspections	3565.351(e)	7.13 A.2.	

PLANNING MEETING AGENDA

	TOPICS	REFERENCES		COMMENTS
		Regulation	HB-1-3565 / Other	
6.	Professional Mgmt. & Servicing			
A.	Assurance Agreement	No citation	7.14 C.3.	
B.	Title VI of Civil Rights Act of 1964	No citation	Exhibit 7-5	
C.	Occupancy Requirements	No citation	8.12 A, B, D, E	
D.	Tenant Grievances	No citation	8.14, 8.15	
E.	Pre-Rent Up Instructions	No citation	8.2 I.	

Date _____

Location _____
 (indicate if virtual)

Attendees:

	Name	Contact Information
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____