

Appendix 1

7 CFR PART 3555 - GUARANTEED RURAL HOUSING PROGRAM

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Subpart A - General.

Sec. 3555.1 Applicability.

This part sets forth policies for the Single Family Housing Guaranteed Loan Program (SFHGLP) administered by USDA Rural Development. It addresses the requirements of section 502(h) of the Housing Act of 1949, as amended, and includes policies regarding originating, servicing, holding and liquidating SFHGLP loans. Any provision regarding the expenditure of funds under this part is contingent upon the availability of funds.

Sec. 3555.2 Purpose.

- (a) General. The purpose of the SFHGLP is to provide low- and moderate-income persons who will live in rural areas with an opportunity to own decent, safe and sanitary dwellings and related facilities. The SFHGLP offers applicants without sufficient resources to provide the necessary housing on their own account, and unable to secure the credit necessary for such housing from other sources upon terms and conditions, which the applicant can reasonably be expected to fulfill without the guarantee, an opportunity to acquire, build, rehabilitate, improve, or relocate dwellings in rural areas.
- (b) Demonstration programs. Rural Development may authorize limited demonstration programs as allowed by law. The objective of these demonstration programs will be to test new approaches to offering housing under the statutory authority granted to the Secretary. Therefore, such demonstration programs may not be consistent with all of the provisions contained in this part. However, any statutory SFHGLP requirements will remain in effect.

Sec. 3555.3 Civil rights.

Rural Development, lenders, and their agents must administer the program fairly, and in accordance with both the letter and the spirit of all equal opportunity, equal credit opportunity and fair housing legislation, and applicable executive orders. Loan guarantees, services, and benefits provided under this part shall not be denied to any person based on race, color, national origin, sex, religion, marital status, familial status, age (provided the applicant has the capacity to enter into a binding contract), handicap, receipt of income from public assistance, sexual orientation, or because the applicant has,

in good faith, exercised any right under the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.). All activities under this part shall be accomplished in accordance with the Fair Housing Act (42 U.S.C. 3601-3620), the Equal Credit Opportunity Act (15 U.S.C. 1691), and Executive Order 11063 as amended by Executive Order 12259, as applicable. Rural Development's civil rights compliance requirements are provided in 7 CFR part 1901, subpart E.

Sec. 3555.4 Mediation and appeals.

Whenever Rural Development makes a decision that will adversely affect a participant, the participant may proceed with alternative dispute resolution including mediation and a USDA National Appeals Division hearing in accordance with 7 CFR parts 1 and 11. The participant also may request an informal review of the adverse decision made by Rural Development. Except when the adverse decision applies to a loss claim, the applicant or borrower and the lender may participate in the appeal process. Adverse decisions made by the lender cannot be appealed unless concurrence by Rural Development was required by this subpart and obtained by the lender.

Sec. 3555.5 Environmental review requirements.

- (a) Policy. Rural Development will consider environmental quality, economic, social, and other relevant factors in program development and decision-making processes. Rural Development will take into account potential environmental impacts of proposed projects by working with applicants, other Federal agencies, American Indian tribes, State and local governments, and interested citizens and organizations in order to formulate actions that advance the program's goals in a manner that will protect environmental quality.
- (b) Regulatory references. Loan processing or servicing actions taken under this part must comply with the environmental review requirements in accordance with 7 CFR part 1970, and 7 CFR part 1924, which addresses lead-based paint. (Revised 04-01-16, SPECIAL PN.)
- (c) Agency responsibilities. Rural Development is responsible for compliance with all applicable environmental regulations and statutes.
- (d) Lender and loan applicant responsibilities.
 - (1) Lenders must use due diligence in regard to potential environmental hazards to ensure the property is decent, safe and sanitary and of sufficient

value to adequately secure the loan. The level of due diligence review to determine potential environmental hazards must be equivalent to the standards established by Fannie Mae, Freddie Mac, FHA, or the VA.

- (2) Mortgage loan transactions will be subject to the requirements of the 1994 National Flood Insurance Reform Act to determine if the dwelling is located in a Special Flood Hazard Area (SFHA).
- (3) On an as needed basis, lenders and loan applicants will assist Rural Development in obtaining such information as Rural Development needs to complete its environmental review and to cooperate in the resolution of environmental problems.
- (4) Lenders will become familiar with Agency environmental requirements, so they can advise applicants and reduce the probability of unacceptable applications being submitted to Rural Development.
- (5) The lender must comply with Federally mandated flood insurance purchase requirements. Existing dwellings in a SFHA are not eligible under the SFHGLP unless flood insurance through the FEMA National Flood Insurance Program (NFIP) is available for the community and flood insurance, whether NFIP, "Write Your Own," or private flood insurance, is purchased by the borrower. The lender will require the borrower to obtain, and maintain for the term of the mortgage, flood insurance for any property located in a SFHA, listing the lender as a loss payee. Purchase of existing structures within the federally regulated floodplain will not require consideration of alternatives to avoid adverse effects and incompatible development in floodplains.
- (6) The borrower must obtain, and continuously maintain for the life of the mortgage, flood insurance on the security property in an amount sufficient to protect the property securing the guaranteed loan. Flood insurance policies must be issued under the NFIP, or by a licensed property and casualty insurance company authorized to participate in NFIP's "Write Your Own" program or private flood insurance policy, as approved by the lender. Lenders are required to accept private flood insurance policies, when purchased by a borrower, that meet the requirements of 42 U.S.C. 4012a (b)(1)(A). Lenders remain responsible to ensure a private flood insurance policy meets the requirements of 42 U.S.C. 4012a(b)(1)(A).
- (7) Rural Development will not guarantee loans for new or proposed homes in an SFHA unless the lender obtains a final Letter of Map Amendment (LOMA) or a final Letter of Map Revision (LOMR) that removes the

property from the SFHA, or performs an alternatives analysis in compliance with the Agencies National Environmental Policy Act regulation and obtains a FEMA elevation certificate that shows that the lowest floor (including basement) of the dwelling and all related building improvements are built at or above the 100-year flood plain elevation in compliance with the NFIP.

Sec. 3555.6 State and local law.

Lenders will comply with applicable State and local laws and regulations, including the laws of American Indian tribes. Supplemental guidance will be issued in the case of any conflict with or significant differences from provisions of this part.

Sec. 3555.7 Exception authority.

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

Sec. 3555.8 Conflict of interest.

- (a) Applicant or borrower responsibility. The applicant or borrower must disclose to the lender any prohibited relationship or association with any Rural Development employee and the lender must disclose that information to Rural Development.
- (b) Lender responsibility. The lender must disclose to Rural Development any prohibited relationship or association it, or any of its employees, has with any Rural Development employee.
- (c) Prohibited relationships and associations. Prohibited relationships and associations include the following:
 - (1) Immediate family members, including parents and children, whether related by blood or marriage;

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- (2) Close relatives, including grandmother, grandfather, aunt, uncle, sister, brother, niece, nephew, granddaughter, grandson, or first cousin, whether related by blood or marriage;
 - (3) Any household residents;
 - (4) Immediate working relationships, including coworkers in the same office, subordinates, and immediate supervisors; and
 - (5) Close business associations, including business partnerships, joint ventures, or closely held corporations.
- (d) Result of disclosure. Disclosure of prohibited relationships and associations under this section will not necessarily result in applicant, borrower or lender ineligibility. Disclosures may result in reassignment with regard to the loan guarantee in question so that no prohibited relationships or associations exist between the Rural Development employees responsible for loan guarantee transactions and lenders, borrowers, or applicants.

Sec. 3555.9 Enforcement.

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

Sec. 3555.10 Definitions and abbreviations.

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

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

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

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

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

Alien. See "Qualified alien."

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

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

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

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

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

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

Assumption. A method of selling real estate wherein the property purchaser accepts the liability for payment of an existing mortgage. Borrower. An individual obligated to repay the loan guaranteed under the Guaranteed Rural Housing loan program.

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

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

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

Condominium project. A real estate project in which each owner has title to a unit in a building, an undivided interest in the common areas of the project and sometimes the exclusive use of certain limited common areas. See Sec. 526(d) of the Housing Act of 1949, as amended. Debarment. An action taken under 2 CFR part 180 or 417 to exclude a person or entity from participating in Federal programs.

Default. A loan is considered in default when a payment has not been paid after 30 days from the date it was due.

Disability. See "Person with a disability."

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

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

- (1) A person who is the head, spouse, or sole member of a household and who is 62 years of age or older, or who is disabled, and is an applicant or borrower;
- (2) Two or more persons who are living together, at least one of whom is age 62 or older, or disabled, and who is an applicant or borrower; or
- (3) Where the deceased borrower or spouse in a household was at least 62 years old or disabled, the surviving household member shall continue to be classified as an elderly household for the purpose of determining adjusted income, even though the surviving members may not meet the definition of an elderly family on their own, provided:
 - (i) They occupied the dwelling with the deceased household member at the time of the death;
 - (ii) If one of the surviving household members is the spouse of the deceased household member, the surviving household shall be classified as an elderly family only until the remarriage or death of the surviving spouse; and

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

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

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

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

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

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

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

FHLB. Federal Home Loan Bank.

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

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

- (ii) Unemployed or underemployed;
 - (iii) Experiencing difficulty in obtaining or upgrading employment; and
 - (iv) In recent years has worked primarily without remuneration to care for the home and family, but has not worked full-time, full-year in the labor force.
- (3) An individual who is a single parent and who, except for owning a home with a spouse, has had no ownership interest in a principal residence during the three-year period ending on the date of loan closing. Single parents include any individual who is:
- (i) Unmarried or legally separated; and
 - (ii) Has custody or joint custody of one or more children, or is pregnant.

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

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

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

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

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

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

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

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

IRS. The Internal Revenue Service of the United States Department of the Treasury.
Leasehold estate. The right to use and occupy real estate for a stated term and under conditions which have been conveyed by a lease.

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

Live-in aide. A person who:

- (1) Lives with an elderly person or a person with a disability and
- (2) Is essential to that person's care and well-being, and
- (3) Is not obligated for the person's support, and
- (4) Would not be living in the unit except to provide the support services.

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

Low-income. An adjusted income limit developed in consultation with HUD under 42 U.S.C. 1437a(b)(2)(D).

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

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

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

Moderate income. The greater of:

- (1) 115 percent of the U.S. median family income,
- (2) The average of the state-wide and state non-metro median family income,
- (3) 115/80ths of the area low-income limit adjusted for household size for the county or MSA where the property is, or will be, located.

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

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

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

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

Mortgage recovery advance. A mortgage recovery advance is funds advanced by the lender on behalf of a borrower to satisfy the borrower's arrearage, pay legal fees and foreclosure costs related to a cancelled foreclosure action, and reduce principal. Upon

request, RHS will reimburse the lender for eligible mortgage recovery advances under Sec. 3555.304.

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

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

Net recovery value. The amount available to apply to the outstanding unpaid loan balance after considering the value of the security property and other amounts recovered, and deducting the costs associated with liquidation, acquisition and sale of the property. Net recovery value is calculated differently depending on the type of disposition, as contained in Sec. 3555.353.

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

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

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

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

- (1) The individual unit owners own a parcel of land improved with a dwelling. This ownership is not in common with other unit owners;
- (2) The development is administered by a homeowners association that owns and is obligated to maintain property and improvements within the development (for

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example, greenbelts, recreation facilities and parking areas) for the common use and benefit of the unit owners; and

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

Pre-foreclosure sale. A sale of property in which the lender and borrower agree to accept the proceeds of the sale to satisfy a defaulted mortgage, even though this may be less than the amount owed on the mortgage, in order to avoid foreclosing on the property.

Primary residence. See ``Principal residence."''

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Streamlined-assist refinance. A streamlined-assist refinance is an abbreviated method of refinancing which does not require a credit report, or the calculation of loan-to-value or debt-to-income ratios. Lenders must verify that the borrower has been current on their existing loan for the preceding 12 month period.

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

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

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

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

United States citizen. An individual who resides as a citizen in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Federated States of Micronesia, the Republic of Palau, or the Republic of the Marshall Islands.

USDA. The United States Department of Agriculture.

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

VA. United States Department of Veterans Affairs.

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

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

Warehouse lender. A non-depository lender who utilizes short-term revolving lines of credit to finance loan origination and or construction financing.

Sec. Sec. 3555.11-3555.49 [Reserved]

Sec. 3555.50 OMB control number.

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

Subpart B--Lender Participation

Sec. 3555.51 Lender eligibility.

A lender must meet the requirements described in this section to be approved for participation in the SFHGLP.

- (a) Ability to underwrite and service loans. The lender must have a demonstrated ability to underwrite and service single-family home loans. A lender will be considered to have such a demonstrated ability if it qualifies as one of the following:
- (1) A State Housing Agency;
 - (2) A lender approved as a supervised or nonsupervised mortgagee by HUD with direct endorsement authority for submission of applications for Federal Housing Mortgage Insurance;
 - (3) A supervised or nonsupervised mortgagee with authority to close VA-guaranteed loans on the automatic basis;
 - (4) A lender approved by Fannie Mae for single-family loans;
 - (5) A lender approved by Freddie Mac for single-family loans;
 - (6) A Farm Credit System institution that provides documentation of its ability to underwrite and service single-family loans. Lenders who are a Farm Credit System lender with direct lending authority meet demonstrated ability;

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- (7) A lender participating in other Rural Development or Farm Service Agency guaranteed loan programs that provide documentation of its ability to underwrite and service single family loans. Documentation criteria for other Rural Development or Farm Service Agency guarantee loan programs require an active lender agreement; or
- (8) A Federally supervised lender that provides documentation of its ability to originate, underwrite and service single-family loans. Acceptable sources of supervision include:
 - (i) Being a member of the Federal Reserve System;
 - (ii) The Federal Deposit Insurance Corporation (FDIC);
 - (iii) The National Credit Union Administration (NCUA);
 - (iv) The Office of Thrift Supervision (OTS);
 - (v) The Office of the Comptroller of the Currency (OCC).
 - (vi) The Federal Housing Finance Board regulating lenders within the Home Loan Bank FHLB system.
- (9) A lender may demonstrate its ability to originate and underwrite loans by submitting appropriate documentation, examples of which include, but are not limited to:
 - (i) A summary of residential mortgage lending activity.
 - (ii) Written criteria outlining the lender's policy and procedures for originating, underwriting and closing residential mortgage loans.
 - (iii) Evidence of an experienced loan underwriter on staff.
 - (iii) Certification the lender will contract with an Agency-approved lender meeting the criteria to participate in the program as a servicer.
- (10) A lender may demonstrate its ability to service loans by submitting appropriate documentation, examples of which include, but are not limited to:

- (i) Evidence of a written plan when contracting for escrow services.
 - (ii) Evidence the lender has serviced single-family residential mortgage loans in the year prior to request lender approval to participate in the SFHGLP.
- (b) SFHGLP participation requirements. Lenders and their agents must comply with the following requirements:
- (1) Keep up to date, and comply with, all Agency regulations and handbooks, including all amendments and revisions of program requirements and policies. Lenders must also comply with all other applicable federal, state and local laws, rules, and requirements, including those under the purview of the Consumer Financial Protection Bureau, such as the Real Estate Settlement Procedures Act and Truth in Lending Act. Lenders who originate a minimal number loans, as determined by the Agency, in a 24 month time frame may be required to take updated training to ensure a lender's continued knowledge of the program;
 - (2) Regularly check Rural Development's Web site for new issuances related to the program;
 - (3) Underwrite loans according to Rural Development regulations and process and approve loans in accordance with program instructions;
 - (4) Review loan applications for accuracy and completeness,
 - (5) Ensure that applicant income limits are not exceeded;
 - (6) Ensure that borrowers have adequate loan repayment ability and acceptable credit histories;
 - (7) Ensure that loss claims include only supportable costs;
 - (8) Cooperate fully with Agency reporting and monitoring requirements;
 - (9) Comply with limitations on loan purposes, loan limitations, interest rates, and loan terms;
 - (10) Inform Rural Development immediately after the sale, transfer, or change of servicers of any Agency guaranteed loan;

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- (11) Maintain reasonable and prudent business practices consistent with generally accepted mortgage industry standards, such as maintaining fidelity bonding;
- (12) Remain responsible for servicing even if servicing has been contracted to a third party;
- (13) Use Rural Development, HUD, Fannie Mae, or Freddie Mac forms, unless otherwise approved by Rural Development;
- (14) Maintain eligibility under paragraph (a) of this section;
- (15) Notify Rural Development if there are any material changes in organization or practices;
- (16) Be neither debarred nor suspended from participation in Federal programs, not debarred, suspended or sanctioned under state licensing and certification laws and regulation;
- (17) Notify Rural Development in the event of its bankruptcy or insolvency;
- (18) Remain free from default and delinquency on any debt owed to the Federal government;
- (19) Allow Rural Development or its representative access to the lender's records, including, but not limited to, records necessary for on-site and desk reviews of the lender's operation and the operations of any of its agents to verify compliance with Agency regulations and guidelines;
- (20) Maintain adequate operational quality control and reporting procedures to prevent mortgage fraud;
- (21) Maintain complete loan files with all required documentation that is accessible by the Agency upon request for review; and
- (22) Execute a lender's agreement provided by Rural Development.

Sec. 3555.52 Lender approval.

- (a) Initial approval. The lender must apply for and receive approval from Rural Development to participate in the SFHGLP. Application forms are available from Rural Development.

- (b) Conditions of approval. The lender must provide evidence to support their ability to originate, underwrite and/or service SFHGLP loans as outlined in Sec. 3555.51(a), including evidence of the lender's internal loan criteria and quality control. New lenders will be subject to mandatory training prior to lender approval in accordance with Agency procedures.
- (c) Termination of approval. Lender approval may be terminated in any of the following situations:
 - (1) Lapse of any eligibility requirement. In the event that a lender fails to meet any of the requirements described in Sec. 3555.51, the lender must notify Rural Development immediately. Rural Development may terminate the lender's approval upon written notice and in accordance with the lender's agreement. The Agency may take other appropriate corrective action due to non-compliance with any of the requirements in this part and the lender's agreement. A lender whose approval has been terminated must sell any SFHGLP loans it holds to an approved lender immediately, and in no event later than 6 months, after termination of approval.
 - (2) Voluntary withdrawal. The lender may choose to end participation in the SFHGLP at any time. If the withdrawing lender has originated SFHGLP loans and obtained conditional commitments but has not closed the loans, or is holding or servicing SFHGLP loans, the lender must make arrangements prior to withdrawing for the transfer of such loans to lenders approved to participate in the SFHGLP.

Sec. 3555.53 Contracting for loan origination.

Lenders may contract with mortgage brokers, non-approved lenders, or other entities for loan origination services, closing services, or both, provided the loan is transferred immediately after closing to an Agency approved lender to which the guarantee will be issued. The approved lender is responsible for ensuring that the loan is properly underwritten, obtaining the conditional commitment, ensuring that the loan is properly closed, and ensuring that all closing costs, financing, and settlement fees meet Agency program requirements.

Sec. 3555.54 Sale of loans to approved lenders.

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Lenders may sell SFHGLP loans only to other Agency-approved lenders, Fannie Mae, Freddie Mac, or the Federal Home Loan Banks. In such a sale, the purchasing lender acquires all rights of the selling lender under the Loan Note Guarantee, and assumes all of the selling lender's obligations contained in any note, security instrument, or Loan Note Guarantee in connection with the loan purchased. The purchasing lender may be subject to any defenses, claims, or offsets that Rural Development would have had against the selling lender if the selling lender had continued to hold the loan. The lender must notify Rural Development immediately upon the sale or transfer of servicing of a SFHGLP loan.

Sec. Sec. 3555.55--3555.99 [Reserved]

Sec. 3555.100 OMB control number.

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

Subpart C--Loan Requirements

Sec. 3555.101 Loan purposes.

Loan funds must be used to acquire a new or existing dwelling to be used by the applicant as a principal residence.

- (a) Eligible purposes. Loan funds may be used for:
 - (1) The construction or purchase of a new dwelling;
 - (2) The cost of acquisition of an existing dwelling;
 - (3) The cost of repairs associated with the acquisition of an existing dwelling; or
 - (4) Acquisition and relocation of an existing dwelling.
- (b) Eligible costs. Loan funds also may be used to pay for the following items associated with the acquisition of a dwelling:
 - (1) Purchase and installation of essential household equipment in the dwelling such as wall-to-wall carpeting, ovens, ranges, refrigerators,

washing machines, clothes dryers, heating and cooling equipment, and other similar items as long as the equipment is conveyed with the dwelling and such items are typically included in the purchase of similar dwellings in the area.

- (2) Purchase and installation of energy-saving measures.
- (3) Site preparation including grading, foundation, plantings, seeding or sodding, trees, walks, fences, and driveways to the home.
- (4) A supplemental loan to provide funds for seller equity or essential repairs when an existing guaranteed loan is assumed simultaneously.
- (5) Special design features or equipment when necessary because of a physical disability of the applicant or a member of the household.
- (6) Loan funds may be used to pay for reasonable and customary expenses related to obtaining the loan. Allowable loan expenses include:
 - (i) Legal, architectural, and engineering fees;
 - (ii) Title exam, title clearance and title insurance;
 - (iii) Transfer taxes and recordation fees;
 - (iv) Appraisal, property inspection, surveying, environmental, tax monitoring, and technical services;
 - (v) Homeownership education.
 - (vi) Reasonable and customary loan discount points to reduce the note interest rate from the rate authorized in Sec. 3555.104(a).
 - (vii) Reasonable and customary non-recurring closing costs associated with the mortgage transaction that do not exceed those charged other applicants by the lender for similar transactions such as FHA-insured or VA-guaranteed first mortgage loans. If the lender does not participate in such

programs, the loan closing costs may not exceed those charged other applicants by the lender for a similar loan program that requires conventional mortgage insurance or guarantee. Allowable closing costs include the actual cost of credit reports, the loan origination fee, settlement fee, deposit verification fees, document preparation fees (if performed by a third party not controlled by the lender), and other reasonable and customary costs as determined by Rural Development. Payment of finder's fees or placement fees for the referral of an applicant to the lender is prohibited.

- (viii) Reasonable connection fees, assessments, or the pro rata installment costs for utilities such as water, sewer, electricity and gas for which the borrower is responsible.
 - (ix) The prorated portion of real estate taxes that is due and payable on the property at the time of closing and to establish escrow accounts for real estate taxes, hazard and flood insurance premiums, and related costs.
 - (x) The amount of the loan up-front guarantee fee required by Sec. 3555.107(g).
 - (xi) The cost of establishing a cushion in the mortgage escrow account for payment of the annual fee required by Sec. 3555.108(h), not to exceed 2 months.
 - (xii) If the seller or other third party pays any of the costs described in this section, the amount of the costs paid by the seller or other third party may not be included in the loan amount to be guaranteed.
- (c) Combination construction and permanent loan. Loan funds may be used and Rural Development will guarantee a "combination construction and permanent loan" as defined at Sec. 3555.10, during the term of construction and prior to the borrower occupying the property, subject to the conditions in Sec. 3555.105.
- (d) Refinancing. Refinancing is permitted only in the following situations:

- (1) The loan may be used for permanent financing when temporary financing to construct a new dwelling, or to purchase and improve an existing dwelling, is arranged as a part of the loan package.
- (2) In the case of loans for a site on which a dwelling is not constructed prior to issuance of the Loan Note Guarantee, refinancing is permitted if:
 - (i) The site is free and clear of debt;
 - (ii) The debt to be refinanced was incurred for the sole purpose of purchasing the site;
 - (iii) The applicant is unable to acquire adequate housing without refinancing; and
 - (iv) An appropriate dwelling will be constructed on the site.
- (3) The loan is a present Section 502 Direct or guaranteed loan, authorized under the Housing Act of 1949 subject to the following additional requirements:
 - (i) Three options for refinancing may be offered: streamlined, non-streamlined, and streamlined-assist. Other than provided in this paragraph, no cash out is permitted for any refinance. Documentation costs and underwriting requirements of subparts D, E, and F of this part apply to streamlined and non-streamlined refinances.
 - (A) Lenders may offer a streamlined refinance for existing Section 502 Guaranteed loans, which does not require a new appraisal. The lender will pay off the balance of the existing Section 502 Guaranteed loan.
 - (B) Lenders may offer non-streamlined refinancing for existing Section 502 Guaranteed or Direct loans, which requires a new and current market value appraisal. The amount of the new loan must be supported by sufficient equity in the property as

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determined by an appraisal. The appraised value may be exceeded by the amount of up-front guarantee fee financed, if any, when using the non-streamlined option.

- (C) A streamlined-assist refinance loan is a special refinance option available to existing Section 502 direct and guaranteed loan borrowers. Applicants must meet the income eligibility requirements of §3555.151(a), and must not have had any defaults during the 12 month period prior to the refinance loan application. There are no debt-to-income calculation requirements, no credit report requirements, no property inspection requirements, and no loan-to-value requirements. There is no appraisal requirement except for Section 502 direct loan borrowers who have received a subsidy.
- (ii) The interest rate of the new loan must be fixed and must not exceed the interest rate of the original loan being refinanced.
- (iii) Existing borrowers seeking to refinance must have demonstrated their ability to meet payment demands by maintaining a current account for the 180 days prior to application.
- (iv) The loan security must include the same property as the original loan and be owned and occupied by the borrowers as their principal residence.
- (v) The maximum loan amount cannot exceed the balance of the loan being refinanced including accrued interest, the guarantee fee, and reasonable and customary closing costs. When a direct loan is refinanced, any recapture amount owed may be included in the loan amount or deferred as long as the recapture amount takes a subordinate lien position to the new SFHGLP loan. A discount on the recapture amount may be offered if the borrower does not defer recapture or includes the recapture amount in the new loan.

- (vi) Two options for refinancing can be offered. Lenders may offer a streamlined refinance for existing Section 502 Guaranteed loans, which does not require a new appraisal. Streamlined financing may not be available for existing Section 502 Direct loans. The lender will pay off the principal balance of the existing Section 502 Guaranteed loan. The new loan amount cannot include any accrued interest, closing costs or lender fees. The refinance up-front guarantee fee as established by the Agency can be included in the loan to be refinanced to the extent financing does not exceed the original loan amount. Lenders may offer non-streamlined refinancing for existing Section 502 Guaranteed or Direct loans, which requires a new and current market value appraisal. The new loan may include the principal and interest of the existing Agency loan, reasonable closing costs and lenders fees to extent there is sufficient equity in the property as determined by an appraisal. The appraised value may be exceeded by the amount of up-front guarantee fee financed, if any, when using the non-streamlined option. Documentation, costs, and underwriting requirements of subparts D, E, and F of this part apply to refinances, unless otherwise provided by the Agency.
- (vii) Lenders may require property inspections and/or repairs as a condition to loan approval. Expenses related to property inspections and repairs required of the lender may not be financed into the new loan amount.
- (viii) The lender pays a guarantee fee as established by the Agency.
- (ix) The refinance loan may be subject to an annual fee as established by the Agency; and
- (x) The Agency may limit the number of guaranteed loans made for refinancing purposes based on market conditions and other appropriate factors.

Sec. 3555.102 Loan restrictions.

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A guarantee will not be issued if loan funds are to be used for:

- (a) Existing manufactured homes. Purchase of an existing manufactured home, except as provided in Sec. 3555.208(b)(3);
- (b) Income producing land or buildings. Purchase or improvement of land or buildings that are typically used principally for income-producing purposes;
- (c) Business or income-producing enterprise. Purchase or the construction of buildings which are largely or in part specifically designed to accommodate a business or income-producing enterprise;
- (d) Loan discount points. Loan discount points, except as provided in Sec. 3555.101(b)(6)(vi);
- (e) Refinancing. Refinancing, except as provided in Sec. 3555.101(d);
- (f) Buydown. Establishing a buydown account;
- (g) Lease. Payments on a lease; or
- (h) Seller concessions. Purchasing a home if the seller, or other interested third party, contributes more than 6 percent, unless otherwise provided by the Agency, of the property's sales price toward the purchaser's mortgage financing costs, closing costs, escrow accounts, furniture or other giveaways.

Sec. 3555.103 Maximum loan amount.

The amount of the loan must not exceed the lesser of:

- (a) Market value. The market value of the property as determined by an appraisal that meets Agency requirements plus the amount of the up-front loan guarantee fee required by Sec. 3555.107(g), or
- (b) Purchase price and acquisition costs. The total of the purchase price and all eligible acquisition costs as permitted by Sec. 3555.101.
- (c) Newly constructed dwelling--limited to 90 percent. A newly constructed dwelling that does not meet the definition of an existing dwelling, as defined at Sec. 3555.10, and cannot meet the inspection and warranty requirements of Sec. 3555.202(a) of this subpart is limited to 90 percent of the present market value. The dwelling must meet or exceed the International Energy Conservation Code (IECC) in effect at the time of construction.

Sec. 3555.104 Loan terms.

- (a) Interest rate. The loan must be written at an interest rate that:
- (1) Is fixed over the term of the loan;
 - (2) Shall be negotiated between the lender and borrower to allow the borrower to obtain the best available rate in compliance with all applicable laws;
 - (3) If the interest rate increases between the time of the issuance of the conditional commitment and the loan closing, the lender will submit appropriate documentation and underwriting analysis to confirm that the applicant is still eligible;
 - (4) The warehouse lender may charge an interest rate for interim construction financing that exceeds the underlying promissory note rate. After construction ends, the interest rate must revert to a rate that is no higher than the underlying promissory note rate. The Agency reserves the right to establish a maximum amount for the interim construction financing interest rate in the handbook, as necessary to further program goals and protect the interests of the government.
- (b) Repayment period. The term of the loan may not exceed 30 years. Adjustable rate mortgages, balloon term mortgages or mortgages requiring prepayment penalties are ineligible terms.
- (c) Repayment schedule. Amortized payments will be due and payable monthly.
- (d) Negative amortization. The loan note must not provide for interest on interest.

Sec. 3555.105 Combination construction and permanent loans.

Guarantees of combination construction and permanent loans are subject to the following conditions:

- (a) Lender requirements. In addition to other lender requirements of this part, lenders seeking guarantees of combination construction and permanent loans must:
- (1) Have two or more years' experience making and administering construction loans.

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- (2) Submit an executed construction contract with each loan application package.
 - (3) Review and approve construction contractors or builders. The lender will conduct due diligence investigations to determine that the contractor or builder meets the minimum requirements in paragraph (b) of this section. Evidence of the contractor or builder's compliance must be made available by the lender upon request of the Agency.
 - (4) Close the loan prior to the start of construction with proceeds disbursed to cover the cost of, or balance owed on, the land and the balance into escrow.
 - (5) Pay out monies from escrow to the builder during construction. The lender must obtain written approval from the borrower before each draw payment is provided to the builder. The borrower and lender are jointly responsible for approving disbursements during the construction phase. The lender must ensure that the appropriate work has been completed prior to releasing each draw. The Agency may require the lender to submit a draw and disbursement ledger for any loan guarantee upon request.
 - (6) Obtain documentation that confirms the construction of the subject property is complete.
- (b) Contractor or builder requirements. Contractors or builders of homes financed with guaranteed combination construction and permanent loans must at least have:
- (1) Two or more years' experience building or constructing all aspects of single family dwellings similar to the type of project being proposed;
 - (2) State-issued construction or contractor licenses, as required by State or local law;
 - (3) Insurance for commercial general liability of at least \$500,000;
 - (4) Acceptable credit histories free of judgments, collections, or liens related to previous projects the contractor was involved with in the past;

- (5) No criminal history based on a criminal background check conducted by the lender; and
- (6) Contractors or builders who are constructing their own residence are ineligible.

(c) Use of loan funds.

- (1) The loan is to finance the purchase of real estate and construction of a single family dwelling or the purchase and required rehabilitation of an existing single family dwelling. Condominiums, including detached condominiums and site condominiums, are ineligible for combination construction and permanent loans.
- (2) The loan amount may include:
 - (i) The price of the lot.
 - (ii) Reasonable and customary construction costs related to the construction administration, such as architectural and engineering fees, building permits and fees, surveys, title updates, contingency reserves, not exceeding a percentage specified by the Agency of the cost of construction, draw control and inspection fees, builder's risk insurance or course of construction insurance, and landscaping costs;
 - (iii) Reasonable and customary closing costs as defined at Sec. 3555.101; and
 - (iv) The costs of an interim construction financing interest rate and PITI reserve under 3555.104(a) and 3555.105(d)(7), respectively.
- (3) Funds remaining after full disbursement of construction costs will be applied by the lender as a principal payment. Borrowers are not to receive funds after closing except that the borrower may receive funds remaining from certain unused prepaid expenses if the borrower used personal, non-loan funds to pay those expenses.
- (d) Terms. The following terms apply to guarantees of combination construction and permanent loans:

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- (1) The interest rate for the construction and permanent loan will be established in accordance with Sec. 3555.104 at the time the rate is locked, which must occur prior to closing.
 - (2) The fair market value as determined by a licensed or certified appraiser in accordance with regulation 3555.107(d) will be used to establish the maximum loan amount.
 - (3) Annual fees will begin in the month immediately following loan closing and will not be affected by loan reamortization following the completion of construction. Lenders may fund a lender imposed escrow account for borrower payments of the annual fee in accordance with Sec. 3555.101(b)(6)(xi), as an eligible loan purpose, provided the market value of the property is not exceeded.
 - (4) Interest on the construction loan is payable monthly either directly from the borrower or indirectly drawn from an established interest reserve. Real estate taxes and property insurance due during the construction period may also be paid using the same draw process. The annual fee will be due and payable from the lender on the 1st of the month following the anniversary date the construction to permanent loan closed.
 - (5) Initial payment of the regularly scheduled (amortized) principal and interest payment may be postponed up to one year, if necessary, based upon the construction period. Local conditions and the proposed construction contract may dictate the term.
 - (6) The loan will be modified and re-amortized to achieve full repayment within its remaining term once construction is complete. Within a reasonable time, as specified by the Agency, after the final inspection, the borrower will begin making regularly scheduled (amortized) principal and interest payments once the loan is re-amortized.
 - (7) Lenders may fund a reserve account for up to 12 months of regularly scheduled (amortized) principal and interest payments along with taxes and insurance (PITI). In such cases, a loan modification is not required after construction is complete. Funds remaining in the PITI reserve after construction is complete will be applied by the lender as a principal payment.
- (e) Mortgage file documentation. Standard industry credit and verification documents may be utilized when processing and closing the loan and must be dated within a reasonable time, specified by the Agency, of the closing in order to be considered valid. In addition to documentation noted at Sec. 3555.202(a), lenders must obtain and retain evidence:

- (1) The actual cost to construct or rehabilitate the subject dwelling;
 - (2) The acquisition, transfer of ownership, and/or ownership of land;
 - (3) Certification of construction completion and that construction costs have been fully drawn;
 - (4) Closing costs;
 - (5) Certification that property is free and clear of all other liens after conversion to permanent loan;
 - (6) Required inspections and warranties; and
 - (7) Loan modification agreement when construction is complete confirming the existence of the permanent loan and the amortizing interest rate on the loan.
 - (8) Evidence that all funds remaining in the construction escrow or PITI reserve accounts have been applied as a principal curtailment once construction or rehabilitation is complete.
- (f) Loan Note Guarantee. The Loan Note Guarantee will be issued after closing of the construction loan without waiting for complete construction of the subject property upon:
- (1) Request by the approved lender;
 - (2) The lender's submission of the closing documentation acceptable to Rural Development demonstrating that the loan was properly closed;
 - (3) Payment of the guarantee fee; and
 - (4) The lender's compliance with other requirements under Sec. 3555.107.
- (g) Unplanned changes during construction. Should an unplanned change occur with the borrower or contractor preventing completion of construction, the lender remains responsible for completion of improvements satisfactory to Rural Development. The loan will be serviced in accordance with subparts F and G of this part. Funds remaining in all PITI reserve and construction escrow accounts after full disbursement of construction costs will be applied by the lender as a principal payment.

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- (h) Reservation of funding. Rural Development reserves the right to limit the number or amount of loans guaranteed under this section based on market conditions and other factors it considers appropriate, such as loan and portfolio performance.

Sec. 3555.106 [Reserved]

Sec. 3555.107 Application for and issuance of the loan guarantee.

- (a) Processing of applications. Except as provided in this section, Rural Development will process loan guarantee applications in the order that completed applications are received. Application forms and instruction procedures are available at any Rural Development office.
 - (1) If analysis of the utilization of funds during the fiscal year indicates that, at the rate of current utilization, funds may not be sufficient to sustain that level of activity for the remainder of the fiscal year, the Agency may determine a shortage of funds exists.
 - (2) When there is a shortage of funds, the Agency will limit SFHGLP loans to first-time homebuyers or veterans. First-time homebuyers and veterans will be served in the order their applications are received.
- (b) Automated underwriting. Rural Development will offer approved lenders an automated system, if available; to process Rural Development guaranteed loans under this part. The automated underwriting system is a tool to help evaluate credit risk, but does not substitute or replace the careful judgment of experienced underwriters, and shall not be the exclusive basis for a determination on whether to extend credit. The lender must apply for and receive approval from Rural Development to utilize the automated underwriting system. Application forms are available from Rural Development. Lenders using the automated underwriting system shall do so in accordance with SFHGLP regulations and guidelines. Rural Development reserves the right to terminate the lender's use of the automated underwriting system.
 - (1) Lenders who utilize the Rural Development automated underwriting system remain responsible for ensuring all data is true and accurately represented.
 - (2) Full documentation and verification, in accordance with Subparts C, D and E of this part, will be retained in the lender's permanent loan file and must confirm the applicant's eligibility, creditworthiness, repayment ability, eligible loan purpose, sufficient collateral, and all other regulatory requirements.
 - (3) Lenders who utilize the Rural Development automated underwriting system will be subject to indemnification requirements in accordance with Sec. 3555.108.

- (4) If a loan receives an "Accept" underwriting recommendation, the lender is generally permitted to submit minimal documentation including the appraisal, flood hazard determination and fully executed request for guarantee, unless the lender is instructed to provide other documentation.
 - (5) Loan requests that receive a "Refer" or "Refer with Caution" underwriting recommendation require further review and manual underwriting by the lender to determine whether the applicant meets SFHGLP eligibility requirements.
 - (6) Lenders who utilize Rural Development's automated underwriting system will validate findings, based upon the output report of the underwriting system.
 - (7) The final submission of the last scoring event must be retained in the lender's permanent loan file.
- (c) Manual underwriting. Lenders may utilize a manual underwriting method. Full documentation and verification, in accordance with Subparts C, D and E of this part will be submitted to Rural Development when requesting a guarantee and maintained in the lender's file. The documentation will confirm the applicant's eligibility, creditworthiness, repayment ability, eligible loan purpose, adequate collateral, and satisfaction of other regulatory requirements.
- (d) Appraisals. The lender must supply a current appraisal report of the property for which the guarantee is requested.
- (1) Appraisals must be conducted in accordance with the Uniform Standards of Professional Appraisal Practices.
 - (2) Approved lenders are responsible for selecting a qualified appraiser and the integrity, accuracy and thoroughness of the appraisals used to support their loan guarantee request.
 - (3) The appraiser must report all readily observable property deficiencies, potential environmental hazards, as well as any adverse conditions discovered performing the research involved in completing the appraisal.
 - (4) The Agency will conduct reviews of the appraisals prior to issuance of the conditional commitment, and other reviews may be conducted to

ensure overall quality of appraisals. The lender is responsible for correcting any appraisal deficiencies reported by the Agency.

- (5) The Agency may determine an appraiser ineligible to conduct appraisals for SFHGLP due to the failure to comply with applicable requirements and regulations. Appraisals from the ineligible appraisers will not be accepted.
 - (6) Use of an alternative approach to value for appraisals performed in remote rural areas, on tribal lands, or where a lack of market activity exists may be accepted at the Agency's discretion.
 - (7) The validity period of an appraisal will be 120 days, unless otherwise provided by the Agency.
- (e) Environmental requirements. The lender and Rural Development will meet all environmental responsibilities in accordance with Sec. 3555.5.
- (f) Issuance of a conditional commitment. The lender must demonstrate that all the general loan, applicant, and site eligibility requirements of this part are met before Rural Development will issue a conditional commitment. The lender, however, may obtain any required property inspection reports, such as a well test or construction phase inspections, if applicable and not needed for environmental compliance, after the issuance of the conditional commitment, but prior to loan closing.
- (1) The conditional commitment will expire in 90 days from issuance, unless new construction is involved.
 - (2) The expiration of a conditional commitment may coincide with projected completion of new construction.
 - (3) An extension may be granted if the loan cannot be closed due to circumstances beyond the lender's control.
 - (4) Lenders may accept or decline the conditional commitment, or submit requests for changes with adequate support and documentation to be reviewed by the Agency.
- (g) Loan guarantee fee. The lender must pay a nonrefundable up-front guarantee fee, the cost of which may be passed on to the borrower. The up-front guarantee fee will not exceed 3.5 percent of the principal obligation. The current guarantee fee is available at any Rural Development office and may change periodically. Notice of a change in fee will be published as authorized in

Exhibit K of subpart A of part 1810 of this chapter (RD Instruction 440.1, available in any Rural Development office) or online at: http://www.rurdev.usda.gov/rd_instructions.html. Once the guarantee has been issued, the fee will not be refunded.

- (h) Annual fee. The Agency may impose an annual fee of the lender not to exceed 0.5 percent of the average annual scheduled unpaid principal balance of the loan for the life of the loan to allow the Agency to reduce the up-front guarantee in Sec. 3555.107(g). The annual fee will be applicable to purchase and refinance loan transactions. The annual fee may be passed on to the borrower by the lender. The Agency may assess a late charge to the lender if the annual fee is not paid by the due date, and the late charge may not be passed on to the borrower. Further administrative guidance is provided in the handbook.
- (i) Proper closing and requesting the loan note guarantee. The lender must ensure that any loan to be guaranteed is properly closed using documents acceptable to Rural Development.
 - (1) Within 30 days of loan closing, the lender must request issuance of a loan guarantee.
 - (2) The lender will certify the loan was closed in accordance with the conditional commitment and that no major changes have taken place since issuance of a commitment, except any changes specifically approved by the Agency.
 - (3) The lender will maintain evidence of hazard insurance and, if applicable, flood insurance.
 - (4) Evidence of documentation supporting the properly closed loan may be submitted to the Agency through regular mail, express mail, facsimile or secure email. Rural Development may offer approved lenders an automated method of submitting properly closed loans.
 - (5) Lenders will submit full documentation supporting a closed loan or evidence of self-certification status, as described in this section. Self-certified lenders must still submit the settlement statement and promissory note. Lenders must obtain written authorization from the Agency prior to submitting evidence of self-certification in lieu of full

documentation. Authorization for self-certification may be granted by the Agency if:

- (i) The lender has an active lender agreement.
- (ii) The lender is actively engaged in originating SFHGLP loans and has closed a minimum of 10 loans in the past 12 months.
- (iii) The lender has successfully submitted 10 consecutive loan closing to the Agency that were in compliance with loan closing requirements and procedures.
- (iv) The lender agrees to retain evidence of confirmed closing conditions in accordance with the issued conditional commitment in the lender's permanent loan file.

(j) Issuance of the guarantee. The loan guarantee does not take effect until:

- (1) The lender transmits the required up-front guarantee fee, the lender certification form provided by Rural Development, and loan closing documents to Rural Development;
- (2) The lender meets all other conditions set out in the conditional commitment;
- (3) The loan is current at the time the lender requests the loan guarantee;
- (4) Any construction or rehabilitation, is complete except for development described in Sec. Sec. 3555.101(c) and 3555.202(c); and (5) Rural Development issues the loan guarantee document.

Sec. 3555.108 Full faith and credit.

- (a) General. The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the lender has actual knowledge at the time it becomes such lender or which the lender participates in or condones. Misrepresentation includes negligent misrepresentation.
- (b) Interest. A note that provides for the payment of interest on interest, however, shall not be guaranteed. If the note to which the Loan Note Guarantee is attached or relates provides for the payment of interest on interest, then the Loan Note Guarantee is void. Notwithstanding the prohibition of interest on

interest, interest may be capitalized in connection with re-amortization under subpart G of this part.

- (c) Violations. The Loan Note Guarantee will be unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, civil rights laws, negligent servicing, failure to obtain the required security or use of loan funds for unauthorized purposes, regardless of the time at which Rural Development acquires knowledge of the foregoing. Negligent servicing is defined as servicing that is inconsistent with this subpart and includes the failure to perform those services which a reasonably prudent Lender would perform in servicing its own loan portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act, but also not acting in a timely manner or acting contrary to the manner in which a reasonably prudent Lender would act up to the time of loan maturity or until a final loss is paid.
- (d) Indemnification. The loan note guarantee will remain in effect for any holder of the loan who acquired it from an originating lender. If the Agency determines that a lender did not originate a loan in accordance with the requirements in this part, and the Agency pays a claim under the loan guarantee, the Agency may revoke the originating lender's eligibility status in accordance with subpart B of this part and may also require the originating lender:
 - (1) To indemnify the Agency for the loss, if the default leading to the payment of loss claim occurred within five (5) years of loan closing, when one or more of the following conditions is satisfied:
 - (i) The originating lender utilized unsupported data or omitted material information when submitting the request for a conditional commitment to the Agency;
 - (ii) The originating lender failed to properly verify and analyze the applicant's income and employment history in accordance with Agency guidelines;
 - (iii) The originating lender failed to address property deficiencies identified in the appraisal or inspection report that affect the health and safety of the occupants or the structural integrity of the property;

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- (iv) The originating lender used an appraiser that was not properly licensed or certified, as appropriate, to make residential real estate appraisal in accordance with § 3555.103(a); or,
- (2) To indemnify the Agency for the loss regardless of how long ago the loan closed or the default occurred, if the Agency determines that fraud or misrepresentation was involved with the origination of the loan.
- (3) In addition, the Agency may use any other legal remedies it has against the originating lender.

Sec. 3555.109 Qualified mortgage.

A qualified mortgage is a guaranteed loan meeting the requirements of this part and applicable Agency guidance, as well as the requirements in 12 CFR 1026.43(e)(2)(i) through (i) and 12 CFR 1026.43(e)(3). An extension of credit made pursuant to a program administered by a State Housing Finance Agency is exempt from this requirement as defined in 12 CFR 1026.43(a)(3)(iv). Lenders will be allowed to cure unintentional errors and retain the qualified mortgage status if the conditions set in 12 CFR 1026.31(h) are met.

Sec. Sec. 3555.110-3555.149 [Reserved]

Sec. 3555.150 OMB control number.

The report and recordkeeping requirements contained in this subpart are currently with the Office of Management and Budget under review and awaiting approval.

Subpart D--Underwriting the Applicant

Sec. 3555.151 Eligibility requirements.

- (a) Income eligibility. At the time of loan approval, the household's adjusted income must not exceed the applicable moderate income limit. The lender is responsible for documenting the household's income to determine eligibility for the SFHGLP.
- (b) Citizenship status. Applicants must provide evidence acceptable to the Agency of their status as United States citizens, U.S. non-citizen nationals, or qualified aliens, as defined in Sec. 3555.10.

- (c) Principal residence. Applicants must agree and have the ability to occupy the dwelling as their principal residence. The Agency may require evidence of this ability. Rural Development will not guarantee loans for investment properties, or temporary, short-term housing.
- (d) Adequate dwelling. The dwelling must be modest, decent, safe, and sanitary.
- (e) Eligibility of current homeowners. Current homeowners may be eligible for guaranteed home loans under this part if all the following conditions are met:
 - (1) The applicants are not financially responsible for another Agency guaranteed or direct home loan by the time the guaranteed home loan is closed;
 - (2) The current home no longer adequately meets the applicants' needs;
 - (3) The applicants will occupy the home financed with the SFHGLP loan as their primary residence;
 - (4) The applicants are without sufficient resources or credit to obtain the dwelling on their own without the guarantee;
 - (5) No more than one single family housing dwelling other than the one associated with the current loan request may be retained; and
 - (6) The applicants must be financially qualified to own more than one home. In order for net rental income from the retained dwelling to be considered for the applicant's repayment ability, the consistency of the rental income must be demonstrated for at least the previous 24 months, and the current lease must be for a term of at least 12 months after the loan is closed.
- (f) Legal capacity. Applicants must have the legal capacity to incur the loan obligation, or have a court-appointed guardian or conservator who is empowered to obligate the applicant in real estate matters.
- (g) Suspension or debarment. Applicants who are suspended or debarred from participation in Federal programs under 2 CFR parts 180 and 417 are not eligible for loan guarantees.

- (h) Repayment ability. Applicants must demonstrate adequate repayment ability. Lenders must maintain documentation supporting the repayment ability analysis in the loan file. Refer to Sec. 3555.152(a) for further information.
- (1) A repayment ratio will be used to determine an applicant's ability to repay a loan. The Agency will utilize two ratios, principal, interest, taxes and insurance (PITI) ratio and total debt (TD) ratio, to determine adequate repayment for the requested loan. The Agency reserves the right to consider calculation of a single ratio in determining repayment for the requested loan.
- (i) An applicant is considered to have adequate repayment ability when the monthly amount required for payment of PITI, homeowners' association dues, the monthly calculation of an annual fee, as applicable, and other real estate assessments does not exceed 29 percent of the applicant's repayment income and the monthly amount of PITI plus recurring monthly debts (total debt) does not exceed 41 percent of the applicant's repayment income.
- (ii) For home purchases under the Rural Energy Plus provision of Sec. 3555.209, the Agency reserves the right to allow flexibility in the PITI and TD ratio. The handbook will define what flexibilities can be extended.
- (iii) Contributions to personal income taxes, retirement accounts (including the repayment of personal loans from those retirement accounts), savings (including repayment of loans secured by such funds), the cost to commute, membership fees in unions or like organizations, childcare or other voluntary obligations will not be considered in the TD ratio.
- (iv) Except for obligations specifically excluded by State law, the debts of non-purchasing spouse must be included in the applicant's repayment ratios if the applicant resides in a community property state.
- (2) The repayment ratio may exceed the percentage specified in paragraph (h)(1) of this section if certain compensating factors exist. The handbook will define when a debt ratio waiver may be granted. The automated underwriting system will take into account any compensating factors in determining whether the variance is appropriate. For manually underwritten loans, the lender must

document compensating factors demonstrating that the household has higher repayment ability based on its capacity, willingness and ability to pay mortgage payments in a timely manner. The presence of compensating factors does not strengthen a ratio exception when multiple layers of risk, such as a marginal credit history, are present in the application. Acceptable compensating factors and supporting documentation for a proposed debt ratio waiver will be further defined and clarified in the handbook. Compensating factors include, but are not limited to:

- (i) A credit score at an acceptable level of 680 or higher for any applicants, unless otherwise provided by the Agency. The Agency reserves the right to change the acceptable level of credit score.
 - (ii) A minimal increase in housing expense, i.e. the current rent payment is comparable to the proposed mortgage loan payment PITI and if applicable, homeowner association dues.
 - (iii) The demonstrated ability to accumulate savings and cash reserves post loan closing.
 - (iv) Continuous employment with a current primary employer.
- (3) Loan ratio exceptions require written approval by Rural Development, or acceptance by an Agency approved automated underwriting system. Flexibilities surrounding loan ratio exceptions will be further clarified in the handbook. Lenders with loans accepted by an Agency approved automated underwriting system need not submit documentation for the need for a ratio waiver.
- (4) If an applicant does not meet the repayment ability requirements, the applicant can increase repayment ability by having other eligible household members join the application.
- (5) Mortgage Credit Certificates may be considered in determining an applicant's repayment ability.

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- (6) Section 8 Homeownership Vouchers may be used in determining an applicant's repayment ability. The monthly subsidy may be treated as repayment income in accordance with Sec. 3555.152(a) or offset in the PITI.
- (7) A funded buydown account may be used to reduce the borrower's monthly mortgage payment during the early years of repayment when all of the following requirements are met:
 - (i) The loan will be underwritten at the note rate.
 - (ii) The interest rate may be bought down to no more than 2 percentage points below the note rate.
 - (iii) The interest rate paid by the borrower may increase no more frequently than annually.
 - (iv) The interest rate paid by the borrower may increase no more than 1 percentage point annually.
 - (v) Funds must be placed in an escrow account with monthly releases scheduled directly to the lender.
 - (vi) Funds must be placed with a Federal- or state-regulated lender.
 - (vii) The escrow account must be fully funded for the buydown period.
 - (viii) The borrower is not permitted to use personal funds or funds borrowed from another source to establish the escrow account for the buydown.
 - (ix) The borrower must not be required to borrow or repay the funds.
- (i) Credit qualifications. Applicants generally must have a verifiable credit history that indicates a reasonable ability and willingness to meet their debt obligations as evidenced by an acceptable credit score, a credit report from a recognized credit repository meeting the requirements of Fannie Mae, Freddie Mac, FHA or VA, and other credit qualifications satisfactory to Rural Development.
- (1) Except as provided in paragraph (i)(6) of this section, the applicant's credit history must demonstrate a past willingness and ability to meet

credit obligations to enable the lender to evaluate each applicant and draw a logical conclusion about the applicant's commitment and ability to handling financial obligations successfully and ability to make payments on the new mortgage obligation.

- (2) A loan's acceptance by an Agency approved automated underwriting system eliminates the need for the lender to submit documentation of the credit qualification decision as loan approval requirements will be incorporated in the automated system.
- (3) For manually underwritten loans, lenders must submit documentation of the credit qualification decision. Lenders will use credit scores to manually underwrite loan mortgage requests. Lenders are required to validate the credit scores utilized in the underwriting determination. Indicators of significant derogatory credit will require further review and documentation of that review. Indicators of significant derogatory credit include, but are not limited to:
 - (i) A foreclosure that has been completed in the 36 months prior to application by the applicant.
 - (ii) A bankruptcy in which debts were discharged within 36 months prior to the date of application by the applicant. A lender may give favorable consideration to applicants who have entered into a bankruptcy debt restructuring plan who have completed 12 months of consecutive payments. The payment performance must have been satisfactory with all required payments made on time, and the Trustee or the Bankruptcy Judge must approve of the new credit.
 - (iii) One rent or mortgage payment paid 30 or more days late within the last 12 months prior to application by the applicant.
 - (iv) A previous Agency loan that resulted in a loss to the Government.
- (4) When evidence of significant derogatory credit is present, lenders may consider extenuating circumstances, including but not limited to,

whether the problems were caused by factors temporary in nature, if the circumstances leading to the derogatory credit were beyond the control of the applicant, and if the loan would significantly reduce the applicant's housing expenses.

- (5) In all cases, the applicant cannot have an outstanding Federal judgment, other than a judgment obtained in the United States Tax Court, or a delinquent non-tax Federal debt that has not been paid in full or otherwise satisfied.
 - (6) For applicants without an established credit history, alternative methods may be used to evidence an applicant's willingness to pay, such as a non-traditional mortgage credit report or multiple independent verifications of trade references.
 - (7) A credit report for a non-purchasing spouse must be obtained in order to determine the debt-to-income ratio referenced at Sec. 3555.151(h) if the applicant resides in a community property state.
 - (8) Lenders are encouraged to offer or provide for home ownership counseling. Lenders may require first-time homebuyers to undergo such counseling if it is reasonably available in the local area. When home ownership counseling is provided or sponsored by Rural Development or another Federal agency in the local area, the Lender must require the borrower to successfully complete the course.
- (j) Obtaining credit. The applicant must be unable to obtain traditional conventional mortgage credit, as defined by the Agency, for the subject loan.

Sec. 3555.152 Calculation of income and assets.

The lender must obtain and maintain documentation in the loan file supporting the lender's determination of all income and assets described in this section.

- (a) Repayment income. Repayment income is the amount of adequate and stable income from all sources that parties to the promissory note are expected to receive. Repayment income is used to determine the applicant's ability to repay a loan.
 - (1) The lender must examine the applicant's past income record for at least the past 2 years and any applicable training and/or education. The Agency may require additional information and documentation

from self-employed applicants and applicants employed by businesses owned by family members.

- (2) The lender must establish an applicant's anticipated amount of repayment income and the likelihood of its continuance for at least the next 3 years to determine an applicant's capacity to repay a requested mortgage loan in accordance with Sec. 3555.151(h)(1).
 - (3) Income may not be used in calculating an applicant's ratios if it is from any source that cannot be verified, is not stable, or is likely not to continue.
 - (4) The following types of income are examples of income not included in repayment income:
 - (i) Any student financial aid received by household members for tuition, fees, books, equipment, materials, and transportation;
 - (ii) Amounts received that are specifically for, or in reimbursement of the cost of medical expenses for any family member;
 - (iii) Temporary, nonrecurring, or sporadic income (including gifts);
 - (iv) Lump sum additions to family assets such as inheritances, capital gains, insurance payments and personal or property settlements;
 - (v) Payments for the care of foster children or adults; and
 - (vi) Supplemental Nutrition Assistance Program payments.
- (b) Annual income. Annual income is the income of all household members, regardless of whether they will be parties to the promissory note.
- (1) Applicants must provide the income, expense and household information necessary to enable the lender to make income determinations.

- (2) Lenders must verify employment and income information provided by the applicant for all household members. Lenders will verify the income for each adult household member for the previous 2 years. Written or oral verifications provided by third-party sources or documents prepared by third-party sources are acceptable. Lenders must project the expected annual income for the next 12 months from the verified sources.
- (3) The lender remains responsible for the quality and accuracy of all information used to establish a household's eligibility.
- (4) Household income from all sources including, but not limited to, income from temporarily absent household members, allowances for tax-exempt income and net family assets as defined in paragraph (d) of this section are to be considered in the calculation of annual income.
- (5) The following sources of income will not be considered in the calculation of annual income:
 - (i) Earned income of persons under the age of 18 unless they are an applicant or a spouse of a member of the household;
 - (ii) Payments received for the care of foster children or foster adults and incomes received by foster children or foster adults who live in the household;
 - (iii) Amounts granted for, or in reimbursement of, the cost of medical expenses;
 - (iv) Earnings of each full-time student 18 years of age or older, except the head of household or spouse, that are in excess of any amount determined pursuant to HUD definition of annual income at 24 CFR 5.609(c);
 - (v) Temporary, nonrecurring, or sporadic income (including gifts);
 - (vi) Lump sum additions to family assets such as inheritances; capital gains; insurance payments under health, accident, or worker's compensation policies; settlements for personal or property losses; and deferred periodic payments of

supplemental social security income and Social Security benefits received in a lump sum;

- (vii) Any earned income tax credit;
 - (viii) Adoption assistance in excess of any amount determined pursuant to HUD's definition of annual income at 24CFR 5.609(c);
 - (ix) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling;
 - (x) Amounts paid by a State agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home;
 - (xi) The full amount of any student financial aid;
 - (xii) Any other revenue exempted by a Federal statute, a list of which is available from any Rural Development office;
 - (xiii) Income received by live-in aides, regardless of whether the live-in aide is paid by the family or a social service program;
 - (xiv) Employer-provided fringe benefit packages unless reported as taxable income; and
 - (xv) Amounts received through the Supplemental Nutrition Assistance Program.
- (c) Adjusted annual income. Adjusted annual income is used to determine program eligibility and is annual income as defined in paragraph (b) of this section, less any of the following verified deductions for which the household is eligible.
- (1) A reduction for each family member, except the head of household or spouse, who is under 18 years of age, 18 years of age or older with a disability, or a full-time student, the amount of which will be

determined pursuant to HUD definition of adjusted income at 24 CFR 5.611.

- (2) A deduction of reasonable expenses for the care of a child 12 years of age or under that:
 - (i) Enables a family member to work, to actively seek work, or to further a member's education;
 - (ii) Are not reimbursed or paid by another source; and
 - (iii) In the case of expenses to enable a family member to work, do not exceed the amount of income, including the value of any health benefits, earned by the family member enabled to work. If the child care provider is a household member, the cost of the children's care cannot be deducted.
- (3) A deduction of reasonable expenses related to the care of household members with disabilities that:
 - (i) Enable a family member or the individual with disabilities to work, to actively seek work, or to further a member's education;
 - (ii) Are not reimbursed from insurance or another source; and
 - (iii) Are in excess of 3 percent of the household's annual income and do not exceed the amount of earned income included in annual income by the person who is able to work as a result of the expenses.
- (4) For any elderly family, a deduction in the amount determined pursuant to HUD definition of adjusted income at 24 CFR 5.611.
- (5) For elderly and disabled families only, a deduction for household medical expenses that are not reimbursed from insurance or another source and which, in combination with any expenses related to the care of household members with disabilities described in paragraph (c)(3) of this section, are in excess of 3 percent of the household's annual income.

- (d) Net family assets. For the purpose of computing annual income, the net family assets of all household members must be included in the calculation of annual income. Lenders must document and verify assets of all household members.
- (1) Net family assets include, but are not limited to, the actual or imputed income from:
- (i) Equity in real property or other capital investments, other than the dwelling or site;
 - (ii) Cash on hand and funds in savings or checking accounts;
 - (iii) Amounts in trust accounts that are available to the household;
 - (iv) Stocks, bonds, and other forms of capital investments that is accessible to the applicant without retiring or terminating employment;
 - (v) Lump sum receipts such as lottery winnings, capital gains, and inheritances;
 - (vi) Personal property held as an investment; and
 - (vii) Any value, in excess of the consideration received, for any business or household assets disposed of for less than fair market value during the 2 years preceding the income determination. The value of assets disposed of for less than fair market value shall not be considered if they were disposed of as a result of foreclosure, bankruptcy, or a divorce or separation settlement.
- (2) Net family assets for the purpose of calculating annual income do not include:
- (i) Interest in American Indian restricted land;
 - (ii) Cash on hand which will be used to reduce the amount of the loan;

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- (iii) The value of necessary items of personal property;
- (iv) Assets that are part of the business, trade, or farming operation of any member of the household who is actively engaged in such operation;
- (v) Amounts in voluntary retirement plans such as individual retirement accounts (IRAs), 401(k) plans, and Keogh accounts (except at the time interest assistance is initially granted);
- (vi) The value of an irrevocable trust fund or any other trust over which no member of the household has control;
- (vii) Cash value of life insurance policies; and
- (viii) Other amounts deemed by the Agency not to constitute net family assets.

Sec. Sec. 3555.153-3555.199 [Reserved]

Sec. 3555.200 OMB control number.

The report and recordkeeping requirements contained in this subpart are currently with the Office of Management and Budget under review and awaiting approval.

Subpart E--Underwriting the Property

Sec. 3555.201 Site requirements.

- (a) Rural areas. Rural Development will only guarantee loans made in rural areas designated as rural by Rural Development. However, if a rural area designation is changed to nonrural:
 - (1) Existing conditional commitments in the former rural area will be honored;
 - (2) A supplemental loan may be made in accordance with Sec. 3555.101 in conjunction with a transfer and assumption of a guaranteed loan;
 - (3) Loan requests where the application and purchase contract was complete prior to the area designation change may be approved; and

- (4) REO property sales and transfers with assumption may be processed.
- (b) Site standards. Sites must be modest and developed in accordance with any standards imposed by a State or local government and must meet all of the following requirements.
- (1) The site size must be typical for the area.
 - (2) The site must not include income-producing land or buildings to be used principally for income-producing purposes. Vacant land without eligible residential improvements, or property used primarily for agriculture, farming or commercial enterprise is ineligible for a loan guarantee.
 - (3) The site must be contiguous to and have direct access from a street, road, or driveway. Streets and roads must be hard surfaced or all weather surfaced and legally enforceable arrangements must be in place to ensure that needed maintenance will be provided.
 - (4) The site must be supported by adequate utilities and water and wastewater disposal systems. Certain water and wastewater systems that are privately-owned may be acceptable if the lender determines that the systems are adequate, safe, compliant with applicable codes and requirements, and the cost or feasibility to connect to a public or community system is not reasonable. Certain community-owned water and wastewater systems may be acceptable if the lender determines that the systems are adequate, safe, and compliance with applicable codes and requirements. The Agency may require inspections on individual, central, or privately-owned and operated water or waste systems.

Sec. 3555.202 Dwelling requirements.

- (a) New dwellings. New dwellings must be constructed in accordance with certified plans and specifications, and must meet or exceed the International Energy Conservation Code (IECC) in effect at the time of construction. The lender must obtain and retain evidence of construction costs, inspection reports, certifications, and builder warranties acceptable to Rural Development.

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- (b) Existing dwellings. Existing dwellings are considered to meet the following criteria when inspected and certified as meeting HUD requirements for one-to-four unit dwellings in accordance with Agency guidelines:
- (1) Be structurally sound;
 - (2) Be functionally adequate;
 - (3) Be in good repair, or to be placed in good repair with loan funds; and
 - (4) Have adequate and safe electrical, heating, plumbing, water, and wastewater disposal systems.
- (c) Escrow account for exterior or interior development. This paragraph does not apply if the development is related to a "combination construction and permanent loan" under Sec. 3555.101(c). If a dwelling is complete with the exception of interior or exterior development work, Rural Development may issue the Loan Note Guarantee on the loan if the following conditions are met:
- (1) The incomplete work does not affect the habitability of the dwelling, nor the health or safety of the housing occupants.
 - (2) The cost of any remaining interior or exterior work is not greater than 10 percent of the final loan amount.
 - (3) An escrow account is funded in an amount sufficient to assure the completion of the remaining work. This figure must be at least 100 percent of the cost of completion but may be higher if the lender determines a higher amount is needed.
 - (4) The builder or a licensed contractor has executed a contract providing for completion of the planned development within 180 days of loan closing. If the borrower will be completing the planned development on an existing dwelling without the services of a contractor, the requirement for an executed contract is waived when all of the following conditions are met:
 - (i) The estimated cost to complete the work is less than 10 percent of the total loan amount;
 - (ii) The escrow amount is less than or equal to \$10,000; and

- (iii) The lender has determined the borrower has the knowledge and skills necessary to complete the work.
- (5) The lender may release escrowed funds only after obtaining a final inspection report acknowledged by the borrower and indicating all planned development has been satisfactorily completed.
- (6) The lender remains responsible to ensure a final inspection is performed and required repairs are completed.
- (7) The settlement statement reflects the amounts escrowed.

Sec. 3555.203 Ownership requirements.

After the loan is closed, the borrower must have an acceptable ownership interest in the property as evidenced by one of the following:

- (a) Fee-simple ownership. Acceptable fee-simple ownership is evidenced by a fully marketable title with a deed vesting a fee-simple interest in the property to the borrower.
- (b) Secured leasehold interest. Loans may be guaranteed on leasehold properties. If the conditions in this subsection are met:
 - (1) The applicant is unable to obtain fee simple title to the property;
 - (2) Such leaseholds are fully marketable in the area, except in the case of properties located on American Indian restricted land;
 - (3) The lease has an unexpired term of at least 45 years from the date of loan closing, except in the case of properties located on American Indian restricted land where the lease must have an unexpired term at least equal to the term of the loan. Leases on American Indian restricted land for period of 25 years which are renewable for a second 25 year period are permissible as are leases of a longer duration;
 - (4) The mortgage must cover both the property improvements and the leasehold interest in the land;

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- (5) The leasehold estate must constitute real property, be subject to the mortgage lien, be insured by a title policy, be assignable or transferable and cannot be terminated except for nonpayment of lease rents; and
- (6) The lease must be recorded in the appropriate local real estate records.

Sec. 3555.204 Security requirements.

Rural Development will only guarantee loans that are adequately secured. A loan will be considered adequately secured only when all of the following requirements are met:

- (a) Recorded security document. The lender obtains at closing, a mortgage on all required ownership and leasehold interests in the security property and ensures that the loan is properly closed.
- (b) Prior liens. No liens prior to the guaranteed mortgage exist except in conjunction with a supplemental loan for transfer and assumption. The guaranteed loan must have first lien position at closing. Junior liens by other parties are permitted as long as the junior liens do not adversely affect repayment ability or the security for the guaranteed loan.
- (c) Adequate security. Existing and proposed property improvements are completely on the site and do not encroach on adjoining property.
- (d) Collateral. All collateral secures the entire loan.

Sec. 3555.205 Special requirements for condominiums.

Loans may be guaranteed for condominium units in condominium projects that meet all the requirements of this part, as well as the standards for condominium standards established by HUD, Fannie Mae, VA, or Freddie Mac, including those related to self-certification, warranty, underwriting, and ineligible condominium projects.

Sec. 3555.206 Special requirements for community land trusts.

A community land trust must meet the definition in accordance with Sec. 3555.10 and other requirements described in this subpart. Loans may be guaranteed for dwellings on land owned by a community land trust only if:

- (a) Rural Development review. Rural Development reviews and accepts any restrictions imposed by the community land trust on the property or applicant before loan closing. The Agency may place conditions on the approval of restrictions on resale price and rights of first refusal.
- (b) Foreclosure termination. The community land trust automatically and permanently terminates upon foreclosure or acceptance by the lender of a deed in lieu of foreclosure.
- (c) Organization. The organization must meet the definition of a community land trust as defined in the Housing Act of 1949 and the following requirements:
 - (1) Be organized under State or local laws.
 - (2) Members, founders, contributors or individuals cannot benefit from any part of net earnings of the organization.
 - (3) The organization must be dedicated to decent affordable housing for low-and moderate-income people.
 - (4) Comply with financial accountability.
- (d) Lender documentation. The lender's file must contain documentation that the community land trust has community support, local market acceptance and 2 years of prior experience in providing affordable housing.
- (e) Appraisals. A property located on a site owned by a community land trust must be appraised as leasehold interest and meet the provisions of Sec. 3555.203.

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Sec. 3555.207 Special requirements for Planned Unit Developments (PUDs).

Loans may be guaranteed for PUDs that meet all of the requirements of this part, as well as the criteria for PUDs established by HUD, VA, Fannie Mae, or Freddie Mac.

Sec. 3555.208 Special requirements for manufactured homes.

Loans may be guaranteed for manufactured homes if all the requirements in this section are met.

- (a) Eligible costs. In addition to the loan purposes described in Sec. 3555.101, Rural Development may guarantee a loan used for the following purposes related to manufactured homes when a real estate mortgage covers both the unit and the site:
 - (1) Purchase of a new manufactured home, transportation, permanent foundation, and installation costs of the manufactured home, and purchase of an eligible site if not already owned by the applicant; and
 - (2) Site development work properly completed to HUD, state and local government standards, as well as the manufacturer's requirements for installation on a permanent foundation.

- (b) Loan restrictions. The following loan restrictions are in addition to the loan restrictions contained in Sec. 3555.102:
 - (1) A loan will not be guaranteed if it is used to purchase a site without also financing a new unit.
 - (2) A loan will not be guaranteed if it is used to purchase furniture, including but not limited to: movable articles of personal property such as drapes, beds, bedding, chairs, sofas, divans, lamps, tables, televisions, radios, and stereo sets. Furniture does not include wall-to-wall carpeting, refrigerators, ovens, ranges, washing machines, clothes dryers, heating or cooling equipment, or other similar items.
 - (3) A loan will not be guaranteed to purchase an existing manufactured home and site unless:

- (i) The unit and site are already financed with an Agency direct single family or guaranteed loan;
 - (ii) The unit and site are being sold by Rural Development as REO property;
 - (iii) The unit and site are being sold from the lender's inventory, and the loan for which the unit and site served as security was a loan guaranteed by Rural Development; or
 - (iv) The unit was installed on its initial installation site on a permanent foundation complying with the manufacturer's and HUD installation standards.
- (4) A loan will not be guaranteed for repairs to an existing unit, unless the unit meets the requirements of Sec. 3555.208(b)(3).
- (5) A loan will not be guaranteed for the purchase of an existing manufactured home that has been moved from another site.
- (c) Construction and development.
- (1) To be an eligible unit, the new unit must have a floor space of not less than 400 square feet.
 - (2) The unit must be properly installed on a permanent foundation according to HUD standards, and the manufacturer's requirements for installation on a permanent foundation. A certification of proper foundation is required.
 - (3) All wheels, axles, towing hitches and running gear must be removed from the manufactured home.
 - (4) Unit construction must conform to the Federal Manufactured Home Construction and Safety Standards (FMHCSS) and be constructed in compliance with the HUD heating and cooling requirements for the State in which the unit will be located. Any alterations, such as garage construction, as a new unit must comply with FMHCSS.
 - (5) The site development, installation and set-up must conform to the HUD requirements and the manufacturer's requirements for a permanent installation.

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- (6) The unit must meet or exceed the IECC in effect at the time of construction.
 - (7) The lender must maintain documentation of construction plans and required certifications.
- (d) Warranty requirements.
- (1) The applicant must receive a warranty in accordance with HUD requirements for new manufactured homes on permanent foundations.
 - (2) The warranty must identify the unit by serial number.
 - (3) The lender and applicant must obtain certification that the manufactured home has sustained no hidden damage during transportation and, if manufactured in separate sections that the sections were properly joined and sealed according to the manufacturer's specifications.
 - (4) The manufactured home must be affixed with a data plate, placed inside the unit, and a certification label, affixed to each transportable section at the tail-light end of each unit which indicates that the home was designed and built in accordance with HUD's construction and safety standards in effect on the date the home was manufactured.
 - (5) The lender must retain a copy of all manufacturers' warranties in the lender file.
- (e) HUD requirements. The FMHCSS and HUD requirements may be found at http://www.access.gpo.gov/nara/cfr/waisidx_04/24cfr3280_04.html.
- (f) Title and lien requirements. To be eligible for the SFHGLP, the following conditions must be met and documented in the lender's file:
- (1) A manufactured home loan must be secured by a perfected lien on real property consisting of the manufactured home and the land;
 - (2) The manufactured home must be taxed as real estate as applicable under State law, including relevant statutes, regulations, and judicial decisions;

- (3) The security instrument must be recorded in the land records and must identify the encumbered property as including both the home and the land;
- (4) If applicable State law so permits, any certificate of title to the manufactured home must be surrendered to the appropriate State government authority. If the certificate of title cannot be surrendered, the lender must indicate its lien on the certificate;
- (5) The mortgage must be covered by a standard real property title insurance policy and any other endorsement required in the applicable jurisdiction for manufactured home ensuring the manufactured home is part of the real property that secures the loan; and
- (6) The borrower must acknowledge the unit is a fixture and part of the real estate securing the mortgage.

Sec. 3555.209 Rural Energy Plus loans.

Loans guaranteed under Rural Energy Plus provisions are for the purchase of energy-efficient homes. Homes that meet the most current IECC standards including existing homes that are retrofitted to those standards are eligible. Energy-efficient homes result in lower utility bills, conserve energy, and thus, make more income available for monthly debt obligations. For loans guaranteed under this subpart, the lender will certify that the home meets the most current IECC standards. The Handbook will define what further flexibilities can be extended.

Sec. Sec. 3555.210-3555.249 [Reserved]

Sec. 3555.250 OMB control number.

The report and recordkeeping requirements contained in this subpart are currently with the Office of Management and Budget under review and awaiting approval.

Subpart F--Servicing Performing Loans

Sec. 3555.251 Servicing responsibility.

- (a) Servicing action. Lenders must perform those servicing actions that a reasonable and prudent lender would perform in servicing its own portfolio of non-guaranteed loans.

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- (b) Third party servicer. A lender may contract with a third party to service its loans, but the servicing lender of record remains responsible for the quality and completeness of the servicing.
- (c) Transfer of servicing. Rural Development may require a lender to transfer its loan servicing activities to an approved lender if Rural Development determines that the lender has failed to provide acceptable servicing.
- (d) Non-compliance. Lenders who fail to comply with Agency requirements or program guidelines may be subject to withdrawal of lender approval, denial and/or reduction in loss claims, withdrawal of the loan guarantee and/or indemnification in accordance with Sec. 3555.108(d).

Sec. 3555.252 Required servicing actions.

Lender servicing responsibility includes, but is not limited to, the following actions.

- (a) Collecting regularly scheduled payments. Lender must collect regularly scheduled loan payments and apply them to the borrower's account.
- (b) Payment of taxes and insurance. Lenders must ensure that real estate taxes, assessments, and flood and hazard insurance premiums for all property that secures a guaranteed loan are paid on schedule.
 - (1) Establish escrow account. Lenders with the capacity to escrow funds must establish escrow accounts for all guaranteed loans for the payment of taxes and insurance. Escrow accounts must be administered in accordance with the Real Estate Settlement and Procedures Act (RESPA) of 1974, and insured by the FDIC or the NCUA.
 - (2) Plan and responsibility of lender to ensure payment. Lenders that do not have the capacity to escrow funds must implement procedures, subject to Agency approval, to ensure the borrower pays such obligations on a timely basis. In addition, such lenders must accept the responsibility for payment of taxes and insurance that comes due prior to liquidation. Rural Development will not include any taxes or insurance amounts that accrued prior to acceleration in any potential loss claim. Rural Development may revoke the acceptance of the

lender's plan if loan performance indicates that delinquency and loss rates are being affected by the lender's inability to escrow for taxes, assessment, and insurance. This alternative is not available to lenders who contract for servicing.

(c) Insurance.

- (1) Until the loan is paid in full, lenders must ensure that borrowers maintain hazard and flood insurance as required, on property securing guaranteed loans. The insurance must be issued by companies in amounts, and on terms and conditions, acceptable to Rural Development. Flood insurance through the National Flood Insurance Program must be maintained for all property located in special flood or mudslide areas identified by FEMA and must be consistent with mortgage industry standards, as determined by the Agency.
 - (2) Lenders must ensure that borrowers immediately notify them of any loss or damage to insured property securing guaranteed loans and collect the amount of the loss from the insurance company. Unless the borrower pays off the guaranteed loan using the insurance proceeds, the following requirements must be met:
 - (i) All repairs and replacements using the insurance proceeds must be planned, performed, and inspected in accordance with Agency construction requirements and procedures.
 - (ii) When insurance funds remain after payments for all repairs, replacements, and other authorized disbursements have been made, the funds must be applied in the following order: prior liens (including past-due property taxes); past-due amounts; protective advances; and released to the borrower if the lender's debt is adequately secured.
 - (3) If the insurance claim is de minimis as determined by the Agency, the lender may release the funds directly to the borrower to advance funds to contractors, provided that the account is current and the borrower has a history of timely payments; the borrower occupies the property; and the borrower executes an affidavit agreeing to apply the funds for repairs or reconstruction of the dwelling.
- (d) Credit reporting. The lender must notify a credit repository of each new guaranteed loan, must identify the loan as guaranteed by Rural Development,

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and must report to that repository whenever any account becomes more than 30 calendar days past due.

- (e) Bankruptcy actions. The lender is responsible for monitoring and taking all appropriate and prudent actions during bankruptcy proceedings to protect the borrower and Government's interest, in accordance with Sec. 3555.306(d).

Sec. 3555.253 Late payment charges.

Late payment charges will not be covered by the guarantee and cannot be added to the principal and interest due under any guaranteed note.

- (a) Maximum amount. Any late payment charge must be reasonable and customary for the area.
- (b) Loans with interest assistance. The lender must not charge a late fee if the only unpaid portion of the borrower's scheduled payment is interest assistance owed by Rural Development.

Sec. 3555.254 Final payments.

Lenders may release security instruments only after payment for the satisfaction of the full debt, including any recapture, has been received and verified.

Sec. 3555.255 Borrower actions requiring lender approval.

- (a) Mineral leases. A lender may consent to the lease of mineral rights and subordinate its lien to the lessee's rights and interests in the mineral activity if the security property will remain suitable as a residence, the lender's security interest will not be adversely affected, and Rural Development's environmental requirements are met. Concurrence by Rural Development prior to consenting to the lease of mineral rights is required, unless otherwise provided by the Agency. Subordination of guaranteed loans to a mineral lease does not entitle the leaseholder to any proceeds from the sale of the security property.
 - (1) If the proposed activity is likely to decrease the value of the security property, the lender may consent to the lease only if the borrower assigns 100 percent of the income from the lease to the lender to be applied to reduce the principal balance, and the total rent to be paid is

at least equal to the estimated decrease in the market value of the security property.

- (2) If the proposed activity is not likely to decrease the value of the security property, the lender may consent to the lease if the borrower agrees to use any damage compensation received from the lessee to repair damage to the site or dwelling, or to assign it to the lender to be applied to reduce the principal balance.
- (b) Partial release of security property. A lender may consent to transactions affecting a security property, such as selling or exchanging security property or granting of a right-of-way across the security property, and grant a partial release, provided that the following conditions are met.
- (1) The borrower will receive adequate compensation, and either make a reduction to the principal balance or make improvements to the security property, in order to maintain the current loan-to-value ratio for the guaranteed loan.
 - (i) For sale of security property, the borrower must receive cash in an amount equal to or greater than the value of the security property being sold or interests being conveyed.
 - (ii) For exchange of security property, the borrower must receive another parcel of property with value equal to or greater than that being disposed of.
 - (iii) For granting an easement or right-of-way, the borrower must receive benefits that are equal to or greater than the value of the security property being disposed of or interests being conveyed.
 - (2) An appraisal of the security property will be conducted by the lender if the most current appraisal is more than 1 year old or if it does not reflect current market value.
 - (3) The security property, after the transaction is completed, will continue to be an adequate, safe, and sanitary dwelling.
 - (4) Repayment of the guaranteed debt will not be jeopardized.
 - (5) When exchange of all or part of the security property is involved, title clearance will be obtained before release of the existing security.

- (6) Proceeds from the sale of a portion of the security property, granting an easement or right-of-way, damage compensation, and all similar transactions requiring the lender's consent, will be used in the following order:
 - (i) To pay customary and reasonable costs related to the transaction that must be paid by the borrower.
 - (ii) To be applied on a prior lien debt, if any.
 - (iii) To be applied to the guaranteed indebtedness or used for improvements to the security property consistent with the purposes and limitations applicable for use of guaranteed loan funds. The lender must ensure that the proceeds are used as planned.
- (7) The lender will seek Agency concurrence, unless otherwise provided by the Agency, by submitting documentation supporting the borrower's reason for request, the proposed use of the land with supporting plans, specifications, cost estimates, surveys, disclosures of restrictions, legal description modification, title clearance related to the transaction request, as applicable, and any other documents necessary for the Agency to make a determination.

Sec. 3555.256 Transfer and assumptions.

- (a) Transfer without assumption.
 - (1) The lender must notify Rural Development if the borrower transfers the security property and the transferee does not assume the debt.
 - (2) Except as described in paragraph (d) of this section, if a security property is transferred with the lender's knowledge without assumption of the debt, Rural Development will void the guarantee.
- (b) Transfer with assumption.
 - (1) The lender must obtain Agency approval before consenting to a transfer with an assumption of the outstanding debt.

- (2) Rural Development may approve a transfer with an assumption of the outstanding debt if the following conditions are met:
- (i) The transferee must assume the entire outstanding debt and acquire all property securing the guaranteed loan balance; however, the transferor must remain personally liable. The transferor must pay any recapture as a result of interest subsidy granted, if applicable, owed at the time of the transfer and assumption.
 - (ii) The transferee must meet the eligibility requirements described in subpart D of this part.
 - (iii) The property must meet the site and dwelling requirements described in subpart E of this part, or be brought to those standards prior to the transfer. Guaranteed loans secured by properties located in areas that have ceased to be rural may be assumed notwithstanding the fact that the property is located in a non-rural area.
 - (iv) The priority of the existing lien securing the guaranteed loan must be maintained or improved.
 - (v) Any new rates and terms must not exceed the rates and terms allowed for new loans under this part, and the interest rate must not exceed the interest rate on the initial loan.
 - (vi) A new guarantee fee, calculated based on the remaining principal balance, must be paid to Rural Development in accordance with Sec. 3555.107(g).
 - (vii) If additional financing is required to complete the transfer and assumption or to make needed repairs, Rural Development may approve a supplemental guaranteed loan provided adequate security exists.
 - (viii) The lender must verify and document their permanent file in accordance with subpart C of this part.
 - (ix) A written request supported by the lender demonstrating the applicant's credit worthiness, income eligibility and underwriting analysis must be submitted to the Agency for approval of a transfer and assumption.

- (x) The lender may close the loan in accordance with Sec. 3555.107.
- (c) Transfer without approval. If a lender becomes aware that a borrower has transferred a property without approval, the lender must take one of the following actions:
 - (1) Notify Rural Development and continue the loan without the guarantee; or
 - (2) Obtain Agency approval for the transfer with assumption; or
 - (3) Liquidate the guaranteed loan and submit a claim for any loss.
- (d) Transfer without triggering the due-on-sale clause.
 - (1) The following types of transfers do not trigger due-on-sale clauses in security instruments:
 - (i) A transfer from the borrower to a spouse or children not resulting from the death of the borrower;
 - (ii) A transfer to a relative, joint tenant, or tenant by the entirety resulting from the death of the borrower;
 - (iii) A transfer to a spouse or ex-spouse resulting from a divorce decree, legal separation agreement, or property settlement agreement;
 - (iv) A transfer to a person other than a deceased borrower's spouse who wishes to assume the loan for the benefit of persons who were dependent on the deceased borrower at the time of death, if the dwelling will be occupied by one or more persons who were dependent on the borrower at the time of death, and there is a reasonable prospect of repayment; or
 - (v) A transfer into an inter vivos trust in which the borrower does not transfer rights of occupancy in the property.

- (2) When a transferee obtains a property with a guaranteed loan through a transfer that does not trigger the due-on-sale clause:
 - (i) The lender will notify Rural Development of the transfer;
 - (ii) Rural Development will continue with the guarantee, whether or not the transferee assumes the guaranteed loan;
 - (iii) The transferee may assume the guaranteed loan on the rates and terms contained in the promissory note. If the account is past due at the time an assumption agreement is executed, the loan may be re-amortized to bring the account current;
 - (iv) The transferee may assume the guaranteed loan under new rates and terms if the transferee applies and is eligible.
- (3) Any subsequent transfer of title, except upon the death of the inheritor or between inheritors to consolidate title, will trigger the due-on-sale clause.

Sec. 3555.257 Unauthorized assistance.

- (a) Unauthorized assistance due to false information. (1) If the borrower receives a guaranteed loan based on false information provided by the borrower, Rural Development may require the lender to accelerate the guaranteed loan. After the lender accelerates the loan upon request, the lender may submit a claim for any loss. If the lender fails to accelerate the loan upon request, Rural Development may reduce or void the guarantee.
 - (2) If the borrower receives a guaranteed loan based on false information provided by the lender, Rural Development may void the guarantee subject to the provisions of Sec. 3555.108.
 - (3) If the borrower or lender provides false information, Rural Development may pursue criminal and civil false claim actions, suspension and/or debarment, and take all other appropriate action.
- (b) Unauthorized assistance due to inaccurate information. Rural Development will honor a guarantee for a loan made to an applicant who receives a guaranteed loan based on inaccurate information if the applicant was eligible to receive the guaranteed loan at the time it was made, and if the loan funds were used only for eligible loan purposes.

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Sec. Sec. 3555.258-3555.299 [Reserved]

Sec. 3555.300 OMB control number.

The report and recordkeeping requirements contained in this subpart are currently with the Office of Management and Budget under review and awaiting approval.

Subpart G--Servicing Non-Performing Loans

Sec. 3555.301 General servicing techniques.

In accordance with industry standards and as provided by the Agency:

- (a) Prompt action. Lenders shall take prompt action to collect overdue amounts from borrowers to bring a delinquent loan current in as short a time as possible to avoid foreclosure to the extent possible and minimize losses.
- (b) Evaluation of borrower. Lenders must evaluate loans and take appropriate loss mitigation actions in an effort to resolve any repayment problems and provide borrowers with the maximum opportunity to become successful homeowners.
- (c) Prompt contact. In the event of default, the lender shall promptly contact the borrower within a timeframe specified by the Agency.
- (d) Determine ability to cure. The lender must make a reasonable effort to obtain from the borrower information regarding the reason for default, the borrower's current financial situation and any other necessary information to evaluate the borrower's ability to cure the default and determine a feasible plan for collection, and/or alternatives to foreclosure.
- (e) Communication. Before an account becomes 60 days past due and if there is no payment arrangement in place, the lender must send a certified letter to the borrower requesting an interview for the purpose of resolving the past due account.
- (f) Prior to liquidation. Before an account becomes 60 days past due or before initiating liquidation, the lender must assess the physical condition of the

property, determine whether it is occupied, and take necessary steps to protect the property.

- (g) Maintain documentation. The lender must maintain documentation demonstrating that requirements in this subpart have been met and what steps have been taken to save a mortgage prior to making a decision to foreclose.
- (h) Formal servicing plan. The lender must report a formal servicing plan to the Agency utilizing a web-based automated system when a borrower's account is delinquent for 90 days or more and a method other than foreclosure is recommended to solve the delinquency.

Sec. 3555.302 Protective advances.

Lenders may pay the following pre-liquidation expenses necessary to protect the security property and charge the cost against the borrower's account.

- (a) Advances for taxes and insurance. Without prior Agency concurrence, lenders may advance funds to pay past due real estate taxes, hazard and flood insurance premiums, and other related costs.
- (b) Advances for costs other than taxes and insurance. Protective advances for costs other than taxes and insurance, such as emergency repairs, can be made only if the borrower cannot, or will not, obtain an additional loan or reimbursement from an insurer or the borrower has abandoned the property. The lender must determine that any repairs funded by protective advances are cost effective. Repairs funded by protective advances must be planned, performed and inspected in accordance with Sec. 3555.202 and as further described by the Agency. The lender must obtain prior Agency concurrence before issuing protective advances under this paragraph of a significant amount as specified by the Agency.

Sec. 3555.303 Traditional servicing options.

- (a) Eligibility. To be eligible for traditional servicing, all the following conditions must be met:

- (1) The borrower presently occupies the property;
 - (2) The borrower is in default or facing imminent default for an involuntary reason. A borrower is "facing imminent default" if that borrower is current or less than 30 days past due on the mortgage obligation and is experiencing a significant reduction in income or some other hardship that will prevent him or her from making the next required payment on the mortgage during the month in which it is due. The borrower must be able to document the cause of the imminent default, which may include, but is not limited to, one or more of the following types of hardship:
 - (i) A reduction in or loss of income that was supporting the mortgage loan;
 - (ii) A change in household financial circumstances;
 - (3) The borrower demonstrates a reasonable ability to support repayment of the debt in the future;
 - (4) There are no adverse property conditions that inhibit the inhabitability or use of the property; and
 - (5) The borrower has not received assistance due to the submission of false information by the borrower.
- (b) Servicing options. The lender must consider traditional servicing options in the following order to resolve the borrower's default or imminent default:
- (1) Repayment agreement. A repayment agreement is an informal plan lasting 3 months or less to cure short-term delinquencies.
 - (2) Special forbearance agreement. A special forbearance agreement is a longer-term formal plan to cure a delinquency not to exceed the equivalent of 12 months of PITI. The agreement may gradually increase monthly payments in an amount sufficient to repay the arrearage over a reasonable amount of time and/or temporarily reduce or suspend payments for a short period. If the borrower is at least 3

months delinquent, the special forbearance agreement may resume normal payments for several months followed by a loan modification.

- (3) Loan modification plan. A loan modification is a permanent change in one or more of the terms of a loan that results in a payment the borrower can afford and allows the loan to be brought current. A loan modification must be a written agreement.
- (i) Loan modifications must be a fixed interest rate and cannot exceed the market interest rate at the time of modification.
 - (ii) Loan modifications may capitalize all or a portion of the arrearage and/or reamortization of the balance due including foreclosure fees and costs, tax and insurance advances, and past due Agency annual fees imposed by the lender. Late charges and lender fees may not be capitalized.
 - (iii) If necessary to demonstrate repayment ability, the loan term after reamortization may be extended for up to 30 years from the date of the loan modification.
 - (iv) The lender's lien priority cannot be adversely affected by providing a loan modification.
 - (v) Lenders may require that borrowers complete a trial payment plan prior to making scheduled payments amended by the traditional loan servicing loan modification.
- (c) Terms of loan note guarantee. Use of traditional servicing options does not change the terms of the loan note guarantee except when the traditional servicing option meets the requirements of Sec. 3555.303(b)(3)(iii). The loan guarantee will apply to loan terms extending beyond the 30 year loan term from the date of origination when a loan modification meets the criteria set forth in Sec. 3555.303(b)(3)(iii).

Sec. 3555.304 Special servicing options.

(a) General.

- (1) Lenders must exhaust traditional servicing options outlined in this part or have determined that use of traditional servicing options would not resolve the delinquency, prior to special servicing options.

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Lenders must exhaust special servicing options prior to liquidation in accordance with Sec. Sec. 3555.305 or 3555.306.

- (2) Use of special loan servicing does not change the terms of the loan note guarantee.
 - (3) Special servicing options shall be used in the order established in this section to bring the borrower's mortgage payment to income ratio as close as possible to, but not less than, 31 percent.
 - (4) If the borrower currently has a mortgage payment to income ratio of 31 percent or less, special servicing options can be utilized to cure the delinquency without modifying the note; otherwise, special servicing options shall be used in the order established in this section to bring the borrower's mortgage payment to income ratio as close as possible to, but not less than, 31 percent.
- (b) Conditions for special servicing options. In addition to the requirements in Sec. 3555.303(a), the following conditions apply to all special loan servicing:
- (1) The borrower's total debt to income ratio following the special loan servicing must not exceed 55 percent. Prior to servicing a borrower's account with special loan servicing, the lender must verify the borrower's income and total debt.
 - (2) The borrower must successfully complete a trial payment plan of sufficient duration, as determined by the Agency, to demonstrate that the borrower will be able to make regularly scheduled payments as modified by the special loan servicing.
 - (3) Expenses related to special loan servicing including, but not limited to, title search and recording fees shall not be charged to the borrower. However, if a foreclosure was initiated and canceled prior to special loan servicing, legal fees and costs for work performed in relation to the foreclosure costs before the cancellation date may be charged to the borrower.
 - (4) Capitalization of late charges and lender fees is not permitted in the special loan servicing option.
- (c) Extended-term loan modification. The Lender may modify the loan by reducing the interest rate to a level at or below the maximum allowable interest rate and extending the repayment term up to a maximum of 40 years from the date of loan modification. The loan guarantee will apply to loan terms extending

beyond the 30 year loan term from the date of origination when a loan modification meets the criteria set forth in this section.

- (1) Loan modifications may capitalize all or a portion of the arrearage and/or reamortization of the balance due including foreclosure fees and costs, tax and insurance advances, and past due Agency annual fees imposed by the lender. Late charges and lender fees may not be capitalized.
 - (2) Loan modifications must be a fixed interest rate and cannot exceed the current market interest rate at the time of modification. When reducing the interest rate, the maximum rate is subject to paragraph (c)(3) of this section.
 - (3) The term shall be extended only as long as is necessary to achieve the targeted mortgage payment to income ratio after the interest rate has been fixed at a level at or below the maximum allowable rate.
 - (4) If the targeted mortgage payment to income ratio cannot be achieved using an extended-term loan modification alone, the lender may consider a mortgage recovery advance under this section in addition to the extended-term loan modification.
- (d) Mortgage recovery advance.
- (1) The maximum amount of a mortgage recovery advance is 30 percent of the unpaid principal balance as of the date of the initial default. The Agency may change the maximum amount of mortgage recovery advance by publication in the Federal Register.
 - (2) If the borrower's total monthly mortgage payment is less than 31 percent of gross monthly income prior to an extended term loan modification, the mortgage recovery advance can be used to cure the borrower's delinquency without changing the terms of the promissory note.

- (3) The principal deferment amount for a specific case shall be limited to the amount that will bring the borrower's total monthly mortgage payment to 31 percent of gross monthly income.
- (4) The lender may file a claim pursuant to Subpart H of this part for reimbursement of reasonable title search and/or recording fees in connection with the promissory note and mortgage or deed-of-trust, not to exceed a maximum amount specified by the Agency.
- (5) Prior to making a mortgage recovery advance, the lender must perform an escrow analysis to ensure that the payment made on behalf of the borrower accurately reflects the escrow amount required for taxes and insurance.
- (6) The following terms apply to the repayment of mortgage recovery advances:
 - (i) The mortgage recovery advance note and subordinate mortgage or deed-of-trust shall be interest-free.
 - (ii) Borrowers are not required to make any monthly or periodic payments on the mortgage recovery advance note; however, borrowers may voluntarily submit partial payments without incurring any prepayment penalty.
 - (iii) The due date for the mortgage recovery advance note shall be the due date of the guaranteed note held by the lender, as modified by the special loan servicing. Prior to the due date on the mortgage recovery advance note, payment in full under the note is due at the earlier of the following:
 - (A) When the first lien mortgage and the guaranteed note are paid off; or
 - (B) When the borrower transfers title to the property by voluntary or involuntary means.
 - (iv) Repayment of all or part of the mortgage recovery advance must be remitted directly to the Agency by the borrower.

- (v) The Agency will collect this Federal debt from the borrower by any available means if the mortgage recovery advance is not repaid based on the terms outlined in the promissory note and mortgage or deed-of-trust.
- (7) The lender may request reimbursement from the Agency for a mortgage recovery advance. A fully supported and documented claim for reimbursement must be submitted to the Agency within 60 days of the advance being executed by the borrower. The borrower must execute a promissory note payable to the Agency and a mortgage or deed-of-trust in recordable form perfecting a lien naming the Agency as the secured party for the amount of the mortgage recovery advance. The lender shall properly record the mortgage or deed-of-trust in the appropriate local real estate records and provide the original promissory note to the Agency.
- (8) A loss claim filed by a lender will be adjusted by any amount of mortgage recovery advance reimbursed to the lender by the Agency.

Sec. 3555.305 Voluntary liquidation.

The lender must have exhausted the servicing options outlined in Sec. 3555.302 through 3555.304 to cure the delinquency before considering voluntary liquidation. The methods of voluntary liquidation of the security property outlined in this section may be used to protect the interests of the Government.

- (a) Eligibility. To be eligible for voluntary liquidation, the following conditions must be met:
 - (1) The loan is at least 30 days delinquent or meets the imminent default definition as outlined in Sec.3555.303(a)(2);
 - (2) The default was caused by an involuntary reason; and
 - (3) The borrower must presently occupy the property except in situations where the borrower does not occupy the property due to the same involuntary reason that led to the default.
- (b) Pre-foreclosure or short sale. The borrower may sell the security property for a price that represents its fair market value. The sale price, less any reasonable and customary sale or closing costs incurred by the borrower, must be applied to the borrower's account.

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- (c) Deed in lieu of foreclosure. The lender may accept a deed in lieu of foreclosure if it will result in a lesser loss claim than if foreclosure occurs.
- (d) Offer by junior lienholder. If a junior lienholder makes an offer in the amount of at least the anticipated net recovery value, as calculated in accordance with Sec. 3555.353, the lender may assign the note and mortgage to the junior lienholder.
- (e) Other methods of voluntary liquidation. The lender may propose other methods of voluntary liquidation that are consistent with this section if the lender fully documents how the proposal will result in a savings to the Government.

Sec. 3555.306 Liquidation.

(a) General.

- (1) When a lender determines that a borrower is unable or unwilling to meet loan obligations with servicing options under this subpart, the lender must accelerate the guaranteed loan and, if necessary, foreclose.
- (2) Prior to acceleration the lender must have advised the borrower, in writing, of available foreclosure avoidance options and the borrower must have failed to request such options.
- (3) The lender must accelerate the guaranteed loan, with a demand letter, when the account is three scheduled payments past due unless there is a reasonable prospect of resolving the delinquency through another method.
- (4) The borrower is responsible for all expenses associated with liquidation and acquisition.

(b) Foreclosure.

- (1) The lender must initiate foreclosure within 90 calendar days of the decision to liquidate unless Federal, State, or local law requires that foreclosure action be delayed. When there is a legal delay (such as bankruptcy), foreclosure must be initiated within 90 calendar days after it becomes possible to do so. Foreclosure initiation begins with the first public action required by law such as filing a complaint or petition, recording a notice of default, or publication of a notice of sale.
- (2) Lenders must exercise due diligence in completing the liquidation process to ensure the foreclosure is cost effective, expeditious, and completed in an efficient manner, as otherwise provided by the Agency. The lender must choose the foreclosure method representing the best interest of the Federal Government.
- (3) The lender's decision to bid at foreclosure and any bid amount will be based upon the property value, whether the property value is sufficient to cover the existing debt and incurred costs, and any potential to recover a deficiency. The lender will encourage third party bidding at a foreclosure sale when the total debt, including the

cost of acquiring, managing and disposing of the property, if acquired, is greater than the gross proceeds expected from a foreclosure sale at market value.

- (c) Reinstatement of accounts. Unless State law imposes other requirements, the lender may reinstate an accelerated account if the borrower pays, or makes acceptable arrangements to pay, all past-due amounts, any protective advances, and any foreclosure-related costs incurred by the lender.
- (d) Bankruptcy.
 - (1) When a borrower files a petition in bankruptcy, the lender must suspend collection and foreclosure actions in accordance with Title 11 of the United States Code.
 - (2) The lender may accept conveyance of security property by the trustee in the bankruptcy, or the borrower, if the bankruptcy court has approved the transaction, and the lender will acquire title free of all liens and encumbrances except the lender's liens.
 - (3) Whenever possible after the borrower has filed for protection under Chapter 7 of Title 11 of the United States Code, a reaffirmation agreement will be signed by the borrower and approved by the bankruptcy court prior to discharge, if the lender and the borrower decide to continue with the loan.
 - (4) The lender must protect the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings.
 - (5) The lender can include principal and interest lost as a result of bankruptcy proceedings in any claim filed in accordance with Sec. 3555.354.
- (e) Maintain condition of security property. The lender must make reasonable and prudent efforts to ensure that the condition of the security property is maintained during any liquidation, acquisition, and sale of the property. These efforts include, but are not limited to, periodic inspections, performing necessary repairs, winterization, securing the property, removing debris, yard maintenance and ensuring the continuance of property insurance. The lender must identify, determine the cause, and document any environmental hazard

affecting the value of the security property. The lender must retain a record of all efforts to maintain the condition of the security property.

- (f) Lender acquisition of title. If at liquidation, the title to the property is conveyed to the lender, the lender will submit a loss claim package, including a market value appraisal, within 60 days of the foreclosure sale date or the date the lender acquires title. If eviction action is required in order to obtain a market value appraisal, the lender must submit the loss claim package, including the market value appraisal, within 60 days of the date the occupants clear the premises. The lender must submit the loss claim request, including the market value appraisal, in accordance with subpart H.
- (g) Debt settlement reporting. The lender must report to the IRS and all national credit reporting repositories any debt settled through liquidation.

Sec. 3555.307 Assistance in natural disasters.

- (a) Policy. Servicers must utilize general procedures available under this subpart for servicing borrowers affected by natural disasters, as supplemented by Rural Development, to minimize delinquencies and avoid foreclosure.
- (b) Evaluating the damage. Servicers are expected to inspect a security property whenever they have reason to believe the property has been damaged.
- (c) Special relief measures. The servicer must evaluate on an individual case-by-case basis a mortgage that is (or becomes) seriously delinquent as the result of the borrower's incurring extraordinary damages or expenses related to the natural disaster. The servicer should document its individual mortgage file regarding all servicing actions taken during this time period. The lender must consider all special relief alternatives for disaster assistance available to the borrower prior to suspending collection and foreclosure activities. The suspension of servicing actions will expire 90 days from the declaration date of the natural disaster, unless otherwise extended by the Agency.
- (d) Insurance claim settlements. Prior to release of hazard insurance proceeds because of damage caused by a natural disaster, servicers must complete a cost and benefit analysis on a case-by-case basis to determine if the property can be repaired or rebuilt. The servicer's actions must be based on the status of the mortgage, the amount of insurance proceeds, and the length of time required repairing or reconstructing the property, and the market conditions in the area. If the property will not be repaired or rebuilt, the insurance proceeds must be applied to the unpaid principal loan balance.

Sec. Sec. 3555.308-3555.349 [Reserved]

Sec. 3555.350 OMB control number.

The report and recordkeeping requirements contained in this subpart are currently with the Office of Management and Budget under review and awaiting approval.

Subpart H--Collecting on the Guarantee

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Sec. 3555.351 Loan guarantee limits.

- (a) Original loan amount. For the purposes of this section, the term "Original Loan Amount" means the original promissory note amount minus any loans funds not actually disbursed to the borrower or on behalf of the borrower at the time the SFHGLP loan was made or thereafter.
- (b) Maximum loss payment. The maximum payment for a loss sustained by the lender under the SFHGLP is the lesser of:
 - (1) 90 percent of the Original Loan Amount; or
 - (2) 100 percent of any loss equal to or less than 35 percent of the Original Loan Amount plus 85 percent of any remaining loss up to 65 percent of the Original Loan Amount.

Sec. 3555.352 Loss covered by the guarantee.

Subject to Sec. 3555.351, the loss claim payment will be calculated as the difference between the Total Indebtedness on the loan and the Net Recovery Value calculated according to Sec. 3555.353. The Total Indebtedness on the loan includes:

- (a) Principal balance. The unpaid principal balance;
- (b) Accrued interest. Accrued interest at the guaranteed loan note rate from the last day interest was paid by the borrower to the settlement date, as defined at Sec. 3555.10;
- (c) Additional interest. Additional interest on the unsatisfied principal accrued from the settlement date to the date the claim is paid, but not more than 60 days from the settlement date;
- (d) Protective advances. Principal and interest for protective advances, as described in Sec. 3555.303; and
- (e) Liquidation costs. Reasonable and customary liquidation costs, such as attorney fees, market value appraisals, and foreclosure costs. Annual fees advanced by the lender to the Agency are ineligible for reimbursement when calculating the loss payment.

Sec. 3555.353 Net recovery value.

The net recovery value of the property is determined differently for properties that have been sold than for properties that remain in inventory at the time the loss claim is filed.

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- (a) For a property that has been sold. When a loss claim is filed on a property that was sold to a third party at the foreclosure sale or through an approved pre-foreclosure sale, net recovery value is calculated as follows:
- (1) The proceeds from the sale plus any other amounts recovered, minus
 - (2) The amount of actual liquidation and disposition costs provided those costs are reasonable and customary for the area. Costs incurred by in-house staff may not be included.
- (b) For a property that has been acquired. When a loss claim is filed on a property acquired by the lender through a foreclosure sale or a deed-in-lieu of foreclosure, the net recovery value is based on an estimated sales price calculated using a market value appraisal along with holding and disposition costs calculated using the acquisition and management factor (also known as the VA Net Value Factor) published by the VA, and other factors as determined by the Agency. The lender must submit a loss claim package, including a market value appraisal, within 60 days of the foreclosure sale date or the date the lender acquires title. If eviction action is required in order to obtain a market value appraisal, the lender must submit the loss claim package, including the market value appraisal, within 60 days of the date the occupants clear the premises and in accordance with subpart H.

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Sec. 3555.354 Loss claim procedures.

All lenders must use a web-based automated system designated by the Agency to submit all loss claim requests.

- (a) Sold property. For property that has been sold, the lender must submit a loss claim within 45 calendar days of the sale. Late claims made beyond this period of time may be rejected or reduced by Rural Development. Instructions and forms may be obtained from Rural Development.
- (b) REO. If at liquidation, the title to the property is conveyed to the lender, the lender will submit a loss claim package, including a market value appraisal, within 60 days of the foreclosure sale date or the date the lender acquires title. If eviction action is required in order to obtain a market value appraisal, the lender must submit the loss claim package within 60 days of the date the occupants clear the premises. The lender must order a market value appraisal and include the market value appraisal with the loss claim package. The Agency will use the market value appraisal, along with other Agency required documentation, to determine the property value for the basis of the loss claim. The Agency will apply an acquisition and management resale factor to estimate holding and disposition costs, based on the most current VA Management and Acquisition Factor found at https://www.benefits.va.gov/HOMELOANS/servicers_valeri.asp.
- (c) Deficiency judgments. The lender must enforce any judgment for which there are current prospects of collection before submitting a loss claim, and amounts collected must be applied against the outstanding debt. Rural Development will process the loss claim if there are no current prospects for collection.

Sec. 3555.355 Reducing or denying the claim.

- (a) Determination of loss payment. Subject to the requirements of Sec. 3555.108, if Rural Development determines that the amount of the loss was increased due to the lender's failure to comply with the conditions of the Loan Note Guarantee, the Agency may reduce or deny any loss claim by the portion of the loss determined was caused by the lender's action or failure to act. The circumstances under which loss claims may be denied or reduced include, but are not limited to, the following lender actions:

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- (1) Failure to adhere to required servicing and liquidation procedures as set forth in Agency regulations and guidance, including the payment of real estate taxes or hazard insurance when due;
 - (2) Failure to report defaulted loans to Rural Development within required timeframes;
 - (3) Failure to ensure that the security property is adequately maintained during liquidation;
 - (4) Delay in filing a loss claim;
 - (5) Claiming unauthorized expenses;
 - (6) Providing unauthorized assistance;
 - (7) Failure to obtain the required security or maintain the security position;
 - (8) Violating usury laws;
 - (9) Negligence, gross negligence or misrepresentation; or
 - (10) Committing fraud, or failing to report knowledge of fraud or false information.
- (b) Disputes. If the lender disputes the loss claim amount determined by Rural Development, Rural Development will pay the undisputed portion of the loss claim, and the lender may appeal the decision in accordance with Sec. 3555.4.

Sec. Sec. 3555.356-3555.399 [Reserved]

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Sec. 3555.400 OMB control number.

The report and recordkeeping requirements contained in this subpart are currently with the Office of Management and Budget under review and awaiting approval.