

CHAPTER 16: CLOSING THE LOAN AND REQUESTING THE GUARANTEE

[7 CFR 3555.107]

16.1 INTRODUCTION

The lender is required to comply with all conditions stated on *Form RD 3555-18/18E* and any attachments, as applicable. The loan must close under the same terms as underwritten and approved for in the conditional commitment.

16.2 CLOSING THE LOAN

The lender has 90 days from the issuance of *Form RD 3555-18/18E* to close the loan. Prior to expiration of the conditional commitment the lender may request the Agency to extend the conditional commitment for one additional 90-day period if the lender has been unable to close the loan due to circumstances beyond their control. For new construction, other than the “combination construction permanent loan” option outlined in Section 7 of Chapter 12, the expiration date of *Form RD 3555-18/18E* will correspond with the projected completion of construction. New construction is limited to an expiration date, including any extension granted, to no greater than 12 months from the issuance of the commitment. The Agency must grant any approved extension in writing. The GLS application page will be updated with the commitment extension.

Closing in Compliance with Conditional Commitment Approval. The loan must close under the same terms it was underwritten and approved for the conditional commitment unless the change does not adversely affect loan approval (i.e. lower loan amount, lower interest rate). In the event there are any changes in the loan terms, characteristics of the applicant, or characteristics of the property, between the issuance of *Form RD 3555-18/18E* and loan closing, or if any conditions or requirements imposed by the Agency will not be met, the lender must notify the Agency in writing. The Agency must verify in writing prior to loan closing that the changes are acceptable. Examples of changes that the Agency would need to review include increases in the interest rate, loan amount or changes in borrower status, such as an increase or reduction in household income. Failure by the lender to obtain approval from the Agency may result in the denial of the issuance of the Loan Note Guarantee.

Signatures. All individuals applying for the loan and assuming responsibility for the mortgage debt must sign the Uniform Residential Loan Application and any addenda. Any individual whose signature is required by state laws (for example - a non-purchasing spouse) must sign the security instruments and/or note in order to create a valid first lien, to pass clear title, or to waive inchoate rights. All owners to be vested in title must sign the security instruments except as noted in this section. Additional signatures on the security instruments for individuals who have not been reviewed during the mortgage

credit analysis may jeopardize issuance of the loan note guarantee. Borrowers should not sign blank or incomplete documents.

A Power of Attorney (POA) may be used when the Mortgagee verifies and documents that the following applicable requirements have been satisfied:

- Any specific or general power of attorney must comply with state law, and allow for legal enforcement of the mortgage note in jurisdiction.
- For military personnel, a POA may only be used for one of the applications (initial or final), but not both:
 - when the service member is on overseas duty or on an unaccompanied tour;
 - when the Mortgagee is unable to obtain the absent Borrower's signature on the application by mail or via fax; and
 - where the attorney-in-fact has specific authority to encumber the Property and to obligate the Borrower. Acceptable evidence includes a durable POA specifically designed to survive incapacity and avoid the need for court proceedings.
- For incapacitated Borrowers, a POA may only be used where:
 - a Borrower is incapacitated and unable to sign the mortgage application;
 - the incapacitated individual will occupy the Property to be insured; and
 - the attorney-in-fact has specific authority to encumber the Property and to obligate the Borrower. Acceptable evidence includes a durable POA specifically designed to survive incapacity and avoid the need for court proceedings.

Electronic signatures in accordance with the conditions outlined in Chapter 15 of this handbook may be accepted.

Interest Credit Closing. To reduce the burden on borrowers whose loans were scheduled to close at the end of the month, but did not due to unforeseen circumstances, lenders and borrowers may agree to credit the per diem interest to the borrower and have the mortgage payments begin the first of the succeeding month.

Lender Certification. The lender must certify that no major changes have taken place (for the applicant and/or the collateral) that would affect eligibility for the loan guarantee, except those approved by the Agency in writing, and that all conditions specified on *Form RD 3555-18/18E* have been met. Whether a lender certifies by

executing Form RD 3555-18/18E or submits the request electronically, the lender certifies to the following:

- No major changes have occurred since the issuance of the Conditional Commitment for Single Family Housing Loan Guarantee that affect the subject loan request, except any that have been approved by the Agency in writing;
- The loan closed in accordance with the amount (equal to or less than) and conditions set forth in *Form RD 3555-18/18E*. The lender will be subject to additional criteria if the loan is closed for an excessive loan amount. An excessive loan amount occurs when the lender closes a loan in an amount higher than permitted by *Form RD 3555-18/18E*. To obtain a Loan Note Guarantee, the lender may choose to reclose the loan to the guarantee amount as reflected on the *Form RD 3555-18/18E* (this option includes executing a loan modification agreement), or request a revised Form RD 3555-18/18E. A revised Form RD 3555-18/18E is subject to continued eligibility as set forth in 7 CFR part 3555 and the availability of funding.
- If the interest rate was not fixed at the time the Conditional Commitment for Single Family Housing Loan Guarantee is issued, and the interest rate increased between issuance of the Conditional Commitment for Single Family Housing Loan Guarantee and loan closing, the change is noted and documentation of the fixed rate, at lock, is submitted;
 - If either or both of the underwriting ratios are exceeded, as a result of an interest rate increase, compensating factors that demonstrate sufficient repayment continues to exist, is required. Documentation supporting the increase must be included in the Loan Note Guarantee request;
- No default exists;
- The lender has not imposed any charges or fees against the borrower in excess of those permissible as set forth in 7 CFR part 3555;
- The information submitted to the Agency is true, accurate and complete;
- The information obtained in the loan application was obtained directly from the borrower by an employee of the undersigned lender or the lender's duly authorized agent and is true to the best of the lender's knowledge and belief;

- The credit report submitted on the subject borrower (and co-borrowers(s), if any) was obtained by the undersigned lender or the lender's duly authorized agent directly from the credit bureau which prepared the report and was received directly from said credit bureau. The lender represents credit documentation has been re-verified since issuance of the Conditional Commitment, if the verification at closing was in excess of 120 days of the loan closing. Updated documentation is retained in the lender's permanent loan file;
- The verification(s) of employment and verification(s) of deposits, if applicable were requested and received by the lender of the lender's duly authorized agent without passing through the hands of any third persons and are true to the best of the lender's knowledge and belief. The lender represents employment and/or asset documentation has been re-verified since issuance of the Conditional Commitment, if the verification at closing was in excess of 120 days of loan closing. Updated documentation is retained in the lender's permanent loan file;
- The loan to the named borrower(s) meets the income and credit requirements of 7 CFR part 3555 and other applicable regulations concerning guaranty of loans;
- The loan conforms to the applicable provisions of 7 CFR part 3555;
- All planned property acquisition (construction, repairs, alterations or improvements) has been completed upon which the market value of the property is predicated unless:
 - An escrow account has been established in accordance with 7 CFR 3555.202(c) and Chapter 12 of the Single Family Housing Guaranteed Loan Program Handbook (HB-1-3555);
 - Lender confirms development/repair work for which an escrow account was established has been: completed or will be completed within 180 days of loan closing. If incomplete, the lender agrees to confirm development/repairs are complete in writing or presentation of the final inspection to Rural Development. Note: Confirmation development/repair work is finished is not required for issuance of a Loan Note Guarantee, but is required upon completion of the work. Remaining escrow funds that represent loan funds must be applied to the principal loan amount.

- The required hazard insurance coverage is in effect. Flood insurance has been obtained, as applicable, if the structure is located in 100 year special flood hazard area;
- All Truth-in-Lending requirements have been met;
- All equal employment opportunity and nondiscrimination requirements have been met;
- The loan has been properly closed and the required security instruments, including recapture of subsidy (as applicable) has been obtained;
- The borrower(s) have marketable title to the collateral now owned by the borrower subject to the instrument securing the loan to be guaranteed and any other exceptions approved in writing by the Agency;
- Lien priorities are consistent with the requirements of the Conditional Commitment for Single Family Housing Loan Guarantee. The security instrument has been recorded and is a good and valid first lien on the property described;
- The loan proceeds have been disbursed for purposes and in amounts consistent with the Conditional Commitment for Single Family Housing Loan Guarantee;
- There has been no adverse change in the borrower's financial condition or any other adverse change in the borrower's situation since the Conditional Commitment for Single Family Housing Loan Guarantee was issued by the Agency;
- All inspections in accordance with 7 CFR §§ 3555.201 and 3555.202 and Chapter 12 of HB-1-3555 have been obtained. Evidence of inspections has been retained in the lender's permanent loan file;
- All other requirements listed in the Conditional Commitment for Single Family Housing Loan Guarantee have been met;

- Copies of the credit and security instruments submitted herewith are true and exact copies as executed and filed for record;
- If the sale of the note or transfer of servicing occurs subsequent to this certification, the lender agrees to notify Rural Development in accordance with 7 CFR § 3555.54.

16.3 REQUESTING THE LOAN NOTE GUARANTEE

Within 30 days after the lender closes the loan, the lender must request issuance of the loan guarantee using *Form RD 1980-19* or equivalent automated means, provided by the Agency.

The lender must provide evidence the loan was properly closed and remit the upfront loan guarantee fee. A lender utilizing the automated method of loan closing will submit the upfront loan guarantee fee through pay.gov, the official United States Department of Treasury electronic payment system. Lenders may utilize Attachment 16-A as a checklist to ensure all loan closing documentation is submitted to Rural Development when requesting the Loan Note Guarantee.

A Loan Note Guarantee may not be issued beyond 30 days of the loan closing if the account is in default at the time the lender executes the Lender Certification.

Two methods for requesting the loan guarantee are available to lenders. Lenders are expected to submit loan closings electronically through the automated method provided by the Agency.

A. Electronic Closing – Preferred Method

Rural Development offers approved lenders the ability to submit guaranteed loan closing transactions to the Agency electronically, thus eliminating the need for lenders to manually complete and submit *Form RD 1980-19* and the *Lender Certification portion of Form RD 3555-18/18E*. Lenders submit the guaranteed loan closing fee through pay.gov.

Lenders that utilize this system are required to enter into a User Agreement and obtain authorized access through the use of an eAuthentication account and password. An on-line user guide and information for lenders can be found at:

<https://usdalinc.sc.egov.usda.gov/USDALincTrainingResourceLib.do>.

Lenders will continue to submit the following by attaching the document(s) to the lender loan closing application to receive a Loan Note Guarantee:

- Final Closing Disclosure. The closing date listed on the Closing Disclosure must be entered on the Add Loan Closing screen in GLS. The Closing Disclosure is not required to be signed;
- Promissory Note; and
- Any other necessary documentation as specified in the conditions.

B. Full Documentation

When requesting a Loan Note Guarantee, the lender must submit the following loan closing documents to the Rural Development office that issued the Conditional Commitment. Attachment 16-A provides a stacking order and document identification checklist for lenders:

- *Signed Form RD 1980-19*;
- *Signed Form RD 3555-18/18E*. This certification is a confirmation the lender has properly closed the loan in accordance with the Conditional Commitment;
- Final Closing Disclosure, which is not required to be signed;
- Promissory note;
- Guarantee fee check payable to Rural Development for the correct amount of upfront fee;
- Any other necessary documentation as specified in the conditions; and
- The specific address (and/or email address) of where the Loan Note Guarantee should be delivered.

16.4 UPFRONT LOAN GUARANTEE FEE

The lender will pay the Agency the upfront guarantee fee, which may be passed to the borrower. If a lender is not submitting electronic loan closings, as outlined in paragraph 16.3 above, the fee must be paid by a lender or closing agent's check made payable to the Treasurer of the United States, United States Department of Agriculture, Rural Development, or other reasonable variation such as USDA, USDA - Rural

Development, or to Rural Development. Lenders who participate in the submittal of electronic loan closings will pay the upfront guarantee fee through pay.gov.

Fees received by check will be processed daily in accordance with subpart B of part 1951. Fees will be returned to the lender if the guarantee is not issued. Once the fee is paid and the guarantee issued, the fee is nonrefundable.

The upfront guarantee fee amount is published in Exhibit K, of RD Instruction 440.1, available in any Rural Development office or on the Rural Development website: <http://www.rd.usda.gov/publications/regulations-guidelines/instructions>. The fee is subject to change to maintain a subsidy neutral program required by Public Law 111-212.

A. Calculation of Upfront Loan Guarantee Fee

The maximum loan amount for a guaranteed loan is 100% of the appraised value plus the upfront guarantee fee. Eligible closing costs may also be included in the loan amount up to 100% of the appraised value. The upfront guarantee fee is not required to be financed into the loan. There are many options available to the applicant. Please see examples below:

1. *Finance the entire upfront fee*

The appraised value may only be exceeded by the amount of the upfront guarantee fee. Therefore the guarantee fee may be financed into the total loan. (For the example calculations shown below a 2% upfront fee is being utilized)

Example: The appraised value of the subject property is \$100,000. The purchase price of the property is \$98,000. The borrower has elected to finance \$2,000 in eligible loan closing costs (these costs do not reflect any portion of the guarantee fee). The entire guarantee fee will be financed. The guarantee fee must be calculated on the total loan amount (which will include the guarantee fee). To finance the entire fee, begin with the base loan amount of \$100,000 (\$98,000 purchase price plus \$2,000 eligible closing costs). Calculate the total loan amount including the guarantee fee as follows:

$$\$100,000 / .98 = \$102,040.82 \text{ (Loan amount including the guarantee fee)}$$

$$\$102,040.82 \times 2\% = \$2,040.82 \text{ (Guarantee fee)}$$

Refer to Chapter 6 of this handbook for assistance in determining the maximum loan amount allowed for each applicable refinance loan program.

2. *Finance part of the upfront guarantee fee*

The borrower may elect to finance only a portion of the guarantee fee. In these cases, the borrower will pay a fee that corresponds to the total loan amount that includes the partial fee. The remaining amount of the guarantee fee not financed, will have to be paid by the borrower from personal funds, seller concessions, or eligible gift assistance at settlement. Using the example of a \$100,000 loan for a property appraised at \$100,000, review the partial fee calculation below.

Example:

\$1,000 of the 2 percent fee will be financed; therefore the total loan amount will be \$101,000.

$\$101,000 \times 2\% = \$2,020.00$ (Guarantee fee)

In this scenario, the applicant will borrow \$101,000 which includes \$1,000.00 of the guarantee fee. The borrower will have to pay the remaining \$1,020.00 of the guarantee fee from personal funds at settlement (\$2,020.00 total fee minus the \$1,000.00 financed = \$1,020.00).

3. *Pay the entire upfront guarantee fee at loan closing*

Borrowers are not required to finance the guarantee fee and may elect to pay the entire fee at loan closing from personal funds, seller concessions, or eligible gift assistance at settlement. In the example of a \$100,000 loan for a property appraised at \$100,000, the borrower may save money by paying the fee out-of-pocket. Since the fee is not financed into the loan amount, it is not considered part of the total loan.

Example:

$\$100,000 \times 2\% = \$2,000.00$ guarantee fee due at loan closing.

NOTE: An upfront fee calculator is available for use by lenders and employees at: <https://www.rd.usda.gov/programs-services/lenders/usda-linc-training-resource-library>

16.5 ANNUAL FEE

The servicer will electronically pay the Agency the annual fee, which may be passed to the borrower. The servicer responsible for payment is required to enter into a User Agreement to electronically receive billing notifications and submit payment. Non-payment of the annual fee will be subject to a late charge if not paid by the due date. Information regarding the amount of annual fee and late charge due if not paid can be found in Exhibit K of RD Instruction 440.1, available on the Rural Development website: <http://www.rd.usda.gov/publications/regulations-guidelines/instructions>

Both purchase and refinance transactions are subject to an annual fee.

Information for gaining access to the Agency's Guaranteed Annual Fee system can be found at <https://www.rd.usda.gov/programs-services/lenders/usda-linc-training-resource-library>

A. Amount of Annual Fee

The servicer will pay the Agency the annual fee which is calculated on the average scheduled unpaid principal balance of the mortgage. The applicable annual fee is determined each fiscal year.

B. Calculation of Annual Fee

The amount of the annual fee is calculated from the original amortization schedule of the mortgage at loan closing. The annual fee is not calculated upon the addition of delinquent payments, prepayments, agreements to postpone payments, or loan modifications (reamortization) of the original mortgage.

C. Due Date of Annual Fee

The annual fee is due and payable to the Agency on the 1st day of the billing month. A grace period applies to payments credited through the 15th day of the billing month. Electronic payments submitted on a business day prior to 7:00 p.m. central time will credit the next business day. Electronic payments after 7:00 p.m. central time, or on a non-business day, will credit two business days later.

D. Payment of Annual Fee

The servicer is responsible for the payment of the annual fee to the Agency.

E. Advance Notice, Billing, and Reconciliation of the Annual Fee

Servicers will receive an advance notice two months prior to the current annual fee due date, which will document the annual fee amount to be collected in the subsequent year. An advance notice allows the servicer to adjust a borrower's escrow collection to

accommodate the next scheduled billing period. Advance notices are generated on the first business day of the month.

The annual fee billing file will be available to the servicer on the anniversary closing month of the loan each year. Payment of any annual fee billed is due to the Agency on the 1st day of the month following the anniversary date of loan settlement.

The billing file will outline the current annual fee amount due, all past due annual fee amounts, and all late charge amounts due for each individual loan in the lender's portfolio subject to an annual fee.

A late fee will be assessed, if the annual fee, due on the 1st day of the month remains unpaid by the 15th day of the month. A secondary late fee may be assessed if the annual fee billed remains unpaid on the last day of the month.

F. Late Charge on Unpaid Annual Fee

Payments received by the Agency after the payment dates prescribed in this section and supported by §3555.107(i) of 7 CFR 3555 shall include a late charge of four percent of the unpaid fee amount.

In addition to the initial late charge provided, the lender may be assessed an additional late charge on any annual fee remaining unpaid after the last day of the month in which payment was due. This additional late charge will be one percent of the unpaid annual fee amount. Late charges cannot be passed on to the borrower.

G. Period Covered by Annual Fee

The initial annual fee shall cover the period effective with the first day of the calendar month following the settlement date and ending on the last day of the settlement anniversary month. Subsequent annual fee payments shall cover the twelve-month period preceding each subsequent anniversary date.

H. Duration of Annual Fee

The lender shall pay the annual fee to the Agency until termination. Termination of a loan must be reported to the Agency within 15 days of the actual event. Termination may be any of the following:

- When the mortgage reaches maturity;
- At prepayment. The borrower paid the mortgage in full prior to the maturity date or by an approved short payoff;
- Foreclosure. The property was acquired by a lender or third party at a foreclosure sale;

- Voluntary conveyance. The property was conveyed to the lender through an approved deed-in-lieu of foreclosure agreement.

I. Pro rata payment of the annual fee

If the loan note guarantee is terminated prior to the due date of the annual fee due, the lender shall pay a prorated portion of the fee. The annual fee is prorated monthly beginning with the month preceding the settlement date. The lender must determine how many months of the scheduled annual fee period have elapsed at the time of termination. Regardless of what day of the month the loan is terminated, the entire month in which termination occurs will be included in the prorated calculation.

If the loan note guarantee is terminated after the due date of the annual fee payment, the lender shall pay a prorated portion of the annual fee. The calculation will be prorated from the due date of the last annual fee to the date of termination.

A pro rata annual fee will also be due and payable after a foreclosure is complete. The lender shall pay a portion of the annual fee prorated from the due date of the last annual fee to the date of settlement.

J. Method of Payment of the Annual Fee

Payment of the annual fee will be remitted electronically. Implementation and technical guides to explain electronic payment of the annual fee may be found on the USDA LINC website at the Training and Resource Library link:

<https://usdalinc.sc.egov.usda.gov/RHShome.do>

K. Nonpayment of the Annual Fee

If for any reason the lender fails to pay the scheduled annual fee payment, submitted loss claims may be reduced by the cumulative amount of unpaid annual fees, late fees and/or additional late charges due the Agency.

Lenders are subject to termination of their eligibility to participate in the SFHGLP due to nonpayment of the annual fee in accordance with §3555.52(c)(1) of 7 CFR 3555 and Chapter 3 of this Handbook.

16.6 AGENCY REVIEW OF CLOSING DOCUMENTS AND ISSUANCE OF THE GUARANTEE

The Agency will review the required loan closing documents to ensure completion, and that the lender has certified all requirements specified on *Form RD 3555-18/18E* have been satisfied. There are three possible outcomes of this review as described below:

A. Incomplete Closing Documents

If the Agency determines that the closing documentation is incomplete, or that there are correctable errors in the loan closing documents, the lender may be granted up to 30 days to correct the situation. The lender will be notified of incomplete packages in writing, typically by e-mail, and, if necessary, by regular mail. Agency staff should make every effort to contact the lender and determine the time required to provide the necessary documentation. While the burden of submitting a complete closing package is on the lender, Agency staff should be cognizant that the lender cannot satisfy investor requirements without possession of the Agency's loan note guarantee. If the loan package is not complete within 30 days, and the account is in default, the Conditional Commitment will not be honored. If the problems with the package cannot be completed within the 30 days granted the lender, the entire loan package will be returned.

B. Acceptable Closing Documents

If all of the closing documents are acceptable, the Agency will issue the loan note guarantee within 10 business days of receipt of the closing package. For those closings submitted without benefit of the Agency's electronic loan closing process, the Agency staff will prepare *Form RD 451-2*, "*Schedule of Remittances*" to transmit the guarantee fee to the Deputy Chief Financial Officer via the "Lock Box." Lenders that utilize the electronic method of loan closing will submit their guarantee fee electronically through a pre-authorized debit. A system generated *Form RD 3555-17E*; "*Loan Note Guarantee*" will be issued to lenders, which is the official loan guarantee document. Agency staff will enter the information into the Guaranteed Loan System when the closed loan meets the conditions set forth in the conditional commitment. The loan note guarantee does not take effect until *Form RD 3555-17/E* is executed or issued by the system generated method. The Agency will send *Form RD 3555-17/E* and the "Loan Amortization Schedule," which outlines applicable annual fees due on the loan, to the lender as an attachment to the promissory note. For those transactions not submitted through the Agency's electronic loan closing, the Agency will transmit the executed *Form RD 3555-17* and the "Loan Amortization Schedule" electronically. The Agency retains a copy of *Form RD 3555-17* for the Agency's imaging repository. For lenders utilizing the electronic loan closing a workflow action will notify the lender to retrieve *Form RD 3555-17E* and the "Loan Amortization Schedule" upon issuance.

C. Unacceptable Closing Documents

The Agency will not issue the loan guarantee if there are significant errors in the closing documents, or if the loan does not meet all program requirements. For example, if the lender failed to meet all of the conditions set forth on *Form RD 3555-18/18E* or if the lender failed to obtain first lien position, the loan will not be eligible for a guarantee.

The loan note guarantee will not be issued in the event the applicant receives cash back at closing in excess of the amount the borrower paid out of pocket for costs such as a deposit, earnest money, an appraisal, or other allowable items that may be financed with the loan being guaranteed. Loan funds or seller paid concessions may not be disbursed to the applicant(s). Lenders have the opportunity to correct oversights and unauthorized use of loan funds. If the lender can make the necessary corrections, the Agency will ensure the loan meets regulatory requirements prior to issuance of the loan note guarantee.

Correction of loans closed for higher loan amounts and/or interest rates than authorized on the conditional commitment:

Lenders may:

1. Request USDA to release the loan back to the approved lender to increase the loan amount and/or interest rate to match the promissory note, or
2. Provide USDA with a loan modification to match the loan amount and/or interest rate authorized on the issued commitment.

Correction of loans that have released unauthorized loan funds to the borrower at loan closing:

Lenders may apply the amount of the unauthorized loan funds directly to the principal loan balance. Documentation of the amount applied must be submitted to USDA.

Loan fees paid by the applicant(s) with credit cards or other short terms loans may not be reimbursed at closing. If the lender is required to reimburse an applicant as the result of erroneous preparation of the Loan Estimate funds may be provided directly to the applicant since it represents a penalty due from the lender.

If the Agency determines the loan note guarantee cannot be issued, the Agency will notify the lender of the reasons and provide review and appeal rights as described in Appendix 3. Guaranteed loan funds will not be deobligated until all appeal rights have been concluded, even if this process continues across fiscal years. If the Agency is upheld on appeal, Agency staff will de-obligate the funds in GLS. If the Agency's decision to deny the loan is overturned, the approval official will immediately take the necessary steps to issue the loan note guarantee.

16.7 CLOSING DATE

The date of closing will be defined as the closing date listed on the Closing Disclosure. The closing date will be captured on the *GLS Add Loan Closing* screen.

Borrowers may elect an interest credit settlement, where interest will be paid at closing to the previous first day of the month. The maturity date for this type of settlement will be slightly less than 30 years. Example: Borrower closes loan October 3, 2011. For most loan closing settlements, interest would be paid from the settlement date to the beginning of the next month, November 1, 2011. The first payment would be due

December 1, 2011. The maturity date would be November 1, 2041. Should the borrower elect an interest credit settlement, fewer funds are required at closing. Interest would be paid to the previous first day of the month, October 1, 2011. The first payment would begin November 1, 2011 and the maturity date would be October 1, 2041 in this example.

16.8 DUPLICATE LOAN NOTE GUARANTEE

It remains the lenders responsibility to inform the Agency of the delivery address to where *Form RD 3555-17/E* and the “Loan Amortization Schedule” should be sent. The preferred method is electronically. Lenders should include this information with the loan note guarantee request. For lenders utilizing electronic loan closing, the lender will be notified by the Agency when the guarantee and loan amortization schedule are ready for retrieval.

Occasionally a lender may request a certified copy or a duplicate original of *Form RD 3555-17*. Many investors accept a certified copy, or scanned copy, while others require a duplicate original. A lender’s request for a certified copy, scanned copy or duplicate original of *Form RD 3555-17/E* will be honored. Lenders who utilize the electronic loan closing method may retrieve the form through GLS. This type of duplicate will be identified as a “Reissued Loan Note Guarantee.”

16.9 SELLING LOANS

Lenders may sell guaranteed loans to other USDA approved lenders by following the requirements described in Chapter 4 of this Handbook.

16.10 ACCEPTABLE LIEN POSITION

The guaranteed loan must have first lien position at closing; however, the lender may permit liens junior to the guaranteed loan as long as:

- The lien will not interfere with repayment of the loan and has been considered in the underwriting process;
- The total value of all liens on the property is less than or equal to the property’s market value, except when a “soft-second” for down payment or closing costs assistance creates the overage; and
- The junior lien is for an authorized loan purpose.

16.11 OWNERSHIP REQUIREMENTS

A. Lender and Agency Responsibilities

After closing, the lender must compare the deed of trust or real estate mortgage with the title opinion to assess lien priority, assure the collateral is accurately covered, verify the date and time record, and ensure that the loan closing instructions have been followed. The Agency does not set policy for survey requirements; however, it is the lender's responsibility to ensure that ownership interest that protects the security property has been obtained after the loan is closed. If the borrower defaults on the loan, the lender must be able to foreclose on the property to settle the debt. If the lender failed to obtain all required security, the originating lender may be subject to indemnification if a loss claim request is made to reflect the lender's failure to meet the lien requirements.

B. Acceptable Forms of Ownership

The two forms of ownership acceptable to the Agency are fee-simple and secure leasehold.

1. *Fee-Simple Ownership*

The most common form of ownership is fee-simple where the borrower holds a fully marketable title to the property. This title is evidenced by a deed that vests full interest in the property to the borrower as mortgagor.

2. *Secure Leasehold Interest*

Although fee-simple ownership is preferable, the borrower may have a secure leasehold interest in the property. Leasehold interests are acceptable when all of the following conditions are met.

- The applicant must be unable to obtain fee-simple title to the property, and the rent charged for the lease must not exceed the rate paid for comparable leases. This must be documented in the appraisal;
- The lessor must own the fee-simple title. This provision does not apply to a lessor who is a Native American possessing a leasehold interest on restricted land. Trust or restricted land must remain in trust or restricted status. In these cases, the mortgage, deed of trust, leasehold interest or other security interest must be approved by the Secretary of the Interior. Each State should issue a supplement to give guidance about making loans under these circumstances;

- Leasehold estates are an accepted practice and readily marketable in the area where the subject property is located;
- Neither the leasehold nor the fee-simple title may be subject to a prior lien unless the Agency authorizes acceptance of the prior lien before loan approval;
- The lease is recorded;
- The lease must be in writing, and contain all of the following provisions:
 - The lessor's consent to allow the lender's mortgage;
 - The right of the lender to foreclose and sell the property without restrictions that adversely affect the market value of the property;
 - The right of the lender to bid at a foreclosure sale or to accept voluntary conveyance of the property in lieu of foreclosure;
 - The right of the lender to occupy, sublet, or sell the property should the leasehold be acquired through foreclosure, voluntary conveyance, or abandonment;
 - The right of the borrower to transfer the leasehold and lender mortgage to an eligible transferee who will assume the lender's debt if the borrower defaults or is unable to continue with the lease;
 - A negotiated agreement with the lessor before the leasehold interest is approved regarding the lender's obligation to satisfy unpaid rent or other charges accrued before or during the time the lender has possession of or title to the leasehold. During negotiations, the lender should consider the length of time it will take to foreclose, how much the Agency would be responsible for, and when the lender would have to pay;
 - Fair compensation to the borrower for any part of the property taken by condemnation; and
 - The unexpired term of the lease must be at least 150 percent of the term of the mortgage.
- The language regarding amendments to mortgages with leasehold interests, specified in Attachment 16-B of this Chapter, must be inserted in the mortgage.

C. Insurance Policy Requirements

1. Hazard Insurance

Until loans are paid in full, lenders must ensure that borrowers continuously maintain hazard insurance on the collateral to protect against fire and weather-related damage. A hazard insurance policy must be in force at the time the loan is closed. A policy must document if the dwelling is on a leasehold to ensure state laws regarding insurance requirements are met.

Lenders should adopt accepted industry standards for hazard insurance as noted below:

- Hazard insurance providers should have ratings in accordance with the most recent Government Sponsored Enterprise (GSE) requirements;
- Hazard insurance policies should conform to the GSE coverage requirements of “the standard extended coverage endorsement,” which states that a policy cannot be accepted that in whole or part excludes wind, hurricane or catastrophe insurance unless the coverage is provided in another policy with the same coverage limits as the hazard policy;
- Borrower occupied properties should have replacement cost coverage in an amount equal to the insured value of the improvements or the unpaid principal balance with deductible(s) which does not exceed the greater of either \$1,000 or 1 percent of the policy coverage, or the minimum deductible offered by the borrower’s chosen insurance carrier.

2. *Flood Insurance*

If a dwelling is located in a Special Flood Hazard Area (SFHA,) as identified by the FEMA, the community must be located within a National Flood Insurance Program (NFIP) participating community and the borrower must obtain flood insurance. The lender must ensure the borrower continuously maintains flood insurance for the life of the loan and that the policy is in force at the time of loan closing. Flood insurance must cover the lesser of the outstanding principal balance of the loan or the maximum amount of coverage allowed under NFIP. Unless a higher amount is allowed by state or federal law (which includes FEMA policies), the maximum deductible clause for a flood insurance policy should not exceed the greater of \$1,000 or 1 percent of the face amount of the policy. Existing dwellings for the SFHGLP are eligible if flood insurance is available. In accordance with §1970.256(c) of 7 CFR part 1970, alternative site analysis are not required for existing properties within a floodplain. Additional requirements, in accordance with Chapter 12 of this Handbook may be required when a property is not served by a public sewer system.

**Guaranteed Rural Housing
Loan Closing Stacking Order Checklist**

Lender Instructions: Submit the identified documents in the order noted with the first document in the bundle being this Attachment. **Submit only the identified documents.** Include complete documentation to ensure an effective file flow. Documents must not exceed the maximum allowable age set forth in 7 CFR 3555 and accompanying Handbook. Rural Development will consider all documents submitted as the certified and true copies of the original documents retained in the lender's permanent file. All copies must be legible. The lender will submit the closing documents and fee so it is received by Rural Development within 30 days of loan closing. The preferred method of delivery is through use of the Agency's automated Lender Loan Closing. Lenders, who have yet to activate LLC, should use the electronic delivery to Rural Development. See <https://usdalinc.sc.egov.usda.gov/USDALincTrainingResourceLib.do> for electronic delivery information by state.

In the subject line identify the case by: Loan Closing: Borrower Last Name, First Name

General Information

Applicant(s):	Date:
RD Borrower ID:	
Lender Name:	Lender Point of Contact: <i>[Identify who to contact with questions on the closing package, documentation, and/or corrections required]</i>
Phone #:	Fax #: Email:

Identify Delivery Location of Loan Note Guarantee
[Preferred method: Automated Lender Loan Closing]

Electronic Delivery/Email:	
Regular Mail Delivery:	Attn:

File Stacking Order Checklist
Post Loan Closing – Issuance of Loan Note Guarantee

Please stack the loan closing package in the following document order:

	<p>Form RD 1980-19, "Loan Closing Report"</p> <p style="text-align: right;">Note: This form is not required if Lender is participating in automated lender loan closing. The date of closing is defined as the settlement date as it appears on the Closing Disclosure.</p>
	<p>Guarantee Fee – Payable to USDA or Rural Development – <i>Include a copy of Page 1 - Form RD 3555-18/18E</i></p> <p style="text-align: right;">Note: Lenders participating in automated lender loan closing will utilize pay.gov to submit the guarantee fee. If not an automated lender loan closing lender, when submitting electronically, submit the paper check to the physical location noted within the "Electronic Doc Delivery" document located at https://www.rd.usda.gov/programs-services/lenders/usda-linc-training-resource-library with a copy of Form RD 1980-19, "Loan Closing Report".</p>
	<p>Form RD 3555-18/18E, Lender Certification</p> <p><i>Lender is certifying all conditions listed or appearing on the commitment and/or GUS Underwriting and Findings Report for this applicant have been fulfilled, the security instrument has been recorded and is a good and valid first lien on the property described.</i></p> <p style="text-align: right;">Note: Lenders participating in automated lender loan closing are not subject to submittal of this certification. For those lenders submitting manually, complete form and execute. Identify servicer and investor, if known. Include all Attachments to Form RD 3555-18. Inspections, plans, warranties are retained in the lender's permanent file.</p>
	<p>Promissory Note, <i>copy with appropriate riders, if any</i></p> <p style="text-align: right;">Note: The loan amount of the Promissory Note must be equal to or less than the amount identified on Form RD 3555-18. The interest rate must be equal to or less than the rate identified on Form RD 3555-18.</p> <p>Note: Increases to the loan amount, interest rate, monthly liabilities, or other adverse conditions after issuance of Form RD 3555-18/18E must be approved by RD prior to loan closing.</p>
	<p>Final Closing Disclosure, <i>copy of final</i></p> <p style="text-align: right;"><i>The submitted form does not require signature.</i></p>
	<p>Additional Conditions, <i>as noted on Form RD 3555-18/18E, or supplemented by Attachment</i></p> <p style="text-align: right;">Submit documentation of required conditions, as applicable. Those conditions indicating the lender should "Retain in Lender's Permanent File" should not be included in post-closing documents.</p>

ATTACHMENT 16-B
AMENDMENTS TO MORTGAGES WITH LEASEHOLD INTEREST

The following paragraphs must be inserted in the mortgage. The first paragraph should be placed directly before the legal description of the real estate.

“All Borrower’s right, title, and interest in and to the leasehold estate for a term of _____ years beginning on _____, 20____, created, executed and established by certain Lease dated _____, 20____, by _____, Page _____ of _____ Records of said County and State, and any renewals and extensions thereof, and all Borrower’s right, title, and interest in and to said Lease, covering the following real estate.”

“Borrower will pay when due all rents and any and all other charges required by said Lease, will comply with all other requirements of said Lease, and will not surrender or relinquish any of Borrower’s right, title, or interest in or to said leasehold estate or under said Lease while this instrument remains in effect.”