

**CHAPTER 4: LOAN GUARANTEE**

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**APPLICATION PROCESSING**

**SECTION 1: AN OVERVIEW OF THE PROCESS**

**4.1 PURPOSE**

This chapter describes the process to obtain a guarantee.

**SECTION 2: THE NOTICE OF PROGRAM FUNDING PROCESS**

**Key Topics in this Section**

- Notice is Published
- Project Proposals are Accepted by the Agency
- Proposals are Reviewed by the Agency for Fundamental Eligibility
- Selected Borrowers Receive a Notice to Proceed with Processing

**4.2 PUBLICATION OF GRRHP REQUIREMENTS**

The Agency will publish a notice in the Federal Register. The notice will state the amount of GRRHP funding available and the period it will be available.

**4.3 RESPONSE TO THE NOTICE**

In response to the Notice, lenders must submit a response to the Agency in the state where the proposed project will be located. The Agency reviews, scores and ranks the response. Lenders state in their responses the type of guarantee sought; Option One, the permanent financing guarantee; Option Two, the construction advances and permanent financing guarantee; or Option Three, the continuous guarantee. The lender must provide information that includes the project’s purpose, its location, and how it meets the established funding priorities. Lenders must submit their response to the Notice in accordance with Paragraph 4.4.

Lenders must submit responses during the prescribed period specified in the Notice. The Agency will determine the highest ranked responses based on priority criteria and a threshold score. Lenders with top ranked proposals will receive a “Notice to Proceed with Application Processing,” inviting them to submit a GRRHP application to the Agency where the project is located. Once the "Notice to Proceed with Application Processing" is issued, lenders have 90 calendar days from its receipt to respond with an application. Lenders withdrawing their requests for a guarantee must notify the Agency in writing. All lenders who submit a response to the Notice will receive a written response from the Agency within 30 calendar days of the receipt of the response.

#### 4.4 INFORMATION TO BE INCLUDED IN RESPONSE TO THE NOTICE

##### A. Descriptive Information

###### 1. *The Project*

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

###### 2. *The Proposed Financing*

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

### **3. *The Proposed Borrower***

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

### **B. Lender Eligibility and Approval Status**

The response must include evidence that the lender is either an approved lender in the GRRHP or that the lender is eligible to become an approved lender. If not approved, the lender can submit its application with the response to the Notice. The application must be received by the National Office no later than 30 calendar days of the lender's receipt of the "Notice to Proceed with Application Processing."

### **C. Competitive Criteria**

Information that shows how the proposal is responsive to the selection criteria specified in the Notice.

### **D. Lender's Commitment Letter**

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

## **4.5 AGENCY REVIEW OF THE RESPONSE TO THE NOTICE**

The Agency review of the response to the Notice is designed to assess preliminary eligibility and feasibility. A good project proposal is one that clearly and completely responds to the criteria set forth in the Notice. Project proposals will be returned if preliminary eligibility cannot be established. Preliminary eligibility means that the project meets the following criteria.

### **A. Was the Project Proposal on Time and Complete?**

Project proposals will be date stamped when first received by the Agency. The reviewer can refer to the date stamp on the project proposal to determine whether the proposal was received by the submission deadline specified in the Notice. Late and/or incomplete proposals will not be considered and will be returned to the lender.

**B. Is the Borrower An Eligible Entity?**

Eligible borrowers shall include individuals, corporations, State or local public agencies or an instrumentality thereof, partnerships, LLCs, trusts, Indian tribes, or any organization deemed eligible by the Agency. The ownership entity must be a valid entity in good standing under the laws of the jurisdiction in which it is organized. Borrowers must be U.S. citizens or permanent legal residents, a U.S. owned corporation, an LLC, or a partnership in which the principals are U.S. citizens or permanent legal residents. Borrowers and principals must not be delinquent on any other Federal debt. The Agency reviewer will determine whether these conditions are met. If these conditions are not met or are unclear, additional steps must be taken as outlined below.

The following resources are available to establish the borrower’s good standing with the Federal Government:

- Systems Award Management (SAM) ,” provides a monthly listing of all suspended and debarred individuals and is available on the Internet at <https://www.sam.gov/portal/SAM/#1>.



Once the site is entered, there are easy-to-follow user instructions that will guide the user through the SAM and main menu. A hard copy of this publication can be mailed to lenders without Internet access upon request to the Agency. The Agency shall verify that the borrower does not appear on the list and provide evidence in the file such as a print out of the SAM page with the date the records were checked and a copy of the AD-1047.

- HUD’s Credit Alert Interactive Voice Response System (CAIVRS) identifies all individuals with delinquent Federal debt. If CAIVRS indicates that the borrower has a delinquent Federal debt, the reviewer must verify with the point of contact that the information regarding the borrower is current. If the information is current and the borrower is delinquent, the borrower is ineligible. The Agency will inform the borrower of the reason for their rejection and provide the CAIVRS list’s point of contact telephone number.

The Agency reviewer will verify that there is satisfactory evidence that the borrower meets the other requirements of Paragraph 3.6.

**C. Is the Lender Eligible?**

Lenders requesting eligibility consideration per Paragraph 2.3 must submit an application to the National Office with supporting documentation within 30 calendar days of receiving the "Notice to Proceed with Application Processing" for the proposed GRRHP project. Information on the contents of an application for lender approval can be found in the Notice and Chapter 2. If a lender is deemed not eligible, the application will be rejected and returned to the lender.

**D. Is the Proposed Project Eligible?**

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

- Is the proposed project located in a designated rural area as defined for all RHS programs? (See Paragraph 1.6 for the definition.) Prior to submitting a response to the Notice, lenders should contact the

- Agency where the project is located to determine whether the project site is located within a designated rural area in that state.
- Are the proposed uses of funds for eligible purposes?
- Does the proposed financing comply with the requirements set forth in Chapter 3, Section 5 (including occupancy and rent limits, 207(c) limits, maximum loan term, interest rate, and loan-to-value ratios)?

#### 4.6 NOTICE TO PROCEED WITH APPLICATION PROCESSING

Complete responses to the Notice deemed eligible after the preliminary review for program requirements will be issued a Notice to Proceed with Application Processing (Notice to Proceed). The Agency will email a copy of the Notice to Proceed to the lender and follow up with a hard copy of the letter.

The Notice to Proceed will instruct the lender to contact the Agency staff to complete the application process. Once the lender contacts the Agency concerning the project, Agency staff will schedule a meeting with the lender, borrower, and other interested parties to review important programmatic, environmental, and civil rights requirements, using Attachment 4-E as a guide.

The Agency will continue to accept responses to the Notice and issue Notices to Proceed until all available funds have been obligated or until the deadline announced in the Notice.

After the Notice to Proceed has been issued, changes in the borrower entity or substitution of the lender with another approved lender are permitted with prior Agency approval, so long as the loan purpose, scope of project, location, and terms related to scoring and ranking remain unchanged. The original lender must transfer the Notice to Proceed to the substituting lender, and the new lender must issue a commitment letter for the project.

Any costs incurred in the transfer of a Notice to Proceed from one lender to another approved lender cannot be charged to the project. The original lender may charge a fee to the borrower or the substituting lender for its work on the project that is being transferred to another approved lender. However, in no way will this cost be charged to the project. If the original lender is unwilling to transfer the Notice to Proceed, then the new lender must submit a new response to the Notice. Incomplete responses to the Notice will be sent to the lender with a letter notifying the lender of the incompleteness of the proposal. Lenders may resubmit the response to the Notice for consideration in the same fiscal year if the submission date for Agency review of responses to the Notice has not expired. A response to the Notice that has been resubmitted will be treated as a new response and will receive a new Agency receipt date.

### SECTION 3: APPLICATION FOR THE GUARANTEE

#### Key Activities Discussed in this Section

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

#### 4.7 PURPOSE OF THE APPLICATION

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

##### A. The Proposed Project Meets the GRRHP Threshold Requirements

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

- Evidence that the owner and development team have the qualifications and experience sufficient to carry out development, management, and ownership responsibilities.
  - Evidence that the property is located in an eligible rural area.  
(<https://eligibility.sc.egov.usda.gov/eligibility/welcomeAction.do?pageAction=sfp&NavKey=property@12>)
- Evidence of readiness to proceed, including submission of a complete application for a guarantee, with evidence of at least a proposed conditional commitment from the lender for financing.
- Evidence of market and financial feasibility.
- Evidence the loan is reasonable for the given borrower.
- Evidence that the loan risk is reasonable, taking conventional lending practices into account.
- Evidence that the loan risk is reasonable given factors related to concentration of risk in a given market.

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

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

- The borrower and the lender are both eligible to receive a guarantee under the option selected.

The lender has conducted its due diligence, and the results have been taken into consideration in the appraisal.

- The application fee is paid, if applicable
- The Agency has completed a satisfactory environmental review required under NEPA in accordance with RD Instruction 1970 and its associated RD Instructions.

#### **4.8 APPLICATION FORM AND DOCUMENTATION**

The lender is responsible for preparing an application that is complete and accurate. The lender must submit the application to the Agency where the project is located. The Section 538 GRRHP Application Checklist is Attachment 4-A. The application is comprised of two components: (1) the lender's certification and (2) exhibits and supporting information to the lender's certification. The lender is encouraged to schedule a meeting with the Agency prior to submission of the application to discuss transaction milestones and deadlines.

##### **A. The Lender's Certification**

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

- The information contained in the exhibits is consistent with the lender's underwriting and loan making standards;
- The lender has completed its review as required by Paragraph 4.10 and has identified any significant findings in a narrative attached to this certification; and
- The lender agrees to make a loan to the borrower for the proposed project, subject to the Agency's issuance of a guarantee.

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

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

Because the application, in many cases, will be prepared before working drawings and an appraisal are complete, the lender must submit proforma estimates at the application stage. Once the Agency issues a conditional commitment, the lender must submit complete documented information, as specified in that conditional commitment.

For more information about the complete requirements and documentation, see Chapter 3.

##### ***1. Forms Included in the Application Package***

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

*Form 400-1,-“Equal Opportunity Agreement”.*

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

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

*Form RD 1944-37, “Previous Participation Certification.”* This document describes a borrower’s prior experience with Federal assistance programs.

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

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

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

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

*Form HUD 9832, “Management Entity Profile.”* This form outlines the proposed management agent and their organizational structure and discloses any IOI relationships the management agent may have.

*Form HUD 935.2A, “Affirmative Fair Housing Marketing Plan (AFHMP) Multifamily Housing.”* This document is required of all federally guaranteed and assisted housing (except when the borrower is a federally recognized Indian tribe and the housing units will be located on land over which the tribe has sovereignty/civil jurisdiction). It describes the process borrowers will use to assure that marketing and outreach efforts are targeted at all persons, regardless of race or disability, who are eligible for admission to the available housing.

*AD 1047, “Certification Regarding Debarment, Suspension, and Other Responsibility Matters – Primary Covered Transactions.”* This document certifies that the borrower entity is not debarred from participating in Federal housing programs.



*AD 1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions."* This form is required of the general contractor and each subcontractor when the Agency is guaranteeing the construction loan.

## **2. Other Information Requested in the Application Package**

- Borrower information:
  - ◇ Financial statements with certification(s) (newly formed entities applying for an Option Two or Option Three guarantees do not need to provide financial statements at the time of application).
  - ◇ Credit report for the entity and any guarantor.
  - ◇ For any type of partnership, all organizational documents, including but not limited to the partnership agreement. Agency requirements should be contained in one section of the agreement and their location identified by the borrower or their attorney in a cover sheet.
  - ◇ For any type of corporation, all organizational documents, including but not limited to the Articles of Organization and its Operating Agreement.
- If the borrower is a nonprofit organization:
  - ◇ Tax-exempt ruling from the IRS designating them as a 501(c)(3) or 501(c)(4) organization. If the designation is pending, a copy of the designation request must be submitted.
  - ◇ Evidence of organization under State law or copies of pending applications.
  - ◇ A list of board members.
- If the borrower is a public body:
  - ◇ The enabling statute or the State law of organization.
- Project information:
  - ◇ Project name, location, number and type of units, the development team, property manager, lawyer, and syndicator. The development team includes the developer (including all principals), architect, and contractor.
  - ◇ Appraisal
  - ◇ Market Study.
  - ◇ Capital Needs Assessment (for rehabilitation loans only).
  - ◇ Reserve for Replacement Schedule.
  - ◇ State Clearinghouse comments or recommendations.
  - ◇ Certification that the lender has reviewed and approved the management plan and agreement and confirmed that they are consistent with Agency requirements.

Site plan, including contour lines.

- ◇ Plot plan.
- ◇ Floor plan of each living unit type and other type spaces.
- ◇ Building exterior elevations.
- ◇ Typical building exterior wall section.
- ◇ Description and justification of any related facilities and schedule of separate charges for related facilities, if any.
- ◇ Design development/working plans/construction specifications.
- ◇ Management plan and proposed management agreement.
  
- Project financing information:
  - ◇ Lender's conditional commitment on the lender's letterhead with lender's signature specifying the GRRHP option under which the project loan is to be guaranteed.
  - ◇ Lender's narrative.
  - ◇ Sources and Uses Comprehensive Evaluation (SAUCE) disc and hard copy (to be completed by the Agency) or comparable document.
  - ◇ A copy of the proforma budget detailing the first year and a typical year's operation.
  - ◇ *Form RD 1924-13, "Estimate and Certificate of Actual Cost"*.
  - ◇ Disclosure of any change in financing since response to the Notice submission.
  - ◇ Type of utilities and utility allowances (Attachment 4-D), if applicable.
  - ◇ Interest Credit Request, if applicable.
  
- Required environmental information:
  - ◇ Most current version of the ASTM Standard E 1528-14, Phase I Environmental Site Assessment Process published by the American Society for Testing and Materials (ASTM).
  - ◇ Compliance with historic and architectural laws, if applicable.
  - ◇ Comments regarding relevant off-site conditions.
  - ◇ Land survey.
  - ◇ *FEMA Form 086-0-32, "Special Flood Hazard Determination."*

#### **4.9 INTEREST CREDIT REQUEST AND DOCUMENTATION – IF APPLICABLE**

Interest credit (when available) requests must be made in the response to the Notice if interest credit is part of the proposed financing. Interest credit awards will be based on a numerical value earned on the scoring of priority criteria identified in the Notice. Lenders will be notified of interest credit awards in the Notice to Proceed with Processing. Lenders must justify the need for the interest credit award in the application package submitted to the Agency. Proformas with and without the interest credit award will serve as justification for the interest credit award.

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

##### **A. Amount of Interest Credit Subsidy**

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

##### **B. Demonstrated Need**

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

##### **C. Limits on Allocation of Interest Credit**

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

##### **D. Payment of Interest Credit**

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

The Agency is not obligated to fund the maximum allowable amount of interest credit. The use of the applicable federal rate to determine the interest rate has been eliminated by the enactment of the Housing and Economic Recovery Act of 2008. The lender and borrower have two alternatives for calculating the rate to the borrower:

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

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

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

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

Interest credit is established in accordance with *Form RD 1980-24, “Request Interest Assistance/Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender.”* *Form RD 1980-24* is due to the Agency no later than February 28 of each year. The calculation will be done in accordance with item 17, “Interest Payable.” The interest credit will be paid upon receipt and Agency approval of the form. The interest credit calculation and the request will be part of the project’s annual report (per Paragraph 7.6 C.) provided to the Agency. The interest will be calculated from the effective date of the permanent loan note guarantee until the end of the year, so interest credit will always be paid in arrears for interest credit accrued for the previous calendar year. The Agency will review the calculation for accuracy and then forward the document on to the Finance Office for processing. The formula for calculation is:

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

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

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

#### **E. Cancellation of Interest Credit**

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

#### **F. Closing of a Loan with Interest Credit**

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

Block 1: Enter Borrower’s Case Number.

Block 4: Enter 241.

Block 7: Enter the Promissory Note Rate.

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

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

This form will be completed for the sole purpose of assisting the Finance Office in the tracking of interest credit and will, therefore, not be completed in accordance with the *FMI* or signed by the borrower. This form will be submitted to the Finance Office when the *Form RD 1980-19*, “*Guaranteed Loan Closing Report*,” is submitted as described in Paragraph 4.17.

### **4.10 LENDER REVIEW OF THE BORROWER SUBMISSIONS**

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

#### **A. Borrower Eligibility**

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

**1. Acceptable Borrower Entity**

The lender will determine whether the borrower is an acceptable borrower entity by reviewing the following documents.

- **Draft organizational documents.** This includes the organizational documents or a Certificate of Good Standing if the borrower is an existing organization.
- **Certification Regarding Debarment.** The lender will have already checked the list of debarred individuals against the applicant's *Form RD 1944-37* when the project proposal was first submitted. This certificate by the borrower on *Form AD-1047* or *AD-1048* must confirm the borrower's status as an entity in good standing with the Federal Government. The website to confirm this information is <https://www.sam.gov>.

**2. IOI Disclosure**

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

**3. Certification Regarding Debt Collection**

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

**B. Project Eligibility**

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

**1. Property Requirements**

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

The lender must submit the design development or final plans and construction documents to the Agency Architect who will review them for compliance with program design requirements. The State Architect must approve the plans prior to issuance of an Agency obligation of funds.

**2. Clear Title and Necessary Local Approval**

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

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

## **C. Project Feasibility Analysis**

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

### ***1. Sources and Uses Comprehensive Evaluation (SAUCE) or a Comparable Document***

The Agency SAUCE program is a software tool to help underwriters determine whether the projected income stream will match projected costs. The lender must conduct a feasibility analysis using SAUCE or a comparable document that the Agency will review. If the projected income and costs do not closely match, the lender or borrower must revise the project costs and rent structure to bring the two in line; otherwise, the project is not feasible.

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

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

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

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

### **3. Management Systems**

The lender must certify that the borrower has adequate systems to manage the property successfully in accordance with Agency requirements. In order for an application to be approved, borrowers must show that they will provide professional management to ensure the successful operation of the project. The lender must evaluate the acceptability of the management proposed for the project by analyzing *Form HUD 9832* and the proposed management plan. Chapter 8 provides details on how to evaluate the management profile information.

## **4.11 AGENCY REVIEW OF THE LOAN GUARANTEE APPLICATION**

The analysis conducted at this stage is intended to verify and document feasibility and eligibility. Any changes to the proposal submitted in response to the Notice must be carefully considered to ensure that the project continues to meet the selection and priority criteria. The application review consists of eight parts as listed below.

### **A. Determination that the Loan Guarantee Application Package is Complete**

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

### **B. Environmental Review by Agency**

The lender will provide the Agency with the information required for the environmental review process. The environmental review process must be concluded by the Agency in accordance with National Environmental Policy Act (NEPA) of 1969 and 7 CFR part 1970 and its associated RD Instructions prior to taking any official action on an application for a loan guarantee. The RHS processing office will begin the environmental review process as soon as supporting documentation is received from the lender and borrower. The required information that must be provided by the lender and borrower is listed under Paragraph 4.8 B.

### **C. Civil Rights Impact Analysis**

The Agency will conduct civil rights impact analyses to determine whether proposed actions will negatively and disproportionately affect minorities, women, or persons with disabilities, who are employees, program beneficiaries, or applicants for employment or program benefits in USDA conducted or assisted programs, by virtue of their race, color, sex, national origin, religion, age, disability, or marital or familial status. At the time of the site visit, a trained staff member will complete *Form RD 2006-38, "Environmental Justice (EJ) and Civil Rights Impact Analysis Certification"*. The State Civil Rights Coordinator and, as necessary, the State Environmental Coordinator, will be consulted if problems are noted. RD Instruction 2006-P provides further guidance on these requirements.

### **D. Review of Other Federal Requirements**

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





**E. Review of Affirmative Fair Housing Marketing Plan (AFHMP)**

As part of the application, borrowers (except when the borrower is a Federally recognized Indian tribe and the housing units will be located on land over which the tribe has sovereignty/civil jurisdiction) must submit to the lender *Form HUD 935.2A* to describe their marketing plan for the project. The intent of this plan is to ensure that eligible persons and families are made aware of the availability of GRRHP multifamily rental housing units. While the lender must review the submission, the Agency must approve and sign this form. An approved AFHMP must be posted in the rental office so that eligible persons and families will be made aware of the availability of affordable multi-family rental housing in the GRRHP.

The lender will use Exhibit 4-1 when reviewing the AFHMP. This exhibit describes the plan and provides guidance on what to look for in each part. The Agency may require revisions to the plan if any changes need to be made based on the Agency review.

**Required AFHMP Attachments**



- Copies of the specific page(s) from the census report on which the plan was based
- Photograph or drawing of the project sign
- Copies of the newspaper advertisement or sample of proposed advertisement
- Sample community contact letters
- Brochures, leaflets, or handouts used
- Written instructions provided to staff concerning Federal, State, and local fair housing laws and regulations as well as concerning the AFHMP

## Exhibit 4-1



**Actions to be Taken By the Lender  
in Reviewing the Affirmative Fair Housing Marketing Plan (AFHMP)**

- A. Part 1 of the plan provides general information about the borrower and the project's location.
  1. Make sure the Census Tract is identified. Copies of the specific page(s) from the census report on which the plan was based must be attached. The areas considered to be the market area should be identified (highlighted) by the borrower.
  2. Information on the rental rates should indicate the lowest to the highest rents. If there is rental assistance, the lowest rent should be shown as zero.
- B. Part 2 of the plan indicates whether the market area is a minority, non-minority, or mixed area. Verify that the response corresponds directly to the census data.
- C. Part 3 of the plan indicates the groups toward which the marketing efforts are going to be directed. It should also correspond directly with the census data and the community contacts that are identified.
- D. Part 4 describes the marketing program.
  1. Ensure that the borrower has indicated they will advertise on an annual basis.
  2. Check to see if minority newspapers have been considered as part of the advertising plan.
  3. Make sure the borrower has attached a sample of the proposed advertisement.
  4. Review any copies of brochures, leaflets, or handouts that the borrower intends to use. Review them to ensure the equal housing opportunity statement, logo, or slogan is used.
  5. A photo or rendering of the project sign must be provided. The dimensions of the project sign must be indicated and described in terms of feet and/or inches. The logo and the words "Equal Housing Opportunity" must be distinguishable in the photo or rendering. If it does not appear, recommend use of the accessibility logo.
  6. The proposed community contacts must reflect efforts directed towards groups identified in Part 3. Ensure each blank in this section is completed (address, phone numbers, etc.). The frequency of contacts must be stated, at a minimum, as "at least once annually" or "(date) and annually thereafter." Sample community contact letters must be attached.
- E. Part 5 describes future marketing activities. Make sure the borrower has indicated future marketing activities that include, as a minimum, "newspapers, a site sign, and community contacts."
- F. Part 6 describes the borrower's experience and the instructions given to staff regarding fair housing marketing. Make sure that the borrower has attached the instructions given to staff concerning Federal, State, and local fair housing laws and regulations, as well as instructions concerning the AFHMP.
- G. Part 7 describes additional considerations that are planned to outreach to groups not previously mentioned in the plan or to groups identified as least likely to apply for the housing. If this plan is for an elderly project, the borrower must have included community contacts for the disabled, who are also eligible to reside at the project. If for a family project, make sure they have included efforts to make the units with special design features known to mobility impaired persons.
- H. Part 8 is the signature block. It must be signed by the legal borrower or by the borrower's agent.

**F. Decision on Interest Credit Subsidy Awards, If Applicable**

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

**G. Decision on the Guarantee Amount**

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

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

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

**H. Determination that the Loan is Acceptable for a Conditional Commitment**

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

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

- The proposed interest credit rate, if applicable, is set in accordance with the alternatives presented in Paragraph 4.9 D.

#### **4.12 AGENCY DECISION**

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

If the Agency deems an application unacceptable, the application does not need to be sent to the National Office for review and concurrence.

Decisions on applications will normally be rendered within 90 calendar days of receipt of a complete application. In most cases, the Agency will be able to notify the lender of its decision in about 60 calendar days; however, the timing will vary depending on the intergovernmental review and the environmental assessments. If an application is determined ineligible to receive a conditional commitment, it will be returned to the lender. In this case, the Agency will send to the lender his/her appeal rights along with the rejection letter explaining the reasons for rejection. Approved applications will receive a conditional commitment as discussed in Paragraph 4.13.

### **SECTION 4: ISSUANCE OF A CONDITIONAL COMMITMENT**

#### **4.13 GENERAL REQUIREMENTS**

A conditional commitment to guarantee the loan will be made upon an Agency determination that:

- The borrower and the lender are both eligible under the GRRHP;
- All other program requirements have been met;
- The lender has determined that the project is financially feasible and has made a conditional loan commitment;
- The Agency has completed a satisfactory environmental review required under NEPA, in accordance with RD Instruction 1970 and its associated RD Instructions; and
- The application fee has been paid, if required.

If a project cannot meet all of the above conditions, then a conditional commitment will not be issued to the lender, and funds will not be obligated to the project.

*Form RD 3565-2, "Conditional Commitment"*, is an agreement between the Agency and the lender in which the Agency agrees to guarantee the loan at a future date, if the conditions in the commitment are met within the term specified in the Conditional Commitment. Prior to the issuance of a Conditional Commitment, the Agency will complete and execute the "*Request for Allocation of FY 20XX Section 538 Loan Funds*" form (this form is updated each fiscal year) for the proposed project. This form, which constitutes an obligation request, along with the summary page of the response to the Notice Priority Score Worksheet is faxed or emailed to the National Office for allocation and obligation of loan guarantee funds. Once the Agency receives the signed and approved *Request for Allocation of FY 20XX Section 538 Loan Funds* form back from the National Office (confirming the National Office has allocated and obligated funds), it may issue the Conditional Commitment. The Director, Multifamily Housing, Guaranteed Loan Division, is the loan guaranteed funds obligation approval authority.

#### 4.14 TERMS OF CONDITIONAL COMMITMENT

The conditional commitment is valid for the length of time specified in the commitment letter not to exceed 24 months which is the maximum term of the commitment. If a commitment has been issued for fewer than 24 months, it may be extended up to 24 months.



On a case-by-case basis and after a thorough due diligence, the State Director may grant an extension to a loan commitment period for a project deemed to remain viable. If it is in the Government's best interest, the State Director may extend a conditional commitment up to 12 months beyond the initial 24-month period (the total cumulative commitment period may not exceed 36 months). The extension must be requested by the lender prior to the expiration of the conditional commitment. The request must include a written justification for the extension and a certification from the lender that the failure to fulfill the conditions for the issuance of a permanent guarantee within the commitment period was beyond the control of the borrower [and the lender], and that those conditions can be fulfilled within the extension period. The lender must also certify that all application documents have been updated and are current, including but not limited to the initial credit and financial underwriting of the borrower and the project. Any changes or updates to the application documents must be submitted to the Agency for its review and approval prior to the issuance of a commitment extension. The lender will also be charged a flat fee [which will be defined by the Agency in a Notice published periodically in the **Federal Register**] for each extension that is granted.

If an extension beyond a cumulative 36-month period is requested and deemed warranted by the State Director, the extension request must be submitted to the National Office to the Director, Multi-Family Housing Guaranteed Loan Division, for review and concurrence. All supporting documentation must be submitted to the National Office along with the State Director's extension approval recommendation.

Please note that in cases where the Government has committed to issue an Option Two guarantee, the commitment extensions cannot to be used as a conduit to extend the construction guarantee period beyond the regulatory maximum of 24 months. The purpose of these conditional commitment extensions is not to extend the guarantee period for construction advances, but rather to extend the Government's commitment to issue a permanent guarantee once the conditions for a permanent guarantee have been met.

**A. Subsidy Layering Review (if applicable)**

Because the loan guarantee and interest credit assistance are government resources, the Agency must conduct a subsidy layering review on transactions that include interest credit. The SAUCE or other comparable document review completed by the lender as part of the application will be reviewed by the Agency in accordance with Paragraph 4.10 C.1. at the conditional commitment stage, with an updated review at the permanent loan closing. The Agency can also rely upon any subsidy layering reviews conducted by state housing finance agencies.

**B. Guarantee Fee, Application Fee and Annual Guarantee Renewal Fee (If Applicable)**

If Congress has authorized it and the program requires it, at the issuance of the Loan Note Guarantee, the lender must pay a loan guarantee fee. The guarantee fee is calculated as a percentage of the note principal amount times the percentage of guarantee.

The guarantee fee will be defined by the Agency in a Notice published periodically in the **Federal Register**. Where the lender intends to make an Option Two guaranteed loan, the guarantee fee is calculated as a percentage of the sum of the note principal actually disbursed for all approved draws multiplied by the percentage of guarantee. Although the fee is paid by the lender, it may be passed on to the borrower.

A sample of the calculation of the guarantee fee is discussed in Paragraph 6.1 and 6.2 A. The guarantee fee is to be collected by the Agency at closing of the loan and transmitted to the Finance Office on *Form RD 451-2, "Schedule of Remittances"*. Code "30" should be entered into the "Miscellaneous Collection" box, and it should be coded as a regular payment (R) in column #1 under "Loan Coding." The check and Form RD 451-2 will be sent by Agency staff to the address shown on the internal Rural Development staff website.

If authorized a payment of an application fee and an annual guarantee renewal fee will also be collected from the lender. These fees will also be defined by the Agency in a Notice published periodically in the **Federal Register**.

**C. Transactions Backed by Ginnie Mae**

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

**D. Termination of the Conditional Commitment**

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

**Withdrawal of an Application.** The lender must notify the Agency immediately of its intention to withdraw an application. In this case, the Agency will retain the loan application fee. The Agency will prepare *Form RD 1940-10, "Cancellation Of U.S. Treasury Check and/or Obligation"* and fax it to the National Office to request the de-obligation of funds to the project. National Office staff will de-obligate the funds to the project in the GLS. The de-obligation request will be faxed back to the Agency with the date and initials of the person in the National Office who de-obligated the funds.

**Lapse of a Conditional Commitment.** If the loan guarantee is not issued within the period specified in the commitment letter, the commitment will automatically expire. On a case-by-case basis, the Agency may allow extensions of the loan commitment period following the procedure outlined in paragraph 4.14 of this handbook TERMS OF CONDITIONAL COMMITMENT.

#### **E. Substitution of Lender**

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

#### **F. Lender's Agreement**

The lender must execute *Form RD 3565-3, "Lender's Agreement,"* prior to the issuance of the loan guarantee, unless a current *Form RD 3565-3* is already on file with the Agency. The lender signs the Lender's Agreement with the Agency, which processes and closes the lender's first Loan Note Guarantee. The State Director or his designee will sign the Lender's Agreement on behalf of the Agency. The Agency will forward the original to the National Office and keep a copy of the Lender's Agreement on file. Once a lender has a signed Lender's Agreement with the Agency, a copy of *Form RD 3565-3* must be included in each subsequent submission of responses to the Notice for proposed projects. Lenders who have been active for a long period of time may be required to sign an updated Lender's Agreement.

#### **G. Loan Note Guarantee Agreement**

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

Even though the Agency provides a single, continuous guarantee for construction and permanent loans under Option Three, [7 *CFR* 3565.52(c)(3)], the Agency must nonetheless require confirmation

from the lender when construction is complete and its loan has transitioned from the construction financing phase to the [fully amortizing] permanent financing phase. The Agency will provide the Finance Office and National Office with a copy of the written confirmation of the conversion to the permanent guarantee phase of a transaction for their records.

## **SECTION 5: RESPONSE TO THE CONDITIONAL COMMITMENT AND LOAN CLOSING**

### **4.15 GENERAL CONDITIONS TO THE COMMITMENT**

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

As part of loan closing procedures, the Agency must review the lender's underwriting calculations, proformas, and mortgage documents for consistent use of the same interest rate in all documents. The lender must correct any discrepancy prior to loan closing.

Among the conditions specified in the conditional commitment, the lender must submit the following for Agency approval before loan closing occurs. Regional OGC review of these documents is mandatory for the issuance of the State's first Loan Note Guarantee and is encouraged thereafter.

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

### **4.16 DEVELOPMENT OF THE REGULATORY AGREEMENT**

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

As a part of the closing documents, the lender's attorney must certify that the regulatory agreement submitted for Agency review meets the requirements of this paragraph.

### **4.17 LOAN CLOSING**

Once the closing documents have been approved by the Agency, the lender should prepare a closing statement showing how funds will be disbursed and begin to coordinate and schedule the closing date for the loan. All conditions of the conditional commitment must be fulfilled prior to the issuance of the Loan Note Guarantee. If the loan is an Option Two guarantee, then the requirements of Section 6 of this chapter will apply, and the construction guarantee will only cover advances for construction. If the loan is an Option Three loan guarantee, the



guarantee will be issued in accordance with the requirements of Section 6 of this chapter pursuant to [7 CFR part 3565.212 and .305]. If the loan is an Option One guarantee, then the guarantee will be issued in accordance with Section 7 of this chapter. In addition to the regulatory agreement, *Form RD 3565-3* must be executed prior to the issuance of the guarantee. Once the loan is closed, *Form RD 1980-19* will be prepared by the lender, signed by both the lender and the Agency, and submitted to the Finance Office. If the loan will receive interest credit, *Form RD 3560-9* must also be completed and submitted in accordance with Paragraph 4.9. *Forms RD 1980-19* and *3560-9* and the executed Loan Note Guarantee will be faxed or emailed to the Finance Office, ATTN: Guaranteed Loan Branch. Contact the Agency for the current fax number or email address.

## SECTION 6: GUARANTEE DURING CONSTRUCTION

### 4.18 CONTINUOUS GUARANTEE AND CONSTRUCTION GUARANTEE AND RELATED RESERVES

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

Option Two guarantee. The Agency may provide a guarantee which will cover construction loan advances (advances) during construction. The maximum guarantee of construction advances related to a construction and permanent loan will not at any time exceed the lesser of 90 percent [or the percent established by the Agency and announced through a Notice in the **Federal Register**] of the amount of principal and accrued interest up to default for amounts which exceed the original advance for eligible uses of loan proceeds or 90 percent of the original principal amount and accrued interest up to default of the loan. The Agency's guarantee will cover losses to the extent aforementioned once all sureties/insurances and/or performance and payment bonds have fully performed their contractual obligations. A construction contingency reserve is required. This guarantee will be enforceable during the construction period but will cease to be enforceable once construction is completed unless and until the requirements for the continuation of the guarantee contained in the Conditional Commitment and this part are completed and approved by the Agency by the date stated in the Conditional Commitment and any Agency approved extension(s) (7 CFR 3565.303 (d)). The Agency will provide written confirmation to the lender when all of the requirements for continuation of the guarantee to cover the permanent loan have been satisfied. Any losses sustained while the guarantee is unenforceable (after the end of the construction period and, if applicable, before the continuation of the guarantee) are not covered by the guarantee. For purposes of this guarantee, the construction period will end on the earlier of:

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

Option Three guarantee. The Agency may provide a single, continuous guarantee for construction and permanent loans. Only projects that have low loan-to-cost ratios, which will be defined by the Agency in a Notice published periodically in the **Federal Register**, are eligible for this type of guarantee. A construction contingency reserve is required. If the lender opts to set up the lease-up reserve (in lieu of 90% occupancy for 90 continuous days), the lease-up reserve must be funded 30 days before the first Certificate of Occupancy is anticipated. This lease-up reserve is an additional amount, over and above the required initial operating and maintenance contribution. The maximum guarantee of construction advances will not at any time exceed the lesser of 90 percent [or the percent established by the Agency and announced through a Notice in the **Federal Register**] of the amount of principal and interest up to default advanced for eligible uses of loan proceeds or 90 percent of the original principal amount and interest up to default.

Under either Option Two or Option Three, the Agency will guarantee construction advances by the lender, not to exceed 90 percent of the work in place, if the lender provides acceptable credit enhancements. Acceptable credit enhancements include any of the following:

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

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

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

## **SECTION 7: PERMANENT GUARANTEE**

The requirements for issuing the permanent guarantee are identified below.

### **4.19 OCCUPANCY**

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

To calculate the required lease-up reserve amount, add the monthly amount of the Operations and Maintenance expense, the monthly amount of the Debt Service, and the monthly amount of the Reserve Deposit, then multiply this sum by three. The required lease-up reserve is a cash contribution and is an additional amount, over and above the required initial O&M reserve contribution which is defined in Paragraph 3.10 C. The Conditional Commitment must state the permanent guarantee will not go into effect until **EITHER** the lender provides RHS staff with copies of rent rolls showing occupancy levels at 90 percent for 90 consecutive days (90/90 test) or the lender fully funds a lease-up reserve using the calculation above.

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

#### 4.20 DOCUMENTATION REQUIREMENTS

The guarantee of a permanent loan provided under § 3565.52(c)(1) or (c)(2) will be issued once the following items have been submitted to and approved by the Agency:

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

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

(3) Documentation that either:

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

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

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

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

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

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

(5) A certificate of substantial completion;

- (6) A certificate of occupancy or similar evidence of local approval;
- (7) A final inspection conducted by a qualified Agency representative;
- (8) A final cost certification in a form acceptable to the Agency. *The cost certification establishes the actual construction costs incurred by the mortgagor and general contractor. If there is an identity of interest (IOI) between the sponsor and contractor, the cost certification must be performed by an experienced audit firm acceptable to the Agency. Where low income housing tax credits are a source of funding, the cost certification should be performed by the agency that awards the tax credits. All IOI and State agency cost certifications must meet the standards 7 CFR 1924.13. All contracts must also indicate that when any IOI exists or comes into being, the contractor agrees to have construction costs as reported to the Agency on Form RD 1924-13 audited by a Certified Public Accountant or Licensed Public Accountant licensed prior to December 31, 1970, who will provide an opinion as to whether the Form RD 1924-13 presents fairly the costs of construction in conformity with eligible construction costs as prescribed in Rural Development regulations. It is the responsibility of the lender to ensure that the borrower has properly completed a cost certification within 60 days of 100% final completion of the project.*
- (9) A submission to the Agency of the complete closing docket;
- (10) A certification by the lender that the project has reached an acceptable minimum level occupancy;
- (11) An executed regulatory agreement;
- (12) The Lender certifies that it has approved the borrower's management plan and assures that the borrower is in compliance with Agency standards regarding property management contained in subparts E and F of this part;
- (13) Necessary information to complete an updated necessary assistance review by the Agency under § 3565.204(c); and
- (14) Compliance with all conditions contained in the conditional commitment for guarantee.

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

The continuous guarantee will remain in effect once construction is completed. In order to remain in compliance with 7 CFR part 3565, the following items must be submitted to and approved by the Agency. The date that these items are due to the Agency must be indicated in the conditional commitment. A reasonable timeframe for submission of these items is 24 months. These items will be submitted to the Agency by the date stated in the Conditional Commitment and any Agency approved extension(s).

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

- (2) Cash flow certification—the lender certifies in writing the project’s cash flow assumptions are still valid and depict compliance with the section 538 program’s debt service coverage ratio requirement of at least 1.15, based on the lender’s analysis of current market conditions and comparable properties in the project’s market area;
- (3) Documentation that the funds required under § 3565.303(d), have been added to the lease-up reserve in an amount the Agency determines is necessary to cover projected shortfalls.
- (4) An appraisal of the property;
- (5) A certificate of substantial completion;
- (6) A certificate of occupancy or similar evidence of local approval;
- (7) A final inspection conducted by a qualified Agency representative;
- (8) A final cost certification in a form acceptable to the Agency;
- (9) A submission to the Agency of the complete closing docket;
- (10) A certification by the lender that the project has reached an acceptable minimum level occupancy;
- (11) An executed regulatory agreement;
- (12) The Lender certifies that it has approved the borrower’s management plan and assures that the borrower is in compliance with Agency standards regarding property management contained in subparts E and F of this part;
- (13) Necessary information to complete an updated necessary assistance review by the Agency under § 3565.204(c); and
- (14) Compliance with all conditions contained in the conditional commitment for guarantee.
- Evidence that the annual guarantee fee has been paid, if applicable.
  - A copy of the Option Three Loan Note Guarantee executed by the Agency with written confirmation from the Agency of the effective date of guarantee.
  - An executed regulatory agreement, if applicable.
  - A management plan that has been approved by the lender and is in conformance with Agency standards regarding property management.
  - Compliance with all conditions in the conditional commitment for guarantee.

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

**SECTION 8: TERMINATION OF THE LOAN GUARANTEE****4.21 REASONS FOR TERMINATION**

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

**A. Repayment of the Loan**

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

**B. Payment of a Claim**

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

**C. Voluntary Termination of the Guarantee Agreement by the Lender**

If a guarantee agreement is voluntarily terminated by the lender, the program restrictions must remain in place unless approved by the National Office pursuant to Paragraph 7.4.

**D. Non-compliance with Program Requirements**

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

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

◇ *Negligent Servicing*

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

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

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

◇ *Improper Sale*

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

**E. Fraud**

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

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

**ATTACHMENT 4-A**  
**SECTION 538 GRRHP APPLICATION CHECKLIST**

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

*The lender is responsible for preparing an application that is complete and accurate. The lender must submit the GRRHP application to the RHS Agency where the project will be located. The GRRHP application is comprised of two components: (1) a list of lender certifications and (2) exhibits and supporting information.*

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

- The information contained in the application is consistent with the lender's underwriting and loan making standards (HB-1-3565, Paragraph 4.8 A.).
- The lender has completed the lender's review as required by Paragraph 4.10 of the GRRHP Origination and Servicing Handbook and has identified any significant findings in a narrative attached to this certification (HB-1-3565, Paragraph 4.8 A.).
- The lender agrees to make a loan to the borrower for the proposed project, subject to the Agency's issuance of an appropriate guarantee option (HB-1-3565, Paragraph 4.8 A.).
- The lender must provide to the Agency a certification from the borrower that the borrower is not under any State or Federal order suspending or debaring participation in State or Federal loan programs and that the borrower is not delinquent on any non-tax obligation to the United States (HB-1-3565, Paragraphs 4.10 A.1. and A.3.).
- The lender must certify that the proposed loan amount (for such part of the property attributable to dwelling use) and the applicable maximum per unit dollar amount limitations under section 207 (c) of the National Housing Act have not been exceeded (HB-1-3565, Paragraph 4.11 H.).



- The lender must certify that the owner and development team have the qualifications and experience sufficient to carry out development, management, and ownership responsibilities (HB-1-3565, Paragraph 4.7 A.).
- The lender must certify that if it is applying for a continuous guarantee, the project has the appropriate low loan-to-cost ratio as determined by the Agency [7 CFR 3565.52(c)(3)].
- The lender must certify that the property is located in an eligible rural area (HB-1-3565, Paragraph 4.7 A.).
- The lender must certify that it has conducted due diligence and the results have been taken into consideration in the appraisal (HB-1-3565, Paragraph 4.7 B.).
- The lender must certify that it has reviewed and approved the management plan and agreement and confirmed that they are consistent with Agency requirements (HB-1-3565, Paragraph 4.8 B.2.).
- Prior to the issuance of the guarantee, the lender must certify that construction meets basic construction requirements (HB-1-3565, Paragraphs 5.3 through 5.12).

*(2) Exhibits and Supporting Information:*

*Forms to be included in the application package:*

- Form RD 3565-1, Application for Loan and Guarantee (HB-1-3565, Paragraph 4.8 B.1.).
  - Form RD 3565-3, Lender's Agreement.
  - 
  - RD Instruction 1940-Q, Exhibit A-2, Statement for Loan Guarantees (HB-1-3565, Paragraph 4.8.B.1).
  - Attachment 4-D, Housing Allowances for Utilities and Other Public Services (HB-1-3565, Paragraph 4.8 B.1.).
  - Form RD 1944-37, Previous Participation Certification (HB-1-3565, Paragraph 4.8 B.1.).
-

- Form RD 3560-30, Certification of No Identity of Interest (IOI), if applicable (HB-1-3565, Paragraph 4.8 B.1.).
- Form RD 3560-31, Identity of Interest Disclosure/Qualification Certification, if applicable (HB-1-3565, Paragraph 4.8 B.1.).
- Form RD 1910-11, Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts (HB-1-3565, Paragraph 4.8 B.1.).
- Form HUD 9832, Management Entity Profile (HB-1-3565, Paragraph 4.8 B.1.).
- Form HUD 935.2, Affirmative Fair Housing Marketing Plan (HB-1-3565, Paragraph 4.8 B.1.).
- AD 1047, Certification Regarding Debarment, Suspension, and Other Responsibility Matters – Primary Covered Transactions (HB-1-3565, Paragraph 4.8 B.1.).
- AD 1048, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions (HB-1-3565, Paragraph 4.8 B.1.) for the borrower, contractor, subcontractors and suppliers (HB-1-3565, Paragraphs 5.5, and 4.10 A.1.).
- FEMA Form 086-0-32, Special Flood Hazard Determination (7 CFR 3565.254, HB-1-3565, Paragraphs 4.8 B.2., 9.3, and 11.7 A.).
- Form RD 1924-13, Estimate and Certificate of Actual Cost (HB-1-3565, Paragraph 4.8 B.2.).
- Form RD 400-4, Assurance Agreement, (HB-1-3565, Paragraph 7.14 C.3.).
- Form RD 1924-25, Plan Certification Form, (HB-1-3565, Paragraph 5.7).
- Form RD 400-1, Equal Opportunity Agreement.
- Form RD 400-6, Compliance Statement.
- Form RD 400-3, Notice to Contractors and Applicants (prepared by the Agency).

*Other Required Supporting Information:*

*Borrower information:*

- Financial statements with certification(s) (newly formed entities applying for a construction/permanent guarantee do not need to provide financial statements at the time of application) (HB-1-3565, Paragraph 4.8 B.2.).
- Credit report for the entity and any guarantor (HB-1-3565, Paragraph 4.8 B.2.).
- Proposed limited partnership agreement and certificate of limited partnership (if applicable). Agency requirements should be contained in one section of the agreement and their location identified by the borrower or their attorney in a cover sheet (HB-1-3565, Paragraph 4.8 B.2.).
- If a corporate entity, its Articles of Organization and its Operating Agreement (HB-1-3565, Paragraph 4.8 B.2.).

*If the borrower is a nonprofit organization:*

- Tax-exempt ruling from the IRS designating them as a 501(c)(3) or 501(c)(4) organization. If the designation is pending, a copy of the designation request must be submitted (HB-1-3565, Paragraph 4.8 B.2.).
- Evidence of organization under State law or copies of pending applications (HB-1-3565, Paragraph 4.8 B.2.).
- A list of board members (HB-1-3565, Paragraph 4.8 B.2.).

*If the borrower is a public body:*

- The enabling statute or the State law of organization (HB-1-3565, Paragraph 4.8 B.2.).

*Project Information:*

- An application fee, if applicable (HB-1-3565, Paragraph 4.7 B.).
  - An appraisal and market study (HB-1-3565, Paragraph 4.8 B.2.).
-

- Project information including project name, location, number and type of units, the development team, property manager, lawyer, and syndicator. The development team includes the developer (including all principals), architect, and contractor (HB-1-3565, Paragraph 4.8 B.2.).
- Capital Needs Assessment (for rehabilitation loans only) (HB-1-3565, Paragraph 4.8 B.2.). Does the Capital Needs Assessment and Capital Improvement Plan call for a replacement reserve escrow that meets or exceeds the \$1,000/unit threshold by year three? If not, document underwriting explanation (7 CFR 3565.254 (b)(4), HB-1-3565, Paragraph 7.6 D.4.). Include a Reserve for Replacement schedule.
- State Clearinghouse comments or recommendations (HB-1-3565, Paragraph 4.8 B.2.).
- Site plan, including contour lines (HB-1-3565, Paragraph 4.8 B.2.).
- Plot plan (HB-1-3565, Paragraph 4.8 B.2.).
- Floor plan of each living unit type and other type spaces (HB-1-3565, Paragraph 4.8 B.2.).
- Building exterior elevations (HB-1-3565, Paragraph 4.8 B.2.).
- FEMA Form 086-0-33, Elevation Certificate.
- Typical building exterior wall section (HB-1-3565, Paragraph 4.8 B.2.).
- Description and justification of any related facilities and schedule of separate charges for related facilities, if any (HB-1-3565, Paragraph 4.8 B.2.).
- Design development/working plans/construction specifications (HB-1-3565, Paragraph 4.8 B.2.). Plans, specifications, and estimates must fully describe all of the work to be completed, including all landscaping, construction, repairs, and site development work. The plans must be clear and accurate with adequate dimensions and sufficient scale for estimating purposes.

Technical data, tests, or engineering evaluations needed to support the design of the development must be included (HB-1-3565, Paragraph 5.7).

*Property Management Information:*

- Management plan and proposed management agreement (HB-1-3565, Paragraph 4.8 B.2.).
- Details for managing a project with scattered sites (if applicable); completion of Form HUD 935.2; procedures for determining applicant eligibility; demonstrated capacity to manage the unique leasing occupancy restrictions of the guaranteed program; description of rent collection; lease provisions covering termination and eviction; provision of a copy of tenant protection and grievance procedures to tenants; description of security plan (7 CFR 3565.351 (b), HB-1-3565, Paragraph 8.4, and Attachment 8-A).
- Plans for maintenance, repair, replacement, tenant work requests, management and maintenance staffing plans; detailed compliance with Federal and state environmental laws; description of energy conservation measures including recycling; detailed management and maintenance staffing plans; information on staff training programs (7 CFR 3565.351 (b), HB-1-3565, Paragraph 8.4, and Attachment 8-A).
- Statement whether plan includes provision for access to project's books and records by USDA staff, USDA-IG, GAO, and the Department of Justice; information on accounting, record keeping, data systems, and software. (7 CFR 3565.351 (a)(7), HB-1-3565, Paragraph 8.4, and Attachment 8-A).
- Qualifications of the property manager (HB-1-3565, Paragraphs 8.6 and 8.7).

*Contractor Information:*

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

*Financing Information:*

- Lender's conditional commitment on the lender's letterhead with lender's signature specifying the GRRHP option under which the project loan is to be guaranteed (HB-1-3565, Paragraph 4.8 B.2.).
  - Sources and Uses Comprehensive Evaluation (SAUCE) disc and hard copy (to be completed by the lender) or a comparable document.
-

- Lender's narrative (HB-1-3565, Paragraph 4.8 B.2.).
- A copy of the proforma budget detailing the first year and a typical year's operation (Proformas with and without the interest credit award will serve as justification for the interest credit award.) (HB-1-3565, Paragraph 4.8 B.2.).
- Disclosure of any change in financing since response to the Notice submission (HB-1-3565, Paragraph 4.8 B.2.).
- Type of utilities and utility allowances (Attachment 4-D), if applicable (HB-1-3565, Paragraph 4.8 B.2.).
- Confirm that Operating and Maintenance (O&M) Reserve is at least two percent of the total loan amount (not just guaranteed portion). Calculation of O&M reserve for congregate care facilities and larger projects should reflect absorption rates in the market study to cover shortfalls between estimated operating budget calculations and rent-up assumptions. Funds contributed as O&M reserves are contributed from the borrower's own resources or an irrevocable letter of credit and are not to be included as part of the total development cost calculation. (7 CFR 3565.402 (a)(2), HB-1-3565, Paragraph 7.7 B and Paragraph 3.10 C).
- Confirm that the construction contingency equal to two percent of the construction contract, inclusive of the contractor's fee and hard and soft costs. This is to be funded at or prior to closing by the contractor (7 CFR 3565.402 (a)(2), HB-1-3565, Paragraph 7.7 B and Paragraph 3.10 C.).
- Make sure that the loan is properly classified in accordance with the following:
  - Existing property \_\_\_\_\_ (7 CFR 3565.252)
  - 515 Rehab \_\_\_\_\_
  - New construction \_\_\_\_\_ (7 CFR 3565.252)
  - Eligible rural area \_\_\_\_\_ (7 CFR 3565.251)
  - General site requirements \_\_\_\_\_ (7 CFR 3565.254)
  - General site standards \_\_\_\_\_ (7 CFR 3565.254)
- Provide evidence of adequate insurance for the project (7 CFR 3565.351, HB-1-3565, Chapter 9).
- Interest Credit Request, if applicable (HB-1-3565, Paragraphs 4.8 B.2. and 4.9).

*Environmental Information:*

- Most current version of the ASTM Standard E 1528-14, Phase I Environmental Site Assessment Process published by the American Society for Testing and Materials (ASTM), (HB-1-3565, Paragraph 4.8 B.2.).
- Compliance with historic and architectural laws, if applicable (HB-1-3565, Paragraph 4.8 B.2.).
- Comments regarding relevant off-site conditions (HB-1-3565, Paragraph 4.8 B.2.).
- Land survey (HB-1-3565, Paragraph 4.8 B.2.).

*Legal and Regulatory Items:*

- Standard Regulatory Agreement approved by the Agency. (7 CFR 3565.303 (d)(9)).
  - Non-Standard Regulatory Agreement(s) containing provisions for transferability between lenders, binding on the borrower and their successors (7 CFR 3565.351(a), HB-1-3565, Paragraph 4.17 and 7.14 D.1.), and requires that the borrower: make all principal and interest payments under the note, maintain the project as affordable housing in good physical condition; maintain complete project books and records; and comply with all Federal Fair Housing requirements under the terms of the note (7 CFR 3565.351(a)).
  - Confirmation in writing that the borrower is in compliance with the Affirmative Fair Housing Marketing Plan (7 CFR 3565.353, HB-1-3565, Paragraph 4.11 E., Exhibit 4-1, and Attachment 8-A).
  - Verify use of security instruments prepared, executed, recorded and/or delivered per program guidelines and in compliance with the terms of the conditional commitment (HB-1-3565, Attachment 4-C).
  - Verify use of the construction contract based on standard AIA Document A-101. If this document is used, it should be modified as described in Form RD 1924-25 or similar form (HB-1-3565, Paragraph 5.9).
  - Verify use of contract specifications, documents and forms. Use Form RD 1924-6 "Construction Contract" or similar document as required by Executive Order 11246, Non-Discrimination in Employment by Construction Contractors (HB-1-3565, Paragraph 7.14, Exhibits 7-4 and 7-5).
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IN SOME CIRCUMSTANCES

11. Lease(s) between Borrower and     (lessor's name)     for the rental of     (property being rented)    , (if real property, give the address of the premises; if machinery equipment, etc., give brief, precise description of property for a     (length of lease)     term commencing on     (date)    ).

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

1. Borrower is a duly organized \_\_\_\_\_ in good standing under the laws of the Commonwealth/State of     (State)    .
  2. Borrower has the necessary \_\_\_\_\_ power to authorize and has taken the necessary corporate action to authorize the Regulatory Agreement and to execute and deliver the Note, Security Agreement, Financing Statement, and Mortgage. Said instruments hereinafter collectively referred to as the "Loan Instruments."
  3. The Loan Instruments were all duly authorized, executed, and delivered and constitute the valid and legally binding obligation of the Borrower and collectively create a valid (first) lien upon or valid security interest in favor of the Lender, in the security covered thereby, and are enforceable in accordance with their terms, except to the extent that the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights. The restrictive-use provisions will be contained in the mortgage or deed of trust and the regulatory agreement signed by the borrower.
  4. The execution and delivery of the Loan Instruments and compliance with the provisions thereof under the circumstances contemplated thereby did not, do not, and will not in any material respect conflict with, constitute default under, or contravene any contract or agreement or other instrument to which the Borrower is a party or any existing law, regulation, court order, or consent decree or device to which the Borrower is subject.
  5. All applicable Federal, State, and local tax returns and reports as required have been duly filed by Borrower and all Federal, State, and local taxes, assessments, and other governmental charges imposed upon Borrower or its respective assets, which are due and payable, have been paid.
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6. The Guaranty has been duly executed by the Guarantors and is a legal, valid, and binding joint and several obligations of the Guarantors, enforceable in accordance with its terms, except to the extent that the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.
7. All necessary consents, approvals, or authorizations of any governmental agency or regulatory authority or of stockholders which are necessary have been obtained. The improvements and the use of the property comply in all respects with all Federal, State, and local laws applicable thereto.
8. (In cases involving subordinate or other than first lien position.) That the mortgage/deed of trust on Borrower's real estate and (fixtures, e.g. machinery and equipment) and the security interest on (type of collateral, e.g., machinery and equipment, accounts receivables and inventory) both given as security to the Lender for the Loan, will be subordinate to (first mortgage) given as security for a loan in the amount of \$ \_\_\_\_\_ and the security interest in Borrower's (type of collateral, e.g., accounts inventory) given to (secured creditor) as security for a loan (state type of loan, i.e., revolving line of credit, if known) in the amount of \$ \_\_\_\_\_.
9. That there are no liens, as of the date hereof, on record with respect to the property of Borrower other than those set forth above.
10. There are no actions, suits, or proceedings pending or, to the best of our knowledge, threatened before any court or administrative agency against Borrower which could materially adversely affect the financial condition and operations of Borrower.
11. Borrower has good and marketable title to the real estate security free and clear of all liens and encumbrances other than those set forth above. I/we have no knowledge of any defect in the title of the Borrower to the property described in the Loan Instruments.
12. Borrower is the absolute owner of all property given to secure the repayment of the loan, free and clear of all liens, encumbrances, and security interests.
13. Duly executed and valid functioning statements have been filed in all offices in which it is necessary to file financing statements to fully perfect the security interests granted in the Loan Instruments.

14. Duly executed real estate mortgages/deeds of trust have been recorded in all offices in which it is necessary to record to fully perfect the security interests granted in the Loan Instruments.
  15. (IN SOME OTHER CIRCUMSTANCES) The Indemnification Agreement has been duly executed by the Indemnitors and is a legal, valid, and binding joint and several obligation of the Indemnitors, enforceable in accordance with its terms, except to the extent that the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.
  16. That the lease contains a valid and enforceable right of assignment and right of reassignment, enforceable in accordance with its terms, except to the extent the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.
  17. The Lender's lien has been duly noted on all motor vehicle titles, stock certificates, or other instruments where such notations are required for proper perfection of security interests therein.
  18. That a valid pledge of the outstanding and unissued stock and/or shares of Borrower has been obtained and the Lender has a validly perfected and enforceable security interest in the shares/stock of Borrower, except to the extent the enforceability thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors rights.
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**ATTACHMENT 4-C  
CLOSING DOCUMENTS TO BE SUBMITTED  
AS PART OF THE FINAL APPLICATION**

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

**DOCUMENTS TO BE SUBMITTED FOR OGC REVIEW**

- (1) Letter from Agency authorizing loan guarantee and containing conditions (if applicable);
- (2) *Form RD 3565-2*;
- (3) Promissory Notes;
- (4) Security documents - Real Estate Mortgage, Security Agreement, Financing Statements, and Leases (if applicable);
- (5) Personal or corporation guarantees with related security documents;
- (6) *Form RD 3565-3*;
- (7) *Form RD 3565-4*;
- (8) Opinion of Lender's Counsel in form prescribed by OGC (Attachment 4-B);
- (9) Regulatory Agreement with attached certification from the lender's attorney (see Paragraph 4.16); and
- (10) Deed Restriction or other Agency/OGC approved recordable instrument that declares that housing must remain available for occupancy by low and moderate income households for the original term of the guaranteed loan.

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

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

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

NAME OF BORROWER: \_\_\_\_\_  
EFFECTIVE DATE: \_\_\_\_\_  
LOCATION OF PROJECT: \_\_\_\_\_

**PART I: PROJECT-BASED PAID UTILITIES AND SERVICES**

**MONTHLY DOLLAR ALLOWANCES**

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

**HEATING**

Natural gas  
Bottle gas  
Electric  
Oil

**AIR CONDITIONING**

**COOKING**

Natural gas  
Bottle gas  
Electric

**OTHER ELECTRIC (LIGHTING,  
REFRIGERATION, ETC.)**

**WATER HEATING**

Natural gas  
Bottle gas  
Electric  
Oil

**WATER**

**SEWER**

**TRASH COLLECTION**

**OTHER (Specify)**

\_\_\_\_\_  
**TOTAL ALLOWANCE**

Prepared by:

\_\_\_\_\_  
Borrower or Agent

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

TO: \_\_\_\_\_  
Address of Tenant

Number of Bedrooms: \_\_\_\_\_

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

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

\_\_\_\_\_  
Signature of Borrower or Agent

\_\_\_\_\_  
Date

\_\_\_\_\_

**ATTACHMENT 4-E  
PLANNING MEETING AGENDA**

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

	TOPICS	REFERENCES		COMMENTS
		Regulation	HB-1-3565 / Other	
<b>1.</b>	<b>Sites</b>			
A.	Location	3565.251(a) and 1924.106(c)	3.12 and 3.13	
B.	Services/facilities	No citation	3.13	
C.	Professional services	1924.105(a)(2)	3.14	
D.	Site standards	1924.107(a)(2) and 1924.108	3.14	
E.	Site density	No citation	3.15	
F.	Non-contiguous sites	3565.251(c)	3.16	
G.	Site control	3565.152	3.17	
<b>2.</b>	<b>Environmental</b>			
A.	NEPA process and responsibilities	3565.255 and 1940-G	3.18 and 5.8 and Chapters 4 and 11	
B.	Lender's Phase I ESA included in NEPA review	3565.254(b)(2) and 1940-G	3.18 and 5.8 and 11.5	
C.	FEMA Form 086-0-32	3565.254(b)(3)	11.5	
D.	Timing issues/scheduling	1940.331	Chapters 4 and 11	
E.	Parties involved from local and state agencies	3565.254(b)	Chapter 11	
F.	Lender documentation	3565.254(b)	Chapter 11	
<b>3.</b>	<b>Design</b>			
A.	Property standards	3565.254(a) and 1924.5(d)(1)	3.20 and 5.3	
B.	Drawings and specifications	1924.5(d)(2) and 1924.13(c),(d)	4.4 A.1., 5.6, and 5.7	
C.	Professional services	3565.256 and 1924.13(a)	5.6	
D.	Agency Reviews	1924.5(h)	5.7	

**PLANNING MEETING AGENDA**

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

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**PLANNING MEETING AGENDA**

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

Date \_\_\_\_\_

Location \_\_\_\_\_  
 (indicate if teleconference)

Attendees:

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