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DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3560

RIN 0575-AA99

Reserve Account

Agency: Rural Housing Service, USDA.

Action: Proposed Rule

SUMMARY: Through this action, the Rural Housing Service (RHS) is proposing to amend its regulation to change the requirements of the Reserve Account for the Section 515 Rural Rental Housing (RRH) program. The intended effect of this action is to address the reserve account requirement of an Agency countersignature with the borrower when a Section 538 guaranteed loan is involved, and to also clarify that reserve account funds cannot be used to pay for fees associated with the Section 538 guaranteed loan program.

DATES: Written or e-mail comments must be received on or before [Insert date 60 days after publication in the Federal Register].

ADDRESSES: You may submit comments to this rule by any of the following methods:

- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW, Washington, D.C. 20250-0742.
- Hand Delivery/Courier: Submit written comments via Federal Express Mail or another mail courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW, 7th Floor, Suite 701, Washington D.C. 20024.

All written comments will be available for public inspection during regular hours at the 300 7th Street, SW, address listed above.

FOR FURTHER INFORMATION CONTACT: Tammy S. Daniels, Financial and Loan Analyst, Multi-Family Housing Guaranteed Loan Division, Rural Housing Service, U.S. Department of Agriculture, STOP 0781, 1400 Independence Avenue, SW, Washington,

D.C. 20250-0781, Telephone: (202) 720-0021 (this is not a toll-free number); e-mail: tammy.daniels@wdc.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 - Classification

This proposed rule has been determined to be not significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988 - Civil Justice Reform

This proposed rule has been reviewed under E. O. 12988, Civil Justice Reform. If this proposed rule is adopted: (1) unless otherwise specifically provided, all State and local laws that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division of the Department of Agriculture (7 CFR part 11) must be exhausted before bringing suit.

Executive Order 13132 – Federalism

The policies contained in this proposed rule do not have any substantial direct effect on States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with states is not required.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on Rural Development in the development of regulatory policies that have tribal implications or preempt tribal laws. Rural Development has determined that the final rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this final rule is not subject to the requirements of Executive Order 13175. If a tribe determines that this rule has implications of which Rural Development is not aware and would like to engage with Rural Development on this rule, please contact Rural Development's Native American Coordinator at ALAN@wdc.usda.gov.

Regulatory Flexibility Act

The proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The undersigned has determined and certified by signature on this document that this rule will not have a significant economic impact on a substantial number of small entities. This rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Paperwork Reduction Act

There are no new reporting and recordkeeping requirements associated with this proposed rule.

E-Government Act Compliance

RHS is committed to complying with the E-Government Act by promoting the use of the Internet and other information technologies in order to provide increased opportunities for citizen access to Government information, services, and other purposes.

Unfunded Mandate Reform Act (UMRA)

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." RHS determined that the proposed action does not constitute a major Federal action significantly affecting the quality of the environment. Therefore in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Programs Affected

The programs affected by this regulation are listed in the Catalog of Federal Domestic Assistance under numbers 10.405 - Farm Labor Housing Loans and Grants; 10.415 - Rural Rental Housing Loans; and 10.427 - Rural Rental Assistance Payments.

Executive Order 12372 - Intergovernmental Consultation

These loans are subject to the provisions of E.O. 12372, which require intergovernmental consultation with state and local officials. RHS conducts intergovernmental consultations for each loan in a manner delineated in RD Instruction 1940-J, (available in any Rural Development office and on the Internet at <http://www.rurdev.usda.gov/SupportDocuments/1940j.pdf>) and 7 CFR part 3015, subpart V.

Background Information:

Reserve accounts are established by the recipient of Section 515 Rural Rental Housing loans (the “borrower”) to meet the major capital expenses of a housing project. The amount of the payments to the reserve account is established in the loan documents, beginning with the first loan payment or the date specified in the loan documents. The current requirement at 7 CFR 3560.306(e)(2) states that reserve accounts require Agency countersignature with the borrower on all withdrawals. The Section 538 Guaranteed Rural Rental Housing Program (GRRHP) often provides funding to an existing Section 515 Direct Rural Rental Housing property. Loan funds provided by the lender and guaranteed by the GRRHP are critical to the rehabilitation and preservation of older existing Section 515 properties. The GRRHP regulation at 7 CFR 3565.402(a) requires

that all property reserve accounts be held by the lender, which eliminates the unauthorized use of these funds by the borrower since the borrower does not have access to the funds. When an approved Section 538 lender lends funds to an existing Section 515 financed property, this brings 7 CFR 3560.306 and 3565.402 into conflict, pitting the requirement for the Agency to countersignature for funds pursuant to § 3560.306, against the requirement that lenders have unfettered control of funds pursuant to § 3565.402 . GRRHP loan guarantees are sold on the secondary market as long as the loan is closed and is not in default. In most cases, the Section 538 loans on Section 515 financed properties are transferred to Ginnie Mae. Ginnie Mae requires that property reserve accounts be pledged as collateral for the loan and that it has unfettered access to those accounts. In order to meet this secondary market requirement, the reserve accounts must be titled exclusively in the lender's name. In order to meet Ginnie Mae's requirements, the reserve accounts cannot be countersigned with any other party. Requiring the Agency's signature on all withdrawals ensures that the borrower does not have uncontrolled use of the funds and this requirement will remain unchanged for properties that only have Section 515 direct loans. This amendment would relieve the Agency of its countersignature responsibility for properties with Section 538 funding; the Agency's interest in the reserve accounts would still be protected by the change in the regulation, since the lender is required to get prior Agency approval before funds disbursement. Therefore, funds from the lender-controlled reserve account cannot be used for items not agreed to by the Agency.

Additionally, RHS proposes to amend 7 CFR 3560.306(g) to clarify that reserve account funds cannot be used to pay fees associated with the loan guarantee. Lenders

are currently using the Replacement Reserve account to pay fees associated with the loan guarantee, i.e., the annual renewal fee. These fees are considered a project expense and must be paid from the operating account, not the replacement reserve account.

List of Subjects in 7 CFR Part 3560

Accounting, Accounting servicing, Administrative practice and procedure, Aged, Farm labor housing, Foreclosure, Grant programs - Housing and community development, Government acquired property, Government property management, Handicapped, Insurance, Loan programs - Agriculture, Loan programs - Housing and community development, Low and moderate income housing, Low and moderate income housing - Rental, Migrant labor, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Rural areas, Rural housing, Sale of Government acquired property, Surplus Government property.

Therefore, chapter XXXV, Title 7 of the Code of Federal Regulations, is proposed to be amended as follows:

Part 3560 – DIRECT MULTI-FAMILY HOUSING LOANS AND GRANTS

1. The authority citation for Part 3560 continues to read as follows:

Authority: 42 U.S.C. 1480.

Subpart G – Financial Management

2. Amend § 3560.306 by revising paragraph (e)(2) and adding paragraph (g)(5) to read as follows:

§ 3560.306 Reserve account.

* * * * *

(e) * * *

(2) Reserve accounts must be supervised accounts that require Agency countersignatures on all withdrawals; except, this requirement is not applicable when loan funds guaranteed by the Section 538 Guaranteed Rural Rental Housing Program (GRRHP) are used for the construction and/or rehabilitation of a Section 515 project. Section 515 Rural Rental Housing borrowers who are exempted from the supervised account and countersignature requirement, as described above, must follow Section 538 GRRHP regulatory requirements pertaining to reserve accounts. In all cases, Section 538 lenders must get prior written approval from the Agency before reserve account funds involving a Section 515 project can be disbursed to the borrower.

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(g) * * *

(5) Funds from the replacement reserve account cannot be used to pay any fees associated with the Section 538 GRRHP loan guarantee, as determined by the Agency.

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Dated: July 11, 2014.

Tony Hernandez

Administrator

Rural Housing Service

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