



Billing Code: 3410-XV

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Parts 3550 and 3555

RIN 0575-AD13

Single Family Housing Direct and Guaranteed Loan Programs

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed rule.

SUMMARY: Through this action, the Rural Housing Service (RHS or Agency) is proposing to amend its regulations for the direct and guaranteed single family housing loan and grant programs.

DATES: Comments on the proposed rule 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 eRulemaking 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, S.W., Washington, DC 20250-0742.

All written comments will be available for public inspection during regular work hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Shannon Chase, Finance and Loan Analyst, Single Family Housing Direct Loan Origination Branch, USDA Rural Development, STOP 0783, 1400 Independence Ave SW, Washington, DC 20250-0783, Telephone: (515) 305-0399. E-mail: shannon.chase@wdc.usda.gov.

SUPPLEMENTARY INFORMATION: The RHS is proposing to amend its regulations for the direct and guaranteed single family housing loan and grant programs in 7 CFR parts 3550 and 3555 by:

(1) Revising the definition of very low-, low-, and moderate-income to allow for a two-tier income limit structure (also known as income banding) within the single family housing direct loan and grant programs.

(2) Clarifying that net family assets are not

considered when calculating repayment income, and that net family assets exclude amounts in voluntary retirement accounts, tax advantaged college, health, or medical savings or spending accounts, and other amounts deemed by the Agency not to constitute net family assets.

(3) Revising the methodology used to determine the area loan limits to use a percentage(s), as determined by the Agency, of the applicable local HUD section 203(b) limit.

(4) As a result of income banding, converting borrowers currently receiving payment assistance method 1 to payment assistance method 2 should they receive a subsequent loan.

(5) Revising the definition of low-income to allow for the two-tier income limit structure (income banding) within the single family housing guaranteed loan program.

Statutory Authority

Section 510(k) of Title V the Housing Act of 1949 (42 U.S.C. 1480(k)), as amended, authorizes the Secretary of Agriculture to promulgate rules and regulations as deemed necessary to carry out the purpose of that title.

Executive Order 12866

The Office of Management and Budget (OMB) has

designated this rule as not significant under Executive Order 12866.

Executive Order 12988, Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Except where specified, all State and local laws and regulations that are in direct conflict with this rule will be preempted. Federal funds carry Federal requirements. No person is required to apply for funding under this program, but if they do apply and are selected for funding, they must comply with the requirements applicable to the Federal program funds. This rule is not retroactive. It will not affect agreements entered into prior to the effective date of the rule. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 must be exhausted.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effect of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Agency

generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million, or more, in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This proposed 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 1970, subpart A, "Environmental Policies." It is the determination of the Agency that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Public

Law 91-190, neither an Environmental Assessment nor an Environmental Impact Statement is required.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and 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 the States is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) the undersigned has determined and certified by signature of this document that this rule, while affecting small entities, will not have an adverse economic impact on small entities. This rule does not impose any significant new requirements on program recipients nor does it adversely impact proposed real estate transactions involving program recipients as the buyers.

Executive Order 12372, Intergovernmental Review of Federal Programs

This program/activity is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. (See the Notice related to 7 CFR part 3015, subpart V, at 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985.)

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

This executive order imposes requirements in the development of regulatory policies that have tribal implications or preempt tribal laws. RHS has determined that the proposed 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 the Indian tribes. Thus, this proposed rule is not subject to the requirements of Executive Order 13175.

Programs Affected

The following programs, which are listed in the Catalog of Federal Domestic Assistance, are affected by

this proposed rule:

Number 10.410, Very Low to Moderate Income Housing Loans (specifically the section 502 direct and guaranteed loans), and Number 10.417, Very Low-Income Housing Repair Loans and Grants (specifically the section 504 direct loans and grants).

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection activities associated with this rule are covered under OMB Number: 0575-0172. This proposed rule contains no new reporting or recordkeeping requirements that would require approval under the Paperwork Reduction Act of 1995.

E-Government Act Compliance

RHS is committed to complying with the E-Government Act, 44 U.S.C. 3601 et. seq., to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Non-Discrimination Policy

In accordance with Federal civil rights law and U.S.

Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at

http://www.ascr.usda.gov/complaint_filing_cust.html and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

- (1) Mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW.,
Washington, D.C. 20250-9410;
- (2) Fax: (202) 690-7442; or
- (3) Email: program.intake@usda.gov.

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I. Background

In order to improve the delivery of the single family housing loan programs and to promote consistency among the programs when appropriate, RHS proposes making the following revisions to 7 CFR parts 3550 and 3555.

- (1) Revising the definition of very low-, low-, and moderate-income in § 3550.10 to allow for a two-tier income

limit structure (income banding) for the single family housing direct loan and grant programs.

The revisions will help minimize the impact of varying minimum wages among states and territories and the observed disconnect between minimum wages and the low median income in many areas. Under current regulations, the income of a household with two people earning the minimum wage would exceed the low-income eligibility limit in 39 to 93 percent of the counties in 16 states and territories. In other words, under current regulations and income limits, the income from a two-person household earning minimum wage may be considered too high to qualify for a direct loan.

In accordance with Section 501(b)(4) of the Housing Act of 1949 (42 U.S.C. 1471(b)(4)), the terms "low income families or persons" and "very low-income families or persons" mean those families and persons whose income do not exceed the respective levels established for low-income families and very low-income families under the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.). The income levels in the Housing Act of 1937 are generally established by the U.S. Department of Housing and Urban Development (HUD). RHS currently uses the HUD income levels without income banding. However, HUD programs authorized by the Housing Act of 1937 focus on renting as

opposed to home purchases, which contributes to the disqualification of households with minimum wage earners as described above. The Agency has been operating a pilot in 23 states to test the alternate methodology of a two-tier income limit structure to address this issue.

For the pilot, the Agency used the authority in 42 U.S.C. 1437a(b)(2)(D), which provides for HUD and USDA to consult on income ceilings for rural areas, taking into account the types of programs that will use the income ceilings as well as subsidy characteristics. Based on this authority, the Agency used a two-tier income limit structure for the single family housing programs which bands together 1-4 person households using the 4-person income level set by HUD, and 5-8 person households using the 8-person income level established by HUD. The pilot has successfully served more borrowers, providing meaningful homeownership opportunities to those who would otherwise be denied. The Agency is now proposing to use income banding to determine all limits for very low-income, low-income, moderate-income, 38 year term, and adjusted median income.

Such banding has successfully been used to establish the moderate income limits in the guaranteed single family housing loan program for years (the term "moderate income"

is not defined in Section 501(b)(4) of the Housing Act of 1949 and therefore is not restricted in the same way as "very low-" and "low-income").

The Agency has consulted with HUD, and both agencies agree that the two-tier income limit approach is suitable for the USDA single family housing loan and grant programs. The impacted income definitions in § 3550.10 will be revised to simply state that the respective limit is "an adjusted income limit developed in consultation with HUD". The two-tier income limits will be published annually via a Procedure Notice and posted to the Agency website at <https://www.rd.usda.gov/files/RD-DirectLimitMap.pdf>.

The Agency also proposes to revise the definition of moderate income so that it does not exceed the moderate income limit established for the guaranteed single family housing loan program. The Agency will publish a specific limit in the program handbook.

The revisions to the income definitions will ultimately allow the Agency and HUD to account for the differences between renting (which is the focus of HUD and 42 U.S.C. 1437 et seq.) and owning a home. This proposed action will improve program availability to the intended recipients.

(2) Revising § 3550.54(d) to remove the requirement that net family assets be included in the calculation of repayment income.

Currently, net family assets are considered for determining annual income, down payment purposes, and repayment income. The Agency proposes to exclude net family assets from repayment income calculations because repayment income focuses on the income of those who sign the promissory note, whereas net family assets considers the finances of other family members. Net family assets will still be considered for annual income and down payment purposes.

The Agency also proposes to revise the regulation so that the list of net family assets considered for annual income and down payment purposes would exclude amounts in voluntary retirement accounts such as individual retirement accounts (IRAs), 401(k) plans, Keogh accounts, and the cash value of life insurance policies.

In addition, the Agency proposes to exclude the value of tax advantaged college savings plans, the value of tax advantaged health or medical savings or spending accounts, and other amounts deemed by the Agency, from net family assets considered in the determination of annual income and down payments.

Excluding these types of assets when considering annual income or down payment requirements will help safeguard the assets for their intended purposes and promote a healthy financial support system for the household when it does incur education and health care costs, or enters retirement.

The Agency also proposes removing from net family assets the value, in excess of the consideration received, for any business or household assets disposed of for less than the fair market value during the 2 years preceding the income determination. This proposed change recognizes that it is not productive or meaningful to consider assets which have been disposed of in the past.

Lastly, the Agency proposes two minor changes primarily for consistency between the direct and guaranteed single family housing loan regulations. The Agency proposes to include in net family assets any equity in capital investments for consistency with the guaranteed single family housing loan regulations, as well as obtaining a full understanding of an applicant's financial condition before making a decision on a loan. In the exclusions from net family assets, the Agency proposes to change the language from "American Indian trust land" to "American Indian restricted land". The terms "trust land"

and "restricted" are often used interchangeably, and the proposed revision is for consistency between the direct and guaranteed program regulations, and will not result in any substantive changes.

(3) Revising the methodology used to determine the area loan limits in § 3550.63(a) to use a percentage(s), as determined by the Agency, of the applicable local HUD section 203(b) limit.

The revisions to the area loan limit methodology will streamline the determination of area loan limits and improve the reliability of the data set used to establish the area loan limits. The current process to annually establish the area loan limits uses a data set based on overly restrictive nationalized parameters and requires a significant amount of staff time on all levels (field, state, and national). Currently, § 3550.63(a) allows for two methods that a State Director may use to establish area loan limits. The first option is based on the cost to construct a modest home plus the market value of an improved lot based on recent sales data. The second option allows the State Director to use State Housing Authority (SHA) limits as long as the limit is within 10 percent of the cost data plus the market value of the improved lot.

This second option is rarely used because the SHA limits are usually not within the 10 percent limit.

For the first option, the most widely used option, the Agency contracts with a third party that provides building cost data for real estate valuations to obtain construction costs, but those construction costs are based on parameters for homes that do not reflect the varied modest homes available to program borrowers. In addition, obtaining the market value is a time-consuming process relying on collecting and updating recent home sales data, which is particularly difficult given Agency staff appraiser shortages over the past few years.

The Agency has been operating a pilot to test the alternate methodology of basing the area loan limits on a percentage of the FHA Forward One-Family mortgage limits (the HUD 203(b) limit). Under the pilot, 80 percent of the HUD 203(b) limit was used to establish the area loan limits in selected pilot states. The 80 percent was established based on a side-by-side, county-by-county comparison of the Agency's existing area loan limits to various percentages of the HUD 203(b) limits. It was determined that 80 percent of the HUD 203(b) limits was adequate to cover the loan amounts in the majority of states (vs. lower percentages of 60-70 percent).

While the pilot states generally experienced increases in their area loan limits, the increases were not significant, in part because an applicant's qualification amount continues to be limited to repayment ability, property eligibility criteria (for example, properties financed through the program are currently subject to 2,000 square feet), and other factors. Average loan amounts in the pilot states increased 13.4 percent from Fiscal Year 2015 to 2017, while average loan amounts in the non-pilot states have increased 5.4 percent during the same period.

The Agency believes the higher percent increase in the pilot states is acceptable for several reasons. For example, the alternate methodology makes new construction under the program more feasible, and new construction can improve a rural community's housing stock and economy. In addition, this proposed action will save the Agency more than \$70,000 each year (which is the cost to obtain the construction cost data set from a nationally recognized residential cost provider). A significant amount of staff time will also be saved.

The Agency will determine the percentage(s) based on housing market conditions and trends, and publish the percentage(s) in the program handbook. The resulting area loan limits will be posted to the Agency website at

<https://www.rd.usda.gov/files/RD-SFHAreaLoanLimitMap.pdf>.

The proposed change allows the Agency to adjust the percentage(s) as necessary in order to be responsive to housing market conditions and trends.

(4) Revising § 3550.68(b)(2) to convert a borrower currently receiving payment assistance method 1 to payment assistance method 2 should that borrower receive a subsequent loan.

The proposed change is related to the income banding proposal, as payment assistance method 2 will more closely align the subsidy with what is actually needed for affordability. The proposed change avoids potentially over-subsidizing borrowers using payment assistance method 1 under the income banding system, and reduces the potential for negative impacts to the program's subsidy rate.

(5) Revising the definition of low-income in § 3555.10 for the single family housing guaranteed loan program to allow for the two-tier income limit structure (income banding) discussed above. The two-tier income limits will be published annually via a Procedure Notice and posted to the Agency website at <https://www.rd.usda.gov/files/RD-GRHLimitMap.pdf>.

The single family housing guaranteed loan program provides guarantees to lenders who make loans to low- and moderate-income borrowers in rural areas who are without sufficient resources or credit to obtain a loan without the guarantee. As mentioned, the guaranteed loan program already uses the two-tier income limit structure for moderate income limits. The proposed change would allow the two-tier income limit structure to be used for determining the very low- and low-income limits in the guaranteed loan program.

List of Subjects in 7 CFR Parts 3550 and 3555

Administrative practice and procedure, Environmental impact statements, Fair housing, Grant programs-housing and community development, Housing, Loan programs-housing and community development, Low and moderate income housing, Manufactured homes, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, 7 CFR parts 3550 and 3555 are proposed to be amended as follows:

PART 3550 – DIRECT SINGLE FAMILY HOUSING LOANS AND GRANTS

1. The authority citation for part 3550 continues to

read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480(k).

Subpart A – General

2. Section 3550.10 is amended by revising the definitions of “low income”, “moderate income”, and “very low income” to read as follows:

§ 3550.10 Definitions.

* * * * *

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

* * * * *

Moderate income. An adjusted income that does not exceed the moderate income limit for the guaranteed single family housing loan program authorized by Section 502(h) of the Housing Act of 1949, as amended.

* * * * *

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

* * * * *

Subpart B - Section 502 Origination

3. In § 3550.54:

- a. Revise the first sentence of paragraph (d) introductory text;
- b. Revise paragraphs (d) (1) introductory text and (d) (1) (i);
- c. Revise paragraphs (d) (1) (iv) through (vi);
- d. Remove paragraph (d) (1) (vii);
- e. Revise paragraphs (d) (2) (i) and (v); and
- f. Add paragraphs (d) (2) (vi) through (x).

The revisions and additions read as follows:

§ 3550.54 Calculation of income and assets.

* * * * *

(d) Net family assets. Income from net family assets must be included in the calculation of annual income. * *

*

(1) Net family assets include, but are not limited to:

(i) Equity in real property or other capital investments, other than the dwelling or site;

* * * * *

(iv) Stocks, bonds, and other forms of capital investments that are accessible to the applicant without retiring or terminating employment;

(v) Lump sum receipts such as lottery winnings, capital gains, inheritances; and

(vi) Personal property held as an investment.

(2) * * *

(i) Interest in American Indian restricted land;

* * * * *

(v) Amounts in voluntary retirement plans such as individual retirement accounts (IRAs), 401(k) plans, and Keogh accounts (except at the time interest assistance is initially granted);

(vi) The value of an irrevocable trust fund or any other trust over which no member of the household has control;

(vii) Cash value of life insurance policies;

(viii) The value of tax advantaged college savings plans (529 plan, Coverdell Education Savings Account, etc.);

(ix) The value of tax advantaged health or medical savings or spending accounts; and

(x) Other amounts deemed by the Agency not to constitute net family assets.

4. In § 3550.63, paragraph (a)(1) is revised to read as follows in its entirety:

§ 3550.63 Maximum loan amount.

* * * * *

(a) * * *

(1) The area loan limit is the maximum value of the property RHS will finance in a given locality. This limit is based on a percentage(s) of the applicable local HUD section 203(b) limit. The percentage(s) will be determined by the Agency and published in the program handbook. The area loan limits will be reviewed at least annually and posted to the Agency website.

(i) [Removed]

(ii) [Removed]

(iii) [Removed]

(iv) [Removed]

(v) [Removed]

* * * * *

5. In § 3550.68, paragraph (b) (2) is revised to read as follows:

§ 3550.68 Payment subsidies.

* * * * *

(b) * * *

(2) If a borrower receiving payment assistance using payment assistance method 1 received a subsequent loan, payment assistance method 2 will be used to calculate the

subsidy for the initial loan and subsequent loan.

* * * * *

PART 3555 – GUARANTEED RURAL HOUSING PROGRAM

6. The authority citation for part 3555 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480(k).

Subpart A – General

2. Section 3555.10 is amended to revising the definition of “low-income” to read as follows:

§ 3555.10 Definitions and abbreviations.

* * * * *

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

* * * * *

Dated: August 1, 2018.

Joel C. Baxley,
Administrator,
Rural Housing Service.
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