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DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3560

[DOCKET #: RHS-23-MFH-0025]

RIN 0575-AD23

Changes Related to Reserve Account Administration in Multi-Family Housing (MFH) Direct Loan Programs

AGENCY: Rural Housing Service, U.S. Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS or Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), is updating its regulations and implementing changes related to the administration of property reserve accounts under the Multi-Family Housing (MFH) section 515, Rural Rental Housing (RRH), and section 514, 516 Farm Labor Housing (FLH) programs. This final rule will increase flexibility in project refinancing for additional capital improvements needed at MFH section 515, RRH, and section 514, 516 FLH properties.

DATES: This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Michael Resnik, Director, Asset Management Division, Multifamily Housing Programs and Housing Service, Rural Development, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington DC 20250, telephone: 202-430-3114; or email: Michael.Resnik@usda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The RHS, an agency of the USDA, offers a variety of programs to build or improve housing and essential community facilities in rural areas. RHS offers loans, grants, and loan guarantees for single- and multi-family housing, childcare centers, fire and police stations, hospitals, libraries, nursing homes, schools, first responder vehicles and equipment, and housing for farm laborers. RHS also provides technical assistance loans and grants in partnership with non-profit organizations, Indian Tribes, State and Federal government agencies, and local communities.

Title V of the Housing Act of 1949 (Act) authorized the USDA to make housing loans to farmers to enable them to provide habitable dwellings for themselves or their tenants, lessees, sharecroppers, and laborers. The USDA then expanded opportunities in rural areas, making housing loans and grants to rural residents through the Single-Family Housing (SFH) and Multi-Family Housing (MFH) Programs.

The RHS operates the MFH section 515 RRH direct loan program. The section 515 program employs a public-private partnership by providing subsidized loans at an interest rate of one percent to developers to construct or renovate affordable rental complexes in rural areas. This one percent loan keeps the debt service on the property sufficiently low to support below-market rents affordable to low-income tenants. Many of these projects also utilize low-income housing tax credit proceeds.

The RHS also operates the MFH FLH direct loan and grant programs under sections 514 and 516 which provide low interest loans and grants to provide housing for farmworkers. These eligible farmworkers may work either at the borrower's farm (“on-farm”) or at any other farm (“off-farm”). This final rule is designed to increase flexibility in project refinancing for additional capital improvements needed for a section 515 or 514, 516 MFH property.

II. Purpose of this Rulemaking

RHS published a proposed rule on January 9, 2023 [88 FR 1149], in the **Federal Register** to solicit comments on the proposed updates to 7 CFR part 3560 and changes related to the administration of property reserve accounts under the MFH section 515, RRH, and section 514, 516 FLH programs. The MFH direct loan project's general operating account is deemed to contain surplus funds when the balance at the end of the housing project's fiscal year, after all payables, exceeds 20 percent of the operating and maintenance expenses. When a MFH property's Agency-approved budget results in surplus cash at the end of the year, this change to the current regulation will allow the borrower to use surplus cash to fund Agency-approved soft debt. MFH approved soft-debt is a type of debt that generally (1) is not immediately due and payable, (2) has lenient repayment terms, and/or (3) has no-interest or low-interest rates, for example a "cash flow note". Soft debt is often provided by State or local government as vital, additional sources of MFH direct loan property rehabilitation funding. This final rule change will allow owners the flexibility to access surplus cash notes as a new source of capital for property improvements, and to implement operating cost increases in property reserve contributions. It is designed to increase flexibility in project refinancing for additional capital improvements under 7 CFR 3560.306 to implement changes related to the administration of property reserve accounts under the MFH section 515, RRH, and section 514, 516 FLH programs.

III. Discussion of Public Comments

In response to the published proposed rule on January 9, 2023 [88 FR 1149], RHS received two identical comments from one respondent with positive feedback on the MFH programs. The comment did not include direct statements regarding the proposed changes and is not applicable to the contents of the rule. The comments did not result in the Agency changing plans for the final rule.

IV. Summary of Changes

The changes to amend 7 CFR 3560.306 include reducing debt service on other third-party debt, as an allowable use of funds, including payments toward cash flow notes. Allowing borrowers to use surplus funds to repay third-party debt would allow those borrowers to access State and local government funding available as a capital source for property improvements. Acceptable third-party debt, including cash flow notes, will take the form of a written agreement for the payment of an Agency-approved debt obligation, with or without interest. Payments may occur only after approval has been granted by the Agency. These changes are designed to improve property condition and increase tools available to borrowers to preserve properties as affordable housing resources. This final rule no longer includes the reduction in rents as an allowable use of surplus funds, as rent-setting is part of the annual proposed budget process and should not be included in the reserve account section of this regulation. These changes are designed to improve property condition and increase tools available to borrowers to preserve properties as affordable housing resources.

V. Regulatory Information

Statutory Authority

The RRH and FLH programs are authorized under sections 514, 515, 516 of title V of the Housing Act of 1949, as amended (42 U.S.C. 1484-86); and implemented under 7 CFR part 3560. 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 12372, Intergovernmental Review of Federal Programs

These loans are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. RHS conducts intergovernmental consultations for each loan in accordance with 2 CFR part 415, subpart C.

Executive Order 12866, Regulatory Planning and Review

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

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988. In accordance with this rulemaking: (1) Unless otherwise specifically provided, all State and local laws that conflict with this rulemaking will be preempted; (2) no retroactive effect will be given to this rulemaking 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 suing in court that challenges action taken under this rulemaking.

Executive Order 13132, Federalism

The policies contained in this final 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. This final rule does not 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 RHS in the development of regulatory policies that have Tribal implications or preempt Tribal laws. RHS 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 Tribal leaders are interested in consulting with RHS on this rulemaking, they are encouraged to contact USDA's Office of Tribal Relations or RD's Tribal Coordinator at: AIAN@usda.gov to request such a consultation.

National Environmental Policy Act

This document has been reviewed in accordance with 7 CFR part 1970, subpart A, "Environmental Policies." RHS determined that this action does not constitute a major Federal action significantly affecting the quality of the environment. In accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement (EIS) is not required.

Regulatory Flexibility Act

This final 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 final rule will not have a significant economic impact on a substantial number of small entities since 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.

Unfunded Mandates Reform Act (UMRA)

Title II of the UMRA, Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and on the private sector. Under section 202 of the UMRA, Federal agencies generally must prepare a written statement, including 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 a Federal 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 final rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and Tribal governments or for the private sector. Therefore, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by OMB and have been assigned OMB control number 0575-0189. This final rule contains no new reporting and recordkeeping requirements that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

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 to provide increased opportunities for citizen access to government information, services, and other purposes.

Civil Rights Impact Analysis

RD has reviewed this final rule in accordance with USDA Regulation 4300-4, Civil Rights Impact Analysis, to identify any major civil rights impacts the final rule might have on program participants on the basis of age, race, color, national origin, sex, or disability. After review and analysis of the final rule and available data, it has been determined that implementation of the rulemaking will not adversely or disproportionately impact very low, low- and moderate-income populations, minority populations, women, Indian Tribes, or persons with disability by virtue of their race, color, national origin, sex, age, disability, or marital or familial status. No major civil rights impact is likely to result from this final rule.

Assistance Listing

The program affected by this regulation is listed in the Assistance Listing Catalog (formerly Catalog of Federal Domestic Assistance) under number 10.415-Rural Rental Housing Loans.

Non-Discrimination Statement Policy

In accordance with Federal civil rights laws and USDA civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, 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.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; or the 711 Relay Service.

To file a program discrimination complaint, a complainant should complete a Form AD-3027, *USDA Program Discrimination Complaint Form*, which can be obtained online at <https://www.usda.gov/sites/default/files/documents/ad-3027.pdf> from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

- a. Mail: U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410; or
- b. Fax: (833) 256-1665 or (202) 690-7442; or
- c. Email: program.intake@usda.gov

List of Subjects in 7 CFR Part 3560

Accounting, Administrative practice and procedure, Aged, Conflicts of interest, Government property management, Grant programs-housing and community development, Insurance, Loan programs-agriculture, Loan programs-housing and community development, Low and moderate-income housing, Migrant labor, Mortgages, Nonprofit organizations, Public housing, Rent-subsidies, Reporting and recordkeeping requirements, Rural areas.

For the reasons discussed in the preamble, the Agency amends 7 CFR part 3560 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.

2. Amend § 3560.306 by revising paragraph (d)(2) to read as follows:

§ 3560.306 Reserve account.

* * * * *

(d) * * *

(2) If a housing project's general operating account has surplus funds at the end of the housing project's fiscal year per paragraph (d)(1) of this section, the borrower will be required to use such surplus for one of the following (not in priority order): use the surplus funds to address capital needs, make a deposit in the reserve account or reduce the debt service on the borrower's loans, including Agency-approved third-party debt. The prior written consent of the Agency must be obtained before surplus funds may be used to pay debt service on third-party debt. At the end of the borrower's fiscal year, if the borrower is required to transfer surplus funds from the general operating account to the reserve account, the transfer does not change the future required contributions to the reserve account.

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Yvonne Hsu,

Acting Administrator,

Rural Housing Service.

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