



DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3565

[Docket No. RHS-23-MFH-0006]

RIN: 0575-AD31

Section 538 Guaranteed Rural Rental Housing Program Change in Priority Projects

Criteria

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

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS or the Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), is amending the current regulation for the Multifamily Family Housing (MFH) Section 538 Guaranteed Rural Rental Housing Program (GRRHP). This final rule will align the current criteria of priority projects with the Housing Act of 1949 while improving the customer experience with more timely and proactive responses to housing market demands and Administration priorities.

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

FOR FURTHER INFORMATION CONTACT: Tammy Daniels, Finance and Loan Analyst, Multi-Family Housing Production and Preservation Division, Rural Housing Service, United States Department of Agriculture, STOP 0781, 1400 Independence Avenue, SW, Washington, DC 20250-0781, Telephone: (202) 720-0021 (this is not a toll-free number); e-mail: tammy.daniels@usda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The RHS 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 multifamily 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.

RHS administers the Section 538 Guaranteed Rural Rental Housing Program (GRRHP) under the authority of the Housing Act of 1949, as amended (42 U.S.C. 1490p–2). Under the GRRHP, RHS guarantees loans for the development of housing and related facilities in rural areas. And, as mandated by Title V of the Housing Act of 1949, the Agency must give priority to rural areas in which borrowers can best use and need guaranteed loans. 42 U.S.C. 1490p-2(l)(2). 7 CFR 3565.5(b) currently defines “priority projects” as those in smaller rural communities, in the neediest communities having the highest percentage of leveraging, having the lowest interest rate, having the highest ratio of 3-to-5-bedroom units to total units, or on tribal lands. Some of these specific priorities are no longer relevant.

II. Discussion of the Final Rule

RHS published a proposed rule on January 31, 2023 (88 FR 6209) to align 7 CFR 3565 current priority criteria points with the Housing Act of 1949 to increase the supply of affordable rural rental housing by using loan guarantees to encourage partnerships between the RHS, private lenders, and public agencies. The Agency received public comments which are discussed in the section “**III. Discussion of Public Comments**” of this notice.

The GRRHP uses priority points to rank and score applications based on criteria that frequently evolve and change depending on the housing market demands, as well as current and future Administrations’ priorities. Currently, 7 CFR 3565.5(b) is not aligned with the Housing Act of 1949 criteria and does not afford the flexibility the Agency requires in its decision making to fully address these evolving priorities without a regulatory change to the priority-points

scoring criteria. This final rule will change the current regulation [7 CFR 3565.5(b)] and provide the flexibility required in the Agency's decision-making to fully address evolving priorities in the housing market demands in a more timely and proactive manner, as needed, by current and future Administrations. The Agency will also be in a stronger position to meet the current and future demands of the housing market which ultimately will allow the Agency to be more responsive to the needs of the program's rural stakeholders.

III. Discussion of Public Comments

The RHS received eight comments from six respondents. One of the comments was not applicable to the contents of the rule and two other respondents submitted their comments twice. One respondent works for a non-profit agency, three respondents are students, of which one of these students submitted their comment to the Agency twice. The last respondent is a member of the public, who also submitted their comment to the Agency twice. All comments were supportive of the rule.

The following is a summary of the relevant comments:

Public Comments

Two respondents replied that they were in favor of the proposed rule indicating that the change will not cause any adverse action to the low to moderate income populations and will grow and strengthen rural areas.

Agency's Response

The Agency appreciates that support and has determined that no action is required.

Public Comments

Three respondents who indicated that they were students who were responding to a class assignment replied in favor of the proposed rule. They all agreed that housing in rural areas is important.

Agency's Response

The Agency appreciates the support and has determined that no action is required.

IV. Summary of Changes

The final rule will amend 7 CFR 3565.5(b) to offer the Agency decision making process flexibility by aligning the current criteria of priority projects with 42 U.S.C. 1490p-2(l)(2) to be more timely and responsive to developing demands in the rural housing market, as well as evolving priorities with current and future Administrations, while improving its customers' experience with the program. The Agency will also be in a stronger position to meet the current and future demands of the housing market, which ultimately would allow the Agency to be more responsive to the needs of the program's rural stakeholders.

V. Regulatory Information

Statutory Authority

The RHS administers the 538 Guaranteed Rural Rental Housing Program (GRRHP) loans under the authority of the Housing Act of 1949, as amended (42 U.S.C. 1490p-2(l)(2)); implemented under 7 CFR part 3565. 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 require 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 rule: (1) Unless otherwise specifically provided, all State and local laws that 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 USDA (7 CFR part 11) must be exhausted before suing in court that challenges action taken under this final rule.

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 rule, they are encouraged to contact USDA's Office of Tribal Relations or RD's Native American 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 is not required.

Regulatory Flexibility Act

This final rule has been reviewed with regards 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 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 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 rule might have on program participants on the basis of age, race, color, national origin, sex, disability, gender identity (including gender expression), genetic information, political beliefs, sexual orientation, marital status, familial status, parental status, veteran status, religion, reprisal and/or resulting from all or a part of an individual's income being derived from any public assistance program. This Final rule is within a Guarantee-based program. Guarantees are not covered under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and Title IX of the Education Amendments Act of 1972, as amended, when the Federal assistance does not include insurance or interest credit loans. Lenders must comply with other applicable Federal laws, including Equal Employment Opportunities, the Equal Credit Opportunity Act, the Fair Housing Act, and the Civil Rights Act of 1964. Guaranteed loans that involve the construction of or addition to facilities that accommodate the public must comply with the Architectural Barriers Act Accessibility Standard. The borrower and lender are responsible for ensuring compliance with these requirements.

Assistance Listing

The program affected by this regulation is listed in the Catalog of Federal Domestic Assistance under numbers 10.438 – Rural Rental Housing Guaranteed Loans (Section 538).

Non-Discrimination Statement

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; the USDA TARGET Center at (202) 720-2600 (voice and TTY); or the Federal Relay Service at 711.

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:

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

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List of Subjects in 7 CFR Part 3565

Conflict of interest, Credit, Fair housing, Loan programs-housing and community development, Low and moderate-income housing, Manufactured homes, Mortgages, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

For the reasons discussed in the preamble, the Agency is proposing to amend 7 CFR part 3565 as follows:

PART 3565 – GUARANTEED RURAL RENTAL HOUSING PROGRAM

1. The authority citation for part 3565 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C 1989; 42 U.S.C. 1480.

Subpart A – General Provisions

2. Amend § 3565.5 by revising paragraph (b) to read as follows:

§ 3565.5 Ranking and selection criteria

* * * * *

(b) *Priority projects.* Priority will be given to projects in rural areas in which borrowers can best utilize and where loan guarantees are needed the most, as determined by the Agency based on information the Secretary considers appropriate. In addition, the Agency may, at its sole discretion, set aside assistance for or rank projects that meet important program goals. Assistance will include both loan guarantees and interest credits. Priority projects must compete for set-aside funds. The Agency will announce the priority criteria in an announcement in the Federal Register.

Yvonne Hsu,

Acting Administrator,

Rural Housing Service.

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