



## **DEPARTMENT OF AGRICULTURE**

### **Rural Housing Service**

#### **7 CFR Parts 1910, 1955, and 3560**

**[Docket No. RHS-24-MFH-0003]**

**RIN 0575-AD30**

### **Multifamily Housing Program Update to the Credit Report Process**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Rural Housing Service (RHS or Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), is proposing to update its regulations on how credit reports are obtained for the purposes of determining eligibility and feasibility for Multifamily Housing (MFH) Programs.

**DATES:** Comments on the proposed rule must be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** Comments may be submitted electronically by the Federal eRulemaking Portal: Go to <http://www.regulations.gov> and, in the “Search Field” box, labeled “Search for docket and documents on agency actions,” enter the following docket number: “RHS–24–MFH–0003” or Regulation Identifier Number (RIN): “0575–AD30,” then click search. To submit or view public comments, select the following document title:

“Updates to Credit Report Process” from the “Search Results,” and select the “Comment” button. Before inputting your comments, you may also review the “Commenter’s Checklist” (optional). Insert your comments under the “Comment” title, click “Browse” to attach files (if available). Input your email address and select “Submit Comment.” Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site’s “FAQ” link.

Other Information: Additional information about RD and its programs is available on the internet at <https://www.rd.usda.gov>.

All comments will be available for public inspection online at the Federal eRulemaking Portal (<http://www.regulations.gov>).

In accordance with 5 U.S.C. 553(b)(4), a summary of this proposed rule may be found by going to <http://www.regulations.gov> and in the “Search for dockets and documents on agency actions” box, enter the following docket number: RHS–24–MFH–0003.

**FOR FURTHER INFORMATION CONTACT:** Abby Boggs, Branch Chief, Program Support Branch, Production and Preservation Division, Multifamily Housing, Rural Development, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250, telephone: (615) 490-1371 or email: [Abby.Boggs@usda.gov](mailto:Abby.Boggs@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 nonprofit 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 Multifamily Housing (MFH) Programs.

The RHS operates the Direct MFH Loan and Grant Programs. The direct loan program provides loans to eligible borrowers unable to get financing through traditional lenders. Multifamily direct loans feature terms and conditions that support the development or preservation of affordable rural rental housing for low-income, elderly, or disabled people. Loan funds can be used for all construction hard costs and land-related costs, including land acquisition and development.

## **II. Discussion of Proposed Rule**

RHS regulation 7 CFR 3560.56(d)(5) provides that for initial loan applications, eligibility and feasibility of a housing proposal will be determined based on, amongst other requirements, an analysis of current credit reports. Currently, the agency collects a credit report fee from applicants during the application process and agency staff obtain the required credit report through a contract with a credit reporting agency. RHS has relied on various internal guidance documents to staff to provide information on this credit report process. By not having the credit report process clearly codified, the Agency makes the process unnecessarily complicated for the applicant and Agency staff. When the Multifamily Housing Program realigned all staff members to the National Office

level, applicants were required to submit the credit report fee electronically to the Agency's Business Center Servicing Office using a payment link. The process for creating the payment link is cumbersome. Agency staff must determine and notify the applicant of the credit report fee applicable for the applicant's particular request. Agency staff will request the Servicing Office to create a staged payment link for the fee through a SharePoint portal. Once the payment link is created, the Servicing Office notifies the requesting Agency staff and provides the payment link. Agency staff, in turn, notifies the applicant of the payment link and the applicant must process the payment before the link expires in 30 days. After the applicant's payment processes successfully, the Agency orders the credit report from a contracted bureau.

The agency is proposing to change the process by which credit reports are obtained to determine credit worthiness, eligibility, and feasibility for applicants and borrowers for MFH funding, transfers, and servicing actions. In lieu of the applicant submitting the fee, the Agency will require the applicant to provide the credit report(s).

It is the Agency's expectation that this regulation update for obtaining borrower credit reports will align the Agency with current industry practices and create an efficiency for applicants and borrowers by streamlining the application process.

### **Request for Comment**

Stakeholder input is vital to ensure the proposed changes in the proposed rule would support the Agency's mission, while ensuring that new regulations and policies are reasonable and do not overly burden the Agency's lenders and their customers.

Comments must be submitted by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] and may be submitted electronically by going to the Federal eRulemaking Portal: <https://www.regulations.gov>. Details on how to

submit comments to the Federal eRulemaking Portal are in the **ADDRESSES** section of this proposed rule.

### **III. Summary of Changes**

The Agency proposes to revise 7 CFR part 3560 by:

- (1) Adding the definition of *Current Comprehensive Credit Report* to §3560.11;
- (2) Updating § 3560.56(d)(5) to include the requirements of a valid credit report which must address both the entity and the actual individual principals, partners, members, etc., within the applicant entity, including any subentities who are responsible for controlling the ownership and operations of the entity;
- (3) Updating § 3560.405 to include the requirement for a credit report in cases of change to the borrower's organization structure or entity's controlling interest;
- (4) Updating § 3560.406 to include the requirement for a credit report for approval of transfers and sales; and
- (5) Establishing a new subpart R to provide detailed requirements of the credit reporting process.

In addition, this proposed rule intends to include conforming changes to rescind 7 CFR part 1910 subparts B and C; and update 7 CFR 1955.118 which is outdated.

### **IV. Regulatory Information**

#### **Statutory Authority**

The Direct Multifamily Housing Loan and Grant program is authorized under sections 514, 515, and 516 of title V of the Housing Act of 1949, as amended, 42 U.S.C. 1471 et seq., and implemented under 7 CFR part 3560. Section 510(k) of Title V of 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 and grants are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials to foster the intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development.

Applicants for the Direct Multifamily Housing Loan and Grant program are required to contact their State's Single Point of Contact (SPOC) to submit their Statement of Activities and find out more information on how to comply with the State's process under Executive Order 12372. To locate a SPOC for your state, the Office of Management and Budget (OMB) has an official SPOC list on its website <https://www.whitehouse.gov/omb/management/office-federal-financial-management>. For those States that have a home page for their designated SPCO, a direct link has been provided by clicking on the State name. SPOC information is also available in any RD Agency office or on the RD Agency's website.

States that are not listed on the OMB website have chosen not to participate in the intergovernmental review process, and therefore, do not have a SPOC. If you are located within a State that does not have a SPOC, you may send application materials directly to the Federal RD awarding agency. RHS conducts intergovernmental consultations for each loan in accordance with 2 CFR part 415, subpart C.

### **Executive Order 12866, Regulatory Planning and Review**

This proposed rule has been determined to be nonsignificant and, therefore, was not 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 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 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. This proposed 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 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 Indian Tribes. Thus, this proposed 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 Tribal Coordinator at: [AIAN@usda.gov](mailto: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 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed rule in accordance with USDA Regulation 4300–4, “Civil Rights Impact Analysis,” to identify any major civil rights impacts the proposed rule might have on program participants on the basis of age, race, color, national origin,

sex, or disability. After review and analysis of the proposed 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 proposed rule.

### **Assistance Listing**

The programs affected by this regulation is listed in the Assistance Listing Catalog (formerly Catalog of Federal Domestic Assistance) under numbers 10.415-Rural Rental Housing Loans and 10.405-Farm Labor Housing Loans and Grants.

### **Non-Discrimination Statement Policy**

In accordance with Federal civil rights laws and U.S. Department of Agriculture (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, audiotope, American Sign Language)

should contact the responsible Mission Area, agency, staff office, or the 711 Federal 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:

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

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## **List of Subjects**

### **7 CFR Part 1910**

Agriculture, Credit, Grant programs-agriculture, Grant programs-housing and community development, Loan programs-agriculture, Loan programs-housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements, Rural areas.

### **7 CFR Part 1955**

Agriculture, Drug traffic control, Government property, Loan programs-agriculture, Loan programs-housing and community development, Low and moderate income housing, Rural areas.

### **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 set forth in the preamble, the Rural Housing Service proposes to amend 7 CFR parts 1910, 1955, and 3560 as follows:

### **PART 1910—GENERAL**

1. The authority citation for part 1910 continues to read as follows:

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

#### **Subpart B—[Removed and Reserved]**

2. Remove and reserve subpart B, consisting of §§ 1910.51 through 1910.100.

#### **Subpart C—[Removed and Reserved]**

3. Remove and reserve subpart C, consisting of §§ 1910.101 through 1910.150.

### **PART 1955—PROPERTY MANAGEMENT**

4. The authority citations for part 1955 continues to read as follows:

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

#### **Subpart C—Disposal of Inventory Property**

5. Amend § 1955.118 by revising paragraphs (b)(2), (b)(6), (b)(8)(iii), and (b)(11)

to read as follows:

**§ 1955.118 Processing cash sales or MFH credit sales on nonprogram terms.**

\* \* \* \* \*

(b) \* \* \*

(2) *Processing.* Purchasers requesting credit on NP terms will be required to submit documentation to establish financial stability, repayment ability, and creditworthiness. Standard forms used to process program applications may be utilized or comparable documentation may be accepted from the purchaser with the servicing official having the discretion to determine what information is required to support loan approval for the type of property involved. Individual credit reports will be ordered for each individual applicant and each principal within an applicant entity in accordance with subpart R of part 3560. Commercial credit reports will be ordered for profit corporations and partnerships, and organizations with a substantial interest in the applicant entity in accordance with subpart R of part 3560.

\* \* \* \* \*

(6) *Term of note.* The note amount will be amortized over a period not to exceed 10 years. If the Leadership Designee determines more favorable terms are necessary to facilitate the sale, the note amount may be amortized using a 30-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing. In no case will the term be longer than the period for which the property will serve as adequate security.

\* \* \* \* \*

(8) \* \* \*

(iii) The Agency will provide the closing agent with the necessary information for closing the sale. The assistance of OGC will be requested to provide closing instructions for all MFH sales.

\* \* \* \* \*

(11) *Form RD 1910–11, “Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts.”* The Agency must review Form RD 1910–11, “Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts,” with the applicant, and the form must be signed by the applicant.

\* \* \* \* \*

## **PART 3560–DIRECT MULTIFAMILY HOUSING LOANS AND GRANTS**

6. The authority citation for part 3560 continues to read as follows:

**Authority:** 42 U.S.C. 1480.

### **Subpart A–General Provisions and Definitions**

7. Amend § 3560.11 by adding the definition of *Comprehensive Credit Report* in alphabetical order.

#### **§ 3560.11 Definitions.**

\* \* \* \* \*

*Current Comprehensive Credit Report.* A credit report no older than 6 months from the date of issuance, that contains details of both current open credit accounts and closed accounts, and that is provided by one of the three accredited major credit bureaus (Experian, Equifax, or TransUnion).

\* \* \* \* \*

### **Subpart B–Direct Loan and Grant Origination**

8. Amend § 3560.56 by revising paragraph (d)(5) to read as follows:

**§ 3560.56 Processing section 515 housing proposals.**

\* \* \* \* \*

(d) \* \* \*

(5) An analysis of current credit reports in accordance with subpart R of this part.

\* \* \* \* \*

**Subpart I—Servicing**

9. Amend § 3560.405 by adding paragraph (b)(4) to read as follows:

**§ 3560.405 Borrower organizational structure or ownership interest changes.**

\* \* \* \* \*

(b) \* \* \*

(4) Borrowers must submit a credit report in accordance with subpart R of this part.

\* \* \* \* \*

10. Amend § 3560.406 by adding paragraph (c)(6) to read as follows:

**§ 3560.406 MFH ownership transfers or sales.**

\* \* \* \* \*

(c) \* \* \*

(6) A credit report in accordance with subpart R of this part.

\* \* \* \* \*

**Subpart Q—[Reserved]**

11. Add and reserve subpart Q, consisting of §§ 3560.801 through 3560.850.

12. Add subpart R to read as follows:

**Subpart R—Credit Report Requirements**

Sec.

**3560.851 General.****3560.852 Requirements.****§ 3560.851 General.**

This subpart contains the Agency’s credit reporting requirements for all Multifamily (MFH) programs.

**§ 3560.852 Requirements.**

When required to submit a credit report under any provision of this part, such submission must include a current comprehensive credit report for both the entity and the individual principals, partners, members, and the individual sub-entities or natural persons who are responsible for controlling the ownership and operations of the applicant entity, including but not limited to principals, partners, or members. The Agency will also accept combination comprehensive credit reports which provide a comprehensive view of the applicant’s credit profile by combining data from all three major credit bureaus (Experian, Equifax, and TransUnion).

Joaquin Altoro,

Administrator, Rural Housing Service.

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