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DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Parts 1910, 1955, and 3560

[Docket No. RHS-24-MFH-0042]

RIN 0575-AD30

Multifamily Housing Program Update to the Credit Report Process

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 publishing a final rule to update its regulation on how credit reports are obtained for the purposes of determining eligibility and feasibility for Multifamily Housing (MFH) Programs.

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

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.

SUPPLEMENTARY INFORMATION:

Statutory Authority

The Direct-MFH Loan and Grant program is authorized under sections 514, 515, 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 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.

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 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.

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 Final Rule

The RHS published a proposed rule in the **Federal Register** on March 29, 2024 [89 FR 22094], 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. A 60-day comment period was provided for the

proposed rule, which closed on May 28, 2024. The Agency received comments from two (2) respondents. Neither comment is applicable to the specific contents of the proposed rule. Of the comments received, one respondent manages a USDA-RD property and provided concerns for tenants providing their own credit report to live in the complex, which is not what this rule will allow, and one respondent's comment was made anonymously about leasing and selling public land to the government, which is not applicable to the subject matter of this rule. No changes were made in this final rule as a result of public comments.

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 obtains 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.

This final rule will amend 7 CFR part 3560 to require that in lieu of applicants and borrowers submitting credit report fees, the Agency will require applicants and borrowers to provide the credit report(s). In accordance with 18 U.S.C. 1001, applicants that submit false, fictitious, or fraudulent materials shall be fined or imprisoned not more than 5 years.

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

III. Summary of Changes

The Agency will make the following revisions as published in the proposed rule. No changes were made in this final rule as a result of public comments.

(1) Add the definition of *Current Comprehensive Credit Report* to 7 CFR 3560.11.

(2) Update 7 CFR 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 sub-entities who are responsible for controlling the ownership and operations of the entity.

(3) Update 7 CFR 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) Update 7 CFR 3560.406 to include the requirement for a credit report for approval of transfers and sales.

(5) Establish a new subpart R within 7 CFR part 3560 to provide detailed requirements of the credit reporting process.

In addition, this final rule will include conforming changes to rescind 7 CFR part 1910, subparts B and C, and 7 CFR 1955.118, which are outdated.

IV. Regulatory Information

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/office-federal-financial-management/spoc-list/>. 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 final rule has been determined to be not 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 bringing suit 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 final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have tribal implications, including

regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Consultation is also required for any regulation that preempts Tribal law or that imposes substantial direct compliance costs on Indian Tribal governments and that is not required by statute.

The Agency has determined that this final rule does not, to our knowledge, have Tribal implications that require formal Tribal consultation under Executive Order 13175. If a Tribe requests consultation, the RHS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

Administrative Pay-As-You-Go-Act of 2023

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 (Pub. L. 118-5, div. B, title III, 137 Stat 31) amended 5 U.S.C. 801(a)(2)(A) to require U.S. Government Accountability Office (GAO) to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO's major rule reports.

The Act does not apply to this rule because it does not increase direct spending.

National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, Public Law 91-190, this final rule has been reviewed in accordance with 7 CFR part 1970 ("Environmental Policies and Procedures"). The Agency has determined that i) this action meets the criteria established in 7 CFR 1970.53(f); ii) no extraordinary

circumstances exist; and iii) the action is not “connected” to other actions with potentially significant impacts, is not considered a “cumulative action” and is not precluded by 40 CFR 1506.1. Therefore, the Agency has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is 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

This final rule contains no new reporting or recordkeeping burdens under OMB control number 0575-0189 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

E-Government Act Compliance

Rural Development is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible and 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.

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 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, audiotape, 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, 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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Severability

It is USDA's intention that the provisions of this rule shall operate independently of each other. In the event that this rule or any portion of this rule is ultimately declared invalid or stayed as to a particular provision, it is USDA's intent that the rule nonetheless be severable and remain valid with respect to those provisions not affected by a declaration of invalidity or stayed. USDA concludes it would separately adopt all of the provisions contained in this final rule.

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 amends 7 CFR parts 1910, 1955, and 3560 as follows:

PART 1910 - [Removed and Reserved]

1. Under the authority of 5 U.S.C. 301, 7 U.S.C. 1989, and 42 U.S.C. 1480, part 1910 is removed and reserved.

PART 1955 – PROPERTY MANAGEMENT

2. 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

3. Amend § 1955.118 by revising paragraphs (b)(2) and (6), (b)(8)(iii), and (b)(11) to read as follows:

§ 1955.118 Processing cash sales or MFH credit sales on NP 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 7 CFR 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 7 CFR 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 MULTI-FAMILY HOUSING LOANS AND GRANTS

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

Authority: 42 U.S.C. 1480.

Subpart A – General Provisions and Definitions

5. Amend § 3560.11 by adding the definition of *Current Comprehensive Credit Report* in alphabetical order to read as follows:

§ 3560.11 Definitions.

* * * * *

Current Comprehensive Credit Report. A credit report no older than six 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

6. 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

7. 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.

* * * * *

8. 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 – [Added and Reserved]

9. Add reserved subpart Q.

10. 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 provides 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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