



DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3565

[Docket No. RHS-24-MFH-0024]

RIN 0575-AD42

Multifamily Housing Guaranteed Rural Rental Housing Program Requirement to Submit a Market Study

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

ACTION: Proposed rule.

SUMMARY: The Rural Housing Service (RHS or Agency), an agency of the Rural Development (RD), within the United States Department of Agriculture (USDA), is issuing a proposed rule to amend its regulation that will require applicants (lenders) to submit a market study as part of the complete application for the Guaranteed Rural Rental Housing Program (GRRHP) loan guarantee. This change will require all applicants to use a market study when demonstrating market need for new construction.

DATES: Comments must be submitted electronically on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] by using the Federal eRulemaking Portal: <http://www.regulations.gov>. Details on how to submit comments to the Federal eRulemaking Portal are in the **ADDRESSES** section of this proposed rule.

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-0024) or RIN# 0575-AD42, then click search. To submit or view public comments, select the following document title: (Guaranteed Rural Rental Housing Program Requirement to Submit a Market

Study) 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 <http://www.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 Rural Development and its programs is available on the internet at rd.usda.gov.

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

FOR FURTHER INFORMATION CONTACT: Abby Boggs, Program Support Branch, Production and Preservation Division, Rural Housing Service, Stop 0782, 1400 Independence Avenue SW, Washington DC 20250-0782, Telephone: (615) 490-1371 or Email: abby.boggs@usda.gov

SUPPLEMENTARY INFORMATION:

I. Background

Rural Development is an advocate for rural America, administering a multitude of programs, ranging from housing and community facilities to infrastructure and business development. The Agency’s mission is to increase economic opportunity and improve the quality of life in rural communities by providing the leadership, infrastructure, capital, and technical support that enables rural communities to prosper. To achieve its mission, the Agency provides financial support, including loan guarantees, direct loans and grants, and technical assistance to enhance the quality of life and provide the foundation for economic development in rural areas.

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, housing for farm laborers and much more. RHS also provides technical assistance, loans, and grants in partnership with non-profit organizations, Indian Tribes, State and Federal government agencies, and local communities.

GRRHP, a program in the RHS, provides up to a 90 percent guarantee for loans made by commercial lenders to borrowers developing or rehabilitating multifamily rental housing for low- and moderate-income tenants in rural areas. The program works with qualified private-sector lenders to provide financing to qualified borrowers to increase the supply of affordable rental housing for low- and moderate-income individuals and families in eligible rural areas and towns.

II. Purpose of the Proposed Rule

The intent of this proposed rulemaking is for the GRRHP to increase the supply of affordable rural rental housing by using loan guarantees to encourage partnerships between the RHS, private lenders, and public agencies. GRRHP is authorized by Section 538 of the Housing Act of 1949. 7 CFR part 3565 sets forth the regulatory requirements for the GRRHP.

7 CFR part 3565 currently requires that applications for a loan guarantee submitted by lenders must include a loan request for projects that demonstrate market feasibility for affordable rental housing. Currently, the regulation makes references to market assessment but does not specify the type of documentation the lender must submit to demonstrate the need. Some provide it in the form of a market study, while others provide the information in other formats, but there is no specific requirement that a market study be submitted. This creates inconsistencies of submitted documentation to the Agency to demonstrate market demand.

The purpose of a market study is to assure there is enough sustainable demand for additional rental housing units without adversely impacting the existing supply and to maintain a balanced overall market. A typical market study includes an assessment of the impact the proposed project will have on existing rental developments.

The Agency is proposing to amend 7 CFR 3565.254(b) to require that applicants (lenders) submit a market study to demonstrate market need as part of the complete application for a Section 538 Guaranteed Rural Rental Housing loan guarantee for a new construction property to create consistency in the application process.

Lenders must provide documentation during the application process that there is a need for the affordable rental housing in the defined market area in which new units are proposed to be built as one of the conditions for receiving a loan guarantee. 7 CFR part 3565 does not specify the documentation that should be submitted to the Agency. In keeping with the precedent of other affordable housing programs, the Agency currently accepts a market study from applicants seeking a loan guarantee, but there is no regulatory requirement to do so. The Agency anticipates that this regulatory change will allow the Agency to enforce the requirement that applicants must submit a market study as a part of a complete Section 538 GRRHP application to determine feasibility of the project.

Request for Comment

Stakeholder input is vital to ensure the 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 its customers. Comments must be submitted on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]** and must be submitted electronically by going to the Federal eRulemaking Portal: 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 proposed changes are intended to amend 7 CFR 3565.254(b) by adding the requirement that a market study must be submitted with a complete application for new construction. The market study determines the need and feasibility of housing in a particular

rural area, which would allow the Agency to be more responsive to the needs of the program's rural stakeholders and housing market.

IV. Regulatory Information

Statutory Authority

Section 510(k), Title V, of the Housing Act of 1949 42 U.S.C. 1480(k)), authorizes the Secretary of the Department of Agriculture to promulgate rules and regulations as deemed necessary to carry out the purpose of that title. The Secretary is further authorized to prescribe regulations for the operation of the Department of Agriculture by 5 U.S.C. 301.

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 Orders 12866

Executive Orders 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, if a regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). This proposed 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 proposed rule has been reviewed under Executive Order 12988. In accordance with this proposed rule: (1) unless otherwise specifically provided, all State and local laws that conflict with this proposed rule will be preempted; (2) no retroactive effect will be given to this proposed rule except as specifically prescribed in the proposed 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 proposed rule.

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 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 the states is not required and a federal summary impact statement is not required.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

Reforming Federal Funding and Support for Tribal Nations to Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination. This proposed 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 proposed 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 and USDA Rural Development's Tribal Relations Team to ensure meaningful consultation is provided

where changes, additions and modifications identified herein are not expressly mandated by Congress.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–602) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act (“APA”) or any other statute. The Administrative Procedures Act exempts from notice and comment requirements rules “relating to agency management or personnel or to public property, loans, grants, benefits, or contracts” (5 U.S.C. 553(a)(2)); therefore, an analysis has not been prepared for this proposed rule.

Unfunded Mandates Reform Act

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, more 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.

National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, Public Law 91-190, this proposed 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.

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 rule might have on program participants on the basis of age, race, color, national origin, sex, disability, 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 proposed 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 proposed rule is listed in the Assistance Listing (AL) (formerly Catalog of Federal Domestic Assistance) for Guaranteed Number 10.438 Rural Rental Housing Guaranteed Loans (Section 538).

Paperwork Reduction Act

This proposed rule contains no new reporting or recordkeeping burdens under OMB control number 0575- 0179 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.

USDA 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, 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 State or local Agency that administers the program or contact USDA through the Telecommunications Relay Service at 711 (voice and TTY). Additionally, program information may be made available in languages other than English.

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> 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:

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

Severability

It is USDA's intention that the provisions of this proposed rule shall operate independently of each other. If this proposed rule or any portion of this proposed rule is ultimately declared invalid or stayed as to a particular provision, it is USDA's intent that the proposed 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 the provisions contained in this proposed rule.

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 42 U.S.C. 1480.

2. Amend § 3565.254 by revising paragraphs (b)(2) and (3) and adding paragraph (b)(5) to read as follows:

§ 3565.254 Property Standards.

* * * * *

(b) * * *

(2) A Phase I Environmental Site Assessment (American Society of Testing and Materials) in accordance with 7 CFR Part 1970.

(3) A Standard Flood Hazard Determination in accordance with 7 CFR Part 1970.

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(5) In the case of new construction, a market study is required. The market study will be used to determine market feasibility. This is separate from the review outlined in § 3565.303(a) which allows the applicant the option to request a preliminary feasibility review by the Agency when required loan documentation is submitted.

Christine Mechtly,

Acting Administrator,

Rural Housing Service.

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