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## **DEPARTMENT OF AGRICULTURE**

### **Rural Housing Service**

#### **7 CFR Part 3555**

**[Docket No. RHS-25-SFH-0003]**

**RIN 0575-AD47**

### **Single Family Housing Guaranteed Loan Program - Limited Party Concessions**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Rural Housing Service (RHS or Agency), an agency of the Rural Development (RD) mission area within the U.S. Department of Agriculture (USDA), proposes to amend the current Single Family Housing Guaranteed Loan Program (SFHGLP) regulation to specify that real estate commission fees are excluded from interested party limitations.

**DATES:** Comments must be submitted on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Comments may be submitted by going to the Federal eRulemaking Portal, [regulations.gov](https://www.regulations.gov) and in the “Search for docket and documents on agency actions” box, enter the docket number, “**Docket No. RHS-25-SFH-0003**”, and click the “Search” button. From the search results: click on or locate the document title: “Single Family Housing Guaranteed Loan Program-Limited Party Concessions” and select the “Comment” button. Before inputting comments, commenters may review the “Commenter’s Checklist” (optional), or the Regulatory Information Number (RIN) provided above in this notice and click the “Search” button. To submit a comment: Insert comments under, choose the “Comment” title, click “Browse” to attach files (if available), input email address, select box to opt to receive email confirmation of submission and

tracking (optional), select the box “I’m not a robot,” and then select “Submit Comment” button associated with this rulemaking. 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 under the site’s “FAQ” link. All comments will be available for public inspection online at the Federal eRulemaking Portal (regulations.gov) tab at the bottom of the Home page.

Additional information about Rural Development and its programs is available on the Internet at <http://www.rurdev.usda.gov/index.html>.

**FOR FURTHER INFORMATION CONTACT:** Laurie Mohr, Finance and Loan Analyst, Single Family Housing Guaranteed Loan Division, Rural Development 1400 Independence Avenue SW., Washington, DC 20250-0784. Telephone: (314) 679-6917; or email: [laurie.mohr@usda.gov](mailto:laurie.mohr@usda.gov).

**SUPPLEMENTARY INFORMATION:**

**Abbreviations**

C.F.R.	Code of Federal Regulations
ET SEQ.	Et Sequens/Sequentes (“and what follows”)
FNMA	Federal National Mortgage Association, “Fannie Mae”
FHA	Federal Housing Administration
FR	Federal Register
FHLMC	Federal Home Loan Mortgage Corporation, “Freddie Mac”
HB-3555	Handbook-1-3555, Single Family Housing Guaranteed Loan Program Technical Handbook
HUD	U.S. Department of Housing and Urban Development
RHS	Rural Housing Service
§	Section
U.S.C.	United States Code

## **I. Authority**

SFHGLP is authorized by Section 502(h) of Title V of the Housing Act of 1949 (42 U.S.C. § 1472(h)), as amended; and is implemented by 7 C.F.R. part 3555.

## **II. Background**

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

Under the authority of the Housing Act of 1949, (42 U.S.C. 1472, *et seq.*), as amended, the SFHGLP makes loan guarantees to provide low- and moderate-income persons in rural areas an opportunity to own decent, safe, and sanitary dwellings and related facilities. Approved lenders make the initial eligibility determinations, and the Agency reviews those determinations to make a final eligibility decision.

This program helps lenders work with low- and moderate-income households living in rural areas to make homeownership a reality. Providing affordable homeownership opportunities promotes prosperity, which in turn creates thriving communities and improves the quality of life in rural areas.

## **III. Discussion of the Proposed Rule**

Currently, under 7 CFR part 3555, if the seller agrees to pay fees on behalf of the buyer, including real estate commission fees, the amount of those fees is included in the maximum interested party contribution limitation of 6 percent. Specifically, 7 C.F.R. § 3555.102(h) states seller concessions include all the following items: purchaser's

mortgage financing costs, closing costs, escrow accounts, furniture, or other giveaways that are paid by the seller or other interested third party.

The Agency is specifically addressing the real estate commission fee in this proposal as it is expected that homebuyers will become responsible to pay these fees due to changing market conditions in the real estate environment because of a national lawsuit and settlement.<sup>1</sup> The result is that real estate commission fees could be paid by the buyer or negotiated into the purchase contract as a seller concession. This could increase closing costs to the SFHGLP buyer and make it more difficult for them to purchase a home using this program, as sellers or other interested parties are limited to contributing a combined maximum of 6 percent of the sales price in the transaction. The mortgage industry is taking the stance that with these anticipated changes within the industry, real estate commission fees should not be included when calculating the interested party concession maximum calculation.<sup>2</sup> The U.S. Department of Housing and Urban Development (HUD), administered through the Federal Housing Administration (FHA) has stated that if the seller continues to pay for the buyer's side real estate agent commissions and fees as a matter of state and local custom, and if the commissions and fees are reasonable in amount, these fees would not be included in the interested party contributions, provided all other requirements of FHA are met.<sup>3</sup> The U.S. Department of Veterans Affairs (VA) interpretation of seller concessions already excluded the real estate commission fees from the 6 percent limitation. However, VA did need to provide a new variance to allow the

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<sup>1</sup> *National Association of Realtors (NAR), et al., Burnett et al. and Moehrl, et al. cases*

<sup>2</sup> FHA Info 2024-12 Bulletin (March 28, 2024), Fannie Mae Selling Notice (April 15, 2024), Freddie Mac Industry Letter (April 15, 2024)

<sup>3</sup> FHA Info 2024-12 Bulletin (March 28, 2024)

VA applicant to pay the real estate commission fee, as previously it was prohibited. The government sponsored enterprises (GSEs), Fannie Mae (FNMA) and Freddie Mac (FHLMC), also permit interested parties to make contributions to borrowers' closing costs subject to maximum limits for common and customary fees or costs.

If the real estate commission fee is reasonable and customary and meets all other requirements, FHA, VA, Fannie Mae, and Freddie Mac allow the commission fee to be excluded from the limited party contribution calculations. This proposed rule aligns the program with these entities by excluding the fee from the seller concession calculation. This allows more applicants access to the SFHGLP to purchase homes in rural areas. The Agency proposes to alter the current regulation by clarifying the real estate commission fees are excluded from the calculation of the 6 percent interested party concession limitation.

The proposed rule adjusts to changes in the mortgage industry to allow the real estate commission fee to be a negotiated fee in the real estate environment. SFHGLP borrowers can finance this fee if it is deemed a normal and customary fee pursuant to 7 C.F.R. § 3555.101(b)(6)(vii), however if the seller pays the fee on the buyer's behalf, it currently would be included in the 6 percent limit, severely limiting potential SFHGLP applicants. Allowing the real estate commission fee to be excluded from the 6 percent seller concession calculation would allow additional funds contributed by the seller to be used to help applicants pay closings costs, fund repairs, or cover other necessary items in the real estate transaction. This allows applicants to save more of their own funds for future expenditures; make home improvements; or allow them to buy goods and services, putting money back into the economy. Borrowers become financially stronger and rural America benefits with more homeownership.

#### **IV. Request for Comment**

Stakeholder input is vital to the Agency to ensure that the proposed changes support the Agency’s mission, while ensuring that new regulations and policies don’t unreasonably burden potential lenders and their customers. Comments must be submitted on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and may 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.

#### **V. Executive Orders/Acts**

##### **Executive Order 12372—Intergovernmental Review of Federal Programs**

This proposed rule is not subject to the requirements of Executive Order 12372, “Intergovernmental Review of Federal Programs,” as implemented under USDA's regulations at 2 C.F.R. part 415, subpart C.

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

This proposed rule has been designated not significant for purposes of Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget (OMB).

##### **Executive Order 12988—Civil Justice Reform**

This proposed 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 the Department of Agriculture (7 C.F.R. part 11) must be exhausted before bringing suit in court that challenges action taken under this 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. Nor does this proposed rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the States is not required.

### **Executive Order 13175– Consultation and Coordination with Indian Tribal Governments**

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 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 Agency 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.

### **Executive Order 13563—Improving Regulation and Regulatory Review**

Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and promoting flexibility. This proposed rule has been designated a “non-significant regulatory action,” under section 3(f) of

Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget (OMB).

### **Civil Rights Impact Analysis**

This proposed rule was reviewed in accordance with USDA Regulation 4300-004, “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, religion, color, national origin, sex, disability, marital status, or familial status. Based on the results of the review and analysis of the proposed rule and all available data, issuance of this proposed rule is not likely to negatively impact any group identified by protected group status.

### **Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for federal agencies to assess the effect of their regulatory actions on state, local, and tribal governments, and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a 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 the 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 the private sector. Therefore, this 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 C.F.R. part 1b (“National Environmental Policy Act”). The Agency has determined that i) this action meets the criteria established in 7 C.F.R. § 1b and ii) no extraordinary circumstances exist. 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 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 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.

### **Programs Affected**

The program affected by this proposed rule is listed in the Assistance Listing (AL) Number 10.410, Very Low- to Moderate- Income Housing Loans (Section 502 Rural Housing Loans).

### **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.

### **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, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [How to File a Program Discrimination Complaint](https://www.usda.gov/about-usda/general-information/staff-offices/office-assistant-secretary-civil-rights/how-file-program-discrimination-complaint) (<https://www.usda.gov/about-usda/general-information/staff-offices/office-assistant-secretary-civil-rights/how-file-program-discrimination-complaint>) 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: (1) 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; (2) fax: (202)

690-7442; or (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov). USDA is an equal opportunity provider, employer, and lender.

### **List of Subjects in 7 CFR Part 3555**

Administrative practice and procedure, Conflicts of interest, Credit, Environmental impact statements, Fair housing, Flood insurance, Housing, Loan programs-housing and community development, Low and moderate income housing, Manufactured homes, Mortgage insurance, Mortgages, Reporting and recordkeeping requirements, Rural areas.

For the reasons discussed in the preamble, the Agency is proposing to amend 7 C.F.R. part 3555 as follows:

### **PART 3555 – GUARANTEED RURAL HOUSING PROGRAM**

1. The authority citation for 7 C.F.R. part 3555 continues to read as follows:

**Authority:** 5 U.S.C. § 301; 42 U.S.C. § 1472(h)

#### **Subpart C – Loan Requirements**

2. Amend § 3555.102 by revising the definition terms for seller concessions in paragraph (h) to read as follows:

#### **§ 3555.102 Loan restrictions.**

\* \* \* \* \*

**(h) *Seller concessions.*** Purchasing a home if the seller, or other interested third party, contributes more than 6 percent, unless otherwise provided by the Agency, of the property's sales price toward the purchaser's mortgage financing costs, closing costs, escrow accounts, furniture, or other giveaways. Real estate commission fees are excluded from the 6 percent seller concession limitation.

\* \* \* \* \*

**George Kelly,**

*Administrator,*

*Rural Housing Service.*

