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DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3560

[Docket No. RHS-23-MFH-0019]

RIN 0575-AD29

Changes Related to Insurance Requirements in Multi-Family Housing (MFH)

Direct Loan and Grant Programs

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), will implement changes related to insurance requirements under the Multi-Family Housing (MFH) Direct Loan and Grant programs. This final rule will align RD insurance coverage types, amounts, and deductibles with affordable housing industry standards to simplify the coverage amounts, deductible limits, and improve customer experience with updated and understandable insurance requirements.

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

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

FOR FURTHER INFORMATION CONTACT: Michael Resnik, Director, Multi-Family Housing Asset Management Division, Rural Housing Service, United States Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250-0782, Telephone: (202) 430-3114 (this is not a toll-free number), or email:

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SUPPLEMENTARY INFORMATION:

I. Background

The Rural Housing Service (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.

Title V of the Housing Act of 1949 (Act) authorized USDA to make housing loans to farmers to enable them to provide habitable dwellings for themselves or their tenants, lessees, sharecroppers, and laborers. USDA then expanded opportunities in rural areas, making housing loans and grants to rural residents through the Single-Family Housing (SFH) and Multi-Family Housing (MFH) Programs.

RHS operates the MFH direct loan and grant programs by providing direct loans or grants to affordable multi-family rental housing for low income, elderly, disabled individuals and families, or domestic farm workers in eligible rural areas. The programs are covered by the 7 CFR part 3560, Direct Multi-Family Housing Loans and Grants and are: (1) Section 515, Rural Rental Housing loans, which finances multi-family units in rural areas; (2) Section 514 and 516 Farm Labor Housing loans and grants, which finances farm labor housing; and (3) Section 521, Rental Assistance, which finances project-based tenant rent subsidy.

As required by the Agency under the 7 CFR part 3560, borrowers must purchase and maintain property insurance on all buildings included as security for an Agency loan, to avoid a non-monetary loan default. Regulations require borrowers to provide fidelity

coverage, liability insurance and various other insurance coverage to protect against losses or damages.

II. Summary of Public Comments Received and Agency Responses

Stakeholder input is vital to the Agency to ensure that the current regulations will 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. The Rural Housing Service (RHS) published a proposed rule in the **Federal Register** on October 25, 2023 (88 FR 73245) where a 60-day comment period was provided for the public to submit comments, which closed on December 26, 2023. Commenters included non-profit housing organizations, entities representing housing providers, and private citizens. The Agency received nine (9) comments from stakeholders and the general public. The Agency's responses to the comments which have been summarized and categorized are noted below:

Comments 1 & 2:

Several commenters provided positive support for the proposed considerations of the rule changes.

Agency's response:

The Agency acknowledges the commenters' support.

Comment 3:

Four commenters expressed concerns with the proposed higher deductible limits adversely affecting smaller properties.

Agency's response:

The Agency understands the concerns expressed by the commenters regarding insurance deductible limits. The deductible limits will be listed as not to exceed maximum limit; therefore, a property can choose a deductible limit that is less than the maximum

limit specified in the proposed rule change.

Comment 4:

Two commenters expressed concern regarding: (1) the difficulty of windstorm deductibles to match the all-peril property deductible limits; (2) the windstorm coverage premium cost being prohibitive in many areas of the country; and, (3) the inclusion of windstorm deductible limits in the same category as hazard coverage. The commenters requested alternative language that would allow owners to opt out of windstorm coverage when the cost is prohibitive. Commenters also flagged that with coverage such as windstorm, which varies widely based on geographical location, the coverage is often based on a percentage of the building and may conflict with the blanket requirements in the Final rule.

Agency's response:

Due to the volume of windstorm events that occur on an annual basis nationwide, the Agency concludes that windstorm coverage is necessary to protect the Agency's security asset. The Agency acknowledges the recommendation that the windstorm deductible limit in the proposed rule limit may be cost prohibitive and could vary based on geographical locations, and the deductible is often based on a percentage of the building value. Therefore, the current regulation at 7 CFR 3560.105(f)(9)(iii) which states that when windstorm coverage is excluded from the "All Risk" policy, the deductible must not exceed five percent of the total insured value, will remain unchanged.

Comment 5:

One commenter requested that these policies apply to all Rural Housing Service (RHS) programs. They urge RHS to include both the direct and guaranteed loan programs in these updated requirements.

Agency's Response:

The Agency appreciates the concern for insurance requirements throughout all

RHS programs. This Final rule applies only to the RHS Multi-Family Housing Programs and the insurance requirements in 7 CFR 3560.

Comment 6:

One commenter requested that the Agency consider business income loss insurance to be an optional type of insurance. The commenter provided benefits and shortcomings of business income loss insurance.

Agency's Response:

The Agency appreciates the commenter's concern. The Final Rule will still require business loss insurance as the Agency believes that requiring business income insurance will provide financial relief to the owners who suffer income loss due to damage or destruction of their rental property.

Comment 7:

One commenter expressed concerns about insurance companies declaring bankruptcy and other insurance companies deciding to discontinue offering insurance coverage in some states entirely as the result of a catastrophic event or multiple catastrophic events.

Agency's Response:

The Agency acknowledges the concern of the overall lack of insurance companies who will provide coverage and the general difficulty in obtaining insurance in some states where catastrophic events have occurred. At the time of a catastrophic event, when a property has incurred a total loss, and tenants have been relocated under Agency relocation procedures, it may be in the Agency's best interest to apply the insurance proceeds to the Agency's debt rather than rebuilding and facing the difficulty of the property being uninsured. As a result, in addition to the revision in the proposed rule, this Final rule incorporates additional language into 7 CFR 3560.105(f)(7) for instances where the insurance proceeds will be applied to the Agency's loan.

Comment 8:

Two commenters urged a larger Federal response to address the underlying issues causing the current vulnerability of the insurance industry.

Agency's Response:

The Agency understands this concern and will continue to support a unified solution beyond the scope of this Final rule.

Comment 9:

One commenter suggested the RHS implement a waiver of certain insurance deductible limits during times of increased rates by the Federal Reserve to allow owners relief until rates stabilize and fall.

Agency's Response:

The Agency acknowledges the commenter's suggestion for this modification. The Agency finds that the implementation of such a waiver will adversely affect the interest of the Federal Government, which is contrary to the Administrator's exception authority noted in § 3560.8.

III. Discussion of the Final Rule

The Agency has determined that the current regulations set forth at 7 CFR part 3560 contain outdated insurance requirements. Stakeholders and affordable housing industry advocates have stressed the need for changes and updates to the RD multifamily housing insurance requirements. The current insurance coverage amounts, and deductible limits were established in 2004 when the interim Final rule was published on November 26, 2004, in the Federal Register (69 FR 69031). This rule is necessary to update the RD multifamily housing insurance coverage amounts and deductible limits from those established in 2004 to the current dollar value. The rule will modernize the RD multifamily housing insurance coverage requirements, amounts, and deductible limits

to align with the affordable housing industry practices.

Insurance premiums, including those for hazard/property insurance required by the Agency, are increasing due to changes in the insurance industry, such as the increasing of insurance rates in part due to increased catastrophic or significant weather related events. Agency stakeholders are expected to benefit from the Final rule changes through lower insurance premiums and more flexibility in choices of coverage and deductibles. The current low-deductible limits result in higher premiums. By allowing higher deductible limits, the Final rule will provide flexibility to the owner to select a deductible that can lower the premium costs.

When a disaster occurred and the coverage was less than the industry standard of 80 percent of replacement cost value, the Agency has seen the loss of needed multifamily housing properties. Due to insufficient coverage amounts, properties have not been able to be rebuilt and the communities in need of affordable housing have lost housing units. For example, an 85-unit property was a total loss as a result of a naturally declared disaster. Insurance proceeds per the current regulation requirement covered the remaining balance of the Agency loan but were insufficient to rebuild, resulting in the total loss of 85 affordable housing units from the community. This Final rule is intended to assist stakeholders by providing the financial capacity to build-back needed affordable housing units. Rural communities will benefit and be able to maintain affordable housing units.

The Agency believes that the changes made by this Final rule will provide a streamlined process and positive customer experience while creating a stronger, more resilient portfolio of properties, improved oversight of critical areas, and a reduction of portfolio financial risk by providing consistent coverage amounts and deductible limits.

IV. Summary of Final rule Changes

Changes As Published in the Proposed Rule and as a Result of Public Comments

The following changes to 7 CFR 3560 as proposed in the published proposed rule, and updated based on public comments received by the Agency during the proposed rule public comment period are as follows:

7 CFR 3560, Subpart A

(1) In § 3560.4(b), the Agency is removing the reference to 7 CFR part 1806, subpart B - National Flood Insurance. The flood insurance requirement for the covered programs is required in § 3560.105.

7 CFR 3560, Subpart B

(2) In § 3560.62 paragraph(d), the Agency is updating the current format to be more reader friendly and adding changes that would require Worker's Compensation insurance and business income insurance. The Worker's Compensation insurance requirement would implement current Agency policy. The business income insurance requirement would provide protection and financial relief to borrowers who suffer income loss due to damage or destruction at their rental property.

7 CFR 3560, Subpart C

(3) The Agency will update the insurance coverages and deductible requirements for the MFH Direct Loan and Farm Labor Housing programs to the current dollar values. The Agency's research for the updates include a review of data from other federal housing agencies such as Housing and Urban Development (HUD) and Freddie Mac, coupled with state agencies and private sector affordable housing data. This data is used by the Agency as an indicator of industry standards for the insurance requirements.

Adding Worker's Compensation insurance and Business Income insurance requirements is consistent with housing industry standards and is consistent with the change for 7 CFR Part 3560.62(d), which will require Worker's Compensation insurance and Business Income insurance before loan funds are made available to the borrower in addition to the current insurance requirements.

The Final rule will update § 3560.105 as follows:

(i) Update language in paragraph (b)(1) to state that insurance is required, on or prior to loan or grant closing rather than prior to loan approval. Also, update language to clarify when insurance is required if there is interim financing or the Agency is providing multiple loan advances.

(ii) Update paragraph (b)(4) to state that the Agency must be named as loss co-payee or mortgagee, regardless of lien position, which provides consistency with Agency subordination agreement documents.

(iii) Update paragraph (c)(4) to state that insurance is required on or prior to loan or grant closing rather than prior to loan approval. This is consistent with the final change to § 3560.105(b)(1).

(iv) Include windstorm coverage in the general types of coverage as noted in hazard insurance in paragraph (f)(1)(i). And add a caveat to (f)(2)(i) that windstorm coverage is an other type of insurance the Agency may require when it is specifically excluded from the All-Risk policy. This is consistent with current hazard (or property) insurance industry standard.

(v) Update paragraph (f)(1)(iii) to include the amount of coverage requirement to provide consistency with current Agency policy.

(vi) Add paragraph (f)(1)(v) to include business income loss insurance in the list of minimum property insurance that borrowers must acquire. This change is consistent with the final change for 7 CFR Part 3560.62(d).

(vii) Update paragraph (f)(3) from a depreciated replacement value or unpaid loan balance, to a “not less than a percentage of insurable replacement cost value,” which is a percentage that is consistent with affordable housing industry standards for the minimum property insurance coverage.

(viii) Remove paragraph (f)(3)(ii) because its intent is duplicative of paragraph (f)(3)(i). Paragraph (f)(3)(iii) will be redesignated to the new (ii) and revise the minimum flood insurance coverage to the lesser of, not less than a percentage of insurable replacement cost value, or maximum amount of insurance available under the National Flood Insurance Act, which is consistent with affordable housing industry standards.

(ix) Update the language in paragraph (f)(4) to consolidate the relevant content of this paragraph and remove the sub-bullet content that references depreciated replacement value which is no longer relevant.

(x) Update the language in paragraph (f)(7) by adding an additional option for insurance settlement claims to be placed in an other supervised account or applied to Agency debt.

(xi) Update the language in paragraph(f)(9)(i)(A) through (B) and adding a paragraph (C) to the hazard/property insurance deductible limits to a “not to exceed” amount that is based on the coverage amount, instead of the current deductible calculation formula. The current Agency limitations on the deductible limit contribute to rising premium costs for the project. This change will allow for larger deductible limits which in turn will make the project’s insurance premiums more affordable.

(xii) Update the language in paragraph (f)(9)(iv) regarding the earthquake deductible limit to allow deductibles that do not exceed 20 percent of the coverage amount. This will increase the deductible limit and align the deductible with affordable housing industry standards.

(xiii) Add new paragraph (f)(11) to include policy requirements for cancellation, standard form of Non-Contribution Mortgage Clause, and loss payee.

(xiv) Revise language in paragraph (h)(2)(ii) by removing the fidelity coverage deductible chart and replacing it with a new deductible limit based on a “not to exceed amount.” Also, revising the fidelity coverage amount to a specific percentage of

proposed annual rental income with a minimum limit, instead of the Agency's current policy of a formula based calculation. This change will simplify the coverage calculation, align the coverage amount and deductible limit with affordable housing industry standard, create consistency among insurance deductibles, and in turn make it easier for the borrower to be in compliance with insurance requirements.

(xv) Update to the definition of worker's compensation insurance based on industry standards will be added and becomes paragraph (i). The current paragraph (i) (Taxes) will become paragraph (j).

V. Regulatory Information

Statutory Authority:

Title V the Housing Act of 1949 (42 U.S.C. § 1480 et. seq.), as amended, authorizes the Secretary of the Department of Agriculture to promulgate rules and regulations as deemed necessary to carry out the purpose of that title, as implemented under 7 CFR part 3560.

Executive Orders and Acts

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. RHS conducts intergovernmental consultations for each loan and grants 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 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 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 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.

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 1b (“National Environmental Policy Act”). The Agency has determined that i) this action meets the criteria established in 7 CFR 1b.4(c)(31) 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

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)), so therefore an analysis has not been prepared for this rule.

Unfunded Mandates Reform Act (UMRA)

Title II of the UMRA, Pub. L. 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

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

This final rule was reviewed in accordance with USDA Regulation 4300-004, “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, 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 final rule is not likely to negatively impact any group identified by protected group status.

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.

Assistance Listing

The programs affected by this regulation are listed in the Assistance Listing Catalog (formerly Catalog of Federal Domestic Assistance) under numbers 10.405 and, 10.415.

Non-Discrimination Statement

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 <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: (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.

List of Subjects in 7 CFR Part 3560

Accounting, Administrative practice and procedure, Aged, Conflict 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, RHS amends 7 CFR part 3560 as follows:

PART 3560 – DIRECT MULTI-FAMILY HOUSING LOANS AND GRANTS

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

Authority: 42 U.S.C. 1480.

Subpart A – General Provisions and Definitions

2. Amend § 3560.4 by revising paragraph (b) to read as follows:

§ 3560.4 Compliance with other Federal requirements.

* * * * *

(b) *National flood insurance.* The National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973; and the National Flood Insurance Reform Act of 1994.

* * * * *

Subpart B – Direct Loan and Grant Origination

3. Amend § 3560.62 by revising paragraph (d) to read as follows:

§ 3560.62 Technical, legal, insurance, and other services.

* * * * *

(d) *Insurance.* Applicants must meet the property, liability, flood, Worker’s Compensation, business income loss, and fidelity insurance requirements in § 3560.105.

(1) Applicants must have property and liability coverage at loan closing as well as flood insurance, if required by the Agency.

(2) Fidelity coverage must be in force as soon as there are assets within the organization, and it must be obtained before any loan funds or interim financing funds are made available to the borrower.

(3) If the property has permanent and/or part-time employees assigned directly to the project, Worker’s Compensation, also known as employer’s liability coverage, must be obtained before interim financing funds are made available to the borrower, or prior to loan or grant closing, whichever occurs first.

(4) Upon completion of construction or rehabilitation of the project, or any portion thereof that allows for occupancy, the Owner shall obtain business income loss insurance.

* * * * *

Subpart C – Borrower Management and Operations Responsibilities

4. Amend § 3560.105 by:
 - a. Revising paragraphs (b)(1) and (4), (c)(4), and (f)(1)(i) and (iii);
 - b. Adding paragraph (f)(1)(v);
 - c. Revising paragraphs (f)(2)(i), (f)(3) introductory text, and (f)(3)(ii);
 - d. Removing paragraph (f)(3)(iii);
 - e. Revising paragraphs (f)(4) and (7) and (f)(9)(i) and (iv);
 - f. Adding paragraph (f)(11);
 - g. Revising paragraph (h)(2)(ii);
 - h. Redesignating paragraph (i) as paragraph (j); and
 - i. Adding a new paragraph (i).

The revisions and additions read as follows:

§ 3560.105 Insurance and taxes.

* * * * *

(b) * * *

(1) On or prior to the date of loan or grant closing, applicants must provide documentary evidence that insurance requirements have been met. The borrower must maintain insurance in accordance with the requirements of their loan or grant documents and this section until the loan is repaid or the terms of the grant expire. If interim financing is obtained or the Agency provides for multiple advances for construction or rehabilitation, evidence of builder's risk insurance is required prior to the start of construction or rehabilitation.

* * * * *

(4) The Agency must be named as loss co-payee or mortgagee as it appears on all property insurance policies.

(c) * * *

(4) If the best insurance policy a borrower can obtain at the time the borrower receives the loan or grant contains a loss deductible clause greater than that allowed by paragraph (f)(9) of this section, the insurance policy and an explanation of the reasons why more adequate insurance is not available must be submitted to the Agency for approval prior to the date of loan or grant closing.

* * * * *

(f) * * *

(1) * * *

(i) *Hazard insurance*. A policy which generally covers loss or damage by fire, smoke, lightning, windstorms, hail, explosion, riot, civil commotion, aircraft, and vehicles. These policies may also be known as “Property Insurance,” “Fire and Extended Coverage,” “Homeowners,” “All Physical Loss,” or “Broad Form” policies.

* * * * *

(iii) *Builder's risk insurance*. A policy that insures 100 percent of the estimated cost value of the project under construction or rehabilitation, or applicable State required coverage limits, if more stringent.

* * * * *

(v) *Business income loss*. Business income or rent loss coverage provides coverage for the loss of rental income incurred due to a property loss during a 12-month period.

(2) * * *

(i) Windstorm Coverage if specifically excluded from the All-Risk policy.

* * * * *

(3) For property insurance, the minimum coverage amount must equal the "Total Estimated Reproduction Cost of New Improvements," as reflected in the housing project's most recent appraisal. At a minimum, property insurance coverage must not be less than 80 percent of the insurable replacement cost value, unless such coverage is financially unfeasible for the housing project, as determined by the Agency.

* * * * *

(ii) When required by paragraph (f)(1) of this section, the coverage amount for flood insurance must not be less than 80 percent of the insurable replacement value, or the maximum amount of insurance available with respect to the project under the National Flood Insurance Act, whichever is less. The policy shall show the Owner as insured and shall show loss, if any, payable to the United States of America acting through the Rural Housing Service or its successor agency.

(4) Except for flood insurance, property insurance is not required if the housing project is in a condition which the Agency determines makes insurance coverage not economical.

* * * * *

(7) When the Agency is in the first lien position and an insurance settlement represents a satisfactory adjustment of a loss, the insurance settlement will be deposited in the housing project's general operating account unless the settlement exceeds \$5,000. If the settlement exceeds \$5,000, the funds will be placed in the reserve account or other supervised account for the housing project.

(i) Insurance settlement funds which remain after all repairs, replacements, and other authorized disbursements have been made retain their status as housing project funds.

(ii) If the indebtedness secured by the insured property has been paid in full or the insurance settlement is in payment for loss of property on which the Agency has no claim; a loss draft which includes the Agency as co-payee may be endorsed by the Agency without recourse and delivered to the borrower.

(iii) The Agency will apply the insurance proceeds to the Agency debt when the following occurs:

(A) The Agency is in the first lien position;

(B) The multifamily housing property has been deemed a total loss by the insurance company, such as a catastrophic event beyond the Borrower's control;

(C) All units are vacant and non-habitable; and

(D) The tenants who occupied the property at the time of the catastrophic event have been relocated to other housing units under the Agency's disaster procedure process.

* * * * *

(9) * * *

(i) *Hazard/property insurance.* (A) For a project with less than or equal to \$1,000,000 of coverage, no deductible greater than \$10,000 per occurrence.

(B) For a project with more than \$1,000,000 but less than or equal to \$2,000,000 of coverage, no deductible greater than \$25,000 per occurrence.

(C) For a project with more than \$2,000,000 of coverage, no deductible greater than \$50,000 per occurrence.

* * * * *

(iv) *Earthquake coverage.* If the borrower obtains earthquake coverage, the Agency is to be named as a loss payee. The deductible should be no more than 20 percent of the coverage amount.

* * * * *

(11) Each policy shall meet the following requirements:

(i) Policy may not be cancelled or modified without at least thirty (30) days prior written notice to the Agency (the clause shall not state that the insurer will “endeavor” to send such notice or that no liability attaches to the insurer for failure to send such notice).

(ii) Policy shall provide that any loss otherwise payable thereunder shall be payable notwithstanding any act or negligence of Borrower which might, absent such agreement, result in a forfeiture of all or part of such insurance payment.

(iii) Such insurance policies shall name the Owner as the Insured and shall carry a standard form of Non-Contribution Mortgage Clause showing loss or damage, if any, payable to the Owner and the “United States of America acting through the Rural Housing Service or its successor agency,” as its interest may appear.

* * * * *

(h) * * *

(2) * * *

(ii) Fidelity coverage amount and deductible as follows:

(A) *Coverage amount.* An amount at least equal to 25 percent of the operational cash sources per the project’s proposed annual budget or \$50,000 whichever is greater, unless greater amounts are required by the Owner. Where the operational cash sources for a project are substantially below the minimum \$50,000 bonding requirement for operation, with Agency approval, the bond may be reduced to an amount sufficient to cover at least 25 percent of the operational cash sources.

(B) *Deductible.* No greater than \$15,000 per occurrence.

* * * * *

(i) *Workers’ compensation insurance.* This insurance coverage, which may also be known as employer’s liability coverage, provides benefits to employees who suffer

work-related injuries or illnesses. Workers' compensation insurance is required for permanent and part-time staff assigned directly to the project.

* * * * *

George Kelly,
Administrator,
Rural Housing Service.

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