

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

#### 7 CFR Part 3565

[Docket No. RHS–23–MFH–0008]

#### Loan Guarantees Under the Section 538 Guaranteed Rural Rental Housing Program

**AGENCY:** Rural Housing Service, USDA.  
**ACTION:** Notification of updates in the competitive lender submissions process.

**SUMMARY:** The Rural Housing Service (RHS or Agency), an agency within Rural Development (RD), announces updates in the process for competitive lender submissions (responses) regarding proposed projects for the Section 538 Guaranteed Rural Rental Housing Program (GRRHP). The amount of program dollars available for the GRRHP will be determined by the Appropriations Act for each fiscal year.  
**DATES:** The effective date of the process updates is April 28, 2023.

**ADDRESSES:** Responses and applications must be submitted electronically in accordance with the instructions in Section IV of this Notice. Section 538 GRRHP Response Form/Application Submission Information.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Bell, Director, Processing and Report Review Branches, Production and Preservation Division, Multifamily Housing Programs, Rural Development, United States Department of Agriculture, via email: [MFHprocessing1@usda.gov](mailto:MFHprocessing1@usda.gov) or telephone: (254) 742–9764. This number is not toll-free. Hearing or speech-impaired persons may access that number by calling the Federal Information Relay Service at 711 Relay Service.

#### SUPPLEMENTARY INFORMATION:

##### Authority

The GRRHP is authorized under the Housing Act of 1949 as amended,

Section 538, Public Law 106–569, 42 U.S.C. 1490p–2; implemented under 7 CFR part 3565.

#### Background

The RHS is committed to helping improve the economy and quality of life in rural areas by offering a variety of programs. The Agency offers loans, grants, and loan guarantees to help create jobs, expand economic development, and provide critical infrastructure investments. RHS also provides technical assistance loans and grants by partnering with agricultural producers, cooperatives, Indian Tribes, non-profits, and other local, State, and Federal agencies.

The Section 538 GRRHP is a program administered by the RHS, under the authority of the Housing Act of 1949, as amended (42 U.S.C. 1490p–2). The purpose of the GRRHP is to increase the supply of affordable rural rental housing, using loan guarantees that encourage partnerships between the RHS, private lenders, and public agencies.

On October 15, 2019 (84 FR 55034), the Agency published a final rule in the **Federal Register** eliminating the requirement to publish an annual Notice of Funding Availability (NOFA). The final rule states that RD will use the standards from the previous NOFA as published in the **Federal Register** on December 21, 2017 (82 FR 60579). If RD chooses to change the selection and/or scoring criteria or fees charged in subsequent years, it will inform the public of those changes through additional notices in the **Federal Register**.

Since the publication of the final rule on October 15, 2019, there have been changes, including but not limited to, submission addresses, contact person, and fee structure. This Notice will consolidate all changes and replace the notice as published on December 21, 2017, as the reference for interested parties to follow when submitting GRRHP applications.

Expenses incurred in developing applications will be at the applicant's risk. The following paragraphs outline the eligibility requirements, lender responsibilities, and the overall response and application processes.

Any modifications to this document, including changes to the selection and/or scoring criteria or fees charged in

subsequent years, will be published in the **Federal Register**.

#### Discussion of Program Updates

The Agency announces the following updates to the GRRHP:

1. The NOSA Response Form will now be titled and referred to as the Section 538 GRRHP Response Form. The Section 538 GRRHP Response Form and the complete application must be submitted to the Agency at the same time. The obligation of available funds, via the issuance of Conditional Commitments for loan guarantees, will be made in the following order: (1) to outstanding approved applications from prior years for which Conditional Commitments have not been issued; then (2) to approved applications in the chronological order on which they were approved.

2. Applications will be accepted on a continual basis. Selected responses and applications that are deemed eligible for further processing will be funded to the extent an Appropriations Act provides sufficient funding in the fiscal year the response and application is selected. If funding is not sufficient in any given fiscal year, funding will be provided under the next funding Appropriations Act, subject to the availability of funds. Approved applications are subject to the fee structure in effect when the response and application were received by the Agency.

3. If the transaction includes a transfer of ownership and assumption of a Section 515 Rural Rental Housing (RRH) property, the complete 538 application and the complete Section 515 RRH transfer of ownership application must be submitted simultaneously on the same day to the Agency. If the complete 538 application is not submitted simultaneously with the Section 515 RRH transfer of ownership application, the 538 application will be rejected and returned to the lender. The lender may resubmit the application when both the complete 538 application and the 515 RRH transfer of ownership application can be submitted simultaneously.

4. A Conditional Commitment must be issued by the Agency before any construction begins on the project. Drawings (plans) and specifications for building construction must be submitted to the Agency and concurred by the Agency before any construction begins on the project. Applicants are reminded that in accordance with 7 CFR

3565.206(g), refinancing of an existing debt is not an eligible use of Section 538 GRRHP loan funds, except in the case of an existing guaranteed loan where the Agency determines that the refinancing is in the government's interest or furthers the objectives of the program.

5. The scores awarded for each priority criteria have been significantly decreased.

6. The Agency has modified the Energy priority criteria. Points may be awarded if applicants enroll in the US Environmental Protection Agency's (EPA) ENERGY STAR Portfolio Manager and track and report energy consumption to the Agency annually.

7. The Agency has reinstated the priority criteria that points will be awarded to projects located on Tribal lands.

8. The address for lenders to submit applications for lender approval has changed. Applications for lender approval can only be submitted electronically to the address listed in the Lender Eligibility section of this Notice.

### I. Funding Opportunity Description

The GRRHP program is administered subject to appropriations by the United States Department of Agriculture (USDA) as authorized under the Housing Act of 1949 as amended, section 538, Public Law 106-569, 42 U.S.C. 1490p-2, and as implemented under 7 CFR part 3565. Section 538 GRRH program will continue to follow procedures similar to other RD guaranteed loan programs and accept applications on a continuous basis.

The purpose of the GRRHP is to increase the supply of affordable rural rental housing using loan guarantees to encourage partnerships between the Agency, private lenders, and public agencies.

**ELIGIBILITY OF PRIOR YEAR SELECTED RESPONSES:** Prior fiscal year response selections that did not develop into complete applications within the time constraints stipulated by the Agency will be cancelled. The Agency will notify lenders of the cancellation. A new application for the project may be submitted subject to the conditions of this document.

Prior years' responses that were selected by the Agency, with a complete application submitted by the lender within 90 days from the date of notification of response selection (unless an extension was granted by the Agency), will be eligible for review, approval, and available current fiscal year program dollars without having to submit a new response.

If approved, applications that accompanied a response submitted under a previous fiscal year notice (outstanding prior years approved applications) will be obligated in the order that the request for obligation was received, to the extent of available funding.

Once the outstanding prior years approved applications have been funded, the Agency will fund applications approved in the current fiscal year in the order by which the request for obligation was received. If funding is insufficient to serve applications approved in the current fiscal year, they will be funded according to the priority scoring set forth in Section V of this document.

The obligation of program funds is discussed further in Section VI of this document.

### II. Award Information

Anyone interested in submitting a response and application for funding under this program is encouraged to visit the RD website Multifamily Housing Loan Guarantees | Rural Development ([usda.gov](https://www.usda.gov)) periodically for updated information regarding the status of funding authorized for this program.

(1) **QUALIFYING PROPERTIES:** Qualifying properties include new construction for multi-family housing units and the acquisition of existing structures with a minimum per unit rehabilitation expenditure requirement in accordance with 7 CFR 3565.252. The Agency does not finance acquisition only deals. 7 CFR 3565.205(a)

Also eligible is the revitalization, repair, and transfer (as specified in 7 CFR 3560.406) of existing Section 515 RRH and Section 514/516 Farm Labor Housing (FLH) (transfer costs are subject to Agency approval and must be an eligible use of loan proceeds as specified in 7 CFR 3565.205), and properties involved in the Agency's Multifamily Preservation and Revitalization (MPR) Demonstration program. Equity payment, as stipulated in 7 CFR 3560.406, in the transfer of existing direct Section 515 and Section 514/516 FLH, is an eligible use of guaranteed loan proceeds. In order to be considered, the transfer of Section 515 and Section 514/516 FLH and MPR projects must need repairs and undergo revitalization of a minimum of \$6,500 per unit.

(2) **ELIGIBLE FINANCING SOURCES:** Any form of Federal, State, and conventional sources of financing can be used in conjunction with the loan guarantee, including HOME Investment Partnerships Program (HOME) grant

funds, tax exempt bonds, and Low-Income Housing Tax Credits (LIHTC).

(3) **TYPES OF GUARANTEES:** The Agency offers three types of guarantees which are set forth at 7 CFR 3565.52(c). The Agency liability under any guarantee will decrease or increase, in proportion to any decrease or increase in the amount of the unpaid portion of the loan, up to the maximum amount specified in the Loan Note Guarantee. Penalties incurred as a result of default are not covered by any of the program's guarantees. The Agency may provide a lesser guarantee based upon its evaluation of the credit quality of the loan.

(4) **INTEREST CREDIT:** There will be no interest credit. Consolidated Appropriations Act, 2023, Public Law 117-328, Division A, Title III.

(5) **PROGRAM FEES:** The following fees have been determined necessary to cover the projected cost of loan guarantees. These fees may be adjusted based on the Appropriation requirements and in future years to cover the projected costs of loan guarantees in those future years, or additional fees may be charged. Any changes to the program fees will be announced in a document published in the **Federal Register**. The fees are as follows:

(a) **Initial guarantee fee.** The Agency will charge an initial guarantee fee as specified at 7 CFR 3565.53(b). For purposes of calculating this fee, the guarantee amount is the product of the percentage of the guarantee times the initial principal amount of the guaranteed loan.

(b) **Annual guarantee fee.** An annual guarantee fee (the outstanding principal amount of the loan as of December 31 times the annual guarantee fee) will be charged each year or portion of a year that the guarantee is outstanding. This fee will be collected, in advance, no later than February 28th of each calendar year.

(c) As permitted under 7 CFR 3565.302(b)(5), there is a non-refundable service fee of \$1,500 for the review of a lender's first request to extend the term of a guarantee commitment beyond its original expiration (the request must be received by the Agency prior to the commitment's expiration). For any subsequent extension request, the fee will be \$2,500.

(d) As permitted under 7 CFR 3565.302(b)(5), there is a non-refundable service fee of \$3,500 for the review of a lender's first request to reopen an application when a commitment has expired. For any subsequent extension request to reopen an application after

the commitment has expired, the fee will be \$3,500.

(e) As permitted under 7 CFR 3565.302(b)(4), there is a non-refundable service fee of \$1,500 in connection with a lender's request to approve the transfer of property or a change in composition of the ownership entity.

(f) There is no application fee.

(g) There is no lender application fee for lender approval.

(h) There is no surcharge for the guarantee of construction advances.

The current initial and annual guarantee fees can be found in a notice published in the **Federal Register** on March 3, 2022 (87 FR 12077).

### III. Lender Eligibility Information

**ELIGIBLE LENDERS:** Lenders must satisfy the eligibility requirements set forth in 7 CFR 3565.102 and must be approved by the Agency pursuant to 7 CFR 3565.103. In order to be eligible as required by 7 CFR 3565.102, a lender must be a licensed business entity or Housing Finance Agency (HFA) in good standing in the State or States where it conducts business and meet the other requirements contained in 7 CFR 3565.102. Please review that section for a list of the criteria. The Agency will only consider responses and applications from GRRHP eligible lenders, or approved lenders as described in 7 CFR 3565.102 and 3565.103 respectively.

Lenders who do not have GRRHP approved lender status and whose responses are selected will be notified by the Agency to submit a request for GRRHP lender approval within 30 days of notification. Alternately, lenders may submit a request for GRRHP approved lender status with the Section 538 GRRHP Response and application submission. Lenders must meet the standards in 7 CFR 3565.103 to obtain GRRHP approved-lender status.

Lenders that have received GRRHP lender approval, and that remain in good standing in accordance with 7 CFR 3565.105, do not need to reapply for GRRHP lender approval.

(1) **SUBMISSION OF DOCUMENTATION FOR GRRHP LENDER APPROVAL:** All lenders that have not yet received GRRHP lender approval must submit a complete lender application to: Multi-Family Housing Asset Management Division, Branch Chief, Risk and Counterparty Oversight, [RDMFH\\_RCOB\\_GRRHP@USDA.gov](mailto:RDMFH_RCOB_GRRHP@USDA.gov). Lender applications must be identified as "Lender Application—Section 538 Guaranteed Rural Rental Housing Program" in the subject line.

### IV. Section 538 GRRHP Response Form/ Application Submission Information

The Section 538 GRRHP Response Form and application Complete responses and complete applications must be submitted to the applicable mailbox based on the location of the project (as outlined below).

(1) The Section 538 GRRHP Response Form is available on the Multifamily Housing Loan Guarantees website <https://www.rd.usda.gov/programs-services/multifamily-housing-programs/multifamily-housing-loan-guarantees>.

*Processing and Report Review Branch 1*  
[MFHprocessing1@usda.gov](mailto:MFHprocessing1@usda.gov)

(CT, DE, IA, IL, IN, KS, MA, MD, ME, MI, MN, MO, ND, NE, NH, NJ, NY, OH, PA, RI, SD, VA, VT, WI, WV).

*Processing and Report Review Branch 2*  
[MFHprocessing2@usda.gov](mailto:MFHprocessing2@usda.gov)

(AK, AL, AR, AZ, CA, CO, FL, GA, HI, ID, KY, LA, MS, MT, NC, NM, NV, OK, OR, PR, SC, TN, TX, UT, VI, WA, WY).

(2) The following instructions will be used to for electronic submission for the Section 538 GRRHP Response Form and the Application:

Once the Section 538 GRRHP Response Form and complete application are complete and ready for submission to the applicable Processing and Report Review (PRR) Branch, please take the following steps to submit the Section 538 GRRHP Response Form, application and supporting documentation:

(a) Email [MFHprocessing1@usda.gov](mailto:MFHprocessing1@usda.gov) or [MFHprocessing2@usda.gov](mailto:MFHprocessing2@usda.gov), as applicable, to request a shared folder in CloudVault. The email must contain the following information:

i. *Subject line:* Type of Section 538 GRRHP Response Form/Application Submission.

ii. *Body of email:* Borrower Name, Project Name, Borrower Contact Information, Project State.

iii. *Request language:* "Please create a shared CloudVault folder so that we may submit our Section 538 GRRHP Response Form, complete application and supporting documents."

(b) Once the email request to create a shared CloudVault folder has been received, a shared folder will be created within 2 business days. When the shared CloudVault folder is created, an email will be sent to the applicant's submission email address with a link to the shared folder.

(c) The applicant will upload all required documents for the applicable Section 538 GRRHP Response Form and application to the shared CloudVault folder. The applicant must also upload

a Table of Contents of all the documents that have been uploaded to the shared CloudVault folder.

(d) Once all required documents for the applicable Section 538 GRRHP Response Form and complete application have been uploaded to the CloudVault shared folder, the applicant will email [MFHprocessing1@usda.gov](mailto:MFHprocessing1@usda.gov) or [MFHprocessing2@usda.gov](mailto:MFHprocessing2@usda.gov), as applicable.

(e) The email must contain the following information:

i. *Subject line:* Type of Section 538 GRRHP Response/Application Submission. (Same wording as the first email)

ii. *Body of email:* Borrower Name, Project Name, Borrower Contact Information, Project State.

iii. *Request language:* "We have completed our upload to the shared CloudVault folder for our Section 538 GRRHP Response Form, complete application and all required documentation and it is ready for review."

*Please note:* CloudVault is a USDA-approved cloud-based file sharing and synchronization system. CloudVault folders are not suitable nor intended for file storage due to agency file retention policies and space limitations. Therefore, the agency will remove all application-related files stored in shared CloudVault folders the latter of either 180 days from the application date, or once the application has been processed and the transaction has been closed.

(3) *Content of Responses:* All responses require lender information and project specific data as set out in this Notice. Complete responses must include a signed cover letter from the lender, on the lender's letterhead. The lender must provide the requested information concerning the project, to establish the purpose of the proposed project, its location, and how it meets the established priorities for funding.

In compliance with Agency guidance to determine the lender's (participants) eligibility, the Agency is responsible for screening lenders and its principals for debarment and suspension. Screening will take place when the lender submits a complete application to the Agency and prior to obligation of the loan. As a part of the complete application package and in accordance with 2 CFR part 25, the lender must be registered in the System for Award Management (SAM) and include the Unique Entity Identifier (UEI). Lenders currently registered in SAM have automatically been assigned a UEI. New lenders will be assigned a UEI during registration. This is only required for the lender and

is not required for the lender’s principals.

Also, as part of the complete application package, the lender must provide a list of all the lender’s principals (in accordance with the definition below) in the organization. This information will be used to screen the lender’s principals for debarment and suspension.

As specified at 2 CFR 180.995, “Principal” is defined as:

- An officer, director, owner, partner, principal investigator, or other person within a participant with management

or supervisory responsibilities related to a covered transaction; or

- a consultant or other person, whether or not employed by the participant or paid with Federal funds, who—
  - Is in a position to handle Federal funds;
  - Is in a position to influence or control the use of those funds; or
  - Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity

required to perform the covered transaction.

(a) *Lender Certification*: The lender must certify that the lender will make a loan to the prospective borrower for the proposed project, under specified terms and conditions subject to the issuance of the GRRHP guarantee. Lender certification must be on the lender’s letterhead and signed by both the lender and the prospective borrower.

(b) *Project Specific Data*: The lender must submit the project specific data below in the Section 538 GRRHP Response Form:

Data element	Information that must be included
Lender Name .....	Insert the lender’s name.
Lender Tax ID # .....	Insert lender’s tax ID number.
Lender Unique Entity Identifier (UEI) .....	Insert lender’s (UEI).
Lender Contact Name .....	Name of the lender contact for loan.
Mailing Address .....	Lender’s complete mailing address.
Phone # .....	Phone number for lender contact.
Fax # .....	Insert lender’s fax number.
Email Address .....	Insert lender contact Email address.
Borrower Name and Organization Type .....	State whether borrower is a Limited Partnership, Corporation, Indian Tribe, etc.
Equal Opportunity Survey .....	Optional Completion.
Tax Classification Type .....	State whether borrower is for profit, not for profit, etc.
Borrower Tax ID # .....	Insert borrower’s tax ID number.
Borrower UEI (if applicable) .....	Insert borrower’s UEI.
Borrower Address, including County .....	Borrower’s complete address and county.
Borrower Phone #, Fax # and Email Address .....	Insert borrower’s phone number, fax number and email address.
Principal or Key Member for the Borrower .....	Insert name and title. List the general partners if a limited partnership, officers if a corporation or members of a Limited Liability Corporation.
Borrower Information and Statement of Housing Development Experience.	Attach relevant information.
New Construction, Acquisition with Rehabilitation .....	State whether the project is new construction or acquisition with rehabilitation.
Revitalization, Repair, and Transfer (as stipulated in 7 CFR 3560.406) of Existing Direct Section 515 and Section 514/ 516 FLH or MPR.	Yes or No (Transfer costs, including equity payments, are subject to Agency approval and must be an eligible use of loan proceeds in 7 CFR 3565.205).
Project Location Town or City .....	Town or city in which the project is located.
Project County .....	County in which the project is located.
Project State .....	State in which the project is located.
Project Zip Code .....	Insert zip code where the project is located.
Project Congressional District .....	Congressional District for project location.
Project Name .....	Insert project name.
Project Type .....	Family, senior (all residents 55 years or older), or mixed.
Property Description and Proposed Development Schedule ....	Provide as an attachment.
Total Project Development Cost .....	Enter amount for total project.
# of Units .....	Insert the number of units in the project.
Ratio of 3–5 Bedroom Units to Total Units .....	Insert percentage of 3–5 bedroom units to total units.
Cost Per Unit .....	Total development cost divided by number of units.
Rent .....	Proposed rent structure.
Median Income for Community .....	Provide median income for the community.
Evidence of Site Control .....	Attach relevant information.
Description of Any Environmental Issues .....	Attach relevant information.
Loan Amount .....	Insert the loan amount.
Borrower’s Proposed Equity .....	Insert amount and source.
Low Income Housing Tax Credits .....	Have tax credits been awarded?
	If tax credits were awarded, submit a copy of the award/evidence of award with your response.
	If not, when do you anticipate an award will be made (announced)?
	What is the [estimated] value of the tax credits?
	Letters of application and commitment letters should be included, if available.
Other Sources of Funds .....	List all funding sources other than tax credits and amounts for each source, type, rates and terms of loans or grant funds.
Loan to Total Development Cost .....	Guaranteed loan divided by the total development costs of project.
Debt Coverage Ratio .....	Net Operating Income divided by debt service payments.
Percentage of Guarantee .....	Percentage guarantee requested.
Collateral .....	Attach relevant information.
Colonia, Tribal Lands, or State’s Consolidated Plan or State Needs Assessment.	Colonia, on an Indian Reservation, or in a place identified in the State’s Consolidated Plan or State Needs Assessment as a high need community for multi-family housing.

Data element	Information that must be included
Is the Property Located in a Federally Declared Disaster Area?	If yes, please provide documentation ( <i>i.e.</i> , Presidential Declaration document).
Population .....	Provide the population of the county, city, or town where the project is or will be located.
What Type of Guarantee is Being Requested, Permanent Only (Option 1), Construction and Permanent (Option 2), or Continuous (Option 3).	Enter the type of guarantee.
Loan Term .....	Minimum 25-year term. Maximum 40-year term (includes construction period). May amortize up to 40 years. Balloon mortgages permitted after the 25th year.
Guarantee Fee Structure Designation .....	Indicate the Guarantee Fee Structure: Standard Fee. Preservation of 514/515/516. Workforce Housing. Energy Efficient/Green. (Documentation is required).
Participation in Energy Efficient Programs .....	Initial checklist indicating prerequisites to register for participation in a particular energy efficient program. All checklists must be accompanied by a signed affidavit by the project architect stating that the goals are achievable. If property management is certified for green property management, the certification must be provided.

(c) *The Proposed Borrower Information:*

i. Lender certification that the borrower and principals are not barred or suspended from participating in State or Federal loan programs and are not delinquent on any Federal debt.

ii. Borrower's unaudited or audited financial statements.

iii. Statement of borrower's housing development experience.

(d) *Lender Eligibility and Approval Status:* Evidence that the lender is either an approved lender for the purposes of the GRRHP or that the lender is eligible to apply for approved lender status. The lender's application package requesting approved lender status can be submitted with the response and application. If a lender who has not yet been approved by the Agency submits a Section 538 GRRHP Response Form and complete application, the lender approval application must be submitted to the Multi-Family Housing Asset Management Division, Risk and Counterparty Oversight Branch, [RDMFH\\_RCOB\\_GRRHP@USDA.gov](mailto:RDMFH_RCOB_GRRHP@USDA.gov) within 30 calendar days of application submission (see SUBMISSION OF DOCUMENTATION FOR GRRHP LENDER APPROVAL above). The Agency will not issue a loan note guarantee until the lender is approved by the Agency.

(e) *Competitive Criteria:* Information that shows how the proposal is responsive to the priority scoring criteria specified in this Notice.

(4) *Content of Application:* The lender must submit a complete application which consists of the following:

(1) *Completed GRRHP Response Form* (available on the Multifamily Housing Loan Guarantees website [https://](https://www.rd.usda.gov/programs-services/multifamily-housing-programs/multifamily-housing-loan-guarantees)

[www.rd.usda.gov/programs-services/multifamily-housing-programs/multifamily-housing-loan-guarantees](https://www.rd.usda.gov/programs-services/multifamily-housing-programs/multifamily-housing-loan-guarantees)).

(2) *The lender's certification will serve as assurance to the Agency that the borrower, the project, and the proposed financing meet the lender's standards for loan making. The lender must certify the following on the lender's letterhead:*

The information contained in the application is consistent with the lender's underwriting and loan making standards.

Current List of Lender's Officers and Principals.

The lender has completed the lender's review and has identified any significant findings in a narrative attached to this certification.

The lender agrees to make a loan to the borrower for the proposed project, subject to the Agency's issuance of an appropriate guarantee option.

The lender must provide to the Agency a certification from the borrower that the borrower is not under any State or Federal order suspending or debaring participation in State or Federal loan programs and that the borrower is not delinquent on any non-tax obligation to the United States.

The lender must certify that the proposed loan amount (for such part of the property attributable to dwelling use) and the applicable maximum per unit dollar amount limitations under section 207(c) of the National Housing Act (12 U.S.C. 1713(c)) have not been exceeded.

The lender must certify that the owner and development team have the qualifications and experience sufficient to carry out development, management, and ownership responsibilities.

The lender must certify that if it is applying for a continuous guarantee, the project has the appropriate low loan-to-cost ratio as determined by the Agency (7 CFR 3565.52(c)(3)).

The lender must certify that the property is located in an eligible rural area.

The lender must certify that it has conducted due diligence and the results have been taken into consideration in the appraisal.

The lender must certify that it has reviewed and approved the management plan and agreement and confirmed that they are consistent with Agency requirements.

Prior to the issuance of the guarantee, the lender must certify that construction meets basic construction requirements.

(3) *Exhibits and Supporting Information (Forms to be included in the application package):*

Form RD 3565-1, Application for Loan and Guarantee.

Form RD 3565-3, Lender's Agreement.

RD Instruction 1940-Q, Exhibit A-2, Statement for Loan Guarantees.

Attachment 4-D, Housing Allowances for Utilities and Other Public Services.

Form RD 1944-37, Previous Participation Certification.

Form RD 3560-30, Certification of No Identity of Interest (IOI), if applicable.

Form RD 3560-31, Identity of Interest Disclosure/Qualification Certification, if applicable.

Form RD 1910-11, Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts.

Form HUD 9832, Management Entity Profile.

Form HUD 935.2, Affirmative Fair Housing Marketing Plan.

FEMA Form 086-0-32, Special Flood Hazard Determination (7 CFR 3565.254).

Form RD 1924-13, Estimate and Certificate of Actual Cost.

Form RD 400-4, Assurance Agreement.

Form RD 1924-25, Plan Certification Form.

Form RD 400-1, Equal Opportunity Agreement.

Form RD 400-6, Compliance Statement.

Form RD 400-3, Notice to Contractors and Applicants (prepared by the Agency).

*Other Required Supporting Information:*

*Borrower information:*

Financial statements with certification(s) (newly formed entities applying for a construction/permanent guarantee do not need to provide financial statements at the time of application).

Credit report for the entity and any guarantor.

Proposed limited partnership agreement and certificate of limited partnership (if applicable). Agency requirements should be contained in one section of the agreement and their location identified by the borrower or their attorney in a cover sheet.

If a corporate entity, its Articles of Organization and its Operating Agreement.

*If the borrower is a nonprofit organization:*

Tax-exempt ruling from the IRS designating them as a 501(c)(3) or 501(c)(4) organization. If the designation is pending, a copy of the designation request must be submitted.

Evidence of organization under State law or copies of pending applications.

A list of board members.

*If the borrower is a public body:*

The enabling statute or the State law of organization.

*Project Information:*

An application fee, if applicable.

An appraisal and market study.

Project information including project name, location, number and type of units, the development team, property manager, lawyer, and syndicator. The development team includes the developer (including all principals), architect, and contractor.

Capital Needs Assessment (for rehabilitation loans only). Does the Capital Needs Assessment and Capital Improvement Plan call for a

replacement reserve escrow that meets or exceeds the \$1,000/unit threshold by year three? If not, document underwriting explanation (7 CFR 3565.254(b)(4)). Include a Reserve for Replacement schedule.

State Clearinghouse comments or recommendations.

Site plan, including contour lines.

Plot plan.

Floor plan of each living unit type and other type spaces.

Building exterior elevations.

FEMA Form 086-0-33, Elevation Certificate.

Typical building exterior wall section.

Description and justification of any related facilities and schedule of separate charges for related facilities, if any.

Design development/working plans/construction specifications. Plans, specifications, and estimates must fully describe all of the work to be completed, including all landscaping, construction, repairs, and site development work. The plans must be clear and accurate with adequate dimensions and sufficient scale for estimating purposes.

Technical data, tests, or engineering evaluations needed to support the design of the development must be included.

*Property Management Information:*

Management plan as specified by 7 CFR 3656.351. A complete management plan will include: Details for managing a project with scattered sites (if applicable); completion of Form HUD 935.2; procedures for determining applicant eligibility; demonstrated capacity to manage the unique leasing occupancy restrictions of the guaranteed program; description of rent collection; lease provisions covering termination and eviction; provision of a copy of tenant protection and grievance procedures to tenants; description of security plan; plans for maintenance, repair, replacement, tenant work requests, management and maintenance staffing plans; detailed compliance with Federal and State environmental laws; description of energy conservation measures including recycling; detailed management and maintenance staffing plans; and information on staff training programs. The plan must include a statement confirming that it includes a provision for access to project's books and records by USDA staff, USDA-IG, GAO, and the Department of Justice; information on accounting, record keeping, data systems, and software. 7 CFR 3565.351(a)(7).

Proposed management agreement

Qualifications of the property manager.

The lender must confirm and provide documentation that neither the property management entity nor the property management entity's principals are debarred or suspended from Federal work by accessing the GSA debarment list and CAIVRS (Credit Voice Response System) in the Do Not Pay portal at <http://donotpay.treas.gov/portal.html>.

*Contractor Information:*

Demonstrated experience of the general contractor in building multifamily housing of the size design, scope, and complexity of the project proposed in the application.

*Financing Information:*

Lender's conditional commitment on the lender's letterhead with lender's signature specifying the GRRHP option under which the project loan is to be guaranteed.

Sources and Uses, proforma statement or a comparable document.

Lender's narrative.

A copy of the proforma budget detailing the first year and a typical year's operation (Proformas with and without the interest credit award will serve as justification for the interest credit award.).

Disclosure of any change in financing since response to the Notice submission.

Type of utilities and utility allowances, if applicable.

Confirm that Operating and Maintenance (O&M) Reserve is at least two percent (see 7 CFR 3565.3) of the total loan amount (not just guaranteed portion). Calculation of O&M reserve for congregate care facilities and larger projects should reflect absorption rates in the market study to cover shortfalls between estimated operating budget calculations and rent-up assumptions. Funds contributed as O&M reserves are contributed from the borrower's own resources or an irrevocable letter of credit and are not to be included as part of the total development cost calculation. 7 CFR 3565.52(e); 7 CFR 3565.402(a)(2).

For Option Two and Option Three guarantees, confirm that the construction contingency equal to two percent of the construction contract, inclusive of the contractor's fee and hard and soft costs (see 7 CFR 3565.3). This is to be funded at or prior to closing by the contractor 7 CFR 3565.402(a)(2).

Ensure the loan meets the regulatory requirements according to applicable classification under 7 CFR 3565.251-254. Provide evidence of adequate insurance for the project (7 CFR 3565.351(a)(5)).

Interest Credit Request, if applicable.

*Environmental Information:*

Most current version of the ASTM Standard E 1528–14, Phase I Environmental Site Assessment Process published by the American Society for Testing and Materials (ASTM).

Environmental Information in accordance with 7 CFR part 1970—Environmental Policies and Procedures.

Compliance with historic and architectural laws, if applicable.

Comments regarding relevant off-site conditions.

Land survey.

*Legal and Regulatory Items:*

Standard Regulatory Agreement approved by the Agency. (7 CFR 3565.303(d)(11)).

Non-Standard Regulatory Agreement(s) containing provisions for transferability between lenders, binding on the borrower and their successors (7 CFR 3565.351(a)), and requires that the borrower: make all principal and interest payments under the note, maintain the project as affordable housing in good physical condition; maintain complete project books and records; and comply with all Federal Fair Housing requirements under the terms of the note (7 CFR 3565.351(a)).

Confirmation in writing that the borrower is in compliance with the Affirmative Fair Housing Marketing Plan (7 CFR 3565.353).

Verify use of security instruments prepared, executed, recorded and/or delivered per program guidelines and that those instruments are in compliance with the terms of the conditional commitment.

Verify use of the construction contract based on standard AIA Document A–101. If this document is used, it should be modified as described in Form RD 1924–25 or a similar form.

Verify use of contract specifications, documents and forms. Use Form RD 1924–6 “Construction Contract” or similar document as required by Executive Order 11246, Non-Discrimination in Employment by Construction Contractors.

**V. Response and Application Review Information**

(1) **SCORING OF PRIORITY CRITERIA FOR SELECTION:** Complete applications received will be scored based on the criteria set forth below to establish priority in the event there is insufficient funding. As specified at 7 CFR 3565.5(b), priority will be given to projects: in smaller rural communities, in the neediest communities having the highest percentage of leveraging, having the lowest interest rate, or having the highest ratio of 3–5 bedroom units to total units, or on Tribal lands. In

addition, as permitted in 7 CFR 3565.5(b), to meet important program goals, priority points will be given for projects that qualify for reduced annual fees, including workforce housing, Section 515 or Section 514/516 preservation and green and energy efficient housing projects.

The priority scoring criteria for projects are listed below.

**Priority 1**—Projects located in eligible rural communities with the lowest populations. Two points are awarded if the city or town population is under 10,000 people.

**Priority 2**—Projects in the most-needy communities. Two points are awarded if the property is located in a persistent poverty county as defined by the USDA Economic Research Service.

**Priority**—Projects that demonstrate partnering and leveraging of third-party funding. Two points are awarded if the loan to total development cost ratio is less than 50%.

**Priority 4**—Projects with the highest ratio of 3–5 bedroom units to total units. Two points are awarded if the ratio of 3–5 bedroom units to total units is 25% or more.

**Priority 5**—Projects on Tribal land. Two points are awarded if the project is located on Tribal land.

**Priority 6**—Projects with a lower Section 538 guaranteed loan interest rate. One point is awarded if the interest rate is equal to or less than 130% of the long-term annual applicable Federal rate (AFR Table 1) at the time of application submission to the Agency.

**Priority 7**—Projects determined eligible for reduced annual Section 538 fees under the **Federal Register** notice published on March 3, 2022 (87 FR 12077). Two points awarded for each of the criteria met for reduced annual fees: (1) Workforce Housing (Rents Between 80%–115% Area Median Income), or (2) Preservation of Existing Section 515 and Section 514/516 Rural Development Properties or (3) Section 538 New Construction or Substantial Rehabilitation Meeting Green or Energy Efficiency Requirements. Projects will be held to the energy program standards in effect the year the Loan Note Guarantee is issued.

**Priority 8**—Energy consumption performance. Two points will be awarded if the lender obtains the borrower’s agreement to enroll in the United States EPA’s ENERGY STAR Portfolio Manager and document and report energy consumption for the property to the Agency. Along with the collection of the borrower’s annual reports (outlined in 7 CFR 3565.351), to obtain the priority points the lender must collect the Statement of Energy

Performance (SEP) report from the borrower and submit it to the Agency for review. This will allow the Agency to track the energy consumption performance of the project. Borrowers may access the EPA’s ENERGY STAR Portfolio Manager software at no cost.

If there is insufficient funding available to fund all approved projects and projects have equal scores based on the priority criteria, the Agency will rank the tied projects based on the scores for Priority 7. If there is still a tie, the Agency will obligate funds in order from the smallest to largest amount of Agency funding needed.

(2) **NOTIFICATIONS:** Responses and applications will be reviewed concurrently for completeness and eligibility. The Agency will notify the lender generally within 30 days of receipt of a complete application of the determination of award. Incomplete applications, which includes the Section 538 GRRHP Response Form and supporting documentation, will be returned to the lender. The lender may reapply in the future with a new and complete application.

**VI. Award Administration Information**

(1) **OBLIGATION OF PROGRAM FUNDS:** The Agency will only obligate funds to projects that meet the requirements under 7 CFR part 3565 and this Notice that have submitted a complete application and have undergone a satisfactory environmental review in accordance with the National Environmental Protection Act (NEPA). If there is sufficient funding, once a complete application is received and approved (and any request for GRRHP approved lender status is granted), the Agency will obligate funds. The Agency considers the program to have insufficient funds when the program’s annually appropriated funding amount has ten percent or less remaining. If there is insufficient funding, the Agency will review the scores for each approved project and rank them accordingly. As funding becomes available, funding for approved projects will be obligated based on the rankings from high to low scores as described in Section V. Response and Application Review Information.

In the event that the Agency suspends the ability to receive applications until sufficient funding becomes available, a notice will be made to the industry via GovDelivery and/or some other form of acceptable electronic notice.

(2) **CONDITIONAL COMMITMENT:** Once the required documents for obligation are received and all applicable requirements have been met, including NEPA requirements, and to

the extent funding is available, the Agency will issue a Conditional Commitment. The Conditional Commitment will stipulate the conditions that must be fulfilled before the issuance of a guarantee, in accordance with 7 CFR 3565.303.

(3) **ISSUANCE OF GUARANTEE:** The Agency will issue a guarantee to the lender for a project in accordance with 7 CFR 3565.303. No guarantee can be issued without a complete application, review of appropriate certifications, satisfactory assessment of the appropriate level of environmental review, and the completion of any conditional requirements.

(4) **TRACKING OF AVERAGE RENTS:** After the loan closes, the lender will track the initial affordable rent at each property funded and the average market rent in the area. The difference between these two rents will provide the lender with a measure of the impact the GRRHP has on affordable rents. 7 CFR 3565.203.

#### *Build America, Buy America*

Funding to Non-Federal Entities. Awardees that are Non-Federal Entities, defined pursuant to 2 CFR 200.1 as any State, local government, Indian Tribe, Institution of Higher Education, or nonprofit organization, shall be governed by the requirements of section 70914 of the Build America, Buy America Act (BABAA) within the IIJA. Any requests for waiver of these requirements must be submitted pursuant to USDA's guidance available online at <https://www.usda.gov/ocfo/federal-financial-assistance-policy/USDABuyAmericaWaiver>.

#### *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, 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, familial/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 responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at 711 Relay Service. 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 [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html) 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:

*Mail:* U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250-9410;

*Fax:* (202) 690-7442; or

*Email:* [program.intake@usda.gov](mailto:program.intake@usda.gov).

USDA is an equal opportunity provider, employer, and lender.

**Joquin Altoro,**

*Administrator, Rural Housing Service.*

[FR Doc. 2023-08952 Filed 4-27-23; 8:45 am]

**BILLING CODE 3410-XV-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG-2023-0258]

RIN 1625-AA00

#### Safety Zone; Port of Los Angeles and Port of Long Beach, San Pedro Bay, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary moving safety zone around the M/V ZHEN HUA 26 while it transits from the Port of Long Beach, CA, from Long Beach Container Terminal (LBCT), LB Berth E22, to inner anchorage, and then to Fenix Marine Services (FMS), LA Berth 302. This safety zone is necessary to protect personnel, vessels, and the marine environment from potential hazards associated with oversized cargo of ship-to-shore gantry cranes which extend more than 200 feet out from the transiting vessel. Entry of persons or vessels into this safety zone is prohibited unless specifically

authorized by the Captain of the Port (COTP) Los Angeles—Long Beach, or their designated representative. The Coast Guard recently issued a safety zone for the transit of the M/V ZHEN HUA 26, but additional time is needed to complete the cargo delivery.

**DATES:** This rule is effective April 26, 2023, though May 2, 2023.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0258 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or LCDR Maria Wiener, Waterways Management, U.S. Coast Guard Sector Los Angeles—Long Beach; telephone (310) 357-1603, email [D11-SMB-SectorLALB-WWM@uscg.mil](mailto:D11-SMB-SectorLALB-WWM@uscg.mil).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Table of Abbreviations**

CFR Code of Federal Regulations  
DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of proposed rulemaking  
§ Section  
U.S.C. United States Code

##### **II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because The COTP was notified of the impending arrival of the M/V ZHEN HUA 26 less than 30 days in advance and immediate action is needed to respond to the potential safety hazards associated with the transfer of large gantry cranes within the Ports of Los Angeles and Long Beach. The vessel recently updated their timeline and timeframe for the crane delivery to FMS after we issued the first safety zone. This safety zone needs to be extended to protect personnel, vessels, and the marine environment from potential hazards associated with oversized cargo of ship-to-shore gantry cranes, which will extend more than