

Rules and Regulations

Federal Register

Vol. 85, No. 233

Thursday, December 3, 2020

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.

The Code of Federal Regulations is sold by the Superintendent of Documents.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3565

[Docket No. RHS-20-MFH-0027]

RIN 0575-AD15

Guaranteed Rural Rental Housing Change in Initial Guarantee Fee and Annual Guarantee Fee

AGENCY: Rural Housing Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS or the Agency) published a proposed rule, September 3, 2019, proposing to amend its regulation to remove the stated amount that the Agency will charge for the initial and annual guarantee fees. The regulation change will allow the Agency the flexibility to establish or make any future changes to the initial and annual guarantee fees without the need for a regulatory change. Through this action, RHS finalizes the proposed rule without any substantive revisions.

DATES: Effective January 4, 2021.

FOR FURTHER INFORMATION CONTACT:

Abby Boggs, Acting Branch Chief, Multi-Family Housing Programs, Rural Housing Service, United States Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250-0781, Telephone: (615) 490-1371 (this is not a toll-free number); email: abby.boggs@usda.gov.

SUPPLEMENTARY INFORMATION:

Background and Summary of Changes

RHS administers the Section 538 Guaranteed Rural Rental Housing Program (GRRHP) under the authority of the Housing Act of 1949, as amended (42 U.S.C. 1490p-2). Under the GRRHP, RHS guarantees loans for the development of housing and related facilities in rural areas. Section 538(g) authorizes the Secretary of Agriculture to charge certain fees to lenders for loan

guarantees. See 42 U.S.C. 1490p-2(g). The charged fees are required to be used to offset costs associated with loan guarantees. ID at 1490p-2(u).

The Agency's GRRHP implementing regulation is at 7 CFR part 3565 and currently sets the exact percentage of the initial guarantee fee and the annual guarantee fee charged by the Agency. The Agency is proposing to amend the regulation by removing the language that indicates the specific amount of the initial guarantee fee and the annual guarantee fee currently charged by the Agency. The Agency is making this change to allow for flexibility and to allow the program to create the maximum housing affordability to residents by lowering program costs when practical. In most cases, the annual guarantee fee is passed onto the borrower, where it is most likely included in the interest rate. Thus, any reduction in the fee will result in a lower interest rate and would ultimately create a reduction in rental rates.

The calculation of the initial guarantee fee is the product of the percentage of the guarantee times the initial principal amount of the guaranteed loan times the Guarantee Fee Rate. The initial guarantee fee will be due at the time the closing package is submitted to the Agency for review and approval. The GRRHP annual fee is a non-refundable amount that the lender must pay the year that the loan closes and going forward each year that the loan guarantee remains in effect.

If changes do occur in the fee amounts, the Agency will release those changes through a Notice in the **Federal Register**. When the fee changes are announced in the **Federal Register**, the Agency will provide guidance on how to process the loans which will be impacted by the new fee structure. Interested parties will be able to locate current fees on the Agency's public website.

The Agency published a proposed rule on September 3, 2019 at 84 FR 45927-45929, proposing to amend its regulation to remove the stated amount that the Agency will charge for the initial and annual guarantee fees. Three comments were received. Two commenters were in full support of the rule change. One commenter supports the rule; however, they suggested that the Agency establish a maximum limit on the annual fee amount. The Agency

will not adopt this comment to establish a maximum limit on the annual fee amount as the intention of this regulation change is to offer flexibility in adjusting fees each year. This regulatory action will adopt the process of announcing the amount of fees charged through a published notice in the **Federal Register**, consistent with other RD programs, including the OneRD Guarantee Loan regulation. Therefore, RHS is moving forward with finalizing this rule.

Executive Order 12866—Classification

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.

Authority

The GRRHP 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.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1970, subpart A, "Environmental Policies." RHS determined that this action does not constitute a major Federal action significantly affecting the quality of the environment. In accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

The 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.

Executive Order 13132—Federalism

The policies contained in this 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 rule does not impose substantial direct compliance costs on State and local Governments; therefore, consultation with States is not required.

Executive Order 12988—Civil Justice Reform

This 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 USDA (7 CFR part 11) must be exhausted before bringing suit in court that challenges action taken under this rule.

Unfunded Mandate Reform Act (UMRA)

Title II of the UMRA, Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal Governments and on the private sector. Under section 202 of the UMRA, Federal Agencies generally must prepare a written statement, including cost-benefit analysis, for proposed and Final Rules with “Federal mandates” that may result in expenditures to State, local, or tribal Governments, in the aggregate, or to the private sector, of \$100 million or more in any one-year. When such a statement is needed for a rule, section 205 of the UMRA generally requires a Federal Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule. This 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

RHS is committed to complying with the E-Government Act by promoting the use of the internet and other Information Technologies in order to provide increased opportunities for citizen access to Government information, services, and other purposes.

Programs Affected

The program affected by this regulation is listed in the Catalog of Federal Domestic Assistance under numbers 10.438—Rural Rental Housing Guaranteed Loans (Section 538).

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on RHS in the development of regulatory policies that have tribal implications or preempt tribal laws. RHS has determined that the rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this rule is not subject to the requirements of Executive Order 13175. If tribal leaders are interested in consulting with RHS on this rule, they are encouraged to contact USDA’s Office of Tribal Relations or Rural Development’s Native American Coordinator at: AIAN@wdc.usda.gov to request such a consultation.

Executive Order 12372—Intergovernmental Consultation

These loans are subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. RHS conducts intergovernmental consultations for each loan in accordance with 2 CFR part 415, subpart C.

Non-Discrimination Statement

In accordance with Federal civil rights law and the United States Department of Agriculture 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 (800) 877–8339. 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 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, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410;
- (2) *Fax*: (202) 690–7442; or
- (3) *Email*: program.intake@usda.gov.

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

List of Subjects in 7 CFR 3565

Conflict of interest, Credit, Fair housing, Loan programs—housing and community development, Low and moderate-income housing, Manufactured homes, Mortgages, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, RHS amends 7 CFR part 3565 as follows:

PART 3565—GUARANTEED RURAL RENTAL HOUSING PROGRAM

- 1. The authority citation for part 3565 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart B—Guarantee Requirements

- 2. Amend § 3565.53 by adding a sentence at the end of the introductory text and revising paragraphs (a) and (b) to read as follows:

§ 3565.53 Guarantee fees.

* * * Changes to the initial and annual guarantee fees will be established by the Agency and will be

published in a notice in the **Federal Register**.

(a) *Initial guarantee fee.* The Agency will establish and charge an initial guarantee fee of up to one percent of the guarantee amount. 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 will be charged, as established by the Agency, each year or portion of a year that the guarantee is in effect. This fee is due no later than February 28, of each calendar year.

* * * * *

Elizabeth Green,

Acting Administrator, Rural Housing Service.

[FR Doc. 2020–25822 Filed 12–2–20; 8:45 am]

BILLING CODE 3410–XV–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

[Docket No. CFPB–2020–0019]

Advisory Opinions Policy

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Procedural rule.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing its final Advisory Opinions Policy (Advisory Opinions Policy), which sets forth procedures to facilitate the submission by interested parties of requests that the Bureau issue advisory opinions, in the form of interpretive rules, to resolve regulatory uncertainty, and the manner in which the Bureau will evaluate and respond to such requests.

DATES: The Advisory Opinions Policy was applicable beginning November 30, 2020.

FOR FURTHER INFORMATION CONTACT: For additional information about the Advisory Opinions Policy contact Jaydee DiGiovanni and Shelley Thompson, Counsels; and Adetola Adenuga, Regulatory Implementation and Guidance Specialist, at 202–435–7158. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION: On June 22, 2020, the Bureau published and sought public comment on a proposal (Advisory Opinions Proposal) for a new Bureau policy on advisory opinions and simultaneously launched a pilot

advisory opinion program (Pilot Advisory Opinions program).¹ This notice finalizes the Advisory Opinions Proposal as the Advisory Opinions Policy (Advisory Opinions Policy). Part I provides some background on the Bureau's guidance functions and related statutory authorities. Part II sets out the final text of the Advisory Opinions Policy. Part III reviews the comments received on the Advisory Opinions Proposal and describes the changes the Bureau has made in the final Advisory Opinions Policy. Parts IV through VI address additional regulatory matters.

I. Background

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),^{2,3} the Bureau's "primary functions" include issuing guidance implementing Federal consumer financial law. Providing clear and useful guidance to regulated entities is an important aspect of facilitating markets that serve consumers.

The Bureau currently issues several types of guidance regarding the statutes that it administers, as well as implementing regulations and Official Interpretations. For example, the Bureau issues "Compliance Aids" that present legal requirements in a manner that is useful for compliance professionals, other industry stakeholders, and the public, or that include practical suggestions for how entities might choose to comply with those requirements.⁴ The Bureau also provides individualized "implementation support" to regulated entities through its Regulatory Inquiries Function (RIF).⁵ Neither Compliance Aids nor the RIF are intended to interpret ambiguities in legal requirements. The Bureau also may issue interpretive rules, which provide guidance on the Bureau's regulations or governing statutes, and which in some situations may provide a safe harbor to regulated entities that are in compliance with the Bureau's interpretive rule.⁶

The Bureau initiated its policy for issuing advisory opinions in response to

feedback received from external stakeholders in the 2018 Guidance RFI, encouraging the Bureau to provide written guidance in cases of regulatory uncertainty. The final Advisory Opinions Policy supersedes the pilot Advisory Opinions Program.⁷ Similar to the advisory opinion programs of many other federal agencies, the Advisory Opinions Policy is intended to facilitate timely guidance by the Bureau that enables compliance by resolving outstanding regulatory uncertainty. The Advisory Opinions Policy supports the Bureau's statutory purpose of ensuring consumers have access to markets for consumer financial products and services, and that markets for consumer financial products and services are fair, transparent, and competitive.⁸

II. Final Text of the Advisory Opinions Policy

A. Overview

The primary purpose of this Advisory Opinions Policy is to establish procedures to facilitate the submission by interested parties of requests that the Bureau issue advisory opinions and the manner in which the Bureau will evaluate and respond to such requests. Advisory opinions will be interpretive rules issued to resolve regulatory uncertainty.⁹

B. Submission and Content of Requests

Requests for advisory opinions should be submitted via email to advisoryopinion@cfpb.gov or through other means designated by the Bureau. The Bureau will not consider a request for an advisory opinion to be complete unless the request includes all of the information specified in the following paragraphs.

1. *Confidential information:* The request must identify information the requestor believes should be treated as confidential. If the requestor would not normally make the information public, the Bureau intends to withhold that information from public disclosure to the extent permitted by the Freedom of Information Act, 5 U.S.C. 552(b), and treat the information as confidential in accordance with the Bureau's regulations on Disclosure of Records

¹ See Advisory Opinions Pilot, 85 FR 37394 (June 22, 2020).

² Public Law 111–203, 124 stat. 2081 (2010).

³ See 12 U.S.C. 5511(c)(5).

⁴ See Policy Statement on Compliance Aids, 85 FR 4579 (Jan. 27, 2020).

⁵ See Bureau of Consumer Financial Protection Request for Information Regarding Bureau Guidance and Implementation Support (Guidance RFI), 83 FR 13959, 13961–62 (Apr. 2, 2018).

⁶ E.g., Treatment of Pandemic Relief Payments Under Regulation E and Application of the Compulsory Use Prohibition, 85 FR 23217 (Apr. 27, 2020); Truth in Lending (Regulation Z); Screening and Training Requirements for Mortgage Loan Originators with Temporary Authority, 84 FR 63791 (Nov. 19, 2019).

⁷ Because the Advisory Opinions Policy replaces the pilot, no further requests may be submitted for the pilot as of November 30, 2020. Requests submitted under the pilot that are pending as of that date will continue to be considered by the Bureau.

⁸ See 12 U.S.C. 5511(a).

⁹ For convenience, this document uses the term "regulatory uncertainty" to encompass uncertainty with respect to regulatory or, where applicable, statutory provisions.