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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

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1980

RIN 0575-AC90

Single Family Housing Guaranteed Loan Program

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements a change in the regulations for the United States Department of Agriculture (USDA), Rural Housing Service (RHS) Section 502 Single Family Housing Guaranteed Loan Program (SFHGLP) (also referred to as "Agency") by requiring an annual fee for all loan obligations. This action is taken to implement authorities granted the Secretary of the USDA, in Sec. 102 of the Supplemental Appropriations Act, 2010 to collect from the lender an annual fee not to exceed 0.5 percent of the outstanding principal balance of the loan for the life of the loan. The primary intent of the annual fee is to make the SFHGLP subsidy neutral when used in conjunction with the one-time up-front guarantee fee, thus eliminating the need for taxpayer support of the program at its current loan level.

DATES: *Effective Date:* July 11, 2012.

FOR FURTHER INFORMATION CONTACT: Cathy Glover, Senior Loan Specialist, Single Family Housing Guaranteed Loan Division, USDA Rural Development, Room 2241, STOP 0784, 1400 Independence Ave. SW., Washington,

DC 20250, Telephone: (202) 720-1460, Email: cathy.glover@wdc.usda.gov.

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been determined to be non-significant by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Except where specified, all State and local laws and regulations that are in direct conflict with this rule will be preempted. Federal funds carry Federal requirements. No person is required to apply for funding under this program, but if they do apply and are selected for funding, they must comply with the requirements applicable to the Federal program funds. This rule is not retroactive. It will not affect agreements entered into prior to the effective date of the rule. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 must be exhausted.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effect of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million, or more, in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of the Agency that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, neither an Environmental Assessment nor an Environmental Impact Statement is required.

Federalism—Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the undersigned has determined and certified by signature of this document that this rule change will not have a significant impact on a substantial number of small entities. This rule does not impose any significant new requirements on Agency applicants and borrowers, and the regulatory changes affect only Agency determination of program benefits for guarantees of loans made to individuals. Changes impacting lenders will impact all approved lenders doing business under this program. There is no distinction made between small and large lenders.

Intergovernmental Consultation

This program/activity is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. (See the Notice related to 7 CFR part 3015, subpart V, at 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985).

Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 imposes requirements on Rural Development in the development of regulatory policies

that have tribal implications or preempt tribal laws. Rural Development has determined that the proposed 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 final rule is not subject to the requirements of Executive Order 13175. If a tribe determines that this rule has implications of which Rural Development is not aware and would like to engage in consultation with Rural Development on this rule, please contact Rural Development's Native American Coordinator at (720) 544-2911 or AIAN@wdc.usda.gov.

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under Number 10.410, Very Low to Moderate Income Housing Loans (Section 502 Rural Housing Loans).

Paperwork Reduction Act

The information collection and record keeping requirements contained in this regulation have been approved by OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The assigned OMB control number is 0575-0078.

E-Government Act Compliance

The Rural Housing Service is committed to complying with the E-Government Act, 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.

Non-Discrimination Statement

The USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotope, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Assistant Secretary for Civil Rights, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., STOP 9410, Washington, DC 20250-9410, or call toll-free at (800)

632-9992 (English) or (800) 877-8339 (TDD) or (866) 377-8642 (English Federal-relay) or (800) 845-6136 (Spanish Federal-relay). USDA is an equal opportunity provider and employer.

Background

Public Law (Pub. L.) 111-212, "Supplemental Appropriations Act, 2010," enacted on July 29, 2010, amended Section 502(h)(8) of the Housing Act of 1949 (42 U.S.C. 1472 (h)(8)), as follows: "(8) Fees.—Notwithstanding paragraph (14)(D), with respect to a guaranteed loan issued or modified under this subsection, the Secretary may collect from the lender— (A) at the time of guarantee or modification, a fee not to exceed 3.5 percent of the principal obligation of the loan; and (B) an annual fee not to exceed 0.5 percent of the outstanding balance of the loan for the life of the loan." As a result of Public Law 111-212, a proposed rule was published in the **Federal Register** on October 28, 2011 (76 FR 66860).

The annual fee provision is applicable to purchase and refinance loan transactions. The primary intent of the annual fee is to make the SFHGLP subsidy neutral, thus eliminating the need for taxpayer funding of the program at its current loan level from Congress. The annual fee will be charged in addition to the up-front guarantee fee. For fiscal year (FY) 2012, an annual fee of 0.3 percent is required for all loan obligations. Future changes to the annual fee will be published in Exhibit K, of RD Instruction 440.1 (available in any RD office).

The annual fee for loans guaranteed under the SFHGLP will be calculated based on the average annual scheduled unpaid principal balance of the loan for the life of the loan. The annual fee will be calculated when the loan is closed and every 12 months thereafter until the loan is paid in full or no longer outstanding and the guarantee canceled or expired.

Accrual of the annual fee will begin on the first of the month, following the month in which the loan closed. For example, if the loan closes on October 25, 2012, accrual of the annual fee will begin on November 1, 2012. An RHS "Guarantee Fee and Annual Fee Calculator" and a Guarantee Fee (GAF) Implementation Guide is available on the USDA LINC Training and Resource Library Web site as follows: <https://usdalinc.sc.egov.usda.gov/USDALincTrainingResourceLib.do>. Additional guidance will also be posted to the above Web site as it becomes available.

The annual fee will accrue on a prorated basis for each month the loan is outstanding, but will only be billed to the lender and collected by the Agency on an annual basis or at such time the loan is paid in full or otherwise terminated. Generally, the servicing lender of record will be billed retroactively for a 12 month period on the 3rd business day following the 15th calendar day in the anniversary month in which the loan closed, and will be due to RHS on the 1st day of the following month. Accrual of the annual fee will begin on the 1st day of the month following the month in which the loan was closed (this is a change from the proposed rule and is explained further below). For example, if the loan closed on October 25, 2012, the initial bill will be generated by RHS on October 18th 2013 (3 business days following October 15, 2013); and the initial annual fee payment will be due to RHS on November 1, 2013. For subsequent years that the loan remains outstanding, the annual fee will be due on November 1st of that year (i.e. November 1, 2014, November 1, 2015, etc.)

RHS may impose a late charge of 4% if the annual fee is not paid to RHS by the 15th day of the month in which it is due. For example, if the annual fee is due to RHS on November 1, 2013, a late charge will apply if the annual fee is not paid by November 15, 2013. Additional late charges will be assessed each month that the annual fee is past due. Future changes to the late charge will be published in Exhibit K of RD Instruction 440.1 (available in any RD office). Due to the new process and system changes associated with the annual fee, RHS will not impose late charges on the initial amount of annual fees due for loans obligated during FY 2012.

RHS will charge the annual fee to the lender, and the lender may pass this fee on to the borrower. The lender may collect the fee from the borrower on a monthly basis by collecting $\frac{1}{12}$ th of the annual fee amount in addition to the borrower's regular monthly mortgage payment of principal, interest, taxes and insurance (PITI). When a lender chooses to collect the annual fee from the borrower on a monthly basis, the $\frac{1}{12}$ th collection amount must be included when calculating the PITI ratio. The lender remains responsible for the timely collection and payment to the Agency of the annual fee.

Discussion of Public Comments Received on the October 28, 2011 Proposed Rule:

The Agency received comments from five different sources in response to the Proposed Rule. These comments came from advocacy groups,

home mortgage companies, community bankers and potential home loan applicants.

Three commenters expressed support and appreciation of the importance of the SFHGLP to its targeted population of low-to-moderate income rural families. However, the same commenters and one additional commenter were concerned that the higher payments attributable to the new annual fee will negatively impact borrower affordability and potentially make eligible borrowers less willing to take out an SFHGLP loan, even when these loans would otherwise be the best product for them. For example, one commenter stated the intent of the program is to help people get into homes, not to make it more expensive.

The Agency acknowledges that the borrower's monthly payment may increase as a result of the annual fee. Based on the Agency's average loan amount of \$135,000 at a 3.75 percent interest rate, the borrowers' payment will increase on average by \$20 per month over the life of the loan. However, in order for the Agency to continue offering the SFHGLP at no cost to the taxpayers, both the up-front and annual fees are necessary. If the Agency were to seek taxpayer funding of the program from Congress, it is highly likely that funding levels will decrease dramatically because Congress has not authorized budget authority for the SFHGLP since FY 2010. Without budget authority and the fees, the Agency estimates that there would be approximately 182,000 fewer loans guaranteed through the SFHGLP.

Four commenters expressed understanding of the budgetary motivation for RHS shifting to an up-front and annual premium structure. However, only one of the four commenters was in favor of the Agency's proposal and believes it will be easier for the borrower to handle since the up-front guarantee fee to purchase a home will be less (lowered to 2% from 3.5%). The commenters that were not in favor of the annual fee believe budget neutrality can be achieved with a single up-front premium. For example, one commenter indicated subsidy neutrality could be achieved with a 4 percent up-front fee; and, another commenter provided an

example that showed the average borrower will see a \$19.25 increase in their monthly house payment because of the annual fee. The commenters that were not in favor of the annual fee, expressed concerns that the split premium may drive up the cost of home ownership for low- and moderate-income rural families, and therefore believe a higher single up-front fee structure is more beneficial to borrowers.

The Agency does not disagree with the commenters that subsidy neutrality could be achieved with a higher up-front single fee structure. However, as an initial matter, statutory authority exists for both fees, and there are limits for each fee that the Agency must manage. In addition, the Agency determines the up-front guarantee fee based in part on the program's subsidy score, which constantly changes. The up-front guarantee fee could potentially change at any time during a fiscal year, and these unexpected changes would cause confusion with a single fee structure. Separate fee structures will allow the Agency better flexibility to manage the fees and the availability of commitment authority for the program.

One commenter expressed concerns that refinance borrowers who took out SFHGLP loans with the expectation that they would only be responsible for payment of a single upfront guarantee fee will now be subject to additional costs over the life of their loan. The commenter was concerned that refinance borrowers may ultimately see their payments actually increase despite the lower interest rate.

The Agency acknowledges that the refinance option might not be advantageous for all SFHGLP borrowers depending on their financial circumstances. However, the Agency does not impose a mandatory refinance requirement for SFHGLP borrowers. Therefore, if refinancing with an SFHGLP does not provide positive benefits for the borrowers, the Agency believes the borrower will continue with their current loan or find another funding source to refinance their SFHGLP loan. If the commenter was concerned that a borrower who already refinanced a loan before the implementation of the annual fee would now see increases in current loan

payments due to the annual fee, the Agency repeats that this rule is not retroactive.

All five commenters expressed strong disagreement with the Agency's proposal to make the annual fee mandatory for the "life of the loan." The commenters were concerned that the "life of the loan" provision will impose unnecessary burden on borrowers as the annual fee will continue even as the loan balance declines. Further, the commenters pointed out the "life of the loan" provision is significantly different from that of the Federal Housing Administration (FHA) insured loans, and conventional loan products that require mortgage insurance. The commenters strongly urged the Agency to reconsider the "life of the loan" provision by eliminating the annual fee when a 78 percent loan-to-value (LTV) is achieved, as FHA does with monthly mortgage insurance premiums (MIPs).

Since several commenters compared RHS to FHA, the Agency conducted an analysis comparing RHS and FHA fee structures. The results, when comparing an RHS purchase loan that requires an annual fee for the "life of the loan" to an FHA 203b purchase loan that requires monthly MIP until 78 percent LTV is achieved, overall housing expenses are significantly less for RHS borrowers. This is due to the fact that the Agency's current annual fee (0.3 percent FY 2012) is much less than the monthly MIP for an FHA loan (115 basis points (bps) as of April 18, 2011 and subject to change). Even, if RHS were to increase the annual fee to the maximum allowed (0.5 percent), it would still be significantly less than the current FHA MIP.

The chart below (Chart 1—RHS/FHA Comparison) compares a RHS purchase loan to a FHA 203b purchase loan, and assumes the following: A Purchase Price of \$135,000; a Term of 30 Years; an Interest Rate of 3.75 percent; and, as applicable, that the Up-front Guarantee Fee or Up Front Mortgage Insurance Premium (UFMIP) is financed into the loan. In this scenario, the SFHGLP borrower will pay \$7,352.87 in annual fees over the life of the loan, while the FHA borrower will pay \$12,655.45 in MIP until the LTV reaching 78 percent, which equates to approximately 10 years and 3 months.

CHART 1—RHS PURCHASE LOAN/FHA 203b PURCHASE LOAN COMPARISONS

Loan type	RHS SFHGLP	FHA 203b loan
Purchase Price	\$135,000	\$135,000.
Interest Rate	3.75%	3.75%.
Loan Term	30 Years	30 Years.
Down-payment Required	\$0	\$4,725.

CHART 1—RHS PURCHASE LOAN/FHA 203b PURCHASE LOAN COMPARISONS—Continued

Loan type	RHS SFHGLP	FHA 203b loan
Base Loan Amount	\$135,000	\$130,275.
Up-front Guarantee fee	\$2,755.10	N/A.
UFMIP	N/A	\$1,302.75.
Total Loan Amount	\$137,755.00	\$131,577.75.
Total Monthly Payment (includes annual fee or MIP as applicable).	\$672.12 (P&I \$637.97 + monthly annual fee \$34.15).	\$734.19 (P&I \$609.35 + MIP \$124.84).
Annual Fee Life of Loan	\$7,352.87	N/A.
Monthly MIP—Until LTV Reaches 78%	N/A	\$12,655.45.

In addition to the illustration in Chart 1 which compares RHS and FHA fee structures, the Agency's analysis of the SFHGLP Portfolio reveals that by 10 years and 3 months (when the LTV reaches 78 percent), approximately 55 percent of SFHGLP borrowers will have already paid their loan in full and/or the guarantee will have been terminated. Using the example in Chart 1, by the time most RHS borrowers pay their loans off (10 years and 3 months), the Agency calculates that they would have paid \$4,101.05 in annual fees compared to an FHA insured borrower who would have paid \$12,655.45 in mortgage insurance premiums.

Since all of the commenters strongly opposed the Agency's proposal to collect the annual fee for the life of the loan, the Agency conducted additional analysis to determine how subsidy neutrality could be achieved if the annual fee were eliminated once 78 percent LTV is achieved. The Agency's analysis revealed that both a higher up-front fee and higher annual fee would be required. Therefore, allowing the borrowers to pay the annual fee over the life of the loan keeps both the up-front fee and annual fee percentage lower for SFHGLP customers, making the cost of homeownership more affordable. Additionally, borrowers that pay off their loans prior to maturity will pay less in annual fees. As previously indicated, the majority of the SFHGLP borrowers pay their loans off by 10 years and 3 month, and using the loan based on the example in Chart 1, the average SFHGLP borrower will pay \$4,101.05 in annual fees.

The Agency acknowledges that the "life of the loan" provision of the annual fee is not an industry standard, and that it creates unique requirements for vendors and servicers as it relates to system enhancements. Therefore, the Agency will continue to study its subsidy model to determine if the effective period of the annual fee can be modified in the future. However, any future changes to the effective period of the annual fee will not be retroactive.

Two commenters expressed concerns that the annual fee billing process will result in higher closing costs for the borrower. The commenters explained that since RHS proposes to collect the initial annual fee 12 months from the date of closing rather than 12 months from the first payment due date as reflected on the promissory note, the lender will have to collect additional funds from the borrower at closing to ensure sufficient funds are available to pay the annual fee when it is due. Therefore, the commenters suggested the Agency reconsider the billing method.

The Agency agrees with the comment. Instead of initiating accrual of the annual fee on the date of loan closing as proposed, the accrual of the annual fee will begin on the 1st day of the month following the month in which the loan is closed. For example, if a loan closes on October 25, 2012, accrual of the annual fee will begin on November 1, 2012, and the initial annual fee payment will be due to RHS on November 1, 2013.

As previously stated, the lender may collect $\frac{1}{12}$ th of the annual fee at loan closing and $\frac{1}{12}$ th per month starting with the first payment due date. This method results in the collection of 12 annual fee payments and will ensure sufficient funds are available when the annual fee comes due. Furthermore, the Agency realizes that a $\frac{1}{12}$ th collection of the annual fee at loan closing will increase closing costs; however, based on the sample loan amount illustrated in chart 1, the closing costs will increase by a nominal amount of \$34 for a borrower purchasing a \$135,000 home.

One commenter expressed concerns that the Agency has not provided sufficient administrative guidance on this policy change, therefore inhibiting the industry from revising its systems and applicable disclosure documents accordingly. For example, the commenter wanted to know if the annual fee is considered mortgage insurance. The commenter was concerned that if the fee were considered mortgage insurance,

escrowing of the fee would violate Real Estate Settlement Procedures Act (RESPA).

The Agency disclosed in the proposed rule that RHS will work closely with lenders and service bureaus on necessary system enhancements. Since issuance of the proposed rule, the Agency has worked with several lenders and service bureaus to ensure their systems are capable of handling the annual fee. As discussed in the background section of this rule, the Agency has made available a Guaranteed Fee Implementation Guide and a "Guarantee and Annual Fee Calculator," and both can be found on the USDALinc Training and Resource Library Web site: <https://usdalinc.sc.egov.usda.gov/USDALincTrainingResourceLib.do>.

Additional guidance will also be posted to the above Web site as it becomes available.

While RHS does not regulate RESPA "escrow account" under RESPA is broadly defined at 24 CFR 3500.17(b) as "any account that a servicer establishes or controls on behalf of a borrower to pay taxes, insurance premiums (including flood insurance), or other charges with respect to a federally related mortgage loan, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay."

Therefore, the Agency does not believe that escrowing the annual fee is a violation of RESPA.

Two commenters wanted to know if a study has been conducted on the impact that the annual fee will have on future loan volume. The commenters believed that small lenders will drop out of the program due to the complicated nature of implementing and administering an annual fee and that only large lenders will adopt the change. The Agency realizes that any time a change is made, there is a potential for lenders both large and small to drop out of the program. Approximately 80 percent of the SFHGLP loans are serviced by larger lenders. Small community banks are actively involved with the SFHGLP, but

typically do not keep such loans on their books for 30 years. Most small community banks originate the loans and immediately sell them to larger lenders/servicers. The Agency is implementing the annual fee to eliminate the need of taxpayer funding of the SFHGLP. Without the annual fee, it is likely the availability of SFHGLP guarantees would be reduced dramatically (approximately 182,000 fewer loans would be guaranteed by SFHGLP), thereby adversely affecting potential homeowners in rural America.

Three commenters expressed concerns that the Agency was not following proper rulemaking requirements; two of the three believe the Regulatory Flexibility Act was not being met because the rule could have significant impact on small entities; and one of the three did not agree with the OMB designation of non-significant.

The OMB, not RHS, has authority for determining whether a regulation is significant. As mentioned, within that authority, OMB has found this final rule to be non-significant.

As stated in the background section of this rule, the Agency is implementing the annual fee as a result of Public Law 111-212, "Supplemental Appropriations Act, 2010," enacted on July 29, 2010, which amended Section 502(h)(8) of the Housing Act of 1949 (42 U.S.C. 1472(h)(8)) to read as follows: "(8) Fees.—Notwithstanding paragraph (14)(D), with respect to a guaranteed loan issued or modified under this subsection, the Secretary may collect from the lender—(A) at the time of guarantee or modification, a fee not to exceed 3.5 percent of the principal obligation of the loan; and (B) an annual fee not to exceed 0.5 percent of the outstanding balance of the loan for the life of the loan." Therefore, the authorizing statute for the SFHGLP specifically allows the Agency to implement an annual fee up to 0.5 percent of the outstanding balance of the loan for the life of the loan.

The Agency has had legal authority to implement an annual fee since the date of the statute (July 29, 2010), but chose not to implement the annual fee until October 1, 2011, to allow lenders time to make necessary technical adjustments to their internal systems. The purpose of the proposed rule was to seek comments from the public to better assist the Agency in writing the technical and administrative guidance associated with the annual fee.

The Agency is amending 7 CFR 1980.302(a) to include a definition of the annual fee. The regulations at 7 CFR 1980.310(c) also are amended to clarify that escrow funds using loan funds may

be used to pay the annual fee. Lastly, the Agency will amend the eligibility regulations at 7 CFR 1980.345(c)(1) to add the annual fee amount in determinations of repayment ability.

List of Subjects in 7 CFR Part 1980

Home improvement, Loan programs—Housing and community development, Mortgage insurance, Mortgages, Rural areas.

For the reason stated in the preamble, Chapter XVIII, Title 7 of the Code of Federal Regulations is amended as follows:

PART 1980—RURAL HOUSING LOANS

- 1. The authority citation for part 1980 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989. Subpart E also issued under 7 U.S.C. 1932(a).

Subpart D—Rural Housing Loans

- 2. Section 1980.302(a) is amended by adding a definition of *Annual fee* in alphabetical order to read as follows:

§ 1980.302 Definitions and abbreviations.

(a) * * *

Annual fee. A periodic amount that is based on the average annual scheduled unpaid principal balance of the loan and is paid by the servicing lender to Rural Development on an annual basis for issuance of a Loan Note Guarantee. The fee may be passed on to the borrower and included in the monthly mortgage payment of a borrower and is considered when calculating applicant repayment ratios.

* * * * *

- 3. Section 1980.310(c) is revised to read as follows:

§ 1980.310 Loan purposes.

* * * * *

(c) The cost of establishing an escrow or reserve account for payment of real estate taxes, insurance premiums and/or annual fees when they come due.

* * * * *

- 4. Section 1980.323 is revised to read as follows:

§ 1980.323 Guarantee loan fees.

The Lender will pay an up-front guarantee fee and an annual fee. The amount of the up-front guarantee fee and annual fee will be calculated based on the appropriate figure identified in exhibit K of subpart A of part 1810 of this chapter (RD Instruction 440.1, available at www.regulations.gov or any Rural Development office). The nonrefundable up-front guarantee fee and annual fee may be passed on to the borrower.

(a) *Up-front guarantee fee.* The amount of the up-front guarantee fee is determined by multiplying the appropriate figure in Exhibit K of subpart A of part 1810 of this chapter, times 90 percent of the principal amount of the guaranteed loan amount. The Agency will collect the up-front guarantee fee from the lender prior to issuance of a Loan Note Guarantee.

(b) *Annual fee.* The annual fee will be based on the average annual scheduled unpaid principal balance of the loan using the actual loan amount. The fee percentage can be found in Exhibit K of subpart A of part 1810 of this chapter. The annual fee will be billed to the servicing lender of record on an annual basis for the previous 12 months. The Agency may assess a late charge to the lender if the annual fee is not paid by the due date, and the late charge may be passed on to the borrower.

- 5. Section 1980.345(c)(1) introductory text is revised to read as follows:

§ 1980.345 Applicant eligibility requirements for a guaranteed loan.

* * * * *

(c) * * *

(1) Monthly obligations consists of the principal, interest, taxes, and insurance (PITI) plus the monthly annual fee amount for the proposed loan (less any interest assistance under this program or any other assistance from a State or County sponsored program when such payments are made directly to the Lender on the applicant's behalf), homeowner and other assessments, and the applicant's long term obligations. Long term obligations include those obligations such as alimony, child support and other obligations with a remaining repayment period of more than 6 months and other shorter term debts that are considered to have a significant impact on repayment ability.

* * * * *

Dated: June 8, 2012.

Dallas Tonsager,

Under Secretary, Rural Development.

Dated: June 1, 2012.

Michael T. Scuse,

Acting Under Secretary, Farm and Foreign Agricultural Services.

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