

SUPPORTING STATEMENT

**7 CFR PART 3565, “GUARANTEED RURAL RENTAL HOUSING PROGRAM”
and SUPPORTING HANDBOOK**

A. Justification

1. Explain the circumstances that make the collection of information necessary.

On March 28, 1996, President Clinton signed the “Housing Opportunity Program Extension Act of 1996.” One of the provisions of the Act was adding the authorization of the section 538 Guaranteed Rural Rental Housing Program (GRRHP) to the Housing Act of 1949. The purpose of the GRRHP is to increase the supply of affordable rural rental housing through the use of loan guarantees that encourage partnerships between the Rural Housing Service (RHS), private lenders, and public agencies.

In developing the GRRHP regulations, (7 CFR part 3565), the Agency has considered the impact on the public to ensure that the information collected is the minimum required to comply with applicable laws and authorities and to meet program objectives. This package addresses the paperwork burden contained in the regulation and the handbook which identifies the administrative and servicing procedures to administer the program.

One of the goals of the program is to use the knowledge and expertise of eligible private sector lenders to originate and service GRRHP loans. Under the program, the Agency will provide loan guarantees as credit enhancements to encourage private and public lenders to make new loans for affordable rental properties that meet program standards. Lenders will be expected to underwrite and service the loans. The Agency will approve qualified lenders to participate and will monitor lender performance to ensure program requirements are met.

The information submitted by the lender to the Agency is used by the Agency to manage, plan, evaluate, and account for Government resources. The information collected is necessary to ensure the proper and judicious use of public funds.

The regulation and handbook that pertain to this paperwork burden docket can be found at <http://www.rurdev.usda.gov/regs/hblist.html#hbw6>. No hard copy is attached. Appendix 1 of the handbook is 7 CFR part 3565.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the Agency has made of the information received from the current collection.

A developer will make application with a lender to finance a rental housing project in a rural community. The lender follows its normal application process, using its own application forms and requirements.

If the lender finds the application creditworthy and the project feasible, but the proposal does not meet its standard underwriting criteria because loans made in rural areas tend to be of higher risk, the lender may submit the application to RHS for a loan note guarantee. This information collection package only covers that additional burden imposed on a lender and borrower to obtain and service a RHS loan note guarantee. The information is collected by RHS so that it may evaluate the lender's request and make the determination that the interests of the government are protected.

The GRRHP regulation and handbook will provide lenders and Agency staff with guidance on the origination and servicing of GRRHP loans and the approval of qualified lenders. Lenders will use the handbook as a guide for carrying out the activities and procedures required by the regulation. The handbook is intended to be consistent with all applicable laws, Executive Orders, and USDA regulations. However, nothing in the handbook should be construed to supersede, rescind, or otherwise amend such laws, Executive Orders, and regulations.

To test ways to expand the availability or enhance the effectiveness of the guarantee program, or for similar purposes, the Agency may, from time to time, propose demonstration programs that use loan guarantees or interest credit. Toward this end, the Agency may enter into special partnerships with lenders, financial intermediaries, or others to carry out one or more elements of a demonstration program. Notices in the Federal Register will publicize demonstration programs. The applications submitted for FY 2007 and 2008 funding will be used for the demonstration program.

Specifically, the burden to be cleared with this package is as follows:

REPORTING REQUIREMENTS - NO FORMS

NOFA Response. The availability of GRRHP guarantee authority and interest credit funds and the criteria for allocating this assistance will be made public through a Notice of Funding Availability (NOFA) which will be published in the Federal Register. Once a NOFA has been published, lenders may submit a summary of proposed projects for scoring and ranking. All responses will be reviewed and ranked, in accordance with selection criteria included in the NOFA. Applicants selected will be issued a "*Notice to Proceed with Application Processing*" and be requested to submit an application for a loan note guarantee.

The lender then follows its normal application and loan origination requirements. The application is underwritten by the lender just as any other application in its pipeline.

If the lender finds the application creditworthy and the project feasible the lender may submit the application to RHS for a loan note guarantee. Loan note guarantees are attractive to lenders because the loan amount will not count against its legal lending limit. The loan amount counts towards the lender's community reinvestment requirements, and the guarantee makes the loan easy to sell on the secondary market.

The lender would prepare an executive summary to justify his decision for making the loan. The burden hours projected under this response only include the additional burden required by the lender to submit this information as a request for a loan note guarantee.

Review of Adverse Decisions. An Agency decision that is not made in favor of the lender may be considered an adverse decision. Adverse decisions may include administrative actions taken by Agency officials or the failure to take required actions within required or reasonable timeframes. The lender may request a review of adverse Agency decisions by the next-level supervisor (except those made by the Secretary) by submitting justification and documentation in writing that reflects the possible error of the Agency decision. This process involves the compilation of information the lender already has documented.

Annual GAGAS Audit and Lender Review. All GRRHP lenders must have an "eligibility audit" annually. The audit will consist of a financial and program performance audit conducted by a certified public accountant in accordance with Generally Accepted Government Accounting Standards (GAGAS). The lender must also certify that all eligibility requirements met in its initial process are being maintained. To be in compliance with industry standards, secondary market requirements, the Federal Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989 and the Office of Thrift Supervision (OTS), the lending institution would be required to have a financial audit completed and this same information would then be used to complete the GAGAS audit. Therefore, the burden is reflective of the lender having this information readily available for examination.

Substitution of Lender and Change in Ownership of a Loan. RHS recognizes that lenders may wish to sell loans that they originate, but it has a duty to ensure that the government's interest is not placed at risk. Therefore, the sale of loans, other than to Fannie Mae or Freddie Mac, must be submitted to RHS and approved in advance. In addition, the lender must not sell or transfer the loan without written approval by RHS. To be approved as a substitute lender, the lender must make application to be an approved lender and agree in writing to assume all original loan requirements, including liabilities and servicing responsibilities.

Notification of Using a Broker or Agent. If an agent or broker originates or services a GRRHP loan, the lender must identify the broker or agent to RHS.

Loan Participation. A loan participation is a loan that is funded by two or more lenders. Loan Participations are permitted but must be submitted to the Agency for review.

Lender Narrative. The lender must submit a complete narrative summary of all of the factors affecting the transaction and provide supporting documentation for all decisions made in underwriting the loan. The lender is expected to identify those factors that may impact the performance of the loan. The lender's underwriting narrative must include the following elements:

- Summary of loan guarantee request, including the amount of the loan, guaranteed portion and any subordinate financing;
- Property history and loan purpose, including prior ownership and any outstanding financing;
- Conclusions about the borrower, including eligibility, financial capacity, and management review;
- Conclusions about the property, including site and neighborhood analysis;
- Determination of the project's value, including market analysis, appraisal, income and expense analysis and valuation; and
- Financing terms and lender's commitment.

The Agency is not requesting information beyond what the lender would ordinarily document in the applicant's file as a part of conventional banking procedure; therefore the burden would involve submitting the information to the Agency.

Citizen Status Verification. An eligible borrower must be a U.S. citizen(s) or legal resident(s), a U.S. owned corporation, a limited liability corporation or a partnership in which the principals are U.S. citizens or permanent legal residents. The lender can establish the citizenship of a borrower by examining a birth certificate or passport, or by verifying the social security number or the tax identification number. If the borrower is not a U.S. citizen, the borrower must provide acceptable evidence of eligible status as a qualified alien.

Rural Area Designation. Lenders must verify that projects are located in an area that meets the Agency's definition of a rural area. Lenders must contact the RHS State Office for rural area verification. This may be accomplished by telephone.

Occupancy and Rent Restrictions. Lenders must ensure that loans are underwritten and that mortgage documents adequately address tenant income and rent restrictions: tenancy at initial occupancy is restricted to individuals and families whose incomes do not exceed 115% of area median income. Rents are restricted at rent up, and on a continuing basis thereafter, to 30% of 115% of area median income, with average rent not exceeding 30% of 100% of median income. The tenant income restriction must be supported by a deed restriction for each GRRHP loan.

Lender Decision Not To Proceed with Processing. When the top ranked NOFA responses are selected, the lender will then receive a "Notice to Proceed with

Processing.” Lenders that decide not to proceed must notify the Agency in writing. The notice may be in the form of a short note, email, or fax.

Interest Credit Request and Documentation. Interest credit is a subsidy available to eligible borrowers that reduces the effective interest rate of the loan to the Long Term Monthly Applicable Federal Rate (AFR). The AFR is the interest rate set by the U.S. Treasury for federal financing programs pursuant to Section 42 of the Internal Revenue Code. At least twenty percent (20%) of the loans financed under GRRHP will be given interest credits.

If interest credit is part of the financing proposed by the borrower and lender, the application package must include a request with documentation as to how it would increase the rental affordability of the project. The interest credit application should demonstrate why the interest credit subsidy is needed. The Agency will review the proposed rents and operating budget to see if the borrower has demonstrated that the interest credit will result in lower rents or in a higher level of services for tenants. The lender would have normally reviewed this information as part of its loan package and it would be documented in the projects rent proformas and cash flow analysis. Therefore, the only burden to the lender in this situation would be the submission of this information to the Agency.

Adequacy of Initial Operating Capital. All borrowers must escrow 2 percent of the loan amount as initial operating capital. The American Institute of Architects Cost Estimate Form or an equivalent form should be completed to show in detail what this money is going to fund. If the budget shows that more than 2 percent is needed, the borrower is required to fund this additional amount from its own resources. The lender must provide the Agency with a schedule of how these funds will be used and that the costs are similar to other comparable projects in the market area. This requirement is a normal business practice of a lender making a loan for a multifamily housing project. The burden for this response was the estimated time it would take to compile and copy this information and to submit a copy to the Agency for review. This information is necessary for the Agency to ensure that its interests are protected.

Lapse of Commitment. On a case-by-case basis, the Agency may allow extensions of the loan conditional commitment period. It is expected that the average term of the conditional commitment will be for a 24 month period. However, up to two extensions of 60-90 days may be requested by the lender. For example, construction of the project may have been delayed due to inclement weather. The lender may then submit a written justification for the extension, which may be granted by the Agency if progress toward completion of the project is demonstrable. The request may be in the form of a short letter or memo.

Withdrawal of an Application. The lender must notify RHS in writing of its intention to withdraw an application after the lender has accepted RHS’ invitation to proceed with processing. This notification can be in the form of a short note, fax, or email.

Response to the Conditional Commitment. Once the lender receives a conditional commitment from the Agency, it must respond to the conditions detailed in that commitment and it must certify to RHS that the conditions have been met. This will require that the lender forward to the Agency most of the same documentation it would be keeping if this were not a guaranteed loan.

Opinion of the Lender's Legal Counsel. As a prudent lending practice, the lender's legal counsel would normally review the closing package. RHS requires that once the review is complete, the closing package will be submitted to RHS for review, with an opinion letter from the lender's legal counsel.

Regulatory Agreement. A regulatory agreement governing the relationship between the borrower and lender must be developed by the lender and executed by both the borrower and the lender. While the Agency will not be a party to the agreement, the agreement will state that the Agency may assume the role of the lender if necessary to force borrower compliance with the agreement. This agreement is also called a loan agreement and would always be required by the lender as part of normal business practices because it is the borrower's "contract" with the lender to perform. However, the Agency mandates that certain minimum requirements must be contained in the agreement and that it be submitted for Agency review as part of the closing package. The burden in this response largely lies in the requirement for the Lender's attorney to certify that the regulatory agreement meets the Agency requirements.

Notification and Attendance of Pre-Construction Conference. Prior to the start of any construction work, a mandatory pre-construction conference must be held between the borrower, contractor, architect, and lender representatives, including the lender's fee inspector. The lender is required to notify the Agency of the conference, so that an Agency representative may attend. The purpose of this conference is to reach mutual understanding of all terms and conditions of the contract documents, any required environmental measures, construction schedules, and any proposed changes in plans and specifications.

Construction Contract. The lender must submit for RHS review the contractual arrangements for the construction of a rural rental housing project as a written contract between the borrower and the construction company (general contractor). The construction contract form published by the American Institute of Architects (AIA Document A-101) is acceptable provided it is modified to meet the Agency's requirements. The form is available from the AIA. The Lender is also free to use the contract that he would normally use in this situation. As part of normal business practice, the construction contract would always be reviewed by the lender making the construction loan. Therefore, the calculation of the burden was based on the time it would take to submit a copy of the contractual arrangements to the Agency.

Life Cycle Cost Analysis. A lender would normally require a life cycle cost analysis in order to determine and establish reserve accounts. This analysis must be submitted to RHS for review. The analysis is employed to compare materials and systems and to

determine which are most economical, considering the sum of all costs: initial, operation, and maintenance. Because a life cycle analysis is a normal part of the lender's loan underwriting process, the calculation of the burden was based on the time it would take to submit a copy of the life cycle analysis to the Agency.

Notification to Agency of Inspections. As part of prudent lending practices, the lender would always make inspections at the 3 major construction phases of a project. The 3 phases are footing, rough plumbing and electrical, and final inspection for completion. The lender must notify RHS when each of these inspections is scheduled so that the RHS inspector can join the lender's inspector in conducting these inspections. The only burden in addition to the lender's normal business practices is the time it would take to notify RHS when each of these inspections are scheduled so that a RHS representative might attend. The notification by the lender may be verbal or written.

Reduction of Loan Amount and Construction Change Orders. When the Agency guarantees construction advances, documentation must be provided for deviations from the approved plans and specifications. Payment requests may include charges for change orders only after the change orders have been signed by the lender and the Agency representative. Review of change orders is a standard of good lending practices and would normally be required by the lender. The only accountable burden would be the notification to the Agency that the contract change order existed.

Payment Estimates & Inspection Reports. When the Agency guarantees construction advances, the lender is responsible for ensuring RHS is provided a copy of approved payment estimates and the related inspection reports prepared by the lender's fee inspector and by the project architect. The lender is simply submitting to RHS information it would normally collect.

Final Cost Certification. When the Agency guarantees construction advances *and before final payment* is made to the contractor, the lender must certify that the contractor has fulfilled its obligations to the borrower.

Certification of Additional Construction Requirements. To ensure that the lender has addressed each of the additional construction requirements when the Agency guarantees construction advances, the lender must include a signed form certifying that each requirement has been met prior to the Agency issuance of a loan note guarantee.

Changes in Ownership Entity. A lender would always review and approve any changes in borrower ownership entity. The lender must notify the Agency of any changes in ownership entity and if the lender decides to disapprove the borrower's request for change in ownership entity, it must notify the applicant in writing that it does not approve the change. As part of normal business practices, the lender would document this information.

Capital Improvement Plan. A capital improvement plan is developed when the lender determines that the property is physically troubled. If the lender determines the property has serious capital deficiencies, the lender must report the findings to the Agency and submit a capital improvement plan as part of the regular quarterly reporting process. This plan is part of prudent servicing by the lender; therefore, the only burden would be the time to submit the information to RHS.

Annual Fair Housing Reporting Requirements and Other Civil Rights Laws. In compliance with Section 526 of Public Law 100-242 of the Housing and Community Development Act of 1987, RHS will require the lender to submit a report from the borrower on fair housing compliance as part of the annual audit. This report should detail for each unit: gross income, race, head of household, gender, and elderly or disability status. In addition, the lender will submit for review its monitoring plan to comply with other civil rights laws affecting federally assisted housing. Lenders must understand these laws and monitor the compliance by their employees, contractors, borrowers and management agents.

Preservation of Affordable Housing The housing must remain available as affordable housing for the term of the loan. However, the Secretary may waive the applicability of such requirement if certain conditions are met as contained in the statute. The lender will forward the borrowers request to the Agency along with its analysis.

Submission of Workout Plan. When a property is in default on a guaranteed loan, a workout plan must be submitted to the Agency using the Section 515 Multifamily Housing workout plan format. The lender must submit the plan no later than 60 days after the lender has notified the borrower that they are in default under the regulatory agreement. The development of a workout plan would be part of the lender's normal servicing routine.

Request for Reserve Funds. RHS reserves the right to control reserve releases of problem accounts. The lender will submit its request to RHS with an analysis of the situation. The lender does not have to submit a request made by the borrower if the lender decides to refuse it.

Housing Allowances for Utilities and Other Public Services. RHS has established certain rent restrictions to preserve affordability of GRRHP units. Monthly rent for any individual housing unit, including any tenant-paid utilities, must not exceed an amount equal to 1/12 of 30 percent of 115 percent of area median income. In addition, on an annual basis, the average monthly rent for a project, taking into account all individual unit rents, including any tenant paid utilities, must not exceed 1/12 of 30 percent of 100 percent of area median income, adjusted for family size. The calculation for tenant paid utilities for each unit size and type of heating fuel must be made at initial occupancy when the rent structure is established.

The lender would not ordinarily perform such an in-depth analysis in a conventional lending situation. However, it is essential that the Agency be able to document

compliance with the program. Therefore, the burden placed on the lender would not just be a submission of information to the Agency that it has already collected. Estimate the number of respondents per year as 50, requiring one hour to collect the information and one hour to compute the utility allowance using Attachment 4-G of the handbook or similar format, for a total of 2 hours per respondent.

Lender’s Analysis and Evidence of Reasonable Loan Risk. This written analysis prepared by the lender represents the lender’s justification for making the loan. This analysis includes evidence that the loan risk is reasonable taking into account the applicant’s management capabilities, repayment ability, history of debt repayment, and other factors related to concentration of risk in a given market. This is a standard industry practice for all such loans. The burden projected only includes the submission of the analysis by the lender to RHS for review.

Certification of Legal Eligibility and Responsibility. Each borrower must have, or obtain, legal authority necessary to own and operate the proposed facility, incur and repay debt, and pledge security for the loan. Copies of items such as charters, bylaws, and articles of incorporation are needed so the lender can determine if the applicant has the proper authority to borrow money for the proposed project. The lender’s attorney must review the organizational documents of the borrower, each principal that is an entity, and the organizational documents of any entity that has an ownership interest in a principal and certify that the structure meets Agency and program requirements. The attorney must give consideration to any increased risks that the organizational structure might cause in the event of default or foreclosure. This analysis would be a prudent lending practice and would normally be required by the lender. The “wage class/\$ per hour” on the grid reflects that this review is completed by the lender’s attorney.

Intergovernmental Review. Executive Order 12372 requires consultation with State officials, and comment is obtained on all proposals for Federal financing in accordance with RD Instruction 1940-J. The purpose of the review is to alert state officials (Soil State housing agencies, Water Authorities, Historical Society, etc.) of the proposed project, so that they may determine its potential impact and have an opportunity to comment. The borrower or the lender must prepare an all encompassing information package describing the project for this purpose. The review process must be completed before an approval for a loan guarantee can be made.

Lender Approval Application. Lenders must submit a lender approval application as prescribed by the Agency. The application will document the lender’s adequate overall level of capital, adequate liquidity, bonding and insurance, adequate loan reserves, experience in managing a multifamily housing (MFH) portfolio, and a list of the principal officers and their responsibilities. The lender must certify that neither it nor its principal officers are debarred or suspended from federal programs or delinquent on any federal debt. The lender must also submit a recent letter, or other proof, verifying that it is an approved multifamily lender with HUD, Fannie Mae, Freddie Mac or Ginne Mae; or evidence that it is a state housing finance agency, a member of the Federal Home Loan Bank system; or is experienced in multifamily lending and can demonstrate ability in

origination and servicing MFH loans. All applications must include an origination and servicing plan. This is needed to make a determination of whether the lender can protect the interests of the government.

As an ongoing requirement of the lender approval application, the lender must inform RHS in writing, within 60 days if there are any substantive changes in corporate structure or business practices, such as a change in management or in the size or scope of business operations.

The lender approval application must be submitted when the lender submits its first application for a loan guarantee, or an application to purchase a guaranteed loan, or to have a loan transferred to him by an existing lender (called a substitution of lender), or when an application to become a loan servicer is submitted. In addition, a lender who has lost its approval status must reapply to regain approved lender status.

The information collected in the application is the same information that is requested of the lender when it deals with the secondary market. In addition, much of it is mandated by FIRREA and OTS. Therefore, the lender would normally have this information compiled and readily available for examination.

Lender Compliance - Notification of Changes in Financial/Operations Status. To maintain approval status, the lender must inform the Agency of any material change in the lender's staffing, policies and procedures, including corporate structure. If a change in the lender's operations or financial status results in the lender becoming ineligible, RHS must be notified immediately.

Borrower Compliance Certification. As a condition of the guarantee, the lender must certify annually to RHS that the borrower is in compliance with the regulatory agreement and program requirements with respect to all aspects of project management. This certification may be in the form of a letter signed by the lender.

Construction Credit Enhancements. The Agency will guarantee construction contracts (not to exceed 90 percent of the work in place) which have credit enhancements to protect the government's guarantee. Payment and performance bonds or unconditional and irrevocable letters must be executed prior to the start of any work and must be submitted to the RHS for review. However, it has been found from the administration of the program as an Interim Final Rule in 1998, that, in general, the lenders are not interested in obtaining a loan note guarantee on the construction contract, but are only interested in requesting a permanent guarantee once construction is completed. The estimated number of responses on the accompanying grid reflects this information.

Voluntary Termination of Guarantee. A lender and borrower *may* voluntarily request the termination of the loan guarantee. A guarantee agreement will terminate; however, use restrictions on the property will remain if termination takes place prior to the end of the term of the loan and RHS has determined the restrictions apply. Therefore, it is unlikely that a request for termination be made.

Final Guarantee Certifications. The lender provides copies of documents and certifications to satisfy requirements of all conditions set forth in the conditional commitment prior to issuance of the Loan Note Guarantee. The lender would collect the same information from the applicant if it were not applying for a guarantee.

Tenant protection and grievance procedures. Tenants in properties subject to a guaranteed loan are entitled to the grievance and appeal rights contained in 7 CFR part 3560 or its successor regulation. The borrower must inform tenants in writing of these rights.

Loan Servicing/Audited Financial Statements. The lender is responsible for servicing the loan. Failure to properly service the loan may result in cancellation of the guarantee or an adjustment in percent of guarantee. The regulation requires that the lender submit to the Agency a copy and analysis of the annual financial statements of its GRRHP borrowers. The lender would normally analyze the borrower's financial statements as normal loan servicing procedure if the loan was not guaranteed. Therefore, the burden to the lender consists only of forwarding the financial statements and analysis to the Agency.

Notice of Loan Prepayment. A guaranteed loan may be prepaid in whole or in part at the determination of the Lender, and upon the Lender's written notice to the Agency, at least 30 days prior to the expected date of prepayment. The Lender certifies that the borrower has notified tenants of the request to prepay the loan, including notice of the prohibition against abrogation of the lease and the policy and procedure for handling complaints regarding compliance with the long-term use restriction. Restrictions on the property will remain if the loan is prepaid; therefore, it is not expected that there will be frequent notices to repay the loan.

Special Servicing Plan. In case of borrower default, the lender is responsible for notifying RHS officials and preparing a special servicing plan to correct the default. If the loan were not guaranteed, the lender would still develop a servicing plan and a work out plan for a delinquent loan in its own portfolio. The only burden to the lender is to forward a copy of the plan with any other information that would be pertinent to the Agency. The financial interests of both RHS and the lender may be jeopardized if curative actions are not taken promptly.

Monthly Delinquent Reports. To ensure close monitoring of a troubled account, the regulation requires the lender to submit monthly reports on all GRRHP loans in its portfolio which are in default, delinquent or not in compliance with program requirements. The monitoring of delinquent accounts is considered a necessary loan servicing practice and therefore, these reports do not impose additional burden on the lender.

Liquidation Plan. When liquidation of a guaranteed loan is necessary, the lender will prepare a liquidation plan in accordance with Form RD 3565-3, "Lender's Agreement."

The plan will contain information on how the liquidation will be conducted, proof of the lender's ownership of the note and other security instruments, information concerning the borrower's assets, proposed method of obtaining maximum collection, and an estimate of the market and potential liquidated value of collateral. If complications in the liquidation process lead to unforeseen delays, the lender must immediately notify RHS for the reason for the delay and submit a revised date for the expected liquidation. If it becomes necessary to change the liquidation plan, the lender will immediately inform RHS of the cause (for example, the borrower files bankruptcy) and submit an amendment to the plan. The Agency does not require additional information beyond that required by state law. Therefore, the Agency is not imposing additional burden beyond that required as part of industry standard loan servicing.

Assignment. In the case of an assignment of the loan to the Agency, the assignment of the security instruments or the security must be in written and recordable form and forwarded to the RHS Regional Attorney for review within 90 days of the Agency notice to the lender to convey the loan. The Agency has the authority to request the lender to convey the loan if it determines that it is in the best interest of the government to do so. The Agency expects the occurrence of this burden to be rare.

Lender Notification of Decision to Liquidate and Certification of Collection Efforts.

Once the lender has made a decision to liquidate the account, they must notify RHS and the borrower within 7 calendar days of the decision. At the same time, the lender must certify to RHS that all possibilities of collection have been exhausted and that all of the items specified in §3565.457(c) have been identified and reported to RHS as a condition for payment of claim. The lender may notify the Agency by phone or letter.

Withdrawal of Claim. If the lender provides timely written notice to the Agency of withdrawal of its intent to foreclose on the loan, the guarantee will continue as if the default had not occurred. A short memorandum from the lender would be satisfactory.

Demand for Repurchase. When a loan is in default, the holder of the guaranteed portion of the loan may demand repurchase of the loan. The holder will simultaneously make written demand for repurchase of the guaranteed loan to the lender and the Agency. The holder must also send to the Agency a copy of the written demand made to the lender. The lender must notify the holder and the Agency of its decision to repurchase within 10 business days of receiving the demand letter from the holder. It is assumed that 1 loan will default and 5 investors who hold participation in the loan will demand repurchase. The estimated number of respondents is 5 annually requiring .5 hours per respondent for a total of 3 man-hours.

Determination of Payment to Holder. The lender will provide the Agency with a current statement, certified by the lender, stating the unpaid principal and interest owed by the borrower and due to the holder. It is assumed that 1 loan will default and 5 investors hold participation in the loan. The estimated number of respondents is 5 annually requiring .5 hours per respondent for a total of 3 man-hours.

Transfer and Assumptions. It is anticipated that assumptions in the program will be rare as the statute does not permit the transferor to be released from liability. In most instances, it would benefit all parties to obtain a new loan to purchase the property. However, if there is a transfer and assumption on the loan, the lender will be expected to provide the Agency with a statement that the loan security instruments can be properly transferred and will file, register, or record all conveyance instruments as appropriate as part of conventional lending practices.

The lender will note all transfers and assumptions on all originals of Loan Note Guarantee(s) and provide the Agency with a copy of the transfer and assumption agreement. The lender is responsible for notifying the Agency before any borrower or guarantor is released from liability to ensure that the financial interests of the Government are not jeopardized.

Demonstration Program. Lender will provide signed written letter requesting consideration for Demonstration Program.

REPORTING REQUIREMENTS – FORMS CLEARED UNDER THIS DOCKET

Form RD 3565-1, “Application for Loan and Guarantee.” This form is used by the borrower to make application for the loan note guarantee. It is also used by a lender, who is not an approved GRRHP lender, to make application for approval status. The Agency must determine the lender meets the eligibility criteria set forth in the statute and corresponding regulations.

The form collects information needed to determine the feasibility of the requested funding and aids in making an evaluation of the ability of the lender and borrower to meet rural housing eligibility criteria and the objectives of the program. Much of the information used to complete the form is compiled from existing information the applicant has already supplied to the lender as part of the lender’s usual application process.

This form also takes advantage of collecting information about the proposed project that is pertinent to the execution of the program to alleviate the need for a second collection of information from the lender at a latter date. The collection addresses questions that are frequently asked of the agency by Congress or other Agencies. Frequent inquires to the Agency include the Congressional district in which Agency assistance was provided. Because the housing is available for occupancy only by low or moderate income families or persons, whose incomes at the time of initial occupancy do not exceed 115 percent of the median income of the area, it is important that both the lender and the borrower are aware of the median income of the community so that compliance with the program can be documented.

The GRRHP is very similar to the Business and Industry program (B&I) administered by Rural Development. In fact, the B&I program does make multifamily housing loans in

rural areas not covered by RHS's jurisdiction. This application was modeled very closely after B&I's application form.

The main difference in collection times is the fact that multifamily lenders commonly package their loans to be sold on the secondary market (commercial B&I loans are usually sold to individual entities), and for the secondary market to accept their package or bundle of loans, the lender must supply extensive information about the borrower and themselves. Much of this information is similar to the information needed to complete the RHS application form and, therefore, should be able to be transferred without further research.

Form RD 3565-2, "Conditional Commitment." This form is used to advise the lender that the loan has been conditionally approved for a guarantee, subject to the lender and the applicant meeting the conditions set forth on the form. The lender is required to sign this form certifying that it understands and agrees to abide by the conditions of the conditional commitment. This assures RHS that the applicant has met the conditions required for the guarantee. A conditional commitment to the applicant is typical lending practice for lenders. Therefore, if the lender were not applying for an RHS loan guarantee, it would prepare a form similar to this form for the applicant's signature as a matter of normal routine. This form guards the Government's interest in that RHS will not issue a Loan Note Guarantee until the Lender certifies that there has been no adverse change in the applicant's condition, and that no adverse changes have occurred in the scope to the project.

Form RD 3565-3, "Lender's Agreement." When the Loan Note Guarantee is issued, Form RD 3565-3 is issued. This agreement sets forth the lender's loan responsibilities and is signed by both the lender and the RHS official. It provides the basis for making and servicing Agency guaranteed loans and reflects the standard lender agreement recommended by the Department of Treasury, Financial Management Services, and the Office of Management and Budget. One Lender's Agreement is signed per lender; therefore, the number of respondents is equal to the estimated number of new lenders making one or more Guaranteed Rural Rental Housing Loans.

Form RD 1980-24, "Request Interest Assistance/Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender." Submitted by the lender on an annual basis if the loan is eligible for interest credit assistance. This form requests the renewal of the assistance and calculates the amount of assistance to be received.

FORM RD 3565-5, "Assignment Guarantee Agreement." If the lender sells participation of the guaranteed loan to an investor, the lender and investor are required to complete this form. The lender will send originals of the duly signed form to the Finance Office and the State Office where the project is located. This form allows the Agency to track holders of the guaranteed loan and to assist in the payments when a demand for repurchase is received by the Agency. It is assumed that 1 loan will default and 5 investors hold participation in the loan. The estimated number of respondents is 5 annually requiring .5 hours per respondent for a total of 3 man-hours.

REPORTING REQUIREMENTS - FORMS CLEARED UNDER OTHER OMB NUMBERS

Form RD 1980-19 “Guaranteed Loan Closing Report.” This form is completed by the lender and submitted to the Finance Office at the time the guarantee is issued. It is also used to accompany all guarantee fee payments submitted to the Finance Office by the lender. The estimated number of respondents is 50 annually requiring 1 hour per respondent for a total of 50 man-hours. This form is cleared under OMB Number 0575-0137.

Form RD 1980-43 “Lender’s Guaranteed Loan Payment to USDA.” This form is used to transmit any funds due RHS, when RHS has purchased all or part of the guaranteed portion of the loan. This would include RHS’s pro-rata share of any payments received from the borrower or any funds received by the lender in the process of liquidation. The estimated number of respondents is 50 annually requiring 30 minutes per respondent for a total of 25 man-hours. This form is cleared under OMB Number 0575-0137.

Form RD 1980-41 “Guaranteed Loan Status Report.” This form is used to report and update the account status of the guaranteed loan to the finance office and is cleared under OMB Number 0570-0016. The estimated number of respondents is 200 annually requiring 20 minutes per respondent for a total of 66 man-hours.

Form RD 1980-44 “Guaranteed Loan Borrower Default Status.” This form is used to inform Rural Development of the status of borrowers in default and report on the progress of the disposition of property. This form is cleared under OMB Number 0570-0016. The estimated number of respondents is 27 annually requiring 20 minutes per respondent for a total of 9 man-hours.

Form RD 449-30 “Guaranteed Loan Report of Loss.” This form is used to provide for reporting estimated loss or final loss payment. This form is cleared under OMB Number 0575-0137. The estimated number of respondents is 1 annually requiring 25 hours per respondent for a total of 25 man-hours.

Form RD 1940-20 “Request for Environmental Review.” This form requests from the applicant various environmental information regarding the elements of its application. This information, in turn, is used by RHS to complete an environmental assessment of the application. The estimated number of respondents is 50 annually requiring 15 minutes per respondent for a total of 13 man-hours. This form is cleared under OMB Number 0575-0094.

Form RD 1944-37 “Previous Participation Certification.” Form HUD 2530/RD 1944-37 is to be used by all parties applying to become principal participants in RHS multifamily housing projects. This certification must state that neither the property management entity nor its principals are debarred or suspended from Federal work. The

estimated number of respondents is 50 annually requiring 15 minutes per respondent for a total of 13 man-hours. This form is cleared under OMB Number 2502-0118.

Form RD 3560-8 “Tenant Certification.” This form is collected primarily to determine eligibility for occupancy and is cleared under OMB Number 0575-0189. The estimated number of respondents is 1,000 annually requiring 30 minutes per respondent for a total of 500 man-hours.

Form RD 3560-31 “Identity of Interest Disclosure/Qualification Certificate.” This form is used for RHS multifamily housing loans to evidence the existence of Identities of Interest and describe the relationships between the borrower and other businesses with whom the borrower may contract for goods or services. The estimated number of respondents is 50 annually requiring 1 hour per respondent for a total of 50 man-hours. This form is cleared under OMB Number 0575-0189.

Form RD 3550-6 “Notice of Special Flood Hazards, Flood Insurance Purchase Requirements, and Availability of Federal Disaster Relief Assistance.” When the Agency has determined that financing has been requested on a dwelling within or that will be located in a special flood hazard area, this form will be generated by the guaranteed lender to notify the applicant that the property is located in a special flood area, that there are certain flood insurance purchase requirements, and that federal disaster relief assistance may be available under certain conditions. The estimated number of respondents is 50 annually requiring 5 minutes per respondent for a total of 4 man-hours. This form is cleared under OMB Number 0575-0172.

Form HUD 935.2 “Affirmative Fair Housing Marketing Plan.” This document is required of all Federally guaranteed and assisted housing. It describes the process borrowers will use to assure that marketing and outreach efforts are targeted to all persons, regardless of race or handicap, who are eligible for admission to the available housing. The estimated number of respondents is 50 annually requiring 3 hours per respondent for a total of 150 man-hours. This form is cleared under OMB Number 2529-0013.

Form HUD 9832 “Management Entity Profile.” This form outlines the proposed management agent and their organizational structure and discloses any identity of interest relationships the management agent may have. The estimated number of respondents is 50 annually requiring 2 hours per respondent for a total of 100 man-hours. This form is cleared under OMB Number 2502-0305.

Form RD 1924-25 “Plan Certification.” This form is used by the project architect to certify modifications for new construction performed on property when the financing is guaranteed by RHS. The estimated number of respondents is 50 annually requiring 10 minutes per respondent for a total of 8 man-hours. This form is cleared under OMB Number 0575-0042.

Form FEMA 81-93 “Standard Flood Hazard Determination.” This form provides specific information with regard to the proposal’s location in a floodplain. The estimated number of respondents is 50 annually requiring 20 minutes per respondent for a total of 17 man-hours. This form is cleared under OMB Number 3067-0264.

Data Collection Device (DCD) “Physical Inspection Report.” The lender must inspect each property on an annual basis and report the summary findings to RHS as a part of its regular annual report. The estimated number of respondents is 50 annually requiring 2 hours per respondent for a total of 100 man-hours. Lenders use a DCD to collect the information.

Form RD 1924-13 “Estimate and Certificate of Actual Cost.” This form is used by the contractor and developer to estimate the cost of construction and total development costs or to certify the actual cost of project construction and development. The estimated number of respondents is 50 annually requiring 2 hours per respondent for a total of 100 man-hours. It is cleared under OMB Number 0575-0042.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection.

There is no information that is collected electronically at this time. However, most lenders have computer systems for generating required information, such as monthly servicing reports. In most cases, the Agency has authorized the use of computer-generated forms that duplicate the Rural Development printed forms. In addition, all public use Rural Development forms may be downloaded from the internet but still cannot be submitted online yet.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

RHS works closely with participants to ensure that there is no duplication of requirements. Most of the information that is collected relates to the specific loan application and therefore is not already available. In some cases, an applicant may be able to use existing data from other sources to meet some of the application requirements. For example, a local housing agency may have information on housing trends that could be included in the market survey.

To avoid duplication for the demonstration program, applications submitted for FY 2007 and 2008 funding will be used to collect the necessary information. The only additional

information requested is a written letter from the Lender requesting to be considered for the demonstration program.

5. If the collection of information impacts small businesses or other small entities (item 5 of OMB Form 83-1), describe any methods used to minimize burden.

The Agency allows lenders seeking guarantees to utilize industry-standard underwriting procedures for loan origination. Lenders assist their clients in completing their own application packages. RHS only requires additional information needed to comply with statutory requirements or those considered standard among other government agencies or other entities guaranteeing such loans. RHS will provide assistance to any lender or loan applicant seeking assistance.

6. Describe the consequences to Federal program or policy activities if the collection is not conducted or conducted less frequently, as well as any technical or legal obstacles to reducing burden.

The Agency could not effectively guarantee loans, monitor lenders, and assess program effectiveness if information were collected less frequently or was not collected at all. The information collected is generally necessary to comply with OMB Circular A-129.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

a. Requiring respondents to report information more than quarterly.

The only report required more frequently is when a loan is in default, then the lender must submit a delinquency report each month. The practice of monthly monitoring of a delinquent account is typical in the lending industry and a lender would monitor its non-guaranteed portfolio in this fashion. The involvement of the lender at an early stage of default will ensure prompt attention to the loan in this critical and time sensitive situation and should reduce the lender's and the Agency's exposure to potential loss.

b. Requiring written responses in less than 30 days.

No responses are required in less than 30 days except in the event of default by the borrower on a guaranteed loan, the lender must file a notice of intent to file a claim within 7 days from the date of the decision to liquidate. This alerts the Agency at an early stage of a pending liquidation and allows monitoring of the lender's servicing actions. This is done to reduce the lender's and the Agency's exposure to potential loss.

c. Requiring more than an original and two copies.

We have no requirements for more than an original and two copies.

d. Requiring respondents to retain records for more than 3 years.

There are no instances where RHS requires respondents to retain records for more than 3 years. The recordkeeping requirements of the lender are typical of a lender originating a similar unguaranteed multifamily housing loan. The recordkeeping requirements of lending institutions are dictated by the secondary market, regulatory agencies (such as the Office of Thrift Supervision) and provisions of the Financial Institutions Reform, Recovery and Enforcement Act of 1989. There is no instance of RHS requiring the lender to maintain a record for a period of time outside of its normal bookkeeping practice.

e. Not utilizing statistical sampling.

There are no such requirements.

f. Requiring use of statistical sampling which has not been reviewed and approved by OMB.

There is no instance where we are using statistical sampling which has not been reviewed and approved by OMB.

g. Requiring a pledge of confidentiality.

There is no pledge of confidentiality required for this program.

h. Requiring submission of proprietary trade secrets.

There is no provision requiring submission of proprietary trade secrets.

8. Describe efforts to consult with persons outside the Agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, reporting format (if any), and on data elements to be recorded, disclosed, or reported.

A 60-Day Notice was published in the Federal Register on December 18, 2007, [72 FR 71619], soliciting comments on this paperwork burden package. No comments were received. A copy of this Notice is attached.

Public Law 104-120 required RHS to conduct an independent study of the Section 538 program. ICF Kaiser (ICF) was hired as a consultant by RHS to complete the study. One of the goals of the study was to provide information that would help the RHS to develop regulations that effectively meet the needs of the program's intended beneficiaries. In addition, RHS has discussed the development of the Section 538 regulations and the contingent components of paperwork burden at a series of Stakeholders meetings. Present at these meetings were participants of the 538 program, including developers, financing institutions, lobbyist groups, as well as Agency personnel. The stakeholders were familiar with other multifamily guaranteed programs administered by HUD and were able to give RHS an insight concerning the guaranteed process from the application stage through the life of the loan, thereby concurrently laying out the outline for what would influence the paperwork burden.

Due to the independent study, the Agency has addressed the issues of continual communication by setting up meetings across the nation to promote the program, a demonstration program to offer a continuous guarantee and hired a contractor to make changes to 7 CFR part 3565 to further improve the program.

RHS has made efforts to involve several outside sources to ensure that burden is reasonable, necessary, and kept to a minimum. RHS has worked closely with the following individuals:

Andy Zehe
Senior Consultant
ICF Kaiser, Inc.
Consulting Group
9300 Lee Highway
Fairfax, VA 22031
(703) 934-3000

Doug McCree
President
First Housing
1715 N. Westshore Boulevard
Suite 700
Tampa, Florida 33607
(813) 289-9410

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

There will be no payments or gifts to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or Agency policy.

No assurances of confidentiality are provided. Information collected is public, with the exception of information that is protected under the Privacy Act, such as personal financial statements of development firm principals.

11. Provide additional justification for any question of a sensitive nature, such as sexual behavior or attitudes, religious beliefs, and other matters that are commonly considered private.

No questions of a sensitive nature are required.

12. Provide estimates of the hour burden of the collection of information.

See attached spreadsheet.

The following assumptions were used in the estimate of annualized cost:

Loan processors will be the primary persons completing the forms to obtain Loan Note Guarantees from the Agency. However, the lenders will occasionally require use of their legal counsel to review certain legal instruments, such as the borrowers articles of incorporation and loan closing documents. They will also require the service of an accountant to perform annual financial audits. Lenders making new construction loans will also require the assistance of architects and engineers. The attached grid was documented as such.

The overall hourly wage and the cost to the public to implement this program was based on the range of \$24.00 per hour for loan officers to \$54.00 per hour for the use of the lender's legal counsel and accounting professionals. Statistics from the Department of Labor were used as the source of hourly wages. The hourly cost was then multiplied by the burden hours. Based on this computation, the projected annualized cost to the public is \$43,595. This is an increase of \$7,727 in cost from our last submission.

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information.

There are no capital/startup or operation and maintenance costs.

14. Provide estimates of annualized cost to the Federal Government.

We estimate the cost to the Federal Government to be \$1,482,250 based on the number of employees directly involved in the administration of this regulation (350) multiplied by the national costs factor of \$42,350, multiplied by the percentage of time (10 percent) the employees are involved. The cost factor includes salaries, benefits, travel, communication, supplies, etc. taking into account the increase in federal salaries and other cost factors in 2006 and 2007.

15. Explain the reasons for any program changes or adjustments reported in items 13 or 14 of the OMB Form 83-1.

The cost to the public to participate in the program increased by \$7,727 from our last submission. The increase is due to higher labor costs. The cost to the Federal Government to operate the program also increased by \$54,250 from our last submission.

The increase is due to higher salaries, costs of benefits and other expenses involved in the program implementation.

16. For collection of information whose results will be published, outline plans for tabulation and publication.

Not applicable. Information collected will not be published for statistical purposes. This information is used to ensure compliance with statutes and prudent loan administration.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

It is not cost effective for the Agency to display the expiration date on the forms and handbooks due to the large number of field offices and the significant difference in the volume of forms and handbooks used by these offices. The Agency would be forced to dispose of thousands of copies of forms and handbooks every 3 years when the paperwork burden approval date would change. This would waste thousands of dollars unnecessarily on printing, distribution, and employee wage costs.

18. Explain each exception to the certification statement identified in item 19 on OMB 83-1.

There are no exceptions requested to the certification statement identified in item 19 submitted with this regulation.

19. How is this information collection related to the Service Center Initiative (SCI)? Will the information collection be part of the one stop shopping concept?

The Service Center Initiative will have no affect on how we administer this program. The information contained in this collection cannot be shared because it is program specific to our agency only.