

Position 5

USDA
Form RD 3565-5
(02-05)

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT

FORM APPROVED
OMB NO.0575-0174

**MULTI FAMILY HOUSING
ASSIGNMENT GUARANTEE AGREEMENT**

Type of Loan: _____ 1/ Government Loan Identification Number _____

Applicable 7 CFR part 3565 _____ 2/

_____ 3/

(Lender) has made a loan to _____ 4/

in the principal amount of \$ _____ 5/ as evidenced by a note(s) dated _____ 6/.
The United States of America, acting through the Rural Housing Service (herein called "Government") entered into a Loan Note Guarantee (Form RD 3565-4) with the Lender applicable to the loan referenced in the Loan Note Guarantee to guarantee the loan not to exceed 7/ _____ % of the amount of the principal advanced and any interest (including any loan subsidy) due thereon and resulting from the restructuring of a loan and not exceeding statutory loan limits, as provided therein,

_____ 8/

desires to purchase from _____ 9/ _____ 10/ % of the guaranteed portion of such loan. Copies of Borrower's note(s) and the Loan Note Guarantee are attached hereto as a part hereof.

NOW, THEREFORE, THE PARTIES AGREE:

1. The principal amount of the loan now outstanding is \$ _____ 11/ Lender hereby assigns to Holder or assignee 12/ _____ % of the guaranteed portion of the loan representing \$ _____ 13/ of such loan now outstanding in accordance with all of the terms and conditions hereinafter set forth. The Lender and Government certify to the Holder that the Lender has paid and Government has received the Guarantee Fee in exchange for the issuance of the Loan Note Guarantee.

2. Loan Servicing. The Lender will be responsible for servicing the entire loan and will remain mortgagee and/or secured party of record. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The Lender will receive all payments on account of principal and interest (including any loan subsidy resulting from the restructuring of a loan and not exceeding statutory loan limits) on, the entire loan and shall promptly remit to the Holder its pro rata share thereof determined according to their respective interests in the loan, less only the Lender's servicing fee.

3. Servicing Fee. Holder agrees that Lender will retain a servicing fee of 14/ _____ percent per annum of the unpaid balance of the guaranteed portion of the loan assigned hereunder.

4. Purchase by Holder. The guaranteed portion purchased by the Holder will always be a portion of the loan which is guaranteed. The Holder will hereby succeed to all rights of the Lender under the Loan Note Guarantee to the extent of the assigned portion of the loan. The Lender, however, will remain bound by all obligations under the Loan Note Guarantee and the program regulations found in the applicable subpart of 7 CFR part 3565 now in effect and future regulations not inconsistent with the provisions hereof.

5. Full Faith and Credit. The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud, misrepresentation or misuse of funds of which the Holder has actual knowledge at the time of this assignment, or which it participates in or condones. Any assignment guarantee agreement attached to or relating to a note which provides for capitalization of interest is void.

6. Rights and Liabilities. The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentations by Lender or any unenforceability of the Loan Note Guarantee by Lender. Nothing contained herein shall constitute any waiver by Government of any rights it possesses against the Lender, and the Lender agrees that Lender will be liable

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0174. The time required to complete this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

and will promptly reimburse Government for any payment made by Government to Holder which, if such Lender had held the guaranteed portion of the loan, Government would not be required to make. The Holder(s) upon written notice to the Lender may resell the unpaid balance of the guaranteed portion of the loan assigned hereunder. An endorsement may be added to the Form RD 3565-5 to effectuate the transfer.

7. Repurchase by Lender. The Holder may make written demand on the Lender to repurchase the unpaid guaranteed portion of the loan when the borrower is in default not less than 60 calendar days on principal or interest due on the loan; or the Lender has failed to remit to the Holder its pro rata share of any payment made by the borrower within 30 calendar days of receipt by the Lender. The Holder must concurrently send a copy of the demand letter to the Government. The Lender will notify the Holder and the Government of its decision to repurchase within 10 business days from the date of the written demand letter by the Holder. The Lender may agree to repurchase the unpaid portion of the entire loan from the Holder, even though the guarantee does not cover any unguaranteed portion of the loan held by the Holder. If the Lender decides to repurchase, the Lender has 30 calendar days from the date of the Holder's written demand letter to do so. The guarantee does not cover any unguaranteed portion of the loan or the note interest to the Holder on the guaranteed loan accruing after 90 calendar days from the date of the Holder's demand letter to the Lender requesting the repurchase. The Lender may deduct the Lender's servicing fee from the repurchase amount. The Lender will accept an assignment without recourse from the Holder upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting of funds, resolve problems, and to prevent default where and when reasonable.

8. Repurchase by Government. If the Lender does not repurchase the loan as provided in paragraph (a) of this section, the Government will purchase from the Holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase, less the Lender's servicing fee, within 30 calendar days after written demand to the Government from the Holder. The guarantee will not cover the note interest to the Holder on the guaranteed loan accruing after 90 calendar days from the date of the original demand letter of the Holder to the Lender requesting the repurchase.

Holders of the Loan Note Guarantee that have been issued prior to the effect date of this final rule may opt to adhere to the terms and conditions of the Loan Note Guarantee then in effect. In the case of default, the Holder of a Loan Note Guarantee issued prior to the effective date of this final rule will stipulate, in a written demand for repurchase, its preference for repurchase in accordance with the Loan Note Guarantee issued prior to the effective date of this final rule. If the demand for repurchase does not stipulate a preference for repurchase in accordance with the Loan Note Guarantee issued prior to the effective date of this final rule, the Government will process for repurchase as stated in this final rule. The Holder must stipulate a preference for repurchase in accordance with the Loan Note Guarantee issued prior to the effective date of this final rule in the first demand for repurchase. The Holder of the Loan Note Guarantee issued prior to the effective date of this final rule cannot make a subsequent demand for repurchase changing the preference stipulated in the original demand for repurchase.

9. Lender's Obligations. The Government will notify the Lender of its receipt of the Holder's demand for payment. The Lender must provide the Government with the information necessary for the Government to determine the appropriate amount due the Holder within 10 business days from the date of the written demand letter to the Lender from the Holder requesting repurchase of the guaranteed portion. The Lender will furnish a current statement certified by an appropriate authorized officer of the Lender stating the unpaid principal and interest then owed by the borrower on the loan and the amount then owed to any Holder. Any discrepancy between the amount claimed by the Holder and the information submitted by the Lender must be resolved between the Lender and the Holder before payment will be approved. The Government will coordinate the resolution of the discrepancy. Such conflict will suspend the running of the 30 calendar day payment requirement.

Purchase by the Government does not change, alter, or modify any of the Lender's obligations to the Government arising from the loan or guarantee nor does it waive any of the Government's rights against the Lender. As Holder, the Government will have the right to set-off any payments the Government owes the Lender.

10. Repurchase by Lender for Servicing. If, in the opinion of the Lender, repurchase of the assigned portion of the loan is necessary to adequately service the loan, the Holder will sell the assigned portion of the loan to the Lender for an amount equal to the unpaid principal and interest (including any loan subsidy) on such portion less Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of the demand letter of the Lender or the Government to the Holder(s) requesting the Holder(s) to tender their guaranteed portion(s).

a. The Lender will not repurchase from the Holder(s) for arbitrage purpose or other purposes to further its own financial gain.

b. Any repurchase will only be made after the Lender obtains the Government's written approval.

c. If the Lender does not repurchase the portion from the Holder(s), the Government at its option may purchase such guaranteed portions for servicing purposes.

11. Foreclosure. The parties owning the guaranteed portions and unguaranteed portion of the loan will join to institute foreclosure action, or in lieu of foreclosure, take a deed of conveyance to such parties.

12. Reassignment. Holder upon written notice to Lender and the Government may reassign the unpaid guaranteed portion of the loan sold hereunder. The Holder who reassigns the guaranteed portion must complete an Agency approved assignment guarantee agreement for the new assignee and submit it to the Government. Upon such notification, the Assignee will succeed to all rights and obligations of the Holder hereunder.

13. Notices. All notices and actions will be initiated through the Government _____

for _____ (state) with mailing address

at the date of this assignment: _____

Dated this _____ day _____, _____.

LENDER:

ADDRESS:

ATTEST:

By _____

_____ (SEAL) Title _____

HOLDER:

ADDRESS:

ATTEST:

By _____

_____ (SEAL) Title _____

ASSIGNEE:

ADDRESS:

ATTEST:

By _____

_____ (SEAL) Title _____

UNITED STATES OF AMERICA

(insert applicable agency)

ADDRESS: _____

By _____

_____ Title _____

- 1/ Insert construction/permanent loan or permanent loan.
- 2/ Insert case number for loan, which is generated and tracked by the Finance Office.
- 3/ Insert name of Lender.
- 4/ Insert name of Borrower.
- 5/ Insert principal loan amount.
- 6/ Insert date of the loan note guarantee. If a construction/permanent loan note guarantee has converted to a permanent guarantee, insert the conversion date to a permanent guarantee.
- 7/ Insert % of Government guarantee.
- 8/ Insert name of entity that desires to purchase the guarantee.
- 9/ Insert name of entity that holds the guarantee that will be sold.
- 10/ Insert percentage of guaranteed portion of the loan amount that will be purchased.
- 11/ Insert the principal amount of the loan that remains outstanding. The Lender should provide this amount. Confirm the amount provided by the Lender with the Finance Office.
- 12/ Insert percentage of guaranteed loan that is being sold.
- 13/ Insert dollar amount representative of percentage that is being sold.
- 14/ Insert the percentage that the Lender will retain as a servicing fee.