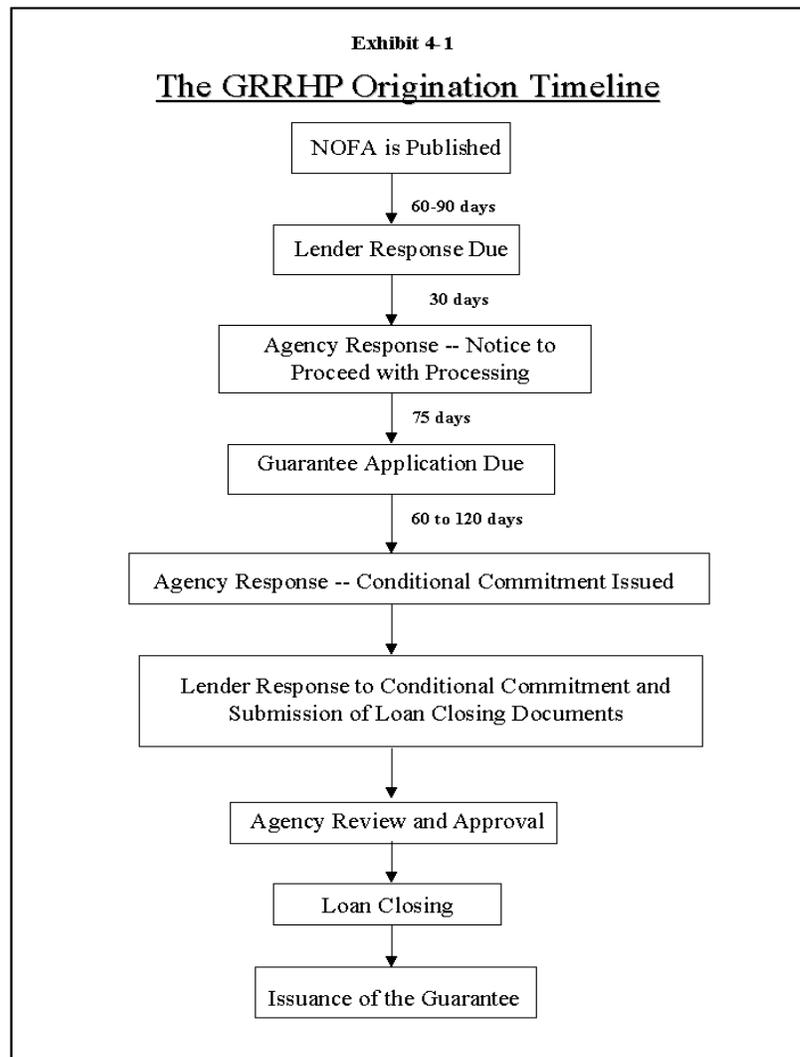


CHAPTER 4: LOAN GUARANTEE APPLICATION PROCESSING

SECTION 1: AN OVERVIEW OF THE PROCESS

4.1 PURPOSE

The purpose of this chapter is to describe the process to obtain a guarantee. Step by step, it will inform the lender what must be done to request and obtain a loan guarantee from the Agency. Exhibit 4-1 presents a timeline of the process.



SECTION 2: NOTICE OF FUNDING AVAILABILITY (NOFA)

Key Activities in this Section

- NOFA is Published
- Project Proposals are Accepted by the Agency
- Proposals are Reviewed by the Agency for Fundamental Eligibility
- Eligible Proposals are Scored and Ranked Against NOFA Selection Criteria
- Selected Borrowers Receive a Notice to Proceed with Processing

4.2 PUBLICATION OF GRRHP REQUIREMENTS

On an annual basis, the Agency will publish a Notice of Funding Availability (NOFA) in the Federal Register. The NOFA will state the amount of GRRHP funding available for the fiscal year. In addition, the NOFA will identify any priorities for selection of proposed applications, and the process by which the Agency will score and rank the proposals. Information will also be included about submission forms and deadlines.

4.3 RESPONSE TO THE NOFA

In response to the NOFA, lenders must submit a request to the Agency for scoring and ranking a proposed GRRHP project. The lender must provide sufficient information to establish the purpose of the proposed project, its location, and how it meets the established priorities for funding. Lenders must submit their response to the NOFA in accordance with Paragraph 4.4.

Lenders must submit responses during the prescribed period specified in the NOFA. The response period will generally extend for a 60-90 day period following publication of the NOFA. During the next 60-90 days, the Agency will determine the highest ranked responses. Lenders with top ranked proposals will receive a “Notice to Proceed with Processing” inviting them to submit a GRRHP application. Lenders that decide not to proceed must notify the Agency in writing within 90 days so that others with eligible proposals can be invited to apply. All lenders who submit a request for scoring and ranking will receive a written response from the Agency.

4.4 INFORMATION TO BE INCLUDED IN RESPONSE TO THE NOFA

A. Descriptive Information

1. *The Project*

- A brief description of the proposed location of the project, including town, county, State, and congressional district.
- A description of the property and improvements, including lot size, number of units, building type, type of construction, etc., including preliminary drawings, if available.

- The proposed development schedule.
- Total project development cost.
- The proposed rent structure and area median income – (HUD published area median incomes can be found online at <http://www.huduser.org>).
- Evidence of site control by the proposed borrower or a purchase option.
- Description of any environmental issues that may affect the project.
- Amount of loan to be guaranteed.

2. *The Proposed Financing*

- Proposed loan amount and the proposed borrower’s equity.
- Proposed use of interest credit – If the lender proposes to use interest credit, this section should include the interest rate the lender will charge and the interest rate after applying the interest credit. This rate may be not lower than the published Applicable Federal Rate (AFR).
- Estimated development budget (total and cost/unit), and the proposed sources and uses of funds. This information should include all proposed financing sources – the amount, type, rates and terms of loans, tax credits, or grant funds. Letters of application and commitment letters should be included, if available.
- Estimated loan-to-value ratio for guaranteed loan.
- Proposed Agency guarantee percentage for guaranteed loan (under no condition can the percentage exceed 90 percent of the loan amount).
- Collateral - all security, in addition to the real property, proposed to secure the loan.

3. *The Proposed Borrower*

- The name of the borrower and the type of ownership entity — list the general partners if a limited partnership, officers if a corporation or members of an LLC.
- Borrower’s contact name, mailing address, phone and fax numbers, and e-mail address.
- Evidence that the borrower or principals of the ownership are not barred from participating in Federal housing programs and are not delinquent on any Federal debt.

- Borrower’s unaudited financial statements.
- Statement of borrower housing development experience.

B. Lender Eligibility and Approval Status

Evidence that the lender is either an approved lender for the purposes of the GRRHP or that the lender is eligible to apply for approved lender status. The lender’s application for approved lender status must be submitted with the guarantee application.

C. Competitive Criteria

Information that shows how the proposal is responsive to the selection criteria specified in the NOFA.

D. Lender Certification

A commitment letter or certification by the lender that will make a loan to the borrower for the proposed project, under specified terms and conditions subject only to the issuance of a guarantee by the Agency.

4.5 AGENCY REVIEW OF NOFA RESPONSE

Agency review of the project proposal is designed to assess preliminary eligibility and feasibility. A good project proposal is one that clearly and completely responds to the criteria set forth in the NOFA. Project proposals will be returned if preliminary eligibility cannot be established. Preliminary eligibility means that the project meets the following criteria.

A. Was the Project Proposal on Time and Complete?

Project proposals will be date stamped when first received by the Agency. The reviewer can refer to the date stamp on the project proposal to determine whether the proposal was received by the submission deadline specified in the NOFA. Late and/or incomplete proposals will not be considered and must be returned to the lender.



B. Is the Borrower An Eligible Entity?

Eligible borrowers shall include individuals, corporations, state or local public agencies or an instrumentality thereof, partnerships, limited liability companies, trusts, Indian tribes, or any organization deemed eligible by the Agency. The ownership entity must be a valid entity in good standing under the laws of the jurisdiction in which it is organized. Borrowers must be U.S. citizens or permanent legal residents; a U.S. owned corporation, or a limited liability company, or partnership in which the principals are U.S. citizens or permanent legal residents. Borrowers must not be delinquent on any other Federal debt. The Agency reviewer will determine whether these conditions are met. If these conditions are not met or are unclear, additional steps must be taken as outlined below.

The following resources are available to establish the borrower’s good standing with the Federal government:

- The publication, “List of Parties Excluded from Federal Procurement and Nonprocurement Programs,” provides a monthly listing of all suspended and debarred individuals and is available on the Internet, at  <http://www.arnet.gov/epls/>. Once the site is entered, there are easy-to-follow user instructions that will guide the user through the Excluded Parties List System (EPLS) and main menu. A hard copy of this publication can be mailed to lenders without Internet access upon request to the Agency.
- The Department of Housing and Urban Development’s Credit Alert Interactive Voice Response System (CAIVRS), identifies all individuals with delinquent Federal debt. If CAIVRS indicates that the borrower has a delinquent Federal debt, the reviewer must verify with the point of contact that the information regarding the borrower is current. If the information is current and the borrower is delinquent, the borrower is ineligible. The borrower must be informed of the reason for their rejection and be provided with the telephone number CAIVRS lists as a point of contact.

The Agency reviewer will verify that there is satisfactory evidence that the borrower meets the other requirements of Paragraph 3.6.

C. Is the Lender Eligible?

The lender must provide evidence that they are an approved lender under the GRRHP program or that they are eligible to apply for approved lender status. An application submitted by a lender who is not eligible to become approved will be rejected and returned to the lender.

D. Is the Proposed Project Eligible?

The Agency will review the following evidence that the project meets basic program requirements.

- Is the proposed project located in a designated rural area as defined for all RHS programs? (See Paragraph 1.6 for the definition.)
- Are the proposed uses of funds for eligible purposes?
- Does the proposed financing comply with the requirements set forth in Chapter 3, Section 5 (including occupancy and rent limits, 207(c) limits, maximum loan term, interest rate and loan-to-value ratios)?

4.6 SCORING AND RANKING

If an application is determined to be eligible after the review of the threshold criteria, then it will enter the ranking and scoring process as established in [7 CFR 3565.5]. In addition, specific ranking and scoring criteria will be determined annually and announced in the NOFA. This criteria will be used to determine project proposals that might receive a Notice to Proceed with Processing (see Attachment 4-A). When all other things are equal between two or more applications in the scoring and ranking process, the Agency will select applications submitted by a borrower who is a veteran of the United States armed services over applications submitted by a non-veteran borrower.

4.7 NOTICE TO PROCEED WITH PROCESSING

Once the proposal has been ranked by the Agency, a Notice to Proceed with Processing will be issued, in the order of ranking, until available funds have been reserved. This process will assure lenders that they can proceed to incur the costs associated with the preparation of a loan guarantee application.

After a Notice to Proceed has been issued, changes in the borrower entity or substitution of the lender with another approved lender, are permitted, with prior Agency approval, so long as the loan purpose, scope of project, location, and terms related to scoring and ranking are unchanged.

Proposals that are not ranked high enough to proceed will be retained at the National Office for reconsideration if higher ranking proposals choose not to proceed or fail to complete the loan guarantee application stage.

SECTION 3: APPLICATION FOR THE GUARANTEE

Key Activities in this Section

- Invite Submission of an Application (Notice to Proceed with Processing)
- Receive and Process Applications
- Issuance of a Conditional Commitment

4.8 PURPOSE OF THE APPLICATION

In submitting an application for a loan guarantee, the lender is seeking a conditional commitment from the Agency. Before a conditional commitment can be issued, the Agency must determine the project meets Agency threshold requirements and is eligible for a commitment.

A. The Proposed Project Meets the GRRHP Threshold Requirements

To be approved for a guaranteed loan, proposed projects must be able to meet the threshold criteria. The lender application for a loan guarantee must clearly demonstrate that the following criteria are or can be met before the Agency issues a guarantee:

- Evidence that the owner and development team have the qualifications and experience sufficient to carry out development, management, and ownership responsibilities.
- Evidence that the property is located in an eligible rural area.
- Evidence of readiness to proceed, including submission of a complete application for a guarantee, with evidence of at least a proposed conditional commitment from the lender for financing.
- Evidence of market and financial feasibility.
- Evidence that the loan risk is reasonable, taking conventional lending practices into account.
- Evidence that the loan risk is reasonable given factors related to concentration of risk in a given market.
- Evidence the loan is reasonable for the given borrower.

B. The Proposed Project is Eligible to Receive a Conditional Commitment

In addition to the threshold requirements, the following conditions must be met before a conditional commitment can be issued to the lender.

- The borrower and the lender are both eligible to receive a guarantee under the GRRHP.
- The lender has conducted due diligence and the results have been taken into consideration in the appraisal.
- The Agency has completed a satisfactory environmental review required under the National Environmental Policy Act in accordance with RD Instruction 1940-G.

4.9 APPLICATION FORM AND DOCUMENTATION

The lender is responsible for preparing an application that is complete and accurate. The lender must submit the application to the RHS office stated in the NOFA. The application is comprised of two components: (1) the lender's certification and (2) exhibits and supporting information to the lender's certification.

A. The Lender's Certification

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

- The information contained in the exhibits is consistent with the lender's underwriting and loan making standards;
- The lender has completed the lender's review as required by Paragraph 4.11 and has identified any significant findings in a narrative attached to this certification; and
- The lender agrees to make a loan to the borrower for the proposed project, subject to the Agency's issuance of a guarantee.

B. Exhibits and Supporting Information to the Lender's Certification

In addition to the submission of the certification, the lender must submit the supporting documentation outlined in Paragraphs 4.8 B.

Because the application, in many cases, will be prepared before working drawings and an appraisal are complete, the lender must submit pro forma estimates at the application stage. Once a conditional commitment has been issued, the lender must submit complete documented information, as specified in the commitment.

For more information about the complete requirements and documentation, see Chapter 3.

1. Agency Forms Included in the Application Package

Form RD 3565-1, Application for Loan and Guarantee. This form is to provide information needed for the analysis and loan determination process.

Form RD 1940-20, Request for Environmental Information. This form will provide an understanding of the environmental conditions of the proposed site and the project's potential impact on the environment, and will provide information to be used by the Agency to complete its environmental review under the National Environmental Policy Act.

Exhibit A-6 of RD Instruction 1944-E, Housing Allowances for Utilities and Other Public Services. This exhibit shows the utility allowance for the proposed project and how it was developed.

Form RD 1944-37, Previous Participation Certification. This document describes a borrower's prior experience with Federal assistance programs.

Form RD 1944-30, Identity of Interest (IOI) Disclosure Certificate. This document describes the Identity of Interest relationships between the borrower and other businesses with whom the borrower may contract for goods or services.

Form RD 1944-31, Identity of Interest (IOI) Qualification. This document provides information on organizations listed in the *Form RD 1944-30*.

Form RD 1910-11, Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts. This document is a certification by the borrower that they are not delinquent on Federal debt.

Form HUD 9832, Management Entity Profile Form. This form outlines the proposed management agent and their organizational structure and discloses any identity of interest relationships the management agent may have.

Form HUD 935.2, Affirmative Fair Housing Marketing Plan. This document is required of all Federally guaranteed and assisted housing (except when the borrower is a Federally recognized Indian tribe and the housing units will be located on land over which the tribe has sovereignty/civil jurisdiction). It describes the process borrowers will use to assure that marketing and outreach efforts are targeted at all persons, regardless of race or disability, who are eligible for admission to the available housing.

AD 1047, Certification Regarding Debarment Suspension. This document certifies that the borrower entity is not debarred from participating in Federal housing programs.

AD 1048, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier-Covered Transactions. This form is required of the General Contractor and each subcontractor when the Agency is guaranteeing the construction loan.

2. Other Information Requested in the Application Package

- Borrower information:
 - ◇ Financial statements with certification(s).
 - ◇ Credit report for each principal of the entity, if a limited partnership or LLC member.
 - ◇ Proposed limited partnership agreement and certificate of limited partnership (if applicable). Agency requirements should be contained in one section of the agreement and their location identified by the borrower or their attorney in a cover sheet.
 - ◇ If a limited liability company, Articles of Organization & Operating Agreement.
- If a nonprofit organization:
 - ◇ Tax-exempt ruling from the IRS designating them as a 501(c)(3) or 501(c)(4) organization. If the designation is pending, a copy of the designation request must be submitted.
 - ◇ Evidence of organization under State law, or copies of pending applications.
 - ◇ List of Board members.
- If a public body:
 - ◇ The enabling statute; or the State law of organization.
- To establish project information:
 - ◇ Project information including project name, location, number and type of units, the development team, property manager, lawyer, and syndicator. The development team includes the developer (including all principals), architect, and contractor.

- ◇ Appraisal or market study.
- ◇ State Clearinghouse comments or recommendations.
- ◇ Certification that the lender has reviewed the management plan and agreement and confirmed that they are consistent with Agency requirements.
- ◇ Site plan, including contour lines.
- ◇ Plot plan.
- ◇ Floor plan of each living unit type and other type spaces.
- ◇ Building exterior elevations.
- ◇ Typical building exterior wall section.
- ◇ Description and justification of any related facilities, and schedule of separate charges for related facilities, if any.
- ◇ Design development/working plans/construction specifications.
- ◇ Management plan and proposed management agreement.
- Project financing information:
 - ◇ Lender's conditional commitment.
 - ◇ Lender's narrative.
 - ◇ SAUCE disc and hard copy (to be completed by RHS).
 - ◇ A copy of the pro forma budget detailing the first year and a typical year's operation.
 - ◇ *Form RD 1924-13, Estimate and Certificate of Actual Cost.*
 - ◇ Disclosure of any change in financing since NOFA submission.
 - ◇ Type of utilities and utility allowances (Exhibit A-6 of RD Instruction 1944-E), if applicable.
 - ◇ Interest Credit Request, if applicable (see Paragraph 4.10).

- Required environmental information:
 - ◇ *Form RD 1940-20, Request for Environmental Information*, to be completed by the lender or the lender's client.
 - ◇ Phase I Environmental Site Assessment Report, as prescribed by the American Society for Testing and Materials.
 - ◇ Compliance with historic and architectural laws, if applicable.
 - ◇ Comments regarding relevant off-site conditions.
 - ◇ Land survey.
 - ◇ *FEMA Form 81-93, Standard Flood Hazard Determination*.

4.10 INTEREST CREDIT REQUEST AND DOCUMENTATION

The application package must also include a request for interest credit if that is part of the proposed financing. An interest credit is a subsidy available to eligible borrowers that reduces the effective interest rate of the loan to the Applicable Federal Rate (AFR). The AFR is the interest rate set by the U.S. Treasury for federal financing programs. Twenty percent (20%) of the loans financed under the GRRHP will be given interest credit.

A. Amount of Interest Credit Subsidy

The interest rate on GRRHP loans may not exceed the Agency maximum interest rate, which will be announced each year in the NOFA. The spread between the interest rate the lender charges on the loan and the AFR (the effective interest rate after the interest credit is applied) determines the amount of interest credit subsidy. The process for allocating interest credit may be competitive in years when there are more requests than credits available. The Agency may give preference to proposals that require less interest credit subsidy.

B. Demonstrated Need

The interest credit application must demonstrate why the interest credit subsidy is needed. The Agency will review the proposed rents and operating budget and give preference to applications that demonstrate that the interest credit will result in lower rents or in a higher level of services for tenants in the event that demand for interest credit exceeds available funds.

C. Limits on Allocation of Interest Credit

In order to fairly distribute the amount of credit available in a given year, the Agency may set a limit on the amount of interest credit allocated to a single project. The Agency expects to accomplish this by limiting the size of loans eligible for interest credit to \$1.5 million. For highly ranked projects, the Agency may guarantee two parity loans -- one with interest credit (up to the maximum amount) and one without interest credit.

D. Payment of Interest Credit

The amount of interest assistance will be calculated by determining the difference between the negotiated rate of interest on the loan and the AFR. No project will receive interest credit on more than \$1,500,000 of the total amount guaranteed. Interest credit is established in accordance with *Form RD 1980-24, "Request Interest Assistance/Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender"*. The calculation will be done in accordance with item 17 "Interest Payable". The Interest Credit will be paid every January 1 following the issuance of the permanent loan note guarantee. The interest credit calculation and the request will be part of the annual report provided to the Agency State Office. The State Office will review the calculation for accuracy and then forward the document on to the Finance Office for processing. The interest will be calculated from the date of the conversion to Final Loan Note Guarantee to the end of the year, so interest credit will always be paid in arrears. The formula for calculation is:

<p>Interest Payments Received + Accrued Interest at the End of the Period - Accrued Interest at the Beginning of the Period x Interest Assistance Rate ÷ Effective Interest Assistance Rate = Interest Payable</p>

<p>To Obtain the Applicable Federal Rate (AFR)</p> 
<p>Check the Internet site:</p> <ul style="list-style-type: none"> • http://ftp.fedworld.gov/pub/irs-utl/afrs.pdf <p style="text-align: center;">or</p> <ul style="list-style-type: none"> • the <i>Wall Street Journal</i> which publishes the AFR rate on the third Wednesday of each month. Locate the "Long Term Monthly Rate."

It is anticipated that the lender will use the interest credit to reduce the interest rate on the loan and therefore enable the borrower to pass the savings on to the tenant in the form of reduced rents. We are using the "Long Term Monthly Rate" for purposes of section 1274(d) of the Internal Revenue Code.

E. Cancellation of Interest Credit

The interest credit is tied to a specific loan. If a loan guarantee application is rejected or withdrawn, the interest credit application is similarly terminated. If the borrower defaults on a GRRHP loan, the interest credit contract will be canceled. Any unearned credit must be repaid to the Agency.

4.11 LENDER REVIEW OF THE BORROWER SUBMISSIONS

The lender must review all elements of the proposed project prior to submission of an application to the Agency for review. The lender must certify to the Agency that program requirements have been met and highlight significant information for Agency review.

A. Borrower Eligibility

The lender will review the following documents submitted by the borrower and assess whether they adequately establish that the borrower meets the eligibility criteria of Chapter 3, Section 3.

1. Acceptable Borrower Entity

The lender review will determine whether the borrower is an acceptable borrower entity by reviewing the following documents.

- **Draft organizational documents.** The organizational documents or Certificate of Good Standing, if the borrower is an existing organization.
- **Certification Regarding Debarment.** The lender will have already checked the list of debarred individuals against the applicant's *Form RD 1944-37* when the project proposal was first submitted. This certificate by the borrower on *Form AD-1047* or *AD-1048* must confirm the borrower's status as an entity in good standing with the Federal government.

2. Identity of Interest Disclosure

The lender will review the identity of interest disclosures in order to understand the borrower entity. *Form RD 1944-30* and *Form RD 1944-31* must be crosschecked. *Form RD 1944-30* must disclose all identity of interest companies and the lender must verify that each such disclosed company has completed a *Form RD 1944-31*.

3. Borrower Certification Regarding Debt Collection

The borrower must sign *Form RD 1910-11* to certify to their understanding of the collection policies that will be taken by the government to recover delinquent or defaulted debts. The lender must ensure that this form is included in the application and signed.

B. Project Eligibility

The lender must ensure that the property meets all program requirements.

1. Property Requirements

In reviewing the application, the lender must determine that any site or design issues and any issues raised by the due diligence report (relating to potential contamination from hazardous substances, hazardous wastes, and petroleum products), have been identified and resolved in a manner consistent with Agency requirements. If they cannot be resolved at the time of application, the lender must notify the Agency and propose an appropriate remedy.

The lender will submit the design development or final plans and construction documents must be provided to the RHS State Architect who will review them to see that program design requirements will be met.

2. Clear Title and Necessary Local Approval

The preliminary title report is a part of the application. The lender must make sure that it does not show any encumbrances to the title that would affect the lender's ability to obtain a first lien.

The lender must ensure that all the necessary State or local approvals have been obtained, including proper zoning and necessary utility rights.

C. Project Feasibility Analysis

The lender must carefully review the borrowers proposed cost estimates to ensure that project costs are reasonable and customary for the type of project.

1. SAUCE

The Agency SAUCE program is a software tool to help underwriters determine whether the projected income stream will match projected costs. The Agency must conduct a feasibility analysis using SAUCE. If the projected income and costs do not match fairly evenly, the project costs and rent structure must be revised to bring the two in line or the project is not feasible.

2. Adequacy of the Initial Operating Capital

All borrowers must contribute from their own resources an amount equal to at least 2 percent of the loan amount as initial operating capital (or provide the lender with a letter of credit, as provided by paragraph 3.10 C., in lieu of a cash contribution). The lender must provide the Agency with a schedule of how these funds will be used.

The materials and equipment that are typically funded by the initial operating capital amount include, but are not limited to, property and liability insurance premiums, fidelity bond premiums when the borrower is an organization, utility installation charges and deposits, maintenance equipment, lease forms, loan payments that may become due during construction, purchase of office equipment and furniture, community room furnishing, other movable equipment and furnishing, congregate items, advertising expenses, management fees, etc.

The lender must ensure that the items are necessary for the project, and the costs are similar to other comparable projects in the area.

3. *Management Systems*

The lender must evaluate whether the borrower has proposed adequate systems to manage the property successfully in accordance with Agency requirements.

In order for an application to be approved, borrowers must show that they will provide professional management to ensure the successful operation of the project. The lender must evaluate the acceptability of the management proposed for the project by analyzing *Form HUD 9832* and the proposed management plan. Chapter 8 provides details on how to evaluate the management profile information.

4.12 AGENCY REVIEW OF THE LOAN GUARANTEE APPLICATION

The analysis conducted at this stage is intended to verify and document feasibility and eligibility. Any changes to the proposal submitted in response to the NOFA must be carefully considered to ensure that the project continues to meet the selection and priority criteria. The application review consists of eight parts.

A. Determination that the Loan Guarantee Application Package is Complete

The Agency will determine if the lender has submitted all of the required application documentation and met the conditions in the NOFA.

B. Environmental Review by Agency

The Agency will complete an environmental review in accordance with the National Environmental Protection Act of 1969 (as amended) and RD Instruction 1940-G prior to taking any official action on an application for a loan guarantee. The Agency will require information from the borrower and the lender to complete this review. The required information is listed under Paragraph 4.9 B.

C. Civil Rights Impact Analysis

The Agency will conduct civil rights impact analyses to determine whether proposed actions will negatively and disproportionately affect minorities, women, or persons with disabilities, who are employees, program beneficiaries, or applicants for employment or program benefits in USDA conducted or assisted programs, by virtue of their race, color, sex, national origin, religion, age, disability, or marital or familial status. At the time of the site visit, a trained staff member will complete *Form RD 2006-38, Civil Rights Impact Analysis Certification*. The State Civil Rights Coordinator and, as necessary, the State Environmental Coordinator, will be consulted if problems are noted. RD Instruction 2006-P provides further guidance on these requirements.

D. Review of Other Federal Requirements

The Agency will determine that all Civil Rights Impact Analysis Certifications and all other Federal requirements, including intergovernmental review (RD Instruction 1940-J) and flood insurance requirements (RD Instruction 426.2), have been met prior to taking any official action on an application for a loan guarantee.



E. Review of Affirmative Fair Housing Marketing Plan (AFHMP)

As part of the application, borrowers (except when the borrower is a Federally recognized Indian tribe and the housing units will be located on land over which the tribe has sovereignty/civil jurisdiction) must submit to the lender *Form HUD 935.2* to describe their marketing plan for the project. The intent of this plan is to ensure that eligible persons and families are made aware of the availability of GRRHP multifamily rental housing units. While the lender must review the submission, the Agency must approve and sign this form.

The lender will use Exhibit 4-2 when reviewing the AFHMP. This exhibit describes the plan and provides guidance on what to look for in each part. The Agency may require revisions to the plan if any changes need to be made based on the Agency review.

Required AFHMP Attachments



- Copies of the specific pages(s) from the census report on which the plan was based
- Photograph or drawing of the project sign
- Copies of the newspaper advertisement or sample of proposed advertisement
- Sample community contact letters
- Brochures, leaflets, or handouts used
- Written instructions provided to staff concerning Federal, State, and local fair housing laws and regulations as well as concerning the AFHMP



Exhibit 4-2

**Actions to be Taken By Lender in Reviewing
the Affirmative Fair Housing Marketing Plan**

- A. Part 1 of the plan provides general information about the borrower and the project’s location.
 - 1. Make sure the Census Tract is identified. Copies of the specific page(s) from the census report on which the plan was based must be attached. The areas considered to be the market area should be identified (highlighted) by the borrower.
 - 2. Information on the rental rates should indicate the lowest to the highest rents. If there is rental assistance, the lowest rent should be shown as zero.
- B. Part 2 of the plan indicates whether the market area is a minority, non-minority, or mixed area. Verify that the response corresponds directly to the census data.
- C. Part 3 of the plan indicates the groups toward which the marketing efforts are going to be directed. It should also correspond directly with the census data and the community contacts that are identified.
- D. Part 4 describes the marketing program.
 - 1. Ensure that the borrower has indicated they will advertise on an annual basis.
 - 2. Check to see if minority newspapers have been considered as part of the advertising plan.
 - 3. Make sure the borrower has attached a sample of the proposed advertisement.
 - 4. Review any copies of brochures, leaflets, or handouts the borrower intends to use. Review them to ensure the equal housing opportunity statement, logo, or slogan is used.
 - 5. A photo or rendering of the project sign must be provided. The dimensions of the project sign must be indicated and described in terms of feet and/or inches. The logo and the words “Equal Housing Opportunity” must be distinguishable in the photo or rendering. If it does not appear, recommend use of the accessibility logo.
 - 6. The proposed community contacts must reflect efforts directed towards groups identified in Part 3. Ensure each blank in this section is completed (address, phone numbers, etc.). The frequency of contacts must be stated, at a minimum, as “at least once annually” or “(date) and annually thereafter.” Sample community contact letters must be attached.
- E. Part 5 describes future marketing activities. Make sure the borrower has indicated future marketing activities that include, as a minimum, “Newspapers, site sign, and community contacts.”
- F. Part 6 describes the borrower’s experience and the instructions given to staff regarding fair housing marketing. Make sure that the borrower has attached the instructions given to staff concerning Federal, State, and local fair housing laws and regulations, as well as instructions concerning the Affirmative Fair Housing Marketing Plan.
- G. Part 7 describes additional considerations that are planned to outreach to groups not previously mentioned in the plan or to groups identified as least likely to apply for the housing. If this plan is for an elderly project, the borrower must have included community contacts for the disabled, who are also eligible to reside at the project. If for a family project, make sure they have included efforts to make the units with special design features known to mobility impaired persons.
- H. Part 8 is the signature block. It must be signed by the legal borrower or by the borrower’s agent.

F. Decision on Interest Credit Subsidy Request

The Agency will review any information justifying the request for interest credit and determine whether interest credit can be reserved for the project.

G. Decision on the Guarantee Amount

The guarantee amount will be negotiated between the lender and the Agency, up to 90 percent of the loan amount. To obtain a 90 percent guarantee, the property must meet all program requirements and be determined to be an average or better than average risk. Factors affecting this determination include:

- A debt service coverage ratio at or above 1.15 and a loan to value ratio at or below 90 percent.
- A strong market area, as indicated by a market vacancy factor of 5 percent or less for units renting at economic rents.
- A financially strong borrower and ownership entity, as evidenced by the borrower credit rating.
- An owner or members with extensive experience in the operation of similar housing.

If the lender has proposed a project which is not qualified for a 90 percent guarantee, the lender may ask the Agency to consider a lesser guarantee.

H. Determination that the Loan is Acceptable for a Conditional Commitment

The lender must underwrite the loan and determine that it is a sound investment. This determination must be confirmed by the issuance of a conditional commitment by the lender, subject to issuance of a loan guarantee by the Agency. The Agency will review the lender's underwriting and determine if the proposed guaranteed loan meets all program requirements. Such requirements include but are not limited to:

- The proposed loan amount does not exceed 207(c) limits;
- The proposed loan term is 40 years or less;
- The proposed sources and uses of funds comply with the use of proceeds and lien;
- The loan to value ratio does not exceed program limits;
- The Agency guarantee percentage does not exceed 90 percent;

- The borrower has contributed 2 percent of the loan amount for initial operating capital (or provided the lender with a letter of credit, as provided by paragraph 3.10 C., in lieu of a cash contribution);
- The proposed interest rate is not higher than the limit published in the NOFA; and
- The proposed interest credit rate is not lower than the published Applicable Federal Rate (AFR).

4.13 AGENCY DECISION

Decisions on applications will normally be rendered within 60-120 days of receipt of a completed application. In most cases, the Agency will be able to notify the lender of its decision in about 75 days, however, the timing will vary depending on the intergovernmental review and the environmental assessments. If an application is determined ineligible to receive a conditional commitment, it will be returned to the lender.

SECTION 4: ISSUANCE OF CONDITIONAL COMMITMENT

4.14 GENERAL REQUIREMENTS

A conditional commitment to guarantee the loan will be made upon an Agency determination that:

- The borrower and the lender are both eligible to receive a guarantee under the GRRHP;
- All other program requirements have been met;
- The lender has determined that the project is financially feasible and made a conditional loan commitment; and
- The Agency has completed a satisfactory environmental review required under the National Environmental Policy Act, in accordance with RD Instruction 1940-G.

Form RD 3565-2, Conditional Commitment is an agreement between the Agency and the lender in which the Agency agrees to guarantee the loan at a future date, if the conditions in the commitment are met within the term specified. Simultaneous with the issuance of a Conditional Commitment, the Agency will execute *Form RD 1940-3, Request for Obligation of Funds Guaranteed Loans* for the proposed project. This form will be faxed to:

USDA Finance Office
 Guaranteed Loan Branch
 Attention: FC 350
 P.O. Box 200011
 St. Louis, MO 63120-0011
 Phone: (314) 539-3555
 Fax: (314) 539-3041

If a project cannot meet all of the above conditions, then a conditional commitment will not be issued to the lender.

4.15 TERMS OF CONDITIONAL COMMITMENT

The conditional commitment is valid for the length of time specified in the commitment letter. It is expected that the standard term will be 24 months, however, a longer term may be permitted in circumstances that warrant a longer term, such as unusual construction requirements. Up to two extensions of 60 to 90 days each may be requested prior to the expiration of the commitment. The Agency will normally charge a fee for any extension of the commitment. Any extension which would result in material changes to the proposed financing interest rate will require a re-underwriting by the lender and a review by the Agency.



A. Subsidy Layering Review

Because the loan guarantee and interest credit subsidies are government resources, the Agency must conduct a subsidy layering review. The SAUCE review completed by the lender as part of the application will be reviewed by the Agency in accordance with Paragraph 3.25 D.3. at the conditional commitment stage, with an updated review at the permanent loan closing.

B. Guarantee Fee

At the issuance of the Loan Note Guarantee, the lender must pay a loan guarantee fee. The Guarantee Fee is calculated as 1% of the note principal amount times the percentage of guarantee. Although the fee is paid by the lender, it may be passed on to the borrower. Calculation of the guarantee fee is discussed in Chapter 6. The guarantee fee is to be collected by the RHS and transmitted to the Finance Office on *Form RD 451-2, Schedule of Remittances*. Code "30" should be entered into the "Miscellaneous Collection" box and it should be coded as a regular payment (R) in column #1. The check and Form RD 451-2 will be sent to: Wholesale Lock Box, P.O. Box 845084, Dallas, TX 75284-5084. Payment of the application fee and the annual renewal fee submitted by the lender will be handled in the same manner.

C. Termination of the Conditional Commitment

The conditional commitment will expire if the terms are not met or if the lender decides not to originate the loan.

- **Withdrawal of an Application.** The lender must notify Agency immediately of its intention to withdraw an application. In this case, the Agency will retain the loan guarantee fee.
- **Lapse of commitment.** If the loan guarantee is not issued within the period specified in the commitment letter, the commitment will automatically expire. On a case-by-case basis, the Agency may allow extensions of the loan commitment period. The lender must submit a written justification for the extension, which may be granted by the Agency if it appears the project can reasonably be completed within the extension period and failure to timely complete was beyond control of lender and borrower. The Agency will charge a fee for this extension/reopening of the application.

D. Substitution of Lender

There are some circumstances, such as bank mergers, which require a substitution of lender, and a transfer of conditional commitment from one lender to another. A transfer of a commitment is permitted if the transfer and the substitute lender are approved by the Agency and the substitute lender agrees to the underwriting terms approved in the conditional commitment. To obtain Agency approval, the borrower and substitute lender must certify that there are no changes in the borrower's ownership or control and that the loan purposes and all other elements of the application supporting the conditional commitment remain the same.

E. Lender's Agreement

The lender must execute for *Form RD 3565-3, Lender's Agreement*, prior to the issuance of the loan guarantee, unless a current *Form RD 3565-3* is already on file with the Agency.

F. Loan Note Guarantee Agreement

Form RD 3565-4, Loan Note Guarantee must be executed in order for the permanent loan guarantee to become effective.

SECTION 5: RESPONSE TO THE CONDITIONAL COMMITMENT AND LOAN CLOSING

4.16 GENERAL CONDITIONS

Once a lender receives a conditional commitment from the Agency, it must respond to the conditions detailed in that commitment. When all of the conditions are resolved and the other requirements outlined in Section 7 of this chapter are met, the Agency will issue a permanent guarantee.

Among the conditions specified in the conditional commitment, the lender must submit the following for Agency approval before loan closing occurs.

- Final organizational documents for the borrower entity or Certificate of Good Standing, if applicable;
- An opinion letter from lender's Legal Counsel. (See Attachment 4-B); and
- A copy of the proposed closing documents (See Attachment 4-C).

4.17 DEVELOPMENT OF THE 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. The regulatory agreement must contain the provisions specified in Paragraph 7.14. 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.

As a part of the closing documents, the lender's attorney must certify that the regulatory agreement submitted for Agency review meets the requirements of this paragraph.

4.18 LOAN CLOSING

Once the closing documents have been approved by the Agency, the lender may schedule the closing date for the loan. All conditions of the conditional commitment must be fulfilled before the permanent guarantee is issued. If the loan is a combination construction and permanent loan, then the requirements of Section 6 will apply and the guarantee will be issued on the amount of outstanding advances. If the loan is a permanent loan, then the guarantee will be issued in accordance with Section 7. In addition to the regulatory agreement, *Form RD 3565-3, Lender's Agreement* must be executed prior to the issuance of the guarantee. Once the loan is closed, *Form RD 1980-19, Guaranteed Loan Closing Report* will be prepared by the lender, signed by both the lender and the Agency, and submitted to the Finance Office.

SECTION 6: GUARANTEE DURING CONSTRUCTION

4.19 COMBINATION CONSTRUCTION AND PERMANENT LOAN

In the case of a combination construction and permanent loan, the loan guarantee will go into effect as construction funds are drawn down (see Chapter 5).

The Agency will guarantee construction advances by the lender, not to exceed 90 percent of the work in place, if the lender provides acceptable credit enhancements. Acceptable credit enhancements include:

- Surety bonding or a performance and payment bond.
- An irrevocable letter of credit acceptable to the Agency.
- A pledge by the lender of acceptable collateral.

Chapter 5 provides additional detail regarding the requirements of a combination construction and permanent loan.

SECTION 7: PERMANENT GUARANTEE

The requirements for issuing the permanent guarantee are identified below.

4.20 OCCUPANCY

The permanent guarantee may not go into effect until the lender has determined, with Agency concurrence, that a minimum level of occupancy to ensure financial feasibility has been attained. The minimum level of occupancy is to be set for each transaction. In general, minimum level of occupancy means at least 90 percent occupancy for three months at the pro forma assumptions for rent and debt service coverage. In lieu of meeting the minimum level of occupancy, borrowers may establish a 2% operating reserve. The operating reserve will be at least 2% of the appraised value of the project or 2% of the total development cost, whichever is greater. This cash contribution is an additional amount, over and above the required initial operating and maintenance reserve contribution, that is described in paragraph 3.10 C.

If tax credits are used in conjunction with the GRRHP, the borrower must meet any occupancy requirements in the tax credit partnership agreement before the permanent guarantee is issued.

4.21 DOCUMENTATION REQUIREMENTS

The following documentation must be submitted for the permanent guarantee to be issued:

- A final appraisal prepared in accordance with the appraisal standards set forth in USPAP.
- A certificate of substantial completion executed by the architect, lender, contractor, and borrower.
- A certificate of occupancy from the local jurisdiction.
- A final inspection conducted by an Agency representative.
- A final cost certification.
- A complete closing docket for the permanent loan closing (see Attachment 4-C for requirements).
- Lender's Agreement executed by the lender.
- An updated necessary assistance review by the Agency.
- Evidence that the annual guarantee fee has been paid.
- Loan Note Guarantee executed by the Agency.

SECTION 8: TERMINATION OF THE LOAN GUARANTEE

4.22 REASONS FOR TERMINATION

If the GRRHP loan is terminated or if the lender fails to comply with the program requirements, the guarantee will be terminated or not issued respectively. The guarantee will terminate under several circumstances identified below.

A. Repayment of the Loan

Once the loan note has been completely paid off, the loan guarantee will automatically terminate.

B. Payment of a Claim

Once a claim has been paid, the loan guarantee automatically terminates.

C. Voluntary Termination of the Guarantee Agreement by the Lender

If a guarantee agreement is voluntarily terminated by the lender, the program restrictions must remain in place unless approved by the Agency pursuant to Chapter 7.

D. Non-Compliance with Program Requirements

The loan guarantee may be terminated for non-compliance with the program requirements. If a lender fails to comply with program requirements, the Agency will make a declaration of default for non-compliance. If the lender fails to remedy the default, the Agency will terminate the guarantee. Non-compliance with program requirements includes, but is not limited to:

1. *Negligent Servicing*

Failure to service the loan is a violation of program requirements (see Chapter 7). Negligent servicing is defined as the failure to perform services which a reasonably prudent lender would perform in servicing its own portfolio of loans. This includes not only the concept of a failure to act, but also not acting in a timely manner, or acting in a manner contrary to that of a reasonably prudent lender.

2. *Failure to Pay the Annual Fee*

Guarantee may be reinstated upon payment of all past due annual loan guarantee fees. The Agency may charge interest penalties on any unpaid guarantee fee.

3. *Improper Sale*

If the Agency determines that the loan has been sold or otherwise transferred without Agency approval, the guarantee will be terminated.

E. Fraud

If the Agency determines that fraud took place on the part of the lender in the loan application process, the Agency may terminate the loan guarantee.

In the event of termination, the lender is required to reimburse the Agency for any unused interest credit. A termination is appealable under the adverse action procedures (see Paragraph 1.11).

ATTACHMENT 4-A
SAMPLE -- NOTICE TO PROCEED WITH PROCESSING

John Dow
Vice President
Rural Mortgage Corporation
123 Farm Road
Smalltown, USA 00000

Thank you for participating in our recent funding round for the Section 538 Guaranteed Rural Rental Housing Program (GRRHP).

We are pleased to inform you that the proposal which you submitted for the Section 538 Guaranteed Rural Rental Housing Loan Program has been selected for further processing. We appreciate your hard work to date and look forward to a successful relationship.

The Rural Development State Director has been notified to proceed with the Environmental Assessment process. You should be contacted soon for additional information.

The proposal should now be processed through your full underwriting procedures in accordance with the GRRHP Handbook (HB-1-3565). Once you are comfortable with the proposal, the application docket should be provided to this office for review and the \$2,500 application fee will be due at this time. The Agency will attempt a quick turn around with any additional conditions for proceeding.

If you have any questions contact the Multi-Family Housing Processing Division on 202-720-1604 or Fax 202-690-3444.

Once again, congratulations on your selection as a pioneer participant in our Section 538 Guaranteed Rural Rental Housing Program.

HB-1-3565
Attachment 4-A
Page 2 of 2

SAMPLE -- LETTER TO THE STATE DIRECTOR

TO: _____
State Director
Rural Development
Anywhere, USA

FROM: _____
Administrator
Rural Housing Service

SUBJECT: Section 538 Guaranteed Rural Rental Housing Program

We are pleased to inform you that the ABC LP and XYZ LP proposals were selected for inclusion in the Section 538 Guaranteed Rural Rental Housing Program. Because of the necessity to get the Environmental Assessments done as quickly as possible, we are asking for your assistance in providing the Environmental Coordinator for your State with the necessary resources to meet the _____, deadline for obligating the guarantee. Since we are unable to obligate Agency resources without an environmental review, **we need the copy of the published FONSI in this office by COB on _____.**

For your use, attached is a copy of the application(s) that was submitted to this office. Please ensure that the proper staff receives this information. If further information is needed to complete the Environmental Assessment(s), contact the lender.

This is not a commitment for the projects. However, we have selected them for further processing.

If you have any questions call the Multi-Family Housing Processing Division at 202-720-1604 or Fax 202-690-3444.

Attachments

7. All necessary consents, approvals, or authorizations of any governmental agency or regulatory authority or of stockholders which are necessary have been obtained. The improvements and the use of the property comply in all respects with all Federal, State, and local laws applicable thereto.
8. (In cases involving subordinate or other than first lien position.) That the mortgage/deed of trust on Borrower's real estate and (fixtures, e.g. machinery and equipment) and the security interest on (type of collateral, e.g., machinery and equipment, accounts receivables and inventory) both given as security to the Lender for the Loan, will be subordinate to (first mortgage) given as security for a loan in the amount of \$_____ and the security interest in Borrower's (type of collateral, e.g., accounts inventory) given to (secured creditor) as security for a loan (state type of loan, i.e., revolving line of credit, if known) in the amount of \$_____.
9. That there are no liens, as of the date hereof, on record with respect to the property of Borrower other than those set forth above.
10. There are no actions, suits or proceedings pending or, to the best of our knowledge, threatened before any court or administrative agency against Borrower which could materially adversely affect the financial condition and operations of Borrower.
11. Borrower has good and marketable title to the real estate security free and clear of all liens and encumbrances other than those set forth above. I/we have no knowledge of any defect in the title of the Borrower to the property described in the Loan Instruments.
12. Borrower is the absolute owner of all property given to secure the repayment of the loan, free and clear of all liens, encumbrances, and security interests.
13. Duly executed and valid functioning statements have been filed in all offices in which it is necessary to file financing statements to fully perfect the security interests granted in the Loan Instruments.
14. Duly executed real estate mortgages/deeds of trust have been recorded in all offices in which it is necessary to record to fully perfect the security interests granted in the Loan Instruments.
15. (IN SOME OTHER CIRCUMSTANCES) The Indemnification Agreement has been duly executed by the Indemnitors and is a legal, valid and binding joint and several obligation of the Indemnitors, enforceable in accordance with its terms, except to the extent that the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.

16. That the lease contains a valid and enforceable right of assignment and right of reassignment, enforceable in accordance with its terms, except to the extent the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.
 17. The Lender's lien has been duly noted on all motor vehicle titles, stock certificates or other instruments where such notations are required for proper perfection of security interests therein.
 18. That a valid pledge of the outstanding and unissued stock and/or shares of Borrower has been obtained and the Lender has a validly perfected and enforceable security interest in the shares/stock of Borrower, except to the extent the enforceability thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors rights.
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ATTACHMENT 4-C

CLOSING DOCUMENTS TO BE SUBMITTED AS PART OF THE FINAL APPLICATION

After the conditional commitment for guarantee has been issued, the proposed closing documents will be prepared by the lender and forwarded to the Agency with the lender's counsel's opinion in the suggested format of Attachment 4-B. Prior to issuing the loan note guarantee, the State Director will forward the loan docket including all required documents to the Office of the General Counsel for review unless otherwise directed by OGC. After an administrative review, the State Director will include with the docket a letter of recommendation indicating any special items, documents or problems that need to be addressed. The docket will be assembled by the lender for OGC review in accordance with guidance listed below, and indexed and tabbed.

DOCUMENTS TO BE SUBMITTED FOR OGC REVIEW

- (1) Letter from RHS National Office authorizing loan guarantee and containing conditions (if applicable);
- (2) *Form RD 3565-2, Conditional Commitment*;
- (3) Promissory Notes;
- (4) Security documents - Real Estate Mortgage, Security Agreement, Financing Statements, and Leases (if applicable);
- (5) Personal or corporation guarantees with related security documents;
- (6) *Form RD 3565-3, Lender's Agreement*;
- (7) *Form RD 3565-4, Loan Note Guarantee*;
- (8) Opinion of Lender's Counsel in form prescribed by OGC (Attachment 4-B);
- (9) Regulatory Agreement with attached certification from the lender's attorney (see paragraph 4.17); and
- (10) Deed Restriction or other recordable instrument acceptable to the Agency that declares that housing must remain available for occupancy by low and moderate income households for the original term of the guaranteed loan.

Do not submit for OGC review feasibility studies, title information, or the original application unless specifically requested to do so.

The Office of the General Counsel will review the docket and furnish advice to the Agency on whether it may issue the loan note guarantee after the loan is closed. Such advice is for the benefit of the agency only and does not relieve the lender of its responsibilities under agency regulations. The Office of the General Counsel at his/her option may attend the loan closing.

