

not revocable by, or under the control of, any member of the household, so long as the funds continue to be held in trust.

(2) The value of any business or household assets disposed of by a member of the household for less than fair market value (including disposition in trust, but not in a foreclosure or bankruptcy sale) during the 2 years preceding the date of application, in excess of the consideration received therefore. In the case of a disposition as part of a separation or divorce settlement, the disposition shall not be considered to be less than fair market value if the household member receives important consideration not measurable in dollar terms.

*Net proceeds.* The proceeds remaining from the property after it is sold or its net value as determined in accordance with this subpart. The determination of net proceeds depends upon whether the property is sold or acquired by the Lender. Net proceeds may be determined using the appraised value and subtracting authorized deductions when the Lender acquires the property.

*Protective advance.* Advances made by the Lender when the borrower is in liquidation or otherwise in default to protect or preserve the security from loss or destruction.

*Qualifying income.* The amount of the applicant's income which the lender determines is adequate and dependable enough to consider for repayment ability. This figure may be different from the adjusted income which is used for RHS program eligibility. Qualifying income is typically less than adjusted income unless the applicant has income from the sources listed in §1980.347(e).

*Rural area.* An area meeting the requirements of §1980.312. Rural areas are designated on maps available in the RHS office servicing that area.

*Single parent.* An individual who is unmarried or legally separated from a spouse and has custody or joint custody of one or more minor children or is pregnant.

*State Director.* Director of RHS programs within a state office area.

*Veteran.* A veteran is a person who has been discharged or released from the active forces of the United States Army, Navy, Air Force, Marine Corps,

or Coast Guard under conditions other than dishonorable discharge including "clemency discharges" and who served on active duty in such forces:

(1) From April 6, 1917, through March 31, 1921;

(2) From December 7, 1941, through December 31, 1946;

(3) From June 27, 1950, through January 31, 1955; or

(4) For more than 180 days, any part of which occurred after January 31, 1955, but on or before May 7, 1975.

(b) The following abbreviations are applicable to this subpart:

*Fannie Mae*— Federal National Mortgage Association.

*FCS*— Farm Credit Service.

*FHA*— Federal Housing Administration.

*Freddie Mac*— Federal Home Loan Mortgage Corporation.

*Ginnie Mae*— Government National Mortgage Association.

*HUD*— Department of Housing and Urban Development.

*IRS*— Internal Revenue Service.

*MCCs*— Mortgage Credit Certificates.

*PITI*— Principal, Interest, Taxes, and Insurance.

*RHS*— Rural Housing Service.

*URAR*— Uniform Residential Appraisal Report.

*VA*— Department of Veterans Affairs.

§§ 1980.303–1980.307 [Reserved]

§ 1980.308 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 or misrepresentation of which the Lender has actual knowledge at the time it becomes such Lender or which the Lender participates in or condones. Misrepresentation includes negligent misrepresentation. A note which provides for the payment of interest on interest shall not be guaranteed. Any guarantee or assignment of a guarantee attached to or relating to a note which provides for the payment of interest on interest is void. Notwithstanding the prohibition of interest on interest, interest may be capitalized in connection with reamortization over the remaining term with written concurrence of RHS.

The loan note guarantee will be unenforceable to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which RHS acquires knowledge of the foregoing. Negligent servicing is defined as servicing that is inconsistent with this subpart and includes the failure to perform those services which a reasonably prudent Lender would perform in servicing its own loan portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act, but also not acting in a timely manner or acting contrary to the manner in which a reasonably prudent Lender would act up to the time of loan maturity or until a final loss is paid. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those authorized in this subpart. When the Lender conducts liquidation in an expeditious manner, in accordance with the provisions of § 1980.374, the loan note guarantee shall cover interest until the claim is paid within the limit of the guarantee.

**§ 1980.309 Lender participation in guaranteed RH loans.**

(a) *Qualification.* The following Lenders are eligible to participate in the RHS guaranteed RH loan program upon presentation of evidence of said approval and execution of the RHS Lender Agreement.

- (1) Any state housing agency;
- (2) Any Lender approved by HUD as a supervised or nonsupervised mortgagee for submission of one to four family housing applications for Federal Housing Mortgage Insurance or as an issuer of Ginnie Mae mortgage backed securities;
- (3) Any Lender approved as a supervised or nonsupervised mortgagee for the VA;
- (4) Any Lender approved by Fannie Mae for participation in one to four family mortgage loans;
- (5) Any Lender approved by Freddie Mac for participation in one to four family mortgage loans;
- (6) An FCS institution with direct lending authority; and
- (7) Any Lender participating in other RHS, Rural Business-Cooperative Serv-

ice, Rural Utilities Service, and/or Farm Service Agency guaranteed loan programs.

(b) *Lender approval.* A Lender listed in paragraph (a) of this section must request a determination of eligibility in order to participate as an originating Lender in the program. Requests may be made to the state office serving the state jurisdiction or to the National office when multiple state jurisdictions are involved.

(1) The Lender must provide the following information to RHS:

- (i) Evidence of approval, as appropriate, for the criteria under paragraph (a) of this section, which the Lender meets.
- (ii) The Lender's Tax Identification Number.
- (iii) The name of an official of the Lender who will serve as a contact for RHS regarding the Lender's guaranteed loans.
- (iv) A list of names, titles, and responsibilities of the Lender's principal officers.
- (v) An outline of the Lender's internal loan criteria for issues of credit history and repayment ability and a copy of the Lender's quality control plan for monitoring production and servicing activities.
- (vi) An executed certification regarding debarment, suspension, or other matters—primary covered transactions. The certification will be obtained using a form prescribed by RHS.

(2) The Lender must agree to:

- (i) Obtain and keep itself informed of all program regulations and guidelines including all amendments and revisions of program requirements and policies.
- (ii) Process and service RHS guaranteed loans in accordance with Agency regulations.
- (iii) Permit RHS employees or its designated representatives to examine or audit all records and accounts related to any RHS loan guarantee.
- (iv) Be responsible for the servicing of the loan, or if the loan is to be sold, sell only to an entity which meets the provisions of paragraph (a) of this section.
- (v) Use forms which have been approved by FHA, Fannie Mae, Freddie