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[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 40401, Oct. 17, 1988; 53 FR 45258, Nov. 9, 1988; 55 FR 26199, June 27, 1990; 56 FR 8271, Feb. 28, 1991; 61 FR 18495, Apr. 26, 1996]

§ 1980.452 FmHA or its successor agency under Public Law 103-354 evaluation of application.

FmHA or its successor agency under Public Law 103-354 will evaluate the application and make a determination whether the borrower is eligible, the proposed loan is for an eligible purpose and that there is reasonable assurance of repayment ability, sufficient collateral and sufficient equity and the pro-

posed loan complies with all applicable statutes and regulations. If FmHA or its successor agency under Public Law 103-354 determines it is unable to guarantee the loan, the lender will be informed in writing. Such notification will include the reasons for denial of the guarantee. If FmHA or its successor agency under Public Law 103-354 is able to guarantee the loan, it will provide the lender and the borrower

with Form FmHA or its successor agency under Public Law 103-354 449-14, listing all requirements for such guarantees. FmHA or its successor agency under Public Law 103-354 will include in the requirements of the Conditional Commitment for Guarantee a full description of the approved use of guaranteed loan funds as reflected in the Form FmHA or its successor agency under Public Law 103-354 449-1. The Conditional Commitment for Guarantee may not be issued on any loan until the State Director has been notified by the National Officer that the Statements of Personal History(s) have been processed and cleared. FmHA or its successor agency under Public Law 103-354 State Directors are the only persons authorized to execute Form FmHA or its successor agency under Public Law 103-354 449-14.

Administrative

State Director evaluates the application and considers:

A. Rural area determinations. (See § 1980.405 of this subpart.)

B. Community impact of the proposal which includes:

1. Number of businesses and industries in the town or city.

2. Employment impact upon the community.

3. Availability of skilled and unskilled labor and permanency of employment opportunities.

4. Vocational and educational facilities to provide skilled labor, if applicable.

5. Policies of applicant regarding unemployment, lay-offs, wage scales, etc.

C. If debt refinancing is requested, consider in accordance with § 1980.411(a)(11) of this subpart and:

1. A complete review will be made to determine whether it is essential to restructure the company's debts on a schedule that will allow the business to operate successfully rather than merely guaranteeing an unsound loan.

(a) Obtain a borrower's complete debt schedule. Schedule should agree with borrower's latest balance sheet.

(b) Determine from lender if the borrower's present loan(s) is on the lender's regulatory examiner's report and if so determine the loan classification.

(c) Analyze lender's liability ledger on the borrower, individual customer credit file, installment Loan Ledger Card or Computer printouts and other credit reports.

(d) The percentage of guarantee should be adjusted to assure that the lender does not

bring its previously existing unguaranteed exposure under the guarantee.

(e) Any special servicing requirements should be identified and included in the Conditional Commitment for Guarantee.

D. Applications will be analyzed by an FmHA or its successor agency under Public Law 103-354 State Loan Review Board before execution of Form FmHA or its successor agency under Public Law 103-354 449-14. When analyzing the B&I loan request, the State Loan Review Board will specifically address the issue of the guarantee percentage to be approved. Consideration of reducing the maximum guarantee to less than 90 percent is appropriate when the loan has sufficient strength to warrant further participation by the private sector or refinancing of existing lender debts to the borrower is involved. Ordinarily, B&I loan guarantees should be structured so that the lender bears a significant portion of the risk of loss from a default. "Significant" means equal to or greater than 20 percent of the loss stemming from default. All review board meetings will be fully documented, including the review and decision concerning the guarantee percentage, and will be signed by those FmHA or its successor agency under Public Law 103-354 employees serving on the board. A copy of such documentation will be retained in the loan file.

1. Generally, the review board consists of the State Director as Chairperson, Community and Business Program Chief or the Business and Industry Chief (Loan Specialist) and either the Community Programs Chief, Rural Housing Chief, or Farmer Programs Chief, as appropriate.

2. The State Director may wish to contact non-FmHA or its successor agency under Public Law 103-354 sources for expertise, such as banker or other lenders, industrial development specialists from state commissions, academicians, certified public accountants, tax attorneys, successful business and professional lenders, management consultants and officials from other Federal agencies. Outside resource consultants may be reimbursed only for their travel costs (transportation and subsistence). (See FmHA or its successor agency under Public Law 103-354 Instruction 2036-A which is available in any FmHA or its successor agency under Public Law 103-354 Office).

3. The Rural Housing Loan Chief will be a member of the FmHA or its successor agency under Public Law 103-354 State Loan Review Board if a site development loan (see § 1980.411(a)(7) of this subpart) is being considered. The Community and Business Programs Chief (Loan Specialist) will be a member if a loan for facilities of the type financed under the provisions of Subpart A of Part 1942 of this chapter is being considered. The Farmer Programs Chief will be a member of the board if a project, the success of

which is dependent on the production of agricultural products, is being considered. If the proposed project covers more than one program area, all the chiefs for those programs involved will be members of the board. If the approval of an application for a B&I loan may result in benefiting or hindering other FmHA or its successor agency under Public Law 103-354 programs, the review board will determine whether the making of such loan or guarantee is likely to result in embarrassment for FmHA or its successor agency under Public Law 103-354 as a result of a possible conflict of interest whereby other parties may accuse the agency of giving loan preference to housing borrowers (in the case of site development) or producers (in the case of agricultural processing plants) or other FmHA or its successor agency under Public Law 103-354 programs.

4. The State Director may request the County Supervisor and/or District Director to attend the review board meeting whenever it is determined they may have special knowledge of the proposed loan which may affect the board's decision.

5. Prior to submission of a B&I guaranteed loan(s) request to the National Office for loan processing review and prior to loan approval, the appropriate loan processing official must visit the project site and discuss the loan proposal with the lender and borrower. In the event there are multiple project sites the official should visit a representative sample of project sites to develop deeper understanding of the project operation. For businesses without a developed project site a visit is not necessary; however, a visit with the lender and borrower is still required. The findings of the visit should be documented in the loan docket submitted to the National Office.

6. The State Director will prepare an original and two copies of Form FmHA or its successor agency under Public Law 103-354 1940-3 for each loan to be obligated. Also, for each initial loan, Form FmHA or its successor agency under Public Law 103-354 1980-50, "Add, Delete, or Change Guaranteed Loan Borrower Information," will be prepared. The State Director will sign the original and one copy and conform the second copy. Form FmHA or its successor agency under Public Law 103-354 1940-3 will not be mailed to the Finance Office. Notice of approval to lender will be accomplished by providing or sending the lender the signed copy of Form FmHA or its successor agency under Public Law 103-354 1940-3 and Form FmHA or its successor agency under Public Law 103-354 449-14 on the obligation date, unless the Administrator has given prior authorization to the Finance Office to obligate before the 6-day reservation period and directs the State Director to forward Form FmHA or its successor agency under Public Law 103-354 1940-3 to the lender in advance of issuance of

Form FmHA or its successor agency under Public Law 103-354 449-14. The State Director or designee will record the actual date of lender notification on the original of the Form FmHA or its successor agency under Public Law 103-354 1940-3 and retain the original of the form as a permanent part of the FmHA or its successor agency under Public Law 103-354 case file. The State Director may retain the remaining conformed copy of Form FmHA or its successor agency under Public Law 103-354 1940-3. The State Director or designee will use the State Office terminal to request reservation/obligation of funds. Use of the telephone for the reservation/obligation of funds is restricted to those instances when the State Office terminal is inoperative. Form FmHA or its successor agency under Public Law 103-354 1980-50 will be prepared and distributed for initial loans only.

a. Immediately after contacting the Finance Office, the requesting official will furnish the requesting office's security identification code. Failure to furnish the security code will result in rejection of the request for reservation of authority. After the security code is furnished, all pertinent information contained on Form FmHA or its successor agency under Public Law 103-354 1940-3 will be furnished to the Finance Office. Upon receipt of the telephone request for reservation of authority, the Finance Office will record all information necessary to process the request for reservation in addition to the date and time of the request.

b. The individual making the telephone request will record the date and time of the telephone request and place his/her signature in section 35 of Form FmHA or its successor agency under Public Law 103-354 1940-3.

c. The Finance Office will terminally process telephone reservation requests. Those requests for reservation received before 2:30 p.m. Central Time, to the extent possible, will be processed on the date received; however, there may be instances in which the reservation will be processed on the next working day.

d. Each working day the Finance Office will notify the State Office by telephone of all projects for which authority was reserved during the previous night's processing cycle and the date of obligation. If authority cannot be reserved for a project, the Finance Office will notify the State Office that authority is not available within the State allocation. The obligation date will be 6 working days from the date of the request for reservation of authority which is being processed in the Finance Office. The Finance Office will mail to the State Director Form FmHA or its successor agency under Public Law 103-354 440-57, "Acknowledgment of Obligated Funds/Check Request," prepared in duplicate, confirming the reservation of authority with the obligation date inserted as required

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by item No. 9 on the FMI for Form FmHA or its successor agency under Public Law 103–354 440–57. Immediately after notification by telephone of the reservation of authority, the State Director will call the Legislative Affairs and Public Information staff in the National Office as required by FmHA or its successor agency under Public Law 103–354 Instruction 2015–C (available in any FmHA or its successor agency under Public Law 103–354 office).

e. See FmHA or its successor agency under Public Law 103–354 Instruction 2015–C (available in any FmHA or its successor agency under Public Law 103–354 office) for notification procedures.

7. State Director notifies the lender and borrower if he/she will not issue the Form FmHA or its successor agency under Public Law 103–354 449–14.

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 45258, Nov. 9, 1988; 56 FR 8271, Feb. 28, 1991]

§ 1980.453 Review of requirements.

(a) Immediately after reviewing the conditions and requirements in Form FmHA or its successor agency under Public Law 103–354 449–14 the lender and applicant should complete and sign the “Acceptance of Conditions,” and return a copy to the FmHA or its successor agency under Public Law 103–354 State Director. If certain conditions cannot be met, the lender and borrower may propose alternate conditions to FmHA or its successor agency under Public Law 103–354.

(b) If the lender indicates in the “Acceptance of Conditions” that it desires to obtain a Loan Note Guarantee and subsequently decides at any time after receiving a conditional commitment that it no longer wants a Loan Note Guarantee, the lender will immediately advise the FmHA or its successor agency under Public Law 103–354 State Director.

Administrative

A. The State Director will negotiate with the lender and proposed borrower any changes made to the initially issued or proposed Form FmHA or its successor agency under Public Law 103–354 449–14. For loans requiring National Office concurrence, a copy of Form FmHA or its successor agency under Public Law 103–354 449–14 and any amendments thereto will be included when the loan file is submitted to the National Office for review. When the National Office recommends modifications or additions to Form FmHA or its successor agency under Public Law 103–354 449–14, the State Director will

further negotiate these recommendations with the lender and proposed borrower. If, as a result of these further negotiations, the lender, proposed borrower or State Director presents alternate conditions which would result in a change in the scope of the proposed project and if the loan exceeds the State Director’s loan approval authority, the State Director will submit these conditions by memorandum to the National Office for consideration with a copy of the revised Form FmHA or its successor agency under Public Law 103–354 449–14 and any amendments thereto. If the loan is within the State Director’s loan approval authority, the State Director may approve such changes.

B. On loan applications within the State Director’s loan approval authority, the State Director will submit to the National Office, Business and Industry Division, within 30 days after the Form FmHA or its successor agency under Public Law 103–354 449–14 has been accepted:

1. A copy of Form FmHA or its successor agency under Public Law 103–354 449–29.

2. A copy of Form FmHA or its successor agency under Public Law 103–354 449–14 is accepted by the lender and borrower.

2. A copy of FmHA or its successor agency under Public Law 103–354 State Loan Review Board Minutes.

4. Notification of required financial and other reports, their frequency, due dates and fiscal year-end.

5. A copy of the proposed loan agreement between the lender and the borrower.

6. When debt refinancing is involved, a copy of the justification for the refinancing.

7. The cover memorandum should indicate whether the Form FmHA or its successor agency under Public Law 103–354 449–34 has been issued. If the Loan Note Guarantee has been issued, enclose a copy of the Lender Certification required by §1980.60(a) of Subpart A of this part, and, if not, a proposed date for issuance of the Form FmHA or its successor agency under Public Law 103–354 449–34.

[52 FR 6501, Mar. 4, 1987, as amended at 54 FR 28022, July 5, 1989; 57 FR 4359, Feb. 5, 1992]

§ 1980.454 Conditions precedent to issuance of the Loan Note Guarantee.

In addition to compliance with the requirements of §1980.60 of subpart A of this subpart, compliance with the following provisions are required prior to issuance of the Loan Note Guarantee.

(a) *Transfer of lenders.* The FmHA or its successor agency under Public Law 103–354 State Director may approve a substitution of a new eligible lender in place of a former lender who holds an outstanding Conditional Commitment