

employee to submit a written application to have his or her leave accounts adjusted. We believe this will make it possible for all affected employees to benefit from this provision. Therefore, OPM has not revised the regulation in this regard.

#### Miscellaneous Leave Administration Amendments

On December 2, 1994, OPM issued final sick leave regulations to permit most Federal employees to use a total of up to 104 hours of sick leave each leave year to provide care for a family member or to make arrangements for or attend the funeral of a family member. An employee may use up to 40 hours of his or her accrued sick leave for these purposes without regard to the amount of leave remaining in his or her sick leave account. An employee may use up to 64 additional hours of sick leave if he or she maintains a balance of at least 80 hours in his or her sick leave account.

OPM received many telephone inquiries concerning whether agencies may advance sick leave for the purpose of satisfying the 80-hour sick leave balance requirement. Although this matter was addressed briefly in the "Supplementary Information" accompanying the final regulations, we are using this opportunity to further clarify the regulation at 5 CFR 630.401(c).

The 40 hours of sick leave that may be used for family care or bereavement purposes may be advanced. Agencies may not advance sick leave so that an employee may meet the requirement to maintain a balance of 80 hours of sick leave in his or her account or to use additional sick leave for these purposes. The intent of the statutory 80-hour minimum sick leave balance requirement is that an employee should retain at least 80 hours of accrued sick leave in his or her account for use in the event of the employee's own incapacitation for duty—i.e., without the necessity of requesting advanced leave or shared leave. To advance an additional amount of sick leave (beyond the 40 hours every employee is entitled to use for family care or bereavement purposes) would circumvent the intent of the law. Therefore, we are amending section 630.401(c) to state that leave may not be advanced for the purpose of meeting the requirement to retain a minimum sick leave balance or using additional sick leave for family care or bereavement purposes.

OPM is also using this opportunity to make a technical correction in 5 CFR 630.201, Definitions. In the interim regulations to incorporate certain incentive awards and pay and leave

administration rules contained in the provisionally retained Federal Personnel Manual material published in the **Federal Register** on December 28, 1994 (59 FR 66629), the numbering of paragraphs (7) through (9) of 5 CFR 630.201(b) was incorrect. The numbering of paragraphs (7) through (9) has been corrected as follows: (7) *Medical certificate*; (8) *Uncommon tour of duty*; and (9) *United States*.

#### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal employees and agencies.

#### List of Subjects in 5 CFR Part 630

Government employees.  
U.S. Office of Personnel Management.  
**James B. King**,  
*Director*.

Accordingly, OPM is amending part 630 of title 5 of the Code of Federal Regulations as follows:

#### PART 630—ABSENCE AND LEAVE

1. The authority citation for part 630 continues to read as follows:

**Authority:** 5 U.S.C. 6311; § 630.301 also issued under Public Law 103-356 (108 Stat. 3410); § 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6403(d)(3), Public Law 103-337 (108 Stat. 2663); subpart D also issued under Public Law 103-329 (108 Stat. 2423); § 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, June 16, 1965, 3 CFR 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332 and Public Laws 100-566 (102 Stat. 2834) and 103-103 (107 Stat. 1022); subpart J also issued under 5 U.S.C. 6362 and Public Laws 100-566 and 103-103; subpart K also issued under Public Law 102-25 (105 Stat. 92); and subpart L also issued under 5 U.S.C. 6387 and Public Laws 103-3 (107 Stat. 23).

#### Subpart D—Sick Leave

##### § 630.201 [Amended]

2. Section 630.201 is amended by redesignating the first paragraph (b)(8) as paragraph (b)(9), paragraph (b)(7) as new paragraph (b)(8), and the existing second paragraph (b)(8) as paragraph (b)(7).

3. In § 630.401, paragraph (c) is revised to read as follows:

##### § 630.401 Grant of sick leave.

\* \* \* \* \*

(c) To be granted any sick leave for the purposes described in paragraphs (a) (3) or (4) of this section during any leave year in an amount exceeding a total of

40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours in the employee's scheduled tour of duty each week), the employee concerned shall retain in his or her sick leave account a balance of at least 80 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, an amount equal to twice the average number of hours in the employee's scheduled tour of duty each week). No sick leave may be advanced under 5 U.S.C. 6307(d) for the purpose of meeting the requirement to retain a minimum sick leave balance or for using additional sick leave for the purposes described in paragraphs (a) (3) and (4) of this section when such use would otherwise cause the employee's sick leave balance to fall below the minimum required.

\* \* \* \* \*

#### Subpart I—Voluntary Leave Transfer Program

##### § 630.907 [Amended]

3. In § 630.907 paragraph (c) introductory text, remove the words "of chapter I"; in paragraph (d)(2), remove the second occurrence of the word "by" and add in its place the word "to".

#### Subpart J—Voluntary Leave Bank Program

##### § 630.1101 [Amended]

4. In § 630.1101 paragraph (b)(2), remove the word "affect" and add in its place the word "effect".

5. In addition to the amendments set forth above, in 5 CFR part 630, subparts I and J, remove the words "or work" in the following places:

##### §§ 630.905, 630.907, 630.1007, 630.1008 [Amended]

- (a) Section 630.905 (b) and (c);
- (b) Section 630.907(a)(1), (a)(2), and (d)(1);
- (c) Section 630.1007 (b) and (c); and
- (d) Section 630.1008(a)(1), (a)(2), and (d)(1).

[FR Doc. 95-12411 Filed 5-19-95; 8:45 am]

BILLING CODE 6325-01-M

**DEPARTMENT OF AGRICULTURE****Rural Housing and Community Development Service****Rural Business and Cooperative Development Service****Rural Utilities Service****Consolidated Farm Service Agency****7 CFR Part 1980**

RIN 0575-AB15

**Rural Housing Loans**

**AGENCIES:** Rural Housing and Community Development Service, Rural Business and Cooperative Development Service, Rural Utilities Service, and Consolidated Farm Service Agency; USDA.

**ACTION:** Final rule.

**SUMMARY:** The Rural Housing and Community Development Service (RHCD) amends its Guaranteed Rural Housing Loans regulation. This action is taken to address issues which arose during the implementation phase of the program. The intended effect of this action is to make the program more acceptable to lenders and the secondary market for mortgage loans, to remove RHCD internal administrative procedures from the **Federal Register**, and to make minor adjustments and corrections as a result of the Agency's experience in implementing the program.

**EFFECTIVE DATE:** June 21, 1995.

**FOR FURTHER INFORMATION CONTACT:** Michael S. Feinberg, Senior Loan Specialist, Rural Housing and Community Development Service, USDA, Room 5334-S, South Agriculture Building, 14th and Independence SW., Washington, DC 20250, telephone (202) 720-1474.

**SUPPLEMENTARY INFORMATION:****Classification**

This rule has been determined to be significant/economically significant and was reviewed by Office of Management and Budget under Executive Order 12866.

**Paperwork Reduction Act**

The information collection and recordkeeping requirements contained in this regulation have been previously approved by the Office of Management and Budget (OMB), except for § 1980.351, which will not become effective until approved by OMB, in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). The assigned OMB control

number is 0575-0078. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer of USDA, Washington, D.C. 20503. Please send a copy of your comments to Jack Holston, Agency Clearance Officer, USDA, RECD, Ag Box 0743, Washington, DC 20250. (OMB# 0575-0078)

**Environmental Impact Statement**

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of RHCD that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

**Intergovernmental Consultation**

For the reason set forth in the final rule related Notice to 7 CFR part 3015, subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order (EO) 12372 which requires intergovernmental consultation with State and local officials.

**Civil Justice Reform**

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. In accordance with this rule: (1) all state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with the regulations of the agency at 7 CFR part 1900 subpart B or those regulations published by the Department of Agriculture to implement the provisions of the National Appeals Division as mandated by the Department of Agriculture Reorganization Act of 1994, whichever is applicable, must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

**Programs Affected**

This program is listed in the Catalog of Federal Domestic Assistance under 10.410, Very Low to Moderate Income Housing Loans.

**Discussion**

On September 3, 1993, Farmers Home Administration (FmHA) published a proposed rule with request for comments for the Guaranteed Rural Housing (GRH) program. We received forty-two comments. Comments were

from Agency employees or employee groups, lenders, secondary market sources, and various interest groups.

The Federal Crop Insurance Reform and Department of Agriculture Act of 1994, Public Law No. 103-354, signed into law on October 13, 1994, resulted in the restructuring of the Department of Agriculture's Rural Housing programs, formerly carried out by FmHA, which are now assigned to RHCD. This change is reflected in this regulation.

The Agency discussed the need to make the program more compatible with existing mortgage lending programs. Many of the comments addressed this issue. Some of the respondents felt that the Agency should make the program more like conventional loans. Others advocated the use of other Federal mortgage programs as a guide. We tried to keep the better features of both conventional and Government programs to make the Guaranteed Rural Housing Program as easy for lenders to use as possible. RHCD believes the easier it is for lenders to participate, the more borrowers can be served with the program.

This regulation omits the detailed internal agency administrative instruction used by the field offices to administer the program. In the past, RHCD program regulations and FmHA Instructions have been the same. Agency policy is to publish any regulation which confers a benefit or imposes an obligation on the public. It is also agency policy to publish any regulation which contains information necessary for members of the public to understand their responsibilities. The Agency does not intend to publish a regulation that omits or evades issues which are subject to public comment or would be of interest to the public. Any substantive changes in the regulation will continue to be published in the **Federal Register**. Each RHCD field office has a copy of the FmHA Instruction and a copy is available upon written request to RHCD.

Some respondents, mostly RHCD employees, focused on the lack of detailed administrative instructions. The Agency continues to publish its FmHA Instruction, discussed above, which contains information on carrying out administrative details.

In previous publications of this regulation, RHCD incorporated the forms used in the program into the **Federal Register**. RHCD no longer publishes the forms. We incorporated the substantive materials from the forms into the regulation.

We discuss other significant changes below in general order of appearance in

the regulation, not based on order of importance.

RHCDS added several new definitions based on the comments. New definitions include: Agency, Co-applicant, Net proceeds, and Qualifying income.

One respondent suggested a section for abbreviations and acronyms which we added. The preamble for the Proposed Rule erroneously stated that the definition for "Existing Dwelling" was deleted. The definition for "Existing Dwelling" provides that an existing dwelling is one "which has been occupied for one year as a primary residence." Several respondents suggested that RHCDS revise the standard. They proposed that an existing dwelling is one that has been completed for more than 12 months as evidenced by a certificate of occupancy. RHCDS agrees and adopts this change.

Several respondents pointed out that the program does not provide for dwellings under construction before the lender receives an application for a guaranteed housing loan. This includes speculative dwellings as well as dwellings built by builders not familiar with the RHCDS program. This results in a burden on builders and homebuyers who would have to wait until the dwelling is more than 12 months old before receiving a loan. RHCDS addresses this in its direct program by limiting the amount of the loan to 90 percent of the appraised value. Based on the comments, we incorporated this same provision into the Guaranteed Rural Housing program.

One respondent indicated a need for clarification of "first time homebuyer." The authorizing legislation provides for granting preference to first time homebuyers. If there are two requests for commitments ready for approval but there is a shortage of funds, RHCDS gives preference to the first time homebuyer over another applicant.

One respondent noted that the Proposed Rule omitted a provision that allowed sale of the loan directly to Fannie Mae and Freddie Mac. This has been corrected.

One respondent encouraged RHCDS to improve the accessibility of housing counseling in rural areas. RHCDS has solicited interested parties for implementation of a demonstration counseling program (see **Federal Register** Vol. 59, No. 31, page 7240 dated February 15, 1994). Loan applicants will be required to attend and complete the housing counseling if it is available in the area.

Several respondents indicated that the various provisions for lender reviews were confusing. RHCDS removed the

review requirements that were duplicative.

RHCDS had revised the section on loan purposes in the Proposed Rule. Several respondents requested restoration of certain specific items such as storm cellars, energy saving measures, etc. RHCDS did not intend to exclude storm cellars, energy saving measures, etc. as long as they are part of the dwelling acquisition. This has been clarified.

Several respondents complained about the prohibition on refinancing in section 1980.311(a). They argued refinancing could assist some homeowners in retaining their dwellings. Some respondents suggested guaranteed loans could help in the graduation of direct loans. The authorizing legislation limits the program to assistance for housing acquisition only. There is no authority for refinancing. In addition, the demand for guaranteed housing dollars exceeds available funds.

RHCDS proposed a prohibition on dwellings with in-ground swimming pools. Several respondents argued that some areas of the country have existing housing stock that is modest in cost even though there is a pool. The respondents commented that the value of the dwelling is often not significantly affected by the pool. They argued exclusion of pools would preclude financing many otherwise eligible dwellings. RHCDS continues to believe that it is not appropriate to finance dwellings with in-ground pools. No change is made.

RHCDS has had a long standing policy of financing in areas only where the streets and roads are maintained by a public entity. We proposed to permit financing where the streets and roads are maintained by a Homeowner Association in projects which have been approved or accepted by HUD, VA, Fannie Mae, or Freddie Mac. One respondent observed that the issue of project acceptance is better placed in a different paragraph. RHCDS agrees and we revised and restructured this portion of the regulation.

We received several comments on the proposal to replace the provision that limits the site to one acre. RHCDS proposed that the value of the site cannot exceed 30 percent of the total value of the property. One respondent felt the proposed change was not as clear as the 1 acre rule. Some respondents believed the 30 percent rule may cause problems in high cost areas. One respondent indicated that the one acre rule is easier to explain and understand. Another respondent suggested the 30 percent rule is an

unnecessary regulatory burden. Most of the comments, however, favored the proposal. Many people felt that the one acre rule was overly restrictive in many areas of the country. RHCDS believes the issue of high cost areas is adequately addressed by the provision that the 30% limitation does not apply when the site cannot be subdivided into two or more sites. The intent of the rule is to assure financing is limited to rural residences and to avoid financing income producing properties. Other lenders use a similar provision.

RHCDS required completion of all development work before issuance of the guarantee. Several respondents observed that RHCDS has no provision for issuance of the guarantee when there is a delay in completion of required development work due to inclement weather. This requires lenders to delay closing until completion of the development work and places undue burden on both the purchaser and the seller. The respondents suggested RHCDS adopt a provision allowing the use of escrow accounts in situations where necessary repair work is delayed due to weather. RHCDS agrees that this would reduce the regulatory burden for its customers.

Many respondents expressed interest in section 1980.317 which implements Executive Order 11246. Respondents took particular interest in the equal opportunity and nondiscrimination inspection and reporting requirements. A number of the respondents argued that these requirements should not apply to guaranteed loans in as much as there is no direct federal financing involved. Some respondents argued that since construction draws are not allowed, RHCDS is not a party in the construction process. While RHCDS is not directly involved in the construction financing, there likely would be no construction contract without the RHCDS guarantee. Executive Order 11246 applies when there is a construction contract of more than \$10,000 between the borrower and the builder.

Several comments addressed flood zones. RHCDS has long had a policy of not financing dwellings located within a flood plain unless it could be demonstrated that there was no alternative. This policy is derived from Executive Order 11988, Flood Plain Management. Practical alternatives are addressed through the environmental review process. In addition, the Agency requires that the first floor elevation to be above the 100 year flood line. These are not changes to RHCDS policy or to the GRH program. This revision simply incorporates the language from other

Agency regulations into this regulation for consistency.

RHCDS had proposed to amend section 1980.324(b) on late charges to make the maximum fee a lender could charge for late payments an unpublished administrative provision. One respondent indicated that the maximum late charge should be available for public comment. This section is revised to provide that the late charge cannot exceed the late charge as prescribed by either HUD or by Fannie Mae. This will allow both HUD and conventional lenders to participate in the program making it available to as many borrowers as possible.

RHCDS proposed to limit the age of the appraisal to not more than 3 months from the date of submission to RHCDS. Several respondents felt this did not allow enough time in some circumstances and proposed a 6 month time frame. RHCDS agrees and the change is adopted.

RHCDS had proposed to implement an environmental checklist intended to help the Agency determine the need for a site visit for environmental reasons. The checklist was to be similar to HUD Form 54891, "Appraiser/Review Appraiser Checklist." Of the seven comments on this subject, only two were favorable. Two respondents advised that HUD no longer uses the form in most circumstances (See 58 Fed. Reg. 41328-41339, August 3, 1993). One respondent reported that they had difficulty locating appraisers who were familiar with the form. Another respondent had little problem locating several appraisers familiar with it. One of the respondents represented an organization of professional real estate appraisers. This respondent indicated the proposed form would require appraisers to respond to questions which they were not trained or qualified to identify. RHCDS has determined it will not adopt the use of the HUD form at this time. The Agency plans to review this issue further for possible future implementation.

RHCDS proposed discontinuing the use of replacement cost in appraisals of dwellings which are more than a year old. One respondent felt that the appraisers should provide the depreciated value of the dwelling and the value of the site for determining insurance and site values. RHCDS believes that these are loan underwriting issues which should be left to the lender. The revisions are adopted as originally proposed.

Several comments were received regarding RHCDS appraisal reviews. Since the performance of the appraisal review is an internal matter, RHCDS is

removing the language from the **Federal Register** regarding appraisal reviews.

Section 1980.340(c) provides that the "Lender and borrower are responsible for seeing that loan purposes are accomplished and loan funds are properly utilized." One respondent felt that the Agency is holding the borrower responsible for matters that require a high degree of technical expertise. RHCDS disagrees. The Government does not perform these functions on behalf of the borrower or the lender. Lenders and borrowers must take the necessary actions to protect their interest.

One respondent took exception with RHCDS's inspection requirements for new and existing dwellings. The respondent indicated that it was not typical to obtain inspections beyond that done by or recommended by the appraiser. The respondent also complained that RHCDS did not provide guidance on minimum qualifications a qualified inspector must meet. Some respondents suggested that only a final inspection need be obtained for new dwellings along with a certification that the dwelling was built according to the plans and specifications and that the appraiser address the inspection issue for existing dwellings. RHCDS continues to believe it is important to have the dwelling inspected. In many instances, the inspection can be performed by the appraiser. The Agency expects that lenders will use the same standards that any reasonable person would use to obtain an inspection of their own dwelling. The regulation is clarified on this point.

Several respondents expressed interest in the requirements for existing dwellings. Section 1980.341(b) made reference to the general requirements of the Agency's Guide 2 to subpart A of part 1924. The respondents indicated a need for clearer guidance. RHCDS agrees and we have revised this section to incorporate the HUD guidelines for existing properties. Many residential appraisers and inspectors are familiar with the HUD guidelines and this will make it easier for lenders to use the program.

Section 1980.345 provides the eligibility requirements an applicant must meet at the time of "loan approval." Program eligibility is limited to moderate income households. One respondent questioned whether loan approval referred to approval by the lender or RHCDS. This is pertinent because an applicant that exceeds the moderate income limits is not eligible for the program. The point in time at which income is determined could result in different decisions. Another respondent suggested using loan closing

as a point of reference instead of loan approval. RHCDS believes this would cause undue burden to borrowers, sellers, and lenders by rendering ineligible loans in which considerable processing time and expense has been incurred. It is important to note the distinction between RHCDS approval and lender approval. The lender approves the loan. RHCDS approves issuance of a loan guarantee. The regulation is revised to bring out this distinction and approval will clearly reference issuance of the commitment for a loan guarantee.

One respondent suggested that RHCDS adopt the income limits used in the Fannie Mae Community Home Buyers Program. The respondent complained that it is burdensome to work with income limits that vary by family size. Fannie Mae limits are simpler to work with, however, many families otherwise eligible would be excluded since the current method provides higher limits for larger family sizes. This provision remains unchanged.

One respondent recommended that RHCDS change the ratio term "Monthly Obligation to Income (MOTI)" to "Total Debt Ratio." "Total Debt" is the terminology used in the industry. RHCDS agrees.

The proposal to consider the cost of job related expenses in the total debt ratio generated nine comments. Three respondents opposed the addition of this provision. One clearly favored including child care as an expense. There were two suggestions for clarification and one recommendation for further study of the issue. RHCDS had proposed this revision in order to make its program more consistent with other Federal program. It has been learned that other agencies are reviewing this requirement. Based on its experience with this program to date, RHCDS has not had cause to believe its current handling of job related expenses has led to losses that otherwise would not have occurred. The Agency has opted for further study of the issue.

Several respondents suggested adding two percent to the qualifying ratios for dwellings that meet the 1992 Model Energy Code (CABO 92 MEC). After careful consideration, the Agency is not adopting this change. The reason is that the Agency's thermal standards which were already in place meet or exceed the Model Energy Code. Adoption of the Model Code standards will not enhance the repayment ability of an RHCDS borrower.

Three respondents suggested the Agency provide guidance on the consideration of contingent liabilities.

Contingent liabilities include debts from a previous marriage and debts assigned to the former spouse in a divorce decree. The lack of guidance is burdensome and inefficient for borrowers and lenders. RHCDS added this guidance.

Another respondent expressed concern about the difference between eligible income and qualifying income. Authorizing legislation limits program eligibility to those borrowers with a moderate income. In making this determination, RHCDS looks at income that many lenders typically would not rely on for repayment ability. We clarified the difference between "eligible" and "qualifying" income. RHCDS uses "eligible" income to determine the borrower's eligibility for the program. Eligibility is based on current income. The lender uses "qualifying" income in loan underwriting. "Qualifying" income provides the basis for repayment ability. For example, income from a part time job the applicant has held for less than 6 months is eligible income. Unless the applicant has a history of similar income, it may not be dependable enough to consider for repayment ability.

RHCDS had proposed allowing the lender to waive the qualifying ratios when there are compensating factors. One respondent suggested that this approach could be workable but would require considerable RHCDS training and oversight. Another respondent suggested the Agency have the lender request an Agency determination for the waiver. Another respondent suggested that "waiver" of the ratios implies that lenders may not have to consider income adequacy. RHCDS agrees with all of these comments. We made revisions so the lender may request RHCDS concurrence in allowing a higher ratio.

Several respondents discussed loan underwriting standards for credit history. Two respondents disagreed with the RHCDS standard which provides that any debt written off by the creditor within the last 36 months is adverse credit. They argued that sometimes a debt is written off by the creditor but the borrower continues to pay. The respondents stated this is not adverse credit. RHCDS considers any credit history blemish to be adverse credit. There are, however, circumstances in which the borrower can reasonably explain adverse credit. When adverse credit is beyond the applicant's control, the lender may consider this in making a final determination.

Several respondents alluded to a 36-month "waiting period" in the case of

a bankruptcy. There is no "waiting period" in the regulations. In fact, RHCDS regulations do not directly address bankruptcy as being adverse credit. There is a provision that bankruptcy older than 36 months should not be considered in evaluating credit history.

One respondent commented on the eligibility issue of home ownership. An applicant that already owns an adequate dwelling is not eligible. Sometimes a family moves from one area to another and they are unable to sell their former residence. The respondent suggested a provision that the applicant could meet the ownership requirement as long as he or she does not own a dwelling in the local commuting area. We have revised the regulation to incorporate the clarification requested.

Another respondent suggested a revision on the provision for other credit. The issue is whether the qualification for another Federal or state program would preclude eligibility for the program or not. We have revised the regulation to incorporate the clarification requested.

Several respondents suggested changing the determination of annual income to include a 24 month history instead of a 12 month history and including straight line depreciation in determining income. Annual and adjusted income, by law, have the same meanings given by section 3(b)(4) and 3(b)(5) of the United States Housing Act of 1937. The regulation already provides for the consideration of depreciation as allowed by the Internal Revenue Service.

One respondent pointed out that income from the employment of minors is not included in annual income but the regulation calls for its use in determining repayment ability. The respondent suggested elimination of the provision for counting a minor's income. Although the minor cannot be a party to the note, the lender may consider this additional household income as a possible compensating factor.

RHCDS had proposed to reserve the authority to issue commitments subject to the availability of funds. RHCDS recognizes the loan making process can range from several weeks to several months. RHCDS receives no notification of a pending application until the Lender submits a request for a loan guarantee. Since RHCDS's funding authority is based on annual appropriations, there could be loans in process which the Agency cannot fund. RHCDS received eight comments on the proposal to issue commitments subject to funding. Seven of these opposed the

proposal. Several respondents argued that the proposal would represent an unacceptable risk to the secondary market and to lenders. One respondent stated that commitments without funding would weaken the validity of the conditional commitment. Most of the respondents suggested an alternative method such as the creation of a register for loan applications. This would enable the Agency to track the application pipeline and assure lenders of the availability of funds. Section 1980.351 implements a funding reservation system.

Section 1980.353(c) clarifies that the loan must be underwritten by the lender before it is submitted to RHCDS. Previous language called for lender submission of a feasibility analysis. This change in terminology was made based on comments received both from RHCDS employees and lenders.

One respondent suggested that the request for a conditional commitment should include copies of the income verifications and the purchase agreement or construction contract. We added these to the list of required documentation.

Several respondents made suggestions regarding requirements for verification of the borrower's income. One suggestion was to clarify that the verification must be valid at that time of issuance of the Conditional Commitment. Several respondents suggested that RHCDS permit the use of an authorization for release of information instead of the borrower signing the verification form directly. This would allow the lender to increase their efficiency. Another suggestion encourages the use of secondary means of income verification. For example, many lenders obtain a copy of the 3 most recent paycheck stubs for employed borrowers to compare with the information in the employer verification. These suggestions have been adopted.

There were four comments on lender submission of a copy of the loan docket. Each of the respondents asked for an explanation of what a "loan docket" consists of. Two of the respondents suggested that RHCDS should already have copies of the information it needs and that the requirement may be redundant. One respondent suggested that RHCDS should ask only for items which are necessary to determine that the closing conditions were met. RHCDS agrees and so revised the regulation.

Two respondents asked that the provision regarding additional loans be removed or revised. One respondent stated the prohibition prevents the lender from making a home

improvement loan but leaves other lenders free to make the same loan. RHCDS agrees with the respondents and deleted this provision.

Two comments addressed assumptions and transfers. One respondent was concerned that since transfers were permitted but not required, a lender might unfairly place a borrower in jeopardy by refusing to permit a transfer. The other respondent felt transfers should be allowed at market value or for the outstanding debt, whichever is less. The same respondent proposed release of liability for the transferor. The Housing Act of 1949, as amended, prohibits the release of liability. For this reason, RHCDS determined that the loan transfers cannot be for less than outstanding debt. Sale of the dwelling without assumption of the loan is not prohibited. RHCDS wanted to permit the lender the flexibility to use the transfer as a servicing tool if the lender determined that was the best course of action. No change is made to this section.

One respondent noted there is nothing in the regulation addressing an unapproved transfer. A provision has been added to clarify this.

One respondent challenged RHCDS because moratoria are not included. The respondent referenced section 505 of the Housing Act of 1949, as amended. RHCDS notes that the Act authorizes the use of this servicing tool but does not require it. RHCDS encourages lenders to "make every effort to assist borrowers who are cooperative and willing to make a good faith effort \* \* \*." The lender is authorized to make temporary revisions to the repayment schedule.

There were two comments on protective advances. One respondent suggested that the \$500 threshold was too low. The other respondent argued that prior approval may not be appropriate since protective advances are by definition of an emergency nature. The respondent suggested that RHCDS encourage lenders to obtain prior approval to assure the expense is included in the loss claim. This protects RHCDS while providing flexibility to the lender.

One respondent suggested that RHCDS approval of a plan to continue with a delinquent borrower may result in delays. These delays could forestall successful implementation of the plan. RHCDS agrees with the comment and section 1980.374(d)(1) is so revised. However, the Agency may reject any plan that does not protect the Government's interest.

One respondent indicated that it was almost always cost effective to accept a Deed-in-lieu rather than foreclose. The

respondent suggested that RHCDS permit the lender discretion to accept a Deed-in-Lieu of foreclosure without prior approval. RHCDS agrees and this change is adopted.

Several comments were received on the revised loss payment provisions. Three respondents indicated that the time frame for filing the loss claim was not long enough. Two respondents suggested 45 working days is more consistent with industry practice. RHCDS finds a 45-working day time frame is awkward to work with and allows 9 weeks or longer for the lender to process the claim. The other respondent indicated that Fannie Mae allows its servicers 30 calendar days to file claims for private mortgage insurance. RHCDS believes that 30 calendar days is reasonable time to file a claim and this revision is adopted.

There were two favorable comments on the proposal to allow a 6 month period for the lender to liquidate acquired property. One respondent indicated that the 6 month period was not long enough and might encourage a "fire" sale to liquidate the property. The respondent suggested a 12 month period with a minimum established upset sale price. Another respondent questioned the need for a plan for disposition of the property. The respondent indicated that the preparation of the plan is a burden for both the lender and RHCDS without financial benefit. The purpose of the plan is to protect the Agency against the possibility of a "fire" sale. The respondent stated that the regulation is very general as to the content of the plan and contains no financial guidance with respect to how much RHCDS will allow for various cost items. The respondent also complained that there is no indication whether RHCDS will accept aggregate costs in excess of the percentage formula allowance currently used. The same respondent felt it is not clear when the plan is to be filed. The intent of the Agency is to protect itself from unreasonable losses. RHCDS does not impose specific cost allowances for various liquidation expenses. The Agency looks to see whether the costs claimed by the lender are legitimate, necessary, and reasonable for the area. There are no allowances for aggregate costs over the percentage formula. Examples and details will be available through the lender handbook.

Two comments related to the date of the RHCDS interest assistance payment. The language was adjusted to clarify when the interest assistance payment would be made. A proposal to provide for the payment on the first of the month instead of the fifteenth was not adopted.

One respondent suggested that interest assistance should be made available as a loss mitigation strategy. We believe the commenter intended this as a loan servicing tool to grant interest assistance to borrowers who experience decreases in income. Interest assistance funds are subject to appropriations. This means that interest assistance can be made available only for loans guaranteed from funds with an interest assistance appropriation. This comment is not implemented.

Four comments dealt with Mortgage Credit Certificates and funded buy-down accounts. Two respondents suggested the value of a Mortgage Credit Certificate should be subtracted from the borrowers obligations rather than added to income. The respondents mentioned this is consistent with the method used by "the general lending community." They argued this would remove a source of confusion for borrowers and lenders. RHCDS acknowledges that some conventional lenders have adopted this approach. However, the method proposed by RHCDS is consistent with other Federal mortgage lending agencies. The income tax credit increases disposable income. The tax credit does not reduce the borrower's liabilities. No change is made on Mortgage Credit Certificates. However, after consideration, RHCDS determined that funded buy-down accounts would be implemented; however, RHCDS concurrence would be required similar to that concurrence required for higher ratios.

We received two comments on appeals. Both respondents suggested a revision to the language so borrowers and lenders could appeal separately. One respondent expressed concern that the lender is not likely to join the borrower in an appeal. RHCDS's position is that the loans are the lender's loans. There is no point in the borrower appealing a decision without the lender's willingness to make the loan after the appeal. It is not necessary that the lender and borrower each fully participate in the appeal process. Only that both parties join in requesting the appeal. One respondent implied that the appeal process should allow the applicant/borrower to appeal lender decisions. This is not consistent with the Agency's position.

#### List of Subjects in 7 CFR Part 1980

Home improvement, Loan programs—Housing and community development, Mortgage insurance, Mortgages, Rural areas.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

**PART 1980—GENERAL**

1. The authority citation for part 1980 continues to read as follows:

**Authority:** 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

2. Subpart D of part 1980 is revised to read as follows:

**Subpart D—Rural Housing Loans**

Sec.

- 1980.301 Introduction.
- 1980.302 Definitions and abbreviations.
- 1980.303–1980.307 [Reserved]
- 1980.308 Full faith and credit.
- 1980.309 Lender participation in guaranteed RH loans.
- 1980.310 Loan purposes.
- 1980.311 Loan limitations and special provisions.
- 1980.312 Rural area designation.
- 1980.313 Site and building requirements.
- 1980.314 Loans on leasehold interests.
- 1980.315 Escrow accounts for exterior development
- 1980.316 Environmental requirements.
- 1980.317 Equal opportunity and nondiscrimination requirements in use, occupancy, rental, or sale of housing.
- 1980.318 Flood and mudslide hazard area precautions.
- 1980.319 Other Federal, State, and local requirements.
- 1980.320 Interest rate.
- 1980.321 Terms of loan repayment.
- 1980.322 Loan guarantee limits.
- 1980.323 Guarantee fee.
- 1980.324 Charges and fees by Lender.
- 1980.325 Transactions which will not be guaranteed.
- 1980.326–1980.329 [Reserved]
- 1980.330 Applicant equity requirements.
- 1980.331 Collateral.
- 1980.332 [Reserved]
- 1980.333 Promissory notes and security instruments.
- 1980.334 Appraisal of property serving as collateral.
- 1980.335–1980.339 [Reserved]
- 1980.340 Acquisition, construction, and development.
- 1980.341 Inspections of construction and compliance reviews.
- 1980.342–1980.344 [Reserved]
- 1980.345 Applicant eligibility requirements for a guaranteed loan.
- 1980.346 Other eligibility criteria.
- 1980.347 Annual income.
- 1980.348 Adjusted annual income.
- 1980.349–1980.350 [Reserved]
- 1980.351 Requests for reservation of funds.
- 1980.352 [Reserved]
- 1980.353 Filing and processing applications.
- 1980.354 [Reserved]
- 1980.355 Review of requirements.
- 1980.356–1980.359 [Reserved]
- 1980.360 Conditions precedent to issuance of the loan note guarantee.
- 1980.361 Issuance of loan note guarantee.
- 1980.362 [Reserved]
- 1980.363 Review of loan closing.
- 1980.364–1980.365 [Reserved]
- 1980.366 Transfer and assumption.
- 1980.367 Unauthorized sale or transfer of the property.

- 1980.368–1980.369 [Reserved]
- 1980.370 Loan servicing.
- 1980.371 Defaults by the borrower.
- 1980.372 Protective advances.
- 1980.373 [Reserved]
- 1980.374 Liquidation.
- 1980.375 Reinstatement of the borrower's account.
- 1980.376 Loss payments.
- 1980.377 Future recovery.
- 1980.378–1980.389 [Reserved]
- 1980.390 Interest assistance.
- 1980.391 Equity sharing.
- 1980.392 Mortgage Credit Certificates (MCCs) and Funded Buydown Accounts.
- 1980.393–1980.396 [Reserved]
- 1980.397 Exception authority.
- 1980.398 Unauthorized assistance and other deficiencies.
- 1980.399 Appeals.
- 1980.400 [Reserved]

**Subpart D—Rural Housing Loans****§ 1980.301 Introduction.**

(a) *Policy.* This subpart contains regulations for single family Rural Housing (RH) loan guarantees by the Rural Housing and Community Development Service (RHCDs) and applies to lenders, borrowers, and other parties involved in making, guaranteeing, servicing, holding or liquidating such loans. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to RHCDs employees, members of their families, known close relatives, or business or close personal associates is subject to the provisions of subpart D of part 1900. Applicants for this assistance are required to identify any known relationship or association with an RHCDs employee.

(b) *Program objective.* The basic objective of the guaranteed RH loan program is to assist eligible households in obtaining adequate but modest, decent, safe, and sanitary dwellings and related facilities for their own use in rural areas by guaranteeing sound RH loans which otherwise would not be made without a guarantee. Guarantees issued under this subpart are limited to loans to applicants with incomes that do not exceed income limits as provided in exhibit C of FmHA Instruction 1980–D (available in any RHCDs office).

(c) [Reserved]

(d) *Nondiscrimination.* Loan guarantees and services provided under this subpart are subject to various civil rights statutes. Assistance shall not be denied to any person or applicant based on race, sex, national origin, color, familial status, religion, age, or physical or mental disability (the applicant must possess the capacity to enter into a legal contract for services). The Consumer Protection Act provides that the applicant may not be denied assistance

based on receipt of income from public assistance or because the applicant has, in good faith, exercised any right provided under the Act.

**§ 1980.302 Definitions and abbreviations.**

(a) The following definitions are applicable to RH loans:

*Agency:* Rural Housing and Community Development Service (RHCDs).

*Applicant.* The party applying to a Lender for a loan.

*Approval official.* An RHCDs employee with delegated loan approval authority under subpart A of part 1901 consistent with the amount and type of loan considered.

*Borrower.* Collectively, all parties who applied for and received a specific guaranteed loan from an eligible Lender.

*Coapplicant.* An adult member of the household who joins the applicant in applying to a lender for a loan.

*Conditional commitment.* RHCDs' notice to the Lender that the material it has submitted is approved subject to the completion of all conditions and requirements set forth in the notice.

*Development standard.* The current edition of any of the model building, plumbing, mechanical, and electrical codes listed in exhibit E to subpart A of part 1924 applicable to single family residential construction or other similar codes adopted by RHCDs for use in the state.

*Disabled person.* A person who is unable to engage in any substantially gainful activity by reason of any medically determinable physical or mental impairment expected to result in death or which has lasted or is expected to last for a continuous period of not less than 12 months. The disability is expected to be of long or indefinite duration; substantially impede the person's ability to live independently; and is of such a nature that the person's ability to live independently could be improved by more suitable housing conditions. In the case of an individual who has attained the age of 55 and is blind, disability is defined as inability by reason of such blindness to engage in substantially gainful activity requiring skills or abilities comparable to those of any gainful activity in which the individual has previously engaged with some regularity over a substantial period of time. Receipt of veteran's benefits for disability, whether service-oriented or otherwise, does not automatically establish disability. A disabled person also includes a person with a developmental disability. A developmental disability means a severe, chronic disability of a person which:

(1) Is attributable to a mental or physical impairment or a combination of mental and physical impairments;

(2) Is manifested before the person attains age 22;

(3) Is likely to continue indefinitely;

(4) Results in substantial functional limitations in one or more of the following areas of major life activity:

- (i) Self-care,
- (ii) Receptive and expressive language,
- (iii) Learning,
- (iv) Mobility,
- (v) Self-direction,
- (vi) Capacity for independent living, and
- (vii) Economic self-sufficiency; and

(5) Reflects the person's need for a combination and sequence of special care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

*Displaced homemaker.* An individual who is an adult; has not worked full-time full-year (2,080 hours) in the labor force for a number of years but has during such years worked primarily without remuneration to care for the home and family; and is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

*Elderly family.* An elderly family consists of one of the following:

(1) A person who is the head, spouse, or sole member of a household and who is 62 years of age or older, or who is disabled and is the applicant/borrower or the coapplicant/coborrower; or

(2) Two or more unrelated elderly (age 62 or older), disabled persons who are living together, at least one of whom is the applicant/borrower or coapplicant/coborrower; or

(3) In the case of a family where a deceased borrower/coborrower or spouse was at least 62 years old or disabled, the surviving household members shall continue to be classified as an "elderly family" for the purpose of determining adjusted income even though the surviving members may not meet the definition of elderly family on their own, provided:

(i) They occupied the dwelling with the deceased family member at the time of his/her death; and

(ii) If one of the surviving members is the spouse of the deceased family member, the surviving family shall be classified as an elderly family only until the remarriage of the surviving spouse; and

(iii) At the time of death, the dwelling of the deceased family member was financed under title V of the Housing Act of 1949, as amended.

*Eligible lender.* A Lender meeting the criteria outlined in § 1980.309 who has requested and received RHCDS approval for participation in the program.

*Existing dwelling.* A dwelling which has been completed for more than 1 year as evidenced by an occupancy permit or a similar document.

*Extended family.* A family unit comprised of adult relatives who live together with the other members of the household, for reasons of physical dependency, economics, and/or social custom, who, under other circumstances, could maintain separate households. A typical example is parents living with their adult children.

*Federal National Mortgage Association (Fannie Mae) rate.* The rate authorized in exhibit B of FmHA Instruction 440.1 (available in any RHCDS office).

*Finance Office.* The office which maintains RHCDS's financial records.

*First-time homebuyer.* Any individual who (and whose spouse) has had no present ownership in a principal residence during the 3 year period ending on the date of purchase of the property acquired with a guaranteed loan under this subpart. A first-time homebuyer includes displaced homemakers and single parents even though they might have owned, or resided in, a dwelling with a spouse. This definition is used to determine RHCDS processing priority in accordance with § 1980.353.

*Guaranteed loan.* A loan made, held, and serviced by a Lender for which RHCDS has entered into an agreement with the Lender in accordance with this subpart.

*Household or family.* The applicant, coapplicant, and all other persons who will make the applicant's dwelling their primary residence for all or part of the next 12 months. The temporary absence of a child from the home due to placement in foster care shall not be taken into account in considering family composition and size. Foster children placed in the borrower's home and live-in aides shall not be counted as members of the household.

*Interest assistance.* Loan assistance payments made by RHCDS to the Lender on behalf of the borrower.

*Lender.* The organization making, holding, and/or servicing the loan which is guaranteed under the provisions of this subpart. The Lender is also the party requesting the guarantee. The Lender includes an entity purchasing an RHCDS guaranteed loan. A purchasing Lender acquires all the privileges, duties, and responsibilities of the originating Lender. The Lender is primarily responsible for originating,

underwriting, servicing, and, where necessary, liquidating the loan and disposing of the property in a manner consistent with maximizing the Government's interest.

*Lender agreement.* The signed master agreement between RHCDS and the Lender setting forth the Lender's loan responsibilities for loan processing and servicing guaranteed RH loans.

*Lender record change.* The Lender's notice to RHCDS of a change of Lender or a change of servicer.

*Liquidation.* Liquidation of the loan occurs when the Lender acquires title to the security, a third party buys the property at the foreclosure sale, or the borrower sells the property to a third party in order to avoid or cure a default situation with the prior approval of the Lender and RHCDS. In states providing a redemption period, the Lender does not typically acquire title until after expiration of the redemption period.

*Liquidation expense.* The Lender's cost of liquidation including those costs that do not qualify as a protective advance.

*Loan note guarantee.* The signed commitment issued by RHCDS setting forth the terms and conditions of the guarantee.

*Manufactured home.* A structure built to the Federal Manufactured Home Construction and Safety Standards and RHCDS thermal requirements.

*Master interest assistance agreement.* The agreement among RHCDS, the borrower, and the Lender which provides the basis for payment of interest assistance and shared equity.

*Minor.* A person under 18 years of age. Neither the applicant, coapplicant, or spouse may be counted as a minor. Foster children placed in the borrower's home are not counted as minors for the purpose of determination of annual or adjusted income.

*Net family assets.* Include:

(1) The value of equity in real property, savings, individual retirement accounts (IRA), demand deposits, and the market value of stocks, bonds, and other forms of capital investments, but exclude:

- (i) Interests in Indian Trust land,
- (ii) The value of the dwelling and a minimum adequate site,
- (iii) Cash on hand which will be used to reduce the amount of the loan,
- (iv) The value of necessary items of personal property such as furniture and automobiles and the debts against them,
- (v) The assets that are a part of the business, trade, or farming operation in the case of any member of the household who is actively engaged in such operation, and
- (vi) The value of a trust fund that has been established and the trust is 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 RHCDS 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 RHCDS 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 RHCDS 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.

*RHCDS*—Rural Housing and Community Development 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 RHCDS. 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 RHCDS 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 RHCDS guaranteed RH loan program upon presentation of evidence of said approval and execution of the RHCDS 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 RHCDS, Rural Business and Cooperative Development Service, Rural Utilities Service, and/or Consolidated 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 RHCDS:

- (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 RHCDS 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 RHCDS.

(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 RHCDS guaranteed loans in accordance with Agency regulations.

(iii) Permit RHCDS employees or its designated representatives to examine or audit all records and accounts related to any RHCDS 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 Mac, or, for FCS Lenders, use the appropriate FCS forms.

(vi) Maintain its approval if qualification as an RHCDS Lender was based on approval by HUD, VA, Fannie Mae, or Freddie Mac including maintaining the minimum allowable net capital, acceptable levels of liquidity, and any required fidelity bonding and/or mortgage servicing errors and omissions policies required by HUD, VA, Fannie Mae, or Freddie Mac, as appropriate.

(vii) Operate its facilities in a prudent and business-like manner.

(viii) Assure that its staff is well trained and experienced in loan origination and/or loan servicing functions, as necessary, to assure the capability of performing all of the necessary origination and servicing functions.

(ix) Notify RHCDS in writing if the Lender:

(A) Ceases to meet any financial requirements of the entity under which the Lender qualified for RHCDS eligibility;

(B) Becomes insolvent;

(C) Has filed for bankruptcy protection, has been forced into involuntary bankruptcy, or has requested an assignment for the benefit of creditors;

(D) Has taken any action to cease operations or discontinue servicing or liquidating any or all of its portfolio of RHCDS guaranteed loans;

(E) Has any change in the Lender name, location, address, or corporate structure;

(F) Has become delinquent on any Federal debt or has been debarred, suspended, or sanctioned by any Federal agency or in accordance with any applicable state licensing or certification requirements.

(c) [Reserved]

(d) *Handling applications for Lender eligibility.* Upon determination of a Lender's eligibility to originate loans, RHCDS and the Lender will execute the RHCDS Lender Agreement. The Lender Agreement establishes the Lender's authorization for participation in the program as an originator, servicer, or holder of RHCDS single family mortgage loans. The Lender Agreement shall be in effect until terminated by either the Agency or the Lender in accordance with the terms of the Lender Agreement and this subpart.

(e) *Lender sale of guaranteed loans.* Loans guaranteed under this subpart may be sold only to entities which meet the qualifications in paragraphs (a) and (b) of this section or directly to Fannie Mae or Freddie Mac. Such entities are referred to as a Lender and are to be treated as a Lender for all purposes under this subpart. The selling Lender shall provide the original loan note guarantee to the purchasing Lender. The selling Lender is responsible for reporting the sale of any loan to RHCDS within 30 days using a reporting form provided by RHCDS. The purchasing Lender must execute a Lender Agreement or have a valid Lender Agreement on file with RHCDS. The purchasing Lender shall succeed to all rights, title, and interest of the Lender under the loan note guarantee. Any necessary or convenient assignments or other instruments relating to the loan and any other actions necessary or convenient to perfect or record such transaction are the responsibility of the purchasing Lender. The purchasing Lender assumes the obligations of, and will be bound by and will comply with, all covenants, agreements, terms, and conditions contained in any note, security instrument, loan note guarantee, and of any outstanding agreements in connection with such loan purchased. The purchasing Lender shall be subject to any defenses, claims, or setoffs that RHCDS would have against the Lender if the Lender had continued to hold the loan.

(f) *Lender responsibility.* The Lender will be responsible for the processing, servicing, and liquidation (if necessary) of the loan. The Lender may use agents, correspondents, branches, financial experts, or other institutions in carrying out its responsibilities. Lenders are fully responsible for their own actions and

the actions of those acting on the Lender's behalf.

(1) *Processing.* The Lender must abide by limitations on loan purposes, loan limitations, interest rates, and terms set forth in this subpart. The Lender will obtain, complete, and submit to RHCDS the items required in § 1980.353(c). The Lender may utilize the services of a non-RHCDS approved lender for originating residential loans. The RHCDS approved lender is responsible for the loan underwriting and for obtaining the RHCDS conditional commitment. The agent may close the loan in its name provided the loan is immediately transferred to the approved lender to whom the guarantee will be issued.

(2) *Servicing.* Lenders are fully responsible for servicing and protecting the security for all guaranteed loans. When servicing is carried out by a third party, the Lender will inform RHCDS of the name and address of the servicer.

(3) *Liquidation.* The Lender will complete any liquidation of loans guaranteed under the provisions of the Lender Agreement. Loss claims will be submitted on the RHCDS Loss Report form. The loss report will be accompanied by supporting information to outline disposition of all security pledged to secure the loan. The Lender shall also effect collection of the debt from other assets of the borrower to the extent practicable.

(4) *Counseling.* Lenders are encouraged to offer or provide for home ownership counseling. Lenders may require first-time homebuyers to undergo such counseling if it is reasonably available in the local area. When home ownership counseling is provided or sponsored by RHCDS or another Federal agency in the local area, the Lender must require the borrower to successfully complete the course.

(g) *Monitoring a Lender's processing and servicing of loans.* If RHCDS determines that the Lender is not fulfilling the obligations of the Lender Agreement or that the Lender fails to maintain the required criteria, the Lender will be notified in writing of the deficiencies and allowed a maximum of 30 days to correct them. If the Lender fails to make the required corrections, RHCDS will proceed as provided in paragraph (h) of this section.

(1) *Loan processing review for new Lenders.* RHCDS may review loans developed by an eligible Lender to assure compliance with, and understanding of, Agency regulations.

(2) [Reserved]

(3) [Reserved]

(h) *Termination of Lender eligibility.* The Lender remains eligible as long as the Lender meets the criteria in

paragraph (a) of this section unless that Lender's status is revoked by RHCDS or by another Federal agency. RHCDS shall revoke the eligible Lender status of any Lender who fails to comply with requirements of paragraph (b) or (e) of this section. Status may also be revoked if the Lender violates the terms of the Lender Agreement, fails to properly service any guaranteed loan, or fails to adequately protect the interests of the Lender and the Government. If the Lender is determined to be no longer eligible, the Lender will continue to service any outstanding loans guaranteed under this subpart which are held by the Lender or RHCDS may require the Lender to transfer the servicing of the loan. In addition to revocation of eligible Lender status, the Lender may be debarred by RHCDS.

#### § 1980.310 Loan purposes.

The purpose of a loan guaranteed under this subpart must be to acquire a completed dwelling and related facilities to be used by the applicant as a primary residence. The loan may be to purchase a new dwelling or an existing dwelling. The guaranteed loan may be for "take out" financing for a loan to construct a new dwelling or improve an existing dwelling when the construction financing is arranged in connection with the loan package. The loan may include funds for the purchase and installation of necessary appliances, energy saving measures, and storm cellars. Incidental expenses for tax monitoring services, architectural, appraisal, survey, environmental, and other technical services may be included. Subject to § 1980.311, eligible loan purposes also include:

(a) Necessary related facilities such as a garage, storage shed, walks, driveway, and water and/or sewage facilities including reasonable connection fees for utilities which the buyer is required to pay.

(b) Special design features or equipment necessary to accommodate a physically disabled member of the household.

(c) The cost of establishing an escrow account for real estate taxes and/or insurance premiums.

(d) Title clearance, title insurance, and loan closing; stock in a cooperative lending agency necessary to obtain the loan; and, for low-income applicants only, loan discount points to reduce the note interest rate from the rate authorized in § 1980.320 not exceeding the amount typical for the area.

(e) Provide funds for seller equity and/or essential repairs when an existing guaranteed loan is to be assumed simultaneously.

#### § 1980.311 Loan limitations and special provisions.

(a) *Prohibited loan purposes.*

Conditional commitments will not be issued if loan funds are to be used for:

- (1) Payment of construction draws.
- (2) The purchase of furniture or other personal property except for essential equipment and materials authorized in accordance with § 1980.310.
- (3) Refinancing RHCDS debts, debts owed the Lender (other than construction/development, financing incurred in conjunction with the proposed loan), or debts on a manufactured home.

(4) Purchase or improvement of income-producing land, or buildings to be used principally for income-producing purposes, or buildings not essential for RH purposes, or to buy or build buildings which are largely or in part specifically designed to accommodate a business or income-producing enterprise.

(5) Payment of fees, charges, or commissions, such as finder's fees for packaging the applications or placement fees for the referral of a prospective applicant to RHCDS.

(6) Improving the entry of a homestead entryman or desert entryman prior to receipt of patent.

(7) Purchase a dwelling with an in-ground swimming pool.

(b) *Limitations.* The principal purpose of the loan, except for a subsequent loan to an existing borrower, must be to buy or build a dwelling. The loan may include additional funds in accordance with § 1980.310. The amount of the loan may not exceed the maximum dollar limitation of section 203(b)(2) of the National Housing Act (12 U.S.C. 1702).

(1) A loan for the acquisition of a newly constructed dwelling that meets the requirements of § 1980.341(b) of this subpart may be made for up to 100 percent of the appraised value or the cost of acquisition and any necessary development including those purposes in § 1980.310, whichever is less.

(2) A loan for the acquisition of an existing dwelling and development, if any, in conjunction with the acquisition of an existing dwelling may be made for up to 100 percent of the appraised value or the cost of acquisition and necessary development including those purposes in § 1980.310, whichever is less.

(3) A loan for the acquisition of a newly constructed dwelling (a dwelling that does not meet the definition for an existing dwelling) that does not meet the requirements of § 1980.341(b) is limited to 90 percent of the present market value.

(c) *Subdivisions.* Housing units may be financed in existing subdivisions

approved by local, regional, state, or Federal government agencies before issuance of a conditional commitment. The subdivision must meet the requirements of § 1901.203. An existing subdivision is one in which the local government has accepted the subdivision plan, its principal developments and right-of-ways, the construction of streets, water and water/waste disposal systems, and utilities; is at a point which precludes any major changes; and provisions are in place for continuous maintenance of the streets and the water and water/waste disposal systems. A dwelling served by a homeowners association (HOA) may be accepted when the project has been approved or accepted by HUD, VA, Fannie Mae, or Freddie Mac.

#### § 1980.312 Rural area designation.

A rural area is an area which is identified as rural by RHCDS in accordance with § 1944.10. Current county maps showing ineligible areas are available in RHCDS field offices.

#### § 1980.313 Site and building requirements.

(a) *Rural area.* The property on which the loan is made must be located in a designated rural area as identified in § 1980.312. A nonfarm tract to be purchased or improved with loan funds must not be closely associated with farm service buildings.

(b) *Access.* The property must be contiguous to and have direct access from a street, road, or driveway. Streets and roads must be hard surface or all-weather surface.

(c) *Water and water/waste disposal system.* A nonfarm tract on which a loan is to be made must have an adequate water and water/waste disposal system and other related facilities. Water and water/waste disposal systems serving the site must be approved by a state or local government agency. When the site is served by a privately owned and centrally operated water and water/waste disposal system, the system must meet the design requirements of the State Department of Health or comparable reviewing and regulatory agency. Written verification must be obtained from the regulatory agency that the private water and water/waste system complies with the Safe Drinking Water Act (42 U.S.C. 300F *et seq.*), and the Clean Water Act (33 U.S.C. 1251 *et seq.*), respectively. A system owned and/or operated by a private party must have a binding agreement which allows interested third parties, such as the Lender, to enforce the obligation of the operator to provide satisfactory service at reasonable rates.

(d) [Reserved]

(e) *Modest house.* Dwellings financed must provide decent, safe, and sanitary housing and be modest in cost. A dwelling that can be purchased with a loan not exceeding the maximum dollar limitation of section 203(b)(2) of the National Housing Act (12 U.S.C. 1702) is considered modest. Generally, the value of the site must not exceed 30 percent of the total value of the property. When the value of the site is typical for the area, as evidenced by the appraisal, and the site cannot be subdivided into two or more sites, the 30 percent limitation may be exceeded.

(f) *Thermal standards.* Dwellings financed shall meet the standards outlined in exhibit D of subpart A of part 1924 except for an existing dwelling, if documentation is provided to establish that the actual cost of heating and cooling is not significantly greater than those costs for a dwelling that meets RHCDS's thermal standards. If the dwelling is excepted, only the perimeter of the house at the band beam and the heat ducts in unheated basements or crawlspace must be insulated.

(g) *Existing dwelling.* An existing dwelling financed must be cost effective to the applicant including reasonable costs of utilities and maintenance for the area. Loan guarantees may be made on an existing manufactured home when it meets the provisions of paragraph (i)(2)(i) of this section.

(h) *Repairs.* Any dwelling financed with an RHCDS guarantee must be structurally sound, functionally adequate, and placed in good repair prior to issuance of the Loan Note Guarantee except as provided in § 1980.315.

(i) *Manufactured homes.* New units that meet the requirements of exhibit J of subpart A of part 1924 and purchased through RHCDS approved dealer-contractors may be considered for a guaranteed loan under this subpart. The Lender may obtain a list of RHCDS approved models and dealer-contractors from any RHCDS office in the area served.

(1) Loans may be guaranteed for the following purposes when the security covers both the unit and the lot:

(i) A new unit and related site development work on a site owned or purchased by the applicant which meets the requirements and limitations of this section or a leasehold meeting the provisions of § 1980.314.

(ii) Transportation and set-up costs for a new unit.

(2) Loans may not be guaranteed for:

(i) An existing unit and site unless it is already financed with a Section 502 RH direct or guaranteed loan, is being

sold from RHCDS inventory, or is being sold from the Lender's inventory provided the Lender acquired possession of the unit through a loan guaranteed under this subpart.

(ii) The purchase of a site without also financing the unit.

(iii) Existing debts owed by the applicant/borrower.

(iv) A unit without an affixed certification label indicating the unit was constructed in accordance with the Federal Manufactured Home Construction and Safety Standards.

(v) Alteration or remodeling of the unit when the initial loan is made.

(vi) Furniture, including movable articles of personal property such as drapes, beds, bedding, chairs, sofas, lamps, tables, televisions, radios, stereo sets, and similar items. Items such as wall-to-wall carpeting, refrigerators, ovens, ranges, clothes washers or dryers, heating or cooling equipment, or similar items may be financed.

(vii) Any unit not constructed to the RHCDS thermal standards as identified by an affixed label for the winter degree day zone where the unit will be located.

#### § 1980.314 Loans on leasehold interests.

A loan may be guaranteed if made on a leasehold owned or being acquired by the applicant when the Lender determines that long-term leasing of homesites is a well established practice and such leaseholds are freely marketable in the area provided the Lender determines and certifies to RHCDS that:

(a) *Unable to obtain fee title.* The applicant is unable to obtain fee title to the property.

(b) *Unexpired term.* The lease has an unexpired term (term plus option to renew) of at least 40 years from the date of approval.

#### § 1980.315 Escrow accounts for exterior development.

When proposed exterior development work cannot be completed because of weather and the work remaining to be done does not affect the livability of the dwelling, an escrow account *for exterior development only* may be established by the originating lender if the following conditions are met:

(a) A signed contract and bid schedule is in effect for the proposed exterior development work.

(b) The contract for development work must provide for completion within 120 days.

(c) The Lender agrees to obtain a final inspection report and advise RHCDS when the work has been completed.

(d) The escrow account must be funded in an amount sufficient to assure

the completion of the remaining work. This figure should be 150 percent of the cost of completion but may be higher if the Lender determines a higher amount is needed.

#### § 1980.316 Environmental requirements.

The requirements of subpart G of part 1940 apply to loan guarantees made under this subpart. Lenders and applicants must cooperate with RHCDS in the completion of these requirements. Lenders must become familiar with these requirements so that they can advise applicants and reduce the probability of unacceptable applications being submitted to RHCDS. RHCDS may require that Lenders and/or applicants obtain information for completing environmental assessments when necessary. The RHCDS approval official will utilize adequate, reliable information in completion of environmental review. Sources of information include, but are not limited to, the State Natural Resource Management Guide (available in any RHCDS office) and, as necessary, the technical expertise available within the Agency as well as other agencies and organizations to assist in the completion of the environmental review.

#### § 1980.317 Equal opportunity and nondiscrimination requirements in use, occupancy, rental, or sale of housing.

(a) *Compliance.* Loans guaranteed under this subpart are subject to the provisions of various civil rights statutes. RHCDS and the Lender may not discriminate against any person in making guaranteed housing loans available, or impose different terms and conditions for the availability of these loans based on a person's race, color, familial status, religion, sex, age, physical or mental disability, or national origin, provided the applicant possesses the capacity to enter into a legal contract for services. These requirements will be discussed with the applicant, builder, developer, and other parties involved as early in the negotiations as possible.

(b) *Reporting.* If there is indication of noncompliance with these requirements, the matter will be reported by the borrower, Lender, or RHCDS personnel to the Administrator or the Director, Equal Opportunity Staff. Complaints and compliance will be handled by RHCDS in accordance with subpart E of part 1901.

(c) *Forms and requirements.* In accordance with Executive Order 11246, the following equal opportunity and nondiscrimination forms and requirements are applicable when the loan guarantee involves a construction

contract between the borrower and the contractor that is more than \$10,000. The Lender is responsible for seeing that the requirements of paragraphs (c)(1) through (c)(5) of this section are met:

(1) *Equal Opportunity Agreement.* Before loan closing, each borrower whose loan involves a construction contract of more than \$10,000 must execute the RHCDS Equal Opportunity Agreement or the equivalent HUD form.

(2) *Construction contract or subcontract in excess of \$10,000.* If the contract or a subcontract exceeds \$10,000:

(i) The contractor or subcontractor must submit the Agency Compliance Statement before or as a part of the bid or negotiation.

(ii) An Equal Opportunity Clause must be part of each contract and subcontract.

(iii) With notification of the contract award, the contractor must receive the Agency Notice to Contractors and Applicants signed by RHCDS, with an attached Equal Employment Opportunity poster. Posters in Spanish must be provided and displayed where a significant portion of the population is Spanish speaking.

(iv) Under Executive Order 11246 and Executive Order 11375, the contractor or subcontractor, subject to the requirements of paragraph (c)(5) of this section, is prohibited from discriminating because of race, color, religion, sex, or national origin to ensure equality of opportunity in all aspects of employment.

(3) *One hundred or more employees and construction contract or subcontract exceeds \$10,000.* If the contractor or subcontractor has 100 or more employees and the contract or subcontract is for more than \$10,000, in addition to the requirements of paragraph (c)(2) of this section, a report must be filed annually on or before March 31. Failure to file timely, complete, and accurate reports constitutes noncompliance with the Equal Opportunity Clause. Report forms are distributed by the Joint Reporting Committee and any questions on this form should be addressed by the contractor or subcontractor to the Joint Reporting Committee, 1800 G Street, NW., Washington, D.C. 20006.

(4) *Fifty or more employees and construction contract or subcontract exceeds \$50,000.* If the contract or subcontract is more than \$50,000 and the contractor or subcontractor has 50 or more employees, in addition to the requirements of paragraph (c)(2) of this section, each such contractor or subcontractor must be informed that the contractor or subcontractor must

develop a written affirmative action compliance program for each of the contractor's or subcontractor's establishments and put it on file in each of the personnel offices within 120 days of the commencement of the contract or subcontract.

(5) [Reserved]

(6) *Employee complaints.* Any employee of or applicant for employment with such contractors or subcontractors may file a written complaint of discrimination with RHCDS.

(i) A written complaint of alleged discrimination must be signed by the complainant and should include the following information:

(A) The name and address (including telephone number, if any) of the complainant.

(B) The name and address of the person committing the alleged discrimination.

(C) A description of the acts considered to be discriminatory.

(D) Any other pertinent information that will assist in the investigation and resolution of the complaint.

(ii) Such complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by RHCDS for good cause shown by the complainant.

#### **§ 1980.318 Flood or mudslide hazard area precautions.**

RHCDS policy is to discourage lending in designated flood and mudslide hazard areas. Loan guarantees shall not be issued in designated flood/mudslide hazard areas unless there is no practical alternative.

(a) *Dwelling location.* Dwellings and building improvements located in special flood or mudslide hazard areas, as designated by the Federal Emergency Management Agency (FEMA) may be financed under this subpart only if:

(1) The community, as a result of such designation by FEMA as a special flood or mudslide prone area, has an approved flood plain area management plan.

(2) The dwelling location and construction plans and specifications for new buildings or improvements to existing buildings comply with an approved flood plain area management plan (see paragraph (a)(1) of this section).

(3) Potential environmental impacts and feasible alternatives have been fully considered by RHCDS in accordance with the requirements of subpart G of part 1940.

(4) The first floor elevation is above the 100 year flood zone elevation.

(b) *Flood insurance.* If the dwelling is located in a special flood or mudslide

hazard area, flood insurance must be purchased by the borrower prior to loan closing and maintained thereafter. See subpart B of part 1806 (FmHA Instruction 426.2).

#### **§ 1980.319 Other Federal, State, and local requirements.**

In addition to the specific requirements of this subpart, on all proposals financed with an RHCDS guarantee, Lenders and/or applicants must coordinate with all appropriate Federal, state, and local agencies. Applicants and/or Lenders will be required to comply with any Federal, state, or local laws, regulatory commission rules, ordinances, and regulations which exist at the time the loan guarantee is issued which affect the dwelling including, but not limited to:

(a) Borrowing money and giving security therefore;

(b) Land use zoning;

(c) Health, safety, and sanitation standards; and

(d) Protection of the environment and consumer affairs.

#### **§ 1980.320 Interest rate.**

The interest rate must not exceed the established applicable usury rate. Loans guaranteed under this subpart must bear a fixed interest rate over the life of the loan. The rate shall be agreed upon by the borrower and the Lender and must not be more than the lender's published rate for VA first mortgage loans with no discount points or the current Fannie Mae rate as defined in § 1980.302(a), whichever is higher. The lender must document the rate and the date it was determined.

#### **§ 1980.321 Terms of loan repayment.**

(a) *Note.* Principal and interest shall be due and payable monthly.

(b) *Term.* The term for final maturity shall be not less than 30 years from the date of the note and not more than 30 years from the date of the first scheduled payment.

#### **§ 1980.322 Loan guarantee limits.**

The amount of the loan guarantee is 90 percent of the principal amount of the loan.

(a) The maximum loss payment under the guarantee of Single Family Housing loans is the lesser of:

(1) Any loss of an amount equal to 90 percent of the principal amount actually advanced to the borrower, or

(2) Any loss sustained by the Lender of an amount up to 35 percent of the principal amount actually advanced to the borrower, plus 85 percent of any additional loss sustained by the Lender of an amount up to the remaining 65

percent of the principal amount actually advanced to the borrower.

(b) Loss includes only:

(1) Principal and interest evidenced by the guaranteed loan note;

(2) Any loan subsidy due and owing; and

(3) Any principal and interest indebtedness on RHCDS approved protective advances for protection and preservation of security.

(c) Interest (including any subsidy) shall be covered by the loan note guarantee to the date of the final loss settlement when the Lender conducts liquidation in an expeditious manner in accordance with the provisions of § 1980.376.

**§ 1980.323 Guarantee fee.**

The Lender will pay a nonrefundable fee which may be passed on to the borrower. The amount of the fee is determined by multiplying the figure in exhibit K of FmHA Instruction 440.1 (available in any RHCDS office) times 90 percent of the principal amount of the loan.

**§ 1980.324 Charges and fees by Lender.**

(a) *Routine charges and fees.* The Lender may establish the charges and fees for the loan, provided they are the same as those charged other applicants for similar types of transactions.

(b) *Late payment charges.* Late payment charges will not be covered by the guarantee. Such charges may not be added to the principal and interest due under any guaranteed note. Late charges may be made only if:

(1) *Maximum amount.* The maximum amount does not exceed the percentage of the payment due as prescribed by HUD or Fannie Mae or Freddie Mac.

(2) *Routine.* They are routinely made by the Lender in similar types of loan transactions.

(3) *Payments received.* Payments have not been received within the customary time frame allowed by the Lender. The term "payment received" means that the payment in cash, check, money order, or similar medium has been received by the Lender at its main office, branch office, or other designated place of payment.

(4) *Calculating charges.* The Lender does not change the rate or method of calculating the late payment charges to increase charges while the loan note guarantee is in effect.

(5) *Interest-assisted loans.* The Lender will not penalize or charge any fee to the borrower when the only delinquency is a loan subsidy payment, which the Lender is entitled to but has not received.

**§ 1980.325 Transactions which will not be guaranteed.**

(a) *Lease payments.* Payments made on a lease will not be guaranteed.

(b) *Loans made by other Federal agencies.* Loans made by other Federal agencies will not be guaranteed. This does not preclude guarantees of loans made by an FCS institution with direct lending authority. This also does not preclude loans made by state or local government agencies assisted by a Federal agency.

**§§ 1980.326–1980.329 [Reserved]**

**§ 1980.330 Applicant equity requirements.**

A loan to purchase a new or existing dwelling may be made up to the appraised market value of the security.

**§ 1980.331 Collateral.**

(a) *General.* The entire loan must be secured by a first lien on the property being financed (second lien when the loan is for a subsequent loan to an existing borrower or there is a transfer and assumption of an existing loan) and the Lender will maintain this lien priority. The Lender is responsible for assurance that proper and adequate security interest is obtained, maintained in existence, and of record to protect the interests of the Lender and RHCDS.

(b) *Third party liens, suits pending, etc.* Among other things in obtaining the required security, it is necessary to ascertain that there are no adverse claims or liens against the property or the borrower, and that there are no suits pending or anticipated that would affect the property or the borrower.

(c) *All collateral must secure the entire loan.* The Lender will not take separate collateral, including but not limited to mortgage insurance, to secure that portion of the loss not covered by the guarantee.

**§ 1980.332 [Reserved]**

**§ 1980.333 Promissory notes and security instruments.**

(a) *Loan instruments.* The Lender may use its own forms for promissory notes, real estate mortgages, including deeds of trust and similar instruments, and security agreements provided there are no provisions that are in conflict or otherwise inconsistent with the provisions of § 1980.309(b)(2)(v). The Lender is responsible for determining that the security instruments are adequate and are properly maintained of record.

(b) *Interest assistance instruments.* When the loan guarantee is authorized from interest assisted funds, RHCDS will provide the Lender with the necessary forms and security

instruments related to the interest assistance. The Lender will complete the Master Interest Assistance Agreement, assure that the closing agent properly records a junior mortgage or deed of trust which grants RHCDS a lien on the property in order to protect RHCDS's equity share subject only to the first mortgage or deed of trust to the Lender or other authorized prior lien, and forward the agreements and recorded instruments to RHCDS.

**§ 1980.334 Appraisal of property serving as collateral.**

An appraisal of all property serving as security for the proposed loan will be completed and submitted to RHCDS for review with the request for loan guarantee. The Lender may pass the cost of the appraisal on to the borrower. The appraisal must have been completed within 6 months of the date the request for a conditional commitment is submitted to RHCDS.

(a) *Qualified appraiser.* The Lender will use an appraiser that is properly licensed or certified, as appropriate, to make residential real estate appraisals in accordance with the criteria set forth by the Appraiser Qualification Board (AQB) of the Appraisal Foundation regardless of the amount of the loan. Appraisers may not discriminate against any person in making or performing appraisal services because of race, color, familial status, religion, sex, age, disability, or national origin.

(b) *Appraisal report.* Residential appraisals will be completed using the sales comparison (market) and cost approach to market value.

(1) *URAR.* The appraiser will use the most recent revision of the URAR.

(i) The "Estimated Reproduction Cost-New of Improvements" section of the form must be completed when the dwelling is less than 1 year old.

(ii) Not less than three comparable sales, which are not more than 12 months old, will be used unless the appraiser provides documentation that such comparables are not available in the area. Comparable sales should be located as close as possible to the subject dwelling. When the need arises to use a comparable sale that is a considerable distance from the subject, the appraiser must use his or her knowledge of the area and apply good judgment in selecting comparable sales that are the best indicators of value for the subject property.

(2) *Supporting documentation.* A narrative explanation supporting unusual adjustments must be attached to the appraisal.

(3) *Photographs.* The appraisal report must include photographs which clearly

provide front, rear, and street scene views of the subject property, and a front view for each comparable sale used in the completion of the appraisal.

(c) *RHCDS acceptance.* The Lender will be required to correct or complete any appraisal returned by RHCDS for corrective action.

**§§ 1980.335–1980.339 [Reserved]**

**§ 1980.340 Acquisition, construction, and development.**

(a) *Acquisition of property.* The Lender is responsible for seeing that the property to be acquired with loan funds is acquired as planned and that the required security interest is obtained.

(b) *New construction.* A new dwelling financed with a guaranteed loan must:

(1) Have been built in accordance with building plans and specifications that contain approved building code certifications (eligible certifiers are listed in § 1924.5(f)(1)(iii)).

(2) Conform to RHCDS thermal standards (exhibit D of subpart A of part 1924).

(i) The builder may certify conformance with RHCDS thermal standards contained in paragraph IV A of exhibit D of subpart A of part 1924.

(ii) A qualified, registered architect or a qualified, registered engineer must certify conformance with RHCDS thermal standards contained in paragraph IV C of exhibit D of subpart A of part 1924.

(c) *Development.* The Lender and borrower are responsible for seeing that the loan purposes are accomplished and loan funds are properly utilized. This includes, but is not limited to, seeing that:

(1) The applicable development standards are adhered to;

(2) Drawings and specifications are certified and complied with;

(3) Adequate water, electric, heating, waste disposal, and other necessary utilities and facilities are obtained;

(4) Equal opportunity and nondiscrimination requirements are met, (see § 1980.317); and

(5) A builder's warranty is issued when new construction, repair, or rehabilitation is involved, which provides for at least 1 year's warranty from the date of completion or acceptance of the work.

**§ 1980.341 Inspections of construction and compliance reviews.**

(a) *Qualified inspectors.* Inspections will be made during construction by a construction inspector deemed qualified and approved by the Lender. A qualified inspector is one that a reasonable person would hire to perform an inspection of his/her own dwelling.

(b) *Inspections.* Inspections shall be done by a party the Lender determines to be qualified, such as a HUD approved fee inspector. The sale agreement shall identify which party (i.e., purchaser or seller) is responsible to obtain and pay for required inspections and certifications. In connection with inspections involving construction contracts, equal opportunity and nondiscrimination compliance reviews must be made as required by § 1980.317.

(1) For existing dwellings, inspections must be made to determine that the dwelling:

(i) Meets the current requirements of HUD Handbooks 4150.1 and 4905.1 (available from the HUD Ordering Desk 1-800-767-7468).

(ii) Meets the thermal standards per § 1980.313(f).

(2) For a newly constructed dwelling, when construction is planned, the Lender must see that the following inspections are made in addition to any additional inspections the Lender deems appropriate:

(i) When footings and foundations are ready to be poured but prior to back-filling.

(ii) When shell is closed in but plumbing, electrical, and mechanical work are still exposed.

(iii) When construction is completed prior to occupancy.

(iv) Inspections under paragraphs (b)(2) (i) and (ii) of this section are not required when the builder supplies an insured 10 year warranty plan acceptable under the requirements of exhibit L of subpart A of part 1924.

(c) *Water and water/waste disposal.* The Lender will see that the water and water/waste disposal systems have been approved by a state or local government agency.

**§§ 1980.342–1980.344 [Reserved]**

**§ 1980.345 Applicant eligibility requirements for a guaranteed loan.**

Applicants who meet the requirements of this section are eligible for a loan guaranteed under this subpart. Applicants desiring loan assistance as provided in this subpart must file loan applications with a Lender that meets the requirements set forth in § 1980.309. The Lender may accept applications filed through its agents, correspondents, branches, or other institutions. The Lender must have at least one personal interview with the applicant to verify the information on the application and to obtain a complete picture of the applicant's financial situation.

(a) *Eligible income.* The applicant's adjusted annual income determined in accordance with § 1980.348 may not

exceed the applicable income limit contained in exhibit C of FmHA Instruction 1980-D (available in any RHCDS office) at the time of issuance of the conditional commitment. Adjusted annual income is used to determine eligibility for the RHCDS loan guarantee.

(b) *Adequate and dependable income.* The applicant (and coapplicant, if applicable) has adequate and dependably available income. The applicant's history of income and the history of the typical annual income of others in the area with similar types of employment will be considered in determining whether the applicant's income is adequate and dependable.

(1) A farm or nonfarm business loss must be considered in determining repayment ability.

(2) A loss may not be used to offset other income in order to qualify for or increase the amount of RHCDS assistance.

(c) *Determining repayment ability.* In considering whether the applicant has adequate repayment ability, the Lender must calculate a total debt ratio. The applicant's total debt ratio is calculated by dividing the applicant's monthly obligations by gross monthly income.

(1) Monthly obligation consists of the principal, interest, taxes, and insurance (PITI) for the proposed loan (less any interest assistance under this program or any other assistance from a state or county sponsored program when such payments are made directly to the Lender on the applicant's behalf), homeowner and other assessments, and the applicant's long term obligations. Long term obligations include those obligations such as alimony, child support, and other obligations with a remaining repayment period of more than 6 months and other shorter term debts that are considered to have a significant impact on repayment ability.

(i) *Cosigned obligations.* Debts which have been cosigned by the applicant for another party must be considered unless the applicant provides evidence (usually canceled checks of the co-obligor or other third party) that it has not been necessary for the applicant to make any payments over the past 12 months.

(ii) *Liability on a previous mortgage.* When the applicant has disposed of a property through a sale, trade, or transfer without a release of liability, the debt must be considered unless the applicant provides evidence (usually canceled checks of the new owners) that the new owners have successfully made all payments over the past 12 months.

(2) Income, for the purpose of determining the total debt ratio,

includes the total qualifying income of the applicant, coapplicant, and any other member of the household who will be a party to the note.

(i) An applicant's qualifying income may be different than the "adjusted annual income" which is used to determine program eligibility. In considering qualifying income, the Lender must determine whether there is a historical basis to conclude that the income is likely to continue. Typically, income of less than 24 months duration should not be included in qualifying income. If the applicant is obligated to pay child care costs, the amount of any Federal tax credit for which the applicant is eligible may be added to the applicant's qualifying income.

(ii) In considering income that is not subject to Federal income tax, the amount of tax savings attributable to the nontaxable income may be added for use with the repayment ratios. Adjustments for other than the applicable tax rate are not authorized. The Lender must verify that the income is not subject to Federal income tax and that the income (and its nontax status) is likely to continue. The Lender must fully document and support any adjustment made.

(3) The applicant meets RHCDS requirements for repayment ability when the applicant's total debt ratio is less than or equal to 41 percent and the ratio of the proposed PITI to income does not exceed 29 percent.

(4) Applicants who do not meet the requirements of this section will be considered ineligible unless another adult in the household has adequate income and wishes to join in the application as a coapplicant. The combined incomes and debts then may be considered in determining repayment ability.

(5) If the applicant's total debt ratio and/or PITI ratio exceed the maximum authorized ratio, the Lender may request RHCDS concurrence in allowing a higher ratio based on compensating factors. Acceptable compensating factors include but are not limited to the applicant having a history over the previous 12 month period of devoting a similar percentage of income to housing expense to that of the proposed loan, or accumulating savings which, when added to the applicant's housing expense and shows a capacity to make payments on the proposed loan. A low total debt ratio, by itself, does not compensate for a high PITI.

(d) *Credit history.* The applicant must have a credit history which indicates a reasonable ability and willingness to meet obligations as they become due.

(1) Any or all of the following are indicators of an unacceptable credit history unless the cause of the problem was beyond the applicant's control and the criteria in paragraph (d)(3) of this section are met:

(i) Incidents of more than one debt payment being more than 30 days late if the incidents have occurred within the last 12 months. This includes more than one late payment on a single account.

(ii) Loss of security due to a foreclosure if the foreclosure has occurred within the last 36 months.

(iii) Outstanding tax liens or delinquent Government debts with no satisfactory arrangements for payments, no matter what their age as long as they are currently delinquent and/or due and payable.

(iv) A court-created or affirmed obligation (judgment) caused by non-payment that is currently outstanding or has been outstanding within the last 12 months.

(v) Two or more rent payments paid 30 days or more past due within the last 3 years.

(vi) Accounts which have been converted to collections within the last 12 months (utility bills, hospital bills, etc.).

(vii) Collection accounts outstanding, with no satisfactory arrangements for payments, no matter what their age as long as they are currently delinquent and/or due and payable.

(viii) Any debts written off within the last 36 months.

(2) The following will not indicate an unacceptable credit history:

(i) "No history" of credit transactions by the applicant.

(ii) A bankruptcy in which applicant was discharged more than 36 months before application.

(iii) A satisfied judgment or foreclosure with no loss of security which was completed more than 12 months before the date of application.

(3) The Lender may consider mitigating circumstances to establish the borrower's intent for good credit when the applicant provides documentation that:

(i) The circumstances were of a temporary nature, were beyond the applicant's control, and have been removed (e.g., loss of job; delay or reduction in government benefits or other loss of income; increased expenses due to illness, death, etc.); or

(ii) The adverse action or delinquency was the result of a refusal to make full payment because of defective goods or services or as a result of some other justifiable dispute relating to the goods or services purchased or contracted for.

(e) *Previous RHCDS loan.* RHCDS shall determine whether the applicant has had a previous RHCDS debt which was settled, or is subject to settlement, or whether RHCDS otherwise suffered a loss on a loan to the applicant. If RHCDS suffered any loss related to a previous loan, a loan guarantee shall not be issued unless RHCDS determines the RHCDS loss was beyond the applicant's control, and any identifiable reasons for the loss no longer exist.

(f) *Other Federal debts.* The loan approval official will check HUD's Credit Alert Interactive Voice Response System (CAIVRS) to determine if the applicant is delinquent on a Federal debt. The Lender will clearly document both its CAIVRS identifying number and the borrower and coborrower's CAIVRS access code near the signature line on the mortgage application form. No decision to deny credit can be based solely on the results of the CAIVRS inquiry. If CAIVRS identifies a delinquent Federal debt, the Lender will immediately suspend processing of the application. The applicant will be notified that processing has been suspended and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides the Lender with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued. An outstanding judgment obtained by the United States in a Federal court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive a loan guarantee until the judgment is paid in full or otherwise satisfied. RHCDS loan guarantee funds may not be used to satisfy the judgment. If the judgment remains unsatisfied or if the applicant is delinquent on a Federal debt and is unable to resolve the delinquency, the Lender will reject the applicant.

#### § 1980.346 Other eligibility criteria.

The applicant must:

(a) Be a person who does not own a dwelling in the local commuting area or owns a dwelling which is not structurally sound, functionally adequate;

(b) Be without sufficient resources to provide the necessary housing and be unable to secure the necessary conventional credit without an RHCDS guarantee upon terms and conditions which the applicant could reasonably be expected to fulfill.

(c) Be a natural person (individual) who resides as a citizen in any of the 50

States, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marianas, Federated States of Micronesia, and the Republics of the Marshall Islands and Palau, or a noncitizen who resides in one of the foregoing areas after being legally admitted to the U.S. for permanent residence or on indefinite parole.

(d) Possess legal capacity to incur the loan obligation and have reached the legal age of majority in the state or have had the disability of minority removed by court action.

(e) Have the potential ability to personally occupy the home on a permanent basis. Because of the probability of their moving after graduation, full-time students will not be granted loans unless:

(1) The applicant intends to make the home his or her permanent residence and there are reasonable prospects that employment will be available in the area after graduation, and

(2) An adult member of the household will be available to make inspections if the home is being constructed.

#### § 1980.347 Annual income.

Annual income determinations will be thoroughly documented in the Lender's casefile. Historical data based on the past 12 months or previous fiscal year may be used if a determination cannot logically be made. Annual income to be considered includes:

(a) Current verified income, either part-time or full-time, received by any applicant/borrower and all adult members of the household, including any coapplicant/coborrower.

(b) If any other adult member of the household is not presently employed but there is a recent history of such employment, that person's income will be considered unless the applicant/borrower and the person involved sign a statement that the person is not presently employed and does not intend to resume employment in the foreseeable future, or if interest assistance is involved, during the term of the Interest Assistance Agreement.

(c) Income from such sources as seasonal type work of less than 12 months duration, commissions, overtime, bonuses, and unemployment compensation must be computed as the estimated annual amount of such income for the upcoming 12 months. Consideration should be given to whether the income is dependable based on verification by the employer and the applicant's history of such income over the previous 24 months.

(d) The following are included in annual income:

(1) The gross amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips, bonuses, and other compensation for personal services of all adult members of the household.

(2) The net income from operation of a farm, business, or profession. Consider the following:

(i) Expenditures for business or farm expansion and payments of principal on capital indebtedness shall not be used as deductions in determining income. A deduction is allowed in the manner prescribed by IRS regulations only for interest paid in amortizing capital indebtedness.

(ii) Farm and nonfarm business losses are considered "zero" in determining annual income.

(iii) A deduction, based on straight line depreciation, is allowed in the manner prescribed by IRS regulations for the exhaustion, wear and tear, and obsolescence of depreciable property used in the operation of a trade, farm, or business by a member of the household. The deduction must be based on an itemized schedule showing the amount of straight line depreciation that could be claimed for Federal income tax purposes.

(iv) Any withdrawal of cash or assets from the operation of a farm, business, or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by a member of the household.

(v) A deduction for verified business expenses, such as for lodging, meals, or fuel, for overnight business trips made by salaried employees, such as long-distance truck drivers, who must meet these expenses without reimbursement.

(3) Interest, dividends, and other net income of any kind from real or personal property, including:

(i) The share received by adult members of the household from income distributed from a trust fund.

(ii) Any withdrawal of cash or assets from an investment except to the extent the withdrawal is reimbursement of cash or assets invested by a member of the household.

(iii) Where the household has net family assets, as defined in § 1980.302(a), in excess of \$5,000, the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate.

(4) The full amount of periodic payments received from social security (including social security received by adults on behalf of minors or by minors intended for their own support),

annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts.

(5) Payments in lieu of earnings; such as unemployment, disability and worker's compensation, and severance pay.

(6) Public assistance except as indicated in paragraph (e)(2) of this section.

(7) Periodic allowances, such as:

(i) Alimony and/or child support awarded in a divorce decree or separation agreement, unless the payments are not received and a reasonable effort has been made to collect them through the official entity responsible for enforcing such payments and they are not received as ordered; or

(ii) Recurring monetary gifts or contributions from someone who is not a member of the household.

(8) Any amount of educational grants or scholarships or VA benefits available for subsistence after deducting expenses for tuition, fees, books, and equipment.

(9) All regular pay, special pay (except for persons exposed to hostile fire), and allowances of a member of the armed forces who is the applicant/borrower or coapplicant/coborrower, whether or not that family member lives in the unit.

(10) The income of an applicant's spouse, unless the spouse has been living apart from the applicant for at least 3 months (for reasons other than military or work assignment), or court proceedings for divorce or legal separation have been commenced.

(e) The following are not included in annual income but may be considered in determining repayment ability:

(1) Income from employment of minors (including foster children) under 18 years of age. The applicant and spouse are not considered minors.

(2) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977.

(3) Payments received for the care of foster children.

(4) Casual, sporadic, or irregular cash gifts.

(5) Lump-sum additions to family assets such as inheritances; capital gains; insurance payments from health, accident, hazard, or worker's compensation policies; and settlements for personal or property losses (except as provided in paragraph (d)(5) of this section).

(6) Amounts which are granted specifically for, or in reimbursement of, the cost of medical expenses.

(7) Amounts of education scholarships paid directly to the student or to the educational institution and

amounts paid by the Government to a veteran for use in meeting the costs of tuition, fees, books, and equipment. Any amounts of such scholarships or veteran's payments, which are not used for the aforementioned purposes and are available for subsistence, are considered to be income. Student loans are not considered income.

(8) The hazardous duty pay to a service person applicant/borrower or spouse away from home and exposed to hostile fire.

(9) Any funds that a Federal statute specifies must not be used as the basis for denying or reducing Federal financial assistance or benefits. (Listed in exhibit F of FmHA Instruction 1980-D, available in any RHCDS office.)

(f) Income of live-in aides who are not relatives of the applicant or members of the household will not be counted in calculating annual income and will not be considered in determination of repayment ability.

#### § 1980.348 Adjusted annual income.

Adjusted annual income is annual income as determined in § 1980.347 less the following:

(a) A deduction of \$480 for each member of the family residing in the household, other than the applicant, spouse, or coapplicant, who is:

(1) Under 18 years of age;  
(2) Eighteen years of age or older and is disabled as defined in § 1980.302(a); or

(3) A full-time student aged 18 or older.

(b) A deduction of \$400 for any elderly family as defined in § 1980.302(a).

(c) A deduction for the care of minors 12 years of age or under, to the extent necessary to enable a member of the applicant/borrower's family to be gainfully employed or to further his or her education. The deduction will be based only on monies reasonably anticipated to be paid for care services and, if caused by employment, must not exceed the amount of income received from such employment. Payments for these services may not be made to persons whom the applicant/borrower is entitled to claim as dependents for income tax purposes. Full justification for such deduction must be recorded in detail in the loan docket.

(d) A deduction of the amount by which the aggregate of the following expenses of the household exceeds 3 percent of gross annual income:

(1) Medical expenses for any elderly family (as defined in § 1980.302(a)). This includes medical expenses for any household member the applicant/borrower anticipates incurring over the

ensuing 12 months and which are not covered by insurance (e.g., dental expenses, prescription medicines, medical insurance premiums, eyeglasses, hearing aids and batteries, home nursing care, monthly payments on accumulated major medical bills, and full-time nursing or institutional care which cannot be provided in the home for a member of the household); and

(2) Reasonable attendant care and auxiliary apparatus expenses for each disabled member of any household to the extent necessary to enable any member of such household (including such disabled member) to be employed.

#### §§ 1980.349—1980.350 [Reserved]

#### § 1980.351 Requests for reservation of funds.

Upon receipt of a viable loan application and prior to loan underwriting, the Lender may request a reservation of loan guarantee funds for the loan application. The request should be made as follows:

(a) The Lender must have a complete application on file that clearly indicates the borrower has sufficient qualifying income and an adequate credit history.

(b) The reservation shall be valid for 60 days. The Lender must submit a request for a loan guarantee on or before the expiration date of the reservation. *Substitutions of borrowers or dwellings are not authorized.*

(c) Reservations may be granted only when adequate funding authority is available. Reservations are subject to the availability of funds. Reservations will not exceed 90 percent of the funds available during that quarter.

(d) [Reserved]

(e) All reservations will expire at the end of 60 days or no later than the pooling date published in subpart L of part 1940 whichever occurs first.

(f) [Reserved]

#### § 1980.352 [Reserved]

#### § 1980.353 Filing and processing applications.

(a) *Loan priorities.* Complete applications will be considered by RHCDS in the order received from Lenders authorized to participate in the program except as provided in paragraph (b) of this section.

(b) *Preference.* Preference is considered when there is a shortage of funds and there is more than one request for a conditional commitment or reservation of funds ready for approval. Applications for guarantees on loans to first-time homebuyers or veterans, their spouses, or children of deceased servicemen who died during one of the

periods described in the definition of "Veteran" in § 1980.302(a) will be given preference by RHCDS. Displaced homemakers and single parents are first-time homebuyers even though they previously owned or resided in a dwelling with a spouse.

(c) *Applications.* If, upon completion of the loan underwriting process of an application, the Lender concludes that the application can be considered for an RHCDS guarantee, the Lender will provide written documentation addressing each of the loan eligibility requirements of this subpart and the basis for the conclusion in the applicant's file. The Lender will submit a request for the guarantee using a Form FmHA 1980-21, "Request for Single Family Housing Loan Guarantee." The form should contain or be supplemented with all of the following information:

(1) Name, address, telephone number, social security number, age, citizenship status of the applicant, and number of persons in the household.

(2) Amount of loan request and proposed use of loan funds.

(3) Name, address, contact person, and telephone number of the proposed Lender.

(4) Anticipated loan rates and terms, the date and amount of the Fannie Mae or VA rate used to determine the interest rate, and the Lender's certification that the proposed rate is in compliance with § 1980.320.

(5) Statement from the Lender that it will not make the loan as requested by the applicant without the proposed guarantee and that the applicant has been advised in writing that the applicant is subject to criminal action if he or she knowingly and willfully gives false information to obtain a federally guaranteed loan.

(6) If the applicant is not a United States citizen, evidence of being legally admitted for permanent residence or indefinite parole.

(7) The applicant's sex, race, and veteran status and whether applicant is a first-time homebuyer.

(8) An appraisal report including information about the dwelling location with respect to neighborhood and community services and facilities, business and industrial enterprises, and streets or roads serving the housing.

(9) Credit report obtained by the Lender.

(10) An equal opportunity agreement supplied by RHCDS for construction contracts costing more than \$10,000.

(11) Evidence of compliance with the Privacy Act of 1974.

(12) Lender's loan underwriting (repayment ability, creditworthiness, and security value).

(13) A certification from the borrower regarding debarment, suspension, ineligibility, and voluntary exclusion from Federal programs using a form supplied by RHCDS.

(14) A statement signed by the borrower acknowledging that the borrower understands that RHCDS approval of the guarantee is required and is subject to the availability of funds.

(15) A copy of a valid verification of income for each adult member of the household.

(16) A copy of the purchase agreement or bid for construction contract.

(d) [Reserved]

(e) *Verifying information provided.* Written documentation from third parties is the preferred method of verifying information. Verifications must pass directly from the source of information to the Lender and shall not pass through the hands of a third party or applicant.

(1) *Income verification.* Employment verifications and other income verifications obtained in accordance with this paragraph are valid for 120 days (180 days for proposed new construction). Income verifications must be valid at the time the conditional commitment is issued.

(i) An RHCDS approved form or the equivalent HUD/FHA/VA or Fannie Mae form will be used to verify employment income of the loan applicant except when the applicant is self-employed. The form will be signed by the applicant or borrower or accompanied by an authorization for a release of information form signed by the applicant or borrower and sent directly to the employer by the Lender. The Lender should also obtain copies of the three most recent paycheck stubs. The information in the employer verification should be compared to the information in the paycheck stubs for consistency.

(ii) Income information that cannot be obtained by use of this form will be obtained in writing from third parties to the extent possible.

(iii) Alimony and/or child support payments will be verified by obtaining a copy of the divorce decree or other legal document indicating the amount of the payments. When the applicant states that less than the amount awarded is received, the Lender will request documentation from the official entity through which payments are received or other third party able to provide the verification when payment is not made through an official entity indicating the

amounts and dates of payments to the applicant during the previous 12 months.

(iv) When it is not feasible to verify income in paragraph (e)(1)(iii) of this section through third parties, the Lender is authorized to accept an affidavit from the applicant stating the effort made to collect the amount awarded and the amounts and dates of payments received during the previous 12 months.

(v) Applicants and borrowers deriving their income from a farming or business enterprise will provide current documentation of the income and expenses of the operation. In addition, historic information from the previous fiscal year must be presented.

(vi) Social Security, pension, and disability income may be verified by obtaining a copy of the most recent award or benefit letter prepared and signed by the authorizing agency. This verification will be considered valid only for 1 year from the date of the award or benefit letter.

(2) *Verification of disability.* An RHCDS supplied form will be used to verify disability in cases where State Review Board or Social Security records are not available. Receipt of veteran's benefits for disability, whether service-oriented or otherwise, does not automatically establish disability.

(3) *Verification of alien status.* Aliens are required to present documentation of their status. Section 1944.9 outlines the acceptable forms of documentation.

(4) *Verification of credit history and current debt.* The Lender shall determine all liabilities of all parties responsible for repayment of the proposed loan. Credit reporting information must pass directly between the Lender and the credit reporting agency or source.

(i) Mortgage credit reports shall be used to determine creditworthiness unless the applicant resides in a remote rural area and conclusive or sufficient information would not be available. Information relative to judgments, garnishments, foreclosures, and bankruptcies must be obtained when a credit report is not obtained.

(ii) The credit report must be the most recent revision of the Residential Mortgage Credit Report form and meet the standards prescribed by Fannie Mae, Freddie Mac, HUD, VA, or RHCDS.

#### § 1980.354 [Reserved]

#### § 1980.355 Review of requirements.

Upon the Lender's review of the conditional commitment, the Lender may determine whether to accept the conditions outlined in it.

(a) *Accepting conditions.* Immediately after reviewing the conditions and

requirements in the conditional commitment and the options listed on the back of the form, the Lender may proceed with loan closing. If the conditions cannot be met, the Lender and borrower may propose alternate conditions to RHCDS.

(b) *Canceling commitment.* If the Lender indicates in the acceptance or rejection of conditions that it desires to obtain a loan note guarantee and subsequently decides prior to loan closing that it no longer wants a loan note guarantee, the Lender should immediately advise the RHCDS approval official.

#### §§ 1980.356—1980.359 [Reserved]

#### § 1980.360 Conditions precedent to issuance of the loan note guarantee.

(a) *Lender certification.* The Lender must certify to RHCDS that:

(1) No major changes have been made in the Lender's loan conditions and requirements since the issuance of the conditional commitment, except those approved in writing by RHCDS. In the event the interest rate has not been fixed at the time the conditional commitment is issued, and the interest rate increases between the time of issuance of the conditional commitment and loan closing, the Lender should note the change when submitting the package to RHCDS for loan guarantee. If either or both of the underwriting ratios are exceeded as a result of the interest rate increase, the Lender should list the compensating factors that demonstrate that sufficient repayment ability still exists.

(2) All planned property acquisition has been completed and:

(i) All development has been completed; or

(ii) An escrow account has been established in accordance with § 1980.315.

(3) Required insurance coverage is in effect and an escrow account has been established for the payment of taxes and insurance.

(4) Truth-in-lending requirements have been met.

(5) All equal employment opportunity and nondiscrimination requirements have been met.

(6) The loan has been properly closed by a party skilled and experienced in conducting loan closings and the required security instruments, including any required shared equity instruments, have been obtained and recorded in the appropriate office in a timely and accurate manner.

(7) The borrower has a marketable (clean and defensible) title to the property then owned by the borrower,

subject to the instrument securing the loan to be guaranteed, and any other exceptions approved in writing by RHCDS.

(8) Lien priorities are consistent with the requirements of the conditional commitment.

(9) The loan proceeds have been disbursed for purposes and in amounts consistent with the conditional commitment.

(10) There has been no adverse change in the borrower's situation since the conditional commitment was issued by RHCDS.

(11) All other requirements of the conditional commitment have been met.

(b) *Inspections.* The Lender will certify to RHCDS that inspections in accordance with § 1980.341 have been completed.

(c) *Lender agreement.* There must be a valid lender agreement on file.

(d) *Lender file.* The Lender will maintain a file for each guaranteed RH loan containing originals or copies, as appropriate, of all documents pertaining to that loan.

**§ 1980.361 Issuance of loan note guarantee.**

(a) When the Lender has certified that all requirements have been met, delivered a completed Loan Closing Report, and paid the guarantee fee, the RHCDS approval official will concurrently execute the loan note guarantee. The original will be provided to the Lender and be attached to the note.

(b) [Reserved]

(c) [Reserved]

**§ 1980.362 [Reserved]**

**§ 1980.363 Review of loan closing.**

The Lender must provide RHCDS with documentation that all of the closing conditions have been met within 10 days of issuance of the loan note guarantee. The Lender is responsible for deficiencies regardless of whether RHCDS discovers them in the loan closing review and/or notifies the Lender at that time. RHCDS reviews do not constitute any waiver of fraud, misrepresentation, or failure of judgment by the Lender.

**§§ 1980.364–1980.365 [Reserved]**

**§ 1980.366 Transfer and assumption.**

(a) *General.* Lenders may, but are not required to, permit a transfer to an eligible applicant. A transfer and assumption must be approved by RHCDS in writing. Transfers without assumption are not authorized. Transfers and assumptions under this subpart are subject to the RHCDS guarantee fee.

(b) *Eligible transferee.* An eligible transferee is one who meets the eligibility requirements of this subpart and includes situations involving transfers of housing in an area that has ceased to be rural. Loans made and guaranteed under this subpart prior to March 29, 1989, may be transferred to an applicant meeting all eligibility requirements of this subpart except the applicant's adjusted annual income may exceed the maximum income for the area by not more than 10 percent.

(c) *Determinations by the Lender.* Before the transfer and assumption can be approved with the guarantee remaining in force, the Lender must determine that all of the following conditions can be met:

(1) The transferee is an eligible applicant.

(2) The transferee will assume the total remaining debt and acquire all of the property securing the guaranteed loan balance.

(3) The transfer and assumption would not be made without the continuation of the loan guarantee.

(4) The market value of the security being acquired by the transferee is at least equal to the secured indebtedness against it.

(5) The priority of the existing lien securing the guaranteed loan will be maintained or improved.

(6) Proper hazard insurance will be obtained.

(7) The transfer and assumption can be properly closed and the conveyance instruments will be filed, registered, or recorded, as appropriate.

(8) The transferor acknowledges continued liability for the debt in writing.

(d) *Changes in the promissory note or security instrument.* If the assumption will result in changes in the repayment schedule or the interest rate, the changes must be approved by the present debtors since they will remain liable for the debt. Any changes in rates and terms must not exceed rates and terms allowed for new loans under this subpart and cannot exceed the interest rate on the initial loan. The debt must not exceed the amount remaining due on the original loan. The term of the loan may cover a period of up to 30 years from the date of transfer and assumption. The Lender's request for approval to RHCDS will be accompanied by:

(1) An explanation of the reasons for the proposed change in the rates and terms.

(2) A statement that the Lender's determinations required by paragraph (c) of this section can be made.

(e) *Release of liability.* The Lender may not release the transferor of liability.

(f) *Forms and case numbers.* The assumption may be made on the Lender's assumption agreement form. The assumption agreement must contain the RHCDS case numbers of the transferor and the transferee.

(g) *Lender's application to RHCDS.* The Lender must submit the items outlined in § 1980.353(e) of this subpart to RHCDS, in addition to items required in this section.

(h) *Notations and notices.* The Lender must notify RHCDS whether the loan and security can be properly assumed and transferred. The Lender shall assure that the conveyance instruments are properly filed, registered, or recorded, as appropriate. Upon completion of the transfer and assumption, the Lender must provide RHCDS a copy of the transfer and assumption agreement. The Lender may present the loan note guarantee to RHCDS if it desires RHCDS to note the transfer and assumption on the loan note guarantee. If a new note is obtained, it will also be attached to the loan note guarantee.

(i) *Interest assistance.* The original borrower's Master Interest Assistance Agreement may be transferred to an eligible transferee. Equity sharing, if any, owed by the transferor must be determined and collected at the time the loan is assumed and title to the property is transferred. See § 1980.391.

(j) *Closing the transfer and assumption.* As soon as the Lender has obtained RHCDS approval, the Lender may proceed with closing the transaction. The closing must include, but need not be limited to, the proper execution and delivery of the conveyance and assumption documents, compliance with any legal requirements, and actions necessary to perfect the transfer and the required lien priority.

(k) *Loan note guarantee.* The existing loan note guarantee will continue to be in effect. RHCDS will note the transfer and assumption on the original loan note guarantee by completing the Assumption Agreement block by inserting the name of the assuming party.

(l) *Material furnished to RHCDS after closing.* Immediately after closing, the Lender must furnish to RHCDS:

(1) A conformed copy of the executed assumption agreement.

(2) A statement showing:

(i) Any changes made in the provisions of the promissory note or security instruments.

(ii) That all conditions and requirements of paragraph (b) of this section have been met.

(iii) That the required insertions have been made per paragraph (h) of this section.

(m) *Notification of Lender.* The RHCDS approval official will review the proposed transfer and assumption and notify the Lender of the decision in writing. The request for transfer and assumption will be treated as an application for guaranteed loan assistance and will be handled in accordance with § 1980.353. The Lender may proceed with the transfer and assumption upon obtaining RHCDS approval.

**§ 1980.367 Unauthorized sale or transfer of the property.**

RHCDS consent is required to continue with the RHCDS guarantee in the event of a sale or transfer of the property in accordance with § 1980.366. If the property is transferred without RHCDS consent, the Lender must take one of the following actions:

- (a) Obtain RHCDS consent if the conditions of § 1980.366 can be met;
- (b) Satisfy the RHCDS guarantee and continue with the loan without the loan note guarantee; or
- (c) Notify the borrower and the transferee of the default and service the loan in accordance with § 1980.371.

**§§ 1980.368–1980.369 [Reserved]**

**§ 1980.370 Loan servicing.**

RHCDS encourages Lenders to provide borrowers with the maximum opportunity to become successful homeowners. Lenders should provide sufficient servicing and counseling to meet the objectives of the loan. Loan servicing should be approached as a preventive action rather than a curative action. Prompt followup by the Lender on delinquent payments and early recognition and solution of problems are keys to resolving many delinquent loan cases. The Lender shall perform those services which a reasonable and prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed.

(a) *Normal loan servicing.* The Lender is responsible for servicing the loan under the Lender Agreement and this subpart even if the Lender has engaged a third party to service the loan on its behalf. Normal servicing includes:

(1) Receiving all payments as they fall due and proper application of payments to principal and interest and escrow accounts for taxes (including special assessments) and insurance.

(2) Establishment and maintenance of an escrow account to pay real estate

taxes and assessments and required hazard and flood insurance on the security. All escrow accounts must be fully insured by the Federal Deposit Insurance Corporation (FDIC). The Lender is responsible for maintaining escrow funds in a reasonable and prudent manner and for assuring that real estate taxes and assessments and required hazard and flood insurance are paid in a timely manner even if it requires advancing the Lender's own funds. The monthly payment may be adjusted when it is not adequate to meet established charges of the escrow account for the coming year. Escrow funds may be used only for the purpose for which they were collected.

(3) Obtaining compliance with the covenants, loan agreement (if any), security instruments, and any supplemental agreements and notifying the borrower in writing of any violations.

(b) *Other servicing requirements.* Other servicing requirements include taking actions to offset the effects of liens, probate proceedings, and other legal actions. The Lender's responsibility includes assuring that:

(1) Insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuild or otherwise acquire needed replacement collateral.

(2) The borrower complies with laws and ordinances applicable to the loan and the collateral.

(3) The borrower is not released of liability for the loan except as provided in Agency regulations.

(c) *Servicing options.* The Lender should make every effort to assist borrowers who are cooperative and willing to make a good faith effort to cure the delinquency. The Lender should consider the borrower's financial condition in attempting to work out repayment agreements. The Lender may revise the payment schedule of the loan on a temporary basis with the written concurrence of the borrower. Changes in the loan repayment such as reamortization of the unpaid balance within the remaining term of the loan may be done with prior written RHCDS concurrence. Reamortization shall not change the amount of the loan guarantee.

(d) *Lender reporting to RHCDS.* Reports on Lender servicing case loads and performance are required as follows:

(1) *Monthly report.* The Lender must prepare and submit a report in a manner prescribed by RHCDS identifying each

borrower with a loan that is more than 30 days delinquent.

(2) *Annual report.* The Lender will submit an annual report indicating the status of each borrower account as of December 31 using the format prescribed by RHCDS.

(e) [Reserved]

**§ 1980.371 Defaults by the borrower.**

Default occurs when the borrower fails to perform under any covenant of the mortgage or Deed of Trust and the failure continues for 30 days. The Lender will negotiate in good faith in an attempt to resolve any problem. The borrower must be given a reasonable opportunity to bring the account current before any foreclosure proceedings are started.

(a) The Lender must make a reasonable attempt to contact the borrower if the payment is not received by the 20th day after it is due.

(b) The Lender must make a reasonable attempt to arrange and hold an interview with the borrower for the purpose of resolving the delinquent account before the loan becomes 60 days delinquent. Reasonable effort consists of not less than one letter sent to the borrower at the property address via certified mail or similar method which the borrower refuses to accept or fails to respond.

(c) If the Lender is unable to make contact with the borrower, the Lender must determine whether the property has been abandoned and the value of the security is in jeopardy before the account becomes two payments delinquent.

(d) When the loan becomes three payments delinquent, the Lender must report borrower delinquencies to credit repositories and make a decision with regard to liquidation of the account. The Lender may proceed with liquidation of the account unless there are extenuating circumstances.

**§ 1980.372 Protective advances.**

Protective advances must constitute an indebtedness of the borrower to the Lender and be secured by the security instrument. Protective advances are advances made for expenses of an emergency nature necessary to preserve or protect the physical security. Attorney fees are not a protective advance. The Lender will not make protective advances in lieu of an additional loan. In order to assure that a protective advance over \$500 will be included in the loss payment, Lenders are encouraged to obtain prior RHCDS approval.

**§ 1980.373 [Reserved]****§ 1980.374 Liquidation.**

If the Lender concludes the liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the borrower cannot or will not cure or eliminate within a reasonable period of time, the Lender will notify RHCDS of the decision to liquidate. Initiation of foreclosure begins with the first public action required by law such as filing a complaint or petition, recording a notice of default, or publication of a notice of sale. Foreclosure must be initiated within 90 days of the date the decision to liquidate is made unless the foreclosure has been delayed by law. When there is a legal delay (such as bankruptcy), foreclosure must be started within 60 days after it becomes possible to do so.

(a) *Expeditious liquidation.* Once the decision to liquidate has been made, the Lender must proceed in an expeditious manner. Lenders must exercise due diligence in completing the foreclosure process. Lenders are expected to complete foreclosure within the time frames that are reasonable for the state in which the property is located.

(b) *Maximum collection.* The Lender is expected to make the maximum collection possible on the indebtedness. The Lender will consider the possibility of recovery of any deficiency apart from the acquisition or sale of collateral. The Lender will submit a recommendation on such recovery considering the borrower's assets and ability to pay, prospects of future recovery, the costs of pursuing such recovery, recommendation for obtaining a judgment, and the collectability of a judgment in view of the borrower's assets.

(c) *Allowable liquidation costs.* Certain reasonable liquidation costs (costs similar to those charged for like services in the area) will be allowed during the liquidation process. No in-house expenses of the Lender will be allowed including, but not limited to, employee salaries, staff lawyers, travel, and overhead. Liquidation costs are deducted from the gross sales proceeds of the collateral when the Lender has conducted the liquidation.

(d) *Servicing plan.* The Lender must submit a servicing plan to RHCDS when the account is 90 days delinquent and a method other than foreclosure is recommended to resolve delinquency. RHCDS encourages Lenders and delinquent borrowers to explore an acceptable alternative to foreclosure to reduce loss and expenses of foreclosure. Although prior approval is not required

in all cases, the Agency may reject a plan that does not protect the Government's interest.

(1) *Continuation with the borrower.* The Lender may continue with the borrower when a clear and realistic plan to eliminate the delinquency is presented. The Lender must fully document the borrower's prospects of success and make this information available to RHCDS upon request.

(2) *Voluntary liquidation.* RHCDS may accept the Lender's plan to use voluntary liquidation when the plan clearly addresses the responsibilities of the parties, the Lender maintains oversight of the progress of the sale, the property is listed for sale at a price in line with its market value (if there is not already a bona fide purchaser for the dwelling), and the expected cost to the Government is the same as or less than the cost of foreclosure.

(3) *Deed-in-lieu of foreclosure.* The Lender may take a deed-in-lieu of foreclosure from the borrower when it will not result in a cost to the Government in excess of that expected for foreclosure.

(4) *Other methods.* RHCDS may accept a proposal submitted by the Lender that is not specifically addressed in but is consistent with the provisions of this subpart if the Lender fully documents how the proposal will result in a savings to the Government.

(e) *Handling shared equity.* Interest assistance payments made under § 1980.390 of this subpart will not be subject to shared equity if the loan is liquidated in accordance with the Lender Agreement unless:

(1) The property is sold at or prior to foreclosure for an amount exceeding the Lender's unpaid balance and costs of foreclosure, or

(2) A junior lienholder takes over the Lender's loan.

**§ 1980.375 Reinstatement of the borrower's account.**

The Lender may reinstate an account when all delinquent payments and any funds that were advanced to pay authorized expenses are paid or as required under state law. When the Lender wishes to consider other offers by the borrower to bring the account current, the Lender must obtain RHCDS concurrence.

**§ 1980.376 Loss payments.**

Settlement of the guarantee will be processed in accordance with this section.

(a) *Loss payment.* Loss payments will be made within 60 days of the Lender's properly filed claim. The Lender must submit its loss claim within 30 calendar

days of loan liquidation. The claim may include interest on the unpaid principal accrued to final loss settlement. RHCDS will pay interest within the limits of the guarantee to the date the claim is paid when the Lender promptly and properly files the claim.

(1) *Determination of loss payment.* To calculate the loss payment, first determine the unpaid debt by adding the unpaid principal and interest on the loan and the unpaid balance for principal and interest on authorized protective advances. The net proceeds from the property will be first applied to the unpaid debt. Any other proceeds recovered by the Lender from other sources shall also be applied to the total unpaid debt. Determination of net proceeds will be different depending on which of the following circumstances are involved.

(i) If, at liquidation, title to the property is conveyed to a bona fide third-party purchaser, then final loss payment will be based on the net sales proceeds received for the property.

(ii) If, at liquidation, title to the property is conveyed to the Lender, then the Lender must prepare and submit a property disposition plan to RHCDS for RHCDS concurrence. The plan will address the Lender's proposed method for sale of the property, the estimated value and minimum sale price, itemized estimated costs of the sale, and any other information that could impact the amount of loss on the loan. The Lender is allowed up to 6 months from the date the property is acquired to sell the property. Upon the Lender's written request, RHCDS will authorize one extension not to exceed 30 days to close the sale of a purchase offer accepted near the end of the 6-month period. Net proceeds will be based on the net proceeds received for the property when the sale is conducted in accordance with the plan as approved by RHCDS. If no sale offer is accepted within the 6-month period, then the RHCDS approval official will obtain and use a liquidation value appraisal of the property. When an appraisal is obtained, the amount of the net proceeds from the security is then determined by subtracting a cost factor, which is found in exhibit D of FmHA Instruction 1980-D (available in any RHCDS office), from the current market value.

(iii) If a deficiency judgment is obtained, the Lender must enforce the judgment against the borrower before loss settlement if the current situation provides a reasonable prospect of recovery. A loss payment will be made when the Lender holds a deficiency judgment but there are not current

prospects of collection, even if there may be in the future.

(2) *Payment procedure.* RHCDS will pay losses on the loan according to the terms of the loan note guarantee unless RHCDS has determined there is cause for reduction of the loss amount. See § 1980.377 for future recovery by the Lender.

(i) If there is no dispute between RHCDS and the Lender regarding the amount of the loss and the Lender's eligibility for payment of loss, RHCDS will pay the loss within the limits of the guarantee.

(ii) If RHCDS and the Lender do not agree on the amount of the loss, or RHCDS has determined that part of the loss is not payable to the Lender under the terms of the loan note guarantee, RHCDS will pay the undisputed portion. The disputed portion of the claim will be treated as an adverse decision and the Lender may appeal.

(iii) When RHCDS has cause to believe that Lender fraud or other lender actions negating the guarantee exist, no loss payment may be made unless the situation is resolved.

(3) The RHCDS approval official will conduct an audit of the account and review the loan in its entirety to determine why the loan failed and whether any reason exists for reducing or denying the loss claim. This information will be documented in the RHCDS casefile.

(4) If a Lender's loss claim is denied or reduced, the RHCDS approval official will notify the Lender of all of the reasons for the action within 10 days of the decision and the Lender may appeal in accordance with § 1980.399 and subpart B of part 1900.

(5) The RHCDS approval official is authorized to approve loss payments in amounts of up to 50 percent of his/her delegated loan approval authority in accordance with exhibit D of FmHA Instruction 1901-A (available in any RHCDS office).

(b) *Denial or reduction of loss claims.* The RHCDS approval official will fully document any loss claim which is denied or reduced including an analysis of how the amount of the reduction was determined. A connection must be made between the Lender's action or failure to act and the loss amount on the loan. The amount of loss occasioned by such action will be established. This information will be made available to the Lender upon request. A Lender's loss claim may be denied or reduced by RHCDS when:

(1) The Lender has committed fraud. (Denial of claim.)

(2) The Lender claims items not authorized under RHCDS regulations.

(Reduced by amount of unauthorized claim.)

(3) The Lender violated usury laws. (Reduction for amount of loss caused by the violation.)

(4) The Lender failed to obtain required security or maintain the security position. (Reduction for loss attributed to failure.)

(5) Loan funds were used for unauthorized purposes. (Reduction by unauthorized amount.)

(6) The Lender was negligent in loan servicing. Negligent servicing is a failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes a failure to act, a failure to act in a timely manner, or acting in a manner contrary to that in which a reasonably prudent Lender would act. (Reduction for loss amount attributable to Lender negligence.) Examples of negligent servicing include:

(i) A failure to contact the borrower in a timely manner when the borrower's account goes into default.

(ii) A failure to pay real estate taxes or hazard insurance when due.

(iii) A failure to notify RHCDS within required time limits when the borrower defaults on the loan.

(iv) A failure to request loan subsidy when the borrower was eligible for loan subsidy and loan subsidy was available (subsidized loans only).

(v) A failure to protect security during the liquidation phase.

(7) The Lender delayed filing the loss claim. (Reduction in claim for interest accrued because the claim was not filed.)

#### § 1980.377 Future recovery.

The proceeds of any amounts recovered shall be shared in proportion to the amount of loss borne between RHCDS and the Lender. Although the Lender's actual loss may be different than the amount on which loss settlement was based, the proportion of recovery sharing must be based on the loss percentage upon which the loss payment calculation was based.

#### §§ 1980.378–1980.389 [Reserved]

#### § 1980.390 Interest assistance.

In order to assist low-income borrowers in the repayment of the loan, RHCDS is authorized to provide interest assistance payments subject to the availability of funds. Regardless of what date a borrower's loan payment is due each month, interest assistance payments will be made by RHCDS directly to the Lender on or before the 15th day of the month in which the borrower's payment is due.

(a) *Policy.* It is the policy of RHCDS to grant interest assistance on guaranteed loans to low-income borrowers to assist them in obtaining and retaining decent, safe, and sanitary dwellings and related facilities as long as the borrower remains eligible for payments when funds are available for interest assistance. Interest assistance must be established for the borrower at the time the loan guarantee is authorized.

(b) *Processing interest assistance agreements.* The Lender will process the interest assistance agreement and submit it to RHCDS for approval.

(1) RHCDS will reimburse the Lender in the amounts authorized in exhibit D of FmHA Instruction 1980-D (available in any RHCDS office) for the cost of processing the agreement. The fee will be paid upon receipt of a valid agreement which has been coded as requiring a processing fee payment. The processing fee is payable when:

(i) A new agreement is made with the borrower except at the time of loan closing.

(ii) The borrower had an agreement for the previous year and a new agreement is made for the current year.

(iii) The borrower is eligible for but not presently on interest assistance and enters into a new interest assistance agreement.

(iv) The borrower has a change in circumstances which requires a revision to the current agreement. When the change in circumstances results in an agreement with less than 90 days remaining, the agreement for the subsequent year will be prepared at the same time. This action is considered one agreement.

(2) A processing fee will not be paid when the revision to an existing agreement is required due to an error on the part of the Lender or the borrower.

(c) *Amount of interest assistance.* (1) The amount of interest assistance granted will be the difference between the monthly installment due on the promissory note eligible for interest assistance and the amount the borrower would pay if the note were amortized at the rate corresponding to the borrower's income range as outlined in the master interest assistance agreement.

(2) The basis for the amount of interest assistance for each loan is determined by the amount of interest assistance authorized to the Agency as shown in exhibit D of FmHA Instruction 1980-D (available in any RHCDS office) and the note interest rate.

(3) A borrower receiving a loan in a high cost area will be granted an additional 1 percent interest assistance in order to assist the borrower up to the

maximum rate in exhibit D of FmHA Instruction 1980-D (available in any RHCDS office).

(i) The Administrator may designate an area as a high cost area for interest assistance purposes. Such designation may be granted when the State Director makes a written request for it and provides documentation that low-income borrowers in the area could not afford to purchase a dwelling under the interest assistance table in exhibit D of FmHA Instruction 1980-D (available in any RHCDS office). The area must also be designated by HUD as a high cost area. The amount of additional interest assistance for high cost areas is 1 percent; however, in no case will more interest assistance be granted than the amount necessary to reach the lowest floor rate in exhibit D of FmHA Instruction 1980-D (available in any RHCDS office).

(ii) The change in a designation (or from) a high cost area will not affect existing loans. An individual's loan eligibility for high cost designation is determined at the time of issuance of the conditional commitment for loan guarantee.

(d) *Shared equity.* Prior to loan closing, the Lender will advise the applicant that interest assistance is subject to equity sharing.

(e) *Eligibility.* To be eligible for interest assistance, a borrower must personally occupy the dwelling and must meet the following additional requirements:

(1) *Initial loans.* Interest assistance may be granted at the time the loan note guarantee is issued, or an assumption is processed in accordance with § 1980.366, when:

(i) The borrower's adjusted income at the time of loan guarantee approval did not exceed the applicable low-income limit, the loan guarantee was funded from interest assisted guaranteed loan funds, and a master interest assistance agreement was completed at closing if the borrower is ever to receive interest assistance.

(ii) The borrower's net family assets do not exceed the maximum allowable amount as per exhibit D of FmHA Instruction 1980-D (available in any RHCDS office) unless an exception is authorized. The calculation of net family assets will exclude the value of the dwelling and a minimum adequate dwelling site, cash on hand which will be used to reduce the amount of the loan, and household goods and personal automobiles and the debts against them. The Lender may request an exception at the time the initial application is submitted to RHCDS for a loan guarantee. For the purpose of

determining whether an exception is justified, consideration will be given to the nature of the assets upon which a borrower is currently dependent for a livelihood or which could be used to reduce or eliminate the need for interest assistance.

(iii) The loan was approved as a subsidized guaranteed loan on or after April 17, 1991.

(iv) The amount of interest assistance will be \$20 or more per month in accordance with the provisions of paragraph (c)(1) of this section. Interest assistance in amounts of less than \$20 per month will not be granted.

(2) *Existing loans.* Interest assistance may be granted at any time after loan closing if:

(i) The requirements of paragraphs (e)(1)(i), (e)(1)(iii), and (e)(1)(iv) of this section are met.

(ii) The borrower's adjusted annual income does not exceed the low-income limit.

(iii) The borrower requests interest assistance through the Lender or the Lender determines that interest assistance is needed to enable the borrower to repay the loan.

(iv) The Lender processes the interest assistance agreement and submits it to RHCDS for approval.

(f) *Processing interest assistance.* The Lender will process interest assistance agreements in accordance with this section. The interest assistance agreement will be executed by the Lender and borrower and forwarded to RHCDS for approval.

(1) *Amount of interest assistance.* The amount of interest assistance for which a borrower is eligible will be determined by use of the interest assistance agreement as outlined in paragraph (c) of this section.

(i) *Determination of income.* The Lender is responsible for determining the borrower's annual and adjusted annual income as outlined in §§ 1980.347 and 1980.348 of this subpart. Income of all persons occupying the dwelling will be verified in accordance with § 1980.347 of this subpart.

(ii) *Effective period.* Annual interest assistance agreements will be for a 12-month period.

(2) *Interest assistance agreements.* The master interest assistance agreement will be executed for each qualifying loan at loan closing provided funds are available for interest assistance at the time the guarantee is issued. This agreement establishes the conditions and maximum amounts of interest assistance for the life of the loan. Each year, an annual interest assistance agreement will be used to

determine the amount of interest assistance for the coming 12 months.

(i) The Lender will determine the borrower's adjusted annual income, document the calculations, and complete the interest assistance agreement form.

(ii) The borrower will review the interest assistance agreement form and sign the form signifying that all information is correct as shown.

(iii) If the information contained on the interest assistance agreement appears correct, RHCDS will approve the agreement and make monthly payments to the Lender on behalf of the borrower.

(iv) When the borrower's income is within the low-income limits but the provisions of paragraphs (e)(1)(ii) or (e)(1)(iv) of this section preclude granting interest assistance, the master interest assistance agreement must be executed if the borrower desires to be considered for interest assistance at a later date due to a change in circumstances.

(g) *Interest assistance modification.* A change in the borrower's circumstances after the effective date of the Annual Interest Assistance Agreement will be handled as follows:

(1) *RHCDS required modifications before expiration.* The borrower is responsible for reporting any increases in income exceeding \$100 per month to the Lender. The Lender is not responsible for monitoring the borrower's income. The Lender must process a revised interest assistance agreement when a reported increase in the borrower's income results in the need for less interest assistance in accordance with paragraph (c) of this section.

(2) *Additional interest assistance before expiration.* The borrower may request and the Lender may process a modification of the interest assistance agreement and submit the modified agreement to RHCDS when:

(i) The borrower's adjusted annual income decreases by more than \$100 per month;

(ii) The interest assistance calculation per paragraph (c) of this section indicates that the borrower is eligible for an additional \$20 interest assistance per month; and

(iii) There are interest assistance funds available if the amount needed by the borrower exceeds the initial floor rate established at the time the loan was closed per paragraph (c) of this section.

(3) *Other changes in the borrower's circumstances.* When one coborrower has left the dwelling, interest assistance based on the remaining coborrower's income may be extended if:

(i) The remaining coborrower is occupying the dwelling, owns a legal interest in the property, and is liable for the debt;

(ii) The remaining coborrower certifies as to who lives in the house;

(iii) Separation is not due only to work assignment or military orders; and

(iv) The remaining coborrower is informed and agrees that should the coborrower begin to live in the dwelling, that coborrower's income will then be counted toward annual income and interest assistance may be reduced or canceled.

(4) *Effect of modification.* An interest assistance agreement modified as per paragraph (g)(1), (g)(2), or (g)(3) of this section is valid for the remainder of the agreement period.

(5) *Correction of interest assistance agreement.* When an error by RHCDS or the Lender resulted in too little interest assistance being granted, a corrected agreement will be prepared effective the date of the error if the error results in granting \$20 or more per month less interest assistance than the borrower was eligible to receive. The Lender must return any overpayment made by the borrower unless an agreement is reached to apply the funds to the loan as an extra payment.

(h) *Eligibility review.* Borrowers receiving interest assistance will be reviewed annually within 30 to 60 days prior to the anniversary date of the loan. All existing agreements must be reviewed and processed for the upcoming 12 months during the review period. Interest assistance will not be renewed if the amount that the borrower qualifies for is less than \$20 per month.

(1) The Lender will obtain written verification of the income of each borrower and all adult members of the borrower's household and conduct the review.

(i) *Borrower responsibility.* The borrower will:

(A) Report the income of each adult member of the household to the Lender;

(B) Assure that each household member has provided sufficient information on that person's income for the Lender to conduct the review; and

(C) Cooperate in the Lender's efforts to verify income.

(ii) [Reserved]

(2) *Processing interest assistance renewals not reviewed during the review period.* The Lender may process interest assistance renewals not completed during the review period as follows:

(i) The amount of interest assistance will be based on the borrower's current annual income.

(ii) The effective date will be:

(A) The expiration period of the previous interest assistance agreement if

the RHCDS approval official determines failure to renew was the fault of RHCDS or the Lender.

(B) The next payment due date following approval in all other cases.

(3) *Interest assistance form.* Interest assistance payments will not be made after the expiration date unless RHCDS receives and approves a new interest assistance agreement form.

(i) *Cancellation of interest assistance.*

(1) An existing interest assistance agreement will be canceled under the following circumstances:

(i) When the borrower has never occupied the dwelling, the interest assistance will be canceled as of the date of issuance of the guarantee. The Lender will refund all interest assistance payments to RHCDS.

(ii) The cancellation will be effective on the date on which the earliest action occurs which causes the cancellation or the date the Lender became aware of the situation if the date cannot be determined when:

(A) The borrower ceases to occupy, sells, or conveys title to the dwelling.

(B) The borrower has received improper interest assistance and a corrected agreement will not be submitted.

(C) The borrower has had an increase in income and is no longer eligible for interest assistance.

(D) The security is acquired by the Lender.

(E) The Lender formally declares the loan to be in default and accelerates the loan.

(2) [Reserved]

(j) *Overpayment.* When the Lender becomes aware of circumstances that have resulted in an overpayment of interest assistance for any reason, except as provided in paragraph (k) of this section, the following actions will be taken:

(1) The Lender will immediately notify RHCDS.

(2) The borrower will be notified and the interest assistance agreement will be corrected.

(3) A repayment agreement acceptable to RHCDS will be reached.

(k) *Unauthorized use of loan funds.* When RHCDS becomes aware that the Lender allowed loan funds to be used for unauthorized purposes, interest assistance paid on said amounts will be promptly repaid by the Lender. The Lender may work out a repayment agreement with the borrower but is expected to make every effort to minimize the adverse impact on the borrower's repayment ability.

(l) *Appeals.* All applicants/borrowers and Lenders may appeal adverse determinations in accordance with

§ 1980.399 when RHCDS denies, reduces, cancels, or refuses to renew interest assistance.

(m) *Reinstatement of interest assistance.* The RHCDS approval official may authorize reinstatement of the borrower's interest assistance if it was canceled because the loan was accelerated and if the acceleration was withdrawn with RHCDS approval.

#### § 1980.391 Equity sharing.

The policy of RHCDS is to collect all or a portion of interest assistance granted on a guaranteed RH loan when any of the events described in paragraph (a) of this section occur, if any equity exists in the security.

(a) *Determining the amount of shared equity.* The RHCDS approval official will calculate shared equity when a borrower's account is settled by payment-in-full (including refinancing) of the outstanding indebtedness, the transfer of title, or when the borrower ceases to occupy the property. The calculation of shared equity when the account is in liquidation will be handled in accordance with § 1980.374(e).

(1) *How to calculate.* The amount of shared equity will be based on the amount of interest assistance granted on the loan, the appreciation in property value between the closing date of the loan and the date the account is satisfied or acquired by the Lender via liquidation action, the period of time the loan is outstanding, the amount of original equity the borrower has in the property, and the value of capital improvements to the property. Shared equity will be the lesser of the interest assistance granted or the amount of value appreciation available for shared equity. Value appreciation available for shared equity means the market value of the property less all debts secured by prior liens, sales expenses, any original borrower equity, principal reduction, and value added by any capital improvements.

(i) *Market value.* Market value of the property as of the date the loan is to be paid in full or the date the borrower ceases to occupy and will be documented by one of the following:

(A) A sales contract which reasonably represents the fair market value based on the Lender's and RHCDS approval official's knowledge of the property and the area.

(B) Lender's appraisal when the loan will be refinanced provided the appraisal reasonably represents the fair market value.

(C) If the items listed in either paragraph (a)(l)(i)(A) or (a)(1)(i)(B) of this section are not available, another

current appraisal, if readily available, when the appraiser meets the qualifications of § 1980.334.

(D) When the account is being paid off from insurance proceeds, the most recent appraisal available if the Lender or RHCDS can document that it represents an accurate indication of the value at the time the dwelling was damaged or destroyed. If not, the best information available will be used to determine the market value. The RHCDS approval official will interview the borrower to determine the extent of improvements, if any, and the general condition of the property at the time of loss. The amount of the insurance payment is generally a good indication of value; however, tax records or comparable sales will be considered.

(E) RHCDS appraisal, with prior approval of the State Director.

(ii) *Prior liens.* Prior liens refers to the amount of liens that are prior to the Lender's liens and include, but may not be limited to, prior mortgages, and real estate taxes and assessments levied against the property.

(iii) *Sale/refinancing expenses.* Sale/refinancing expenses include, but are not limited to, expenses commonly associated with the sale or refinancing of real estate that are not reimbursed, such as sales commissions, advertising costs, recording fees, pro rata taxes, points based on the current interest rate, appraisal fees, transfer tax, deed preparation fee, loan origination fee, etc. In refinancing situations, only those expenses necessary to finance the amount of the current RHCDS debt are allowed. Shared equity may be calculated using estimated expenses if actual expenses cannot be obtained and the RHCDS approval official is satisfied with the estimated amount and the prorating of the expenses are accurate for this transaction.

(iv) *Original borrower equity.* Original equity consists of a contribution by the borrower that reduces the amount of the loan below the market value. The contribution may be in the form of cash and/or value of the lot if the home was constructed on the borrower's property.

(v) *Capital improvements.* Capital improvements will be considered to the extent that they do not exceed market value contribution as indicated by a sales comparison analysis. Generally, the value added by improvements will be the difference in market value at the time of sale and market value without capital improvements. Cost of the improvement will not be considered, only contribution to value. Maintenance cost and replacement of short-lived depreciable items are normal expenses associated with home ownership and

are not considered capital improvements.

(2) *Other considerations.* (i) *Overpayments of interest assistance.* When RHCDS has overpaid interest assistance and the overpaid amounts remain uncollected at the time shared equity is calculated, the overpaid amount will be added to shared equity.

(ii) *Multiple loans.* When a borrower has more than one loan and elects to pay only some of the loans, shared equity will not be calculated unless the remaining loan is not subject to shared equity. Shared equity will be calculated when the account is paid in full taking into consideration all of the interest assistance granted on the account.

(b) *Miscellaneous provisions—(1) Changes in terms.* Shared equity will not be calculated when an account is reamortized.

(2) *Junior liens.* Junior liens are not considered in the shared equity calculation. In the event a junior lienholder forecloses, the RHCDS approval official will calculate shared equity before providing the lienholder with a pay-off figure, which is in addition to any amounts still due the Lender on the loan in the same manner as paragraph (a) of this section.

(c) *Affordable housing proposals.* Shared equity under an affordable housing innovation (such as limited equity or a state or county sponsored shared equity) will be calculated in accordance with this subpart unless prior written approval is obtained from RHCDS. Proposals that deviate from this subpart must be reviewed and approved in the National office prior to issuance of the loan note guarantee.

#### §1980.392 Mortgage Credit Certificates (MCCs) and Funded Buydown Accounts.

(a) *MCCs.* MCCs are authorized under the Tax Reform Act of 1986 and allow the borrower to receive a Federal tax credit for a percentage of their mortgage interest payment. They may be used by RHCDS guaranteed RH borrowers to improve their repayment ability for the loan. MCCs impact on the borrower's tax liability. MCCs may be used with interest assisted loans when the amount of the tax credit is based on the amount of interest actually paid by the borrower. MCCs are subject to shared equity of a portion of any "gain" realized on the property when sold within 10 years after purchase. If the loan is also an RHCDS interest assisted loan, RHCDS shall receive priority for shared equity repayment. Income taxes are complex issues; RHCDS employees and Lenders are not expected to be able to identify all issues impacting the borrower's taxes. Lenders should

encourage borrowers to consult with a tax advisor.

(1) When the Lender is participating in an MCC program the amount of the tax credit is considered as an additional resource available for repayment of the loan when the credit is taken on a monthly basis from withholding.

(2) The Lender will submit a copy of the MCC and a copy of the applicant's Form IRS W-4, "Employee's Withholding Allowance Certificate," along with the other materials for the loan guarantee request. The amount of tax credit is limited to the applicant's maximum tax liability.

(i) The MCC must show the rate of credit allowed.

(ii) The Form IRS W-4 must reflect that the borrower is taking the tax credit on a monthly basis.

(iii) The Lender will certify that the borrower has completed and processed all of the necessary documents to obtain the tax credit in accordance with this section.

(b) *Funded buydown accounts.* A funded buydown account is a prepaid arrangement between a builder or a seller and a Lender that is designed to improve applicant's repayment ability. Funded buydown accounts are permitted when the Lender obtains prior RHCDS concurrence. RHCDS will consider buydown accounts when there are compensating factors which indicate the borrower's ability to meet the expected increases in loan payment. The seller, Lender or other third party must place funds in an escrow account with monthly releases scheduled directly to the Lender to reduce the borrower's monthly payment during the early years of the loan. The maximum reduction which may be considered is 2 percent below the note rate, even though the actual buydown may be for more. Reductions in buydown assistance may not result in an increase in the interest rate paid by the borrower of more than 1 percent per year. The borrower shall not be required to repay escrowed buydown funds. Funds must be escrowed with a state or federally supervised Lender. Funded buydown accounts must be fully funded for the buydown period. Buydown periods must be at least 12 months for each 1 percent of the buydown.

#### §§ 1980.393–1980.396 [Reserved]

#### § 1980.397 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable

law if the Administrator determines that application of the requirement, or provision, or failure to take action in the case of an omission would adversely affect the Government's financial interest. The Administrator will exercise this authority upon request of the State Director with the recommendation of the Assistant Administrator for Housing. Requests for exception must be made in writing accompanied by the borrower's casefile in cases involving specific borrowers and supported with documentation to explain the adverse effect, propose alternative courses of action, and to show how the adverse effect will be eliminated or minimized if the exception is granted.

**§ 1980.398 Unauthorized assistance and other deficiencies.**

(a) *Unauthorized assistance.*

Unauthorized assistance includes, but is not limited to, issuance of a loan note guarantee when the borrower was not eligible for the loan or the borrower was eligible but the loan was not made for authorized purposes. Unauthorized assistance in the form of interest assistance is discussed in § 1980.390.

(b) *Initial determination of unauthorized assistance.* The reasons for unauthorized assistance being received by the Lender may include:

- (1) Submission of false or inaccurate information by the Lender;
- (2) Submission of false or inaccurate information by the borrower;
- (3) Error by RHCDS personnel; or
- (4) Error by the Lender.

(c) [Reserved]

(d) [Reserved]

(e) *Categories of unauthorized assistance.*

(1) *Minor deficiency.* A minor deficiency is one that does not change the eligibility of the borrower, the eligibility of the property, or amount of the loan. Such incidents will be brought to the Lender's attention in writing. Examples of minor deficiencies include improperly completed builder certifications, use of an outdated credit report, or use of an outdated income verification. Minor deficiencies also include those significant deficiencies when the Lender is willing and able to correct the problem such as obtaining flood insurance for a dwelling located in a flood hazard area and assuring the escrow amount is sufficient.

(2) *Significant deficiency.* A significant deficiency is one that creates a significant risk of loss to the Government, or involves acceptance of a borrower or property not permitted by Agency regulations. Such cases may result in probation or withdrawal of the Lender's approval for program

participation. Examples of significant deficiencies include gross miscalculation of income, acceptance of property that is severely deficient of the required standards, missing builder certifications, and construction changes that materially affect value without proper change orders.

(3) *Fraud or misrepresentation.* A deficiency that involves an action by the Lender to misrepresent either the financial capacity of the borrower or the condition of the property being financed may, in addition to any criminal and civil penalties, result in a withdrawal of RHCDS approval, or debarment. Examples of this type of deficiency include falsified Verifications of Employment, false certifications, reporting a delinquent loan as being current, and omitting conditions relating to the health and safety of a property.

(f) *Borrower noncompliance.* When the borrower receives unauthorized assistance due to an error or oversight, the Lender may continue with the guaranteed loan. More serious violations will be viewed on a case-by-case basis by the National office.

(g) *RHCDS error oversight.* When the borrower receives unauthorized assistance solely due to an error or oversight by RHCDS, the Lender may continue with the guaranteed loan.

**§ 1980.399 Appeals.**

The borrower and the Lender respectively can appeal an RHCDS administrative decision that directly and adversely impacts them. Decisions made by the Lender are not covered by this paragraph even if RHCDS concurrence is required before the Lender can proceed. Appeals will be conducted in accordance with the rules of the National Appeals Division, USDA.

(a) *Appealable decisions.* (1) The borrower and the Lender must jointly execute the written request for an alleged adverse decision made by RHCDS. The Lender need not be an active participant in the appeal process.

(2) The Lender only may appeal cases where RHCDS has denied or reduced the amount of a loss payment to the Lender.

(b) *Nonappealable decisions.* (1) The Lender's decision as to whether to make a loan is not subject to appeal.

(2) The Lender's decision to deny servicing relief is not subject to appeal.

(3) The Lender's decision to accelerate the account is not subject to appeal.

**§ 1980.400 [Reserved]**

Dated: March 22, 1995.

**Michael V. Dunn,**

*Acting Under Secretary for Rural Economic and Community Development.*

[FR Doc. 95-11943 Filed 5-19-95; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 94-NM-193-AD; Amendment 39-9231; AD 95-10-14]

**Airworthiness Directives; Airbus Model A300, A310, and A300-600 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A300, A310, and A300-600 series airplanes, that requires repetitive mechanical and electrical inspections to detect chafing of electrical wiring; and repair or replacement of discrepant parts, and repositioning the looms. This amendment is prompted by reports of wire chafing in the forward avionic compartment. The actions specified by this AD are intended to prevent such chafing, which may lead to a short in the electrical circuits at the 104VU panel; this condition could result in unwanted depressurization, loss of wing de-icing, and loss of in-flight engine restart capability.

**DATES:** Effective June 21, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 21, 1995.

**ADDRESSES:** The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2797; fax (206) 227-1320.