

PART 1980 - General

Subpart D - Rural Housing Loans

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PART 1980 - GENERAL

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 (RHCD) 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 RHCD 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 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an RHCD 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 RD Instruction 1980-D (available in any RHCD office).

(c) Program administration. The guaranteed RH loan program is administered by the Administrator through a State Director who serves each State through District Directors and County Supervisors. The local contact person and focal point for loan processing and loan servicing shall be designated by the State Director. The State Director is responsible for determining the eligibility of lenders within their jurisdiction. The Administrator shall determine the eligibility of multi-State or national lenders. State Directors shall not issue supplements to this subpart without the prior approval of the Assistant Administrator, Housing, except as specifically provided in this subpart.

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(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 of this chapter 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's 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 of this chapter 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 of this subpart 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 subpart A of part 1810 of this chapter (RD 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 of this subpart.

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. Form RD 1980-16, "Agreement for Participation in Single Family Housing Guaranteed/Insured Loan Programs of the United States Government," is 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. Form RD 1980-11, "Guaranteed Rural Housing Lender Record Change," is 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. Form RD 1980-17, "Loan Note Guarantee," is 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. Form RD 1980-12, "Master Interest Assistance and Shared Equity Agreement with Promissory Note," is the agreement between 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 account's (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 itself 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) of this subpart.

Rural area. An area meeting the requirements of §1980.312 of this subpart. 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 of this subpart, 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 Form RD 1980-16.

- (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 Form AD 1047, "Certification Regarding Debarment, Suspension, or Other Matters - Primary Covered Transactions."

(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) RHCDS review for Lender eligibility. RHCDS will assure that the Lender's request for eligibility to originate loans is complete, that neither the Lender nor any of its principal officers have been debarred from doing business with the Government, and will notify the Lender within 15 calendar days of the receipt of a request of the decision or the need for additional information. The following are the steps required for reviewing a request for Lender eligibility:

(1) Check current "Lists of Parties Excluded from Federal Procurement/Nonprocurement Programs" to determine whether the Lender or any of its principal officers have been debarred from doing business with the Government.

(2) Review and verify the Lender's evidence of approval under paragraph (b) of this section. Obtaining the Lender's Fannie Mae, Freddie Mac, or FHA ID number will typically be sufficient verification.

(d) Handling applications for Lender eligibility. Upon determination of a Lender's eligibility to originate loans, RHCDS and the Lender will execute Form RD 1980-16. The application material will be retained by RHCDS for all eligible Lenders. Form RD 1980-16 establishes the Lender's authorization for participation in the program as an originator, servicer, or holder of RHCDS single family mortgage loans. Form RD 1980-16 shall be in effect until terminated by either the Agency or the Lender in accordance with the terms of Form RD 1980-16 and this subpart. The RHCDS approval official will provide newly approved Lenders with forms needed by the Lender as outlined in exhibit A of RD Instruction 1980-D (available in any RHCDS office) and the materials in exhibit E of RD Instruction 1980-D (available in any RHCDS office).

(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 Form RD 1980-11, "Guaranteed Rural Housing Lender Record Change." 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) of this subpart. 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 Form RD 1980-16. Loss claims will be submitted on Form RD 1980-20, "Rural Housing Guarantee Report of Loss." 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 possible.

(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. RHCDS will conduct certain reviews of the Lender's operations as provided below. If RHCDS determines that the Lender is not fulfilling the obligations of Form RD 1980-16 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 a newly eligible Lender to assure compliance with, and understanding of, Agency regulations. Thereafter, the Lender will be subject to the review provided in paragraph(g)(2) of this section.

(2) Two-year review. RHCDS will review at least 10 percent of the outstanding loans serviced by each Lender every 2 years, or more often if necessary. During this review the RHCDS approval official will obtain a current list of the names, titles, and responsibilities of the Lender's principal officers and evidence that the Lender continues to meet the qualification requirements of paragraph (a) of this section. The review will include an examination of the Lender's loan processing and servicing as follows:

- (i) The incidence of first-year delinquency on loans made by the Lender;
- (ii) Any reviews conducted of the Lender's portfolio of RHCDS guaranteed loans;
- (iii) Loan servicing actions taken by the Lender;
- (iv) The Lender remains in good standing and none of its principal officers or key employees have been debarred;
- (v) Any other information regarding the Lender.

(3) Other reviews. RHCDS may conduct other reviews of the Lender's operations, as related to the RHCDS guaranteed RH loan program, when the Administrator or State Director determines that a review is needed based on factors such as loan delinquencies, loan losses, failure to submit required reports, or other such reasons related to assuring that the Government's interest is adequately protected.

(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 paragraphs (b) or (e) of this section. Status may also be revoked if the Lender violates the terms of Form RD 1980-16, 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. In seeking to debar the Lender, RHCDS will comply with the provisions of RD Instruction 1940-M (available in any RHCDS office). A Lender that has been debarred must obtain the services of another Lender that meets the provisions of this subpart to service any outstanding loans guaranteed under this subpart which are held by said Lender.

(i) RHCDS responsibility.

(1) Lender Agreement. The State Director will maintain the original of Form RD 1980-16 in an operational file for each eligible Lender. A copy of Form RD 1980-16 will also be placed in the RHCDS borrower's docket at the time Form RD 1980-17, "Loan Note Guarantee," is issued.

(2) Other provisions. The RHCDS contact point for Lenders regarding loan guarantees shall be the field office which serves the area in which the security is located.

§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 of this subpart, 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 of this subpart 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 of this subpart.
- (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 of this subpart. 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). Each State Office will obtain the most current information from their State HUD office and maintain the listing of maximum loan amounts for distribution to field offices and lenders.

- (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 of this subpart, whichever is less.

RD Instruction 1980-D
§ 1980.311(b) (Con.)

(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 of this subpart, 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) of this subpart 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 of subpart E of part 1901 of this chapter. 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 Rural Development in accordance with 7 CFR part 3550. Current county maps showing ineligible areas are available in Rural Development field offices.
(Revised 01-23-03, SPECIAL PN.)

§ 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 of this subpart. 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 surfaced 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 legally 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) Environmental concerns. The RHCDS approval official will comply with the siting and environmental requirements contained in subpart G of part 1940 of this chapter. RHCDS State environmental coordinators will assure that County Supervisors are aware of the environmentally sensitive areas.

(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 of this chapter 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 Form RD 1980-17 except as provided in §1980.315 of this subpart.

(i) Manufactured homes. New units that meet the requirements of exhibit J of subpart A of part 1924 of this chapter 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 of this subpart.

(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 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 of this chapter 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 the 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 of this chapter.

(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 Form RD 400-1, "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 Form RD 400-6, "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 Form RD 400-3, "Notice to Contractors and Applicants," signed by an RHCDS approval official, 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, an annual report must be filed 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) Compliance reviews. Compliance reviews must be made during construction inspections to determine whether the required posters are displayed, the facilities are not segregated, and there is no evidence of discrimination in employment. Findings of the borrower or Lender (when inspections are made) will be documented in writing. If there is any evidence of noncompliance, the borrower or Lender will be made to achieve voluntary compliance. If the effort fails, the Compliance Review Officer will report all the facts in writing to the Administrator, Rural Housing and Community Development Service, 14th and Independence SW., Washington, D.C. 20250, Attention: Equal Opportunity Officer.

(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 as mentioned in 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 of this chapter.

(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 of this chapter (RD 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 Form RD 1980-17 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) of this subpart, 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 as provided in the promissory note.
- (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 of this subpart.

§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 subpart A of part 1810 of this chapter (RD 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 timeframe 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) of this subpart. 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 Form RD 1980-12, assure that the closing agent properly records a junior mortgage or deed of trust which grants RHCDS a lien on the security 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 review. The RHCDS approval official will perform an administrative review in accordance with RD Instruction 1922-C (available in any RHCDS office).

- (1) The Lender will be required to correct or complete any appraisal returned by RHCDS for corrective action.
- (2) The Lender is responsible for communicating and initiating corrective action with the appraiser. The corrected appraisal will be subject to the same review process described in this section.
- (3) The Lender will no longer use an appraiser determined by RHCDS to not meet the requirements of this section. RHCDS will notify the Lender that appraisals performed by that appraiser will no longer be accepted.

§§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) of subpart A of part 1924 of this chapter).
- (2) Conform to RHCDS thermal standards (exhibit D of subpart A of part 1924 of this chapter).
 - (i) The builder may certify conformance with RHCDS thermal standards contained in paragraph IV A of exhibit D of subpart A of part 1924 of this chapter.
 - (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 of this chapter.

(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 of this subpart); 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 of this subpart.

- (1) For existing dwellings, inspections must be made to determine that the dwelling:
 - (i) Meets the current requirements of HUD Handbook 4150.1 and 4905.1 (available from the HUD Ordering Desk 1-800-767-7468).
 - (ii) Meets the thermal standards per §1980.313(f) of this subpart.

(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 of this chapter.

(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 of this subpart. 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. The interview may take place by telephone or face-to-face.

(a) Eligible income. The applicant's adjusted annual income determined in accordance with §1980.348 of this subpart may not exceed the applicable income limit in exhibit C of RD Instruction 1980-D (available in any RHCD office) at the time of issuance of Form RD 1980-18, "Conditional Commitment for Single Family Housing Loan Guarantee." Adjusted annual income is used to determine eligibility for the RHCD 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 to make 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 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 payments 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 nonpayment 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 the 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. The statement will be filed in the applicant/borrower's loan file.
- (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) of this subpart, 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 RD 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 of this subpart 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) of this subpart; 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) of this subpart.

(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) of this subpart). 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

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(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 issued are subject to the availability of funds. Reservations will not exceed 90 percent of the funds available during that quarter. Adequate funding shall be maintained by the State Director for all unexpired reservations issued.
- (d) The RHCDS approval official will issue a reservation number to the Lender. The reservation number is a sequential number of four or more digits preceded by the RHCDS State and County code for the proposed loan applicant and the current fiscal year (i.e., 54058950001 would be the first reservation number issued for State Code 54, County Code 058, Fiscal Year 95).
- (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 of this chapter, whichever occurs first.
- (f) The State Director will assure that all Lenders are timely notified regarding the status of loan funds. Agency policy is to process funding requests within 1 day if possible.

§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) of this subpart 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 Form RD 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 of this subpart.
- (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) Form RD 400-1 for construction contracts costing more than \$10,000.

(11) Evidence of compliance with the Privacy Act of 1974. Form RD 410-9, "Statement Required by the Privacy Act," may be used for this purpose.

(12) Lender's loan underwriting analysis (repayment ability, credit worthiness, and security value).

(13) Form AD 1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," signed by the borrower.

(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) Filing applications. The requirements of the Right to Financial Privacy Act of 1978 must be met as follows:

(1) Within 3 days of the receipt of a complete application from a Lender for a guarantee for a loan, RHCDS will forward Form RD 410-7, "Notification to Applicant on Use of Financial Information from Financial Institution," to the loan applicant.

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(2) RHCDS will notify Lenders and other financial institutions to which RHCDS makes a direct request for financial records. The notification will read as follows:

"I certify that the United States Department of Agriculture, acting through the Rural Housing and Community Development Service, has complied with the applicable provisions of Title XI, Public Law 95-630, in seeking financial information regarding (applicant)."

Date

Approval Official

(3) Under no circumstances may financial information obtained under this subpart be disseminated to any other department or agency of the Federal Government (other than the Office of the Inspector General (OIG)) without express approval of the Office of General Counsel (OGC).

(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 Form RD 1980-18 is issued.

(i) Form RD 1910-5, "Request for Verification of Employment," 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 applicant's 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 Form RD 1910-5 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 from another 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. Form RD 1944-4 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 acceptable documentation of their status. HB-1-3550 outlines the acceptable forms of documentation. (Revised 01-23-03, SPECIAL PN.)

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(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 RHCDS review of applications.

RHCDS will review the application for completeness to determine whether the proposed loan is to an eligible applicant for an eligible loan purpose, for documentation that there is reasonable assurance of repayment ability and sufficient collateral, and to determine that the environmental requirements of §1980.316 of this subpart are met. RHCDS approval officials will notify the Lender of the approval status of the application or the reason the request cannot be processed within 48 hours of receipt.

(a) Issuance of commitment. If RHCDS determines the application is eligible:

(1) Funding authority is available. The approval official will obligate the loan and issue Form RD 1980-18 to the Lender. The Lender can assure that funding authority is available by submitting a request for reservation of funds in accordance with §1980.351 of this subpart.

(i) Prepare and process Form RD 1940-3, "Request for Obligation of Funds Guaranteed Loans." (Revised 05-19-04, PN 374.)

(ii) Prepare Form RD 1980-18 listing all approval requirements and send an original and one copy to the Lender provided adequate authority is available. Form RD 1980-18 shall be valid for a period of 90 days with an option by Rural Development to renew for an additional 90 days. The approval official must assure that funds have been properly obligated before sending Form RD 1980-18 to the Lender.

(2) Nonavailability of funding authority. The approval official will advise the Lender that the application meets the Agency's eligibility criteria but funds are not available.

(b) Incomplete applications. RHCDS will contact the Lender by telephone if Form RD 1980-20 is incomplete. Incomplete applications will be returned to the Lender if the package will not or cannot be made complete within 3 working days.

(c) Denial. If RHCDS determines it is unable to guarantee the loan, the Lender will be informed in writing. Such notification will include the reasons for denial of the guarantee and appropriate appeal or review rights. Appeals will be handled as provided in §1980.399 of this subpart.

§ 1980.355 Review of requirements.

Upon the Lender's review of Form RD 1980-18, the Lender may determine whether to accept the conditions outlined in it.

(a) Accepting conditions. Immediately after reviewing the conditions and requirements in Form RD 1980-18 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. The RHCDS approval official may negotiate any revisions consistent with this subpart. These alternatives will be considered and the Lender will be advised of RHCDS's decision. If altered conditions are accepted by RHCDS, Form RD 1980-18 will be revised as appropriate.

(b) Cancelling 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. Using the reverse side of Form RD 1980-18, 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 Form RD 1980-18, except those approved in writing by RHCDS. In the event the interest rate has not been fixed at the time Form RD 1980-18 is issued, and the interest rate increases between the time of issuance of Form RD 1980-18 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 of this subpart.
- (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 Form RD 1980-18.

RD Instruction 1980-D
§1980.360 (a) (Con.)

(9) The loan proceeds have been disbursed for purposes and in amounts consistent with Form RD 1980-18.

(10) There has been no adverse change in the borrower's situation since Form RD 1980-18 was issued by RHCDS.

(11) All other requirements of Form RD 1980-18 have been met.

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

(c) Lender agreement. There must be a valid Form RD 1980-17 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) Loan note guarantee (Form RD 1980-17). When the Lender has certified that all requirements have been met, delivered a completed Form RD 1980-19, "Guaranteed Loan Closing Report," and paid the guarantee fee, the RHCDS approval official will execute Form RD 1980-17. The original will be provided to the Lender and be attached to the note. A conformed copy with a copy of the note will be retained by RHCDS.

(b) Refusal to execute contract. If RHCDS determines that it cannot execute the loan note guarantee because all requirements have not been met, it will promptly inform the Lender of the reasons using a denial letter form and give the Lender a reasonable period to satisfy the objections. RHCDS may grant additional time as it considers necessary and reasonable under the circumstances if the Lender makes a request within the given time period. If the objections are satisfied within the time allowed, RHCDS will issue the guarantee. Otherwise, the Lender will be informed of the appropriate appeal or review rights in accordance with §1980.399 of this subpart and subpart B of part 1900 of this chapter.

(c) Cancellation of obligations. If the conditions for the guarantee cannot be met after allowance for the completion of the appeal process, RHCDS will prepare and process Form RD 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation," through the field office terminal system.

§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 Form RD 1980-17. Upon a review, RHCDS will notify the Lender of any deficiencies noted during the review and that the guarantee may be jeopardized if the deficiencies are not corrected. 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 Form RD 1980-17 to RHCDS if it desires RHCDS to note the transfer and assumption on the form. If a new note is obtained, it will also be attached to Form RD 1980-17.

(i) Interest assistance. The original borrower's Form RD 1980-12 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 Form RD 1980-17 will continue to be in effect. RHCDS will note the transfer and assumption on the original Form RD 1980-17 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) RHCDS responsibility. The RHCDS approval official may consent to any transfer and assumption consistent with this subpart. The RHCDS approval official shall notify the Lender of the decision in writing. If disapproved, the appropriate appeal rights will be given to the Lender. A copy of the assumption agreement and a copy of any new promissory note will be maintained in the RHCDS loan file.

(1) 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 of this subpart. The Lender may proceed with the transfer and assumption upon obtaining RHCDS approval.

(2) Review of closing documents. The RHCDS approval official or designee is responsible for the review and approval of the executed assumption agreement and the original statement required from the Lender in paragraph (d) of this section.

(i) Errors and omissions. If upon review of the conformed documents RHCDS finds any errors or omissions, the review official will return the defective material to the Lender so that errors and omissions may be corrected. If the original assumption agreement contains the same defects, it will be necessary to have the assuming parties, the transferors, and the Lender initial the changes.

(ii) Notification of Finance Office. If the material is in order, or upon correction per paragraph(m) (2) (i) of this section, the review official will complete and submit Form RD 1980-7, "Notification of Transfer and Assumption of a Guaranteed Loan," and Form RD 1980-50, "Add, Delete, or Change Guaranteed Loan Borrower Information," to the Finance Office.

§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 of this subpart. 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 of this subpart can be met;

(b) Satisfy the RHCDS guarantee and continue with the loan without the guarantee; or

(c) Notify the borrower and the transferee of the default and service the loan in accordance with §1980.371 of this subpart.

§§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 Form RD 1980-16 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 using Form RD 1980-81, "Guaranteed Rural Housing Borrower Default Status," identifying each borrower with a loan that is more than 30 days delinquent. The Lender may use the Agency's form or generate its own similar form provided the format is the same.

(2) Annual report. The Lender must prepare and submit a report on the status of each guaranteed loan, as of December 31, using Form RD 1980-80, "Guaranteed Rural Housing Loan Status Report." The Lender may use the Agency's form or generate its own similar form provided the format is the same.

(e) RHCDS responsibilities.

The RHCDS approval official:

§ 1980.370(e) (Con.)

- (1) Must establish an office management system for guaranteed housing loans and monitor the loans for Rural Development; Applications for loan guarantees will be maintained using Form RD 1905-4, "Application Processing Card - Individual," or its equivalent on the Management Record System. (Revised 02-24-05, SPECIAL PN.)
- (2) Must assure that the necessary reports and information from the Lender are obtained as needed;
- (3) May consult with the State Office on any servicing problem and if it cannot be handled at the State level, the State Office may request the assistance of the National Office.
- (4) Will review the Lender's annual report to protect the Government's interest.

§ 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. The interview may be conducted by either a face-to-face meeting or by telephone. 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.

RD Instruction 1980-D
§ 1980.371 (Con.)

(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 timeframes 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 Form RD 1980-16 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 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 sale 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 period 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 RD 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 Form RD 1980-17 unless RHCDS has determined there is cause for reduction of the loss amount. See §1980.377 of this subpart 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 Form RD 1980-17, 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 its opportunity to appeal the decision as set forth in §1980.399 of this subpart and subpart B of part 1900 of this chapter.

(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 subpart A of part 1901 of this chapter (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.)

§ 1980.376(b) (Con.)

(4) The Lender failed to obtain required security and/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. (Revised 12-21-05, PN 393.)

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.

(a) Estimated claims. When an estimated claim is paid, the Agency will advise the lender, servicer, or payee, as appropriate, of the following:

- (1) the estimated sale price (appraised value) used to calculate the claim,
- (2) that future recovery may be due if the actual sale price exceeds the estimated sale price,
- (3) when and how to report future recovery of sale proceeds, and
- (4) the consequences of failure to report future recoveries, including agency monitoring and the possible termination of lender eligibility.

(b) Verification of sale.

- (1) The Agency will flag claims that were paid based on estimated sale proceeds and contact the lender 6 months after loss claim payment to inquire about the REO status if the actual sale information has not been received.
- (2) If the REO has been sold, the Agency will request the lender to submit HUD-1, Settlement Statement, or similar document as verification of the sale amount.
- (3) Agency follow-up should continue until the sale information is received.

(c) Compliance reviews.

- (1) Lender monitoring reviews conducted under section 1980.309(g) should include review of lender compliance with future recovery loss sharing provisions.
- (2) For Nationally-approved lenders, report non-compliance with requests for sale information or payment of future recovery to the National Office Single Family Housing Guaranteed Loan Division.
- (3) For State-approved lenders, consider non-compliance with requests for sale information or payment of future recovery as grounds for a lender monitoring review under RD Instruction 1980-D, § 1980.309(g) (3).

§ 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 Form RD 1980-13 "Annual Interest Assistance Agreement," and submit it to RHCDS for approval.

(1) RHCDS will reimburse the Lender in the amounts authorized in exhibit D of RD 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 Form RD 1980-13.

(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 Form RD 1980-12.

(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 RD 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 RD 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 RD 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 RD Instruction 1980-D (available in any RHCDS office).

(ii) The change in a designation to (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 Form RD 1980-18 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 of this subpart, 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 Form RD 1980-12 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 RD 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 automobile 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. The District Director may authorize exceptions of net family assets up to \$20,000. The State Director may submit cases for which the net family assets exceeds \$20,000 to the National Office for authorization to grant 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 Form RD 1980-13 and submits it to RHCDS for approval.

(f) Processing interest assistance. The Lender will process interest assistance agreements in accordance with this section. Form RD 1980-13 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 Form RD 1980-13 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. Form RD 1980-13 will be for a 12-month period.

(2) Interest assistance agreements. Form RD 1980-12 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, Form RD 1980-13 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 Form RD 1980-13.

(ii) The borrower will review Form RD 1980-13 and sign the form signifying that all information is correct as shown.

(iii) If the information contained on Form RD 1980-13 appears correct, RHCDS will then 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, Form RD 1980-12 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 Form RD 1980-13 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 Form RD 1980-13 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 Form RD 1980-13 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 the coborrower's income will then be counted toward annual income and interest assistance may be reduced or cancelled.

(4) Effect of modification. A Form RD 1980-13 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) Initiation of renewal action. At least 15 but not more than 30 days prior to the beginning of the annual review period, RHCDS will mail a list of borrowers whose interest assistance agreements are to be reviewed, to the Lender. 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) RHCDS actions. RHCDS will:
 - (A) Maintain a list of borrowers for a record of interest assistance agreements processed.
 - (B) Review the calculations of adjusted annual income and document the results in the running case record. The County Supervisor will utilize "Wage Matching" if available.
 - (C) Retain the original of the Form RD 1980-13 and send two copies to the Lender.
 - (D) Notify the Lender in writing of any errors noted in processing and the necessary corrective actions.
 - (E) When the information received for the interest assistance review period indicates that the borrower's income exceeds the previous year's income by 20 percent or more, RHCDS will determine when the change in income occurred and whether the borrower failed to report an increase as required. If any interest assistance has been overpaid, the overpayment will be collected from the borrower in the following manner:
 - (1) If the borrower is eligible for further interest assistance, the amount of overpayment will be deducted from future interest assistance payments at the rate of 1/12 per month unless the borrower repays the interest assistance in a lump sum.

§ 1980.390(h)(1)(ii)(E) (Con.)

(2) If the borrower is not eligible for further interest assistance or the amount of interest assistance is not sufficient to cover the overpayment, the repayment schedule will be negotiated in such a manner as to minimize the possibility that the repayment of the loan will suffer. The preferred method of collection in this circumstance is lump sum. Interest assistance repayment will never take more than 12 months unless prior authorization is obtained from the State Director. (Revised 10-28-03, SPECIAL PN.)

(3) If RHCDS is unable to collect the interest assistance by deductions or voluntary repayment by the borrower, the RHCDS servicing official will obtain the advice of the State or National Office as appropriate.

(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 Form RD 1980-13 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 Form RD 1980-13.

(i) Cancellation of interest assistance.

(1) An existing Form RD 1980-13 will be cancelled under the following circumstances:

(i) When the borrower has never occupied the dwelling, the interest assistance will be cancelled 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) The RHCDS servicing office will notify the Finance Office of the effective date for cancellation using Form RD 1980-13. The Finance Office will process the cancellation and notify the RHCDS servicing office of any interest assistance payments made after the effective date. The servicing office will collect the overpaid interest assistance from the Lender.

(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 Form RD 1980-13 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 promptly be 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 will be notified of their appeal rights in accordance with §1980.399 of this subpart 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 cancelled because the loan was accelerated and if the acceleration was withdrawn with RHCDS approval. The approval official will notify the Finance Office via memorandum of the reinstatement.

§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 equity exists in the security. The RHCDS approval official will remit the shared equity proceeds to the Finance Office using Form RD 451-2, and Form RECD 1980-87, "Shared Equity Payment."

(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) of this subpart.

(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, as defined in this section. 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)(1)(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 of this subpart.

(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(s) 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 Form RD 1980-17.

§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, proposed 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.

This section prescribes the policies and procedures for servicing loan guarantees issued under this subpart when the borrower was not eligible for all or part of the financial assistance received in the form of a loan guarantee or other improper processing or servicing actions taken by the Lender.

(a) Unauthorized assistance. Unauthorized assistance includes, but is not limited to, issuance of Form RD 1980-17 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 of this subpart.

(b) Initial determination of unauthorized assistance. Unauthorized assistance may be identified through audits conducted by the OIG, United States Department of Agriculture (USDA), through reviews conducted by RHCDS or its agents, or through other means. The reasons for the unauthorized assistance being received by the Lender must be well documented in the RHCDS casefile and 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) Notification to Lender. RHCDS will notify the Lender of unauthorized assistance by "Certified Mail, Return Receipt Requested." The letter will specify in detail the reason(s) the assistance is determined to be unauthorized.

(d) Lender noncompliance. The RHCDS approval official will consider the seriousness of the deficiency.

(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 referral to the Regional OIG, a withdrawal of RHCDS approval, or debarment proceedings. 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.

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

(2) Fraud or misrepresentation. In all cases where the borrower noncompliance was based on fraud or misrepresentation, the case will be referred to the OIG and the National Office with a recommendation on disposition of the case.

(g) RHCDS error oversight. When the borrower receives unauthorized assistance 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.

RD Instruction 1980-D

§1980.400 [Reserved]

Attachments: Exhibits A, B, C, D, E, and F.

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List of Forms Used in the Agency's RH Guaranteed Loan Instruction 1980-D

Form Number -----	Title of -----	Purpose of Form -----
400-1	Equal opportunity Agreement	Used by RHCDS to obtain required E.O. agreements from contractors.
400-3	Notice to Contractors and Applicants	Used by RHCDS to notify contractors and applicants of E.O. requirements.
400-6	Compliance Statement	Used by RHCDS to obtain statement of compliance with E.O. requirements from applicant.
410-7	Notification to Applicant on Use of Financial Information from Financial Institution	Used by RHCDS to notify applicant on its use of financial information.
451-2	Schedule of Remittances	Used by RHCDS to remit overpayments of interest assistance to the Finance Office.
1905-4	Application and Processing Card -- Individual	Used by RHCDS to maintain application processing records.

Form Number -----	Title of -----	Purpose of Form -----
1910-5	Request for Verification of Employment	Used by Lender to obtain written verification of applicant/borrower employment.
1940-3	Request for Obligation of Funds Guaranteed Loans	Used by RHCDS to notify Finance Office of loan guarantee approval.
1940-10	Cancellation of U.S. Treasury Check and/or Obligation	Used by RHCDS to notify Finance Office of a deobligation of loan guarantee.
1944-4	Certification of Disability or Handicap	Used by Lender to verify an applicant's eligibility for certain adjustments to income.
1980-11	Guaranteed Rural Housing Lender Record Change	Used by one Lender to report the sale of the loan note to another Lender.
1980-12	Master Interest Assistance and Shared Equity Agreement with Promissory Note	Used by RHCDS to establish the basis for the amount of interest assistance to be paid over the life of the loan.

Form Number -----	Title of -----	Purpose of Form -----
1980-13	Annual Interest Assistance Agreement	Used by RHCDS to establish the amount of interest assistance to be paid for the upcoming 12 months.
1980-14	Interest Assistance Shared Equity Determination	Used by RHCDS to determine the amount of interest assistance to be repaid.
1980-16	Agreement For Participation In Single Family Housing Guaranteed/Insured Loan Programs of the United States Government.	Used by RHCDS and Lender to memorialize agreements regarding Rural Housing Loan guarantees.
1980-17	Loan Note Guarantee	Used by RHCDS to issue the Guarantee on a loan made under this subpart.
1980-18	Conditional Commitment for Single Family Housing Loan Guarantee	Used by RHCDS to set forth the conditions for issuance of loan note guarantee and used by Lender to accept conditions.
1980-19	Guaranteed Loan Closing Report	Used by Lender to report closing of a guaranteed loan to RHCDS and to remit guarantee fee.

Form Number -----	Title of -----	Purpose of Form -----
1980-20	Rural Housing Guarantee Report of Loss	Used by Lender to report loss on a guaranteed loan or to report collection recovery on a previously paid loss. Used by RHCDS to determine the amount of the loss payment.
1980-21	Request for Single Family Housing Loan Guarantee	Used by Lender to submit a request for a rural housing loan guarantee to RHCDS.
1980-86	Reservation of Funds	Used by Lender to submit a request for reservation of funds and by RHCDS to confirm reservation.
1980-87	Shared Equity Payment	Used by RHCDS to notify Finance Office of shared Equity Payment.
URAR	Uniform Residential Appraisal Report	Used by appraiser to determine market value of dwelling.

Loans Made On or Before March 28, 1989

Servicing Loan Guarantees.

Loans guaranteed before March 28, 1989, will be serviced in accordance with the Loan Note Guarantee and Lender's Agreement for the loan.

Transfers and Assumptions.

A loan made and guaranteed under subpart D of part 1980 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 moderate income limit by not more than 10 percent of the moderate income limit for the area. Eligible applicant also includes an applicant who meets the eligibility requirements of this subpart except that the housing being transferred is in an area which has ceased to be rural.

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Exhibit C in PDF ONLY.

Fee Schedule for Guaranteed Housing Loan Processing and Servicing Activities

Fee paid to Lender for processing renewals
and revisions of interest assistance agreements -- \$40.00

Factor used to estimate Real Estate Owned (REO) property management and
disposition costs for loss claims on unsold REO under § 1980.376(a)(1)(ii) of
this subpart - 11.87 percent of appraised value

The chart below will serve as the basis for determining the amount of interest
assistance paid by the government and the amount that the borrower will be
responsible for payment of the Promissory Note in the attached agreement. The
actual amounts for which each party is responsible will be reflected in Form
RD 1980-12, "Master Interest Assistance and Shared Equity Agreement with
Promissory Note."

Percentage of Median Income		Interest Assistance	
When the Borrower's income is:		Borrower's High Cost Area	
<u>More than</u>	<u>But Less than</u>	<u>Floor Rate is:</u>	<u>Floor Rate is:</u>
55 percent	60 percent	3 percent	3 percent
60 percent	65 percent	4 percent	3 percent
65 percent	70 percent	5 percent	4 percent
70 percent	75 percent	6 percent	5 percent
75 percent	80 percent	7 percent	6 percent

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LENDERS GUARANTEED RURAL HOUSING
LIST OF AGENCY INSTRUCTIONS AND EXHIBITS

I. PURPOSE: This exhibit prescribes the necessary Agency Instructions and exhibits which must be provided to approved Guaranteed Section 502 Rural Housing (RH) Lenders, in order for the Lenders to develop application packages for submission to Rural Development field offices.

II. POLICY: State Directors shall provide all eligible Guaranteed Section 502 RH Lenders with copies of Agency Instructions and exhibits listed in this exhibit, including training of the Lender's staff, to ensure that the Lender understands Rural Development guaranteed RH loan requirements prior to submission of guaranteed RH loan packages. State Directors shall assemble the regulations and exhibits into a Lenders Manual and provide the Lender with an appropriate number of copies of the Manual to assist the Lender's staff in developing application packages in a timely manner.

III. LIST OF AGENCY INSTRUCTIONS AND EXHIBITS:

1. RD Instruction 1924-A, Exhibit D, "Thermal Performance Construction Standards."
2. RD Instruction 1924-A, Exhibit E, "Voluntary National Model Building Codes."
3. HB-1-3550, "Direct Single Family Housing Loans and Grants"
4. Rural Development Rural Area Eligibility Maps.
5. RD Instruction 1980-D, Exhibit A, "List of Forms Used in the Agency's RH Guaranteed Loan Instruction 1980-D."
6. RD Instruction 1980-D, Exhibit C, "Income Limits."
7. All required Agency forms identified in RD Instruction 1980-D, Exhibit A (cited above).
8. RD Instruction 440.1, Exhibit K, which contains the guarantee fee structure.
9. Current directory of Agency Field Offices.
10. RD Instruction 1980-D.

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INCOME EXEMPTED BY FEDERAL STATUTE

Revenue which a Federal statute exempts shall not be considered as income or used as a basis for determining eligibility for a Rural Housing and Community Development Service (RHCDS) loan, payment credit assistance, or denying or reducing Federal financial assistance or benefits to which the recipient would otherwise be entitled.

In addition to the exempted income outlined under §1980.347 (e) (9) of this subpart, the following are not included in annual income but may be considered in determining repayment ability:

(1) The imminent danger duty pay to a service person applicant/borrower or spouse away from home and exposed to hostile fire. Amounts of imminent danger pay for military personnel stationed in the Combat Zone are excluded from annual income effective August 2, 1990. Any military pay received by persons serving in the Combat Zone received on or after January 17, 1991, is excluded from annual income. The Combat Zone, as defined by the Presidential Executive Order 12744 dated January 21, 1991, consists of the Persian Gulf, the Red Sea, the Gulf of Oman, that portion of the Arabian Sea that lies north of 10 degrees north latitude and west of 68 degrees east longitude, the Gulf of Aden, the total land areas of Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar, and the United Arab Emirates. Immediately upon notification by the family, or based on information from a knowledgeable source that a member of the household was serving in the Combat Zone, the loan approval official shall redetermine the household income retroactive to January 17, 1991, and adjust the applicant/borrower's payment assistance accordingly.

(2) Payments to volunteers under the Domestic Volunteer Service Act of 1973, including but not limited to:

(a) National Volunteer Antipoverty Programs which include VISTA, Peace Corps, Service Learning Programs, and Special Volunteer Programs.

(b) National Older American Volunteer Programs for persons age 60 and over which include Retired Senior Volunteer Programs, Foster Grandparent Program, Older American Community Services Program, and National Volunteer Programs to Assist Small Business and Promote Volunteer Service to Persons with Business Experience, Service Corps of Retired Executives (SCORE), and Active Corps of Executives (ACE).

- (3) Payments received after January 1, 1989 from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the "In Re Agent Orange" product liability litigations, M.D.L. No. 381 (E.D.N.Y.).
- (4) Payments received under the "Alaska Native Claims Settlement Act" or the "Maine Indian Claims Settlement Act." (A more detailed explanation will be provided in a State Supplement by the State Directors for Alaska and Maine.)
- (5) Income derived from certain submarginal land of the United States that is held in trust for certain American Indian tribes.
- (6) Payments or allowances made under the Department of Health and Human Services Low-Income Home Energy Assistance Program.
- (7) Payments received from the Job Training Partnership Act.
- (8) Income derived from the disposition of funds of the Grand River Band of Ottawa Indians.
- (9) The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the Court of Claims, or from funds held in trust for an American Indian tribe by the Secretary of Interior.
- (10) Payments received from programs funded under Title V of the Older Americans Act of 1965.
- (11) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977.
- (12) Any other income which is exempted under Federal statute.