

otherwise satisfied. RHS 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 RHS guarantee upon terms and conditions which the applicant could reasonably be expected to fulfill.

(c) Be a natural person (individual) who resides as a citizen in any of the 50 States, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marianas, Federated States of Micronesia, and the Republics of the Marshall Islands and Palau, or a noncitizen who resides in one of the foregoing areas after being legally admitted to the U.S. for permanent residence or on indefinite parole.

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

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

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

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

§ 1980.347 Annual income.

Annual income determinations will be thoroughly documented in the Lender's casefile. Historical data based on the past 12 months or previous fiscal year may be used if a determination

cannot logically be made. Annual income to be considered includes:

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

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

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

(d) The following *are* included in annual income:

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

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

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

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

(iii) A deduction, based on straight line depreciation, is allowed in the manner prescribed by IRS regulations for the exhaustion, wear and tear, and obsolescence of depreciable property used in the operation of a trade, farm,

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or business by a member of the household. The deduction must be based on an itemized schedule showing the amount of straight line depreciation that could be claimed for Federal income tax purposes.

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

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

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

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

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

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

(4) The full amount of periodic payments received from social security (including social security received by adults on behalf of minors or by minors intended for their own support), annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts.

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

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

(7) Periodic allowances, such as:

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

forcing such payments and they are not received as ordered; or

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

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

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

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

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

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

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

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

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

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

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

(7) Amounts of education scholarships paid directly to the student or to the educational institution and amounts paid by the Government to a veteran for use in meeting the costs of tuition, fees, books, and equipment. Any amounts of such scholarships or veteran's payments, which are not used for the aforementioned purposes and

are available for subsistence, are considered to be income. Student loans are not considered income.

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

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

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

§ 1980.348 Adjusted annual income.

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

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

- (1) Under 18 years of age;
- (2) Eighteen years of age or older and is disabled as defined in §1980.302(a); or
- (3) A full-time student aged 18 or older.

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

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

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

(1) Medical expenses for any elderly family (as defined in §1980.302(a)). This includes medical expenses for any

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

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

§§ 1980.349–1980.350 [Reserved]

§ 1980.351 Requests for reservation of funds.

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

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

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

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

(d) [Reserved]

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

(f) [Reserved]

§ 1980.352 [Reserved]

§ 1980.353 Filing and processing applications.

(a) *Loan priorities.* Complete applications will be considered by RHS in the order received from Lenders authorized