

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

§ 1980.309 Lender participation in guaranteed RH loans.

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

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

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

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

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

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

(2) The Lender must agree to:

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

Mac, or, for FCS Lenders, use the appropriate FCS forms.

(vi) Maintain its approval if qualification as an RHS 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 RHS in writing if the Lender:

(A) Ceases to meet any financial requirements of the entity under which the Lender qualified for RHS 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 RHS guaranteed loans;

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

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

(c) [Reserved]

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

(e) *Lender sale of guaranteed loans.* Loans guaranteed under this subpart may be sold only to entities which meet the qualifications in paragraphs (a) and (b) of this section or directly to Fannie Mae or Freddie Mac. Such entities are referred to as a Lender and are to be treated as a Lender for all purposes under this subpart. The selling Lender shall provide the original loan note guarantee to the purchasing Lender. The selling Lender is responsible for reporting the sale of any loan to RHS within 30 days using a reporting form provided by RHS. The purchasing Lender must execute a Lender Agreement or have a valid Lender Agreement on file with RHS. 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 RHS 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 RHS the items required in §1980.353(c). The Lender may utilize the services of a non-RHS approved lender for originating residential loans. The RHS approved lender is responsible for the

loan underwriting and for obtaining the RHS 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 RHS of the name and address of the servicer.

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

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

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

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

(2)-(3) [Reserved]

(h) *Termination of Lender eligibility.* The Lender remains eligible as long as the Lender meets the criteria in paragraph (a) of this section unless that Lender's status is revoked by RHS or

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

§ 1980.310 Loan purposes.

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

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

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

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

(d) Title clearance, title insurance, and loan closing; stock in a cooperative lending agency necessary to obtain the loan; and, for low-income applicants