

Protective advance. Advances made by the Lender when the borrower is in liquidation or otherwise in default to protect or preserve the security from loss or destruction.

Qualifying income. The amount of the applicant's income which the lender determines is adequate and dependable enough to consider for repayment ability. This figure may be different from the adjusted income which is used for RHS program eligibility. Qualifying income is typically less than adjusted income unless the applicant has income from the sources listed in §1980.347(e).

Rural area. An area meeting the requirements of §1980.312. Rural areas are designated on maps available in the RHS 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 RHS programs within a state office area.

Total debt to income ratio. Total debt to income ratio is defined as the borrower's monthly mortgage payment plus all recurring monthly debt divided by the borrower's gross monthly income.

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.

RHS— Rural Housing Service.

URAR— Uniform Residential Appraisal Report.

VA— Department of Veterans Affairs.

[60 FR 26985, May 22, 1995, as amended at 75 FR 52432, Aug. 26, 2010; 77 FR 40789, July 11, 2012]

§§ 1980.303–1980.307 [Reserved]

§ 1980.308 Full faith and credit and indemnification.

(a) *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 RHS. 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

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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.

(b) *Indemnification.* If RHS determines that a Lender did not originate a loan in accordance with the requirements in this subpart, and RHS pays a loss claim under the loan note guarantee as a result of the originating Lender's nonconforming action or failure to act, RHS may revoke the originating Lender's eligibility status in accordance with §1980.309(h) of this subpart and may also require the originating Lender:

(1) To indemnify RHS for the loss, if the payment under the guarantee was made within 24 months of loan closing, when one or more of the following conditions is satisfied:

(i) The originating Lender utilized unsupported data or omitted material information when submitting the request for a conditional commitment to RHS;

(ii) The originating Lender failed to properly verify and analyze the applicant's income and employment history in accordance with Agency guidelines;

(iii) The originating Lender failed to address property deficiencies identified in the appraisal or inspection report that affect the health and safety of the occupants or the structural integrity of the property;

(iv) The originating Lender used an appraiser that was not properly licensed or certified, as appropriate, to make residential real estate appraisals in accordance with §1980.334(a) of this subpart; or,

(2) To indemnify RHS for the loss, regardless of how long ago the loan closed, if RHS determines that there was fraud or misrepresentation in connection with the origination of the loan of which the originating Lender had actual knowledge at the time it became such Lender or which the originating Lender participated in or con-

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done. Misrepresentation includes negligent misrepresentation.

[76 FR 31219, May 31, 2011]

§ 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 Service, 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.