

## § 1980.85

354 will not attempt to or participate in the obtaining of replacement notes from the borrower. It will be the responsibility of the holder to bear costs of note replacement if the borrower agrees to issue a replacement instrument. Should such note be replaced, the terms of the note cannot be changed. (See paragraph III(A)(2)(b) of Form FmHA or its successor agency under Public Law 103-354 449-35 for general conditions for reissued notes.) If the evidence of debt has been lost, stolen, destroyed, mutilated or defaced, such evidence of debt must be replaced before FmHA or its successor agency under Public Law 103-354 will replace any instruments.

### ADMINISTRATIVE

A. State Directors will review all documents when presented by the lender to assure all requirements are met.

B. The State Director will contact the Regional OGC for assistance before new guarantee instruments are issued.

C. If the decision is to reissue Loan Note Guarantee(s), Contract of Guarantee(s), or Assignment Guarantee Agreement(s) the following procedure will be followed:

(1) *Multi-note system.* A new Form FmHA or its successor agency under Public Law 103-354 449-34 will be prepared using the original face amounts and amounts guaranteed (not outstanding loan balance). At the top of the form type "This Loan Note Guarantee is issued to replace the original dated \_\_\_\_\_ which was (*insert "lost, stolen, destroyed, defaced or mutilated."*) Only execute an original for the Holder. Copies may be conformed for the lender and FmHA or its successor agency under Public Law 103-354 file.

If borrower notes are needed they must be obtained by the holder from the borrower. The indemnity bond must be kept in safekeeping.

(2) *Assignment Guarantee Agreement system.* A new Form FmHA or its successor agency under Public Law 103-354 449-36 will be prepared using the original amounts except the current principal amount of the loan outstanding should be inserted at item 1 on the face of the document. At the top of the form type "This Assignment Guarantee Agreement is issued to replace the original dated \_\_\_\_\_ which was *lost, stolen, destroyed, defaced or mutilated.*" Only execute an original for the Holder. Copies may be conformed for the lender and FmHA or its successor agency under Public Law 103-354. If a surety bond is issued, it must be kept in safekeeping.

(3) The lender must execute the replacement forms prior to FmHA or its successor

## 7 CFR Ch. XVIII (1-1-01 Edition)

agency under Public Law 103-354 execution of the same.

(4) Certificates of Incumbency may be provided.

[48 FR 30947, July 6, 1983, as amended at 50 FR 39886, Sept. 30, 1985; 51 FR 6707, Feb. 25, 1986; 58 FR 34308, June 24, 1993; 60 FR 53256, Oct. 13, 1995; 64 FR 7403, Feb. 12, 1999]

### § 1980.85 Exception authority.

The Administrator may in individual cases make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute or other applicable law, or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. Requests for exception, must be in writing by the State Director and submitted through the appropriate Assistant Administrator. Requests must be supported with documentation to explain the adverse effect on the Government's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted. In addition, any request for an exception to §1980.13(b) of this subpart must document that the lender involved has furnished acceptable evidence of regulation and supervision.

[54 FR 1549, Jan. 13, 1989]

### §§ 1980.86-1980.99 [Reserved]

### § 1980.100 OMB control number.

The reporting requirements contained in this subpart have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0024. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 28 hours per response, with an average of 2.08 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this

**RHS, RBS, RUS, FSA, USDA**

**Pt. 1980, Subpt. A, App. A**

burden, to the Department of Agriculture, Clearance Officer, OIRM, Ag Box 7630, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575-0024), Washington, DC 20503.

[60 FR 53256, Oct. 13, 1995]

APPENDICES TO SUBPART A

APPENDIX A—LOAN NOTE GUARANTEE

USDA

Form FmHA 449-34  
(Rev. 10-95)

Type of Loan \_\_\_\_\_  
Applicable 7 C.F.R. part 1980  
subpart \_\_\_\_\_  
State \_\_\_\_\_  
County \_\_\_\_\_  
Date of Note \_\_\_\_\_  
Borrower \_\_\_\_\_  
Government Loan Identification Number \_\_\_\_\_  
Lender \_\_\_\_\_  
Lender's IRS ID Tax Number \_\_\_\_\_  
Lender's Address \_\_\_\_\_  
Principal Amount of Loan \_\_\_\_\_

The guaranteed portion of the loan is \$ \_\_\_\_\_  
which is \_\_\_\_\_ (\_\_\_\_ %) \_\_\_\_\_

percent of loan principal. The principal amount of loan is evidenced by \_\_\_\_\_ note(s) (includes bonds as appropriate) described below. The guaranteed portion of each note is indicated below. This instrument is attached to note \_\_\_\_\_

\_\_\_\_\_ in the face amount of \$ \_\_\_\_\_  
and is number \_\_\_\_\_ of \_\_\_\_\_.

Lender's identi- fying No.	Face amount	Percent of total face amount	Amount guaran- teed
	\$ _____	_____	\$ _____
Total ....	\$ _____	100	\$ _____

In consideration of the making of the subject loan by the above named Lender, the United States of America, acting through the Farm Service Agency, Rural Business-Cooperative Service, Rural Utilities Service, or Rural Housing Service (herein called "Government"), pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*), the Emergency Livestock Credit Act of 1974 (7 U.S.C. note preceding 1961 Pub. L. 93-357 as amended), the Emergency Agricultural Credit Adjustment Act of 1978 (7 U.S.C. note preceding 1921, Pub. L. 95-334), or Title V of the Housing Act of 1949 (42 U.S.C. 1471 *et seq.*) does hereby agree that in

accordance with and subject to the conditions and requirements herein, it will pay to:

A. Any Holder 100 percent of any loss sustained by such Holder on the guaranteed portion and on interest due (including any loan subsidy) on such portion and any capitalized interest on such portion resulting from the restructuring of a Guaranteed Farm Credit Program loans but not exceeding statutory loan limits.

B. The Lender the lesser of 1. or 2. below:

1. Any loss sustained by such Lender on the guaranteed portion including:

a. principal and interest indebtedness as evidenced by said note(s) or by assumption agreement(s), and

b. Any loan subsidy due and owing, and

c. Principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with Government's authorization, including but not limited to, advances for taxes, annual assessments, any ground rents, and hazard or flood insurance premiums affecting the collateral, or

d. and, Capitalized interest on such portion resulting from the restructuring of a Guaranteed Farm Credit Programs Loans and not exceeding statutory loan limits, or

2. The guaranteed principal advanced to or assumed by the Borrower under said note(s) or assumption agreement(s) and any interest due (including any loan subsidy) thereon and any capitalized interest resulting from the restructuring of a Guaranteed Farm Credit Programs loans and not exceeding statutory loan limits.

If Government conducts the liquidation of the loan, loss occasioned to a Lender by accruing interest (including any loan subsidy) after the date Government accepts responsibility for liquidation will not be covered by this Loan Note Guarantee. If Lender conducts the liquidation of the loan accruing interest (including any loan subsidy) shall be covered by this Loan Note Guarantee to date of final settlement when the lender conducts the liquidation expeditiously in accordance with the liquidation plan approved by Government.

*Definition of Holder*

The Holder is the person or organization other than the Lender who holds all or part of the guaranteed portion of the loan with no servicing responsibilities. Holders are prohibited from obtaining any part(s) of the Guaranteed portion of the loan with proceeds from any obligation, the interest on which is excludable from income, under Section 103 of the Internal Revenue Code of 1954, as amended (IRC). When the Lender assigns a part(s) of the guaranteed loan to an assignee, the assignee becomes a Holder only when Form FmHA 449-36, "Assignment Guarantee Agreement," is used.

*Definition of Lender*

The Lender is the person or organization making and servicing the loan which is guaranteed under the provisions of the applicable subpart of 7 C.F.R. part 1980. The Lender is also the party requesting a loan guarantee.

## CONDITIONS OF GUARANTEE

## 1. Loan Servicing

Lender will be responsible for servicing the entire loan, and Lender will remain mortgagee and/or secured party of record not withstanding the fact that another party may hold a portion of the loan. When multiple notes are used to evidence a loan, Lender will structure repayments as provided in the loan agreement. In the case of Farm Ownership, Soil and Water, or Operating Loans, the Lender agrees that if liquidation of the account becomes imminent, the Lender will consider the Borrower for an Interest Rate Buydown under Exhibit C of subpart B of 7 C.F.R., part 1980, and request a determination of the Borrower's eligibility by Government. The Lender may not initiate foreclosure action on the loan until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown Program.

## 2. Priorities

The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion.

## 3. 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 Lender or any Holder has actual knowledge at the time it became such Lender or Holder or which Lender or any Holder participates in or condones. If the note to which this is attached or relates provides for the payment of interest on interest, then this Loan Note Guarantee is void. However, in the case of the Farm Credit Programs loans, the capitalization of interest when restructuring loans will not void this Loan Note Guarantee. In addition, the Loan Note Guarantee will be unenforceable by Lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which Government acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved

by Government in its Conditional Commitment for Guarantee. Negligent servicing is defined as the 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 not only the concept of a failure to act but also not acting in a timely manner or acting in a manner 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.

## 4. Rights and Liabilities

The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentation by Lender or any unenforceability of this Loan Note Guarantee by Lender. Nothing contained herein will constitute any waiver by Government of any rights it possesses against the Lender. Lender will be liable for and will promptly pay to Government any payment made by Government to Holder which if such Lender had held the guaranteed portion of the loan, Government would not be required to make.

## 5. Payments

Lender will receive all payments of principal, or interest, and any loan subsidy on account of the entire loan and will promptly remit to Holder(s) its pro rata share thereof determined according to its respective interest in the loan, less only Lender's servicing fee.

## 6. Protective Advances

Protective advances made by Lender pursuant to the regulations will be guaranteed against a percentage of loss to the same extent as provided in this Loan Note Guarantee notwithstanding the guaranteed portion of the loan that is held by another.

## 7. Repurchase by Lender

The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the borrower is in default not less than 60 days on principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest (including any loan subsidy) less the Lender's servicing fee. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date

of the demand letter to the Lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to Government. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and Government of its decision.

#### 8. Government Purchase

If Lender does not repurchase as provided by paragraph 7 hereof, Government will purchase from Holder the unpaid principal balance of the guaranteed portion together with accrued interest (including any loan subsidy) to date of repurchase less Lender's servicing fee, within thirty (30) days after written demand to Government from Holder. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the original demand letter of the Holder to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender. The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from Government. Such evidence will consist of either the original of the Loan Note Guarantee properly endorsed to Government or the original of the Assignment Guarantee Agreement properly assigned to Government without recourse including all rights, title, and interest in the loan. Government will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy) to date of demand and interest (including any loan subsidy) subsequently accruing from date of demand to proposed payment date. Unless otherwise agreed to by Government, such proposed payment will not be later than 30 days from the date of demand.

The Government will promptly notify the Lender of its receipt of the Holder(s)'s demand for payment. The Lender will promptly provide the Government with the information necessary for Government determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. Government will notify both parties who must resolve the conflict before payment by Government will be approved. Such conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, Government will review the demand and submit it to the State Director for verification. After reviewing the demand the

State Director will transmit the request to the Government Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office servicing the borrower and State Director and remit the check(s) to the Holder(s).

#### 9. Lender's Obligations

Lender consents to the purchase by Government and agrees to furnish on request by Government a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by Borrowers on the loan and the amount including any loan subsidy then owed to any Holder(s). Lender agrees that any purchase by Government does not change, alter or modify any of the Lender's obligations to Government arising from said loan or guarantee nor does it waive any of Government's rights against Lender, and that Government will have the right to set-off against Lender all rights inuring to Government as the Holder of this instrument against Government's obligation to Lender under the Loan Note Guarantee.

#### 10. Repurchase by Lender for Servicing

If, in the opinion of the Lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the Holder will sell the portion of the loan to the Lender for an amount equal to the unpaid principal and interest (including any loan subsidy) on such portion less Lender's servicing fee. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of the demand letter of the Lender or Government to the Holder(s) requesting the Holder(s) to tender their guaranteed portion(s).

a. The Lender will not repurchase from the Holder(s) for arbitrage purposes or other purposes to further its own financial gain.

b. Any repurchase will only be made after the Lender obtains Government written approval.

c. If the Lender does not repurchase the portion from the Holder(s), Government at its option may purchase such guaranteed portions for servicing purposes.

#### 11. Custody of Unguaranteed Portion

The Lender may retain, or sell the unguaranteed portion of the loan only through participation. Participation, as used in this instrument, means the sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

#### 12. When Guarantee Terminates

This Loan Note Guarantee will terminate automatically (a) upon full payment of the

**Pt. 1980, Subpt. A, App. B**

**7 CFR Ch. XVIII (1-1-01 Edition)**

guaranteed loan; or (b) upon full payment of any loss obligation hereunder; or (c) upon written notice from the Lender to Government that the guarantee will terminate 30 days after the date of notice, provided the Lender holds all of the guaranteed portion and the Loan Note Guarantee(s) are returned to be cancelled by Government.

**13. Settlement**

The amount due under this instrument will be determined and paid as provided in the applicable subpart of 7 CFR part 1980 in effect on the date of this instrument.

**14. Loan Subsidy**

\*In addition to the interest rate of the note attached hereto, Government will pay a loan subsidy of \_\_\_\_\_ percent per year. Payments will be made annually.

**15. Interest Capitalization**

In the case of Farm Credit Programs loans, the Lender/Holder(s) may capitalize interest only when the note is restructured. When delinquent interest is so treated as principal, the new principal amount may exceed the principal amount of the loan listed herein, but may not exceed statutory loan limits. The new principal amount and new guaranteed portion will be identified at restructuring in an addendum to this Loan Note Guarantee. Such capitalized interest will be covered by this loan Note Guarantee. References to "principal and interest" and "principal advanced" herein, therefore, shall include any capitalized interest on the guaranteed portion of the loan resulting from the restructuring of a Guaranteed Farm Credit Programs loans and not exceeding statutory loan limits.

*Position 5*

**16. Notices**

All notices will be initiated through the Government for \_\_\_\_\_ (State) with mailing address at the day of this instrument:

\_\_\_\_\_

\*If not applicable delete paragraph prior to execution of this instrument.

UNITED STATES OF AMERICA

(insert applicable agency)

By \_\_\_\_\_

Title \_\_\_\_\_

(Date) \_\_\_\_\_

Assumption Agreement by \_\_\_\_\_

dated \_\_\_\_\_, 19\_\_\_\_

Assumption Agreement by \_\_\_\_\_

dated \_\_\_\_\_, 19\_\_\_\_

[60 FR 53256, Oct. 13, 1995]

**APPENDIX B—LENDER’S AGREEMENT**

USDA-FmHA OR ITS SUCCESSOR AGENCY  
UNDER PUBLIC LAW 103-354 *Position 5*

Form FmHA or its successor agency under Public Law 103-354 449-35 (Rev. 12-89)

FORM APPROVED

OMB No. 0575-0024

Type of Loan: \_\_\_\_\_  
FmHA or its successor agency under Public Law 103-354 Loan Ident. No. \_\_\_\_\_

Applicable 7 CFR

Part 1980 Subpart \_\_\_\_\_

\_\_\_\_\_ (Lender) of  
\_\_\_\_\_ has made a loan(s) to  
\_\_\_\_\_ (Borrower)  
\_\_\_\_\_ in the principal

amount of \$ \_\_\_\_\_  
as evidenced by \_\_\_\_\_

note(s) (include Bond as appropriate)

described as follows: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

The United States of America, acting through Farmers Home Administration or its successor agency under Public Law 103-354 (FmHA or its successor agency under Public Law 103-354) has entered into a "Loan Note Guarantee" (Form FmHA or its successor agency under Public Law 103-354 449-34) or has issued a "Conditional Commitment for Guarantee" (Form FmHA or its successor agency under Public Law 103-354 449-14) to enter into a Loan Note Guarantee with the Lender applicable to such loan to participate in a percentage of any loss on the loan not to exceed \_\_\_\_\_% of the amount of the principal advance and any interest (including any loan subsidy) thereon. The terms of the Loan Note Guarantee are controlling. In order to facilitate the marketability of the guaranteed portion of the loan and as a condition for obtaining a guarantee of the loan(s), the Lender enters into this agreement.

**THE PARTIES AGREE:**

I. The maximum loss covered under the Loan Note Guarantee will not exceed \_\_\_\_\_ percent of the principal and accrued interest including any loan subsidy on the above indebtedness.

II. *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 became such Lender or which Lender participates in or condones. Any note which provides for the payment of interest on interest shall not be guaranteed. Any Loan Note Guarantee or Assignment Guarantee Agreement attached to or relating to a note which provides for payment of interest on interest is void.

The Loan Note Guarantee will be unenforceable by the Lender 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 FmHA or its successor agency under Public Law 103-354 acquires knowledge of the foregoing. Any losses will be unenforceable by the Lender to the extent that loan funds are used for purposes other than those specifically approved by FmHA or its successor agency under Public Law 103-354 in its Conditional Commitment for Guarantee. Negligent servicing is defined as the 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 not only the concept of a failure to act but also not acting in a timely manner or acting in a manner 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.

Public reporting burden for this collection of information is estimated to average 1½ hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575-0024), Washington, D.C. 20503.

### III. Lender's Sale or Assignment of Guarantee Loan.

A. The Lender may retain all of the guaranteed loan. The Lender is not permitted to sell or participate in any amount of the guaranteed or unguaranteed portion(s) of the loan(s) to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default as set forth in the terms of the notes. The Lender may proceed under the following options:

1. *Assignment.* Assign all or part of the guaranteed portion of the loan to one or

more Holders by using Form FmHA or its successor agency under Public Law 103-354 449-36, "Assignment Guarantee Agreement." Holder(s), upon written notice to Lender and FmHA or its successor agency under Public Law 103-354, may reassign the unpaid guaranteed portion of the loan sold thereunder. Upon such notification the assignee shall succeed to all rights and obligations of the Holder(s) thereunder. If this option is selected, the Lender may not at a later date cause to be issued any additional notes.

2. *Multi-Note System.* When this option is selected by the Lender, upon disposition the Holder will receive one of the Borrower's executed notes and Form FmHA or its successor agency under Public Law 103-354 449-34, "Loan Note Guarantee," attached to the Borrower's note. However, all rights under the security instruments (including personal and/or corporate guarantees for B&I, FP only) will remain with the Lender and in all cases insure to its and the Government's benefit notwithstanding any contrary provisions of state law.

a. *At Loan Closing.* Provide for no more than 10 notes, unless the Borrower and FmHA or its successor agency under Public Law 103-354 agree otherwise, for the guaranteed portion and one note for the unguaranteed portion. When this option is selected, FmHA or its successor agency under Public Law 103-354 will provide the Lender with a Form FmHA or its successor agency under Public Law 103-354 449-34, for each of the notes.

#### b. *After Loan Closing:*

(1) Upon written approval by FmHA or its successor agency under Public Law 103-354, the Lender may cause to be issued a series of new notes, not to exceed the total provided in 2.a. above, as replacement for previously issued guaranteed note(s) provided:

(a) The Borrower agrees and executes the new notes.

(b) The interest rate does not exceed the interest rate in effect when the loan was closed.

(c) The maturity of the loan is not changed.

(d) FmHA or its successor agency under Public Law 103-354 will not bear any expenses that may be incurred in reference to such reissue of notes.

(e) There is adequate collateral securing the note(s).

(f) No intervening liens have arisen or have been perfected and the secured lien priority remains the same.

(2) FmHA or its successor agency under Public Law 103-354 will issue the appropriate Loan Note Guarantees to be attached to each of the notes then extant in exchange for the original Loan Note Guarantee which will be cancelled by FmHA or its successor agency under Public Law 103-354.

#### 3. *Participations.*

a. The Lender may obtain participation in its loan under its normal operating procedures. Participation means a sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

b. The Lender is required to hold in its own portfolio or retain a minimum of 10% of Farmer Program loans and 5% for Community Programs and Business and Industry Program loans of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another. The Lender may sell the remaining amount of the unguaranteed portion of the loan, except for Farmer Program loans, only through participation. However, the Lender will always retain the responsibility for loan servicing and liquidation.

B. When a guaranteed portion of a loan is sold by the Lender to a Holder(s), the Holder(s) shall thereupon succeed to all rights of Lender under the Loan Note Guarantee to the extent of the portion of the loan purchased. Lender will remain bound to all the obligations under the Loan Note Guarantee, and this agreement, and the FmHA or its successor agency under Public Law 103-354 program regulations found in the applicable subpart of title 7 CFR part 1980, and to future FmHA or its successor agency under Public Law 103-354 program regulations not inconsistent with the express provisions hereof.

C. The Holder(s) upon written notice to the Lender may resell the unpaid guaranteed portion of the loan sold under provision III A.

IV. The Lender agrees loan funds will be used for the purposes authorized in the applicable subpart of title 7 CFR part 1980 and in accordance with the terms of Form FmHA or its successor agency under Public Law 103-354 449-14.

V. The Lender certifies that none of its officers or directors, stockholders or other owners (except stockholders in a Farm Credit Bank or other Farm Credit System Institution will direct lending authority that have normal stockshare requirements for participation) has a substantial financial interest in the Borrower. The Lender certifies that neither the Borrower nor its officers or directors, stockholders or other owners has a substantial financial interest in the Lender. If the Borrower is a member of the board of directors or an officer of a Farm Credit Bank or other Farm Credit System Institution with direct lending authority, the Lender certifies that an FCS institution on the next highest level will independently process the loan request and will act as the Lender's agent in servicing the account.

VI. The Lender certifies that it has no knowledge of any material adverse change,

financial or otherwise, in the Borrower, Borrower's business, or any parent, subsidiaries, or affiliates since it requested a Loan Note Guarantee.

VII. The Lender certifies that a loan agreement and/or loan instruments concurred in by FmHA or its successor agency under Public Law 103-354 has been or will be signed with the Borrower.

VIII. Lender certifies that it has paid the required guarantee fee.

IX. *Servicing.*

A. The Lender will service the entire loan and will remain mortgagee and/or secured part of record, notwithstanding the fact that another may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. Lender may charge Holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan.

B. Disposition of the guaranteed portion of a loan may be made prior to full disbursement, completion of construction and acquisitions only with the prior written approval of FmHA or its successor agency under Public Law 103-354. Subsequent to full disbursement, completion of construction, and acquisition, the guaranteed portion of the loan may be disposed of as provided herein.

It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and that FmHA or its successor agency under Public Law 103-354's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements and notifying in writing FmHA or its successor agency under Public Law 103-354 and the Borrower of any violations. None of the aforesaid instruments will be altered without FmHA or its successor agency under Public Law 103-354's prior written concurrence. The Lender must service the loan in a reasonable and prudent manner.

2. Receiving all payments on principal and interest (including any loan subsidy) on the loan as they fall due and promptly remitting and accounting to any Holder(s) of their pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. The loan may be reamortized, renewed, rescheduled or (for

Farm Ownership, Soil and Water, and Operating loans only) written down only with agreement of the Lender and Holder(s) of the guaranteed portion of the loan and only with FmHA or its successor agency under Public Law 103-354's written concurrence.

3. Inspecting the collateral as often as necessary to properly service the loan.

4. *Assuring that adequate insurance is maintained.* This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party and Fidelity Bond coverage for Community Program Loans if required.

5. *Assuring that:* taxes, assessment or ground rents against or affecting collateral are paid; the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation, 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 rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA or its successor agency under Public Law 103-354; proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature in value up to \$\_\_\_\_\_ without written concurrence of FmHA or its successor agency under Public Law 103-354; the Borrower complies with all laws and ordinances applicable to the loan, the collateral and/or operating of the farm, business or industry.

6. Assuring that if personal or corporate guarantees are part of the collateral, current financial statements from such loan guarantors will be obtained and copies provided to FmHA or its successor agency under Public Law 103-354 at such time and frequency as required by the loan agreement or Conditional Commitment for Guarantee. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by FmHA or its successor agency under Public Law 103-354, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA or its successor agency under Public Law 103-354.

8. Assuring that the Borrower obtains marketable title to the collateral.

9. Assuring that the Borrower (any party liable) is not released from liability for all or any part of the loan, except in accordance with FmHA or its successor agency under Public Law 103-354 regulations.

10. Providing FmHA or its successor agency under Public Law 103-354 Finance Office with loan status reports semiannually as of June 30 and December 31 on Form FmHA or its successor agency under Public Law 103-354 1980-41, "Guaranteed Loan Status Report." For Farm Ownership, Soil and Water, and Operating loans, Form FmHA or its successor agency under Public Law 103-354 1980-41 will only be submitted annually as of December 31.

11. Obtaining from the Borrower periodic financial statements under the following schedule:

Lender is responsible for analyzing the financial statements, taking any servicing actions and providing copies of statements and record of actions to the FmHA or its successor agency under Public Law 103-354 office immediately responsible for the loan.

12. Monitoring the use of loan funds to assure they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M.

D. If a Farm Ownership, Soil and Water or Operating loan is involved the Lender shall participate in any farm credit mediation program of a state in accordance with the rules of that system and 7 CFR Part 1980, Subpart B, §1980.126.

#### X. Default.

A. The Lender will notify FmHA or its successor agency under Public Law 103-354 when a Borrower is thirty (30) days (90 days for guaranteed rural housing loan) past due on a payment or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA or its successor agency under Public Law 103-354 of the status of a Borrower's default on Form FmHA or its successor agency under Public Law 103-354 1980-44, "Guaranteed Loan Borrower Default Status." A meeting will be arranged by the Lender with the Borrower and FmHA or its successor agency under Public Law 103-354 to resolve the problem. Actions taken by the Lender with written concurrence of FmHA or its successor agency under Public Law 103-354 will include but are not limited to the following or any combination thereof:

1. Deferment of principal payments (subject to rights of any Holder(s)).

2. An additional temporary loan by the Lender to bring the account current.

3. Reamortization of or rescheduling the payments on the loan (subject to rights of any Holder(s)).

4. Transfer and assumption of the loan in accordance with the applicable subpart of Title 7 CFR Part 1980.

5. Reorganization.

6. Liquidation.

7. Subsequent loan guarantees.

8. Changes in interest rates with FmHA or its successor agency under Public Law 103-354's Lender's, and the Holder's approval; provided, such interest rate is adjusted proportionally between the guaranteed and unguaranteed portion of the loan and the type of rate remains the same.

9. Principal and interest write down in accordance with 7 CFR Part 1980, Subpart B, §1980.125.

B. The Lender will negotiate in good faith in an attempt to resolve any problem to permit the Borrower to cure a default, where reasonable. In the case of Farm Ownership, Soil and Water, or Operating loans, the Lender agrees that if liquidation of the account becomes imminent, the Lender will consider the Borrower for an Interest Rate Buydown under Exhibit C of Subpart B of 7 CFR, Part 1980, and request a determination of the Borrower's eligibility by FmHA or its successor agency under Public Law 103-354. The Lender may not initiate foreclosure action on the loan until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown Program.

C. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the Borrower is in default not less than 60 days in payment of principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the Borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of the principal and accrued interest less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to FmHA or its successor agency under Public Law 103-354. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA or its successor agency under Public Law 103-354 of its decision.

D. If Lender does not repurchase as provided by paragraph C, FmHA or its successor agency under Public Law 103-354 will purchase from Holder(s) the unpaid principal balance of the guaranteed portion herein together with accrued interest (including any loan subsidy) to date of repurchase, within 30 days after written demand to FmHA or its successor agency under Public Law 103-354

from the Holder(s). The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of original demand letter of the Holder(s) to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender.

The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA or its successor agency under Public Law 103-354. Such evidence will consist of either the originals of the Loan Note Guarantee and note properly endorsed to FmHA or its successor agency under Public Law 103-354 or the original of the Assignment Guarantee Agreement properly assigned to FmHA or its successor agency under Public Law 103-354 without recourse including all rights, title, and interest in the loan. FmHA or its successor agency under Public Law 103-354 will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy) to date of demand and interest subsequently accruing from date of demand to proposed payment date. Unless otherwise agreed to by FmHA or its successor agency under Public Law 103-354, such proposed payment will not be later than 30 days from the date of the demand.

The FmHA or its successor agency under Public Law 103-354 office serving the Borrower will promptly notify the Lender of the Holder(s) demand for payment. The Lender will promptly provide the FmHA or its successor agency under Public Law 103-354 office servicing the Borrower with the information necessary for FmHA or its successor agency under Public Law 103-354's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA or its successor agency under Public Law 103-354 will notify both parties who must resolve the conflict before payment by FmHA or its successor agency under Public Law 103-354 will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, the FmHA or its successor agency under Public Law 103-354 office servicing the Borrower will review the demand and submit it to the State Director for verification. After reviewing the demand, the State Director will transmit the request to the FmHA or its successor agency under Public Law 103-354 Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office serving the Borrower and State Director and remit the check(s) to the Holder(s).

E. Lender consents to the purchase by FmHA or its successor agency under Public

Law 103-354 and agrees to furnish on request by FmHA or its successor agency under Public Law 103-354 a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by the Borrower on the loan and the amount due the Holder(s). Lender agrees that any purchase by FmHA or its successor agency under Public Law 103-354 does not change, alter or modify any of the Lender's obligations to FmHA or its successor agency under Public Law 103-354 arising from said loan or guarantee, nor does such purchase waive any of the FmHA or its successor agency under Public Law 103-354's rights against Lender, and FmHA or its successor agency under Public Law 103-354 will have the right to set-off against Lender all rights inuring to FmHA or its successor agency under Public Law 103-354 from the Holder against FmHA or its successor agency under Public Law 103-354's obligation to Lender under the Loan Note Guarantee. To the extent FmHA or its successor agency under Public Law 103-354 holds a portion of a loan, loan subsidy will not be paid the Lender.

F. Servicing fees assessed by the Lender to a Holder are collectible only from payment installments received by the Lender from the Borrower. When FmHA or its successor agency under Public Law 103-354 repurchases from a Holder, FmHA or its successor agency under Public Law 103-354 will pay the Holder only the amounts due the Holder, FmHA or its successor agency under Public Law 103-354 will not reimburse the Lender for servicing fees assessed to a Holder and not collected from payments received from the Borrower. No servicing fee shall be charged FmHA or its successor agency under Public Law 103-354 and no such fee is collectible from FmHA or its successor agency under Public Law 103-354.

G. Lender may also repurchase the guaranteed portion of the loan consistent with paragraph 10 of the Loan Note Guarantee.

XI. *Liquidation.* If the Lender concludes that 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, a meeting will be arranged by the Lender with FmHA or its successor agency under Public Law 103-354. When FmHA or its successor agency under Public Law 103-354 concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA or its successor agency under Public Law 103-354, at its option, decides to carry out liquidation.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan. The

Holder(s) will be paid according to the provisions in the Loan Note Guarantee or the Assignment Guarantee Agreement.

If the Lender does not purchase the guaranteed portion of the loan, FmHA or its successor agency under Public Law 103-354 will be notified immediately in writing. FmHA or its successor agency under Public Law 103-354 will then purchase the guaranteed portion of the loan from the Holder(s). If FmHA or its successor agency under Public Law 103-354 holds any of the guaranteed portion, FmHA or its successor agency under Public Law 103-354 will be paid first its pro rata share of the proceeds from liquidation of the collateral.

A. *Lender's proposed method of liquidation.* Within 30 days after the decision to liquidate, the Lender will advise FmHA or its successor agency under Public Law 103-354 in writing of its proposed detailed method of liquidation called a liquidation plan and will provide FmHA or its successor agency under Public Law 103-354 with:

1. Such proof as FmHA or its successor agency under Public Law 103-354 requires to establish the Lender's ownership of the guaranteed loan promissory note(s) and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice to whether or not each item is serving as collateral for the guaranteed loan.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. If the outstanding principal B&I or CP loan balance including accrued interest is less than \$200,000, the Lender will obtain an estimate of the market and potential liquidated value of the collateral. On B&I or CP loan balances in excess of \$200,000, and all other loans regardless of the outstanding principal balance, the Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA or its successor agency under Public Law 103-354 to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA or its successor agency under Public Law 103-354 and the Lender.

B. FmHA or its successor agency under Public Law 103-354's response to Lender liquidation plan. FmHA or its successor agency under Public Law 103-354 will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such notification from the Lender. If FmHA or its successor agency

under Public Law 103-354 needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA or its successor agency under Public Law 103-354 and the Lender not agree on the Lender's liquidation plan, negotiations will take place between FmHA or its successor agency under Public Law 103-354 and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA or its successor agency under Public Law 103-354 opt to conduct the liquidation, FmHA or its successor agency under Public Law 103-354 will proceed as follows:

1. The Lender will transfer to FmHA or its successor agency under Public Law 103-354 all rights and interest necessary to allow FmHA or its successor agency under Public Law 103-354 to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA or its successor agency under Public Law 103-354.

2. FmHA or its successor agency under Public Law 103-354 will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA or its successor agency under Public Law 103-354 include any one or combination of the usual commercial methods of liquidation.

C. *Acceleration.* The Lender or FmHA or its successor agency under Public Law 103-354, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the acceleration notice or other acceleration document will be sent to FmHA or its successor agency under Public Law 103-354 or the Lender, as the case may be.

D. *Liquidation: Accounting and Reports.* When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA or its successor agency under Public Law 103-354 with periodic reports on the progress of liquidation, disposition of collateral, resulting costs and additional procedures necessary for successful completion of liquidation. The Lender will transmit to FmHA or its successor agency under Public Law 103-354 any payments received from the Borrower and/or pro rata share of liquidation or other proceeds, etc. when FmHA or its successor agency under Public Law 103-354 is the holder of a portion of the guaranteed loan using Form FmHA or its successor agency under Public Law 103-354 1980-43. "Lender's Guaranteed Loan Payment to FmHA or its successor agency under Public Law 103-354." When FmHA or its successor agency under Public Law 103-354 liquidates, the Lender will be provided with similar reports on request.

E. *Determination of Loss and Payment.* In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. FmHA or its successor agency under Public Law 103-354 will have the right to recover losses paid under the guarantee from any party liable.

1. Form FmHA or its successor agency under Public Law 103-354 449-30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final loss determinations. Estimated loss payments may be approved by FmHA or its successor agency under Public Law 103-354 after the Lender has submitted a liquidation plan approved by FmHA or its successor agency under Public Law 103-354. Payments will be made in accordance with applicable FmHA or its successor agency under Public Law 103-354 regulations.

2. When the Lender is conducting the liquidation, and owns any of the guaranteed portion of the loan, it may request a tentative loss estimate by submitting to FmHA or its successor agency under Public Law 103-354 an estimate of loss that will occur in connection with liquidation of the loan. FmHA or its successor agency under Public Law 103-354 will agree to pay an estimated loss settlement to the Lender provided the Lender applies such amount due to the outstanding principal balance owed on the guaranteed debt. Such estimate will be prepared and submitted by the Lender on Form FmHA or its successor agency under Public Law 103-354 449-30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral. For Farm Ownership, Soil and Water, and Operating loans only, if it appears the liquidation period will exceed 90 days, the Lender will file an estimated loss claim. Once this claim is approved by FmHA or its successor agency under Public Law 103-354, the Lender will discontinue interest accrual on the defaulted loan and the loss claim will be promptly processed in accordance with the applicable FmHA or its successor agency under Public Law 103-354 regulations.

After the Report of Loss estimate has been approved by FmHA or its successor agency under Public Law 103-354, and within 30 days thereafter, FmHA or its successor agency under Public Law 103-354 will send the original Report of Loss estimate to FmHA or its successor agency under Public Law 103-354 Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA or its successor agency under Public Law 103-354 449-30 by the Lender to FmHA or its successor agency under Public Law 103-354.

3. After the Lender has completed liquidation, FmHA or its successor agency under Public Law 103-354 upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA or its successor agency under Public Law 103-354 has any questions regarding the amounts set forth in the final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA or its successor agency under Public Law 103-354 in making the investigation. If FmHA or its successor agency under Public Law 103-354 finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA or its successor agency under Public Law 103-354 finds the final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the Lender conducted liquidation and after the final Report of Loss has been tentatively approved:

a. If the loss is greater than the estimated loss payment, FmHA or its successor agency under Public Law 103-354 will send the original of the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA or its successor agency under Public Law 103-354 to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimburse FmHA or its successor agency under Public Law 103-354 for the overpayment plus interest at the note rate from date of payment.

5. If FmHA or its successor agency under Public Law 103-354 has conducted liquidation, it will provide an accounting and Report of Loss to the Lender and will pay the Lender in accordance with the Loan Note Guarantee.

6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by FmHA or its successor agency under Public Law 103-354 when the final Report of Loss is approved.

F. *Maximum amount of interest loss payment.* Notwithstanding any other provisions of this agreement, the amount payable by FmHA or its successor agency under Public Law 103-354 to the Lender cannot exceed the limits set forth in the Loan Note Guarantee. If FmHA or its successor agency under Public Law 103-354 conducts the liquidation, loss occasioned by accruing interest (including any loan subsidy) will be covered by the guarantee only to the date FmHA or its successor agency under Public Law 103-354 accepts this responsibility. Loss occasioned by accruing interest (including subsidy) will be covered to the extent of the guarantee to the date of

final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA or its successor agency under Public Law 103-354, except for Farm Ownership, Soil and Water, and Operating loans only, when the Lender files an estimated loss claim. For Farm Ownership, Soil and Water and Operating loans, only, when the Lender files an estimated loss claim, the Lender will discontinue interest accrual on the defaulted loan when the estimated loss claim is approved by FmHA or its successor agency under Public Law 103-354. The balance of accrued interest (including any loan subsidy) payable to the Lender, if any, will be calculated on the final Report of Loss form.

G. *Application of FmHA or its successor agency under Public Law 103-354 loss payment.* The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by FmHA or its successor agency under Public Law 103-354 will be applied by the Lender on the guaranteed portion of the loan debt. However, such application does not release the Borrower from liability. At time of final loss settlement the Lender will notify the Borrower that the loss payment has been so applied. In all cases a final Form FmHA or its successor agency under Public Law 103-354 449-30 prepared and submitted by the Lender must be processed by FmHA or its successor agency under Public Law 103-354 in order to close out the files at the FmHA or its successor agency under Public Law 103-354 Finance Office.

H. *Income from collateral.* Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. *Liquidation costs.* Certain reasonable liquidation costs will be allowed during the liquidation process. The liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the lender (with FmHA or its successor agency under Public Law 103-354 written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA or its successor agency under Public Law 103-354's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel and overhead.

J. *Foreclosure.* The parties owning the guaranteed portion and unguaranteed portions of the loan will join the institute foreclosure action or, in lieu of foreclosure, to take a deed of conveyance to such parties.

When the conveyance is received and liquidated, net proceeds will be applied to the guaranteed loan debt.

K. *Payment.* Such loss will be paid by FmHA or its successor agency under Public Law 103-354 within 60 days after the review of the accounting of the collateral.

XII. *Protective Advances.*

Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). FmHA or its successor agency under Public Law 103-354 written authorization is required on all protective advances in excess of \$500. Protective advances include but are not limited to advances made for taxes annual assessments, ground rent hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XIII. *Additional Loans or Advances.*

The Lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA or its successor agency under Public Law 103-354 even though such expenditures or loans will not be guaranteed.

XIV. *Future Recovery.*

After a loan has been liquidated and a final loss has been paid by FmHA or its successor agency under Public Law 103-354, any future funds which may be recovered by the Lender will be pro-rated between FmHA or its successor agency under Public Law 103-354 and the Lender. FmHA or its successor agency under Public Law 103-354 will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amounts in proportion to the percentage of the unguaranteed portion of the loan.

XV. *Transfer and Assumption Cases.*

Refer to the applicable subpart of title 7 of CFR part 1980.

If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantees) is released from personal liability, the Lender, if it holds the guaranteed portion, may file an estimated Report of Loss on Form FmHA or its successor agency under Public Law 103-354 449-30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA or its successor agency under Public Law 103-354 449-30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the Transfer, will be entered on Form FmHA or its successor agency

under Public Law 103-354 449-30, line 13 and 14.

XVI. *Bankruptcy.*

A. The Lender is responsible for protecting the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings. When the loan is involved in a reorganization bankruptcy proceeding under Chapters 9, 11, 12 or 13 of the Bankruptcy Code, payment of loss claims may be made as provided in this paragraph XVI. For a Chapter 7 bankruptcy or liquidation plan in a Chapter 11 bankruptcy, only paragraphs XVI B3 and B6 are applicable.

B. *Loss Payments.*

1. *Estimated Loss Payments.*

a. If a borrower has filed for protection under a reorganization bankruptcy, the Lender will request a tentative estimated loss payment of accrued interest and principal written off. This request can only be made after the bankruptcy plan is confirmed by the court. Only one estimated loss payment is allowed during the reorganization bankruptcy. All subsequent claims during reorganization will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by FmHA or its successor agency under Public Law 103-354, at its option, in accordance with any court approved changes in the reorganization plan. At the time the performance under the confirmed reorganization plan has been completed, the Lender is responsible for providing FmHA or its successor agency under Public Law 103-354 with the documentation necessary to review and adjust the estimated loss claim to (a) reflect the actual principal and interest reduction on any part of the guaranteed debt determined to be unsecured and (b) to reimburse the Lender for any court ordered interest rate reduction during the term of the reorganization plan.

b. The Lender will use Form FmHA or its successor agency under Public Law 103-354 449-30, "Loan Note Guarantee Report of Loss," to request an estimated loss payment and to review estimated loss payments during the course of the reorganization plan. The estimated loss claim as well as any revisions to this claim will be accompanied by applicable legal documentation to support the claim.

c. Upon completion of the reorganization plan, the Lender will complete Form FmHA or its successor agency under Public Law 103-354 1980 44, "Guaranteed Loan Borrower Default Status," and forward this form to the Finance Office.

2. *Interest Loss Payments.*

a. Interest loss payments sustained during the period of the reorganization plan will be processed in accordance with paragraph XVI B1.

b. Interest loss payments sustained after the reorganization plan is completed will be processed annually when the Lender sustains

**RHS, RBS, RUS, FSA, USDA**

**Pt. 1980, Subpt. A, App. C**

a loss as a result of a permanent interest rate reduction which extends beyond the period of the reorganization plan.

c. Form FmHA or its successor agency under Public Law 103-354 449-30 will be completed to compensate the Lender for the difference in interest rates specified on the Loan Note Guarantee or Interest Rate Buydown Agreement and the rate of interest specified by the bankruptcy court.

**3. Final Loss Payments.**

a. Final Loss Payments will be processed when the loan is liquidated.

b. If the loan is paid in full without an additional loss, the Finance Office will close out the estimated loss account at the time notification of payment in full is received.

4. Payment Application. The Lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event the bankruptcy court attempts to direct the payments to be applied in a different manner, the Lender will immediately notify the FmHA or its successor agency under Public Law 103-354 servicing office.

5. Overpayments. Upon completion of the reorganization plan, the Lender will provide FmHA or its successor agency under Public Law 103-354 with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained, as a result of the reorganization, is greater than the estimated loss payment, the Lender will submit a revised estimated loss in order to obtain payment of the additional amount owed by FmHA or its successor agency under Public Law 103-354 to the Lender. If the actual loss payment is less than the estimated loss, the Lender will reimburse FmHA or its successor agency under Public Law 103-354 for the overpayment plus interest at the note rate from the date of the payment of the estimated loss.

6. Protective Advances. If approved protective advances were made prior to the borrower having filed bankruptcy, as a result of prior liquidation action, these protective advances and accrued interest will be entered on Form FmHA or its successor agency under Public Law 103-354 449-30.

**XVII. Debt Write-down.**

For Farm Ownership, Soil and Water, and Operating loans only, refer to title 7 of CFR part 1980, subpart B, § 1980.125. The maximum amount of loss payment associated with a loan/line of credit agreement which has been written down will not exceed the percent of the guarantee multiplied by the difference between the outstanding principal and interest balance of the loan/line of credit before the write-down and the outstanding balance of the loan/line of credit after the write-down. The Lender will use Form FmHA or

its successor agency under Public Law 103-354 449-30. "Loan Note Guarantee Report of Loss," to request an estimated loss payment to receive is pro-rata share of any loss sustained.

**XVIII. Other Requirements.**

This agreement is subject to all the requirements of the applicable subpart of Title 7 CFR Part 1980, and any future amendments of these regulations not inconsistent with this agreement. Interested parties may agree to abide by future FmHA or its successor agency under Public Law 103-354 regulations not inconsistent with this agreement.

**XIX. Execution of Agreements.**

If this agreement is executed prior to the execution of the Loan Note Guarantee, this agreement does not impose any obligation upon FmHA or its successor agency under Public Law 103-354 with respect to the execution of such contract. FmHA or its successor agency under Public Law 103-354 in no way warrants that such a contract has been or will be executed.

**XX. Notices.**

All notices and actions will be initiated through FmHA or its successor agency under Public Law 103-354 for \_\_\_\_\_ (State) with mailing address at the date of this instrument \_\_\_\_\_

XXI. The Lender will ensure that the borrower complies with the measures identified in the Government's environmental impact analysis for this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

LENDER:

ATTEST: \_\_\_\_\_ (SEAL)

By \_\_\_\_\_  
Title \_\_\_\_\_

UNITED STATES OF AMERICA  
Farmers Home Administration or its successor agency under Public Law 103-354

By \_\_\_\_\_  
Title \_\_\_\_\_

[55 FR 11134, Mar. 27, 1990]

**APPENDIX C—ASSIGNMENT GUARANTEE AGREEMENT**

*Position 5*

USDA  
Form FmHA 449-36  
(Rev. 10-95)  
Type of Loan \_\_\_\_\_  
Government Loan Identification Number \_\_\_\_\_  
Applicable 7 CFR part 1980 subpart \_\_\_\_\_ of \_\_\_\_\_  
(Lender) has made a loan to \_\_\_\_\_

in the principal amount of \$ \_\_\_\_\_ as evidenced by a note(s) dated \_\_\_\_\_.

The United States of America, acting through the Farm Service Agency, Rural Business-Cooperative Service, Rural Utilities Service, or Rural Housing Service (herein called "Government") entered into a Loan Note Guarantee (Form FmHA 449-34) with the Lender applicable to such loan to guarantee the loan not to exceed \_\_\_\_\_% of the amount of the principal advanced and any interest (including any loan subsidy) due thereon and any capitalized interest, resulting from the restructuring of a Guaranteed Farm Credit Programs loan and not exceeding statutory loan limits, as provided therein.

\_\_\_\_\_ of \_\_\_\_\_ (Holder) desires to purchase from Lender \_\_\_\_\_% of the guaranteed portion of such loan. Copies of Borrower's note(s) and the Loan Note Guarantee are attached hereto as a part hereof.

**NOW, THEREFORE, THE PARTIES AGREE:**

1. The principal amount of the loan now outstanding is \$ \_\_\_\_\_. Lender hereby assigns to Holder \_\_\_\_\_% of the guaranteed portion of the loan representing \$ \_\_\_\_\_ of such loan now outstanding in accordance with all of the terms and conditions hereinafter set forth. The Lender and Government certify to the Holder that the Lender has paid and Government has received the Guarantee Fee in exchange for the issuance of the Loan Note Guarantee.

2. Loan Servicing. The Lender will be responsible for servicing the entire loan and will remain mortgagee and/or secured party of record. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The Lender will receive all payments on account of principal of, or interest (including any loan subsidy and any capitalized interest, resulting from the restructuring of a Guaranteed Farm Credit Programs loans and not exceeding statutory loan limits) on, the entire loan and shall promptly remit to the Holder its pro rata share thereof determined according to their respective interests in the loan, less only the Lender's servicing fee.

3. Servicing Fee. Holder agrees that Lender will retain a servicing fee of \_\_\_\_\_ percent per annum of the unpaid balance of the guaranteed portion of the loan assigned hereunder.

4. Purchase by Holder. The guaranteed portion purchased by the Holder will always be a portion of the loan which is guaranteed. The Holder will hereby succeed to all rights of the Lender under the Loan Note Guarantee to the extent of the assigned portion of the loan. The Lender, however, will remain bound by all obligations under the Loan Note Guarantee and the program regulations

found in the applicable subpart of 7 CFR part 1980 now in effect and future regulations not inconsistent with the provisions hereof.

5. 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 Holder has actual knowledge at the time of this assignment, or which it participates in or condones. Any Assignment Guarantee Agreement attached to or relating to a note which provides for capitalization of interest is void. Except in the case of Farm Credit Program loans, a note which provides for the payment of interest on interest as a result of restructuring the loan and not exceeding statutory loan limits, and any Assignment Guarantee Agreement attached to or related to such note is not void.

6. Rights and Liabilities. The guarantee and right to require purchase will be directly enforceable by Holder not withstanding any fraud or misrepresentations by Lender or any unenforceability of the Loan Note Guarantee by Lender. Nothing contained herein shall constitute any waiver by Government of any rights its possesses against the Lender, and the Lender agrees that Lender will be liable and will promptly reimburse Government for any payment made by Government to Holder which, if such Lender had held the guaranteed portion of the loan, Government would not be required to make. The Holder(s) upon written notice to the Lender may resell the unpaid balance of the guaranteed portion of the loan assigned hereunder. An endorsement may be added to the Form FmHA 449-36 to effectuate the transfer.

7. Repurchase by the Lender (Defaults). The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the borrower is in default not less than 60 days on principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest (including any loan subsidy), less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to Government. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable.

The Lender will notify the Holder(s) and Government of its decision.

8. Purchase by Government. If Lender does not repurchase as provided by paragraph 7, Government will purchase from Holder the unpaid principal balance of the guaranteed portion together with accrued interest (including any loan subsidy) to date of repurchase, less Lender's servicing fee, within 30 days after written demand to Government from the Holder. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of the original demand letter of the holder to the lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender. The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from Government. Such evidence will consist of each the original of the Loan Note Guarantee properly endorsed to Government or the original of the Assignment Guarantee Agreement properly assigned to Government without recourse including all rights, title, and interest in the loan. Government will be subrogated to all rights of Holder(s). The Holder will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy) to date of demand and interest (including any loan subsidy) subsequently accruing from date of demand to proposed payment date. Unless otherwise agreed to by Government, such proposed payment will not be later than 30 days from the date of demand.

The Government will promptly notify the Lender of its receipt of the Holder(s)'s demand for payment. The Lender will promptly provide the Government with the information necessary for Government's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. Government will notify both parties who must resolve the conflict before payment will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, Government will review the demand and submit it to the State Director for verification. After reviewing the demand the State Director will transmit the request to the Government Finance Office of issuance of the appropriate check. Upon issuance, the Finance Office will notify the office servicing the borrower and the State Director and remit the check(s) to the Holder(s).

9. Lender's Obligations. Lender consents to the purchase by Government and agrees to furnish on request by Government a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owned by Bor-

rowers on the loan and the amount then owed to any Holder(s). Lender agrees that any purchase by Government does not change, alter or modify any of the Lender's obligations to Government arising from said loan or guarantee nor does it waive any of Government's right against Lender, and that Government shall have the right to set-off against Lender all rights inuring to Government as the Holder of this instrument against Government's obligation to Lender under the Loan Note Guarantee.

10. Repurchase by Lender for Servicing. If, in the opinion of the Lender, repurchase of the assigned portion of the loan is necessary to adequately service the loan, the Holder will sell the assigned portion of the loan to the Lender for an amount equal to the unpaid principal and interest (including any loan subsidy) on such portion less Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of the demand letter of the lender or Government to the Holder(s) requesting the Holder(s) to tender their, guaranteed portion(s).

a. The Lender will not repurchase from the Holder(s) for arbitrage purpose or other purposes to further its own financial gain.

b. Any repurchase will only be made after the Lender obtains Government written approval.

c. If the Lender does not repurchase the portion from the Holder(s), Government at its option may purchase such guaranteed portions for servicing purposes.

11. Foreclosure. The parties owning the guaranteed portions and unguaranteed portion of the loan will join to institute foreclosure action, or in lieu of foreclosure, take a deed of conveyance to such parties.

12. Reassignment. Holder upon written notice to Lender and Government may reassign the unpaid guaranteed portion of the loan sold hereunder. Upon such notification, the assignee will succeed to all rights and obligations of the Holder hereunder.

13. Interest Capitalization. In the case of Farm Credit Programs loans, the Lender may capitalize interest only when the note is restructured. When delinquent interest is so treated as principal, the new principal amount may exceed the line of credit listed herein, but may not exceed statutory loan limits. The new principal amount and new guaranteed portion will be identified at restructuring in an addendum to this agreement. Such capitalized interest will be covered by this Assignment Guarantee Agreement. References to principal and interest herein, therefore, shall include any capitalized interest on the guaranteed portion of the loan resulting from the restructuring of a Farm Credit Programs loans and not exceeding statutory loan limits.

**§ 1980.301**

14. Notices. All notices and actions will be initiated through the Government \_\_\_\_\_ for \_\_\_\_\_ (state) with mailing address at the date of this assignment: \_\_\_\_\_

Dated this \_\_\_\_\_ day \_\_\_\_\_, 19\_\_\_\_.

LENDER:  
ADDRESS:  
ATTEST:  
\_\_\_\_\_(SEAL)

By \_\_\_\_\_  
Title \_\_\_\_\_

HOLDER:  
ADDRESS:  
ATTEST:  
\_\_\_\_\_(SEAL)

By \_\_\_\_\_  
Title \_\_\_\_\_

UNITED STATES OF AMERICA

(insert applicable agency)

ADDRESS \_\_\_\_\_

By \_\_\_\_\_  
Title \_\_\_\_\_

[60 FR 53258, Oct. 13, 1995]

**Subparts B-C [Reserved]**

**Subpart D—Rural Housing Loans**

SOURCE: 60 FR 26985, May 22, 1995, unless otherwise noted.

**§ 1980.301 Introduction.**

(a) *Policy.* This subpart contains regulations for single family Rural Housing (RH) loan guarantees by the Rural Housing Service (RHS) 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 RHS employees, members of their families, known close relatives, or business or close personal associates is subject to the provisions of subpart D of part 1900. Applicants for this assistance are required to identify any known relationship or association with an RHS employee.

(b) *Program objective.* The basic objective of the guaranteed RH loan program is to assist eligible households in obtaining adequate but modest, decent,

**7 CFR Ch. XVIII (1-1-01 Edition)**

safe, and sanitary dwellings and related facilities for their own use in rural areas by guaranteeing sound RH loans which otherwise would not be made without a guarantee. Guarantees issued under this subpart are limited to loans to applicants with incomes that do not exceed income limits as provided in exhibit C of FmHA Instruction 1980-D (available in any RHS office).

(c) [Reserved]

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

**§ 1980.302 Definitions and abbreviations.**

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

*Agency:* Rural Housing Service (RHS).

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

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

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

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

*Conditional commitment.* RHS'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 applicable to single family