

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. The Loan Note Guarantee or Assignment Guarantee Agreement in the hands of a holder shall not cover interest accruing 90 days after the holder has demanded repurchase by the lender, nor shall the Loan Note Guarantee or Assignment Guarantee Agreement in the hands of a holder cover interest accruing 90 days after the lender or the Agency has requested the holder to surrender the evidence of debt for repurchase.

[60 FR 53255, Oct. 13, 1995, as amended at 64 FR 7402, Feb. 12, 1999]

§ 1980.12 [Reserved]

§ 1980.13 Eligible lenders.

(a) *Local lenders.* Local lenders may participate by using the various sources of capital and segments of the money market to meet the necessary financing requirement for guaranteed loan programs. Except in paragraphs (a)(1) and (2) this section, the Agency or its successor agency under Public Law 103-354 will require that a local lender be involved for each project. A local lender is a lender in or near a community where the project is or will be located who routinely provides loan services to such community. Although the project may involve other lenders, investors, or packagers, the local lender will be the lead lender and the lender for purposes of these regulations responsible for servicing and liquidation (if necessary) of the loan. The lender may use agents, correspondents, branches, financial experts, or other institutions or persons to provide expertise to assist in carrying out its responsibilities. The Agency or its successor agency under Public Law 103-354 will use the lender as the point of contact for the administration of the program. The Agency or its successor agency under Public Law 103-354 may

also permit a lender to be the lender for the loan without being local if:

(1) The lender normally makes loans in the region or geographic location in which the applicant's project being financed is located; or

(2) The lender has specific expertise in loans for the proposed project and provides evidence of such expertise to the satisfaction of the Agency or its successor agency under Public Law 103-354.

(b) *An eligible lender is:* Any Federal or State chartered bank, Farm Credit Bank, other Farm Credit System institution with direct lending authority, Bank for Cooperatives, Savings and Loan Association, Building and Loan Association, or mortgage company that is part of a bank-holding company. These entities must be subject to credit examination and supervision by either an agency of the United States or a State. Eligible lenders may also include credit unions that are subject to credit examination and supervision by either the National Credit Union Administration or a State agency or an insurance company that is regulated by a State or National insurance regulatory agency. Only those lenders listed in this paragraph are eligible to make and service guaranteed loans, and such lenders must be in good standing with their licensing authority and have met licensing, loan making, loan servicing, and other requirements of the State in which the collateral will be located and the loan making and loan servicing office requirements in paragraph (b)(3) of this section. A lender must have the capability to adequately service the loan for which a guarantee is requested.

(1) *Participation.* Lenders who are not eligible lenders are not barred from participating in loans made by eligible lenders.

(2) *Lender notification.* Each lender will inform the Agency or its successor agency under Public Law 103-354 whether it qualifies for eligibility under this section and which agency or authority, if any, supervises such lender. This information will be furnished to FmHA or its successor agency under Public Law 103-354 with such proofs as FmHA or its successor agency under Public Law 103-354 may require.

(3) *Lender location.* Each lender must maintain an office (either its main or branch office or that of an agent) near enough to the collateral's location so it can properly and efficiently discharge its loanmaking and loan servicing responsibilities.

(4) *Conflict of interest.* The Agency shall determine whether such ownership or business dealings are sufficient to result in a conflict of interest or an apparent conflict of interest. All lenders will, for each proposed loan, inform the Agency in writing and furnish such additional evidence as the Agency requests as to whether and the extent for those loans covered by Form RD 449–35, the lender or its principals or officers (including immediate family) or the borrower or its principals or officers (including immediate family) hold any stock or other evidence of ownership in the other.

(i) For those loans covered by Form FmHA or its successor agency under Public Law 103–354 449–35, the lender or its principal officers (including immediate family) or the borrower or its principals or officers (including immediate family) hold any stock or other evidence of ownership in the other; or

(ii) For Farm Credit Programs loans covered by Form FmHA or its successor agency under Public Law 103–354 1980–38, the lender or its officers, directors, principal stockholders or other principal owners or the borrower or its officers, directors, stockholders or other owners have any business dealings with, or hold any stock or other evidence of ownership in, the other.

(5) *Debarment.* See subpart M of part 1940 (available in any Agency or its successor agency under Public Law 103–354 office).

(c) *Substitution of lenders.* With written concurrence of the Agency or its successor agency under Public Law 103–354, another eligible lender may be substituted for a lender who holds an outstanding Conditional Commitment provided the borrower, loan purposes, scope of project and loan terms remain unchanged.

[48 FR 30947, July 6, 1983, as amended at 50 FR 39884, Sept. 30, 1985; 54 FR 14334, Apr. 11, 1989; 58 FR 34307, June 24, 1993; 60 FR 53255, Oct. 13, 1995; 61 FR 67633, Dec. 23, 1996; 64 FR 7402, Feb. 12, 1999]

§§ 1980.14–1980.19 [Reserved]

§ 1980.20 Loan guarantee limits.

(a) Lenders and applicants will propose the percentage of guarantee. The Agency will set the percentage of guarantee. The maximum percentage of guarantee will be ninety percent. Also, the maximum loss covered by Form RD 449–34 (available in any Agency office) can never exceed the lesser of:

(1) The percentage of guarantee of principal and interest indebtedness as evidenced by said note(s) or by assumption agreement(s), any loan subsidy due, and the percentage of guarantee of principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with the Agency or its successor agency under Public Law 103–354's authorization; or

(2) The percentage of guarantee of the 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.

(b) The Agency or its successor agency under Public Law 103–354 will determine the percentage of guarantee after considering all credit factors involved, including but not limited to:

(1) *Applicant's management.* The applicant's management, and when appropriate, equity capital, history of operation, marketing plan, raw material requirements, and availability of necessary supporting utilities and services.

(2) *Collateral.* Collateral for the loan.

(3) *Financial condition.* Financial condition of applicant or applicant's principals if appropriate.

(4) *Lender's exposure.* The lender's exposure before and after the loan.

(5) *Trends and conditions.* Current trends and economic conditions.

[54 FR 1548, Jan. 13, 1989, as amended at 54 FR 42482, Oct. 17, 1989; 55 FR 137, Jan. 3, 1990; 58 FR 34307, June 24, 1993; 60 FR 53255, Oct. 13, 1995; 61 FR 67633, Dec. 23, 1996; 62 FR 9357, Mar. 3, 1997; 64 FR 7402, Feb. 12, 1999]

§ 1980.21 Guarantee fee.

The fee will be the applicable rate multiplied by the principal loan amount multiplied by the percent of guarantee, paid one time only at the