

time the Loan Note Guarantee is issued.

(a) The fee will be paid to the Agency by the lender and is nonreturnable. The lender may pass on the fee to the borrower.

(b) Guarantee fee rates are specified in exhibit K of RD Instruction 440.1 (available in any Rural Development Office).

[64 FR 7402, Feb. 12, 1999]

§ 1980.22 Charges and fees by lender.

(a) *Routine charges and fees.* The lender may establish the charges and fees for the loan, provided they are the same as those charged other applicants for similar types of transactions. "Similar types of transactions" means those transactions involving the same type of loan requested for which a non-guaranteed loan applicant would be assessed charges and fees.

(b) *Late payment charges.* Late payment charges will not be covered by the Loan Note Guarantee. Such charges may not be added to the principal and interest due under any guaranteed note. Late payment charges may be made only if:

(1) *Routine.* They are routinely made by the lender in all types of loan transactions.

(2) *Payments received.* Payment has not been received within the customary time frame allowed by the lender. The term "payment received" means that the payment in cash or by check, money order, or similar medium has been received by the lender at its main office, branch office, or other designated place of payment.

(3) *Calculating charges.* The lender agrees with the applicant in writing that the rate or method of calculating the late payment charges will not be changed to increase charges while the Loan Note Guarantee is in effect.

[48 FR 30947, July 6, 1983, as amended at 50 FR 39884, Sept. 30, 1985; 58 FR 48291, Sept. 15, 1993; 64 FR 7402, Feb. 12, 1999]

§ 1980.23 Prohibition of the guaranteeing of tax-exempt transactions.

(a) FmHA or its successor agency under Public Law 103-354 will not guarantee any loan or line of credit made with the proceeds of any obligation the

interest on which is excludable from income under section 103 of the Internal Revenue Code of 1954, as amended (IRC). Funds generated through the issuance of tax-exempt obligations may not be used to purchase the guaranteed portion of any FmHA or its successor agency under Public Law 103-354 guaranteed loan or line of credit nor may an FmHA or its successor agency under Public Law 103-354 guaranteed loan or line of credit serve as collateral for a tax-exempt issue.

(b) The only time FmHA or its successor agency under Public Law 103-354 may guarantee a loan or line of credit for a project which involves tax-exempt financing is when the guaranteed loan funds are (1) used to finance a part of the project which is separate and distinct from the part of the project which is financed by the tax-exempt issue, and (2) the guaranteed loan or line of credit has at least a parity security position with the tax-exempt obligation.

[50 FR 39884, Sept. 30, 1985]

§§ 1980.24-1980.39 [Reserved]

§ 1980.40 Environmental requirements.

The need for an Environmental Impact Statement (EIS) will be determined by the FmHA or its successor agency under Public Law 103-354 approval official. The determination will be based upon FmHA or its successor agency under Public Law 103-354's completion of the appropriate environmental review and Form FmHA or its successor agency under Public Law 103-354 1940-20, "Request for Environmental Information," when required as set forth in subpart G of part 1940 of this chapter and other agency comments or other information available. If an EIS is necessary, applicants and lenders will be required to provide essential data for use in its preparation. FmHA or its successor agency under Public Law 103-354 State Directors will coordinate preparation and processing of any required EIS. If joint financing for the proposal is involved, the lead agency will be responsible for preparation of the EIS. In all cases, FmHA or its successor agency under Public Law 103-354 is responsible for assuring that the requirements of section 102(2)(c) of

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the National Environmental Policy Act of 1969 (NEPA), and subpart G of part 1940 of this chapter are met.

[54 FR 42482, Oct. 17, 1989]

§ 1980.41 Equal opportunity and non-discrimination requirements.

(a) *Equal Credit Opportunity Act.* In accordance with title V of Public Law 93-495, the Equal Credit Opportunity Act, with respect to any aspect of a credit transaction, neither the lender nor FmHA or its successor agency under Public Law 103-354 will discriminate against any applicant on the basis of race, color, religion, national origin, age, sex, marital status or physical/mental handicap providing the applicant can execute a legal contract or because all or part of the applicant's income derives from any public assistance program or because the applicant in good faith, exercised any rights under the Consumer Protection Act. The lender will comply with the requirements of this Act as set forth in the Federal Reserve Board's Regulation implementing this Act (see 12 CFR part 202). Such compliance will be accomplished prior to loan closing.

(b) *Forms and requirements.* In accordance with Executive Order 11246, the following equal opportunity and non-discrimination forms and requirements are applicable to certain cases involving construction as indicated. The borrower is responsible for seeing that the requirements of paragraphs (b)(1) through (5) of this section are met.

(1) *Compliance reports.* No prospective contractor or subcontractor will be eligible for a contract or subcontract financed with a guaranteed loan until he has filed all of the compliance reports required of him under any previous contracts.

(2) *Equal Opportunity agreement.* Before loan closing, each borrower whose loan involves a construction contract of more than \$10,000 must execute Form FmHA or its successor agency under Public Law 103-354 400-1, "Equal Opportunity Agreement."

(3) *Contract or subcontract in excess of \$10,000.* If the contract or a subcontract exceeds \$10,000.

(i) The contractor or subcontractor must submit Form FmHA or its successor agency under Public Law 103-354

400-6, "Compliance Statement," before or as a part of the bid or negotiation.

(ii) An Equal Opportunity Clause must be part of each contract and subcontract. This clause is incorporated in Form FmHA or its successor agency under Public Law 103-354 424-6, "Construction Contract," which may serve as a guide.

(iii) With notification of the contract award, the contractor must receive:

(A) Form FmHA or its successor agency under Public Law 103-354 400-3, "Notice to Contractors and Applicants," signed by the County Supervisor with an attached Equal Employment Opportunity Poster. Posters in Spanish must be provided and displayed where a significant portion of the population is Spanish speaking.

(B) Form AD-425, "Contractor's Affirmative Action Plan for Equal Employment Opportunity Under Executive Order 11246 and Executive Order 11375," if the contractor or subcontractor is subject to the requirements of paragraph (b)(5) of this section.

(4) *One hundred or more employees and contract or subcontract exceeds \$10,000.* If the contractor or subcontractor has 100 or more employees and the contract or subcontract is for more than \$10,000.

(i) In addition to meeting the requirements of paragraph (b)(3) of this section, each such contractor or subcontractor must file Standard Form 100, "Equal Employment Opportunity Employer Information Report EEO-1," with the Joint Reporting Committee within 30 days of the contract or subcontract award unless this report has already been submitted within the last 12 months.

(ii) An annual report must be filed on or before March 31, as long as the contractor or subcontractor holds a contract equal to \$10,000 or more which is financed with a guaranteed loan.

Failure to file timely, complete and accurate reports constitutes noncompliance with the Equal Opportunity Clause. Report forms are distributed by the Joint Reporting Committee and any questions on this form should be addressed by the contractor or subcontractor to the Joint Reporting Committee, 1800 G Street, NW., Washington, DC 20006.