

## § 1980.41

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

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.

(5) *Fifty or more employees and contract or subcontract exceeds \$50,000.* If the contract or subcontract is more than \$50,000 and the contractor or subcontractor has 50 or more employees, in addition to the requirements of paragraph (b)(3) of this section, each such contractor or subcontractor must be informed that he must develop a written affirmative action compliance program for each of his establishments and put it on file in each of his personnel offices within 120 days of the commencement of the contract or subcontract. Form AD-425 provides guidelines for the contractor or subcontractor in developing such a program.

(6) *Compliance reviews.* Compliance reviews must be made during construction inspections to determine whether the required posters are displayed, the facilities are not segregated, and there is no evidence of discrimination in employment. Findings of the borrower or lender (when inspections are made), will be shown on Form FmHA or its successor agency under Public Law 103-354 424-12, "Inspection Report." If there is any evidence of non-compliance, the borrower or lender will be made to achieve voluntary compliance. If the effort fails, the Compliance Review Officer will report all the facts in writing to the Administrator, ATTN: Equal Opportunity Officer.

(7) *Employee complaints.* Any employee of or applicant for employment with such contractors or subcontractors may file a written complaint of discrimination with FmHA or its successor agency under Public Law 103-354.

(i) A written complaint of alleged discrimination must be signed by the complainant and should include the following information:

(A) The name and address (including telephone number, if any) of the complainant.

(B) The name and address of the person committing the alleged discrimination.

(C) A description of the acts considered to be discriminatory.

(D) Any other pertinent information that will assist in the investigation and resolution of the complaint.

(ii) Such complaint must be filed not later than 180 days from the date of the

alleged discrimination, unless the time for filing is extended by FmHA or its successor agency under Public Law 103-354 for good cause shown by the complainant.

[48 FR 30947, July 6, 1983, as amended at 49 FR 28039, July 10, 1984; 50 FR 39884, Sept. 30, 1985; 51 FR 6707, Feb. 25, 1986; 52 FR 6500, Mar. 4, 1987; 56 FR 11504, Mar. 19, 1991; 61 FR 67633, Dec. 23, 1996]

#### § 1980.42 Flood or mudslide hazard area precautions.

(a) *Project location.* Projects located in special flood or mudslide hazard areas, as designated by the Federal Insurance Administration (FIA) of the Department of Housing and Urban Development may be financed under this subpart only:

(1) If the community, as a result of such designation by FIA as a special flood or mudslide prone area, has an approved flood plain area management plan.

(2) If the project location and construction plans and specifications for new buildings or improvements to existing buildings comply with an approved flood plain area management plan in paragraph (a)(1) of this section.

(3) The requirements of Subpart G of Part 1940 of this chapter have been met.

(b) *Flood insurance.* If project is located in a special flood or mudslide hazard area and if flood insurance is available it will be purchased by the borrower prior to loan closing. (See Part 1806, Subpart B of this chapter.) (FmHA or its successor agency under Public Law 103-354 Instruction 426.2.)

[48 FR 30947, July 6, 1983, as amended at 49 FR 3764, Jan. 30, 1984]

#### § 1980.43 Clean Air Act and Water Pollution Control Act requirements.

(a) *Conditions.* As a condition for FmHA or its successor agency under Public Law 103-354's making or guaranteeing a loan in excess of \$100,000 and unless otherwise exempted, an applicant for a loan will:

(1) Comply with all the requirements of section 114 of the Clean Air Act (42 U.S.C., 1857 C-9) and section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1318) relating to inspection,