

of the Conditional Commitment for Guarantee to issuance of the Loan Note Guarantee or from the time of FmHA or its successor agency under Public Law 103-354's issuance of the Conditional Commitment for Contract of Guarantee to the issuance of the Contract of Guarantee. The lender's certification must address all adverse changes of the borrower and be supported by financial statements of the borrower and its guarantors not more than 60 days old at time of certification. For purposes of this paragraph, the term "borrower" includes additionally any parent, affiliate, or subsidiary of the borrower.

(b) *Inspections.* The lender will notify FmHA or its successor agency under Public Law 103-354 of any scheduled field inspections during construction and after issuance of the Loan Note Guarantee. FmHA or its successor agency under Public Law 103-354 may attend such field inspections. Any inspections or review conducted by FmHA or its successor agency under Public Law 103-354, including those with the lender, are for the benefit of FmHA or its successor agency under Public Law 103-354 only and not for other parties of interest. FmHA or its successor agency under Public Law 103-354 inspections do not relieve any parties of interest of their responsibilities to conduct necessary inspections, nor can these parties rely on FmHA or its successor agency under Public Law 103-354's inspections in any manner whatsoever.

(c) *Execution of form.* The lender has executed and delivered to FmHA or its successor agency under Public Law 103-354 Form FmHA or its successor agency under Public Law 103-354 449-35.

(d) *Plans for marketing.* The lender advises FmHA or its successor agency under Public Law 103-354 of its plans to sell or assign any part of the loan as provided in Form FmHA or its successor agency under Public Law 103-354 449-35.

(e) *Additional requirements.* See also appropriate subpart for additional requirements.

[48 FR 30947, July 6, 1983, as amended at 49 FR 28039, July 10, 1984; 50 FR 39885, Sept. 30, 1985; 51 FR 6710, Feb. 25, 1986; 55 FR 11134, Mar. 27, 1990; 58 FR 34307, June 24, 1993; 61 FR 67633, Dec. 23, 1996; 64 FR 7402, Feb. 12, 1999]

§ 1980.61 Issuance of Lender's Agreement, Loan Note Guarantee, and Assignment Guarantee Agreement.

(a) *Lender's Agreement.* If FmHA or its successor agency under Public Law 103-354 finds that all requirements have been met:

(1) The lender and FmHA or its successor agency under Public Law 103-354 will execute Form FmHA or its successor agency under Public Law 103-354 449-35. The original will be delivered to FmHA or its successor agency under Public Law 103-354 and a signed duplicate original will be retained by the lender. There will be a Form FmHA or its successor agency under Public Law 103-354 449-35 executed for all loans and lines of credit guaranteed by FmHA or its successor agency under Public Law 103-354.

(2) In all cases, the lender's agreement will be executed no later than the time the Loan Note Guarantee is signed.

(b) *Loan Note Guarantee.* (1) Upon receipt of the Form FmHA or its successor agency under Public Law 103-354 449-35, and after all requirements have been met, FmHA or its successor agency under Public Law 103-354 will execute Form FmHA or its successor agency under Public Law 103-354 449-34. All original(s) will be provided to the lender and attached to the note(s). A conformed copy with copies of notes attached will be retained by FmHA or its successor agency under Public Law 103-354.

(2) In the event a lender has made a loan guaranteed by FmHA or its successor agency under Public Law 103-354 under previous regulations and has obtained a Form FmHA or its successor agency under Public Law 103-354 449-17, "Contract of Guarantee," the lender

may request the State Director to substitute a Loan Note Guarantee governed in all respects by these regulations for the previously issued Contract of Guarantee. The State Director will review the lender's written request for substitution of guarantees and may authorize the issuance of the new Loan Note Guarantee in exchange for the Contract of Guarantee. The lender will:

(i) Prepare and submit to FmHA or its successor agency under Public Law 103-354 a written request for such substituted guarantee.

(ii) Certify to FmHA or its successor agency under Public Law 103-354 that there is no adverse change in the borrower's financial situation, the collateral and terms of the loan remain the same as under the original guarantee, and the loan is in good standing.

(iii) Pay the required guarantee fee.

(iv) Certify to FmHA or its successor agency under Public Law 103-354 the outstanding principal amount of the loan.

(v) Execute Form FmHA or its successor agency under Public Law 103-354 449-35.

(3) If a lender has selected the multi-note system as provided in paragraph III A 2 of Form FmHA 449-35, a Loan Note Guarantee will be prepared and attached to each note the borrower issues. All the notes will be listed on Form FmHA or its successor agency under Public Law 103-354 449-34.

(4) If the lender requests a series of new notes to replace previously issued guaranteed notes as provided in paragraph III A (b) of Forms FmHA 449-35 the County Supervisor may reissue the new Loan Note Guarantee in exchange for the original Loan Note Guarantee.

(c) *Assignment Guarantee Agreement.* In the event the lender assigns the guaranteed portion of the loan to a holder(s) in accordance with the provision of the applicable subpart, the lender, holder, and FmHA or its successor agency under Public Law 103-354 will execute Form FmHA or its successor agency under Public Law 103-354 449-36. The original of the agreement(s) will be provided to the holder with conformed copy(s) to the lender and FmHA or its successor agency under Public Law 103-354. If the lender desires to assign a part(s) of the guaranteed loan to

a holder(s), an Assignment Guarantee Agreement will be executed for each assigned portion. Attached to the Assignment Agreement will be a copy of the borrower's note(s) and a copy of the Loan Note Guarantee.

(d) *Refusal to execute contract.* If FmHA or its successor agency under Public Law 103-354 determines that it cannot execute the Loan Note Guarantee because all requirements have not been met, it will promptly inform the lender on Form FmHA or its successor agency under Public Law 103-354 449-13, "Denial Letter," of the reasons, and give the lender a reasonable period within which to satisfy FmHA or its successor agency under Public Law 103-354 objections. If the lender is unable to satisfy FmHA or its successor agency under Public Law 103-354 objections, then the lender will be informed of the appeal rights as set out in §1980.80 of this subpart. If the lender writes FmHA or its successor agency under Public Law 103-354 within the period allowed requesting additional time to satisfy the objections, FmHA or its successor agency under Public Law 103-354 may, in writing, grant such additional time as it considers necessary and reasonable under the circumstances. If the lender satisfies the objections with the time allowed and otherwise complies with these regulations, the guarantee will be issued.

(e) *Cancellation of obligations.* If the conditions for the loan or line of credit are rejected or cannot be met after completion of any appeal, FmHA or its successor agency under Public Law 103-354 will prepare and submit to the Finance Office, Form FmHA or its successor agency under Public Law 103-354 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation."

(f) *Payment of guarantee fee.* The lender will prepare and deliver a Form FmHA or its successor agency under Public Law 103-354 1980-19, "Guaranteed Loan Closing Report," for each loan or line of credit to be guaranteed and deliver the guarantee fee to the FmHA or its successor agency under Public Law 103-354 representative who concurrently delivers the Loan Note Guarantee(s).

(g) *Authorized FmHA or its successor agency under Public Law 103-354 representatives to execute forms.* State Directors, District Directors, State Program Loan Chiefs, and County Supervisors are authorized to execute the Lender's Agreement (Form FmHA or its successor agency under Public Law 103-354 449-35, the Loan Note Guarantee, and/or the Assignment Guarantee Agreement.

[48 FR 30947, July 6, 1983, as amended at 50 FR 39885, Sept. 30, 1985; 51 FR 6710, Feb. 25, 1986; 51 FR 29905, Aug. 21, 1986; 52 FR 6500, Mar. 4, 1987; 58 FR 34308, June 24, 1993; 61 FR 67633, Dec. 23, 1996; 64 FR 7402, 7403, Feb. 12, 1999]

§ 1980.62 Lender's sale or assignment of guaranteed portion of loan.

Any sale or assignment by the lender of the guaranteed portion of the loan must be accomplished in accordance with the conditions in paragraph III of Form FmHA or its successor agency under Public Law 103-354 449-35. Only guaranteed portions of loans not in payment default as set forth in the terms of the debt instruments may be sold. Should the lender know at the time the loan application is being prepared that it plans to sell or assign any part of the guaranteed portion of the loan as provided in Form FmHA or its successor agency under Public Law 103-354 449-35, the lender will provide this information with the application of FmHA or its successor agency under Public Law 103-354.

[58 FR 34308, June 24, 1993, as amended at 64 FR 7403, Feb. 12, 1999]

§ 1980.63 Defaults by borrower.

(a) Refer to paragraph X of Form FmHA or its successor agency under Public Law 103-354 449-35.

(b) FmHA or its successor agency under Public Law 103-354 may be required to purchase the guaranteed portion of a loan(s) from holder(s) in the event of default or servicing problems. The County Supervisor will coordinate any requests from holder(s) located in close proximity to the local lender. If several holders are located outside the area, the State Director will handle the transaction and notify the County Supervisor. The County Supervisor will prepare a Form FmHA or its successor

agency under Public Law 103-354 1980-37, "FmHA or its successor agency under Public Law 103-354 Purchase of a Guaranteed Loan Portion," for each holder(s) and follow the instructions on the reverse of the form.

[52 FR 6501, Mar. 4, 1987, as amended at 58 FR 34308, June 24, 1993; 61 FR 67633, Dec. 23, 1996; 64 FR 7403, Feb. 12, 1999]

§ 1980.64 Liquidation.

(a) *Reference.* Refer to paragraph XI of Form FmHA or its successor agency under Public Law 103-354 449-35.

(b) *Lender's option.* If a lender has made a loan guaranteed by FmHA or its successor agency under Public Law 103-354 under previous regulations and the lender concludes that liquidation of the guaranteed loan is necessary because of one or more defaults or third party actions that the borrower cannot or will not cure, the lender has the option of liquidate the loan under the provisions of this subpart, or under the provisions of previous regulations. The lender will notify the State Director in writing within 10 days after its decision to liquidate if it desires to proceed under this subpart.

(c) *Settlement option.* If a lender acquires title to property either through voluntary conveyance or foreclosure proceeding, FmHA or its successor agency under Public Law 103-354 may elect to permit the lender the option to calculate the final loss settlement using the net proceeds received at the time of ultimate disposition of such property. The lender must submit its written request for this option to FmHA or its successor agency under Public Law 103-354, and FmHA or its successor agency under Public Law 103-354 must agree, prior to the lender submitting any request for estimated loss payment.

[48 FR 30947, July 6, 1983, as amended at 50 FR 39886, Sept. 30, 1985; 58 FR 34308, June 24, 1993; 64 FR 7403, Feb. 12, 1999]

§ 1980.65 Protection advances.

Refer to paragraph XII of Form FmHA or its successor agency under Public Law 103-354 449-35.

[58 FR 34308, June 24, 1993, as amended at 64 FR 7403, Feb. 12, 1999]