

§§ 1980.803–1980.804

state, an Indian Tribe on a Federal or State reservation, or another Federally recognized Indian Tribe.

Service area. The service area is that area reasonably expected to be served by the facility being financed by the guaranteed loan.

State. Any of the fifty States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

[55 FR 11139, Mar. 27, 1990, as amended at 64 FR 28336, May 26, 1999]

§§ 1980.803–1980.804 [Reserved]

§ 1980.805 Rural area determinations.

Facilities financed through FmHA or its successor agency under Public Law 103–354 guarantee must primarily serve rural residents. For water or waste disposal facilities, the terms “rural” and “rural area” will not include any area in any city or town with a population in excess of 10,000 inhabitants according to the latest decennial census of the United States.

[55 FR 11139, Mar. 27, 1990, as amended at 64 FR 28336, May 26, 1999]

§ 1980.806 Availability of credit from other sources.

To be eligible for a guaranteed loan under this subpart, the borrower must be unable to obtain the required credit without the CP loan guarantee from private, commercial, or cooperative sources at reasonable rates and terms for loans for similar purposes and period of time. The borrower must certify in writing and FmHA or its successor agency under Public Law 103–354 shall determine the credit is not available from other sources at reasonable rates and terms without the CP loan guarantee. The lender also must certify that it would not make the loan without the guarantee. These certifications shall become a part of the FmHA or its successor agency under Public Law 103–354 case file.

[56 FR 29170, June 26, 1991]

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§§ 1980.807–1980.810 [Reserved]

§ 1980.811 Legal authority and responsibility.

Each borrower must have or will obtain the legal authority necessary for constructing, operating, and maintaining the proposed facility or service and for obtaining, giving security for, and repaying the proposed loan. The borrower shall be responsible for operating, maintaining, and managing the facility, and providing for its continued availability and use at reasonable rates and terms. This responsibility shall be exercised by the borrower even though the facility may be operated, maintained, or managed by a third party under contract, management agreement, or written lease. Leases may be used when this is the only feasible way to provide the service and is the customary practice to provide such service in the state. Management agreements should provide for at least those items listed in Guide 24 of FmHA or its successor agency under Public Law 103–354 Instruction 1942–A (available in any FmHA or its successor agency under Public Law 103–354 office.) Such contracts, management agreements, or leases must not contain options or other provisions for transfer of ownership.

§ 1980.812 Priorities.

Section 1942.17(c) of subpart A of part 1942 of this chapter shall apply to loans to be guaranteed under this subpart.

[55 FR 11139, Mar. 27, 1990, as amended at 56 FR 29170, June 26, 1991]

§ 1980.813 Eligible loan purposes.

(a) Funds may be used to construct, enlarge, extend, or otherwise improve water or waste disposal providing service primarily to rural residents and rural businesses. Rural businesses would include facilities such as educational and other publicly owned facilities.

(1) Water or waste disposal facilities include water, sanitary sewerage, solid waste disposal, and storm wastewater facilities.

(2) Otherwise improve includes but is not limited to the following:

(i) The purchase of major equipment, such as solid waste collection trucks, which will in themselves provide an essential service to rural residents;

(ii) The purchase of existing facilities when it is necessary either to improve or to prevent a loss of service; and

(iii) Payment of tap fees and other utility connection charges as provided in utility purchase contracts.

(b) Funds also may be used:

(1) To pay the following expenses, but only when such expenses are a necessary part of a loan to finance facilities authorized in paragraphs (a), (b)(1), and (b)(2) of this section.

(i) Reasonable fees and costs such as origination fee, legal, engineering, architectural, fiscal advisory, recording, environmental impact analyses, archaeological surveys and possible salvage or other mitigation measures, planning, and establishing or acquiring rights.

(ii) Interest on loans until the facility is self-supporting, but not for more than three years unless a longer period is approved by the FmHA or its successor agency under Public Law 103-354 National Office; interest on loans secured by general obligation bonds until tax revenues are available for payment, but not for more than two years unless a longer period is approved by the FmHA or its successor agency under Public Law 103-354 National Office; and interest on interim financing.

(iii) Costs of acquiring interest in land; rights, such as water rights, leases, permits, rights-of-way; and other evidence of land or water control necessary for development of the facility.

(iv) Purchasing or renting equipment necessary to install, maintain, extend, protect, operate, or utilize facilities.

(v) Initial operating expenses for a period ordinarily not exceeding one year when the borrower is unable to pay such expenses.

(vi) Refinancing debts incurred by, or on behalf of, a community when all of the following conditions exist:

(A) The debts being refinanced are a secondary part of the total loan;

(B) The debts are incurred for the facility or service being financed or any part thereof;

(C) Arrangements cannot be made with the creditors to extend or modify the terms of the debts so that a sound basis will exist for making a loan.

(2) To pay obligations for construction incurred before issuance of the conditional commitment. Construction work should not be started and obligations for such work or materials should not be incurred before the conditional commitment is issued. However, if there are compelling reasons for proceeding with construction before the conditional commitment is issued, applicants may request FmHA or its successor agency under Public Law 103-354 approval to pay such obligations. Such requests may be approved if FmHA or its successor agency under Public Law 103-354 determines that:

(i) Compelling reasons exist for incurring obligations before issuance of conditional commitment; and

(ii) The obligations will be incurred for authorized loan purposes; and

(iii) Contract documents have been approved by the lender; and

(iv) All environmental requirements applicable to the applicant and the borrower have been met; and

(v) The borrower has the legal authority to incur the obligations at the time proposed, and payment of the debts will remove any basis for any mechanics, material, or other liens that may attach to the security property. FmHA or its successor agency under Public Law 103-354 may authorize payment of such obligations at the time of loan closing. FmHA or its successor agency under Public Law 103-354's authorization to pay such obligations is on the condition that it is not committed to make the loan guarantee. FmHA or its successor agency under Public Law 103-354 assumes no responsibility for any obligations incurred by the borrower; and the borrower must subsequently meet all loan guarantee approval requirements. The lender's request and FmHA or its successor agency under Public Law 103-354 authorization for paying such obligations shall be in writing. If construction is started without FmHA or its successor agency under Public Law 103-354 approval, post

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approval in accordance with this section may be considered.

[55 FR 11139, Mar. 27, 1990, as amended at 56 FR 29170, June 26, 1991; 57 FR 21199, May 19, 1992; 64 FR 28336, May 26, 1999]

§ 1980.814 Ineligible loan purposes.

Loan funds may not be used to finance:

(a) On-site utility systems or business and industrial buildings in connection with industrial parks.

(b) Facilities to be used primarily for recreation purposes.

(c) Community antenna television services or facilities.

(d) Facilities which are not modest in size, design, and cost.

(e) Finder's and packager's fees.

(f) Projects located within the Coastal Barriers Resource System that do not qualify for an exception as defined in Section 6 of the Coastal Barriers Resource Act, Pub. L. 97-348 (available in any FmHA or its successor agency under Public Law 103-354 office).

(g) New combined sanitary and storm water sewer facilities.

[55 FR 11139, Mar. 27, 1990, as amended at 56 FR 29170, June 26, 1991; 64 FR 28336, May 26, 1999]

§ 1980.815 Transactions which will not be guaranteed.

(a) Loans made by any Federal or State agencies. This does not preclude guaranteeing loans made by the Bank for Cooperatives or Federal Land Bank.

(b) Loans involved in tax-exempt obligations according to §1980.23 of subpart A of this part.

(c) Loans for a water or waste disposal facility involving an FmHA or its successor agency under Public Law 103-354 grant.

[55 FR 11139, Mar. 27, 1990, as amended at 56 FR 29171, June 26, 1991]

§ 1980.816 Facilities for public use.

The parameters for "facilities for public use," as defined at §1942.17(e) of Subpart A of Part 1942 of this chapter, are applicable as well for this subpart. In addition:

(a) The term "Applicant/Borrower," as used in §1942.17(e), shall mean the lender and the borrower for purposes of this subpart.

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(b) The term "FmHA or its successor agency under Public Law 103-354 Fundings," as used in §1942.17(e), shall mean FmHA or its successor agency under Public Law 103-354 guarantee for purposes of this subpart.

§ 1980.817 Fees and charges by lender.

(a) Allowable fees and charges by the lender are shown under §1980.22 of Subpart A of this part.

(b) Guarantee fees are as shown under §1980.21 of Subpart A of this Part.

§ 1980.818 Eligible lenders.

(a) Eligible lenders as defined in this section may participate in the FmHA or its successor agency under Public Law 103-354 CP loan guarantee program. These lenders must be subject to credit examination and supervision by either an agency of the United States or a state. Only those lenders listed in this section 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/or loan servicing office requirements of §1980.13 of Subpart A of this Part. A lender must have the capability to adequately service loans for which a guarantee is requested. Eligible lenders include:

(1) Any Federal or State chartered:

(i) Bank, or

(ii) Savings and loan association.

(2) Any mortgage company that is a part of a bank holding company,

(3) Farm Credit Bank of the Federal Land Bank Association or other Farm Credit System institution with direct lending authority authorized to make loans of the type guaranteed by this subpart.

(4) An insurance company regulated by a State or National insurance regulatory agency, and

(5) Other lenders that possess the legal powers necessary and incidental to making and servicing guaranteed loans involving community development type projects. These lenders must also be subject to credit examination and supervision by either an agency of the United States or a state, and other