

§ 1980.814

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

requirements as set forth in paragraph (a) of this section. These types of lenders must be approved by the FmHA or its successor agency under Public Law 103-354 Administrator prior to the issuance of the loan guarantee.

(b) With written concurrence of FmHA or its successor agency under Public Law 103-354, another eligible lender may be substituted for a lender who holds an outstanding Form FmHA or its successor agency under Public Law 103-354 449-14, "Conditional Commitment for Guarantee," provided the borrower, loan purposes, scope of the project, and loan terms remain unchanged. After issuance of the Loan Note Guarantee and with prior written approval of the FmHA or its successor agency under Public Law 103-354 Administrator, a new eligible lender may be substituted for the original lender provided the new lender agrees to assume all original loan requirements including liabilities, servicing responsibilities, and acquiring legal title to the unguaranteed portion of the loan. Such approval will be granted by the FmHA or its successor agency under Public Law 103-354 Administrator only when a lender discontinues lending operations or other extreme situations require a substitution of lender. If approved by the FmHA or its successor agency under Public Law 103-354 Administrator, the State Director will submit to the Finance Office Form FmHA or its successor agency under Public Law 103-354 1980-42, "Notice of Substitution of Lender."

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

§ 1980.819 Loan guarantee limits.

The percentage of guarantee, up to the maximum allowed by this section, is a matter for negotiation between the lender and FmHA or its successor agency under Public Law 103-354.

(a) Normally, guarantees will not exceed 80 percent unless extraordinary circumstances exist. The State Director will document these circumstances in the case file. National Office concurrence is required when the requested guarantee exceeds 80 percent. The maximum allowable guarantee will be 90 percent.

(b) Lenders and borrowers will propose the percentage of guarantee. FmHA or its successor agency under Public Law 103-354 informs lenders and borrowers in writing on Form FmHA or its successor agency under Public Law 103-354 449-14, of any percentage of guarantee less than proposed by the lender and borrower, and the reasons therefore. FmHA or its successor agency under Public Law 103-354 determines the percentage of guarantee after considering all credit factors involved, including but not limited to:

- (1) Borrower's management.
- (2) Collateral.
- (3) Financial condition.

(4) Lender's exposure (retain a minimum of 5% of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another.)

(5) Current trends and economic conditions.

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

§§ 1980.820-1980.822 [Reserved]

§ 1980.823 Interest rates.

(a) Rates will be negotiated between the lender and the borrower. They may be either fixed or variable rates as long as they are legal. Interest rates will be those rates customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to FmHA or its successor agency under Public Law 103-354 review and approval. FmHA or its successor agency under Public Law 103-354 will take into consideration in approving the lender's interest rate, the rate at which guaranteed loans are being sold or traded in the secondary market.

(b) A variable interest rate must be tied to a base rate published periodically in a recognized national or regional financial publication specifically agreed to by the lender and borrower. Notice of any interest rate change proposed by the lender should allow a sufficient time period for the borrower to obtain any required state or other regulatory approval and to implement any user rate adjustments necessary as a result of the interest rate change. The interest rate will not