

## § 1980.856

may propose alternate conditions to FmHA or its successor agency under Public Law 103-354.

(b) If the lender indicates in the "Acceptance of Conditions" that it desires to obtain a Loan Note Guarantee (Form FmHA or its successor agency under Public Law 103-354 449-34), and subsequently decides at any time after receiving a conditional commitment that it no longer wants a guarantee, the lender will immediately advise the FmHA or its successor agency under Public Law 103-354 District Director.

### **§ 1980.856 Conditions precedent to issuance of the Loan Note Guarantee (Form FmHA or its successor agency under Public Law 103-354 449-34).**

In addition to compliance with the requirements of § 1980.60 of subpart A of this part, compliance with the following provisions are required prior to issuance of the Loan Note Guarantee:

(a) *Transfer of lenders.* With prior written concurrence of the FmHA or its successor agency under Public Law 103-354 Administrator, the FmHA or its successor agency under Public Law 103-354 approval official may approve a substitution of a new eligible lender in place of a former lender who holds an outstanding Conditional Commitment for Guarantee (where Loan Note Guarantee has not yet been issued) provided, there are no changes in the borrower's ownership or control, loan purposes, scope of project, and loan conditions in the Form FmHA or its successor agency under Public Law 103-354 449-14, and the loan agreement remains the same. To effect such a substitution, the former lender will provide FmHA or its successor agency under Public Law 103-354 with a letter stating the reasons it no longer desires to be a lender for the project. The substituted lender will execute a new Part "B" of Form FmHA or its successor agency under Public Law 103-354 1980-10. If approved by FmHA or its successor agency under Public Law 103-354, the Administrator will issue a letter of amendment to the original Form FmHA or its successor agency under Public Law 103-354 449-14 reflecting the new lender who will acknowledge acceptance of the letter or amendment in writing. If the Loan Note Guarantee

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has been issued, the provisions of § 1980.818(b) regarding substitution of lender must be followed.

(b) *Substitution of borrowers.* FmHA or its successor agency under Public Law 103-354 will not issue a Loan Note Guarantee to the lender who is in receipt of a Form FmHA or its successor agency under Public Law 103-354 449-14 with an obligation in a previous fiscal year if the originally approved borrower (including changes in legal entity) or owners are changed. The only exception to this provision prohibiting a change in the legal entity's form of ownership is when the originally approved borrower or owner is replaced with substantially the same individuals with substantially the same interests, as originally approved and identified in Form FmHA or its successor agency under Public Law 103-354 1980-10. All requests for exceptions must be approved by the FmHA or its successor agency under Public Law 103-354 National Office.

(c) *Changes in terms and conditions in Form FmHA or its successor agency under Public Law 103-354 449-14.* Once Form FmHA or its successor agency under Public Law 103-354 449-14 is issued and accepted by the lender and borrower, the Commitment shall not be modified as to the scope of the project, overall facility concept, project purpose, use of proceeds, or terms and conditions. Only minor changes will be considered, unless otherwise provided for in this subpart.

(d) *Preguarantee review.* Coincident with, or immediately after loan closing, the lender will contact FmHA or its successor agency under Public Law 103-354 and provide those documents and certifications required in §§ 1980.60 and 1980.61 of subpart A of this part. For any loans involving bonds, the opinion of the recognized bond counsel will be reviewed to determine the adequacy of the bonds issued or to be issued. Only when the District Director is satisfied that all conditions for the guarantee have been met, will the Loan Note Guarantee be executed.

(e) *Title for land, rights-of-way, or easements.* Where applicable, the lender must certify that the borrower has obtained:

(1) A legal opinion relative to the title to rights-of-way and easements. Lenders are responsible for ensuring that borrowers have obtained valid, continuous, and adequate rights-of-way and easements needed for the construction, operation, and maintenance of a facility. Ordinarily, an opinion of counsel relative to rights-of-way similar to Form FmHA or its successor agency under Public Law 103-354 442-22, "Opinion of Counsel Relative to Right-of-Way," is sufficient documentation for rights-of-way.

(2) A title report by the borrower's attorney showing ownership of the land and all mortgages or other lien defects, restrictions, or encumbrances, if any. It is the responsibility of the lender to obtain and record such releases, consents, or subordinations to such property rights from holders of outstanding liens or other instruments as may be necessary for the construction, operation, and maintenance of the facility and to provide the required security. For example, when a site is for major structures for utility-type facilities, such as a reservoir or pumping station, and the lender is able to obtain only a right-of-way or easement on such a site rather than a fee simple title, such a title report should be requested.

(f) *Loan closing.* When loan closing plans are established, the lender will notify FmHA or its successor agency under Public Law 103-354.

(g) *Review by OGC.* After the conditional commitment for guarantee has been issued and proposed closing documents prepared by the lender and forwarded to FmHA or its successor agency under Public Law 103-354 with the lender's legal counsel's opinion but prior to issuing the loan note guarantee, the State Director will forward the loan docket to the Regional Attorney for review. After an administrative review, the State Director will include with the docket a letter with recommendations indicating any special items, documents or problems that need to be addressed specifically which may have a significant impact upon the loan or may be contrary to the regulation. Copies of the following documents should be submitted for OGC review:

(1) Letter from FmHA or its successor agency under Public Law 103-354 National Office authorizing loan guarantee containing conditions (if applicable);

(2) Form FmHA or its successor agency under Public Law 103-354 449-14, including any amendments;

(3) Loan agreement;

(4) Promissory notes and/or bond transcript;

(5) Security documents—real estate mortgage, security agreement, financing statements, and leases (if applicable);

(6) Proposed Forms FmHA or its successor agency under Public Law 103-354 449-34, 449-35, "Lender's Agreement," and 449-36 "Assignment Guarantee Agreement," if any;

(7) Proposed lender's certification (§1980.60 of Subpart A of this part); and

(8) Opinion of lender's counsel in form prescribed by OGC.

(h) *OGC advice.* The Regional Attorney will review the docket for legal sufficiency and furnish advice to FmHA or its successor agency under Public Law 103-354. Such advice is for the benefit of FmHA or its successor agency under Public Law 103-354 only and does not relieve the lender of its responsibilities under FmHA or its successor agency under Public Law 103-354 regulations. Upon receipt of the Regional Attorney's advice, the State Director will correct or cause to be corrected any noted deficiencies before issuing the Loan Note Guarantee.

[55 FR 11139, Mar. 27, 1990, as amended at 56 FR 29172, June 26, 1991]

**§ 1980.857 Issuance of lender's agreement, loan note guarantee, contract of guarantee, and assignment guarantee agreement.**

Compliance with §1980.61 of subpart A of this part is required for this subpart.

**§§ 1980.858–1980.868 [Reserved]**

**§ 1980.869 Design and construction.**

Specifications for design and construction provided at §1942.18(d), (j)(1) and (2), and (n)(1), (2), (4), (5), (6), and (11) of subpart A of part 1942 of this chapter also apply to this subpart. The