

(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

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lender will provide FmHA or its successor agency under Public Law 103-354 with a written certification at the end of construction that all funds were utilized for authorized purposes. The lender will also certify that the FmHA or its successor agency under Public Law 103-354 design policies have been met. The lender will monitor the progress of construction and undertake the reviews and project inspections necessary to reasonably assure that funds are used for eligible project costs and that problems in project development are expeditiously reported to the District Director.

§ 1980.870 Loan servicing.

The lender will be responsible for servicing the entire loan in accordance with the lender's loan agreement. The lender will notify FmHA or its successor agency under Public Law 103-354 of any violations of the lender's loan agreement.

(a) The lender will require, at a minimum, annual audited financial statements which will be reviewed by the lender and a copy forwarded to the FmHA or its successor agency under Public Law 103-354 District Office with a summary evaluation by the lender. After receipt of the evaluation, the District Director will determine if a joint FmHA or its successor agency under Public Law 103-354 lender and borrower site visit will be necessary. Site visits will be conducted at least once every three years but may be scheduled more frequently if conditions warrant. Delinquent borrowers will be visited at least annually. The State Director may waive the audit requirement for financial statements for borrowers with gross annual income of less than \$100,000.

(b) The District Director or his/her designated representative will meet annually with each lender or his/her agent with whom a CP loan guarantee is outstanding. At this meeting, a review will be made of the lender's performance in loan servicing and a determination of any future actions needed. This meeting will be documented in the running record for each borrower serviced by the lender and followed by

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a letter to the lender. The letter shall be placed in each borrower's case file.

[55 FR 11139, Mar. 27, 1990, as amended at 56 FR 29173, June 26, 1991]

§ 1980.871 Loan classification.

All CP guaranteed loans will be classified by FmHA or its successor agency under Public Law 103-354 at loan closing and again whenever there is a change in the loan which would impact on the original classification. The loans will be classified as set out at §1904.104 of subpart C of part 1904 of this chapter.

[56 FR 29173, June 26, 1991]

§ 1980.872 Defaults by borrower.

(a) In case of any monetary or significant non-monetary default under the loan agreement, the lender is responsible for arranging a meeting with the District Director or designated representative and borrower to resolve the problem. A memorandum of the meeting listing the individuals in attendance and summarizing the problem and proposed solution will be prepared by the FmHA or its successor agency under Public Law 103-354 representative and retained in the loan file. When the District Director receives a notice of default on a loan, he/she will immediately notify the State Office in writing of the details. The District Director will notify the lender and borrower of any decision reached by FmHA or its successor agency under Public Law 103-354.

(b) In considering servicing options, some of which are identified in paragraph X. A of Form FmHA or its successor agency under Public Law 103-354 449-35, the prospects for providing a permanent cure without adversely affecting the risks to FmHA or its successor agency under Public Law 103-354 and the lender must become the paramount objective. Within the State Director's authority, temporary curative actions such as payment deferments or collateral subordination, must strengthen the loan and be in the best interest of the lender and FmHA or its successor agency under Public Law 103-354. Some of these actions may require concurrence of the holder(s).