

State Director shall determine that there will be no adverse changes in the borrower's financial situation and that such loan or advance is not likely to adversely affect the collateral or the guaranteed loan.

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§ 1980.876 Bankruptcy.

(a) It is the lender's responsibility to protect the guaranteed loan debt and all the collateral securing it in bankruptcy proceedings. These responsibilities include but are not limited to the following:

(1) The lender will file a proof of claim where necessary and all the necessary papers and pleadings concerning the case.

(2) The lender will attend and where necessary participate in meetings of the creditors and all court proceedings.

(3) The lender, whose collateral is subject to being used by the trustee in bankruptcy, will immediately seek adequate protection of the collateral.

(4) Where appropriate, the lender should seek involuntary conversion of a pending chapter 11 case to a liquidation proceeding under chapter 7 or under section 1123(b)(4), or seek dismissal of the proceedings.

(5) FmHA or its successor agency under Public Law 103-354 will be kept adequately and regularly informed in writing of all aspects of the proceedings.

(b) In a chapter 9 or chapter 11 reorganization, if an independent appraisal is necessary in FmHA or its successor agency under Public Law 103-354's opinion, FmHA or its successor agency under Public Law 103-354 and the lender will share such appraisal fee equally.

(c) Expenses on chapter 11 reorganizations, chapter 11 or chapter 7 liquidations (unless the lender is directly the liquidator) are not to be deducted from the collateral proceeds.

(d) All bankruptcy cases should be reported immediately to the National Office by utilizing and completing a problem/delinquent status report. The Regional Attorney must be informed promptly of the proceedings.

(e) FmHA or its successor agency under Public Law 103-354 or the lender, with the approval of the State Direc-

tor, may initiate the repurchase of the unpaid guaranteed portion of the loan from the holder(s) to reduce interest accruals during certain bankruptcy proceedings. The State Director may approve the repurchase of the unpaid guaranteed portion of the loan from the holder(s) to reduce interest accrual during chapter 7 proceedings or after a chapter 11 proceeding becomes a liquidation proceeding. If the lender is the holder, an estimated loss payment may be filed at the initiation of a chapter 7 proceeding or after a chapter 11 proceeding becomes a liquidation proceeding. On loans in bankruptcy, any loss payment must be handled in accordance with the lender's agreement (Form FmHA or its successor agency under Public Law 103-354 449-35) and carry the approval of the State Director.

(f) The State Director must approve in advance and in writing the lender's estimated liquidation expenses on loans in liquidation bankruptcy. These expenses must be reasonable and customary and not in-house expenses of the lender.

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§ 1980.877 Transfer and assumptions.

(a) *General.* It is the policy of FmHA or its successor agency under Public Law 103-354 to approve transfers and assumptions of loans to transferees who will continue the original purpose of the guaranteed loan. All transfers and assumptions will be approved in writing by FmHA or its successor agency under Public Law 103-354. Transfers and assumptions may be approved subject to the following:

(1) When the transaction is to a member of the borrower's organization at a price which will not result in a loss to the lender.

(2) Transfers to eligible borrowers will receive preference over transfers to ineligible borrowers, if recovery to the lender from the sale price is not less than it would be if the transfer was to an ineligible borrower.

(3) The present borrower is unable or unwilling to accomplish the objectives of the guaranteed loan and the transfer will be to the lender's advantage.

(4) If the debt(s) is not equal to the present market value, the transferee will assume an amount at least equal to either the present market value or the debt, whichever is less. The percentage of FmHA or its successor agency under Public Law 103-354's guarantee will be based on the new debt or the current market value, whichever is less.

(5) The lender concurs in the plans for disposition of funds in the transferor's debt service, reserve, and operation and maintenance account.

(b) *Eligible borrowers.* (1) The total indebtedness may be transferred to an eligible borrower on the same terms.

(2) The total indebtedness may be transferred to another borrower on different terms not to exceed those terms for which an initial guaranteed loan can be made.

(3) Less than the total indebtedness may be transferred to another borrower on the same or different terms.

(4) A guaranteed loan for which the transferee is eligible may be made in connection with a transfer subject to the policies and procedures governing the kind of loan being made.

(5) If the transferor is to receive a payment for its equity, the total FmHA or its successor agency under Public Law 103-354 debt must be assumed.

(c) *Ineligible borrower.* Transfers to ineligible borrowers are considered only when needed as a method for servicing problem cases when an eligible transferee is not available. Transfers should not be considered as a means by which members can obtain an equity or as a method of providing a source of easy credit for purchasers. Transfers are as follows:

(1) All transfers to ineligible borrowers will include a one-time non-refundable transfer fee. Transfer fees will be collected and payments applied in accordance with paragraph (d) of this section.

(2) For all loans covered by this subpart, the State Director, is authorized to approve a transfer of indebtedness to, and assumption of, a loan by a transferee who does not meet the eligibility requirements for the kind of loan being assumed when the ineligible borrower will:

(i) Make a significant downpayment.

(ii) Agree to pay the remaining balance within not more than 15 years. Installments will be at least equal to the amount amortized over a period not greater than the remaining life of the debt being transferred and the balance will be due the fifteenth year.

(3) Interest rates to ineligible transferees will be the rate specified in the note of the transferor or the 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. The rates may be either fixed or variable.

(i) Transferees must have the ability to repay the debt according to the assumption agreement and must have the legal authority to enter into the contract. The borrower will submit a current balance sheet. The lender will obtain and analyze the credit history of the borrower. In all transfers, consideration will be given to obtaining individual liability agreements from members of the transferee organization.

(ii) This subpart does not preclude the transferor from receiving equity payments when the full amount of the debt is assumed. However, equity payments will not be made on more favorable terms than those on which the balance of the debt will be paid.

(d) *Transfer fees.* Transfer fees are a one-time nonrefundable cost to be collected by the lender at the time of application or proposal.

(1) *Amount.* The transfer fees will be a standard fee plus the cost of the appraisal. This fee will be established by the FmHA or its successor agency under Public Law 103-354 National Office and issued annually to all FmHA or its successor agency under Public Law 103-354 State Offices for further distribution.

(2) *Remittance.* The lender will collect and submit the fee to the FmHA or its successor agency under Public Law 103-354 District Office. The FmHA or its successor agency under Public Law 103-354 District Office will submit the fee to the Finance Office identified as a transfer fee using Form FmHA or its successor agency under Public Law 103-354 451-2, "Schedule of Remittance."

(3) *Waiver.* When the State Director determines waiving the transfer fee is in the best interest of the Government, the file will be submitted to the National Office with appropriate recommendations for the request.

(e) *Processing transfers and assumptions.* (1) In any transfer and assumption case, the transferor, including any guarantor(s), may be released from liability by the lender with FmHA or its successor agency under Public Law 103-354 written concurrence, only when the value of the collateral being transferred is at least equal to the amount of the loan or part of the loan being assumed. If the transfer is for less than the entire debt:

(i) FmHA or its successor agency under Public Law 103-354 must determine that the transferor and any guarantors have no reasonable debt-paying ability considering their assets and income at the time of transfer.

(ii) The District Director must certify that the transferor has cooperated in good faith, used due diligence to maintain the collateral against loss, and has otherwise fulfilled all of the regulations of this subpart to the best of the borrower's ability.

(2) The lender will make, in all cases, a complete credit analysis to determine viability of the project, subject to FmHA or its successor agency under Public Law 103-354 review and approval, including any requirement for deposits in an escrow account as security to meet its determined equity requirements for the project.

(3) The lender will issue a statement to FmHA or its successor agency under Public Law 103-354 that the transaction can be properly transferred and the conveyance instruments will be filed, registered, or recorded as appropriate and legally permissible.

(4) The State Director may approve all transfer and assumption provisions if the guaranteed loan debt balance is within his/her loan approval authority including:

(i) Consent in writing to the release of the transferor and guarantors from liability.

(ii) Any changes in loan terms.

NOTE: The assumption will be reviewed as if it were a new loan. The Loan Note Guarantee(s) (Form FmHA or its successor agency under Public Law 103-354 449-34) will be

endorsed in the space provided on the form(s).

(5) The assumption will be made on the lender's form of assumption agreement and will contain the FmHA or its successor agency under Public Law 103-354 case number of the transferor and transferee.

(6) If the guaranteed loan debt balance is in excess of the State Director's loan approval authority, the State Director will forward the file, together with his/her recommendations, to the appropriate National Office program division for approval.

(7) A copy of the Assumption Agreement will be retained in the FmHA or its successor agency under Public Law 103-354 file. The District Director will notify the Finance Office of all approved transfer and assumption cases on Form FmHA or its successor agency under Public Law 103-354 1980-7, "Notification of Transfer and Assumption of a Guaranteed Loan," and submit Form FmHA or its successor agency under Public Law 103-354 1980-50, for all new borrowers and Form FmHA or its successor agency under Public Law 103-354 1980-51, "Add, Change, or Delete Guaranteed Loan Record," in order that Finance Office records may be adjusted accordingly.

(8) Loan terms cannot be changed by the Assumption Agreement unless previously approved in writing by FmHA or its successor agency under Public Law 103-354, with the concurrence of any holder(s) and the transferor (including guarantors) if they have not been released from personal liability. Any new loan terms cannot exceed those authorized in this subpart. The lender's request will be supported by:

(i) An explanation of the reasons for the proposed change in the loan terms.

(ii) Certification that the lien position securing the guaranteed loan will be maintained or improved, proper hazard insurance will be continued in effect, and all applicable Truth in Lending requirements will be met.

(9) In the case of a transfer and assumption, it is the lender's responsibility to see that all such transfers and assumptions will be noted on all originals of the Loan Note Guarantee(s). The lender will provide FmHA or its successor agency under Public Law 103-

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354 a copy of the transfer and assumption agreement. Notice must be given by the lender to FmHA or its successor agency under Public Law 103-354 before any borrower or guarantor is released from liability.

(10) The holder(s), if any, need not be consulted on a transfer and assumption case unless there is a change in loan terms.

(11) If a loss should occur upon consummation of a complete transfer of assets and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantor) is released from personal liability, as provided in paragraph (e) of this section, the lender, if it holds the guaranteed portion, may file an estimated "Report of Loss" on Form FmHA or its successor agency under Public Law 103-354 449-30 to recover its pro rata share of the actual loss at that time. In completing Form FmHA or its successor agency under Public Law 103-354 449-30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the transferee, will be entered on Form FmHA or its successor agency under Public Law 103-354 449-30, lines 13 and 14.

(f) *Submission to National Office.* (1) Under any of the following conditions, a proposed transfer or assumption will be forwarded to the National Office for prior review and approval before making any commitments:

(i) Where a loss to the Government will result; or

(ii) The prospective transferee is a member of the present borrower's organization; or

(iii) Proposals for transfer or assumption are made on more liberal terms than set forth in paragraphs (b) and (c) of this section; or

(iv) Proposals for cash downpayment to the present borrower in an amount which exceeds that actual sales expenses; or

(v) The transfer fee is to be waived for a prospective transferee.

(2) All submissions to the National Office will contain:

(i) Transfer case file.

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(ii) OGC comments on the proposed transfer or assumption.

(iii) Appropriate forms to complete the transfer prepared by the transferee.

(iv) Completed environmental review.

(v) Any other necessary supporting information.

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§ 1980.878 Mergers.

(a) *General.* State Directors are authorized to approve mergers or consolidations (which are herein referred to as mergers) when the resulting organization will be eligible for an FmHA or its successor agency under Public Law 103-354 guaranteed loan and assumes all the liabilities and acquires all the assets of the merged borrower. Mergers may be approved when:

(1) The merger is in the best interest of the Government and the merging borrower.

(2) The resulting borrower can meet all required conditions as set forth in specific loan note agreements.

(3) All property can be legally transferred to the resulting borrower.

(4) The membership of each organization involved is made aware of the proposed merger.

(b) *Distinguishing mergers from transfers and assumptions.* Mergers occur when one corporation combines with another corporation in such a way that the first corporation ceases to exist as a separate entity while the other continues. In a consolidation, two or more corporations combine to form a new, consolidated corporation, with the original corporations ceasing to exist. Such transactions must be distinguished from transfers and assumptions in which a transferor will not necessarily go out of existence, and the transferee will not always take all the transferor's assets, nor assume all the transferor's liabilities.

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§ 1980.879 Disposition of acquired property.

(a) When the lender acquires title to the collateral through a voluntary basis or foreclosure means, and the FmHA or its successor agency under Public Law 103-354 final loss claim is