

§ 1980.472

amount of the loan and interest cannot be accrued on the principal amount of the loan that is equal to the estimated loss payment. Community and Business Program Chiefs (C&BP), Business and Industry Chiefs or Loan Specialists will conduct such reviews. The State Director may request National Office assistance in the conduct of any review. All reviews for final loss claim in excess of the State Director's approval authority (See Subpart A of Part 1901 of this Chapter) will be submitted to the National Office, Business and Industry Division, for concurrence prior to the State Director's approval of the claim. Close scrutiny of liquidation proceeds and their application in accordance with lien priorities is required. Before final loss payments are approved and to assist in the required review, the C&BP Chief, B&I Chief or Loan Specialist will prepare a narrative history of the guarantee transaction which will serve as the summary of occurrence which led to failure of the borrower and actions taken to maximize loan recovery. The original of this report will be filed in the loan case file. A copy of this report together with the review of the final loss claim will be included in the material sent to the Director, B&I Division, for review prior to approval of final loss payments.

§ 1980.472 Protective advances.

[See § 1980.65 Subpart A of this Part.]

Administrative

Refer to Appendix G of this subpart (available in any FmHA or its successor agency under Public Law 103-354 Office) for advice on how to interact with the lender on liquidations and property management.

A. Protective advances will not be made in lieu of additional loans, in particular, working capital loans. Protective advances are advances made by the lender for the purpose of preserving and protecting the collateral where the debtor has failed to and will not or cannot meet its obligations. Ordinarily, protective advances are made when liquidation is contemplated or in process. A precise rule of when a protective advance should be made is impossible to state. A common, but by no means the only, period when protective advances might be needed is during liquidation. At this point, the borrower and success of the project are no longer of paramount importance, but preserving collateral for maximum recovery is of vital importance. Elements which should always be considered include how close the project is to liquidation or default, how much control the borrower will have over the funds, what danger is there that collateral may be destroyed and whether there will be a good chance of saving the collateral later if a protective advance in contemplation of liquidation is

7 CFR Ch. XVIII (1-1-05 Edition)

made immediately. A protective advance *must* be an indebtedness of the borrower.

B. The State Director must approve, in writing, all protective advances on loans within his/her loan approval authority which exceed a total commulative advance of \$500 to the same borrower. Protective advances must be reasonable when associated with the value of collateral being preserved.

C. When considering protective advances, sound judgment must be exercised in determining that the additional funds advanced will actually preserve collateral interests and recovery is actually enhanced by making the advance.

§ 1980.473 Additional loans or advances.

(Refer to paragraph XIII of Form FmHA or its successor agency under Public Law 103-354 449-35.)

Administrative

Only the State Director shall approve within his/her loan approval authority additional nonguaranteed loans or advances prior to or subsequent to the issuance of the Loan Note Guarantee. The 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.

§ 1980.474 [Reserved]

§ 1980.475 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 liquidating proceeding under Chapter 7 or under Section 1123(b) (4) or seek dismissal of the proceedings.

(5) When permitted by the Bankruptcy Code, the lender will request