

§ 1980.391

7 CFR Ch. XVIII (1-1-08 Edition)

loan. All existing agreements must be reviewed and processed for the upcoming 12 months during the review period. Interest assistance will not be renewed if the amount that the borrower qualifies for is less than \$20 per month.

(1) The Lender will obtain written verification of the income of each borrower and all adult members of the borrower's household and conduct the review.

(i) *Borrower responsibility.* The borrower will:

(A) Report the income of each adult member of the household to the Lender;

(B) Assure that each household member has provided sufficient information on that person's income for the Lender to conduct the review; and

(C) Cooperate in the Lender's efforts to verify income.

(ii) [Reserved]

(2) *Processing interest assistance renewals not reviewed during the review period.* The Lender may process interest assistance renewals not completed during the review period as follows:

(i) The amount of interest assistance will be based on the borrower's current annual income.

(ii) The effective date will be:

(A) The expiration period of the previous interest assistance agreement if the RHS approval official determines failure to renew was the fault of RHS or the Lender.

(B) The next payment due date following approval in all other cases.

(3) *Interest assistance form.* Interest assistance payments will not be made after the expiration date unless RHS receives and approves a new interest assistance agreement form.

(i) *Cancellation of interest assistance.*

(1) An existing interest assistance agreement will be canceled under the following circumstances:

(i) When the borrower has never occupied the dwelling, the interest assistance will be canceled as of the date of issuance of the guarantee. The Lender will refund all interest assistance payments to RHS.

(ii) The cancellation will be effective on the date on which the earliest action occurs which causes the cancellation or the date the Lender became

aware of the situation if the date cannot be determined when:

(A) The borrower ceases to occupy, sells, or conveys title to the dwelling.

(B) The borrower has received improper interest assistance and a corrected agreement will not be submitted.

(C) The borrower has had an increase in income and is no longer eligible for interest assistance.

(D) The security is acquired by the Lender.

(E) The Lender formally declares the loan to be in default and accelerates the loan.

(2) [Reserved]

(j) *Overpayment.* When the Lender becomes aware of circumstances that have resulted in an overpayment of interest assistance for any reason, except as provided in paragraph (k) of this section, the following actions will be taken:

(1) The Lender will immediately notify RHS.

(2) The borrower will be notified and the interest assistance agreement will be corrected.

(3) A repayment agreement acceptable to RHS will be reached.

(k) *Unauthorized use of loan funds.* When RHS becomes aware that the Lender allowed loan funds to be used for unauthorized purposes, interest assistance paid on said amounts will be promptly repaid by the Lender. The Lender may work out a repayment agreement with the borrower but is expected to make every effort to minimize the adverse impact on the borrower's repayment ability.

(l) *Appeals.* All applicants/borrowers and Lenders may appeal adverse determinations in accordance with §1980.399 when RHS denies, reduces, cancels, or refuses to renew interest assistance.

(m) *Reinstatement of interest assistance.* The RHS approval official may authorize reinstatement of the borrower's interest assistance if it was canceled because the loan was accelerated and if the acceleration was withdrawn with RHS approval.

§ 1980.391 **Equity sharing.**

The policy of RHS is to collect all or a portion of interest assistance granted on a guaranteed RH loan when any of

the events described in paragraph (a) of this section occur, if any equity exists in the security.

(a) *Determining the amount of shared equity.* The RHS approval official will calculate shared equity when a borrower's account is settled by payment-in-full (including refinancing) of the outstanding indebtedness, the transfer of title, or when the borrower ceases to occupy the property. The calculation of shared equity when the account is in liquidation will be handled in accordance with §1980.374(e).

(1) *How to calculate.* The amount of shared equity will be based on the amount of interest assistance granted on the loan, the appreciation in property value between the closing date of the loan and the date the account is satisfied or acquired by the Lender via liquidation action, the period of time the loan is outstanding, the amount of original equity the borrower has in the property, and the value of capital improvements to the property. Shared equity will be the lesser of the interest assistance granted or the amount of value appreciation available for shared equity. Value appreciation available for shared equity means the market value of the property less all debts secured by prior liens, sales expenses, any original borrower equity, principal reduction, and value added by any capital improvements.

(i) *Market value.* Market value of the property as of the date the loan is to be paid in full or the date the borrower ceases to occupy and will be documented by one of the following:

(A) A sales contract which reasonably represents the fair market value based on the Lender's and RHS approval official's knowledge of the property and the area.

(B) Lender's appraisal when the loan will be refinanced provided the appraisal reasonably represents the fair market value.

(C) If the items listed in either paragraph (a)(1)(i)(A) or (a)(1)(i)(B) of this section are not available, another current appraisal, if readily available, when the appraiser meets the qualifications of §1980.334.

(D) When the account is being paid off from insurance proceeds, the most recent appraisal available if the Lender

or RHS can document that it represents an accurate indication of the value at the time the dwelling was damaged or destroyed. If not, the best information available will be used to determine the market value. The RHS approval official will interview the borrower to determine the extent of improvements, if any, and the general condition of the property at the time of loss. The amount of the insurance payment is generally a good indication of value; however, tax records or comparable sales will be considered.

(E) RHS appraisal, with prior approval of the State Director.

(ii) *Prior liens.* Prior liens refers to the amount of liens that are prior to the Lender's liens and include, but may not be limited to, prior mortgages, and real estate taxes and assessments levied against the property.

(iii) *Sale/refinancing expenses.* Sale/refinancing expenses include, but are not limited to, expenses commonly associated with the sale or refinancing of real estate that are not reimbursed, such as sales commissions, advertising costs, recording fees, pro rata taxes, points based on the current interest rate, appraisal fees, transfer tax, deed preparation fee, loan origination fee, etc. In refinancing situations, only those expenses necessary to finance the amount of the current RHS debt are allowed. Shared equity may be calculated using estimated expenses if actual expenses cannot be obtained and the RHS approval official is satisfied with the estimated amount and the prorating of the expenses are accurate for this transaction.

(iv) *Original borrower equity.* Original equity consists of a contribution by the borrower that reduces the amount of the loan below the market value. The contribution may be in the form of cash and/or value of the lot if the home was constructed on the borrower's property.

(v) *Capital improvements.* Capital improvements will be considered to the extent that they do not exceed market value contribution as indicated by a sales comparison analysis. Generally, the value added by improvements will be the difference in market value at the time of sale and market value without capital improvements. Cost of

the improvement will not be considered, only contribution to value. Maintenance cost and replacement of short-lived depreciable items are normal expenses associated with home ownership and are not considered capital improvements.

(2) *Other considerations.* (i) *Overpayments of interest assistance.* When RHS has overpaid interest assistance and the overpaid amounts remain uncollected at the time shared equity is calculated, the overpaid amount will be added to shared equity.

(ii) *Multiple loans.* When a borrower has more than one loan and elects to pay only some of the loans, shared equity will not be calculated unless the remaining loan is not subject to shared equity. Shared equity will be calculated when the account is paid in full taking into consideration all of the interest assistance granted on the account.

(b) *Miscellaneous provisions—(1) Changes in terms.* Shared equity will not be calculated when an account is reamortized.

(2) *Junior liens.* Junior liens are not considered in the shared equity calculation. In the event a junior lienholder forecloses, the RHS approval official will calculate shared equity before providing the lienholder with a pay-off figure, which is in addition to any amounts still due the Lender on the loan in the same manner as paragraph (a) of this section.

(c) *Affordable housing proposals.* Shared equity under an affordable housing innovation (such as limited equity or a state or county sponsored shared equity) will be calculated in accordance with this subpart unless prior written approval is obtained from RHS. Proposals that deviate from this subpart must be reviewed and approved in the National office prior to issuance of the loan note guarantee.

**§ 1980.392 Mortgage Credit Certificates (MCCs) and Funded Buydown Accounts.**

(a) *MCCs.* MCCs are authorized under the Tax Reform Act of 1986 and allow the borrower to receive a Federal tax credit for a percentage of their mortgage interest payment. They may be used by RHS guaranteed RH borrowers

to improve their repayment ability for the loan. MCCs impact on the borrower's tax liability. MCCs may be used with interest assisted loans when the amount of the tax credit is based on the amount of interest actually paid by the borrower. MCCs are subject to shared equity of a portion of any "gain" realized on the property when sold within 10 years after purchase. If the loan is also an RHS interest assisted loan, RHS shall receive priority for shared equity repayment. Income taxes are complex issues; RHS employees and Lenders are not expected to be able to identify all issues impacting the borrower's taxes. Lenders should encourage borrowers to consult with a tax advisor.

(1) When the Lender is participating in an MCC program the amount of the tax credit is considered as an additional resource available for repayment of the loan when the credit is taken on a monthly basis from withholding.

(2) The Lender will submit a copy of the MCC and a copy of the applicant's Form IRS W-4, "Employee's Withholding Allowance Certificate," along with the other materials for the loan guarantee request. The amount of tax credit is limited to the applicant's maximum tax liability.

(i) The MCC must show the rate of credit allowed.

(ii) The Form IRS W-4 must reflect that the borrower is taking the tax credit on a monthly basis.

(iii) The Lender will certify that the borrower has completed and processed all of the necessary documents to obtain the tax credit in accordance with this section.

(b) *Funded buydown accounts.* A funded buydown account is a prepaid arrangement between a builder or a seller and a Lender that is designed to improve applicant's repayment ability. Funded buydown accounts are permitted when the Lender obtains prior RHS concurrence. RHS will consider buydown accounts when there are compensating factors which indicate the borrower's ability to meet the expected increases in loan payment. The seller, Lender or other third party must place funds in an escrow account with monthly releases scheduled directly to