

*Administrative*

The lender is responsible for notifying the FmHA or its successor agency under Public Law 103-354 of the taxability of the proposed bond issue.

**§ 1980.489 [Reserved]****§ 1980.490 Business and industry buydown loans.**

(a) *Introduction.* This section contains regulations for the Business and Industry Buydown (BIB) loan program. The purpose of this program is to provide loan guarantees with reduced interest rates to the borrowers, under the authority of Public Law 103-50 (107 Stat. 241). All provisions of Subparts A and E of this part apply to BIB loans except as provided in this section. All forms used in connection with a BIB loan will be those used with other B&I loans, except as provided in this section.

(b) *Location of applicants.* Businesses eligible for BIB loans shall be located within the area covered by the Presidential disaster declaration related to Hurricanes Andrew or Iniki or Typhoon Omar.

(c) *Interest rate.* (1) If the interest rate charged by the lender (note rate) on a BIB loan is a variable rate in accordance with § 1980.423 of this subpart, the base rate must be the prime rate as published in the Wall Street Journal and the note rate must not exceed the prime rate as published in the Wall Street Journal by more than 100 basis points. If the note rate is fixed, it must not exceed by more than 100 basis points the prime rate as published in the Wall Street Journal on the day the Loan Note Guarantee is issued.

(2) The note rate for a BIB loan must be the same for the entire loan, including both the guaranteed and unguaranteed portion.

(d) *Interest rate buydown.* (1) To be eligible for a BIB loan, the business must provide evidence and the lender and FmHA or its successor agency under Public Law 103-354 must determine that, at least for the first year of the loan, the business will not have adequate cash flow to meet all of its financial obligations including the required payments on the proposed loan at the note rate, but that it can meet all obligations if the interest rate is reduced by 100 basis points.

(2) During the first year after a Loan Note Guarantee is issued for a BIB loan, FmHA or its successor agency under Public Law 103-354 will pay one percentage point of interest on the loan directly to the lender, thereby reducing the interest due from the borrower by this amount. This interest payment shall be applied to both the guaranteed and unguaranteed portion of the loan pro rata according to FmHA or its successor agency under Public Law 103-354 regulations.

(3) Interest payments by FmHA or its successor agency under Public Law 103-354 may continue in subsequent years if the borrower's cash flow is insufficient to pay all obligations including the required payments on the proposed loan at the note rate. On or about each yearly anniversary of the promissory note the lender may submit a request to FmHA or its successor agency under Public Law 103-354 for continued interest payments, along with current profit and loss and cash flow statements and cash flow projections to show that the continued payments are needed for another year. FmHA or its successor agency under Public Law 103-354 will promptly review the material submitted, determine whether the continued interest payments by FmHA or its successor agency under Public Law 103-354 are needed to provide for sufficient cash flow in the coming year, and notify the lender in writing of the determination. Once interest payments by FmHA or its successor agency under Public Law 103-354 are terminated because the borrower's cash flow is determined to be sufficient to pay the note rate, such payments will not be made in subsequent years even if the cash flow decreases.

(4) This section does not authorize interest payments by FmHA or its successor agency under Public Law 103-354 on B&I loans other than those approved under this section. To be eligible for interest payments by FmHA or its successor agency under Public Law 103-354, the loan must be designated as a BIB loan when approved and funded from funds authorized by Public Law 103-50.

(e) *Duration of BIB loan program.* No BIB loan will be obligated after September 30, 1994.

(f) *Administrative procedures.* (1) A lender that wants a B&I application considered under BIB authorities should so indicate by notation on Form FmHA or its successor agency under Public Law 103-354 449-1 or by letter submitted with the Form FmHA or its successor agency under Public Law 103-354 449-1.

(2) FmHA or its successor agency under Public Law 103-354 will identify a loan as a BIB loan by notation in the top margin of Form FmHA or its successor agency under Public Law 103-354 449-29 and by the "type of assistance" code listed on Form FmHA or its successor agency under Public Law 103-354 1940-3, in accordance with the Forms Manual Insert.

(3) FmHA or its successor agency under Public Law 103-354 will set out the interest buydown provisions in accordance with this section in the Conditional Commitment for Guarantee. When the Loan Note Guarantee is issued, the lender and FmHA or its successor agency under Public Law 103-354 will execute Form FmHA or its successor agency under Public Law 103-354 1980-48, "Business and Industry Interest Rate Buydown Agreement."

(4) The lender will request the interest payment from FmHA or its successor agency under Public Law 103-354 by submitting Form FmHA or its successor agency under Public Law 103-354 1980-23, "Request for Business and Industry Interest Buydown Payment," to the FmHA or its successor agency under Public Law 103-354 servicing office. Each request must cover exactly 1 year and be filed within 30 days after the anniversary date of the promissory note, except when interest buydown is terminated between anniversary dates. The FmHA or its successor agency under Public Law 103-354 servicing office will review each request for consistency with FmHA or its successor agency under Public Law 103-354 regulations and the Form FmHA or its successor agency under Public Law 103-354 1980-48 and, if the claim is valid, will approve it and forward it to the Finance Office for issuance of the payment to the lender.

(g) *Termination of interest buydown.* When FmHA or its successor agency under Public Law 103-354 purchases a

portion of a loan, interest buydown will cease on the entire loan. Interest buydown will also cease upon termination of the Loan Note Guarantee or assumption/transfer of the loan. In the event of any action that causes the interest buydown to terminate, the lender will submit a claim on Form FmHA or its successor agency under Public Law 103-354 1980-23 for interest buydown payments through the date of termination.

(h) *Loan purposes.* (1) *Refinancing.* Section 1980.452 *Administrative C.1.* (d) of this subpart does not apply to BIB loans if refinancing is needed as a direct consequence of the disaster. In such cases, the lender may be allowed to bring previously unguaranteed exposure under the guarantee. No loan will be refinanced unless the current market value of the collateral is at least equal to the amount of the loan to be refinanced plus any new loan amount.

(2) *Agriculture.* Section 1980.412 (e) of this subpart does not apply to BIB loans. BIB loans may be guaranteed for agriculture production, which means the cultivation, production (growing), and harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds, and marine life, either for fiber or food for human consumption), and disposal or marketing thereof, the raising, housing, feeding (including commercial custom feedlots), breeding, hatching, control and/or management of farm or domestic animals.

(3) *Other eligible businesses.* Eligible types of businesses also include:

(i) Commercial nurseries primarily engaged in the production of ornamental plants and trees and other nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of vegetables from seed to the transplant stage.

(ii) Forestry which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

(iii) The growing of mushrooms or hydroponics.

(4) *Recreation and tourism.* Loans may be guaranteed for tourist or recreation facilities except for hotels, motels, bed

and breakfasts, race tracks, gambling, or golf courses.

(5) *Meat processing facilities.* The provisions of §1980.411 (a)(8) of this subpart will not apply to BIB loans. Loans, including working capital or debt refinancing, may be guaranteed for businesses engaged in meat or poultry processing.

(i) *Small Business Administration.* Section 1980.451 (c) of this subpart will not apply to BIB loans. Applicants eligible for Small Business Administration assistance will be advised of the availability of that assistance.

(j) *Loan guarantee limits.* Notwithstanding the provisions of §1980.420 of this subpart, the guarantee percentage on any BIB loan will not exceed 80 percent.

(k) *Credit quality analysis.* In analyzing the credit quality of a proposed loan to a business that has lost assets to a natural disaster, primary emphasis will be placed on the operating history of the business, rather than its current financial condition. If the business has a sound, profitable and successful history prior to the disaster and there are reasonable projections to ensure it can operate successfully in the future, the proposed loan may be approved even if disaster losses have caused somewhat less equity and/or collateral than would normally be expected for a B&I loan guarantee. If the business appears to have had an unprofitable operation or inadequate cash flow prior to the disaster, the proposed loan guarantee will not be approved.

(l) *Equity requirements.* The equity requirements of §1980.441 of this subpart do not apply to BIB loans.

(m) *Collateral.* Section 1980.443 Administrative A. 2., 3., and 4. of this subpart will not apply to BIB loans. Collateral may be considered at its current market value without discount. Work-in-process inventory may be valued at the estimated market value of the finished product. All costs of producing the finished product must be included in the cash flow analysis.

(n) *Conditional approval.* A Form FmHA or its successor agency under Public Law 103-354 449-14 may be issued prior to receipt of specific items needed to complete an application package provided:

(1) The lender and/or borrower demonstrates to the Government's satisfaction that it has a need for a prompt indication of the availability of the proposed loan guarantee and the conditions under which a guarantee are available;

(2) The specific items missing from the application package will take considerable time to obtain;

(3) The lender requests a commitment prior to providing the items;

(4) The attachment to Form FmHA or its successor agency under Public Law 103-354 449-14 clearly states that the commitment is conditioned on satisfactory completion of the missing item(s) and a guarantee will not be issued unless all conditions of these regulations are met; and

(5) No Form FmHA or its successor agency under Public Law 103-354 449-14 will be issued prior to the obligation date established with the Finance Office.

(o) *Financial statements.* All requirements of §1980.451(i)(13) of this subpart will apply except that for BIB loans minimum annual financial statements will be required as follows:

(1) For nonagricultural borrowers with a B&I indebtedness of \$500,000 or less, an annual compilation by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970.

(2) For nonagricultural borrowers with a B&I indebtedness of \$500,001 through \$1 million, an annual review by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970.

(3) For nonagricultural borrowers with a B&I indebtedness of more than \$1 million, an annual audited financial statement by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970.

(4) All agricultural loans will require annual financial statements per §1980.113 of subpart B of this part.

(p) *Agriculture loans.* The following additional provisions apply to BIB loan guarantees for businesses engaged in agriculture production:

(1) *General policy.* Paragraph (p) of this section contains the regulations for making BIB loans to farmers for agricultural purposes. BIB loans made for agricultural purposes are subject to the provisions in subparts A and E of this part except as specified. In addition, certain sections of subpart B of this part referenced in this section are applicable subject to the limitations outlined in this section. Several key loan processing and loan servicing requirements stipulated in subpart B of this part do not apply to loans made to borrowers under this section.

(2) *Type of guarantee.* BIB loans will be processed under the Loan Note Guarantee option of §1980.101 (e)(1) of subpart B of this part Only. No loan will be processed for a Contract of Guarantee (Line of Credit) under §1980.101 (e)(2) of subpart B of this part.

(3) *Farm size.* Loan guarantees may be made under the BIB program without regard to the size of the farming operation.

(4) *Filing and processing preapplications and applications.* If the applicant has already developed material for an FmHA or its successor agency under Public Law 103-354 Farmer Programs loan or if the financial and production information required by §1980.113 of subpart B of this part is needed to document repayment ability or is required by the lender, §1980.113 of subpart B of this part may apply with the following exceptions:

(i) Lines of credit will not be guaranteed.

(ii) If the application is submitted solely for a farm as defined in §1980.106(b) of subpart B of this part, Form FmHA or its successor agency under Public Law 103-354 1980-25, "Farmer Programs Application," or Form FmHA or its successor agency under Public Law 103-354 449-1, will be used as an application for assistance.

(5) *Evaluation of applications.* If the application is developed and processed in accordance with §1980.113 of subpart B of this part, the provisions outlined in §1980.114 of subpart B of this part apply with the following exceptions:

(i) Timeframe requirements for the evaluation of applications and references to the Approved Lender Program are not applicable.

(ii) County Committee reviews of applications processed under this section will not be required. If the loan approval official finds the applicant is not eligible, the applicant will be notified in writing of the reasons for disapproval and his/her rights through inclusion of the Equal Credit Opportunity Act (ECOA) statement. An opportunity will be given for an appeal as set out in subpart B of part 1900 of this chapter.

(iii) When applied to BIB applications, references in §1980.114 of this part to "County Office" shall normally be construed to mean "State Office." References to "County Supervisor" shall be construed to mean "Business and Industry Chief or Community and Business Programs Chief, or other appropriate FmHA or its successor agency under Public Law 103-354 official as designated by the State Director."

(6) *Terms of loan repayment.* (i) Principal and interest on the loan will be due and payable to coincide with the cash flow operating cycle of the business. Installments will be scheduled for payment as agreed upon by the lender and borrower on terms that reasonably assure repayment of the loan. The first installment to include a repayment of principal may be scheduled for payment after the project is operational and has begun to generate income. However, such installment will be due and payable within 6 years from the date of the debt instrument and at least annually thereafter. Interest will not be deferred and will be due at least annually from the date of the debt instrument. In granting a deferral of principal payment, the loan approval official must document based on pro forma financial statements and the nature of the crop that the deferral of payments is necessary.

(ii) The lender must ensure that loan repayment is scheduled to eliminate the possibility of a balloon payment at the end of the loan.

(7) *Agriculture BIB loan purposes.* Loans may be made only for the following purposes:

(i) Operating purposes as outlined in §1980.175 (c)(1) of Subpart B of this part except for those stipulated in §1980.175(c)(1)(iv) and (vii).

(ii) Real estate purposes as outlined in § 1980.180 (c) of Subpart B of this part except for those stipulated in § 1980.180 (c)(1) and (4).

(iii) Refinancing in accordance with paragraph (h)(1) of this section and §§ 1980.411 (a)(11), 1980.451 (i)(19), and 1980.452 Administrative C. (except § 1980.452 Administrative C. 1. (d) of this subpart.

(8) *Sodbuster and swampbuster requirements*. The provisions of exhibit M of subpart G of part 1940 of this chapter will apply to loans made to enterprises engaged in agricultural production.

[59 FR 28466, June 2, 1994]

**§§ 1980.491–1980.494 [Reserved]**

**§ 1980.495 FmHA or its successor agency under Public Law 103–354 forms and guides.**

The following FmHA or its successor agency under Public Law 103–354 forms and guides, as applicable, are used in connection with processing B&I, D&D, and DARBE loan guarantees; they are incorporated in this subpart and made a part hereof:

(a) Form FmHA or its successor agency under Public Law 103–354 449–1. “Application for Loan and Guarantee,” is referred to as “Appendix A,”

(b) The “Certificate of Incumbency and Signature” is referred to as “Appendix B,”

(c) “Guidelines for Loan Guarantees for Alcohol Fuel Production Facilities” is referred to as “Appendix C,”

(d) “Alcohol Production Facilities Planning, Performing, Development and Project Control” is referred to as “Appendix D,”

(e) “Environmental Assessment Guidelines” is referred to as “Appendix E.”

(f) Form FmHA or its successor agency under Public Law 103–354 449–14, “Conditional Commitment for Guarantee” is referred to as “Appendix F,” and

(g) “Liquidation and Property Management Guide” is referred to as “Appendix G.”

(h) “Suggested Format for the Opinion of the Lender’s Legal Counsel” is referred to as “Appendix H.”

(i) “Instructions for Loan Guarantees for Drought and Disaster Relief” and

Forms FmHA or its successor agency under Public Law 103–354 1980–68, “Lender’s Agreement—Drought and Disaster Guaranteed Loans,” 1980–69, “Loan Note Guarantee—Drought and Disaster Guaranteed Loans,” and 1980–70, “Assignment Guarantee Agreement—Drought and Disaster Guaranteed Loans,” are referred to as “Appendix I.”

(j) [Reserved]

(k) “Regulations for Loan Guarantees for Disaster Assistance for Rural Business Enterprises” and Forms FmHA or its successor agency under Public Law 103–354 1980–71, “Lender’s Agreement—Disaster Assistance for Rural Business Enterprises Guaranteed Loans,” 1980–72 “Loan Note Guarantee—Disaster Assistance for Rural Business Enterprises Guaranteed Loans,” and 1980–73 “Assignment Guarantee Agreement—Disaster Assistance for Rural Business Enterprises Guaranteed Loans” are referred to as “Appendix K.”

[52 FR 6501, Mar. 4, 1987, as amended at 54 FR 4, Jan. 3, 1989, and 54 FR 26946, June 27, 1989; 54 FR 42483, Oct. 17, 1989]

**§ 1980.496 Exception authority.**

The Administrator may in individual cases grant an exception to any requirement or provision of this subpart which is not inconsistent with any applicable law or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government’s interest. Requests for exceptions must be in writing by the State Director and submitted through the Assistant Administrator, Community and Business Programs. Requests must be supported with documentation to explain the adverse effect on the Government’s interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

**§ 1980.497 General 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 OGC on liquidations and property management.