

documented accordingly. Refinancing debts may be allowed in connection with viable projects when it is determined by the lender and FmHA or its successor agency under Public Law 103-354 that it is necessary to create new or save existing jobs. FmHA or its successor agency under Public Law 103-354 will consider any lender's exposure as it relates to this item and may adjust the guarantee percentage accordingly. Refinancing in accordance with this paragraph may be insured or guaranteed only when:

(i) It is necessary to spread substantial debt payment over a longer period of time thereby improving the business' net cash flow and working capital position consistent with the useful life of the asset(s) being refinanced, or

(ii) For payment of short-term debt when required in situations customarily financed over long periods of time (e.g., financing the purchase of real estate, machinery, or equipment with short-term debt or cash expenditures, when lenders would not extend reasonable longer terms to the business), or

(iii) It is necessary to place a permanent loan subsequent to an interim loan for financing the construction of the project.

(12) Reasonable fees and charges only as specifically listed below and disclosed on Form FmHA or its successor agency under Public Law 103-354 449-1, "Application for Loan and Guarantee," or on an addendum to the application at the time the request is submitted to FmHA or its successor agency under Public Law 103-354 for processing. Authorized fees include professional fees rendered by professionals generally licensed by individual State or accreditation Associations, such as Engineers, Architects, Lawyers, Accountants, and Appraisers. The amount of the fee will be what is reasonable and customary in the community or region where the project is located. For example, Architects and Engineers customarily charge fees based on a percentage of estimated project costs. Lawyers, Accountants, and Appraisers customarily charge for services on an hourly basis. Any fees for professional or expert services are to be fully documented and justified on the Form FmHA or its successor agency under Public Law 103-354

449-1 and are subject to FmHA or its successor agency under Public Law 103-354 review and approval before the application is presented to the FmHA or its successor agency under Public Law 103-354 State Loan Review Board for action. The above approved fees and charges may be funded out of loan proceeds.

(13) FmHA or its successor agency under Public Law 103-354 guarantee fee.

(14) Acquisition of membership and/or stocks, bonds, or debentures necessary to obtain a loan from Production Credit Associations, Banks for Cooperatives, Small Business Investment Companies, and other lenders, provided such acquisition is required of all their borrowers. However, a lender which requires membership fees in such organization or the purchase of securities issued by such organization will not use such proceeds to acquire, lease or improve property which does not benefit its members.

(15) Aquaculture including conservation, development and utilization of water for aquaculture. Aquaculture means the culture or husbandry of aquatic animals or plants by private industry for commercial purposes including the culture and growing of fish by private industry for the purpose of granting or augmenting publicly-owned and regulated stock of fish.

(b) *Public bodies.* See §§ 1980.481 and 1980.488.

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 45258, Nov. 9, 1988; 54 FR 28022, July 5, 1989]

§ 1980.412 Ineligible loan purposes.

Loans may *not* be made or guaranteed if the funds are used:

(a) To pay off a creditor in excess of the value of the collateral.

(b) For distribution or payment to the owner, partners, shareholders or beneficiaries of the applicant or members of their families when such persons will retain any portion of their equity in the business.

(c) For projects in which such assistance exceeds \$1 million and when direct employment increases more than 50 employees which is calculated to or is likely to result in the transfer from one area to another of any employment

§ 1980.413

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

or business activity provided by the operations of the applicant. This limitation will not prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate or subsidiary of such entity if the expansion will not result in an increase in the unemployment in the area of original location or in any other area where such entity conducts business operations unless there is reason to believe that such explanation is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where it conducts such operations.

(d) For projects in which such assistance exceeds \$1 million and when direct employment increased more than 50 employees which is calculated to or likely to result in an increase in the production of goods, materials or commodities, or the availability of services or facilities in the area when there is not sufficient demand for such goods, materials, commodities, services or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

(e) For agricultural 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 and domestic animals. Exceptions to this definition are:

(1) Aquaculture as identified under eligible purposes.

(2) 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.

(3) Forestry which includes establishments primarily engaged in the operation of timber tracts, tree farms, for-

est nurseries, and related activities such as reforestation.

(4) Loans for livestock and poultry processing as identified under eligible purposes.

(5) The growing of mushrooms or hydroponics.

(f) For the transfer of ownership of a business unless the loan will keep the business from closing, or prevent the loss of employment opportunities in the area, or provide expanded job opportunities.

(g) For financing community antenna television services or facilities.

(h) Charitable and educational institutions, churches, organizations affiliated with or sponsored by churches, and fraternal organizations.

(i) For lending and investment institutions and insurance companies.

(j) For assistance to government employees and military personnel who are directors, officers or have a major ownership of 20 percent or more in the business.

(k) For any legitimate business activity when more than 10 percent of the annual gross revenue is derived from legalized gambling activity.

(l) For any illegal business activity.

(m) For hotels, motels, tourist homes, or convention centers.

(n) For any tourist, recreation or amusement facility.

(o) For any line of credit.

Administrative

Par (c) and (d). The FmHA or its successor agency under Public Law 103-354 State Director will review the criteria in § 1980.412(c) and (d) and make a written determination with supporting data and reasons as to the determinations. Such review must be independent of the Department of Labor certification. The State Director will make sure the loan file contains these determinations as part of the loan analysis prior to the issuance of the Conditional Commitment for Guarantee.

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 45258, Nov. 9, 1988]

§ 1980.413 Transactions which will not be guaranteed.

(a) The following transactions will not be guaranteed by FmHA or its successor agency under Public Law 103-354:

(1) The guarantee of lease payments.