

(c) For loans in excess of \$5 million, the maximum percentage of guarantee is 70 percent.

(d) Lenders and borrowers will propose the percentage of guarantee. FmHA or its successor agency under Public Law 103–354 informs lenders and borrowers in writing on Form FmHA or its successor agency under Public Law 103–354 449–14 of any percentage of guarantee less than proposed by the lender and borrower, and the reasons therefore. FmHA or its successor agency under Public Law 103–354 determines the percentage of guarantee after considering all credit factors involved, including but not limited to:

(1) *Borrower's management.* The borrower's management, and when appropriate, equity capital, history of operation, marketing plan, raw material requirements, and availability of necessary supporting utilities and services;

(2) *Collateral.* Collateral for the loan;

(3) *Financial condition.* Financial condition of borrower or borrower's principals, if appropriate;

(4) *Lender's exposure.* The lender's exposure before and after the loan, and any applicable limits on the lender's lending authority; and

(5) *Trends and conditions.* Current trends and economic conditions.

[53 FR 40401, Oct. 17, 1988]

§§ 1980.421–1980.422 [Reserved]

§ 1980.423 Interest rates.

(a) *Guaranteed loans.* Rates will be negotiated between the lender and the borrower. They may be either fixed or variable as long as they are legal. Interest rates will be those 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. Should any part of the loan(s) be sold by the lender, FmHA or its successor agency under Public Law 103–354, in its analysis, will take into consideration in approving the lender's interest rate, the rate at which guaranteed loans are being sold or traded in the secondary market.

(1) A variable interest rate must be a rate that is tied to a base rate pub-

lished periodically in a recognized national or regional financial publication specifically agreed to by the lender and borrower. The variable interest rate may be adjusted at different intervals during the term of the loan but the adjustments may not be more often than quarterly. The intervals between interest rate adjustments will be specified in the Loan Agreement. The lender must incorporate within the variable rate promissory note at loan closing, the provision for adjustment of payment installments coincident with an interest rate adjustment. This will assure that the outstanding principal balance is properly amortized within the prescribed loan maturity to eliminate the possibility of a balloon payment at the end of the loan.

(2) Under a Memorandum of Understanding between FmHA or its successor agency under Public Law 103–354 and the Farm Credit Administration dated September 25, 1974, the interest rate on loans made by the Bank for Cooperatives, Federal Land Banks and Production Credit Associations may be a variable rate based on their administrative and borrowing costs.

(3) Any change in the interest rate between the date of issuance of the Form FmHA or its successor agency under Public Law 103–354 conditional Commitment For Guarantee, and before the issuance of the Loan Note Guarantee must be approved by the State Director. Approval of such change will be shown on an amendment to Form FmHA or its successor agency under Public Law 103–354 449–14.

(4) It is permissible to have one interest rate on the guaranteed portion of the loan and another interest rate on the unguaranteed portion of the loan, provided the lender and borrower agree and:

(i) The rate on the unguaranteed portion does not exceed that currently being charged on loans of similar size and purpose for borrowers under similar circumstances.

(ii) The rate on the guaranteed portion of the loan will not exceed the rate on the unguaranteed portion.

(5) When multi-rates are used, the lender will provide FmHA or its successor agency under Public Law 103–354

with the overall effective interest rate for the entire loan.

(6) The borrower, lender and holder (if any) may collectively effect a permanent reduction in the interest rate of their B&I guaranteed loan at any time during the life of the loan upon written agreement by these parties. FmHA or its successor agency under Public Law 103-354 must be notified by the lender, in writing, within 10 calendar days of the change. If the guaranteed portion has been repurchased by FmHA or its successor agency under Public Law 103-354, then FmHA or its successor agency under Public Law 103-354 is a holder and must affirm or reject interest rate change proposals. When FmHA or its successor agency under Public Law 103-354 is a holder, it will concur in such interest rate change only when it is demonstrated to FmHA or its successor agency under Public Law 103-354 that the change is a more viable alternative than initiating or proceeding with liquidation of the loan or continuing with the loan in its present state and that the Government's financial interests are not adversely affected. Factors which will be considered in making such determination will include whether the proposed interest rate will be below the Government's cost of borrowing money, whether continuing with the loan would realistically promote or enhance rural development and employment in rural areas, whether the monetary recovery would be increased by proceeding immediately to liquidation, if applicable, or allowing the borrower to continue at a reduced interest rate, and whether an in-depth financial analysis by the lender reasonably indicates that the business would be successful at a lower interest rate and reasonably indicates that the borrower could make the reduced payment and pay off amounts in arrears, if any. The FmHA or its successor agency under Public Law 103-354 will reflect the documentation of the interest rate change decision.

(i) Fixed rates cannot be changed to variable rates to reduce the interest rate to the borrower unless the variable rate has a ceiling which is less than the original fixed rate.

(ii) Variable rates can be changed to reduced fixed rates. In a final loss settlement, when qualifying rate changes were made with the required written agreements and notification, the interest will be calculated for the periods the given rates were in effect, except that interest claimed on a loan which originated at a variable rate can never exceed the amount which would have been eligible for claim had the variable interest remained in force. The lesser cost to the Government will always prevail. The lender must maintain records which adequately document the accrued interest claimed.

(iii) The lender is responsible for the legal documentation of interest changes by an allonge attached to the promissory note(s) or any other legally effective amendment of the rate(s); however, no new note(s) may be issued.

(7) No increases in interest rates will be permitted under the B&I loan guarantee except the normal fluctuations in approved variable interest rate loans.

(b) *Insured loans.* (1) Loans for other than those in paragraph (b)(2) of this section will bear interest at a rate prescribed by FmHA or its successor agency under Public Law 103-354, and will be announced periodically. The interest rate for insured loans will be the rate in effect at the time the loan is approved or at the time the loan is closed, whichever rate is lower.

(2) Loans to public bodies, nonprofit associations and Indian Tribes used to finance community facilities will bear interest at the rate prescribed in FmHA or its successor agency under Public Law 103-354 Instruction 440.1, Exhibit B (available in any FmHA or its successor agency under Public Law 103-354 Office).

*Administrative*

*Par (a)(6) and (a)(7). (Added 4-26-85, SPECIAL PN.)* The Director will notify the Finance Office of any interest rate reduction by using Form FmHA or its successor agency under Public Law 103-354 1980-47, "Guaranteed Loan Borrower Adjustments." The State Director will make corrections to the Rural Community Facility Tracking System (FCFTS) reflecting the interest rate change. The FmHA or its successor agency under Public Law 103-354 loan file, as well as the attachments to the copy of the promissory note in the file, will be documented by the

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State Director to reflect any change in the interest rate.

[52 FR 6501, Mar. 4, 1987, as amended at 54 FR 28022, July 5, 1989]

### § 1980.424 Term of loan repayment.

(a) Principal and interest on the loan will be due and payable as provided in the promissory note except, any interest accrued as the result of the borrower's default on the guaranteed loan(s) over and above that which would have accrued at the normal note rate on the guaranteed loan(s) will not be guaranteed by FmHA or its successor agency under Public Law 103-354. The lender will structure repayments as established in the loan agreement between the lender and borrower. Ordinarily, such installments will be scheduled for payment as agreed upon by the lender and applicant but on terms that reasonably assure repayment of the loan. However, the first installment to include a repayment of principal may be scheduled for payment after the project is operable and has begun to generate income, but such installment will be due and payable within three years from the date of the promissory note and at least annually thereafter. Interest will be due at least annually from the date of the note. Ordinarily, monthly payments will be expected, except for seasonal-type businesses.

(b) The maximum time allowable for final maturity for an FmHA or its successor agency under Public Law 103-354 guaranteed B&I loan will be limited to thirty (30) years for land, buildings and permanent fixtures; the usable life of the machinery and equipment purchased with loan funds, but not to exceed fifteen (15) years; and seven (7) years for the working capital portion of the loan. The term for a loan that is being refinanced may be based on the collateral the lender will take to secure the loan.

(c) The maximum time allowable for final maturity of an FmHA or its successor agency under Public Law 103-354 insured loan for community facilities will not exceed forty (40) years.

(d) FmHA or its successor agency under Public Law 103-354 will not guarantee any loan in which the promissory note or any other document provides

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for the payment of interest upon interest.

### *Administrative*

It is permissible for lenders to structure the borrower's financial proposal under the multi-note option as provided for in paragraph III A.2. of Form FmHA or its successor agency under Public Law 103-354 449-35, "Lender's Agreement," in the following ways:

A. To treat the entire financial package of the borrower as one loan (i.e., loan purposes may include one or any combination of working capital, machinery and equipment or real estate) provided:

1. The loan is amortized to provide repayment of the working capital portion within the 7 years, the machinery and equipment portion within useful life or 15 years, whichever is less, and real estate portion within 30 years.

2. One note represents the unguaranteed portion of the loan. It is permissible to issue as many as 10 notes or the guaranteed portion of the loan.

3. A Form FmHA or its successor agency under Public Law 103-354 449-34, "Loan Note Guarantee," is attached to all notes, including the unguaranteed note.

4. One interest rate (either variable or fixed) is used for the entire loan or one interest rate is used on the guaranteed portion and a different interest rate is used on the unguaranteed portion, subject to the requirements and conditions found in §1980.423 of this subpart.

5. One of each of the following Forms: FmHA or its successor agency under Public Law 103-354 449-14, FmHA or its successor agency under Public Law 103-354 1940-3, "Request for Obligation of Funds—Guaranteed Loans," FmHA or its successor agency under Public Law 103-354 449-35, and FmHA or its successor agency under Public Law 103-354 1980-19, "Guaranteed Loan Closing Report," is used.

B. To treat the financial package of the borrower as separate loans that are processed as a single application provided:

1. A separate loan is made for each purpose (i.e., working capital, machinery and equipment or real estate). As an example, a working capital loan could be structured as follows:

One note for \$XXXX at X% interest due in 7 years representing the unguaranteed portion of the loan, and

Up to 10 notes for \$XXXX at X% interest due in 7 years representing the guaranteed portions of the loan.

2. A Form FmHA or its successor agency under Public Law 103-354 449-34 is attached to all notes, including the unguaranteed note.