

(3) The guarantee or making of any B&I loans(s), to any one borrower, when the total amount of the B&I loans(s) requested plus the outstanding balance of any existing B&I loan(s) is in excess of \$10 million.

(b) Guaranteeing of loans involved in tax-exempt obligations under §1980.23 of Subpart A of this Part.

Administrative

The State Director will consider the overall State allocations of funding authority in recommending loans for processing. Loan requests which fall within Small Business Administration (SBA) authority should continue to be referred to SBA. If the State Director decides to process SBA size loans, the loan file must be fully documented as to the reasons for such actions.

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 40401, Oct. 17, 1988]

§ 1980.414 Fees and charges by lender and others.

[See Subpart A, §1980.22]

(a) All fees and charges must be specifically documented and justified on the Form FmHA or its successor agency under Public Law 103-354 449-1 or on an addendum to the application at the time the loan request is submitted to FmHA or its successor agency under Public Law 103-354 for processing. Allowable fees will be those reasonably and 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.

(b) Packaging fees include services rendered by the lender or others in connection with preparation of the application and seeing the project through to final decision. These services may or may not be performed by an investment banker. If an investment banker provides needed assistance in addition to the packaging of the loan, additional charges may be added to the packaging fee. The maximum allowable packaging fees are 2 percent of the total principal amount of the loan up to \$1 million and on all amounts over \$1 million, an additional one-fourth percent up to total maximum fee of \$50,000. Packaging fees, investment banker fees and other fees and charges not specifically provided for in this

section are permitted subject to FmHA or its successor agency under Public Law 103-354 review and approval. Loan proceeds may be used to pay fees as specifically authorized under §§1980.411(a)(12) and (13). Packaging fees, investment banker fees, and any other fees or charges shall not be paid from loan proceeds.

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

§§ 1980.415-1980.418 [Reserved]

§ 1980.419 Eligible lenders.

[See Subpart A, §1980.13.]

Administrative

A. *Par (a) of Subpart A, §1980.13* requires National Office approval for any variations.

B. *Par (b)(4) of Subpart A, §1980.13*, State Director submits information to National Office with recommendations.

C. With prior written approval of the FmHA or its successor agency under Public Law 103-354 National Office, a new eligible lender may be substituted for the original lender provided the new lender agrees to assume all original loan requirements including liabilities, servicing responsibilities and acquiring legal title to the unguaranteed portion of the loan. Such approval will be granted by the National Office only when a lender discontinues lending operations or other extreme situations require a substitution of lender. If approved by the National Office, the State Director will submit to the Finance Office Form FmHA or its successor agency under Public Law 103-354 1980-42. "Notice of Substitution of Lender."

§ 1980.420 Loan guarantee limits.

The percentage of guarantee, up to the maximum allowed by this section, is a matter of negotiation between the lender and FmHA or its successor agency under Public Law 103-354.

(a) For loans of \$2 million or less, the maximum percentage of guarantee is 90 percent.

(b) For loans over \$2 million but not over \$5 million, the maximum percentage of guarantee is 80 percent.

(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 published 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 inter-

est 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