

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 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 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.

3. A different interest rate may be used on the guaranteed and unguaranteed portions of the loan, subject to the requirements and conditions found in §1980.423 of this subpart.

4. Separate Forms FmHA or its successor agency under Public Law 103-354 449-14, 1940-3, 449-35, and 1980-19 are required for each loan. If you have two loans, one for working capital and another for real estate, then a set of these forms will be required for each loan.

C. Form FmHA or its successor agency under Public Law 103-354 449-36, "Assignment Guarantee Agreement," will never be used when the multi-note option is utilized.

D. Par. (b). The State Director will assure that the loan officer reviewing the application fully evaluates the useful life of the collateral offered for the loan when determining maturities for the loan. Loan requests for the maximum maturities could result in collateral obsolescence prior to full repayment of the indebtedness. The loan file must be documented to support the maturity granted for the loan.

[52 FR 6501, Mar. 4, 1987, as amended at 56 FR 8271, Feb. 28, 1991]

§ 1980.425 Availability of credit from other sources.

(a) Inability to obtain credit elsewhere is not a requirement for guaranteed assistance under this subpart.

(b) To be eligible for an insured loan under this subpart, the borrower must be unable to obtain the required credit from private or cooperative sources at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near the borrower's location(s) for loans for similar purposes and period of time. The borrower's inability to obtain such credit elsewhere will be determined in accordance with subpart A of part 1942 of this chapter.

§ 1980.426-1980.431 [Reserved]

§ 1980.432 Environmental requirements.

[See subpart A, §1980.40 and subpart G of part 1940 of this chapter.]

Administrative

When required by subpart G of part 1940 of this chapter, the approving official will review Form FmHA or its successor agency under Public Law 103-354 1940-20, "Request for Environmental Information," submitted by the borrower and the environmental impact assessment prepared by the environmental reviewer. The approving official will indicate his/her decision as part of the assessment when required. If the approving official determines that an EIS is required, he/she will notify the borrower and lender in writing.

§ 1980.433 Flood or mudslide hazard area precautions.

(See subpart A, §1980.42.)

Administrative

The State Director is responsible for determining if a project is located in a special flood or mudslide hazard area. Refer to subpart B of part 1806 of this chapter [FmHA or its successor agency under Public Law 103-354 Instruction 426.2].

§ 1980.434 Equal opportunity and non-discrimination requirements.

(See subpart A §1980.41.)

Administrative

The State Director will assure that equal opportunity and nondiscrimination requirements are met. If there is indication of non-compliance with these requirements, such facts will be reported by the Compliance Reviewing Officer or FmHA or its successor agency under Public Law 103-354 Official in writing to the Administrator, ATTN: Equal Opportunity Officer.

§ § 1980.435-1980.440 [Reserved]

§ 1980.441 Borrower equity requirements.

(a) A minimum of 10 percent tangible balance sheet equity will be required for existing businesses at loan closing. A minimum of 20 percent tangible balance sheet equity will be required for new businesses at loan closing. For energy projects, the minimum tangible balance sheet equity requirement range will be between 25 percent and 40 percent. Criteria for considering the minimum equity required for an individual application will be based on: existing businesses with successful financial and management history vs. start-up businesses; personal/corporate guarantees offered; contractual relationships with suppliers and buyers; credit rating; and strength of the business plan/feasibility study. Where the application is a request to refinance outstanding Federal direct or guaranteed loans, without any new financing, the equity requirement may be determined using adjusted tangible net worth. An application that combines a refinancing loan or guarantee request with a new loan or guarantee request is subject to the standard, unadjusted, equity requirement except as provided in paragraphs (a)(1) or (a)(2) of this section. Increases or decreases in the equity requirements may be imposed or granted as follows: