

loans which will provide lasting community benefits. It is NOT intended that the guarantee authority be used for marginal or substandard loans or to "bail out" lenders having such loans.

(c) This subpart and its appendices (especially appendix I and appendix K) also contain regulations for Drought and Disaster (D&D) and Disaster Assistance for Rural Business Enterprises (DARBE) guaranteed loans authorized by section 331 of the Disaster Assistance Act of 1988 (Pub. L. 100-387) and section 401 of the Disaster Assistance Act of 1989 (Pub. L. 101-82). D&D loans must be to alleviate distress caused to rural business entities, directly or indirectly, by drought, hail, excessive moisture, or related conditions occurring in 1988, or to provide for the guarantee of loans to such rural business entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters and are limited to a guarantee of principal only. DARBE loans must be to alleviate distress caused to rural business entities, directly or indirectly, by drought, freeze, storm, excessive moisture, earthquake, or related conditions occurring in 1988 or 1989, or to provide for the guarantee of loans to such rural business entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters and within certain parameters guarantee both principal and interest.

(d) The B&I loan program is administered by the Administrator through a State Director serving each State. The State Director is the focal point for the program and the local contact person for processing and servicing activities, although this subpart refers in various places to the duties and responsibilities of other FmHA or its successor agency under Public Law 103-354 employees.

(e) Throughout this subpart there appear Administrative provisions for the State Director, District Director, and County Supervisor. These provisions establish the internal duties, responsibilities and procedures to carry out the requirements of the program. These provisions are identified as "Administrative" and follow appropriate sections of this subpart.

(f) This subpart and its appendices also contains regulations for Business and Industry Disaster (BID) loans under the authority of the Dire Emergency Supplemental Appropriations Act, 1992, Public Law 102-368. This program provides B&I guarantees for loans needed as a result of natural disasters. Some of the requirements of this subpart are waived or altered for BID loans. The waivers and alterations are provided in §1980.498 of this subpart.

[52 FR 6501, Mar. 4, 1987, as amended at 54 FR 4, Jan. 3, 1989; 54 FR 42483, Oct. 17, 1989; 55 FR 19245, May 8, 1990; 57 FR 45969, Oct. 5, 1992; 58 FR 229, Jan. 5, 1993; 61 FR 67633, Dec. 23, 1996]

§ 1980.402 Definitions.

(a) The following general definitions are applicable to the terms used in this subpart. *Adjusted tangible net worth.* Tangible balance sheet equity plus allowed tangible asset appreciation and subordinated owner debt.

Allowed tangible asset appreciation. The difference between the current net book value recorded on the financial statements (original cost less cumulative depreciation) of real property assets and the lesser of their current market value or original cost, where current market value is determined using an appraisal satisfactory to the Agency.

Area of high unemployment. An area in which a B&I loan guarantee can be issued, consisting of a county or group of contiguous counties or equivalent subdivisions of a State which, on the basis of the most recent 12-month average or the most recent annual average data, has a rate of unemployment 150 percent or more of the national rate. Data used must be those published by the Bureau of Labor Statistics, U.S. Department of Labor.

Biogas. Biomass converted to gaseous fuel.

Biomass. Any organic material that is available on a renewable or recurring basis including agricultural crops, trees grown for energy production, wood waste and wood residues, plants, including aquatic plants and grasses, fibers, animal waste and other waste materials, fats, oils, greases, including recycled fats, oils and greases. It does not include paper that is commonly recycled or unsegregated solid waste.

Borrower. A borrower may be a cooperative organization, corporation, partnership, trust or other legal entity organized and operated on a profit or nonprofit basis; an Indian Tribe on a Federal or State reservation or other Federally recognized tribal group; a municipality, county or other political subdivision of a State; or an individual. Such borrower must be engaged in or proposing to engage in improving, developing or financing business, industry and employment and improving the economic and environmental climate in rural areas, including pollution abatement and control.

Business and Industry Disaster Loans. Business and Industry loans guaranteed under the authority of the Dire Emergency Supplemental Appropriations Act, 1992, Public Law 102-368. These guaranteed loans cover costs arising from the direct consequences of natural disasters such as Hurricanes Andrew and Iniki and Typhoon Omar that occur after August 23, 1992, and receive a Presidential declaration. Also included are the costs to any producer of crops and livestock that are a direct consequence of at least a 40 percent loss to a crop, 25 percent loss to livestock, or damage to building structures from a microburst wind occurrence in calendar year 1992.

Commercially available. Energy projects utilizing technology that has a proven operating history, and for which there is an established industry for the design, installation, and service (including spare parts) of the equipment.

Community facilities. For the purposes of this subpart, community facilities are those facilities designed to aid in the development of private business and industry in rural areas. Such facilities include, but are not limited to, acquisition and site preparation of land for industrial sites (but not for improvements erected thereon), access streets and roads serving the site, parking areas extension or improvement of community transportation systems serving the site and utility extensions all incidental to site preparation. Projects eligible for assistance under Subpart A of Part 1942 of this chapter are not eligible for assistance under this subpart.

Development cost. These costs include, but are not limited to, those for acquisition, planning, construction, repair or enlargement of the proposed facility; purchase of buildings, machinery, equipment, land easements, rights of way; payment of startup operating costs, and interest during the period before the first principal payment becomes due, including interest on interim financing.

Disaster Assistance for Rural Business Enterprises. Guaranteed loans authorized by section 401 of the Disaster Assistance Act of 1989 (Pub. L. 101-82), providing for the guarantee of loans to assist in alleviating distress caused to rural business entities, directly or indirectly, by drought, freeze, storm, excessive moisture, earthquake, or related conditions occurring in 1988 or 1989, and providing for the guarantee of loans to such rural business entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters. See this subpart and its appendices, especially Appendix K, containing additional regulations for these loans.

Drought and Disaster Guaranteed Loans. Guaranteed loans authorized by section 331 of the Disaster Assistance Act of 1988 (Pub. L. 100-387), providing for the guarantee of loans to assist in alleviating distress caused to rural business entities, directly or indirectly, by drought, hail, excessive moisture, or related conditions occurring in 1988, and providing for the guarantee of loans to such rural business entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters.

Energy projects. Commercially available projects that produce or distribute energy or power and/or projects that produce biomass or biogas fuel.

Farmers Home Administration (FmHA). The former agency of USDA that previously administered the programs of this Agency. Many Instructions and forms of FmHA are still applicable to Agency programs.

Hurricane Andrew. A hurricane that caused damage in southern Florida on August 24, 1992, and in Louisiana on August 26, 1992.

Hurricane Iniki. A hurricane that caused damage in Hawaii on September 11, 1992.

Letter of conditions. Letter issued by Rural Development under Public Law 103-354 to a borrower setting forth the conditions under which Rural Development will make a direct (insured) loan from the Rural Development Insurance Fund.

Loan classification system. The process by which loans are examined and categorized by degree of potential for loss in the event of default.

Microburst wind. A violently descending column of air associated with a thunderstorm which causes straight-line wind damage.

Problem loan. A loan which is not performing according to its original terms and conditions or which is not expected in the future to perform according to those terms and conditions.

Public body. A municipality, political subdivision, public authority, district, or similar organization.

Qualified Intellectual Property. Trademarks, patents or copyrights included on current (within one year) audited balance sheets for which an audit opinion has been received that states the financial reports fairly represent the values therein and the reported value has been arrived at in accordance with GAAP standards for valuing intellectual property. The supporting work papers must be satisfactory to the Administrator.

Refinancing loan. A loan, all of the proceeds of which are applied to extinguish the entire balance of an outstanding debt.

Seasoned loan. A loan which:

(1) Has a remaining principal guaranteed loan balance of two-thirds or less of the original aggregate of all existing B&I guaranteed loans made to that business.

(2) Is in compliance with all loan conditions and B&I regulations.

(3) Has been current on the B&I guaranteed loan(s) payments for 24 consecutive months.

(4) Is secured by collateral which is determined to be adequate to ensure there will be no loss on the B&I guaranteed loan.

State. Any of the 50 States, the Commonwealth of Puerto Rico, the Virgin

Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Subordinated owner debt. Debt owed by the borrower to one or more of the owner(s) that is subordinated to debt owed by the borrower to the Agency or guaranteed by the Agency (aggregate B&I loan exposure) pursuant to a subordination agreement satisfactory to the Agency. The debt must have been issued in exchange for cash loaned to the borrower for the benefit of the borrower's business. The terms of the subordination agreement must provide that repayment will not commence until the earlier of the date all aggregate B&I loan exposure has been repaid or when a period of three consecutive years has passed during which the borrower has met all loan covenants and evidenced operating profit sufficient to commence partial repayment of this subordinated debt after giving effect to the annual debt service requirements of the aggregate B&I loan exposure. The partial repayment schedule in the case of the latter scenario is subject to annual Agency concurrence and may not be more accelerated than the rate of the debt repayment schedule in effect for the Agency's aggregate B&I loan exposure.

Tangible balance sheet equity. Total equity less the value of intangible assets recorded on the financial statements, as determined from balance sheets prepared in accordance with generally accepted accounting principles (GAAP), plus qualified intellectual property.

Typhoon Omar. A typhoon that caused damage in Guam on August 28, 1992.

Working capital. The excess of current assets over current liabilities. It identifies the relatively liquid portion of total enterprise capital which constitutes a margin or buffer for meeting obligations within the ordinary operating cycle of the business.

§ 1980.403

(b) Accounting terms not otherwise defined in this part shall have the definition ascribed to them under generally accepted accounting principles (GAAP).

[71 FR 33185, June 8, 2006]

§ 1980.403 Citizenship of borrowers.

Loans to individuals will be made or guaranteed only to those who are citizens of the United States or reside in the United States after being legally admitted for permanent residence. At least 51 percent of the outstanding interest in any corporation or organization-type applicant must be owned by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence.

§ 1980.404 [Reserved]

§ 1980.405 Rural areas.

The business financed with a B&I loan must be located in a rural area. Loans to borrowers with facilities located in both rural and non-rural areas will be limited to the amount necessary to finance the facility located in the eligible rural area. Cooperatives that are headquartered in a non-rural area may be eligible for a B&I loan if the loan is used for a project or venture that is located in a rural area. Rural areas are any areas other than:

(a) A city or town that has a population of greater than 50,000 inhabitants; and

(b) The urbanized area contiguous and adjacent to such a city or town, as defined by the U.S. Bureau of the Census using the latest decennial census of the United States.

[67 FR 78130, Dec. 23, 2002]

§§ 1980.406–1980.410 [Reserved]

§ 1980.411 Loan purposes.

Loans to borrowers with facilities located in both urban and rural areas will be limited to the amount necessary to finance the facility located in the eligible rural area.

(a) *Private entrepreneurs.* Loans may be for improving, developing or financing business, industry and employment and improving the economic and envi-

7 CFR Ch. XVIII (1–1–09 Edition)

ronmental climate, including pollution and abatement control, of rural areas, and may include but not be limited to:

(1) Business and industrial acquisitions, construction, conversion, enlargement, repair, modernization of development cost.

(2) Purchasing and development of land, easements, rights-of-way, buildings, facilities, leases or materials.

(3) Purchasing of equipment, leasehold improvements machinery or supplies.

(4) Pollution control and abatement including those in connection with farming and ranching operations.

(5) Transportation services incidental to industrial development.

(6) Startup costs and working capital.

(7) The financing of housing development sites located in open country or cities, towns or villages with populations not in excess of those eligible for FmHA or its successor agency under Public Law 103–354 rural housing loans, provided the community demonstrates a need for additional housing to prevent a loss of jobs in the area, or to house families moving to the area as a result of new employment opportunities.

(8) Loans, other than for working capital or debt refinancing, for meat processing facilities and integrated meat and poultry operations. Loans may not be guaranteed for agricultural production as defined in §1980.412(e); however, applicants who are in the business of processing, marketing or packaging of agricultural products, as well as agricultural production, may be eligible for loan assistance for that portion of the business other than agricultural production provided the agricultural production aspect is separate from the rest of the business; i.e., the production aspects are handled through separate legal business entities or through maintenance of the accounting system in such a manner as to clearly identify the use of and future accounting of the loan proceeds and operation of the business.