

(iii) When applied to BIB applications, references in §1980.114 of this part to "County Office" shall normally be construed to mean "State Office." References to "County Supervisor" shall be construed to mean "Business and Industry Chief or Community and Business Programs Chief, or other appropriate FmHA or its successor agency under Public Law 103-354 official as designated by the State Director."

(6) *Terms of loan repayment.* (i) Principal and interest on the loan will be due and payable to coincide with the cash flow operating cycle of the business. Installments will be scheduled for payment as agreed upon by the lender and borrower on terms that reasonably assure repayment of the loan. The first installment to include a repayment of principal may be scheduled for payment after the project is operational and has begun to generate income. However, such installment will be due and payable within 6 years from the date of the debt instrument and at least annually thereafter. Interest will not be deferred and will be due at least annually from the date of the debt instrument. In granting a deferral of principal payment, the loan approval official must document based on pro forma financial statements and the nature of the crop that the deferral of payments is necessary.

(ii) The lender must ensure that loan repayment is scheduled to eliminate the possibility of a balloon payment at the end of the loan.

(7) *Agriculture BIB loan purposes.* Loans may be made only for the following purposes:

(i) Operating purposes as outlined in §1980.175 (c)(1) of Subpart B of this part except for those stipulated in §1980.175(c)(1)(iv) and (vii).

(ii) Real estate purposes as outlined in §1980.180 (c) of Subpart B of this part except for those stipulated in §1980.180 (c)(1) and (4).

(iii) Refinancing in accordance with paragraph (h)(1) of this section and §§1980.411 (a)(11), 1980.451 (i)(19), and 1980.452 Administrative C. (except §1980.452 Administrative C. 1. (d) of this subpart.

(8) *Sodbuster and swampbuster requirements.* The provisions of exhibit M of subpart G of part 1940 of this chapter

will apply to loans made to enterprises engaged in agricultural production.

[59 FR 28466, June 2, 1994]

#### §§ 1980.491–1980.494 [Reserved]

#### § 1980.495 FmHA or its successor agency under Public Law 103-354 forms and guides.

The following FmHA or its successor agency under Public Law 103-354 forms and guides, as applicable, are used in connection with processing B&I, D&D, and DARBE loan guarantees; they are incorporated in this subpart and made a part hereof:

(a) Form FmHA or its successor agency under Public Law 103-354 449-1, "Application for Loan and Guarantee," is referred to as "Appendix A,"

(b) The "Certificate of Incumbency and Signature" is referred to as "Appendix B,"

(c) "Guidelines for Loan Guarantees for Alcohol Fuel Production Facilities" is referred to as "Appendix C,"

(d) "Alcohol Production Facilities Planning, Performing, Development and Project Control" is referred to as "Appendix D,"

(e) "Environmental Assessment Guidelines" is referred to as "Appendix E."

(f) Form FmHA or its successor agency under Public Law 103-354 449-14, "Conditional Commitment for Guarantee" is referred to as "Appendix F," and

(g) "Liquidation and Property Management Guide" is referred to as "Appendix G."

(h) "Suggested Format for the Opinion of the Lender's Legal Counsel" is referred to as "Appendix H."

(i) "Instructions for Loan Guarantees for Drought and Disaster Relief" and Forms FmHA or its successor agency under Public Law 103-354 1980-68, "Lender's Agreement—Drought and Disaster Guaranteed Loans," 1980-69, "Loan Note Guarantee—Drought and Disaster Guaranteed Loans," and 1980-70, "Assignment Guarantee Agreement—Drought and Disaster Guaranteed Loans," are referred to as "Appendix I."

(j) [Reserved]

(k) "Regulations for Loan Guarantees for Disaster Assistance for Rural Business Enterprises" and Forms FmHA or its successor agency under Public Law 103-354 1980-71, "Lender's Agreement—Disaster Assistance for Rural Business Enterprises Guaranteed Loans," 1980-72 "Loan Note Guarantee—Disaster Assistance for Rural Business Enterprises Guaranteed Loans," and 1980-73 "Assignment Guarantee Agreement—Disaster Assistance for Rural Business Enterprises Guaranteed Loans" are referred to as "Appendix K."

[52 FR 6501, Mar. 4, 1987, as amended at 54 FR 4, Jan. 3, 1989, and 54 FR 26946, June 27, 1989; 54 FR 42483, Oct. 17, 1989]

**§ 1980.496 Exception authority.**

The Administrator may in individual cases grant an exception to any requirement or provision of this subpart which is not inconsistent with any applicable law or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. Requests for exceptions must be in writing by the State Director and submitted through the Assistant Administrator, Community and Business Programs. Requests must be supported with documentation to explain the adverse effect on the Government's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

**§ 1980.497 General administrative.**

Refer to appendix G of this subpart (available in any FmHA or its successor agency under Public Law 103-354 Office) for advice on how to interact with the OGC on liquidations and property management.

(a) *Office of the General Counsel (OGC).* In performing the FmHA or its successor agency under Public Law 103-354 functions with respect to B&I, D & D, and DARBE loans, the advice and assistance of OGC may be sought and followed on any legal matter. However, it is the responsibility of the lender to ascertain that all requirements for making, securing, and servicing the loan are duly met. If FmHA or its successor agency under Public Law 103-354

has any questions concerning the lender's resolution of these matters, OGC should be consulted. Assistance of OGC will be requested on all loans as specified herein and all liquidations and workouts.

(b) *Contact with OGC.* Initial informal contact with OGC should be made as soon as possible. FmHA or its successor agency under Public Law 103-354 State Directors should use the following format in formally requesting legal assistance on workouts.

(1) *Origination:* All written requests should come from the State Director.

(2) *Method:* Request should be made by referral memorandum to the Regional Attorney setting forth a brief statement of the facts, the reason assistance is requested, the extent of legal assistance sought, the date when FmHA or its successor agency under Public Law 103-354's response to the lender's liquidation plan (if any) is due and:

(i) *Projected losses on collateral:* e.g., projected losses on collateral are expected to be significant.

(ii) *Unusual or complex nature of primary collateral:* e.g., multi-state foreclosures or foreclosure of leases or general intangibles.

(iii) *Presence of other major creditors or of senior creditors:* e.g., guaranteed loan collateral may be subject to a prior lien or other creditors may have rights in other assets of borrower, such as inventory and accounts receivable.

(iv) *Litigation is pending or threatened:* e.g., bankruptcy, other foreclosure suits.

(3) *Materials to submit:* Referral memorandums will be accompanied by a copy of lender's liquidation plan together with a copy of FmHA or its successor agency under Public Law 103-354's planned response and principal loan papers, conditional commitment for guarantee, guarantee documents and any comments from the National Office. If lender refuses to prepare a plan, the State Director should so state. DO NOT SEND DOCKETS unless specifically requested by OGC.

(c) *Reviews prior to issuance of the loan note guarantee.* After the conditional commitment for guarantee has been