

§§ 1980.491–1980.494

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

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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 issued and proposed with closing documents prepared by the lender and for-

warded to FmHA or its successor agency under Public Law 103-354 with the lender's legal counsel's opinion in the suggested format of appendix H of this subpart, but prior to issuing the loan note guarantee, the State Director will forward the loan docket to the Regional Attorney for review. After an administrative review, the State Director will include with the docket a letter with recommendations and indicating any special items, documents or problems that need to be addressed specifically which may have a significant impact upon the loan or may be contrary to the regulation. The docket will be assembled for OGC review in accordance with §1980.451 Administrative B 5 of this subpart and indexed and tabbed.

(d) *Please submit the following for OGC review. Copies of:*

(1) Letter from FmHA or its successor agency under Public Law 103-354 National Office authorizing loan guarantee containing conditions (if applicable);

(2) Form FmHA or its successor agency under Public Law 103-354 449-14, including any amendments;

(3) Loan Agreement;

(4) Promissory Notes;

(5) Security documents—Real Estate Mortgage, Security Agreement, Financing Statements, and Leases (if applicable);

(6) Personal or corporation guarantees with related security documents;

(7) Proposed Form FmHA or its successor agency under Public Law 103-354 449-35.

(8) Proposed Form FmHA or its successor agency under Public Law 103-354 449-34.

(9) Proposed Form FmHA or its successor agency under Public Law 103-354 449-36, if any;

(10) Proposed Lender's Certification (§1980.60 of subpart A of this part); and

(11) Opinion of Lender's Counsel in form prescribed by OGC.

(e) *Do not submit for OGC review* feasibility studies, title information, or the original application unless specifically requested to do so.

(f) *OGC advice.* The Regional Attorney will review the docket and furnish advice to FmHA or its successor agency under Public Law 103-354 on whether

it may issue the LOAN NOTE GUARANTEE AFTER THE LOAN IS CLOSED. SUCH ADVICE IS FOR THE BENEFIT OF FmHA or its successor agency under Public Law 103-354 ONLY AND DOES NOT RELIEVE THE LENDER OF ITS RESPONSIBILITIES UNDER FmHA or its successor agency under Public Law 103-354 REGULATIONS. The Regional Attorney at his/her option may attend the loan closing. Upon receipt of the Regional Attorney's advice, the State Director will correct or cause to be corrected any noted deficiencies before issuing the Loan Note Guarantee.

(g) *Delegation of authority.* The State Director may delegate those administrative duties and responsibilities as authorized in the Administrative sections of this subpart, except those specifically reserved to the State Director.

§ 1980.498 Business and Industry Disaster Loans.

(a) *Introduction.* This section contains regulations for the Business and Industry Disaster (BID) loan program. The purpose of the program is to provide loan guarantees under the authority of the Dire Emergent Supplemental Appropriations Act, 1992, Public Law 102-368. These guaranteed loans cover costs arising from the 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 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. No BID loan guarantee will be approved after September 30, 1993. All provisions of subparts A and E of part 1980 of this chapter apply to BID loans, except as provided in this section. All forms used in connection with a BID loan will be those used with other Business and Industry (B&I) loans, except as provided in paragraph (m) of this section.

(b) *Location of Applicants.* (1) Section 1980.405 of this subpart. "Rural area determinations," will not apply to BID

loans. BID loans may be made in rural and nonrural areas.

(2) Eligible borrowers' businesses must be located within the area covered by the Presidential declaration except for those with qualifying losses from microburst wind in accordance with paragraph (a) of this section.

(c) *Loan Purposes.* Loans may be guaranteed for the purposes listed in § 1980.411 of this subpart, "Loan Purposes," except as follows:

(1) *Relationship to disaster.* The purpose of any BID loan must be to cover costs that are a direct consequence of a natural disaster or microburst of wind in accordance with paragraph (a) of this section. The amount of the loan must not be greater than the amount needed as determined by the Rural Development Administration or its successor agency under Public Law 103-354 (RDA or its successor agency under Public Law 103-354) to cure problems caused by the natural disaster so that the business is reestablished on a successful basis. Facilities which were damaged or destroyed by the natural disaster may be repaired or replaced by modern facilities as necessary to ensure success. Replacement by modern facilities will not be made solely for the purpose of enlarging the business or increasing its production capacity. No loan for a change of purpose of the business will be guaranteed. Eligible refinancing or working capital loans should not exceed the amount needed to overcome the financial distress caused by the disaster. Losses that were adequately paid by insurance or by loans or grants from other sources will not be covered by BID loans. BID loans may be used to supplement insurance payments and/or assistance from other sources when the insurance coverage or other assistance is not sufficient.

(2) *Refinancing.* Section 1980.452, Administrative C.1.(d) of this subpart does not apply to BID loans. If refinancing is needed as a direct consequence of the disaster, the lender may be allowed to bring previously unguaranteed exposure under the guarantee. No loan will be refinanced unless the current market value of the collateral is at least equal to the amount of the loan to be refinanced plus any new loan amount.