

§ 1980.434

7 CFR Ch. XVIII (1–1–09 Edition)

§ 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:

(1) A reduction in the equity requirement for existing businesses may be permitted by the Administrator. In order for a reduction to be considered, the borrower must furnish the following:

(i) Collateralized personal and corporate guarantees, including any par-

ent, subsidiary, or affiliated company, when feasible and legally permissible, and

(ii) Pro forma and historical financial statements that indicate the business to be financed meets or exceeds the median quartile (as identified in the Risk Management Association's Annual Statement Studies or similar publication) for the current ratio, quick ratio, debt-to-worth ratio, debt coverage ratio, and working capital.

(2) The approval official may require more than the minimum equity requirements provided in this paragraph if the official makes a written determination that special circumstances necessitate this course of action.

(b) The equity requirement must be met in the form of either cash or tangible earning assets contributed to the business and reflected on the balance sheet.

(c) The equity requirement must be determined using balance sheets prepared in accordance with GAAP and met upon giving effect to the entirety of the loan in the calculation, whether or not the loan itself is fully advanced, as of the date the loan is closed; a certification to this effect is required of all guaranteed lenders.

(d) The modified formula for determining whether the equity requirement is met, "adjusted tangible net worth," may be used only in cases where the guarantee requested is for a loan, the proceeds of which are to be used entirely to refinance a debt owed to the Federal government or Federally guaranteed debt. In all other situations, the equity requirement must be determined using tangible net worth.

[71 FR 33187, June 8, 2006]

§ 1980.442 Feasibility studies.

A feasibility study by a recognized independent consultant will be required for all loans, except as provided in this paragraph. The cost of the study will be borne by the borrower and may be paid from funds included in the loan. The loan approval official may make an exception to the requirement of a feasibility study for loans to existing businesses when the financial history of the business, the current financial condition of the business, and guarantees or other collateral offered for the

loan are sufficient to protect the interest of the lenders and FmHA or its successor agency under Public Law 103-354. FmHA or its successor agency under Public Law 103-354 will thoroughly document the justification for the exception to the feasibility study for such businesses. An acceptable feasibility study should include but not be limited to:

(a) *Economic feasibility.* Information related to the project site, availability of trained or trainable labor; utilities; rail, air and road service to the site; and the overall economic impact of the project.

(b) *Market feasibility.* Information on the sales organization and management, nature and extent of market area, marketing plans for sale of projected output, extent of competition and commitments from customers or brokers.

(c) *Technical feasibility.* Technical feasibility reports shall be prepared by individuals who have previous experience in the design and analysis of similar facilities and/or processes as are proposed in the application. The technical feasibility reports shall address the suitability of the selected site for the intended use, including an environmental impact analysis. The report shall be based upon verifiable data and contain sufficient information and analysis so that a determination may be made on the technical feasibility of achieving the levels of income and/or production that are projected in the financial statements. The report shall also identify any constraints or limitations in these financial projections and any other facility or design related factors which might affect the success of the enterprise. The report shall also identify and estimate project operating and development costs and specify the level of accuracy of these estimates and the assumptions on which these estimates have been based. For the purpose of the technical feasibility reports, the project engineer or architect may be considered an independent party provided the principals of the firm or any individual of the firm who participates in the technical feasibility report does not have a financial interest in the project, and provided further that no other individual or firm with the exper-

tise necessary to make such a determination is reasonably available to perform the function.

(d) *Financial feasibility.* An opinion on the reliability of the financial projections and the ability of the business to achieve the projected income and cash flow. An assessment of the cost accounting system, the availability of short-term credit for seasonal business and the adequacy of raw material and supplies.

(e) *Management feasibility.* Evidence that continuity and adequacy of management has been evaluated and documented as being satisfactory.

Administrative

FmHA or its successor agency under Public Law 103-354 loan approval officials will be selective in approving borrowers for new business ventures involved in unproven products, services, or markets. Should such businesses be considered, additional equity will usually be required.

[52 FR 6501, Mar. 4, 1987, as amended at 58 FR 40039, July 27, 1993]

§ 1980.443 Collateral, personal and corporate guarantees and other requirements.

(a) *Collateral.* (1) The lender is responsible for seeing that proper and adequate collateral is obtained and maintained in existence and of record to protect the interest of the lender, the holder, and FmHA or its successor agency under Public Law 103-354.

(2) Collateral must be of such a nature that repayment of the loan is reasonably assured when considered with the integrity and ability of project management, soundness of the project, and applicant's prospective earnings. Collateral may include, but is not limited to the following: Land, buildings, machinery, equipment, furniture, fixtures, inventory, accounts receivable, cash or special cash collateral accounts, marketable securities and cash surrender value of life insurance. Collateral may also include assignments of leases or leasehold interest, revenues, patents, and copyrights.

(3) All collateral must secure the entire loan. The lender will not take separate collateral to secure only that portion of the loan or loss not covered by the guarantee. The lender will not