

## §§ 1970.157–1970.200

FEDERAL REGISTER notice indicating its availability to the public.

(c) The ROD may be signed no sooner than 30 days after the publication of EPA's Notice of Availability of the final EIS in the FEDERAL REGISTER.

## §§ 1970.157–1970.200 [Reserved]

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AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart E also issued under 7 U.S.C. 1932(a).

EDITORIAL NOTE: Nomenclature changes to part 1980 appear at 80 FR 9905, Feb. 24, 2015.

### **Subparts A–D [Reserved]**

### **Subpart E—Business and Industrial Loan Program**

SOURCE: 52 FR 6501, Mar. 4, 1987, unless otherwise noted.

#### **§ 1980.401 Introduction.**

(a) Direct Business and Industry (B&I) loans are disbursed by the Agency under this subpart. B&I loan guarantees are to be processed and serviced under the provisions of subparts A and B of part 4279 and subpart B of part 4287 of this title. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to relatives, or business or close personal associates, is subject to the provisions of part 1900 subpart D of this chapter. Applicants for this assistance are required to identify any known relationship or association with any Agency employee.

(b) The purpose of the B&I program is to improve, develop or finance business, industry and employment and im-

prove the economic and environmental climate in rural communities, including pollution abatement and control. This purpose is achieved through bolstering the existing private credit structure through guarantee of quality 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 Rural Development 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

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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.

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(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

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obligations within the ordinary operating cycle of the business.

(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 city or town that has a population of greater than 50,000 inhabitants, the urbanized area contiguous and adjacent to such a city or town, as defined by the U.S. Bureau of the Census, and which exclude certain populations pursuant to 7 U.S.C. 1991(a)(13)(H) and (I). For the purpose of this section:

(a) The population figure is obtained from the most recent decennial Census of the United States (decennial Census). If the applicable population figure cannot be obtained from the most recent decennial Census, RD will determine the applicable population figure based on available population data; and

(b) An urbanized area means a densely populated territory as defined in the most recent decennial Census or other

Agency-accepted data source if not defined in the most recent decennial Census.

[80 FR 9905, Feb. 24, 2015, as amended at 87 FR 38643, June 29, 2022]

**§§ 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 environmental 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 Rural Development 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.

(9) Interest (including interest on interim financing) during the period before the first principal payment becomes due or the facility becomes income producing, whichever occurs first.

(10) Feasibility studies.

(11) *Debt refinancing.* Lenders and Rural Development must provide as part of their loan analysis the reasons for refinancing and the file must be documented accordingly. Refinancing debts may be allowed in connection with viable projects when it is determined by the lender and Rural Development that it is necessary to create new or save existing jobs. Rural Development will consider any lender's exposure as it relates to this item and may adjust the guarantee percentage accordingly. Refinancing in accordance with this paragraph may be insured or guaranteed only when:

(i) It is necessary to spread substantial debt payment over a longer period of time thereby improving the business' net cash flow and working capital position consistent with the useful life of the asset(s) being refinanced, or

(ii) For payment of short-term debt when required in situations customarily financed over long periods of time (e.g., financing the purchase of real estate, machinery, or equipment with short-term debt or cash expenditures, when lenders would not extend reasonable longer terms to the business), or

(iii) It is necessary to place a permanent loan subsequent to an interim loan for financing the construction of the project.

(iv) It does not refinance subordinated owner debt; or

(v) (Except where the amount to be refinanced is owed directly to the Federal government or is Federally guaranteed) the amount to be refinanced by

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the Agency is a secondary part (less than 50 percent) of the overall loan requested.

(12) Reasonable fees and charges only as specifically listed below and disclosed on Form FD 449-1, "Application for Loan and Guarantee," or on an addendum to the application at the time the request is submitted to Rural Development for processing. Authorized fees include professional fees rendered by professionals generally licensed by individual State or accreditation Associations, such as Engineers, Architects, Lawyers, Accountants, and Appraisers. The amount of the fee will be what is reasonable and customary in the community or region where the project is located. For example, Architects and Engineers customarily charge fees based on a percentage of estimated project costs. Lawyers, Accountants, and Appraisers customarily charge for services on an hourly basis. Any fees for professional or expert services are to be fully documented and justified on the Form RD 449-1 and are subject to Rural Development review and approval before the application is presented to the Rural Development State Loan Review Board for action. The above approved fees and charges may be funded out of loan proceeds.

(13) Rural Development guarantee fee.

(14) Acquisition of membership and/or stocks, bonds, or debentures necessary to obtain a loan from Production Credit Associations, Banks for Cooperatives, Small Business Investment Companies, and other lenders, provided such acquisition is required of all their borrowers. However, a lender which requires membership fees in such organization or the purchase of securities issued by such organization will not use such proceeds to acquire, lease or improve property which does not benefit its members.

(15) Aquaculture including conservation, development and utilization of water for aquaculture. Aquaculture means the culture or husbandry of aquatic animals or plants by private industry for commercial purposes including the culture and growing of fish by private industry for the purpose of granting or augmenting publicly-owned and regulated stock of fish.

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(16) *Energy projects.* Commercially available energy projects that produce biomass fuel or biogas as an output must have completed two operating cycles at design performance levels submitted to the Agency. Projects that produce steam or electricity as an output must have met or exceeded acceptance test performance criteria submitted to the Agency and be successfully interconnected with the purchaser of the output. Performance or acceptance test requirements for all other energy projects will be determined by the Agency on a case by case basis. Financing for energy projects will only be allowed when the facility has been constructed according to plans and specifications and is producing at the quality and quantity projected in the application.

(b) *Public bodies.* See §§ 1980.481 and 1980.488.

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 45258, Nov. 9, 1988; 54 FR 28022, July 5, 1989; 71 FR 33187, June 8, 2006]

### § 1980.412 Ineligible loan purposes.

Loans may *not* be made or guaranteed if the funds are used:

(a) To pay off a creditor in excess of the value of the collateral.

(b) For distribution or payment to the owner, partners, shareholders or beneficiaries of the applicant or members of their families when such persons will retain any portion of their equity in the business.

(c) For projects in which such assistance exceeds \$1 million and when direct employment increases more than 50 employees which is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by the operations of the applicant. This limitation will not prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate or subsidiary of such entity if the expansion will not result in an increase in the unemployment in the area of original location or in any other area where such entity conducts business operations unless there is reason to believe that such explanation is being established with the intention of closing down the operations of the existing business entity in the area of its

original location or in any other area where it conducts such operations.

(d) For projects in which such assistance exceeds \$1 million and when direct employment increased more than 50 employees which is calculated to or likely to result in an increase in the production of goods, materials or commodities, or the availability of services or facilities in the area when there is not sufficient demand for such goods, materials, commodities, services or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

(e) For agricultural production which means the cultivation, production (growing), and harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds, and marine life, either for fiber or food for human consumption), and disposal or marketing thereof, the raising, housing, feeding (including commercial custom feedlots), breeding, hatching, control, and/or management of farm and domestic animals. Exceptions to this definition are:

(1) Aquaculture as identified under eligible purposes.

(2) Commercial nurseries primarily engaged in the production of ornamental plants and trees and other nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of vegetables from seed to the transplant stage.

(3) Forestry which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

(4) Loans for livestock and poultry processing as identified under eligible purposes.

(5) The growing of mushrooms or hydroponics.

(f) For the transfer of ownership of a business unless the loan will keep the business from closing, or prevent the loss of employment opportunities in the area, or provide expanded job opportunities.

(g) For financing community antenna television services or facilities.

(h) Charitable and educational institutions, churches, organizations affiliated with or sponsored by churches, and fraternal organizations.

(i) For lending and investment institutions and insurance companies.

(j) For assistance to government employees and military personnel who are directors, officers or have a major ownership of 20 percent or more in the business.

(k) For any legitimate business activity when more than 10 percent of the annual gross revenue is derived from legalized gambling activity.

(l) For any illegal business activity.

(m) For hotels, motels, tourist homes, or convention centers.

(n) For any tourist, recreation or amusement facility.

(o) For any line of credit.

#### *Administrative*

*Par (c) and (d).* The State Director will review the criteria in §1980.412(c) and (d) and make a written determination with supporting data and reasons as to the determinations. Such review must be independent of the Department of Labor certification. The State Director will make sure the loan file contains these determinations as part of the loan analysis prior to the issuance of the Conditional Commitment for Guarantee.

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 45258, Nov. 9, 1988]

#### **§ 1980.413 Transactions which will not be guaranteed.**

(a) The following transactions will not be guaranteed by the Agency:

(1) The guarantee of lease payments.

(2) The guarantee of loans made by other Federal agencies. This does not preclude the guaranteeing of loans made by the Bank for Cooperatives, Federal Land Bank, or Production Credit Association.

(3) The guarantee or making of any B&I loans(s), to any one borrower, when the total amount of the B&I loans(s) requested plus the outstanding balance of any existing B&I loan(s) is in excess of \$10 million.

(b) Guaranteeing of loans involved in tax-exempt obligations under §1980.23 of subpart A of this part.

#### *Administrative*

The State Director will consider the overall State allocations of funding authority in



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recommending loans for processing. Loan requests which fall within Small Business Administration (SBA) authority should continue to be referred to SBA. If the State Director decides to process SBA size loans, the loan file must be fully documented as to the reasons for such actions.

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 40401, Oct. 17, 1988]

### § 1980.414 Fees and charges by lender and others.

[See Subpart A, § 1980.22]

(a) All fees and charges must be specifically documented and justified on the Form RD 449-1 or on an addendum to the application at the time the loan request is submitted to Rural Development for processing. Allowable fees will be those reasonably and customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to Rural Development review and approval.

(b) Packaging fees include services rendered by the lender or others in connection with preparation of the application and seeing the project through to final decision. These services may or may not be performed by an investment banker. If an investment banker provides needed assistance in addition to the packaging of the loan, additional charges may be added to the packaging fee. The maximum allowable packaging fees are 2 percent of the total principal amount of the loan up to \$1 million and on all amounts over \$1 million, an additional one-fourth percent up to total maximum fee of \$50,000. Packaging fees, investment banker fees and other fees and charges not specifically provided for in this section are permitted subject to Rural Development review and approval. Loan proceeds may be used to pay fees as specifically authorized under §§ 1980.411(a)(12) and (13). Packaging fees, investment banker fees, and any other fees or charges shall not be paid from loan proceeds.

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 45258, Nov. 9, 1988]

### §§ 1980.415-1980.418 [Reserved]

### § 1980.419 Eligible lenders.

[See Subpart A, § 1980.13.]

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### Administrative

A. *Par (a) of subpart A, § 1980.13* requires National Office approval for any variations.

B. *Par (b)(4) of subpart A, § 1980.13*, State Director submits information to National Office with recommendations.

C. With prior written approval of the Rural Development National Office, a new eligible lender may be substituted for the original lender provided the new lender agrees to assume all original loan requirements including liabilities, servicing responsibilities and acquiring legal title to the unguaranteed portion of the loan. Such approval will be granted by the National Office only when a lender discontinues lending operations or other extreme situations require a substitution of lender. If approved by the National Office, the State Director will submit to the Finance Office Form RD 1980-42. "Notice of Substitution of Lender."

### § 1980.420 Loan guarantee limits.

The percentage of guarantee, up to the maximum allowed by this section, is a matter of negotiation between the lender and Rural Development.

(a) For loans of \$2 million or less, the maximum percentage of guarantee is 90 percent.

(b) For loans over \$2 million but not over \$5 million, the maximum percentage of guarantee is 80 percent.

(c) For loans in excess of \$5 million, the maximum percentage of guarantee is 70 percent.

(d) Lenders and borrowers will propose the percentage of guarantee. Rural Development informs lenders and borrowers in writing on Form RD 449-14 of any percentage of guarantee less than proposed by the lender and borrower, and the reasons therefore. Rural Development determines the percentage of guarantee after considering all credit factors involved, including but not limited to:

(1) *Borrower's management.* The borrower's management, and when appropriate, equity capital, history of operation, marketing plan, raw material requirements, and availability of necessary supporting utilities and services;

(2) *Collateral.* Collateral for the loan;

(3) *Financial condition.* Financial condition of borrower or borrower's principals, if appropriate;

(4) *Lender's exposure.* The lender's exposure before and after the loan, and

any applicable limits on the lender's lending authority; and

(5) *Trends and conditions.* Current trends and economic conditions.

#### §§ 1980.421–1980.422 [Reserved]

#### § 1980.423 Interest rates.

(a) *Guaranteed loans.* Rates will be negotiated between the lender and the borrower. They may be either fixed or variable as long as they are legal. Interest rates will be those rates customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to Rural Development review and approval. Should any part of the loan(s) be sold by the lender, Rural Development, in its analysis, will take into consideration in approving the lender's interest rate, the rate at which guaranteed loans are being sold or traded in the secondary market.

(1) A variable interest rate must be a rate that is tied to a base rate published periodically in a recognized national or regional financial publication specifically agreed to by the lender and borrower. The variable interest rate may be adjusted at different intervals during the term of the loan but the adjustments may not be more often than quarterly. The intervals between interest rate adjustments will be specified in the Loan Agreement. The lender must incorporate within the variable rate promissory note at loan closing, the provision for adjustment of payment installments coincident with an interest rate adjustment. This will assure that the outstanding principal balance is properly amortized within the prescribed loan maturity to eliminate the possibility of a balloon payment at the end of the loan.

(2) Under a Memorandum of Understanding between Rural Development and the Farm Credit Administration dated September 25, 1974, the interest rate on loans made by the Bank for Cooperatives, Federal Land Banks and Production Credit Associations may be a variable rate based on their administrative and borrowing costs.

(3) Any change in the interest rate between the date of issuance of the Form RD conditional Commitment For Guarantee," and before the issuance of

the Loan Note Guarantee must be approved by the State Director. Approval of such change will be shown on an amendment to Form RD 449-14.

(4) It is permissible to have one interest rate on the guaranteed portion of the loan and another interest rate on the unguaranteed portion of the loan, provided the lender and borrower agree and:

(i) The rate on the unguaranteed portion does not exceed that currently being charged on loans of similar size and purpose for borrowers under similar circumstances.

(ii) The rate on the guaranteed portion of the loan will not exceed the rate on the unguaranteed portion.

(5) When multi-rates are used, the lender will provide Rural Development with the overall effective interest rate for the entire loan.

(6) The borrower, lender and holder (if any) may collectively effect a permanent reduction in the interest rate of their B&I guaranteed loan at any time during the life of the loan upon written agreement by these parties. Rural Development must be notified by the lender, in writing, within 10 calendar days of the change. If the guaranteed portion has been repurchased by Rural Development, then Rural Development is a holder and must affirm or reject interest rate change proposals. When Rural Development is a holder, it will concur in such interest rate change only when it is demonstrated to Rural Development 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

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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 Rural Development 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 Rural Development, 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 RD Instruction 440.1, Exhibit B (available in any Rural Development 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 RD 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 Rural Development 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 Rural Development. 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 Rural Development 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 Rural Development insured loan for community facilities will not exceed forty (40) years.

(d) Rural Development 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 RD 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 RD 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: RD 449-14, RD 1940-3, "Request for Obligation of Funds—Guaranteed Loans," RD 449-35, and RD 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 RD 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 RD 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 RD 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 review requirements.**

[See subpart A, §1980.40 and 7 CFR part 1970.] *Administrative*

Loans made under this part must be in compliance with the environmental review requirements in accordance with 7 CFR part 1970.

[81 FR 11047, Mar. 3, 2016]

**§ 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 [RD 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 Rural Development 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 parent, 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 Rural Development. Rural Development 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 expertise necessary to make such a deter-

mination 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*

Rural Development 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 Rural Development.

(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 require compensating balances or certificates of deposit as a means of eliminating the lender's exposure on the

unguaranteed portion of the loan. However, compensating balances as used in the ordinary course of business may be used.

(4) Release of collateral of a going concern is based on a complete analysis of the proposal.

(i) Release of collateral prior to payment-in-full of the Rural Development guaranteed debt must be requested by the lender and concurred with by the State Director as prescribed in §1980.469 Administrative D.2 of this subpart subject to the following conditions:

(A) Collateral taken initially or subsequently may not be released prior to the payoff, in full, of the loan balance without adequate consideration for the value of that collateral. Adequate consideration may include, but is not limited to:

(1) Application of the net proceeds from the sale of the collateral to the note in inverse order of maturity. All or part of the total proceeds, if approved by the Administrator, may be applied to the payment of current or delinquent principal and interest on the note; or

(2) Use of the net proceeds from the sale of collateral to purchase collateral of equal or greater value for which the lender will obtain a first lien position; or

(3) Application of net proceeds from the sale of collateral to the borrower's business operations in such a manner that enhancement of the borrower's debt service ability can be clearly demonstrated; for example, the payoff or reamortization of the loan as the result of a large extra payment which reduces subsequent installments on the loan; or

(4) Assurance to Rural Development that the release of collateral will contribute to the project's success thereby furthering the goals of the B&I program to show why the release of collateral will contribute to the success of the borrower and repayment of the loan; and

(B) Rural Development must not be adversely affected by the release of collateral; and

(C) If the release of collateral does not involve a reduction of the Rural Development guaranteed debt equal to the net proceeds of the disposition of

the collateral, then it must be determined that the remaining collateral is sufficient to provide for the recovery of the Rural Development guaranteed loan(s).

(ii) Sale of collateral of a going concern to the borrower, borrower's stockholder(s) or officer(s), the lender or lender's stockholder(s) or officer(s) must be based on an arm's-length transaction with the concurrence of Rural Development.

(b) *Personal and corporate guarantees.*

(1) Unconditional personal/corporate guarantees (i.e., absolute guarantees of full and punctual payment and performance by the borrower) from owners or major stockholders as determined by Rural Development and all partners of partnerships (except for limited partnerships) unless restricted by law *will* be required unless exempted as provided for in paragraph (b)(2) of this section. Guarantees of parent, subsidiaries, or affiliated companies and/or secured guarantees may also be required. Rural Development is not a co-guarantor with the personal or corporate guarantors. The personal and corporate guarantees are part of the collateral for the loan.

(2) An exception to the requirement for personal or corporate guarantees may be made by Rural Development when requested by the lender and if:

(i) The borrower has a satisfactory and current (not over 90 days old) credit report, proven management, evidence of the market necessary to support projections, profitable historical performance of no less than 3 years, abundant collateral to protect the lender and Rural Development, sufficient cash flow to service its debts and meets key industry standards such as those of Robert Morris Associates, Dunn and Bradstreet or the like; or

(ii) The borrower's stock is widely enough held so that no one individual can exercise control. Examples of control would include but are not limited to: Holding sufficient proxies and maintaining sufficient family or special interest voting blocks; or

(iii) A borrower which has a parent, subsidiary, or affiliate which is legally restricted from guaranteeing, or if the guarantee would conflict with existing contractual obligations. Examples of

existing contractual obligations include but are not limited to restrictions in loan agreements or in credit lines which may preclude guaranteeing.

(3) No guarantees are required from any partners in a limited partnership.

(4) As a general rule, stockholders of publicly traded corporations will not be required to guarantee. However, such guarantees can be required from some of the stockholders where such guarantees are determined necessary to adequately protect the interest of the Government.

(5) If the guarantee would conflict with existing contractual restrictions, the Administrator will have the authority to grant exceptions to the above restrictions upon a finding by the Administrator that such a guarantee is not necessary to adequately protect the Government's interest. Relief would only be granted as to contractual restrictions existing at the time the lender filed an application with Rural Development.

(6) Unsecured personal guarantees, while collateral, will not be considered for purposes of adequacy of security. Personal guarantees will be secured by collateral when business collateral offered is determined by Rural Development to be insufficient or when the borrower's credit does not meet the program's normal requirements or anytime the lender deems such security should be taken.

(7) Guarantors of borrowers will:

(i) In the case of personal guarantees, provide current financial statements (not over 60 days old at time of filing), signed by the guarantors, which make a clear disclosure of community or homestead property.

(ii) in the case of corporate guarantees, provide current financial statements (not over 90 days old at time of filing), certified by an officer of the corporation.

(iii) When applicable, provide written evidence to Rural Development of their inability to provide a guarantee because of existing contractual arrangements or legal restrictions.

(c) *Other requirements.* (1) The lender will ascertain that no claim or liens of laborers, material men, contractors, subcontractors, suppliers of machinery

and equipment or other parties are against the collateral of the borrower, and that no suits are pending or threatened that would adversely affect the collateral of the borrower when the security instruments are filed.

(2) Hazard insurance with a standard mortgage clause naming the lender as beneficiary will be required on every loan in an amount that is at least the lesser of the depreciated replacement value of the property being insured or the amount of the loan. Hazard insurance includes fire, windstorm, lightning, hail, business interruption, explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder's risk, public liability, property damage, flood or mudslide or any other hazard insurance that may be required to protect the collateral.

(3) Ordinarily, life insurance, which may be decreasing term insurance, is required for the principals and key employees of the borrower and will be assigned or pledged to the lender. A schedule of life insurance available for the benefit of the loan will be included as part of the application.

(4) Workman's compensation insurance is required in accordance with State law.

#### *Administrative*

A. *Par (a)(2).* Rural Development's credit analysis of collateral will consist of the following:

1. Little or no value will be assigned to unsecured personal or corporate guarantees.

2. A maximum of 80 percent of current market value will be given to real estate. Special purpose real estate should be assigned less value.

3. Rural Development at its option may permit a maximum of 60 percent of book value to be assigned to acceptable accounts receivable; however, all accounts over 90 days past due, contra accounts, affiliated accounts and other accounts deemed, by the Rural Development official, not to be collateral will be omitted. Calculations to determine the percentage to be applied in the analysis are to be based on the realizable value of the accounts receivable taken from a current aging of accounts receivable from the borrower's most recent financial statement.

4. A maximum of 60 percent of book value will be assigned to inventory.

5. Collateral value assigned to machinery and equipment, furniture and fixtures will be based upon its marketability, mobility, useful life and alternative uses, if any.



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*B. Par (b).* The State Director will assure that the collateral values and personal and corporate guarantees are fully reviewed, analyzed and the loan file is documented as to the facts and reasons for decisions reached.

### § 1980.444 Appraisal of property serving as collateral.

(a) Appraisal reports prepared by independent qualified fee appraisers will be required on all property that will serve as collateral. In the case of loans two million dollars or less, the State Director may modify this requirement by permitting the appraisal to be made by a qualified appraiser on the lender's staff with experience appraising the type of collateral involved. The appraisers will give their opinion regarding the current market value of the collateral and the purpose for which the appraisal will be used. The lender will be responsible for assuring that appropriate appraisals are made.

(b) The lender will be responsible for determining that appraisers have the necessary qualifications and experience to make the appraisals. The lender will consult with Rural Development for its recommendations before having the appraisal made.

(c) The lender will determine that the fees or charges of appraisers are reasonable.

(d) Independent appraisals will be made in accordance with the accepted format of the industry and those prepared by the lender in accordance with its policy and procedures. All appraisals will become part of the application. (See § 1980.541(i)(6) of this subpart.)

(e) If a subsequent loan request is made within 3 years from the date of the most recent borrower's appraisal report, and there is no significant change in collateral, then the Rural Development State Director in his/her discretion, and if the lender agrees, may use the existing appraisal report in lieu of having a new appraisal prepared.

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 40401, Oct. 17, 1988]

### § 1980.445 Periodic financial statements and audits.

All borrowers will be required to submit periodic financial statements to

the lender. Lenders must forward copies of the financial statements and the lender's analysis of the statements to the Agency.

(a) *Audited financial statements.* Except as provided in paragraphs (d) and (e) of this section, all borrowers with a total principal and interest loan balance for loans under this subpart, at the end of the borrower's fiscal year, of more than \$1 million must submit annual audited financial statements. The audit must be performed in accordance with generally accepted accounting principles (GAAP) and any other requirements specified in this subpart.

(b) *Unaudited financial statements.* For borrowers with a loan balance (principal plus interest at year-end) of \$1 million or less, the Agency will require annual financial statements which may be statements compiled or reviewed by an accountant qualified in accordance with the publication "Standards for Audit of Governmental Organizations, Programs, Activities and Functions" instead of audited financial statements.

(c) *Internal financial statements.* The Agency may require submission of financial statements prepared by the borrower at whatever frequency is determined necessary to adequately monitor the loan. Quarterly financial statements will be required on new business enterprises or those needing close monitoring.

(d) *Minimum requirements.* This section sets out minimum requirements for audited and unaudited financial statements to be submitted to the Agency. If specific circumstances warrant, the Agency may require audited financial statements or independent unaudited financial statements in excess of the minimum requirements. For example, loans that depend heavily on inventory and accounts receivable for collateral will normally be audited, regardless of the size of the loan. Nothing in this section shall be considered an impediment to the lender requiring financial statements more frequently than required by the Agency or requiring audited financial statements when the Agency would accept unaudited financial statements.

(e) *Public bodies and nonprofit corporations.* Notwithstanding other provisions

of this section, any public body or non-profit corporation that receives a guarantee of a loan that meets the thresholds established by 2 CFR part 200, subpart F, as codified by 2 CFR 400.1, must provide an audit for the fiscal year of the borrower in which the Loan Note Guarantee is issued. If the loan is for development or purchases made in a previous fiscal year through interim financing, an audit will also be provided for the fiscal year in which the development or purchases occurred. Any audit provided by a public body or non-profit corporation required by this paragraph will be considered adequate to meet the requirements of this section for that year.

**§§ 1980.446–1980.450 [Reserved]**

**§ 1980.451 Filing and processing applications.**

(a) *Borrowers' and lenders' contact.* Borrowers and lenders desiring Rural Development assistance as provided in this subpart may file preapplications or applications with the County Supervisor or District Director servicing the area in which the project is to be located. In either case, the requirements of § 1980.46 of subpart A of this part must be met. The County Supervisor or District Director receiving the request for assistance will promptly notify the State Director of the nature and facts of the request. The Rural Development State Director will promptly arrange an early meeting with the borrower and lender representatives to discuss assembly, preparation and processing of preapplications and applications. The State Director may call upon the County Supervisor and District Director to assist the State Office in any way necessary.

(b) *Applications from cooperatives.* Borrowers eligible for loans from the Bank for Cooperatives will be encouraged to obtain guaranteed loans from that source since the Bank for Cooperatives is experienced in making and servicing such loans and can provide substantial counsel to the applicant. Applications must be submitted to the Bank for Cooperatives as a test for credit elsewhere when an insured loan is being considered. (See RD Instruction 2000–Q available in any Rural Development of-

fice for Memorandum of Understanding between Rural Development and Farm Credit Administration.)

(c) *Borrowers eligible for Small Business Administration (SBA) assistance.* All borrowers for loan guarantees eligible for SBA assistance will be advised by Rural Development at the time of receipt of the preapplication of the availability of such assistance and will be encouraged to apply to that agency. (See RD Instruction 2000–P available in any Rural Development office for Memorandum of Understanding between SBA and Rural Development).

(d) *Loan Priorities.* Applications and preapplications received by Rural Development will be considered in the order received; however, for the purpose of assigning priorities as described in paragraph (d)(3) of this section, Rural Development will compare an application to other pending applications.

(1) Rural Development will cooperate fully with appropriate State agencies in guaranteeing and insuring loans in a manner which will assure maximum support of the State's strategies for development of its rural areas.

(2) When applications on hand otherwise have equal priority, the applications from a veteran will have preference. A veteran is a person who has been discharged or released from the active forces of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard under conditions other than dishonorable and who served on active duty in such forces:

(i) During the period April 6, 1917, through March 31, 1921;

(ii) During the period of December 7, 1941, through December 31, 1946;

(iii) During the period of June 27, 1950, through January 31, 1955; or

(iv) For a period of more than 180 days, any part of which occurred after January 31, 1955; but on or before May 17, 1975. Discharges under conditions other than dishonorable include "clemency discharges."

(3) Priorities will be assigned by Rural Development to eligible applications on the basis of a point system that takes into account project location, the creation and saving of jobs, the cost at which those jobs would be created or saved, seasonal and part-

time job impact, and leveraging of Rural Development assistance. The application and supporting information submitted with it will be used to determine an eligible proposed project's priority for available funds or guarantee authority. The priorities described in this paragraph will be used by Rural Development to score projects. A copy of the calculation of the score should be placed in the case file for future reference.

(i) *Location priorities.* The priority score for location will be the score for the highest-ranked category in which the project fits. If the location does not fit one of these categories, it receives no points for location. The categories, and their point scores, are:

(A) Located in a city or area under 25,000 population (10 points).

(B) Located in a city or area under 25,000 population that is in an area of high unemployment as of the date of application (20 points).

(C) Located in an area of high unemployment as of the date of application, provided the borrower certifies in writing to the State Director in simple narrative or letter form that the project will employ on a permanent, full-time basis (providing at its own cost such training or retraining as may be needed) persons (numbering no fewer than 25 percent of the project's employment) who are members of displaced farm families which recently derived from farming or ranching the majority of their combined incomes but are no longer actively engaged in farming or ranching as operators or employees (35 points).

(ii) *Jobs priorities.* The priority score for jobs created and/or saved is the score for the highest-ranked category in which the project fits. If the project does not fit one of these categories, it receives no points for jobs. The categories, and their point scores, are:

(A) Project will contribute to the overall economic stability of the project area and generate permanent jobs beyond the entrepreneur and the entrepreneur's household (10 points).

(B) Project will contribute to the overall economic stability of the project area and will employ on a permanent, full-time basis a number of

persons that is significant in the context of the area's economy (20 points).

(C) Project will contribute to the overall economic stability of the project area, will employ on a permanent, full-time basis a number of persons that is significant in the context of the area's economy, and will retain in that area a significant number of jobs that would otherwise be lost (35 points)

(iii) *Job cost priorities.* The priority score for the project's cost per job is the score for the highest-ranked category in which the project fits. First, divide the amount of the Rural Development guaranteed loan by the number of jobs created or saved. This will result in the cost per job. Count only full-time jobs. Part-time jobs may be reduced to a fraction of a full-time job and counted. For example, a 20-hour-per-week job, or a job that is full-time for six months per year, is one-half of a job. Second, determine the State's nonmetropolitan household income as described in § 1980.451(d)(3)(vi). Third, divide the cost per job by the State's nonmetropolitan household income. For example, if the cost per job is \$10,000 and the State's nonmetropolitan household income is \$20,000, the result will be 0.5. The categories, and their point scores are:

(A) Loans on which the result is greater than 1.5 but less than 2.0 (5 points).

(B) Loans on which the result is from 1.0 to 1.5 (15 points).

(C) Loans on which the result is less than 1.0 (25 points).

If the result exceeds 2.0, a high cost per job in that State, no points are received for job cost.

(iv) *Additional Points.* There shall be added to the score the points indicated for any and all of the following criteria met by the project.

(A) FmHA or its successor agency under Public Law 103-354 guaranteed loan is less than 50 percent of project cost (5 points).

(B) Percentage of guarantee is 10 or more percentage points less than the maximum allowable for a loan of its size (5 points).

(C) Project will, in addition to any permanent full-time jobs, create a significant number of part-time or seasonal jobs that will provide additional income to underemployed residents of the project area without their having to give up any present part-time or seasonal jobs (10 points).

(v) *Administrative Points.* The State Director may assign up to 20 points to an application in addition to those points scored under §1980.451(d)(3) (i) through (iv). These administrative points are intended to be assigned by a State Director only in cases of unforeseen exigencies, emergencies, benefits to other FmHA or its successor agency under Public Law 103-354-assisted projects (including the limiting of financial risks affecting FmHA or its successor agency under Public Law 103-354 loans and loan guarantees) or the loss of financing if Rural Development funds are not committed in a timely fashion. They may also be assigned in cases in which the project's goods or services are essential to other Federally assisted projects and activities in the area or to the successful implementation of an economic development strategy for the area that is sponsored and/or operated by an agency of the Federal or State government. An explanation for the assigning of these points by the State Director will be appended to the calculation of the project score maintained in the case file. If an application is considered in the National Office, the Administrator may also assign up to 20 points. An assignment of points by the Administrator will be by memorandum, stating the Administrator's reasons, and that memorandum will be appended to the calculation of the project score maintained in the case file. In assigning priorities to applications and in selecting projects for funding, Rural Development will consider State development strategies. Funds (guarantee authority) allocated for use as prescribed in this regulation are to be considered for use by Indian tribes within the State regardless of whether State development plans include Indian reservations within the State's boundaries. It is essential that Indians residing on such reservations have equal opportunity to

participate in any benefits of these programs.

(vi) *Indexation.* When current, annual data are not available to determine a State's nonmetropolitan household income for purposes of the calculations described in paragraph (d)(3)(iii) of this section, indexation of census data is necessary. The State Director will use the figure from the most recent decennial census of the United States, increased by a factor representing the increase since the year of that census in the Consumer Price Index ("CIP-U"). That factor shall be furnished annually by the National Office, Rural Development.

(e) *Filing preapplications and applications.* Borrowers or lenders may file preapplications described in paragraph (f) of this section if they desire an expression of Rural Development interest prior to assembling the complete application and request for Loan Note Guarantee or they may present the complete application, in one package, including the material required in paragraphs (f), (i), (j), and (k) of this section.

(f) *Preapplications.* Applicants may file preapplications with the County, District, or State Office including:

(1) A letter prepared by the borrower and the lender which shall include:

(i) Borrower's name, address, contact person and telephone number.

(ii) Amount of loan request.

(iii) Name of the proposed lender, address, contact person, and telephone number.

(iv) Brief description of the projects, products and services provided.

(v) Type and number of employment opportunities and unemployment rate where the project will be located.

(vi) Amount of borrower's equity and guarantees offered.

(vii) Anticipated loan maturity and interest rates.

(viii) Availability of raw materials and supplies.

(ix) If a corporation, names and addresses of borrower's parent, affiliates and/or subsidiary firms and a brief description of relationship, products and ownership among borrower, parent, affiliates and subsidiary firms.

(2) Form RD 449-22, “Certification of Non-Relocation and Market and Capacity Information Report.”

(3) Form RD 449-4, “Statement of Personal History,” for a proprietor (owner), each partner, officer, director, key employee and stockholders holding 20 percent or more interest in the borrower except for those corporations listed on a major stock exchange and for those so listed if required by Rural Development. Forms RD 449-4 are not required to be submitted for elected officials and appointed officials in connection with loan applications from public bodies. Failure to report full, complete and accurate information on the Statement of Personal History may result in Rural Development’s not making or guaranteeing the loan. Whenever possible, a local, regional, or national credit report, furnished by the lender, will be used to verify data on Form RD.

(4) A record of any pending or final regulatory or legal (civil or criminal) action against the borrower, parent, affiliate, proposed guarantors, subsidiaries, principal stockholders, officers and directors.

(5) For existing businesses, a current balance sheet, and latest profit and loss statement (not more than 60 days old) and financial statements including parent, affiliate and subsidiary firms, for at least the last 3 years or more if necessary for a thorough evaluation.

(6) A detailed projection of gross revenue, net earnings and cash flow statements for 3 years including assumptions upon which such forecasts are based.

(7) Sales projections indicating the percent of the national and local market the business expects to obtain.

(8) Intergovernmental consultation should be carried out in accordance with 2 CFR part 415, subpart C, “Intergovernmental Review of Department of Agriculture Programs and Activities.”

(g) *Preliminary determination by Rural Development.* If preparation information indicates the project will not meet Rural Development’s minimum credit standards for a sound loan, is ineligible, does not have sufficient priority or that funds or guarantee authority are not available for the project, Rural Development will so inform the lender.

The lender will be notified in writing with all reasons for the decision indicated. If it appears that the project is eligible, has sufficient priority, is economically feasible and loan guarantee authority is available, Rural Development will inform the lender and borrower in writing and request that they complete the application.

(h) *Department of Labor certifications.* Rural Development will submit Form RD 449-22 to the Department of Labor for the necessary certification that the proposal will not be in conflict with § 1980.412(c) and (d).

(i) *Content of Applications:*

(1) Form RD 449-1.

(2) Form RD 449-2.

(3) Environmental review documentation as required in accordance with 7 CFR part 1970.

(4) Architectural or engineering plans, if applicable.

(5) Cost estimates and forecasts of contingency funds to cover inflation or project changes.

(6) Appraisal reports.

(7) For existing businesses a pro forma balance sheet at startup and for at least three additional projected years, indicating the necessary startup capital, operating capital and short-term credit based on financial statements for the last three years, or more (if available); and projected cash flow and earnings statements for at least three years supported by a list of assumptions showing the basis for the projections. The business should submit a current balance sheet with a debt schedule of any debts to be refinanced and an income statement to Rural Development, through the lender, every 90 days from the time the application is filed with the lender to the time of issuance of the Loan Note Guarantee. If debt refinancing is requested, a debt schedule is prepared (correlated to the latest balance sheets) reflecting the debts to be refinanced including the name of the creditor, the original loan amount and loan balance, date of loan, interest rate, maturity date, monthly or annual payments, payment status and collateral that secured such loans.

(8) For new businesses, a pro forma balance sheet at startup and for the next three years, project cash flow (monthly first year, quarterly for two

additional years) and projected earnings statements for three years supported by a list of assumptions showing the basis for the projections.

(9) Any credit reports obtained by the lender or Rural Development on the borrower, its principals and parent, affiliate and subsidiary firms.

(10) Form RD 400-1, "Equal Opportunity Agreement," if construction costing more than \$10,000 is involved.

(11) Copies of building permits, if applicable, and any necessary certifications and recommendations of appropriate regulatory or other agency having jurisdiction over the project including any pollution control agency.

(12) Personal and corporate financial statements of those guarantors named in § 1980.443.

(13) Proposed loan agreement. (See paragraph VII of Form RD 449-35). Loan agreements between the borrower and lender will be required. The final executed loan agreement must include the Agency requirements as set forth in the Form RD 449-14 including the requirements for periodic financial statements in accordance with § 1980.445. The loan agreement must also include, but is not limited to, the following:

(i) Prohibition against assuming liabilities or obligations of others.

(ii) Restrictions on dividend payments.

(iii) Limitation on purchase or sale of equipment and fixed assets.

(iv) Limitations on compensation of officers and owners.

(v) Minimum working capital requirements.

(vi) Maximum debt to net worth ratio.

(vii) Restrictions concerning consolidations, mergers or other circumstances.

(viii) Limitations on selling the business without concurrence of the lender and Rural Development.

(ix) Repayment and amortization of the loan.

(x) List of collateral for the loan including a list of persons and/or corporations guaranteeing the loan with a schedule for providing the lender and Rural Development with personal and/or corporate financial statements. (See § 1980.443)

(14) A complete feasibility study when required. (See § 1980.442)

(15) Any additional information required by Rural Development.

(16) For companies listed on major stock exchanges and/or subject to the Securities and Exchange Commission regulations, a copy of Form 10-K, "Annual Report Pursuant to section 13 or 15 D of the Act of 1934."

(17) Documented evidence that the project is located within or without special flood or mudslide hazard areas.

(18) Notices of compliance with the Privacy Act of 1974.

(i) If the borrower is acting in a personal capacity and not as an entrepreneur for such entities as proprietorships, partnerships, or corporations, and Rural Development solicits personal information for him/her, the individual will be provided Form RD 410-9, "Statement Required by the Privacy Act."

(ii) If Rural Development desires to obtain information concerning an individual from any source, Rural Development will provide such source with Form RD 410-10, "Privacy Act Statement to References."

(19) On any request for refinancing of existing loan(s) as authorized under § 1980.411(a)(11), the lender is required, as a minimum, to obtain the previously held collateral as security for the guaranteed loan(s). Additional collateral will be required by Rural Development when refinancing of unsecured or undersecured loans is unavoidable in order to accomplish the necessary strengthening of the firm's current position.

(j) *Use of forms.* Rural Development numbered forms will be used where shown in both preapplications and applications. Otherwise, lenders should use their forms, real estate mortgages, security instruments and other agreements, provided such forms do not contain any provisions that are in conflict or are inconsistent with provisions of the subpart.

(k) *Certificate of need.* If the loan request is for health care facilities (e.g., hospitals or nursing homes), a "Certificate of Need" will be obtained by the borrower from the appropriate regulatory or other agency having jurisdiction over the project and submitted

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to Rural Development by the lender. If a significant part of the project's income will be from third party payors, (e.g., medicare or medicaid), the project will be designed and operated in a manner necessary to meet the requirements of the third-party payors.

### *Administrative*

#### *A. The State Director:*

1. Determines if material and information submitted is completed and signed by the appropriate party in the appropriated capacity.
2. May request the comments and recommendations of the County Supervisor and District Director. Such comments will include but are not limited to the following: Community attitude toward project; a summary of comments regarding the proposal by the lender, county leaders and other interested parties; whether the project is likely to result in the need for additional community facilities such as schools, water, sewer and health care services, and if so, the community's plan for providing such facilities; availability of any required additional labor force and training plans for such force, if needed; an economic forecast of the effect on the community should the project fail, if financed.
3. Will furnish all individuals acting in a personal capacity at the time of filing a preapplication or application and two copies of Form RD 410-9. The individual will sign both copies, retaining one and providing Rural Development with the other copy which becomes a part of the loan file.
4. Will provide any source whom Rural Development obtains information concerning an individual with two copies of Form Rural Development 410-10. The source will sign both copies, retain one and provide Rural Development with the other copy which becomes a part of the loan file.
5. Will input the necessary data via terminal screens into the Rural Community Facility Tracking System (RCFTS). The RCFTS data structure consists of 3 sets: Applicant/Borrower (BOR), Facility (FAC), and Loan/Grant Request (LGR) sets. There are multiple screens for the BOR and LGR sets. The State Director may, if he/she so desires, prepare a Form RD 2033-34, "Management System Card—Business and Industry," in accordance with RD Instruction 2033-F.
6. Will forward immediately to the National Office on all projects.
  - (a) Form RD 449-22 (7 copies) for loans over \$1 million and when direct employment increases more than 50 employees.
  - (b) For insured loans where the borrower leases facilities to another, submit Form RD 449-22 for such borrower. The lessor(s) will also be required to provide Form RD 449-22.

Subsequent loan requests require resubmission of Form RD 449-22.

(c) A local, national or regional credit report and Form RD 449-4 for all loans over one million dollars or for loans, regardless of size, when the State Director believes a character evaluation check is advisable.

NOTE: Forms RD 449-22 and RD 449-4 should *only* be processed if a *complete* preapplication or application has been received.

#### *B. Miscellaneous Administrative provisions:*

1. *Par (f)*. Preapplications are not to be accepted or processed unless a lender has agreed in writing to finance the proposal. The preapplication letter is a joint letter prepared by the borrower and lender.
2. *Par (g)*. Upon receipt of all preapplications in excess of \$5 million, the State Director will transmit to the National Office the material required under paragraph (f)(1), (f)(4) and (f)(5) of this section together with recommendations and observations an analysis of the quality and permanency of the employment opportunities involved in the project. The National Office will review the proposed project in relation to objectives, priorities and intent of the program and will advise the State Director. After receiving the National Office advice or for loans less than \$5 million, the State Director will inform the borrower of the decision.
3. *Par (i)*. State Director submits a transmittal letter with recommendations on loan applications requiring National Office review. Included are:
  - (a) Loan file.
  - (b) Form RD 449-29, "Project Summary—Business Industrial Loan Division," including State Director's a spread sheets, financial history and projections (use attachments to Project Summary if necessary).
  - (c) Proposed Form RD 449-14.
  - (d) Copy of Rural Development State Loan Review Board Minutes.
  - (e) Notification of required financial and other reports, their frequency, due dates and fiscal yearend.
4. *Par (i)(9), Credit reports.*
  - (a) The National Office has a contract to provide credit reports for preapplications, applications, and in instances after the loan(s) is made, where a credit report is needed.
  - (b) States should first try to have the lender provide such a report because credit reports are the responsibility of the lender.
  - (c) Any state needing a credit report should telephone the National Office, Director, B&I, and give the name of the business and the city and State location. The report will be mailed to the State the same day, if possible.
5. *File documentation.* Applications will be organized in a loan file in accordance with RD Instruction 2033-A (available in any

Rural Development office.) An 8-position folder with tabs will be utilized.

The State Director may supplement the Position Guides to include specific legal requirements within their State. If the lender prepares a complete application package, it may accompany the docket provided the docket is organized in a binder, indexed and tabbed. Feasibility studies should be kept separate. It is the responsibility of Rural Development employees who work on applications or servicing actions to add to the correspondence section of the loan file (also known as the running record) a written report of any field visits, meetings, telephone conversations and memorandums covering decisions or reasons for Rural Development's actions on the cases. Particular attention must be given to this requirement on cases

that become delinquent or problems in order that Rural Development position will be defensible in the event of an adverse action.

6. *Par (i), (13), Audit agreements and requirements.* Rural Development urges the use of a written agreement between the lender and borrower to assure that there is no misunderstanding concerning Rural Development audit requirements.

7. *Par (i), Forms and documents found in loan docket.* The following table is a guide to forms and documents used in completing an application and loan docket. The filing position within the 8 position folder is shown on the right. Some of these items may not be applicable for a particular loan. However, a complete loan docket may need to include items in addition to the following:

DESCRIPTION OF RECORD OR FORM NUMBER AND TITLE

		Filing position
AD-425 .....	Contractor's Affirmative Action Plan For Equal Employment Opportunity .....	1
RD 400-1 .....	Equal Opportunity Agreement .....	6
RD 400-3 .....	Notice to Contractors and Applicants .....	6
RD 400-4 .....	Assurance Agreement .....	3
RD 400-6 .....	Compliance Statement .....	6
RD 410-8 .....	Applicant Reference Letter .....	3
RD 410-9 .....	Statement Required by the Privacy Act .....	3
RD 410-10 .....	Privacy Act Statement to References .....	3
RD 424-12 .....	Inspection Report .....	6
RD 1940-3 .....	Request for Obligation of Funds—Guaranteed Loans; Filing Position 2 .....	2
RD 1970-1 .....	Environmental Checklist for Categorical Exclusions .....	3
	Environmental Reports .....	3
	Environmental Assessments .....	3
	Environmental Impact Statements .....	3
RD 440-57 .....	Acknowledgement of Obligated Funds/Check Request .....	2
RD 449-1 .....	Application for Loan and Guarantee .....	3
RD 449-2 .....	Statement of Collateral .....	5
RD 449-4 .....	Statement of Personal History .....	3
	Loan Closing Opinion of Lender's Legal Counsel .....	

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 40401, Oct. 17, 1988; 53 FR 45258, Nov. 9, 1988; 55 FR 26199, June 27, 1990; 56 FR 8271, Feb. 28, 1991; 61 FR 18495, Apr. 26, 1996; 76 FR 80731, Dec. 27, 2011; 79 FR 76012, Dec. 19, 2014; 80 FR 9906, Feb. 24, 2015; 81 FR 11047, Mar. 2, 2016; 81 FR 26667, May 4, 2016]

#### § 1980.452 Rural Development evaluation of application.

Rural Development will evaluate the application and make a determination whether the borrower is eligible, the proposed loan is for an eligible purpose and that there is reasonable assurance of repayment ability, sufficient collateral and sufficient equity and the proposed loan complies with all applicable statutes and regulations. If Rural Development determines it is unable to guarantee the loan, the lender will be informed in writing. Such notification will include the reasons for denial of the guarantee. If Rural Development is

able to guarantee the loan, it will provide the lender and the borrower with Form RD 449-14, listing all requirements for such guarantees. Rural Development will include in the requirements of the Conditional Commitment for Guarantee a full description of the approved use of guaranteed loan funds as reflected in the Form RD 449-1. The Conditional Commitment for Guarantee may not be issued on any loan until the State Director has been notified by the National Officer that the Statements of Personal History(s) have been processed and cleared. Rural Development State Directors are the only



persons authorized to execute Form RD 449-14.

*Administrative*

State Director evaluates the application and considers:

A. Rural area determinations. (See § 1980.405 of this subpart.)

B. Community impact of the proposal which includes:

1. Number of businesses and industries in the town or city.

2. Employment impact upon the community.

3. Availability of skilled and unskilled labor and permanency of employment opportunities.

4. Vocational and educational facilities to provide skilled labor, if applicable.

5. Policies of applicant regarding unemployment, lay-offs, wage scales, etc.

C. If debt refinancing is requested, consider in accordance with § 1980.411(a)(11) of this subpart and:

1. A complete review will be made to determine whether it is essential to restructure the company's debts on a schedule that will allow the business to operate successfully rather than merely guaranteeing an unsound loan.

(a) Obtain a borrower's complete debt schedule. Schedule should agree with borrower's latest balance sheet.

(b) Determine from lender if the borrower's present loan(s) is on the lender's regulatory examiner's report and if so determine the loan classification.

(c) Analyze lender's liability ledger on the borrower, individual customer credit file, installment Loan Ledger Card or Computer printouts and other credit reports.

(d) The percentage of guarantee should be adjusted to assure that the lender does not bring its previously existing unguaranteed exposure under the guarantee.

(e) Any special servicing requirements should be identified and included in the Conditional Commitment for Guarantee.

D. Applications will be analyzed by an Rural Development State Loan Review Board before execution of Form RD 449-14. When analyzing the B&I loan request, the State Loan Review Board will specifically address the issue of the guarantee percentage to be approved. Consideration of reducing the maximum guarantee to less than 90 percent is appropriate when the loan has sufficient strength to warrant further participation by the private sector or refinancing of existing lender debts to the borrower is involved. Ordinarily, B&I loan guarantees should be structured so that the lender bears a significant portion of the risk of loss from a default. "Significant" means equal to or greater than 20 percent of the loss stemming from default. All review board meetings will

be fully documented, including the review and decision concerning the guarantee percentage, and will be signed by those Rural Development employees serving on the board. A copy of such documentation will be retained in the loan file.

1. Generally, the review board consists of the State Director as Chairperson, Community and Business Program Chief or the Business and Industry Chief (Loan Specialist) and either the Community Programs Chief, Rural Housing Chief, or Farmer Programs Chief, as appropriate.

2. The State Director may wish to contact non-Rural Development sources for expertise, such as banker or other lenders, industrial development specialists from state commissions, academicians, certified public accountants, tax attorneys, successful business and professional lenders, management consultants and officials from other Federal agencies. Outside resource consultants may be reimbursed only for their travel costs (transportation and subsistence). (See RD Instruction 2036-A which is available in any Rural Development Office).

3. The Rural Housing Loan Chief will be a member of the Rural Development State Loan Review Board if a site development loan (see § 1980.411(a)(7) of this subpart) is being considered. The Community and Business Programs Chief (Loan Specialist) will be a member if a loan for facilities of the type financed under the provisions of Subpart A of Part 1942 of this chapter is being considered. The Farmer Programs Chief will be a member of the board if a project, the success of which is dependent on the production of agricultural products, is being considered. If the proposed project covers more than one program area, all the chiefs for those programs involved will be members of the board. If the approval of an application for a B&I loan may result in benefiting or hindering other Rural Development programs, the review board will determine whether the making of such loan or guarantee is likely to result in embarrassment for Rural Development as a result of a possible conflict of interest whereby other parties may accuse the agency of giving loan preference to housing borrowers (in the case of site development) or producers (in the case of agricultural processing plants) or other Rural Development programs.

4. The State Director may request the County Supervisor and/or District Director to attend the review board meeting whenever it is determined they may have special knowledge of the proposed loan which may affect the board's decision.

5. Prior to submission of a B&I guaranteed loan(s) request to the National Office for loan processing review and prior to loan approval, the appropriate loan processing official must visit the project site and discuss

the loan proposal with the lender and borrower. In the event there are multiple project sites the official should visit a representative sample of project sites to develop deeper understanding of the project operation. For businesses without a developed project site a visit is not necessary; however, a visit with the lender and borrower is still required. The findings of the visit should be documented in the loan docket submitted to the National Office.

6. The State Director will prepare an original and two copies of Form RD 1940-3 for each loan to be obligated. Also, for each initial loan, Form RD 1980-50, "Add, Delete, or Change Guaranteed Loan Borrower Information," will be prepared. The State Director will sign the original and one copy and conform the second copy. Form RD 1940-3 will not be mailed to the Finance Office. Notice of approval to lender will be accomplished by providing or sending the lender the signed copy of Form RD 1940-3 and Form RD 449-14 six working days from the date funds are reserved, unless an exception is granted by the National Office. The State Director or designee will record the actual date of lender notification on the original of the RD 1940-3 and retain the original of the form as a permanent part of the Rural Development case file. The State Director may retain the remaining conformed copy of Form RD 1940-3. The State Director or designee will use the State Office terminal to request reservation/obligation of funds. Use of the telephone for the reservation/obligation of funds is restricted to those instances when the State Office terminal is inoperative. Form RD 1980-50 will be prepared and distributed for initial loans only.

a. Immediately after contacting the Finance Office, the requesting official will furnish the requesting office's security identification code. Failure to furnish the security code will result in rejection of the request for reservation of authority. After the security code is furnished, all pertinent information contained on Form RD 1940-3 will be furnished to the Finance Office. Upon receipt of the telephone request for reservation of authority, the Finance Office will record all information necessary to process the request for reservation in addition to the date and time of the request.

b. The individual making the telephone request will record the date and time of the telephone request and place his/her signature in section 35 of Form RD 1940-3.

c. The Finance Office will terminally process telephone reservation requests. Those requests for reservation received before 2:30 p.m. Central Time, to the extent possible, will be processed on the date received; however, there may be instances in which the reservation will be processed on the next working day.

d. Each working day the Finance Office will notify the State Office by telephone of all projects for which authority was reserved during the previous night's processing cycle and the date of obligation. If authority cannot be reserved for a project, the Finance Office will notify the State Office that authority is not available within the State allocation. The obligation date will be the date of the request for reservation of authority which is being processed in the Finance Office. The Finance Office will mail to the State Director Form RD 440-57, "Acknowledgment of Obligated Funds/Check Request," prepared in duplicate, confirming the reservation of authority with the obligation date inserted as required by item No. 9 on the FMI for Form RD 440-57. Immediately after notification by telephone of the reservation of authority, the State Director will call the Legislative Affairs and Public Information staff in the National Office as required by RD Instruction 2015-C (available in any Rural Development office).

e. See RD Instruction 2015-C (available in any Rural Development office) for notification procedures.

7. State Director notifies the lender and borrower if he/she will not issue the Form RD 449-14.

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 45258, Nov. 9, 1988; 56 FR 8271, Feb. 28, 1991; 79 FR 55967, Sep. 18, 2014]

#### § 1980.453 Review of requirements.

(a) Immediately after reviewing the conditions and requirements in Form RD 449-14 the lender and applicant should complete and sign the "Acceptance of Conditions," and return a copy to the Rural Development State Director. If certain conditions cannot be met, the lender and borrower may propose alternate conditions to Rural Development.

(b) If the lender indicates in the "Acceptance of Conditions" that it desires to obtain a Loan Note Guarantee and subsequently decides at any time after receiving a conditional commitment that it no longer wants a Loan Note Guarantee, the lender will immediately advise the Rural Development State Director.

#### *Administrative*

A. The State Director will negotiate with the lender and proposed borrower any changes made to the initially issued or proposed Form RD 449-14. For loans requiring National Office concurrence, a copy of Form RD 449-14 and any amendments thereto will be included when the loan file is submitted

to the National Office for review. When the National Office recommends modifications or additions to Form RD 449-14, the State Director will further negotiate these recommendations with the lender and proposed borrower. If, as a result of these further negotiations, the lender, proposed borrower or State Director presents alternate conditions which would result in a change in the scope of the proposed project and if the loan exceeds the State Director's loan approval authority, the State Director will submit these conditions by memorandum to the National Office for consideration with a copy of the revised Form RD 449-14 and any amendments thereto. If the loan is within the State Director's loan approval authority, the State Director may approve such changes.

B. On loan applications within the State Director's loan approval authority, the State Director will submit to the National Office, Business and Industry Division, within 30 days after the Form Rural Development 449-14 has been accepted:

1. A copy of Form RD 449-29.
2. A copy of Form RD 449-14 is accepted by the lender and borrower.
2. A copy of Rural Development State Loan Review Board Minutes.
4. Notification of required financial and other reports, their frequency, due dates and fiscal year-end.
5. A copy of the proposed loan agreement between the lender and the borrower.
6. When debt refinancing is involved, a copy of the justification for the refinancing.
7. The cover memorandum should indicate whether the Form RD 449-34 has been issued. If the Loan Note Guarantee has been issued, enclose a copy of the Lender Certification required by §1980.60(a) of subpart A of this part, and, if not, a proposed date for issuance of the Form RD 449-34.

[52 FR 6501, Mar. 4, 1987, as amended at 54 FR 28022, July 5, 1989; 57 FR 4359, Feb. 5, 1992]

**§1980.454 Conditions precedent to issuance of the Loan Note Guarantee.**

In addition to compliance with the requirements of §1980.60 of subpart A of this subpart, compliance with the following provisions are required prior to issuance of the Loan Note Guarantee.

(a) *Transfer of lenders.* The Rural Development State Director may approve a substitution of a new eligible lender in place of a former lender who holds an outstanding Conditional Commitment for Guarantee (where the Loan Note Guarantee has not yet been issued and the loan is within the State Director's loan approval authority) provided there are no changes in the borrower's

ownership or control, loan purposes, scope of project and loan conditions in the Form RD 449-14 and the loan agreement remains the same. To effect such a substitution, the former lender will provide Rural Development with a letter stating the reasons it no longer desires to be a lender for the project. For loans in excess of the State Director's loan approval authority, National Office concurrence is required. The State Director will submit a recommendation concerning the transfer of lenders along with the lender's letter stating the reasons it no longer desires to be a lender for the project. The substituted lender will execute a new Part "B" of Form RD 449-1. If approved by Rural Development, the State Director will issue a letter or amendment to the original Form RD 449-14 reflecting the new lender and the new lender will acknowledge acceptance of the letter or amendment in writing.

(b) *Substitution of borrowers.* Rural Development will not issue a Loan Note Guarantee to the lender who is in receipt of a Form RD 449-14 with an obligation in a previous fiscal year if the originally approved borrower (including changes in legal entity) or owners are changed. The only exception to this provision prohibiting a change in the legal entity's form of ownership is when the originally approved borrower or owner is replaced with substantially the same individuals with substantially the same interests, as originally approved and identified in the Form RD 449-1, item 15. All requests for exceptions must be approved by the Rural Development National Office.

(c) *Changes in terms and conditions in Form RD 449-14.* It is the intent of Rural Development that once the Form RD 449-14 is issued and accepted by the lender, the commitment is not to be modified as to the scope of the project, overall facility concept, project purpose, use of proceeds or terms and conditions. Should changes be requested by the lender, the State Director will negotiate with the lender and proposed borrower any proposed changes to the originally accepted Form RD 449-14. If, as a result of these negotiations, the lender, proposed borrower or State Director presents alternate conditions which would result in a change in the

scope of the project, and if the loan exceeds the State Director's loan approval authority, the State Director will submit these changes in the conditions by memorandum to the National Office for consideration with a copy of the revised Form FmHA or its successor agency under Public Law 103-354 449-14 and any amendments thereto. Changes to the conditional commitment may be approved by the State Director for loans within their loan approval authority.

(d) *Additional requirements for B&I guaranteed loans.* All B&I borrowers and lenders, as applicable, must comply with Appendix D, paragraphs (I) (A) and (B); (II)(A) through (II)(A)(2)(g)(1); (II) (B) and (C); (III) (A), (B), (C), (D), and (E).

(e) *Preguarantee review.* Coincident with, or immediately after loan closing, the lender will contact Rural Development and provide those documents and certifications required in §§ 1980.60 and 1980.61 of subpart A of this part. Only when the Rural Development B&I or C&BP Chief or Loan Specialist, as required in paragraph B. (Administrative) of this section, is satisfied that all conditions for the guarantee have been met will the Loan Note Guarantee be executed.

(f) *Loan closing.* When loan closing plans are established, the lender will notify Rural Development.

(g) *Closing of working capital loans.* The State Director will not issue a Loan Guarantee for a working capital loan prior to the completion of all proposed construction for the project. Working capital loan funds will not be used to pay short-term notes.

#### *Administrative*

A. *The State Director reviews:* 1. [Reserved]

2. Plans for inspections made on construction projects. These should be coordinated with the lender and borrower. Form RD 424-12, "Inspection Reports," may be used by the State Engineer or Architect who will make an inspection of the projects which involve substantial construction. The inspection shall be completed prior to the issuance of the Loan Note Guarantee to assure all construction is complete. The State Loan Specialist or Chief may also participate in the inspections.

3. Cost overruns, if any, and how they will be met. State Directors may approve cost overruns for projects in any amount or per-

centage within their loan approval authority not to exceed 10 percent in loan amounts between \$1 million and \$10 million.

4. Basic credit requirements of all loans.

B. In all cases, the Program Chief or the B&I Loan Specialist will conduct a preguarantee review before issuance of the Loan Note Guarantee to assure that all requirements of the application, Conditional Commitment for Guarantee and Loan Agreement have been met including the required certifications using language specified by the regulations, and will provide such verification in the loan file, including arrangements for annual audit reports. In the conduct of this review, all requirements of § 1980.60(a) of Subpart A of this part will be reviewed and special attention should be paid to reviewing current financial statements of the borrower to assure that no adverse change has taken place. The District Director may participate in the review.

C. The State Director or any other Rural Development personnel shall not sign any documents other than those specifically provided for in Subparts A or E of this part. No certificates shall be signed except the "Certificate of Incumbency and Signature" as set forth as Appendix B of this subpart.

D. *Par (a) Transfer of Lender.* The State Director will analyze all requests for substituted lenders including the servicing capability, eligibility and experience of the new lender before the request is approved. If approved, notify the Finance Office of the change using Form RD 1980-42, Do not deobligate and reobligate the loan if the Form RD 449-14 was issued in a previous fiscal year.

E. *Par (b) Substitution of borrowers.* The State Director will review any request for exceptions to substitution of borrowers and forward such requests with a memorandum of facts and recommendations to the National Office for a decision. The National Office will not approve any request where the legal entity is changed, such as from a corporation to a partnership, etc., or if the ownership changes more than 20 percent.

F. *Par (c) Changes in terms and conditions in Form RD 449-14.* The State Director will review any request for changes to Form RD 449-14. Only those changes which do not materially affect the project, its capacity, employment, original projections or credit factors may be approved. Changes in legal entities or where tax considerations are the reason for change will not be approved when modifying any loan guarantee or conditions of guarantee. State Directors may approve these changes in terms and conditions if the loan is within the State Director's loan approval authority and the change will not result in a major change in the scope of the project. Changes in terms and conditions for loans in excess of the State Director's loan approval authority, must be submitted to

the National Office with a memorandum of facts and recommendations for review and concurrence.

In order to identify the number and types of action taken, the following procedures are to be followed when requests of this type are approved by Rural Development.

1. Start with the number 1 when the first modification is approved and enter this number in the upper right hand corner of the Letter of Concurrence and on the related “Modification or Administration Action” sheet.

2. Next to the modified wording on the work copy of the Conditional Commitment for Guarantee and the Term Loan Agreement or any form which has been modified, pencil in a short cross reference to the modification and identify the number given it.

3. File the copies of the “Modification or Administrative Action” sheet and related Letters of Concurrence numerically in the docket directly on top of the affected original documents of conditions.

4. This order of recordkeeping should include any requests which were declined by the National Office.

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 26413, July 12, 1988; 57 FR 4359, Feb. 5, 1992; 61 FR 18495, Apr. 26, 1996]

**§§ 1980.455–1980.468 [Reserved]**

**§ 1980.469 Loan servicing.**

The lender is responsible for loan servicing and for notifying the Rural Development (RD) of any violations in the Lender's Loan Agreement. (See Paragraph X of Form Rural Development RD 449-35).

(a) All B&I guaranteed loans in the lender's portfolio will be classified by the lender as soon as it is notified by the State Office to do so and again whenever there is a change in the loan which would impact on the original classification. The State Director will notify the lender of this requirement for all existing loan guarantees, when new Loan Note Guarantees are issued to a lender and/or when the State Office becomes aware of a condition that would affect the classification and justification of the classification will be sent to the State Office. The loans will be classified according to the following criteria:

- (1) *Substandard Classifications.* Those loans which are inadequately protected by the current sound worth and paying capacity of the obligor or of the collat-

eral pledged, if any. Loans in this category must have a well defined weakness or weaknesses that jeopardize the payment in full of the debt. If the deficiencies are not corrected, there is a distinct possibility that the lender and Rural Development will sustain some loss.

- (2) *Doubtful Classification.* Those loans which have all the weaknesses inherent in those classified Substandard with the added characteristics that the weaknesses make collection or liquidation in full, based on currently known facts, conditions and values, highly questionable and improbable.

- (3) *Loss Classifications.* Those loans which are considered uncollectible and of such little value that their continuance as bankable loans is not warranted. Even though partial recovery may be effected in the future, it is not practical or desirable to defer writing off these basically worthless loans.

(b) There is a close relationship between classifications; and no classifications category should be viewed as more important than the other. The uncollectibility aspect of Doubtful and Loss classifications are of obvious importance; however, the function of the Substandard classification is to indicate those loans that are unduly risky which may result in future claims against the B&I guarantee.

(c) Substandard, Doubtful and Loss are adverse classifications. There are other classifications for loans which are not adversely classified but which require the attention and followup of the lenders and Rural Development. These classifications are:

- (1) *Special Mention Classification.* Those loans which do not presently expose the lender and Rural Development to a sufficient degree of risk to warrant a Substandard classification but do possess credit deficiencies deserving the lender's close attention. Failure to correct these deficiencies could result in greater credit risk in the future. This classification would include loans that the lender is unable to supervise properly because of a lack of expertise, an inadequate loan agreement, the condition of or lack of control over the collateral, failure to obtain proper documentation or any other deviations

from prudent lending practices. Adverse trends in the borrower's operation or an imbalanced position in the balance sheet which has not reached a point that jeopardizes the repayment of the loan should be assigned to this designation. Loans in which actual, not potential, weaknesses are evident and significant should be considered for a Substandard classification.

(2) *Seasoned Loan Classification.* A loan which: (i) 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.

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

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

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

(3) *Current Non-problem Classification*—Those loans that are current and are in compliance with all loan conditions and B&I regulations but do not meet all the criteria for a Seasoned Loan classification. All loans not classified as Seasoned or Current Non-problem will be reported on the quarterly status report with documentation of the details of the reason(s) for the assigned classification.

#### *Administrative*

Refer to RD Instruction 1980-E, Appendix G, Liquidation and Property Management Guide (available in any RD office) for advice on how to interact with the lender on liquidations and property management.

A. While the lender has the primary responsibility for loan servicing and protecting the collateral, the State Director is responsible for seeing that servicing as required by the Lender's Agreement and regulation is properly accomplished. Loan servicing is intended to be a preventive rather than a curative action. Prompt followup on delinquent accounts and early recognition of potential problems and pursuing a solution to them are keys to resolving many problem loan cases.

B. *Paragraph II of the Lender's Agreement.* 1. The Loan Note Guarantee is unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, use of loan funds for unauthorized purposes, negligent servicing, or failure to obtain the required security regardless of the time at which

Rural Development acquires knowledge of the foregoing. As used herein, the phrase "use of loan funds for unauthorized purposes" refers to the situation in which the lender in fact agrees with the borrower that loan funds are to be so used and the phrase "unauthorized purposes" means any purpose not listed by the Lender in the completed application as approved by Rural Development.

2. With respect to the negligent servicing and use of loan funds for unauthorized purposes, the Loan Note Guarantee is unenforceable by the lender to the extent any loss is occasioned by negligent servicing and use of loan funds for unauthorized purposes regardless of the time Rural Development acquires knowledge of the negligent servicing or use of loan funds for unauthorized purposes by the lender. Only the amount of the loss caused by negligent servicing or use of loan funds for unauthorized purposes can be withheld from the final loss claim submitted by the lender. The dollar amount withheld from the final loss claim must be ascertainable. In order to determine the final loss amount, the guaranteed loan collateral and any collateral of the guarantor(s) must be liquidated and settled or a settlement with the guarantor(s) reached. In the event there is reason to suspect the lender of negligent servicing or use of loan funds for unauthorized purposes during the life of the loan, the lender should be notified in writing that (a) the acts of negligent servicing and/or use of loan funds for unauthorized purposes will cause the guarantee to be unenforceable by the lender to the extent these acts cause a loss; (b) any decision not to honor any part of the guarantee is not possible until the loan has been liquidated and a loss established; (c) if any loss occurs Rural Development will consider whether negligent acts of the lender caused a loss after the liquidation is complete; and (d) at the time Rural Development determines a loss has occurred as the result of negligent servicing the lender may appeal any adverse decision.

3. When facts or circumstances indicate that criminal violations may have been committed by an applicant, a borrower, or third party purchaser, the State Director will refer the case to the appropriate Regional Inspector General for Investigations, Office of Inspector General (OIG), USDA, in accordance with RD Instruction 2012-B (available in any Rural Development office) for criminal investigation. Any questions as to whether a matter should be referred will be resolved through consultation with OIG for Investigations and the State Director and confirmed in writing. In order to assure protection of the financial and other interest of the government, a duplicate of the notification will be sent to the Office of General Counsel (OGC). After OIG has accepted any matter for investigation, Rural Development staff must coordinate with OIG in advance

regarding routine servicing actions on existing loans. A borrower or lender can be sued even though criminal fraud is present. If Rural Development has good reason to believe that, for example, a borrower or a lender made a false statement to obtain a loan or guarantee, or a lender submitted a loss claim to Rural Development which was false or fraudulent, it should promptly call the matter to the attention of OGC—even if no payment of the loss claim has occurred yet. (This would include those situations in which a borrower lied to the lender in order to get the loan, the lender believed the borrower and made the loan—which was guaranteed by Rural Development—and then the lender presented a loss claim to Rural Development for payment after the borrower defaulted on the loan.) Sometimes it might be necessary to ask OIG to do an investigation to establish all the aspects of the fraud. If at all possible, this should then be done prior to referral to OGC.

4. There are two methods the Government could use to seek relief for the fraud. One of the ways the Government could seek redress for the fraud is to sue under the False Claims Act (31 U.S.C. sections 3729-3731). If fraud is proven to have occurred, the False Claims Act provides for the recovery of double damages and a \$2,000 penalty (and the costs of one civil suit) for each act involving, for example: (a) Knowingly submitting to a Government employee of false or fraudulent claim for payment or approval, (b) knowingly making or using a false record or statement to get a false or fraudulent claim paid or approved, or (c) conspiring to defraud the United States by getting a false or fraudulent claim allowed or paid. Suit under the False Claims Act must be filed within six years from the date of the commission of the act (e.g., presentation of the claim to Rural Development for payment). The double damage feature ought to be a good incentive to convince OIG to undertake necessary investigations to help establish the fraud.

5. In order to decide whether to file suit, the Department of Justice will need to know such things as: What was the amount of the loan or the loss paid to the lender or holder? How much did the scheme cost the Government? What is the difference in money between what the Government paid out and what it should have paid out? Does the borrower or lender have enough assets to make it worth suing? If Rural Development can answer these questions before referral to OGC—either on its own or by using OIG—than OGC can refer the matter that much more quickly to the Justice Department.

6. There is also a way to bring suit for civil fraud by alleging that “common law” fraud occurred. This would just involve proving that a borrower or a lender falsely represented by their words or actions, a matter of fact either by alleging something in a

false or misleading manner or by concealing something that should have been disclosed; and that Rural Development was deceived by this conduct, and relied on it to its detriment. Under “common law” fraud, only single damages could be recovered, and there would be no \$2,000 penalty assessed. The action would generally have to be brought within three years from the date of the discovery of the fraud.

7. Neither the False Claims Act nor the right to bring a “common law” action for fraud precludes the Government from just suing to recover the money wrongfully or mistakenly paid by its employees. If the Justice Department decides not to pursue a civil frauds claim under the False Claims Act or “common law,” it will return the matter to OGC. Depending on what stage the proceedings were in when the matter was first referred, Rural Development could then continue to negotiate with the lender or OGC could re-refer the case to Justice for any contract-based actions, including fraud or misrepresentation based on the terms of the guarantee.

C. *The State Director will assure that:* 1. [Reserved]

2. A timetable for routine site, borrower and lender visitations by Rural Development personnel is established before the Loan Note Guarantee is issued. As a guide, visits to newly established borrowers with the lender represented should be scheduled monthly. Visits to established, nonproblem borrowers must be made at least annually except for seasoned loans which will be visited at least bi-annually. Special attention problem accounts should be visited as frequently as the need demands. If possible, these visitations should be coordinated with the lender's visits.

3. During or in preparation for field visits, the following functions are to be performed:

(a) Current financial information is obtained in advance and analyzed for trends.

(b) Any issues revealed or problems not resolved from the last visitation are included in the agenda.

(c) Collateral is observed and its condition, maintenance, protection and utilization by the borrower appears to be satisfactory.

(d) A report of the visit is made on Form RD 449-39, “Field Visit Review (Business and Industrial Loans),” or otherwise documented and included in the loan file. The report should include an opinion of the borrower's status based upon observations made during the visit.

(e) Any instructions or directions to the lender should be confirmed by letter.

4. The Program Chief or Loan Specialist will conduct an annual meeting with each lender or its agent with whom a Loan Note Guarantee(s) or Contract of Guarantee(s) is outstanding. This cannot be redelegated. These meetings may be scheduled at the

time Rural Development makes periodic field inspections to the borrower's place of business. At the meeting, a review will be made of the lender's performance in loan servicing, including enforcement of conditions and covenants in the loan agreements. The observations and results of the meeting will be documented. Form RD 449-39 may be used for this purpose. Servicing exceptions on the part of the lender which are noted by Rural Development will be confirmed by letter to the lender.

5. The lender performs an adequate analysis of borrower financial statements for Rural Development. Rural Development in turn will evaluate the lender's analysis and follow up with the lender on servicing action(s) required or negative observations not detected through the lender's analysis. The financial statement analysis of the lender, the financial statement and a memorandum reflecting Rural Development's analysis, including a comparison to previous and projected performance of the borrower, will be forwarded to the National Office, Attention: Business and Industry Division, only for the following loans:

(a) All loans within the first year of loan closing.

(b) Loans over one year old as determined by the State Director or a National Office assigned loan reviewer who is participating in a field review. In event of a disagreement between the State Director and an assigned loan reviewer as to which loans should be included, the assigned loan reviewer's decision will take precedence.

(c) All problem and delinquent loans.

(d) Loans that the State Director would like reviewed by the National Office.

6. Meetings are arranged between the lender, borrower and Rural Development to resolve any problems of late payment, etc.

D. *State Director authorities.* 1. The State Director may delegate authority for the conduct of all functions listed in §1980.469 Administrative B., except item C. 4. in Administrative B.

2. The State Director may approve B&I guaranteed loan servicing actions as authorized in separate written approval authorities issued in accordance with Subpart A of Part 1901 of this chapter.

3. Servicing actions on loans which exceed the State Director's loan approval authority are to be referred together with the State Director's recommendations to the Director, Business and Industry Division, for prior review and concurrence.

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 40403, Oct. 17, 1988; 60 FR 26350, May 17, 1995; 61 FR 18495, Apr. 26, 1996]

#### § 1980.470 Defaults by borrower.

[See §1980.63 of subpart A, of this part.]

#### *Administrative*

Refer to Appendix G of FmHA or its successor agency under Public Law 103-354 Instruction 1980-E (available in any FmHA or its successor agency under Public Law 103-354 Office) for advice on how to interact with the lender on liquidations and property management.

A. In case of any monetary or significant non-monetary default under the loan agreement, the lender is responsible for arranging a meeting with the State Director, or its designee, and borrower to resolve the problem. A memorandum of the meeting, individuals who attend, a summary of the problem and proposed solution will be prepared by the Rural Development representative and retained in the loan file. When the State Director receives a notice of default on a loan, he/she will immediately notify the National Office in writing of the details and will subsequently report the problem loan to the National Office on the quarterly status report. The State Director will notify the lender and borrower of any decision reached by Rural Development.

B. In considering servicing options, some of which are identified in paragraph X. A of Form RD 449-35, the prospects for providing a permanent cure without adversely affecting the risks of the Rural Development and the lender must become the paramount objective. Within the State Director's authority temporary curative actions such as payment deferments, moratoriums on payments or collateral subordination, if approved, must strengthen the loan and be in the best interests of the lender and Rural Development. Some of these actions may require concurrence of the holder(s). A deferral, re-scheduling, reamortization or moratorium is limited by the period of time authorized by this subpart for the purpose for which the loan(s) is made or the remaining useful life of the collateral securing the loan. For example, if the promissory note on a working capital loan is scheduled to mature in 2 years the loan could be rescheduled for 7 years or the remaining life of the collateral whichever is the lesser of the two.

C. Subsequent loan guarantee requests will be processed in accordance with provisions of §1980.473 of this subpart.

D. If the loan was closed with the multi-note option, the lender may need to possess all notes to take some servicing actions. In these situations when Rural Development is holder of some of the notes, the State Director may endorse the notes back to the lender after the State Director has sought the advice and guidance of OGC, provided a proper receipt is received from the lender which defines the reason for the transfer. Under no circumstances will Rural Development endorse the original Form RD 449-34 to the lender.



E. The State Director's authority to approve servicing actions is defined in § 1980.469, Administrative D.2.

F. Consultant services may be recommended by the State Director to assist Rural Development and the lender in determining which servicing action is appropriate. Requests for consultant services should be made by the State Director and addressed to the Administrator, Attn: Business and Industry Division. A full explanation of the loan history, an evaluation and scope of the proposed study and the need should be included in the request.

G. When the National Office determines it is necessary on individual cases, due to some special servicing requirements, it may, at its option, assume the servicing responsibility on individual cases.

H. The State Director will report all delinquent and problem loans quarterly to the Director, Business and Industry Division, by the 10th day of January, April, July and October.

I. The State Director will notify the Finance Office by memorandum of any change in payment terms such as reamortizations or interest rate adjustments and effective dates of any changes resulting from servicing actions.

[52 FR 6501, Mar. 4, 1987, as amended as 80 FR 9908, Feb. 24, 2015; 80 FR 9908, Feb. 24, 2015]

**§ 1980.471 Liquidation.**

(See § 1980.64 of subpart A of this part.)

Refer to RD Instruction 1980-E, Appendix G, Liquidation and Property Management Guide (available in any Rural Development office) for advice on how to interact with the lender on liquidations and property management.

(a) Collateral acquired by the lender can only be released after a complete review of the proposal.

(1) There may be instances when the lender acquires the collateral of a business where the cost of liquidation exceeds the potential recovery value of the collection. Whenever this occurs the lender with the concurrence of Rural Development on the collateral in lieu of liquidation.

(2) Sale of acquired collateral to the former borrower, former borrower's stockholder(s) or officer(s), the lender or lender's stockholder(s) or officer(s) must be based on an arm's length transaction with the concurrence of Rural Development.

*Administrative*

A. The State Director determines which Rural Development personnel will attend meetings with the lender.

B. Introduction to Paragraph XI and Paragraph XI B of the Lender's Agreement. Rural Development will exercise the option to liquidate only when there is reason to believe the lender is not likely to initiate liquidation efforts that will result in maximum recovery. When there is reason to believe the lender will not initiate efforts that will maximize recovery through liquidation, the State Director will forward the lender's liquidation plan, if available with appropriate recommendations, along with the State Director's exceptions to the lender's plan, if any, to the Director, Business and Industry Division, for evaluation and approval or rejection of the State Director's recommendation regarding liquidation. Only when compromise cannot be reached between Rural Development and the lender on the best means of liquidation will Rural Development consider conducting the liquidation. The State Director has no authority to exercise the option to liquidate without National Office approval. When Rural Development liquidates, reasonable liquidation expenses will be assessed against the proceeds derived from the sale of the collateral. In such instances the State Director will send to the Finance Office Form RD 1980-45, "Notice of Liquidation Responsibility."

C. State Directors are authorized to approve lender liquidation plans as authorized on separate written approval authorities issued in accordance with subpart A of part 1901 of this chapter. Within delegated authorities, the State Director may approve a written partial liquidation plan submitted by the lender covering collateral that must be immediately protected or cared for in order to preserve or maintain its value. Approval of the partial liquidation plan must be in the best interest of the government. The approved partial liquidation plan is only good for those actions necessary to immediately preserve and protect the collateral and must be followed by a complete liquidation plan prepared by the lender in accordance with the requirements of paragraph XII A of the Lender's Agreement.

D. Paragraph XI D. State Directors are responsible for review and acceptance of accounting reports as submitted by lenders and for submission of such reports to lenders when Rural Development is conducting liquidation, after they have been submitted with the State's recommendations to the Director, Business and Industry Division for prior review.

E. Paragraph XI E 2. State Directors are authorized to approve final reports of loss from the lender in separate written approval

authorities issued in accordance with subpart A of part 1901 of this chapter. The State Director will submit to the Finance Office for payment any loss claims of the lender on Form RD 103-354 449-30, "Loan Note Guarantee Report of Loss." The Finance Office forwards loss payment checks to the State Director for delivery to lender. When a loss claim is involved on a particular loan guarantee, ordinarily one "Estimated Loss Report" will be authorized. Only one final "Report of Loss" will be authorized. A final Form RD 449-30 must be filed with the Finance Office at the completion of all liquidations. Finance Office will use this form to close out the account.

F. Paragraph XI E 3. Final loss payments will be made within the 60 days required but only after a review by Rural Development to assure that all collateral for the loan has been properly accounted for and liquidation expenses are reasonable and within approved limits. State Directors are responsible to see that such reviews are accomplished by the State within 30 days and final loss claims in excess of the State Director's approval authority are forwarded to be accepted or otherwise resolved by the Director, Business and Industry Division within the 60-day period. Any estimated loss payments made to the lender must be taken into consideration when paying a final loss on the Rural Development guaranteed loan. The estimated loss payment must be treated as a deduction from the principal amount of the loan and interest cannot be accrued on the principal amount of the loan that is equal to the estimated loss payment. Community and Business Program Chiefs (C&BP), Business and Industry Chiefs or Loan Specialists will conduct such reviews. The State Director may request National Office assistance in the conduct of any review. All reviews for final loss claim in excess of the State Director's approval authority (See subpart A of part 1901 of this Chapter) will be submitted to the National Office, Business and Industry Division, for concurrence prior to the State Director's approval of the claim. Close scrutiny of liquidation proceeds and their application in accordance with lien priorities is required. Before final loss payments are approved and to assist in the required review, the C&BP Chief, B&I Chief or Loan Specialist will prepare a narrative history of the guarantee transaction which will serve as the summary of occurrence which led to failure of the borrower and actions taken to maximize loan recovery. The original of this report will be filed in the loan case file. A copy of this report together with the review of the final loss claim will be included in the material sent to the Director, B&I Division, for review prior to approval of final loss payments.

#### § 1980.472 Protective advances.

[See § 1980.65 subpart A of this part.]

##### *Administrative*

Refer to RD Instruction 1980-E, Appendix G, Liquidation and Property Management Guide (available in any Rural Development office) for advice on how to interact with the lender on liquidations and property management.

A. Protective advances will not be made in lieu of additional loans, in particular, working capital loans. Protective advances are advances made by the lender for the purpose of preserving and protecting the collateral where the debtor has failed to and will not or cannot meet its obligations. Ordinarily, protective advances are made when liquidation is contemplated or in process. A precise rule of when a protective advance should be made is impossible to state. A common, but by no means the only, period when protective advances might be needed is during liquidation. At this point, the borrower and success of the project are no longer of paramount importance, but preserving collateral for maximum recovery is of vital importance. Elements which should always be considered include how close the project is to liquidation or default, how much control the borrower will have over the funds, what danger is there that collateral may be destroyed and whether there will be a good chance of saving the collateral later if a protective advance in contemplation of liquidation is made immediately. A protective advance *must* be an indebtedness of the borrower.

B. The State Director must approve, in writing, all protective advances on loans within his/her loan approval authority which exceed a total cumulative advance of \$500 to the same borrower. Protective advances must be reasonable when associated with the value of collateral being preserved.

C. When considering protective advances, sound judgment must be exercised in determining that the additional funds advanced will actually preserve collateral interests and recovery is actually enhanced by making the advance.

#### § 1980.473 Additional loans or advances.

(Refer to paragraph XIII of Form RD 449-35.)

##### *Administrative*

Only the State Director shall approve within his/her loan approval authority additional nonguaranteed loans or advances prior to or subsequent to the issuance of the Loan Note Guarantee. The State Director shall determine that there will be no adverse changes in the borrower's financial situation and that such loan or advance is not likely

## § 1980.474

to adversely affect the collateral or the guaranteed loan.

### § 1980.474 [Reserved]

### § 1980.475 Bankruptcy.

(a) It is the lender's responsibility to protect the guaranteed loan debt and all the collateral securing it in bankruptcy proceedings. These responsibilities include but are not limited to the following:

(1) The lender will file a proof of claim where necessary and all the necessary papers and pleadings concerning the case.

(2) The lender will attend and where necessary participate in meetings of the creditors and all court proceedings.

(3) The lender, whose collateral is subject to being used by the trustee in bankruptcy, will immediately seek adequate protection of the collateral.

(4) Where appropriate, the lender should seek involuntary conversion of a pending Chapter 11 case to a liquidating proceeding under Chapter 7 or under Section 1123(b) (4) or seek dismissal of the proceedings.

(5) When permitted by the Bankruptcy Code, the lender will request modification of any plan of reorganization whenever it appears that additional recoveries are likely.

(6) Rural Development will be kept adequately and regularly informed in writing of all aspects of the proceedings.

(b) In a Chapter 11 reorganization, if an independent appraisal of collateral is necessary in Rural Development's opinion, Rural Development and the lender will share such appraisal fee equally.

(c) Expenses on Chapter 11 reorganization, liquidating Chapter 11 or Chapter 7 (unless the lender is directly handling the liquidation) cases are not to be deducted from the collateral proceeds.

(d) *Estimated loss payments.* See paragraph XVI of Form RD 449-35.

#### *Administrative*

Refer to appendix G of this subpart (available in any Rural Development office) for advice on how to interact with the lender on liquidation and property management.

A. It is the responsibility of the State Program Chief to see that Rural Development is

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being fully informed by the lender in all bankruptcy cases.

B. All bankruptcy cases should be reported immediately to the National Office by utilizing and completing a problem/delinquent status report. The Regional Attorney must be informed promptly of the proceedings.

C. Chapter 11 pertains to a reorganization of a business contemplating an ongoing business rather than a termination and dissolution of the business where legal protection is afforded to the business as defined under Chapter 11 of the Bankruptcy Code. Consequently, expenses incurred by the lender in a Chapter 11 reorganization can never be liquidation expenses unless the proceeding becomes a Liquidating 11. If the proceeding should become a Liquidating 11, reasonable and customary liquidation expenses may be deducted from proceeds of collateral provided the lender is doing the actual liquidation of the collateral as provided by the Lender's Agreement. Chapter 7 pertains to a liquidation of the borrower's assets. If and when liquidation of the borrower's assets under Chapter 7 is conducted by the bankruptcy trustee, the lender cannot claim expenses.

D. The State Director may approve the repurchase of the unpaid guaranteed portion of the loan from the holder(s) to reduce interest accruals during Chapter 7 proceedings or after a Chapter 11 proceeding becomes a liquidation proceeding. On loans in bankruptcy, any loss payment must be halted in accordance with the Lender's Agreement and carry the approval of the State Director.

E. The State Director must approve in advance and in writing the lender's estimated liquidation expenses on loans in liquidation bankruptcy. These expenses must be reasonable and customary and not in-house expenses of the lender.

F. The lender is responsible for advising Rural Development of the completion of the Chapter 11 reorganization plan; however, the Rural Development servicing office will monitor the lender's files to ensure timely notification of servicing actions.

G. If an estimated loss claim is paid during the operation of the reorganization plan, and the borrower repays in full the remaining balance of the loan as set forth in the plan without an additional loss sustained by the lender, a Final Report of Loss is not necessary. The Finance Office will close out the estimated loss account as a Final Loss at the time notification of payment in full is received.

H. If the bankruptcy court attempts to direct that loss payments will be applied to the account other than the unsecured principal first and then to unsecured accrued interest, the lender is responsible for notifying the Rural Development servicing office immediately. The Rural Development servicing office will then obtain advice from OGC on

what actions Rural Development should take.

I. Protective Advances—Authorized protective advances may be included with the estimated loss payment associated with the Chapter 11 reorganization provided they were incurred in connection with liquidation of the account prior to the borrower filing bankruptcy.

J. Adequate Protection—The bankruptcy court can order protection of the collateral while the borrower is in a reorganization bankruptcy. The lender whose collateral is subject to being used by the trustee in bankruptcy should immediately seek adequate protection of the collateral, including petitioning for a super priority.

#### § 1980.476 Transfer and assumptions.

(a) All transfers and assumptions will be approved in writing by Rural Development. Such transfers and assumptions will be to an eligible applicant.

(b) Transfers and assumptions will be considered without regard to § 1980.451 (d) of this subpart.

(c) The borrower will submit to Rural Development Form RD 449-4 for the required character evaluation prior to the execution of the Assumption Agreement.

(d) Available transfer and assumption options to eligible borrowers include the following:

(1) The total indebtedness may be transferred to another borrower on the same terms.

(2) The total indebtedness may be transferred to another borrower on different terms not to exceed those terms for which an initial loan can be made.

(3) Less than the total indebtedness may be transferred to another borrower on the same terms.

(4) Less than the total indebtedness may be transferred to another borrower on different terms.

(e) In any transfer and assumption case, the transferor, including any guarantor(s), may be released from liability by the lender with Rural Development written concurrence only when the value of the collateral being transferred is at least equal to the amount of the loan or part of the loan being assumed. If the transfer is for less than the entire debt:

(1) Rural Development must determine that the transferor and any guarantors have no reasonable debt-paying

ability considering their assets and income at the time of transfer.

(2) The Rural Development County Committee must certify that the transferor has cooperated in good faith, used due diligence to maintain the collateral against loss, and has otherwise fulfilled all of the regulations of this subpart to the best of borrower's ability.

(f) Any proceeds received from the sale of secured property before a transfer and assumption will be credited on the transferor's guaranteed loan debt in inverse order of maturity before the transfer and assumption transaction is closed.

(g) When the transferee makes any cash downpayment in connection with the transfer and assumption:

(1) The lender will employ an independent appraiser, subject to concurrence of both the transferor and transferee, to make an appraisal to determine the fair market value of all the collateral securing the loan. Such appraisal report fee and any other costs related thereto will be paid by the transferor and the transferee as they mutually agree.

(2) The market value of the secured property being acquired by the transferee, plus any additional security the transferee proposes to give to secure the debt, will be adequate to secure the balance of the total guaranteed loan owed, plus any prior liens. If any cash downpayment is made, it may be paid directly to the transferor as payment for equity in the project provided:

(i) The lender recommends and Rural Development approves the case downpayment be released to the transferor. The lender and Rural Development may require that an amount be retained for an established period of time in escrow as a reserve account as security for use against any future default on the loan. Any interest accruing on such an escrow account may be paid periodically to the transferor.

(ii) Any payments that are to be made by the transferee to the transferor in respect to the downpayment do not suspend the transferee's obligation to continue to meet the guaranteed loan payments as they come due under the terms of the assumption.

(iii) The transferor will agree not to take any actions against the transferee

in connection with such transfer in the future without first obtaining the written approval of Rural Development and the lender.

(iv) The lender determines that there is repayment ability for the guaranteed debt assumed and any other indebtedness of the transferee.

(h) The lender will make, in all cases, a complete credit analysis to determine viability of the project, subject to Rural Development review and approval, including any requirement for deposits in an escrow account as security to meet its determined equity requirements for the project.

(i) The lender will issue a statement to Rural Development that the transaction can be properly transferred and the conveyance instruments will be filed, registered, or recorded as appropriate and legally permissible.

(j) Rural Development will not guarantee any additional loans to provide equity funds for a transfer and assumption.

(k) The assumption will be made on the lender's form of assumption agreement.

(l) The assumption agreement will contain the Rural Development case number of the transferor and transferee.

(m) Loan terms cannot be changed by the Assumption agreement unless previously approved in writing by Rural Development, with the concurrence of any holder(s) and concurrence of the transferor (including guarantors) if they have not been released from personal liability. Any new loan terms cannot exceed those authorized in this subpart. The lender's request will be supported by:

(1) An explanation of the reasons for the proposed change in the loan terms.

(2) Certification that the lien position securing the guaranteed loan will be maintained or improved, proper hazard insurance will be continued in effect and all applicable Truth in Lending requirements will be met.

(n) In the case of a transfer and assumption, it is the lender's responsibility to see that all such transfers and assumptions will be noted on all originals of the Loan Note Guarantee(s). The lender will provide Rural Development a copy of the transfer and as-

sumption agreement. Notice must be given by the lender to Rural Development before any borrower or guarantor is released from liability.

(o) The holder(s), if any, need not be consulted on a transfer and assumption case unless there is a change in loan terms.

(p) If a loss should occur upon consummation of a complete transfer of assets and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantor) is released from personal liability, as provided in paragraph (e) of this section, the lender, if it holds the guaranteed portion, may file an estimated "report of Loss" on Form RD 449-30 to recover its pro rata share of the actual loss at that time. In completing Form RD 449-30, the amount of the debt assumed will be entered on Line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the transferee, will be entered on Form 449-30, lines 13 and 14.

#### *Administrative*

Refer to appendix G of this subpart (available in any Rural Development Office) for advice on how to interact with the lender on liquidations and property management.

A. The State Director may approve all transfer and assumption provisions if the guaranteed loan debt balance is within his/her individual loan approval authority including:

1. Consent in writing to the release of the transferor and guarantors from liability.
2. Any changes in loan terms.

NOTE: The assumption will be reviewed as if it were a new loan. The Loan Note Guarantee(s) will be endorsed in the space provided on the form(s).

B. A copy of the Assumption Agreement will be retained in the Rural Development file. The State Director will notify the Finance Office of all approved transfer and assumption cases on Form RD 1980-7, "Notice of Transfer and Assumption of a Guaranteed Loan," and submit Form RD 1980-50 for all new borrowers and Form RD 1980-51, "Add, Change, or Delete Guaranteed Loan Record," in order that Finance records may be adjusted accordingly.

C. Any transfer and assumption of less than the total indebtedness must be submitted to the Director, Business and Industry Division, for review and concurrence.

D. If the guaranteed loan debt balance is in excess of the State Director's loan approval

authority, the State Director will forward the file, together with his/her recommendations, to the National Office for approval, ATTN: Business and Industry Division.

**§§ 1980.477–1980.480 [Reserved]**

**§ 1980.481 Insured loans.**

Applications from private parties for whom Rural Development and such borrowers agree that a guarantee lender is not available and from public bodies shall be processed as insured loans in accordance with the applicable provisions of this subpart and subpart A of part 1942 of this chapter, including the credit elsewhere requirement, except as provided in § 1980.488 of this subpart which provides for the guarantee of taxable bond issues of public bodies. Loans to public bodies will be used only to finance:

(a) Community facilities as defined in § 1980.402 of this subpart, and

(b) Constructing and equipping industrial plants for lease to private businesses (not including loans for operating such businesses) when the requesting loan is not available under subpart A of part 1942 of this chapter.

*Administrative*

A. Without specific written delegated authority, all insured loans require National Office concurrence prior to approval.

B. Applications from private parties for insured loans will not be encouraged.

C. Loan closings on insured loans will be in accordance with this subpart, the Regional Attorney and applicable provisions of subpart A of part 1942 of this chapter.

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 40403, Oct. 17, 1988]

**§§ 1980.482–1980.487 [Reserved]**

**§ 1980.488 Guaranteed industrial development bond issues.**

(a) Loans to public bodies will be guaranteed only in connection with the issuance of any class or series of industrial development bonds (as defined in section 103(c)(2) of the Internal Revenue Code of 1954, as amended (IRC)), the interest on which is included in gross income under IRC. No part of the loan guaranteed by Rural Development may extend to any class or series of industrial development bonds the interest on which is excludable from gross income under section 103(a)(1) of such

Code. Before the execution of any Loan Note Guarantee, the lender will furnish Rural Development evidence regarding interest on bonds being taxable for Federal income tax purposes. Such evidence may be in the form of an unqualified opinion of a recognized bond counsel or a ruling from the Internal Revenue Service. Guaranteed loans to public bodies can only be used for constructing and equipping industrial plants for lease to private businesses engaged in industrial manufacturing and does not provide funds for debt refinancing, working capital and other miscellaneous fees, charges or services. The lessee will have to provide necessary capital and sufficient financial strength to provide for a sound project.

(b) If Rural Development and the applicant agree that a guaranteed lender is not available, the application may be considered for an insured loan under the provisions of § 1980.481 of this subpart.

*Administrative*

The lender is responsible for notifying the Rural Development of the taxability of the proposed bond issue.

**§ 1980.489 [Reserved]**

**§ 1980.490 Business and industry buydown loans.**

(a) *Introduction.* This section contains regulations for the Business and Industry Buydown (BIB) loan program. The purpose of this program is to provide loan guarantees with reduced interest rates to the borrowers, under the authority of Public Law 103-50 (107 Stat. 241). All provisions of Subparts A and E of this part apply to BIB loans except as provided in this section. All forms used in connection with a BIB loan will be those used with other B&I loans, except as provided in this section.

(b) *Location of applicants.* Businesses eligible for BIB loans shall be located within the area covered by the Presidential disaster declaration related to Hurricanes Andrew or Iniki or Typhoon Omar.

(c) *Interest rate.* (1) If the interest rate charged by the lender (note rate) on a BIB loan is a variable rate in accordance with § 1980.423 of this subpart, the base rate must be the prime rate as published in the Wall Street Journal

and the note rate must not exceed the prime rate as published in the Wall Street Journal by more than 100 basis points. If the note rate is fixed, it must not exceed by more than 100 basis points the prime rate as published in the Wall Street Journal on the day the Loan Note Guarantee is issued.

(2) The note rate for a BIB loan must be the same for the entire loan, including both the guaranteed and unguaranteed portion.

(d) *Interest rate buydown.* (1) To be eligible for a BIB loan, the business must provide evidence and the lender and Rural Development must determine that, at least for the first year of the loan, the business will not have adequate cash flow to meet all of its financial obligations including the required payments on the proposed loan at the note rate, but that it can meet all obligations if the interest rate is reduced by 100 basis points.

(2) During the first year after a Loan Note Guarantee is issued for a BIB loan, Rural Development will pay one percentage point of interest on the loan directly to the lender, thereby reducing the interest due from the borrower by this amount. This interest payment shall be applied to both the guaranteed and unguaranteed portion of the loan pro rata according to Rural Development regulations.

(3) Interest payments by Rural Development may continue in subsequent years if the borrower's cash flow is insufficient to pay all obligations including the required payments on the proposed loan at the note rate. On or about each yearly anniversary of the promissory note the lender may submit a request to Rural Development for continued interest payments, along with current profit and loss and cash flow statements and cash flow projections to show that the continued payments are needed for another year. Rural Development will promptly review the material submitted, determine whether the continued interest payments by Rural Development are needed to provide for sufficient cash flow in the coming year, and notify the lender in writing of the determination. Once interest payments by Rural Development are terminated because the borrower's cash flow is determined to

be sufficient to pay the note rate, such payments will not be made in subsequent years even if the cash flow decreases.

(4) This section does not authorize interest payments by Rural Development on B&I loans other than those approved under this section. To be eligible for interest payments by Rural Development, the loan must be designated as a BIB loan when approved and funded from funds authorized by Public Law 103-50.

(e) *Duration of BIB loan program.* No BIB loan will be obligated after September 30, 1994.

(f) *Administrative procedures.* (1) A lender that wants a B&I application considered under BIB authorities should so indicate by notation on Form RD 449-1 or by letter submitted with the Form RD 449-1.

(2) Rural Development will identify a loan as a BIB loan by notation in the top margin of Form RD 449-29 and by the "type of assistance" code listed on Form RD 1940-3, in accordance with the Forms Manual Insert.

(3) Rural Development will set out the interest buydown provisions in accordance with this section in the Conditional Commitment for Guarantee. When the Loan Note Guarantee is issued, the lender and Rural Development will execute Form RD 1980-48, "Business and Industry Interest Rate Buydown Agreement."

(4) The lender will request the interest payment from Rural Development by submitting Form RD 1980-23, "Request for Business and Industry Interest Buydown Payment," to the Rural Development servicing office. Each request must cover exactly 1 year and be filed within 30 days after the anniversary date of the promissory note, except when interest buydown is terminated between anniversary dates. The Rural Development servicing office will review each request for consistency with Rural Development regulations and the Form RD 1980-48 and, if the claim is valid, will approve it and forward it to the Finance Office for issuance of the payment to the lender.

(g) *Termination of interest buydown.* When Rural Development purchases a portion of a loan, interest buydown will cease on the entire loan. Interest

buydown will also cease upon termination of the Loan Note Guarantee or assumption/transfer of the loan. In the event of any action that causes the interest buydown to terminate, the lender will submit a claim on Form RD 1980-23 for interest buydown payments through the date of termination.

(h) *Loan purposes*—(1) *Refinancing*. Section 1980.452 *Administrative C.1.* (d) of this subpart does not apply to BIB loans if refinancing is needed as a direct consequence of the disaster. In such cases, 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.

(2) *Agriculture*. Section 1980.412 (e) of this subpart does not apply to BIB loans. BIB loans may be guaranteed for agriculture production, which means the cultivation, production (growing), and harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds, and marine life, either for fiber or food for human consumption), and disposal or marketing thereof, the raising, housing, feeding (including commercial custom feedlots), breeding, hatching, control and/or management of farm or domestic animals.

(3) *Other eligible businesses*. Eligible types of businesses also include:

(i) Commercial nurseries primarily engaged in the production of ornamental plants and trees and other nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of vegetables from seed to the transplant stage.

(ii) Forestry which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

(iii) The growing of mushrooms or hydroponics.

(4) *Recreation and tourism*. Loans may be guaranteed for tourist or recreation facilities except for hotels, motels, bed and breakfasts, race tracks, gambling, or golf courses.

(5) *Meat processing facilities*. The provisions of §1980.411 (a)(8) of this subpart

will not apply to BIB loans. Loans, including working capital or debt refinancing, may be guaranteed for businesses engaged in meat or poultry processing.

(i) *Small Business Administration*. Section 1980.451 (c) of this subpart will not apply to BIB loans. Applicants eligible for Small Business Administration assistance will be advised of the availability of that assistance.

(j) *Loan guarantee limits*. Notwithstanding the provisions of §1980.420 of this subpart, the guarantee percentage on any BIB loan will not exceed 80 percent.

(k) *Credit quality analysis*. In analyzing the credit quality of a proposed loan to a business that has lost assets to a natural disaster, primary emphasis will be placed on the operating history of the business, rather than its current financial condition. If the business has a sound, profitable and successful history prior to the disaster and there are reasonable projections to ensure it can operate successfully in the future, the proposed loan may be approved even if disaster losses have caused somewhat less equity and/or collateral than would normally be expected for a B&I loan guarantee. If the business appears to have had an unprofitable operation or inadequate cash flow prior to the disaster, the proposed loan guarantee will not be approved.

(l) *Equity requirements*. The equity requirements of §1980.441 of this subpart do not apply to BIB loans.

(m) *Collateral*. Section 1980.443 *Administrative A. 2., 3., and 4.* of this subpart will not apply to BIB loans. Collateral may be considered at its current market value without discount. Work-in-process inventory may be valued at the estimated market value of the finished product. All costs of producing the finished product must be included in the cash flow analysis.

(n) *Conditional approval*. A Form RD 449-14 may be issued prior to receipt of specific items needed to complete an application package provided:



(1) The lender and/or borrower demonstrates to the Government's satisfaction that it has a need for a prompt indication of the availability of the proposed loan guarantee and the conditions under which a guarantee are available;

(2) The specific items missing from the application package will take considerable time to obtain;

(3) The lender requests a commitment prior to providing the items;

(4) The attachment to Form RD 449-14 clearly states that the commitment is conditioned on satisfactory completion of the missing item(s) and a guarantee will not be issued unless all conditions of these regulations are met; and

(5) No Form RD 449-14 will be issued prior to the obligation date established with the Finance Office.

(o) *Financial statements.* All requirements of §1980.451(i)(13) of this subpart will apply except that for BIB loans minimum annual financial statements will be required as follows:

(1) For nonagricultural borrowers with a B&I indebtedness of \$500,000 or less, an annual compilation by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970.

(2) For nonagricultural borrowers with a B&I indebtedness of \$500,001 through \$1 million, an annual review by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970.

(3) For nonagricultural borrowers with a B&I indebtedness of more than \$1 million, an annual audited financial statement by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970.

(4) All agricultural loans will require annual financial statements per §1980.113 of subpart B of this part.

(p) *Agriculture loans.* The following additional provisions apply to BIB loan guarantees for businesses engaged in agriculture production:

(1) *General policy.* Paragraph (p) of this section contains the regulations for making BIB loans to farmers for agricultural purposes. BIB loans made for

agricultural purposes are subject to the provisions in subparts A and E of this part except as specified. In addition, certain sections of subpart B of this part referenced in this section are applicable subject to the limitations outlined in this section. Several key loan processing and loan servicing requirements stipulated in subpart B of this part do not apply to loans made to borrowers under this section.

(2) *Type of guarantee.* BIB loans will be processed under the Loan Note Guarantee option of §1980.101 (e)(1) of subpart B of this part Only. No loan will be processed for a Contract of Guarantee (Line of Credit) under §1980.101 (e)(2) of subpart B of this part.

(3) *Farm size.* Loan guarantees may be made under the BIB program without regard to the size of the farming operation.

(4) *Filing and processing preapplications and applications.* If the applicant has already developed material for an Rural Development Farmer Programs loan or if the financial and production information required by §1980.113 of subpart B of this part is needed to document repayment ability or is required by the lender, §1980.113 of subpart B of this part may apply with the following exceptions:

(i) Lines of credit will not be guaranteed.

(ii) If the application is submitted solely for a farm as defined in §1980.106(b) of subpart B of this part, Form RD 1980-25, "Farmer Programs Application," or Form RD 449-1, will be used as an application for assistance.

(5) *Evaluation of applications.* If the application is developed and processed in accordance with §1980.113 of subpart B of this part, the provisions outlined in §1980.114 of subpart B of this part apply with the following exceptions:

(i) Timeframe requirements for the evaluation of applications and references to the Approved Lender Program are not applicable.

(ii) County Committee reviews of applications processed under this section will not be required. If the loan approval official finds the applicant is

not eligible, the applicant will be notified in writing of the reasons for disapproval and his/her rights through inclusion of the Equal Credit Opportunity Act (ECOA) statement. An opportunity will be given for an appeal as set out in subpart B of part 1900 of this chapter.

(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 requirements found in 7 CFR part 1970 will apply to loans made to enterprises engaged in agricultural production.

[52 FR 6501, Mar. 4, 1987, as amended at 81 FR 11048, Mar. 2, 2016]

#### §§ 1980.491–1980.494 [Reserved]

#### § 1980.495 RD forms and guides.

The following RD 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 RD 449-1. "Application for Loan and Guarantee" is referred to as "Appendix A," or successor form,

(b) The "Certificate of Incumbency and Signature" or successor form,

(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 RD 449-14, "Conditional Commitment for Guarantee, " or successor form.

(g) "Liquidation and Property Management Guide" as found in RD Instruction 1980-E 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 RD 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, or their successor forms.

(j) [Reserved]

(k) "Regulations for Loan Guarantees for Disaster Assistance for Rural

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Business Enterprises” and Forms RD 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” or their successor forms.

[80 FR 9910, Feb. 24, 2015]

### § 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 RD Instruction 1980-E, Appendix G, Liquidation and Property Management Guide (available in any Rural Development 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 Rural Development 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 Rural Development 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. Rural Development 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 Rural Development’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 Rural Development’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 forwarded to Rural Development 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 Rural Development National Office authorizing loan guarantee containing conditions (if applicable);
- (2) Form RD 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 RD 449-35.
- (8) Proposed Form RD 449-34.
- (9) Proposed Form RD 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 Rural Development on whether it may issue the LOAN NOTE GUARANTEE AFTER THE LOAN IS CLOSED. SUCH ADVICE IS FOR THE benefit of RURAL DEVELOPMENT ONLY AND DOES NOT RELIEVE THE LENDER OF ITS RESPONSIBILITIES UNDER RURAL DEVELOPMENT 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 Emergency 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.

(3) *Agriculture.* Section 1980.412(e) of this subpart does not apply to BID loans. BID loans may be guaranteed for agriculture production, which means the cultivation, production (growing), and harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds, and marine life, either for fiber or food for human consumption), and disposal or marketing thereof, the raising, housing, feeding (including commercial custom feedlots), breeding, hatching, control and/or management of farm or domestic animals.

(4) *Other eligible businesses.* Eligible types of businesses also include:

(i) Commercial nurseries primarily engaged in the production of orna-

mental plants and trees and other nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of vegetables from seed to the transplant stage.

(ii) Forestry which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

(iii) The growing of mushrooms or hydroponics.

(5) *Recreation and tourism.* Loans may be guaranteed for tourist or recreation facilities except for hotels, motels, bed and breakfasts, race tracks, gambling, or golf courses.

(6) *Meat processing facilities.* The provisions of §1980.411(a)(8) of this subpart will not apply to BID loans. Loans, including working capital or debt refinancing, may be guaranteed for businesses engaged in meat or poultry processing.

(d) *Federal Emergency Management Agency (FEMA).* BID loans may be approved only to the extent that the assistance is not available from FEMA. The case file will be documented to show that FEMA assistance was not available or that FEMA assistance is not adequate to cover the costs as a consequence of the natural disaster.

(e) *Small Business Administration.* Section 1980.451 of this subpart will not apply to BID loans. Applicants eligible for Small Business Administration assistance will be advised of the availability of that assistance.

(f) *Loan guarantee limits.* Notwithstanding the provisions of §1980.420 of this subpart, the guarantee percentage on any BID loan will not exceed 80 percent.

(g) *Credit quality analysis.* In analyzing the credit quality of a proposed loan to a business that has lost assets to a natural disaster, primary emphasis will be placed on the operating history of the business, rather than its current financial condition. If the business has a sound, profitable and successful history prior to the disaster and there are reasonable projections to ensure it can operate successfully in the future, the proposed loan may be approved even if disaster losses have caused somewhat less equity and/or

collateral than would normally be expected for a B&I guarantee. If the business appears to have had an unprofitable operation or inadequate cash flow prior to the disaster, the proposed loan guarantee will not be approved.

(h) *Equity requirements.* The equity requirements of §1980.441 of this subpart do not apply to BID loans.

(i) *Feasibility studies.* Feasibility studies as required by §1980.442 of this subpart will not be required for BID loans if the business has a successful financial history that supports future plans and projections that indicate a successful operation with adequate repayment ability.

(j) *Collateral.* Section 1980.443, Administrative A. 2., 3., and 4. of this subpart will not apply to BID loans. Collateral may be considered at its current market value without discount. Work-in-process inventory may be valued at the estimated market value of the finished product. All costs of producing the finished product must be included in the cash flow analysis.

(k) *Conditional approval.* A Form RD 449-14, "Conditional Commitment for Guarantee," may be issued prior to receipt of specific items needed to complete an application package provided:

(1) The lender and/or borrower demonstrates to the Government's satisfaction that it has a need for a prompt indication of the availability of the proposed loan guarantee and the conditions under which a guarantee are available;

(2) The specific items missing from the application package will take considerable time to obtain;

(3) The lender requests a commitment prior to providing the items;

(4) The attachment to Form RD 449-14 clearly states that the commitment is conditioned on satisfactory completion of the missing item(s) and a guarantee will not be issued unless all conditions of these regulations are met; and

(5) No Form RD 449-14 will be issued prior to the obligation date established with the Finance Office.

(l) *Financial statements.* All requirements of §1980.451(i)(13) of this subpart will apply except that it is modified for BID loans to require minimum annual financial statements as follows:

(1) For nonagricultural borrowers with a B&I indebtedness of \$500,000 or less, an annual compilation by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970.

(2) For nonagricultural borrowers with a B&I indebtedness of \$500,001 through \$1,000,000, an annual review by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970.

(3) For nonagricultural borrowers with a B&I indebtedness of more than \$1 million, an annual audited financial statement by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970.

(4) All agricultural loans will require annual financial statements per §1980.113 of subpart B of part 1980 of this chapter.

(m) *Agriculture loans.* The following additional provisions apply to BID loan guarantees for businesses engaged in agriculture production:

(1) *General policy.* This portion of this section contains the regulations for making BID loans to farmers for agricultural purposes. BID loans made for agricultural purposes are subject to the provisions in subparts A and E of part 1980 of this chapter except as specified. In addition, certain sections of subpart B of part 1980 of this chapter referenced in this section are applicable subject to the limitations outlined in this section. BID loans made for agricultural purposes are made under the Business and Industry authority of section 310B of the Consolidated Farm and Rural Development Act of 1972, as amended. In this regard, several key loan processing and loan servicing requirements stipulated in subpart B of part 1980 of this chapter do not apply to loans made to borrowers under this section. Only the material cross-referenced to subpart B of part 1980 of this chapter is to be utilized in lieu of or in addition to the requirements contained in subpart E of part 1980 of this chapter in processing loans under this section.

(2) *Type of guarantee.* See §1980.101(e)(1) of subpart B of part 1980

of this chapter. BID loans will be processed under the Loan Note Guarantee option ONLY. No loan will be processed for a Contract of Guarantee (Line of Credit) under this section.

(3) *Abbreviations and definitions.* (i) The abbreviations and definitions found in §1980.106 of subpart B of part 1980 of this chapter will apply to loans made under this section except for “family farm,” “related by blood or marriage,” and “subsequent loans.”

(ii) Loan guarantees may be made under the BID program without regard to the size of the farming operation.

(4) *Loan eligibility requirements.* In addition to the requirements set forth in this subpart, the requirements in §1980.175(b) of subpart B of part 1980 of this chapter regarding controlled substances are applicable.

(5) *Filing and processing preapplications and applications.* If the applicant has already developed material for an Rural Development Farmer Programs loan or if the financial and production information required by §1980.113 of subpart B of part 1980 of this chapter is needed to document repayment ability or is required by the lender, §1980.113 of subpart B of part 1980 of this chapter may apply with the following exceptions:

(i) Lines of credit will not be guaranteed.

(ii) Timeframes for applicant/lender notification in §1980.113 of subpart B of part 1980 of this chapter do not apply.

(iii) If the application is submitted solely for a farm as defined in §1980.106(b) of subpart B of part 1980 of this chapter, Form RDal Development 449–1, “Application for Loan and Guarantee,” will be used as an application for assistance.

(6) *Evaluation of applications.* If the application is developed and processed in accordance with §1980.113 of subpart B of part 1980 of this chapter, the provisions outlined in §1980.114 of subpart B of part 1980 of this chapter applies with the following exceptions:

(i) Timeframe requirements for the evaluation of applications and references to the Approved Lender Program are not applicable.

(ii) County Committee reviews of applications processed under this section will not be required. If the loan ap-

proval official finds the applicant is not eligible, the applicant will be notified in writing of the reasons for disapproval and the opportunity given for an appeal as set out in subpart B of part 1900 of this chapter.

(7) *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 operable 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. All accrued interest will be due at least annually from the date of the debt instrument. In no case will interest be deferred. 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.

(8) *BID agriculture 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 part 1980 of this chapter except for those stipulated in paragraphs (c)(1) (iv) and (vii) of that section.

(ii) Real estate purposes as outlined in §1980.180(c) of subpart B of part 1980 of this chapter except for those stipulated in paragraphs (c) (1) and (4) of that section.

(iii) Refinancing in accordance with paragraphs (c)(1) and (c)(2) 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.

(9) *Sodbuster and swampbuster requirements.* The requirements found in 7 CFR part 1970 will apply to loans made

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to enterprises engaged in agricultural production.

[57 FR 45969, Oct. 5, 1992, as amended at 58 FR 34342, June 24, 1993; 58 FR 38952, July 21, 1993; 58 FR 41172, Aug. 3, 1993; 58 FR 48300, Sept. 15, 1993; 81 FR 11048, Mar. 2, 2016]

**§ 1980.499 [Reserved]**

**§ 1980.500 OMB control number.**

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575-0029. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 58 hours per response, with an average of 4 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0575-XXXX), Washington, DC 20503.

[55 FR 19245, May 8, 1990]

**APPENDIXES A–B TO SUBPART E OF PART 1980 [RESERVED]**

**APPENDIX C TO SUBPART E OF PART 1980—GUIDELINES FOR LOAN GUARANTEES FOR ALCOHOL FUEL PRODUCTION FACILITIES**

(1) *Alcohol production facility.* An alcohol production facility is a facility in which alcohol, suitable for use by itself or in combination with other substances as a substitute for petroleum or petrochemical feedstocks and not suitable for beverage purposes, is manufactured from biomass.

(2) The alcohol production facility includes all facilities necessary for the production and storage of alcohol and the processing of the by-products of alcohol production. The intent is to limit the alcohol and by-products processing facilities to those facilities which are necessary to yield marketable products and necessary for the financial success of the project. Further refinements,

such as gasoline blending or the construction of facilities which use the alcohol or by-products in another manufacturing process, are not considered part of the alcohol production facility.

(3) Application will be reviewed by both B&I personnel and the State Office engineer and forwarded to the National Office if approval is recommended.

(4) The applicant should have a startup *tangible* book equity of 20-25 percent. (Appraisal surplus and subordinated debt are not eligible equity items.)

(5) Loan maturity maximums will be as follows:

Real Estate = 15-20 years

Machinery & Equipment = 10 years or less depending on the estimated life of the equipment involved

Working Capital = 3 years (It is assumed that the additional equity required for these projects will provide much of the working capital needs.)

(6) Farmers Home Administration or its successor agency under Public Law 103-354 will ordinarily only finance new facilities and will not get involved in the refinancing of existing ones.

(7) Priority consideration will be given to the use of primary fuel other than petroleum or natural gas.

(8) A positive energy balance must be indicated and supported by appropriate data; i.e., the energy content of the alcohol produced at the alcohol production facility must be greater than the energy used to produce the alcohol and by-products.

(9) Plant location, in relation to feedstocks, primary fuel and markets for product and by-products, will be an important consideration.

(10) Debt refinancing will only be considered in modest amounts and only when necessary to provide a satisfactory lien position.

(11) Feasibility studies are very important and required and will be prepared by competent and knowledgeable independent parties.

(12) Participating lenders must either have expertise or the availability of expertise in this field.

(13) The proposed operating managers must have experience in this or a related field.

(14) Alcohol Fuel Production Facilities are eligible for assistance under the Drought and Disaster (D&D) Guaranteed Loan and Disaster Assistance for Rural Business Enterprises (DARBE) programs described in this subpart, and especially in appendix I and appendix K. Any such loan must meet the requirements for D&D and DARBE loans.

[52 FR 6522, Mar. 4, 1987, as amended at 53 FR 40403, Oct. 17, 1988; 54 FR 5, Jan. 3, 1989, and 54 FR 26946, June 27, 1989; 54 FR 42483, Oct. 17, 1989]



APPENDIX D TO SUBPART E OF PART  
1980—ALCOHOL PRODUCTION FACILI-  
TIES PLANNING, PERFORMING, DE-  
VELOPMENT AND PROJECT CONTROL

(I) *Design Policy.* The borrower shall ensure or cause to be ensured that:

(A) All project facilities are designed utilizing accepted engineering practices and are conformed to applicable Federal, State and local codes and requirements.

(B) Proven equipment and processes are employed in all project facilities unless an exception is granted by the Administrator or designee of Rural Development (“Administrator”) in accordance with paragraph (B)(2) hereof and pilot equipment or processes are used instead.

(1) Equipment and processes shall be considered “proven” if they have been successfully employed in other commercial facilities.

(2) Equipment and processes shall be considered pilot if they have not been used in a commercial operation but have been operated on a scale such that all design and material problems have been identified and resolved and operations maintained to demonstrate that the equipment and process may be successfully applied to the proposed commercial operation. Pilot equipment and processes may be considered for use in the project subject to the following:

(a) The plans, specifications, and operational data for the applicable facilities are reviewed by the Administrator or designee and lender. If, in the opinion of Rural Development, the proposed processes or equipment are insufficiently developed to assure reliable and successful operation of the project, proven processes and equipment will be utilized.

(b) If pilot processes or equipment are used, the Administrator or designee will also require that:

(i) Reasonable provision is made in the project for conversion to proven equipment or processes; and

(ii) The borrower agrees to convert to proven equipment or processes if conversion is necessary to protect the interest of the Government in the project. A reserve account for this conversion may be required. This account will not be an eligible loan purpose.

(C) Facility and equipment design incorporates cost-effective primary fuel systems, energy recovery systems and conservation measures to the maximum extent that this is feasible and consistent with paragraphs (I), (A), and (B) of this appendix.

(II) *Technical Services.* (A) The borrower is responsible for selecting engineering consultants with suitable experience, training and professional competence in the design and construction of the project to assure that the completed project will operate at the prescribed levels of performance. In dis-

charging its responsibility the borrower will obtain or cause to be obtained:

(1) Full engineering services for design and construction inspection for all project facilities. Resident inspection by qualified persons will be required.

(2) Agreements for engineering or design/build services which describe the project facilities in terms of the parameters critical to the successful operation of the project. The parameters shall include input quantities, conversion efficiency, rate of production and fuel consumption and product quality under normal operating conditions. The design parameters will be mutually agreed upon by the borrower, lender, the State Director and the project engineer, and may not be modified without the written concurrence of each of these parties. These agreements for engineering or design/build services will require, or the borrower will otherwise obtain, assurance satisfactory to the State Director that:

(a) The project engineer will maintain adequate insurance to protect the borrower, lender and the Government from incurring expenses resulting from errors and omissions of the engineer in performance of engineering services.

(b) The project engineer will certify that only proven equipment and processes will be utilized in the proposed development. The State Director may request evidence of successful operations of such proven equipment and process. If proven equipment or processes are not used in the project, the project engineer will identify these items and provide the information necessary for acceptance by the Administrator, borrower and lender in accordance with paragraph (I)(B)(2) of this appendix.

(c) If used equipment or existing facilities are incorporated into the project, they must be inspected by the project engineer or by another qualified engineer of the borrower. This engineer will prepare a report describing the proposed facilities or equipment and will comment on their suitability for use in the project. The report will also identify the modifications necessary for successful integration into the project. A cost estimate will also be included comparing new equipment and facilities to the proposed existing facilities or used equipment. Consideration must be given to the relative energy requirements of used and new facilities and their relative operation and maintenance costs.

(d) The project engineer or qualified individuals representing the manufacturer of principal equipment (or the designer/builder if the contractor has designed the plant) will visit the plant site at reasonable intervals for a period of one year after substantial completion of the project. Such personnel will be experienced in the proper operation

and maintenance of applicable plant components. A report will be presented to the borrower within two weeks of each site visit advising the borrower of operation and maintenance deficiencies. A copy of each report will be forwarded to the State Director and lender by the borrower.

(e) The project engineer will prepare or supervise the preparation of a record drawing of all facilities. One copy will be submitted to the lender and the borrower.

(f) The project engineer or another group acceptable to the State Director and lender will prepare an operation and maintenance manual and assist the borrower in the start-up of the project. The operation and maintenance manual will describe the specific operation and maintenance procedures which must be performed for the project to operate at its rated capacity and efficiency and outline product testing, quality control, plant safety and emergency shut-down procedures.

(g) The project engineer will assist the borrower in determining acceptability of materials, equipment and construction during the construction period, review shop drawings, payment estimates and change orders, and assist in determining substantial completion of the project and final completion of individual contracts. (1) The project is substantially complete when:

(i) Construction is sufficiently completed in accordance with plans and specifications so that the project may be used for its intended purpose, and;

(ii) The project is producing products of the quantity and quality and at the conversion and energy efficiencies proposed in the completed application submitted by the lender and borrower and approved by the Rural Development.

(2) The State Director must concur that the project is substantially complete. The following evidence, in form and substance satisfactory to the State Director and lender, must be submitted prior to such concurrence:

(i) A certificate from the project engineer stating that all facilities are substantially complete. Engineers who design specialized equipment or processes must also certify that construction/fabrication is acceptable in accordance with plans and specifications previously approved by them. The certification of the project engineer must be based upon a project start-up procedure where the complete project operates continuously to reach steady-state operating conditions. During this period contractors and engineers will identify and correct problems in operations, malfunctions in equipment, failure in materials and defects in workmanship. After this pre-startup, the certifying engineers will monitor project operations for a continuous period of at least 72 hours or 3 consecutive batch runs as appropriate to assure that

all equipment is operating satisfactorily at rated capacity and efficiency.

(ii) Copies of system operation and performance data obtained during project start-up.

(iii) Exceptions to substantial completion and a list of nonsubstantial items which must be completed prior to release of any contractor's retainage.

(3) If the project is not producing products of the required quantity or quality at the prescribed conversion efficiencies, even though the project is otherwise physically complete in accordance with paragraph (1)(i) of this subparagraph, the project engineer will prepare a report identifying the corrective actions including an estimate of costs and additional time necessary to meet established performance criteria.

(4) The project must be certified to be substantially complete by an independent engineer if any portion of the project has been designed or constructed by the borrower or the project engineer has participated in any portion of the construction.

(B) Modification of plans and specifications will not be made without the written authorization of the project engineer.

(C) The Administrator, State Director or their representative's acceptance or concurrence in feasibility studies, preliminary engineering reports, plans, specifications, contract documents and payment estimates will not be construed as a representation of the adequacy of same, reliability of cost estimates or quality of construction, nor will such acceptance or concurrence be deemed a waiver of any of the Government's rights or remedies against any person or party. Reviews and construction inspections by the Administrator, State Director or their representatives are solely for the benefit of the Government and do not relieve the lender or borrower of their obligation to conduct project reviews and inspections.

#### (III) *Project Construction.*

(A) Borrower will not award contracts for the construction of any project facilities unless and until:

(1) The borrower obtains applicable construction permits, right-of-ways, licenses and approvals of Federal, State and local authorities for the construction of such facilities.

(2) The State Director concurs in applicable plans, specifications and contract documents. Standard contract documents prescribed for use in Federally assisted projects may be used as a guide for determining the minimum standards for contract acceptability. These standard documents are contained in Guides 18 and 19 of subpart A of part 1942 of this chapter (available in any Rural Development office).

(B) The borrower has the responsibility, without recourse to the Government, for the

settlement and satisfaction of all contractual and administrative issues arising out of procurements. This includes, but is not limited to, disputes, claims, protests of awards, or other matters of a contractual nature. Matters concerning violation of laws are to be referred to such local, State, or Federal authority as may have proper jurisdiction.

(C) The borrower's attorney will review executed contract documents including applicable performance and payment bonds and provide a certificate to the borrower and lender that they have been properly executed and that the persons executing these documents have been properly authorized to do so.

(D) In all contracts for construction or facility improvement awarded in excess of \$100,000, the borrower will require bonds and a bank letter of credit or cash deposit in escrow, assuring performance and payment of 100 percent of the contract cost. The surety will normally be in the form of performance and payment bonds. Such assurance shall remain in full force and effect through any warranty period. Companies providing performance and payment bonds must hold a certificate of authority as an acceptable security on Federal bonds and eligible for listing in Treasury circular 510 as amended and be legally doing business in the State the project is located.

(E) Project Changes. Any change in the project which may affect collateral, its ultimate financial viability or compliance with the conditional commitment must have prior approval of the lender and Rural Development.

(1) Construction contracts will require that change orders receive prior approval from the lender when such changes:

- (a) Increase or decrease contract price,
- (b) Materially modify contract provisions,
- (c) Increase or decrease time of completion,
- (d) Affect project performance.

(2) All change orders will be recorded on a chronologically numbered contract change order as they occur. Change orders will not be included in payment estimates until approved by the borrower, project engineer, the lender and concurred in by Rural Development.

(F) Warranty.

(1) All major equipment must be guaranteed by the manufacturer to be free from defects in workmanship and materials for a period of one year after start-up of equipment.

(2) Equipment purchased by a construction contractor or design builder and all other work shall be further warranted to be free from defect in material and workmanship by the contractor or the design builder for a period of one year after substantial completion of the contract.

(3) Applicable provisions to this effect shall be included in equipment purchase orders or construction contracts.

(G) Lease agreements. Where the right of use or control of any property or equipment not owned by the borrower is essential to the successful operation of the project during the life of the loan, such right will be evidenced by written agreements or contracts between the owner(s) of the property or equipment and the borrower. Lease agreements shall not contain provisions for restricted use of the site or facility, forfeiture or similar cancellation clauses and shall provide for the right to transfer and lease without restriction. Such lease contracts or agreements shall be approved by the lender and Rural Development.

(IV) *Project Control.*

(A) Lender will adopt project control procedures to assure that loan funds are applied for costs or expenses properly attributable to the project ("Eligible Project Costs") as proposed in the completed application submitted by the lender and borrower and approved by the Rural Development. A project monitoring account ("Project Monitoring Account") will be developed by lender for this purpose and concurred in by the State Director. This account will be divided into sufficient budget categories to permit adequate control of expenditures and identification of potential budget overruns.

(B) The first advance ("First Advance") of loan funds to the borrower will not commence from the Project Monitoring Account prior to lender's receipt of evidence that:

(1) The borrower has made adequate provisions for compliance with measures established by Rural Development to mitigate adverse historical and environmental impacts.

(2) Applicable engineering, design/build, construction management, inspection and plant start-up service agreements have been obtained and accepted by the State Director and lender.

(3) The project engineer has prepared a detailed cost estimate and construction schedule for all facilities related to the project. This estimate must indicate that the project can be completed with the funds available as shown on the Form RD 449-1, "Application for Loan and Guarantee." A reasonable contingency amount will be included in the estimate. This contingency shall be at least 20 percent of the estimated project costs for which firm bids have not been received plus 5 percent of project costs for which firm bids have been received. Construction interest and inspection costs will be based upon a reasonable contingency for unforeseen delays in project completion. The estimate shall include a listing with associated costs of any proposed leasing arrangements for property or equipment that is essential to the successful operation of the project.

(4) All funds necessary for construction of project facilities will be available when needed.

(5) The borrower has retained a project manager with sufficient experience and training to supervise project construction and engineering services on behalf of the borrower.

(C) After the first advance, future advances may be made from the Project Monitoring Account, in accordance with prudent lender practice, for all Eligible Project Costs established in the Project Monitoring Account, provided these payments are made in accordance with the terms of applicable contracts and are approved by the borrower and, when applicable, recommended by the project engineer.

(D) Payments for Eligible Project Costs incurred by the borrower prior to satisfaction of the conditions precedent to the first advance shall be made with borrower's funds or other nonguaranteed loan funds only. These payments however, may be reimbursed through the Project Monitoring Account as authorized by the State Director after compliance with Paragraph (IV)(B) hereof. The lender will not advance and the borrower will not be entitled to loan funds for reimbursement if such costs or expenses incurred by the borrower prior to the first advance, or at anytime thereafter, were for costs or expenses other than Eligible Project Costs. Costs and expenses accruing from but not limited to, interest charges imposed by construction, equipment, material or service contracts, penalty payments, damage claims, awards or settlements are not Eligible Project Costs unless specifically approved by the State Director.

(E) The lender will monitor the progress of construction and undertake the reviews and project inspections necessary to reasonably assure that funds are paid for Eligible Project Costs and that problems in project development are expeditiously reported to the State Director.

(F) The lender will prepare a monthly report showing the expenditures made from each budget category of the Project Monitoring Account. This report will include a review of construction progress including proposed and approved contract change orders and, to the extent possible, identify problems or delays in construction or other matters which might affect successful startup of project. This report may be based upon information received from the project engineer and borrower and/or independent observations of the lender. The report will be initiated by the borrower and project engineer and submitted to the State Director.

(G) Transfer of loan funds between established or new categories of the Project Monitoring Account or any change in the total amount of funds committed to the project

will be reported by the lender to the State Director as these changes occur.

#### APPENDIX E TO SUBPART E OF PART 1980—ENVIRONMENTAL ASSESSMENT GUIDELINES

In completing an assessment, it is important to understand the comprehensive nature of the impacts which must be analyzed. Consideration must be given to all potential impacts associated with the construction of the project and its operation and maintenance. The attainment of the project's major objectives often induces or supports changes in population densities, land uses, community services, transportation systems and resource consumption. The impacts of these activities must also be assessed.

The environmental reviewer should consult with appropriate experts from Federal, State and local agencies, universities and other organizations or groups whose views could be helpful in the assessment of potential impacts. In so doing, each discussion which is utilized in reaching a conclusion with respect to the degree of an impact should be summarized in the assessment as accurately as possible and include name, title, phone number, and organization of the individual contacted, plus the date of contact. Related correspondence should be attached to the assessment.

The Farmers Home Administration or its successor agency under Public Law 103-354 assessment should be prepared in the following format; it should address the listed items and questions and contain as attachments the indicated descriptive materials, as well as the environmental information submitted by the applicant.

These assessment guidelines have been designed to cover the wide variety of impacts which may be encountered. Consequently, not every issue or potential impact raised in these guidelines may be relevant to each project. The purpose of the format is to give the preparer an understanding of a standard range of impacts, environmental factors and issues which may be encountered. In preparing an assessment, each topic heading identified by a roman numeral and each environmental factor listed under topic heading IV, such as air quality for example, must be addressed.

The amount of analysis and material that must be provided will depend upon the type and size of the project, the environment in which it is located and the range and complexity of the potential impacts. The amount of analysis and detail provided, therefore, must be commensurate with the magnitude of the expected impact. The analysis of each environmental factor (i.e., water quality) must be taken to the point that a conclusion can be reached and supported concerning the

degree of the expected impact with respect to that factor.

(I) *Project description and need.* Identify the name, project number, location, and specific elements of the project along with their sizes, and, when applicable, their design capacities. Indicate the purpose of the project, Rural Development's position regarding the need for it, and the extent or area of land to be considered as the project site.

(II) *Primary beneficiaries and related activities.* Identify any existing businesses or major developments that will benefit from the project and those which will expand or locate in the area because of the project. Specify by name, product, service, and operations involved.

Identify any related activities which are defined as interdependent parts of an Rural Development action. Such undertakings are considered interdependent parts whenever they either make possible or support the Rural Development action or are themselves induced or supported by the Rural Development action or another related activity. These activities may have been completed in the very recent past and are now operational or they may reasonably be expected to be accomplished in the near future. Related activities may or may not be Federally permitted or assisted. When they are, identify the involved Federal agency(s).

In completing the remainder of the assessment, it must be remembered that the impacts to be addressed are those which stem from the project, the primary beneficiaries, and the related activities.

(III) *Description of project area.* Describe the project site and its present use. Describe the surrounding land uses; indicate the directions and distances involved. The extent of the surrounding land to be considered depends on the extent of the impacts of the project, its related activities, and the primary beneficiaries. Unique or sensitive areas must be pointed out. These include residential, schools, hospitals, recreational, historical sites, beaches, lakes, rivers, parks, floodplains, wetlands, dunes, estuaries, barrier islands, natural landmarks, unstable soils, steep slopes, aquifer recharge areas, important farmlands and forestlands, prime rangelands, endangered species habitats, or other delicate or rare ecosystems.

Attach adequate location maps of the project area, as well as (1) a U.S. Geological Survey "15 minute" ("7½ minute" if available) topographic map which clearly delineates the area and the location of the project elements, (2) the Department of Housing and Urban Development's floodplain map(s) for the project area, (3) site photos, (4) if completed, a standard soil survey for the project and, (5) if available, an aerial photograph of the site. When necessary for descriptive purposes or environmental analysis, include land use maps or other graphic information.

All graphic materials shall be of high quality resolution.

(IV) *Environmental impact.* (1) *Air Quality.*—Discuss, in terms of the amounts and types of emissions to be produced, all aspects of the project including beneficiaries' operations and known indirect effects (such as increased motor vehicle traffic) which will affect air quality. Indicate the existing air quality in the area. Indicate if topographical or meteorological conditions hinder or affect the dispersals of air emissions. Evaluate the impact on air quality given the types and amounts of projected emissions, the existing air quality and topographical and meteorological conditions. Discuss the project's consistency with the State's air quality implementation plan for the area, the classification of the air quality control region within which the project is located, and the status of compliance with air quality standards within that region. Cite any contacts with appropriate experts and agencies which must issue necessary permits.

(2) *Water Quality.*—Discuss, in terms of amounts and types of effluents all aspects of the project, including primary beneficiaries' operations and known indirect effects which will affect water quality. Indicate the existing water quality of surface and/or underground water to be affected. Evaluate the impacts of the project on this existing water quality. Indicate if an aquifer recharge area is to be adversely affected. If the project lies within or will affect a sole source aquifer recharge area as designated by the Environmental Protection Agency (EPA), contact the appropriate EPA regional office to determine if its review is necessary. If it is, attach the results of its review.

Indicate the source and available supply of raw water and the extent to which the additional demand will affect the raw water supply. Describe the wastewater treatment system(s) to be used and indicate their capacity and their adequacy in terms of the degree of treatment provided. Discuss the characteristics and uses of the receiving waters for any sources of discharge. If the treatment systems are or will be inadequate or overloaded, describe the steps being taken for necessary improvements and their completion dates. Compare such dates to the completion date of the Rural Development project. Analyze the impacts on the receiving water during any estimated period of inadequate treatment.

Discuss the project's consistency with the water quality planning for the area, such as EPA's Section 208 areawide waste treatment management plan. Describe how surface runoff is to be handled and the effect of erosion on streams.

Evaluate the extent to which the project may create shortages for or otherwise adversely affect the withdrawal capabilities of other present users of the raw water supply,

particularly in terms of possible human health, safety, or welfare problems.

For projects utilizing a groundwater supply, evaluate the potential for the project to exceed the safe pumping rate for the aquifer to the extent that it would (1) adversely affect the pumping capability of present users, (2) increase the likelihood of brackish or saltwater intrusion, thereby decreasing water quality, or (3) substantially increase surface subsidence risks.

For projects utilizing a surface water supply, evaluate the potential for the project to (1) reduce flows below the minimum required for the protection of fish and wildlife or (2) reduce water quality standards below those established for the stream classification at the point of withdrawal or the adjacent downstream section.

Cite contacts with appropriate experts and agencies that must issue necessary permits.

(3) **Solid Waste Management**—Indicate all aspects of the project, including primary beneficiaries' operations, and known indirect effects which will necessitate the disposal of solid wastes. Indicate the kinds and expected quantities of solid wastes involved and the disposal techniques to be used. Evaluate the adequacy to these techniques especially in relationship to air and water quality. Indicate if recycling or resource recovery programs are or will be used. Cite any contacts with appropriate experts and agencies that must issue necessary permits.

(4) **Land Use**—Given the description of land uses as previously indicated, evaluate (a) the effect of changing the land use of the project site and (b) how this change in land use will affect the surrounding land uses and those within the project's area of environmental impact. Particularly address the potential impacts to the unique or sensitive areas discussed under Section III, Description of Project Area. Also address any changes in land use which may result from demand for feedstock for the plant's operation. Describe the existing land use plan and zoning restrictions for the project area. Evaluate the consistency of the project and its impacts with these plans.

(5) **Transportation**—Describe available facilities such as highways and rail. Discuss whether the project will result in an increase in motor vehicle traffic and the existing roads' ability to safely accommodate this increase. Indicate if additional traffic control devices are to be installed. Describe new traffic patterns which will arise because of the project. Discuss how these new traffic patterns will affect the land uses described above, especially residential, hospitals, schools, and recreational. Describe the consistency of the project's transportation impacts with the transportation plans for the area and any air quality control plans. Cite any contact with appropriate experts.

(6) **Natural Environment**—Indicate all aspects of the project, including construction, beneficiaries' operations, and known indirect effects which will affect the natural environment including wildlife, their habitats, and unique natural features. Cite contacts with appropriate experts. If an area listed on the National Registry of Natural Landmarks may be affected, consult with the Department of Interior and document these consultations and any agreements reached regarding avoidance or mitigation of potential adverse impacts.

(7) **Human Population**—Indicate the number of people to be relocated and arrangements being made for this relocation. Discuss how impacts resulting from the project such as changes in land use, transportation changes, air emissions, noise, odor, etc., will effect nearby residents and their lifestyles or users of the project area and surrounding areas. Cite contacts with appropriate experts.

(8) **Construction**—Indicate the potential effects of construction of the project on air quality, water quality noise levels, solid waste disposal, soil erosion and siltation. Describe the measures that will be employed to limit adverse effects. Give particular consideration to erosion, stream siltation, and clearing operations.

(9) **Energy Impacts**—Indicate the project's and its primary beneficiaries' effects on the area's existing energy supplies. This discussion should address not only the direct energy utilization, but any major indirect utilization resulting from the siting of the project. Describe the availability of these supplies to the project site. Discuss whether the project will utilize a large share of the remaining capacity of an energy supply or will create a shortage of such supply. Discuss any steps to be taken to conserve energy.

(10) Discuss any of the following areas which may be relevant: noise, vibrations, safety, seismic conditions, fire prone locations, radiation, and aesthetic considerations. Cite any discussions with appropriate experts.

(V) *Coastal Zone Management Act*. Indicate if the project is within or will impact a coastal area defined as such by the state's approved Coastal Zone Management Program. If so, consult with the State agency responsible for the Program to determine the project's consistency with it. The results of this coordination shall be included in the assessment and considered in completing the environmental impact determination and environmental findings.

(VI) *Compliance with Advisory Council on Historic Preservation's regulations*. In this section, the environmental reviewer shall detail the steps taken to comply with the above regulations as specified in Subpart F of Part 1901 of this Chapter. First, indicate that the

National Register of Historic Places, including its monthly supplements, has been reviewed and whether there are any listed properties located within the area to be affected by the project. Second, indicate the steps taken such as historical/archeological surveys to determine if there are any properties eligible for listing located within the affected area. Summarize the results of the consultation with the State Historic Preservation Officer (SHPO) and attach appropriate documentation of the SHPO's views. Discuss the views of any other experts contacted. Based upon the above review process and the views of the SHPO, state whether or not an eligible or listed property will be affected.

If there will be an effect, discuss all of the steps and protective measures taken to complete the Advisory Council's regulations. Describe the affected property and the nature of the effect. Attach to the assessment the results of the coordination process with the Advisory Council on Historic Preservation.

(VII) *Compliance with the Wild and Scenic Rivers Act.* Indicate whether the project will affect a river or portion of it which is either included in the National Wild and Scenic Rivers System or designated for potential addition to the System. This analysis shall be conducted through discussions with the appropriate regional office of the National Park Service or the Forest Service when its lands are involved, as well as the appropriate State agencies having implementation authorities. A summary of discussions held or any required formal coordination shall be included in the assessment.

(VIII) *Compliance with the Endangered Species Act.* Indicate whether the project will either (1) affect a listed endangered or threatened species or critical habitat or (2) adversely affect a proposed critical habitat for an endangered or threatened species or jeopardize the continued existence of a proposed endangered or threatened species. This analysis shall be conducted in consultation with the Fish and Wildlife Service and the National Marine Fisheries Service, when appropriate.

The results of any required coordination shall be included in the assessment along with any completed biological opinion and mitigation measures to be required for the project. These factors shall be considered in completing the environmental impact determination.

(IX) *Compliance with Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands.* Indicate whether the project is either located within a 100-year floodplain (500-year floodplain for a critical action) or a wetland or will impact a floodplain or wetland. If so, determine if there is a practicable alternative project or location. If there is no such alternative, determine whether all practicable mitigation

measures are included in the project and document as an attachment these determinations and the steps taken to inform the public, locate alternatives, and mitigate potential adverse impacts. See the U.S. Water Resource Council's *Floodplain Management Guidelines* for more specific guidance.

(X) *State Environmental Policy Act.* Indicate if the proposed project is subject to a State environmental policy act or similar regulation. Summarize the results of compliance with these requirements and attach available documentation.

(XI) *Consultation requirements.* Attach the comments of any State or local agency received through the implementation of Executive Order 12372, Intergovernmental Review of Federal Programs.

(XII) *Environmental analysis of participating Federal agency.* Indicate if another federal agency is participating in the project either through the provision of additional funds, a companion project, or a permit review authority. Summarize the results of the involved agency's environmental impact analysis and attach available documentation.

(XIII) *Reaction to project.* Discuss any negative comments or public views raised about the project and the consideration given to these comments. Indicate whether a public hearing or public information meeting has been held either by the applicant or Rural Development to include a summary of the results and any objections raised. Indicate any other examples of the community's awareness of the project, such as newspaper articles or public notifications.

(XIV) *Cumulative impacts.* Summarize the cumulative impacts of this project and the related activities. Give particular attention to land use changes and air and water quality impacts. Summarize the results of the environmental impact analysis done for any of these related activities and/or your discussion with the sponsoring agencies. Attach available documentation of the analysis.

(XV) *Adverse impact.* Summarize the potential adverse impacts of the proposal as pointed out in the above analysis.

(XVI) *Alternatives.* Discuss the feasibility of alternatives to the project and their environmental impacts. These alternatives should include (a) alternative location, (b) alternative designs, (c) alternative projects having similar benefits, and (d) no project.

(XVII) *Mitigation measures.* Describe any measures which will be taken or required by Rural Development to avoid or mitigate the identified adverse impacts. Such measures shall be included as special requirements or provisions to the offer of financial assistance.

APPENDIXES F-G TO SUBPART E OF PART  
1980 [RESERVED]APPENDIX H TO SUBPART E OF PART  
1980—SUGGESTED FORMAT FOR THE  
OPINION OF THE LENDER'S LEGAL  
COUNSEL(Legal Opinion to be Retyped on Lender's  
Counsel's Letterhead)

To: (Name of Lender).

I/We have acted as counsel to (Lender) \_\_\_\_\_ in connection with a \$ (amount) \_\_\_\_\_ (type) \_\_\_\_\_ loan by the (Lender) \_\_\_\_\_ (hereinafter "the Lender") to (Borrower) \_\_\_\_\_ (hereinafter "Borrower"), the terms of which loans are set forth in a certain Loan Agreement (hereinafter "the Loan Agreement") executed by the Lender and Borrower on (date) \_\_\_\_\_.

In connection with this loan, I/we have examined:

1. The corporate records of Borrower, including its Articles of Incorporation, By-Laws and Resolutions of its Board of Directors.
2. The Loan Agreement between the Lender and Borrower.
3. The Security Agreement executed by Borrower on (date) \_\_\_\_\_.
4. The Guaranty (where applicable) executed on (date) \_\_\_\_\_ by (personal guarantors) \_\_\_\_\_.
5. Financing Statements executed by Borrower and the Lender.
6. Real Estate Mortgages dated \_\_\_\_\_ and executed by Borrower in favor of the Lender.
7. Real Estate Mortgages dated \_\_\_\_\_ and/or other security documents dated \_\_\_\_\_ executed by (personal guarantors) \_\_\_\_\_ in favor of the Bank.
8. The appropriate title and/or lien searches relating to Borrower's property.
9. The pledge of stock and instruments related thereto.
10. Such other materials, including relevant provisions of the laws of this state as I/we have deemed pertinent as a basis for rendering the opinion hereafter set forth.

*In Some Circumstances*

11. Lease(s) between Borrower and (lessor's name) \_\_\_\_\_ for the rental of (property being rented) \_\_\_\_\_, (if real property, give the address of the premises; if machinery equipment, etc., give brief, precise description of property for a (length of lease) \_\_\_\_\_ term commencing on (date) \_\_\_\_\_.

Based on the foregoing examinations, I am/we are of the opinion and advise you that:

1. Borrower is a duly organized corporation in good standing under the laws of the Commonwealth/State of (State) \_\_\_\_\_.
2. Borrower has the necessary corporate power to authorize and has taken the nec-

essary corporate action to authorize the Loan Agreement and to execute and deliver the Note, Security Agreement, Financing Statement, and Mortgage. Said instruments hereinafter collectively referred to as the "Loan Instruments."

3. The Loan Instruments were all duly authorized, executed, and delivered and constitute the valid and legally binding obligation of the Borrower and collectively create and valid (first) lien upon or valid security interest in favor of the Lender, in the security covered thereby, and are enforceable in accordance with their terms except to the extent that the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.

4. The execution and delivery of the Loan Instruments and compliance with the provisions thereof under the circumstances contemplated thereby did not, do not and will not in any material respect conflict with, constitute default under, or contravene any contract or agreement or other instrument to which the Borrower is a party or any existing law, regulation, court order, or consent decree or device to which the Borrower is subject.

5. All applicable Federal, State and local tax returns and reports as required have been duly filed by Borrower and all Federal, State and local taxes, assessments and other governmental charges imposed upon Borrower or its respective assets, which are due and payable, have been paid.

6. The guaranty has been duly executed by the Guarantors and is a legal, valid and binding joint and several obligations of the Guarantors, enforceable in accordance with its terms, except to the extent that the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.

7. All necessary consents, approvals, or authorizations of any governmental agency or regulatory authority or of stockholders which are necessary have been obtained. The improvements and the use of the property comply in all respects with all Federal, State, and local laws applicable thereto.

8. (In cases involving subordinate or other than first lien position) That the mortgage/deed of trust on Borrower's real estate and (fixtures, e.g., machinery and equipment) and the security interest on (type of collateral, e.g., machinery and equipment, accounts, receivables and inventory) both given as security to the Lender for the Loan, will be subordinate to (first mortgagee) \_\_\_\_\_ given as security for a loan in the amount of \$ \_\_\_\_\_ and the security interest in Borrower's (type of collateral, e.g., accounts inventory) \_\_\_\_\_ given to (secured creditor) \_\_\_\_\_ as security for a loan (state



type of loan, i.e., revolving line of credit, if known) in the amount of \$\_\_\_\_\_.

9. That there are no liens, as of the date hereof, on record with respect to the property of Borrower other than those set forth above.

10. There are no actions, suits or proceedings pending or, to the best of our knowledge, threatened before any court or administrative agency against Borrower which could materially adversely affect the financial condition and operations of Borrower.

11. Borrower has good and marketable title to the real estate security free and clear of all liens and encumbrances other than those set forth above. I/we have no knowledge of any defect in the title of the Borrower to the property described in the Loan Instruments.

12. Borrower is the absolute owner of all property given to secure the repayment of the loan, free and clear of all liens, encumbrances, and security interests.

13. Duly executed and valid functioning statements have been filed in all offices in which it is necessary to file financing statements to fully perfect the security interests granted in the Loan Instruments.

14. Duly executed real estate mortgages/deeds of trust have been recorded in all offices in which it is necessary to record to fully perfect the security interests granted in the Loan Instruments.

15. (IN SOME OTHER CIRCUMSTANCES) The Indemnification Agreement has been duly executed by the Indemnitors and is a legal, valid and binding joint and several obligation of the Indemnitors, enforceable in accordance with its terms, except to the extent that the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.

16. That the lease contains a valid and enforceable right of assignment and right of re-assignment, enforceable in accordance with its terms, except to the extent the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.

17. The Lender's lien has been duly noted on all motor vehicle titles, stock certificates or other instruments where such notations are required for proper perfection of security interests therein.

18. That a valid pledge of the outstanding and unissued stock and/or shares of Borrower has been obtained and the Lender has a validly perfected and enforceable security interest in the shares/stock of Borrower, except to the extent the enforceability thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.

[52 FR 6522, Mar. 4, 1987]

#### APPENDIX I TO SUBPART E OF PART 1980—INSTRUCTIONS FOR LOAN GUARANTEES FOR DROUGHT AND DISASTER RELIEF

A. *In general.* Drought and Disaster (D&D) guaranteed loans are authorized by section 331 ("Disaster Assistance for Rural Business Enterprises") of the Disaster Assistance Act of 1988, which provides for guarantees of up to 90 percent of the unpaid principal amount of qualifying loans. Interest and protective advances are not covered by the guarantee. Drought and Disaster Guaranteed Loans may be either to assist in alleviating financial distress caused to rural business entities, directly or indirectly, by drought, hail, excessive moisture, or related conditions occurring in 1988, or to assist such entities that re-finance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters. Where used in this appendix, the term "natural disaster(s)" refers only to drought, hail, excessive moisture, and related conditions occurring in 1988. All provisions of Subparts A and E of Part 1980 of this chapter apply to D&D loans, except as provided in this appendix. All forms used in connection with a D&D loan will be those used in connection with a B&I guaranteed loan, except for the following three forms that are incorporated in this Appendix I of this Subpart E, made a part hereof:

(1) Form FmHA or its successor agency under Public Law 103-354 1980-68, "Lender's Agreement—Drought and Disaster Guaranteed Loans," or successor form will be used instead of Form FmHA or its successor agency under Public Law 103-354 449-35, "Lender's Agreement."

(2) Form FmHA or its successor agency under Public Law 103-354 1980-69, "Loan Note Guarantee—Drought and Disaster Guaranteed Loans," or successor form will be used instead of Form FmHA or its successor agency under Public Law 103-354 449-34, "Loan Note Guarantee."

(3) Form FmHA or its successor agency under Public Law 103-354 1980-70, "Assignment Guarantee Agreement—Drought and Disaster Guaranteed Loans," or successor form will be used instead of Form FmHA or its successor agency under Public Law 103-354 449-36, "Assignment Guarantee Agreement."

B. *Loan purpose.* Except for §§ 1980.411(a)(11), 1980.412, and section C., below, loan proceeds may be used for purposes described in § 1980.411(a) if such use of loan proceeds will assist in alleviating financial distress caused, directly or indirectly, by drought, hail, excessive moisture, or related conditions which occurred in 1988. In lieu of the debt refinancing requirements in

§1980.411(a)(11), the following refinancing requirements apply to D&D loans. Loan proceeds to be used for refinancing must be used solely for refinancing or restructuring of debts as a result of losses incurred, directly or indirectly, as a result of drought, hail, excessive moisture, or related condition occurring in 1988, and such refinancing or restructuring of debt(s) must be essential for the borrower to meet its financial obligations in a timely fashion. In addition, D&D loan proceeds may be used for hotels, motels, tourist or recreation facilities which meet the eligibility requirements for D&D guaranteed loans.

C. *Ineligible loan purposes.* See §1980.412. Except for hotels, motels, tourist and recreation facilities mentioned in section B of this appendix, purposes listed as ineligible B&I loan purposes are ineligible D&D loan purposes. In addition, D&D guaranteed loans may not be used for:

(1) Business expansion, acquisition of real estate, machinery, equipment, inventory, other goods or services, or for any other purpose unless related directly to the financial distress or loss that is the basis for the D&D guaranteed loan.

(2) Any eligible agricultural production purpose if annual tillage of the soil is involved.

(3) Refinancing or restructuring debt(s) which are or were in payment default more than 60 consecutive days during the 12 months preceding the date of the adverse financial effect of the natural disaster of 1988 upon the borrower.

D. *Transactions which will not be guaranteed.* In addition to transactions listed in §1980.413, Rural Development will not guarantee:

(1) D&D guaranteed loan(s) to any borrower if the total cumulative principal amount of D&D guaranteed loan(s) to that borrower would exceed \$500,000, or

(2) Any D&D guaranteed loan if the completed application is not received by Rural Development on or before September 30, 1991.

E. *Borrower equity requirements.* See §1980.441. In lieu of the borrower equity requirements in §1980.441, paragraphs (a) and (b), the following applies to D&D loans. Tangibles balance sheet equity must be positive when the Loan Note Guarantee is issued. Equity must be such that, when considered with other credit factors, repayment of the loan and the continued success of the business operation are reasonably assured. Requirements of §1980.441(c) apply to D&D guaranteed loans.

F. *Filing and processing preapplications and applications.* See §1980.451. All requirements of §1980.451 remain in effect. But, in addition to the information required as part of a preapplication under §1980.451(f), and unless previously submitted, as a part of an applica-

tion under §1980.451(i) evidence is required which demonstrates:

(1) The causal relationship between a 1988 natural disaster and the financial distress or loss upon which the preapplication or application is based; and,

(2) That the amount of the loan requested is not greater than the amount necessary for curing the problems caused by the natural disaster. Financial distress or loss shall be determined on the basis of a comparison of financial data for comparable periods of time and need not necessarily be based on data at the year's end. Evidence submitted may include, but is not limited to, the following:

(a) Evidence of financial loss or distress (including loss or distress caused by business interruption) resulting from physical damage caused by natural disaster, or

(b) Evidence that the financial loss and/or distress of the business is the direct or indirect result of loss of sales, business interruption, loss of markets, shortage of raw materials, or decline in patronage or customers caused by a natural disaster. It must be shown that business operations were damaged as a result of such natural disaster.

G. *Loan guarantee limit.* See §1980.20 of Subpart A. The maximum loss covered by the Loan Note Guarantee, Form FmHA or its successor agency under Public Law 103-354 1980-69, can never exceed the percentage of guarantee multiplied by the unpaid principal amount of the loan as evidenced by the note(s) or by assumption agreement(s). Interest, capitalized interest, and protective advances are not covered by the guarantee of a D&D loan.

H. *Percentage of guarantee.* See §1980.420. The maximum percentage of guarantee on a D&D loan is 90 percent of the unpaid principal.

I. *Lender's existing unguaranteed exposure.* The provisions of §1980.452 Administrative C. 1(d) do not apply.

J. *No direct or "insured" loans.* Sections 1980.423(b), 1980.488(b), 1980.481, 1980.411(b), and other provisions of this subpart dealing with "insured" or direct loans do not apply to D&D loans. All D&D loans are Rural Development guaranteed loans. Rural Development has no authority to make D&D loans directly to borrowers.

[54 FR 5, Jan. 3, 1989, as amended at 54 FR 14792, Apr. 13, 1989; 54 FR 26946, June 27, 1989; 80 FR 9911, Feb. 24, 2015]

APPENDIX J TO SUBPART E OF PART 1980  
[RESERVED]APPENDIX K TO SUBPART E OF PART  
1980—REGULATIONS FOR LOAN GUAR-  
ANTEES FOR DISASTER ASSISTANCE  
FOR RURAL BUSINESS ENTERPRISES*A. In general*

Disaster Assistance for Rural Business Enterprises (DARBE) guaranteed loans are authorized by Section 401 of the Disaster Assistance Act of 1989, which provides for guarantees of up to 90 percent of the unpaid principal and interest amount of qualifying loans, or \$2,500,000 whichever is less, to any one borrower. DARBE guaranteed loans may be either to assist in alleviating financial 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 assist such entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters. Where used in this appendix, the term “natural disaster(s)” refers only to drought, freeze, storm, excessive moisture, earthquake, and related conditions occurring in 1988 or 1989. All provisions of subparts A and E of part 1980 of this chapter apply to DARBE loans, except as provided in this appendix. All forms used in connection with a DARBE loan will be those used in connection with a Business and Industrial (B&I) guaranteed loan, except for the following three forms that are incorporated in this appendix K of this subpart E, made a part hereof:

(1) Form RD 1980-71, “Lender’s Agreement—Disaster Assistance for Rural Business Enterprise Guaranteed Loans,” or successor form will be used instead of Form RD 449-35, “Lender’s Agreement.”

(2) Form RD 1980-72, “Loan Note Guarantee—Disaster Assistance for Rural Business Enterprise Guaranteed Loans,” or successor form will be used instead of Form RD 449-34, “Loan Note Guarantee.”

(3) Form RD 1980-73, “Assignment Guarantee Agreement—Disaster Assistance for Rural Business Enterprise Guaranteed Loans,” or successor form will be used instead of Form RD 449-36, “Assignment Guarantee Agreement.”

*B. Loan purposes*

Loan proceeds may be used for purposes described in §1980.411(a), except in lieu of the debt refinancing requirements in §1980.411(a)(11), the following refinancing requirements apply to DARBE loans. Loan proceeds to be used for refinancing must be used solely for refinancing or restructuring of debts as a result of losses incurred, directly or indirectly, as a result of drought, freeze, storm, excessive moisture, earthquake, or re-

lated conditions occurring in 1988 or 1989, and such refinancing or restructuring of debt(s) must be essential for the borrower to meet its financial obligations in a timely fashion. DARBE loan proceeds may be used for hotels, motels, tourist, or recreation facilities which meet the eligibility requirements of DARBE guaranteed loans in addition to the eligible loan purposes as stated in RD Instruction 1980-E. In addition, DARBE loan proceeds may be used for business enterprises engaged in agricultural production (production agriculture) which means the cultivation, production (growing), and harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds, and marine life, either for fibers or food for human consumption), and disposal or marketing thereof, the raising, housing, feeding (including commercial custom feedlots), breeding, hatching, control and/or management of farm and domestic animals. Other eligible uses of loan proceeds under agricultural production include:

(1) Commercial nurseries primarily engaged in the production of ornamental plants and trees and other nursery products such as bulbs, florists’ greens, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of vegetables from seed to the transplant stage.

(2) Forestry which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

(3) Loans for livestock and poultry processing as identified under eligible purposes.

(4) The growing of mushrooms or hydroponics.

In addition, those business enterprises which qualify for assistance as agricultural production must be ineligible entities for FmHA or its successor agency under Public Law 103-354 farmer program loans because the entity exceeds the definition of a family-size farm as defined by RD Instruction 1941-A, §1941.4(d).

*C. Ineligible loan purposes*

RD Instruction 1980-E, §1980.412 are ineligible purposes for DARBE guaranteed loans except for hotels, motels, tourist, recreation facilities and agricultural production (production agriculture) as defined in §1980.412(e), DARBE guaranteed loans may not be used for:

(1) Business expansion, acquisition of real estate, machinery, equipment, inventory, other goods or services, or for any other purpose unless related directly to the financial distress or loss that is the basis for the DARBE guaranteed loan.

(2) Alleviating financial distress of entities engaged in agricultural production that are eligible for other Rural Development -type farm loan programs.

*D. Transactions which will not be guaranteed*

In addition to transactions listed in RD Instruction 1980-E, §1980.413, except for §1980.413(a)(3), Rural Development will not make DARBE guaranteed loans if the completed application is not received by Rural Development on or before September 30, 1991, nor will Rural Development make subsequent DARBE guarantee loans.

*E. Borrower equity requirements*

See RD Instruction 1980-E, §1980.441. In lieu of the borrower equity requirements in §1980.441, paragraphs (a) and (b), the following applies to DARBE loans. Tangible balance sheet equity must be positive when the Loan Note Guarantee is issued. Equity must be such that, when considered with other credit factors, repayment of the loan and the continued success of the business operation are reasonably assured. Requirements of §1980.441(c) apply to DARBE guaranteed loans.

*F. Filing and processing preapplications and applications*

See RD Instruction 1980-E, §1980.451. All requirements of §1980.451 remain in effect. In addition to the information required as part of a preapplication under §1980.451(f), and unless previously submitted as a part of an application under §1980.451(i) evidence is required which demonstrates to Rural Development's satisfaction:

(1) The causal relationship between a 1988 or 1989 natural disaster and the financial distress or loss upon which the preapplication or application is based; and,

(2) That the amount of the loan requested is not greater than the amount necessary for curing the problems caused by the natural disaster. Financial distress or loss shall be determined on the basis of a comparison of financial data for comparable periods of time and need not necessarily be based on data at the year's end. Evidence submitted may include, but is not limited to, the following:

(a) Evidence of financial loss or distress (including loss or distress caused by business interruption) resulting from physical damage caused by natural disaster, or

(b) Evidence that the financial loss and/or distress of the business is the direct or indirect result of loss of sales, business interruption, loss of markets, shortage of raw materials, or decline in patronage or customers caused by a natural disaster. It must be shown that business operations were damaged as a result of such natural disaster.

(3) Evidence of compliance with Sodbuster and Swampbuster requirements as referenced in paragraph K below.

*G. Loan guarantee limit.* The total principal amount of DARBE guaranteed loans to any one borrower cannot exceed \$10,000,000. The maximum loss covered by Form RD 1980-72,

"Loan Note Guarantee DARBE," (or successor form) issued on any one borrower can never exceed the percentage of guarantee multiplied by the unpaid principal and accrued interest on the loan as evidenced by the note(s) or by assumption agreement(s), and protective advances, or \$2,500,000, whichever is the lesser amount.

*H. Percentage of guarantee.* The provisions of RD instruction 1980-E, §1980.420 will not apply to DARBE. For loans in excess of \$2,000,000, the percentage of guarantee will be calculated so that the guaranteed portion of the principal amount of the loan cannot exceed \$2,000,000. For loans of \$2,000,000 or less the maximum percentage of guarantee will be 90 percent. For example, a loan of \$10,000,000 would not exceed a 20 percent guarantee; a \$5,000,000 loan would not exceed a 40 percent guarantee.

*I. Lender's existing unguaranteed exposure*

The provisions of §1980.452 ADMINISTRATIVE C. 1(d) do not apply.

*J. No direct or insured loans*

RD Instruction 1980-E, §§1980.423(b), 1980.488(b), 1980.481, 1980.411(b), and other provisions of this subpart dealing with insured or direct loans do not apply to DARBE loans. All DARBE loans are Rural Development guaranteed loans. Rural Development has no authority to make DARBE loans directly to borrowers.

*K. Sodbuster and Swampbuster requirements*

The provisions of 7 CFR part 1970 will apply to loans made to rural business enterprises engaged in agricultural production.

[54 FR 42483, Oct. 17, 1989, as amended at 55 FR 137, Jan. 3, 1990; 55 FR 19245, May 8, 1990; 80 FR 9911, Feb. 24, 2015; 81 FR 11048, Mar. 2, 2016]

## EXHIBIT G TO SUBPART E OF PART 1980

NOTE: The Exhibit is not published in the Code of Federal Regulations. It is available in any Rural Development office.

[54 FR 1599, Jan. 13, 1989, as amended at 80 FR 9911, Feb. 24, 2015]

## Subparts F-I [Reserved]

## Subpart K—Strategic Economic and Community Development

SOURCE: 80 FR 28816, May 20, 2015, unless otherwise noted.

## § 1980.1001

### § 1980.1001 Purpose.

Projects that support the implementation of Strategic Community Investment Plans may receive priority funding from authorized programs found in § 1980.1002. The purpose of this subpart is to describe the process by which applications will be reviewed and selected to receive priority funding.

[85 FR 59393, Sept. 22, 2020]

### § 1980.1002 Programs.

The Agency may elect to reserve funds from one or more programs for projects that support Strategic Community Investment Plans. The programs chosen for a given fiscal year will be announced annually in a notice published in the FEDERAL REGISTER. The authorized programs are:

- (a) Community Facility Loans (7 CFR part 1942, subpart A).
- (b) Community Facilities Grant Program (7 CFR part 3570, subpart B).
- (c) Community Programs Guaranteed Loans (7 CFR part 3575, subpart A).
- (d) Water and Waste Disposal Programs Guaranteed Loans (7 CFR part 1779).
- (e) Water and Waste Loans and Grants (7 CFR part 1780, subparts A, B, C, and D).
- (f) Business and Industry Guaranteed Loans (7 CFR part 4279, subparts A and B; 7 CFR part 4287, subpart B).
- (g) Rural Business Development Grants (7 CFR part 4280, subpart E).
- (h) Community Connect Grant (7 CFR part 1739).
- (i) Rural Community Development Initiative Grant (2 CFR part 200).
- (j) Tribal College Initiative Grants (7 CFR part 3570, subpart B).
- (k) Intermediary Relending Program (7 CFR part 4274).
- (l) Mutual Self-Help Housing Technical Assistance Grants (7 CFR part 1944, subpart I).
- (m) Rural Housing Site Loans (7 CFR part 1822, subpart G).
- (n) Housing Preservation Grants (7 CFR part 1994, subpart N; 7 CFR part 1970, subparts A and O).
- (o) Farm Labor Housing Direct Loans and Grants (7 CFR part 3560, subparts L and M).
- (p) Multi-Family Housing Loan Guarantees (7 CFR part 3565).

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(q) Distance Learning and Telemedicine Loans and Grants (7 CFR part 1734).

(r) Rural Energy for America Program (7 CFR part 4280, subpart B).

(s) Rural Economic Development Loans and Grants (7 CFR part 4280).

(t) Rural Energy Savings Program (7 U.S.C. 8107a).

(u) Value-Added Producer Grants (7 U.S.C. 1632a).

(v) Household Water Well System Grant Program (7 CFR part 1776).

(w) Solid Waste Management Grant (7 CFR part 1775, subpart D).

[85 FR 59393, Sept. 22, 2020]

### § 1980.1003 Applicability of Program Regulations.

Except as supplemented by this subpart, the provisions of the programs identified in § 1980.1002 are incorporated into this subpart.

### § 1980.1004 Funding.

Unless the Agency publishes a notice that indicates otherwise, the Agency will reserve funds according to the procedures specified in paragraphs (a) through (c) of this section for each of the programs identified in § 1980.1002 each fiscal year.

(a) *Individual program basis.* The Agency will reserve funds on an individual program basis.

(b) *Percentage of funds.* The Agency will reserve up to 15 percent of the funds made available in a fiscal year to each program identified in § 1980.1002. The percentage of funds to be set aside will be published in a notice in the FEDERAL REGISTER on an annual basis. The Agency may reserve the same or different percentages for each program in a single fiscal year.

(c) *Unobligated funds.* In accordance with 7 U.S.C. 2008v, all Strategic Economic and Community Development (SECD) reserved funds will be reserved for the 1-year period beginning on the date on which the funds were first made available. The Agency has determined that for both non-annual and annually appropriated programs, SECD reserved funding will be available for obligation until dates established by covered programs as specified in a

## RHS, RBS, RUS, FSA, USDA

## § 1980.1010

SECD annual FEDERAL REGISTER publication. Reserved funds in annual programs not obligated by September 30 will be reconciled according to applicable law.

[80 FR 28816, May 20, 2015, as amended at 85 FR 59393, Sept. 22, 2020]

### § 1980.1005 Definitions.

In addition to the definitions found in the regulations for the programs identified in §1980.1002, the following definitions apply to this subpart. If the same term is defined in any of the regulations for the programs identified in §1980.1002, for purposes of this subpart, that term will have the meaning identified in this subpart.

*Adopted* means appropriate entity has, or entities have, officially approved the plan for implementation. The appropriate entity or entities will vary among plans and may be, for example, a governing body or planning board.

*Agency* means the Rural Business-Cooperative Service, the Rural Housing Service, or the Rural Utilities Service, or their successor agencies.

*Carried out in a rural area* means either:

- (1) The entire project is physically located in a rural area; or
- (2) The beneficiaries of the service(s) provided through the project must either reside in a rural area (in the case of individuals) or be located in a rural area (in the case of entities).

*Investment* means either monetary or non-monetary contributions to the implementation of the Plan's objectives.

*Jurisdiction* means a unit of government or other entity with similar powers, such as a city, county, district, special purpose district, township, town, borough, parish, village, state, Indian tribe, etc.

*Multi-jurisdictional* means more than one jurisdiction.

*Multi-sectoral* means intentional collaboration between two or more sectors (i.e., utility, health, housing, community services, etc.) to accomplish goals and achieve outcomes in communities and regions.

*Philanthropic organization* means an entity whose mission is to provide monetary, technical assistance, or other items of value for religious, char-

itable, community development, scientific, literary, or educational purposes.

*Plan* means a Strategic Community Investment Plan illustrating:

- (1) A variety of activities designed to facilitate the vision of a rural community for the future including considerations for improving and expanding broadband services as needed;
- (2) Participation by multiple stakeholders, including local and regional partners;
- (3) Leverage of applicable regional resources;
- (4) Investment from strategic partners, such as private organizations, cooperatives, other government entities, Indian tribes, and philanthropic organizations;
- (5) Clear objectives with the ability to establish measurable performance metrics;
- (6) Action steps for implementation; and
- (7) Any other elements necessary to ensure that the plan results in a comprehensive and strategic approach to rural economic development, as determined by the Secretary.

*Project* means the eligible proposed use(s) for which funds are requested as described in the application material submitted to the Agency for funding under the programs listed in §1980.1002.

*Sector* means stakeholders from areas such as business, health, education, and/or workforce; or from organization types such as public, private, non-profit, and/or philanthropy.

*Stakeholder* means an individual, group or organization with an interest in, or affected by, the plan.

*Strategic partner* means entities such as private organizations, cooperatives, other government entities, Indian Tribes, and philanthropic organizations.

[80 FR 28816, May 20, 2015, as amended at 85 FR 59394, Sept. 22, 2020]

### §§ 1980.1006–1980.1009 [Reserved]

### § 1980.1010 Project eligibility.

In order to be eligible to receive funds under this subpart, the Project must meet the following:

## §§ 1980.1011–1980.1014

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(a) The Project must meet the Project eligibility criteria of the applicable program identified in §1980.1002;

(b) The Project must be carried out in a rural area; and

(c) The Project must support the implementation of a Strategic Community Investment Plans on a multi-jurisdictional and multi-sectoral basis.

[80 FR 28816, May 20, 2015, as amended at 85 FR 59394, Sept. 22, 2020]

### §§ 1980.1011–1980.1014 [Reserved]

#### § 1980.1015 Applications.

In addition to the application material specific to the applicable program identified in §1980.1002, each applicant seeking funding under this subpart must provide the information specified in paragraphs (a) through (f) of this section.

(a) A Strategic Economic and Community Development application form (Form RD 1980–88);

(b) A description of the jurisdiction or jurisdictions in which the Plan is to be implemented;

(c) Documentation that the Plan was developed through the collaboration of multiple stakeholders in the jurisdiction of the Plan, including the participation of combinations of stakeholders;

(d) Documentation that the Plan demonstrates leveraging of the applicable region's assets to support the Plan;

(e) Documentation indicating whether or not the Plan includes monetary or non-monetary contributions from strategic partners; and

(f) Documentation that the Plan contains:

(1) Clear, measurable performance objectives with action steps for implementation; and

(2) The ability to track progress toward meeting the Plan's objectives.

[85 FR 59394, Sept. 22, 2020]

### §§ 1980.1016–1980.1019 [Reserved]

#### § 1980.1020 Scoring.

The Agency will score each eligible application seeking funding under this subpart as described in this section.

(a) *Program scoring.* The Agency will score each application using the criteria for the applicable covered program, identified in §1980.1002. The maximum number of points an application

can receive under this paragraph (a) is based on the scoring criteria for the applicable program identified in §1980.1002, including any discretionary points that may be awarded.

(b) *SECD scoring.* The Agency will score each application using the criteria identified in paragraphs (b)(1) and (2) of this section. The maximum number of points an application can receive under this paragraph (b) is 20 points.

(1) *Objectives of the plan.* The Agency will score how the project supports achieving the objectives of a plan which are identified in paragraphs (b)(1)(i) through (iii). Applicants must supply sufficient documentation that demonstrates to the Agency the criteria identified in paragraphs (b)(1)(i) through (iii) of this section are met. The maximum score under this paragraph (b)(1) is 10 points.

(i) If the project directly supports implementation of three or more of the plan's objectives, the application will receive 10 points.

(ii) If the project directly supports implementation of two of the plan's objectives, the application will receive 5 points.

(iii) If the project directly supports implementation of less than two of the plan's objectives, the application will receive no points.

(2) *Characteristics of a plan.* The Agency will score the plan associated with a Project based upon the characteristics of the plan, which are identified in paragraphs (b)(2)(i) through (v) of this section. Applicants must supply sufficient documentation that demonstrates to the Agency the criteria identified in paragraphs (b)(2)(i) through (v) of this section are met. The maximum score under this paragraph (b)(2) is 10 points.

(i) *Variety of activities.* If the plan contains a variety of activities which clearly show facilitation toward achieving the vision for the rural communities and/or region as expressed in the plan, two points will be awarded.

(ii) *Regional resources leverage.* If the plan demonstrates an understanding of the applicable regional asset resources and indicates leveraging of those resources to support the plan, including cultural resources, natural resources,

human resources, infrastructure, and financial resources, two points will be awarded.

(iii) *Strategic partner investments.* If the Plan includes investments from strategic partners other than the U.S. Department of Agriculture, two points will be awarded.

(iv) *Participation by multiple stakeholders.* If the plan provides evidence of the involvement of multiple stakeholders from multiple jurisdictions and representing multiple sectors in the preparation, implementation, monitoring and/or evaluation of the plan, Rural Development (RD) will award two points.

(v) *Objectives, performance measures, and action steps.* If the plan contains clear, measurable objectives, the ability to track progress toward meeting the objectives and identifiable action steps for implementation, two points will be awarded.

(c) *Total score.* The Agency will sum the scores each application receives under paragraphs (a) and (b) of this section in order to rank applications.

[80 FR 28816, May 20, 2015, as amended at 85 FR 59394, Sept. 22, 2020]

#### §§ 1980.1021–1980.1024 [Reserved]

#### § 1980.1025 Award process.

(a) Unless RD indicates otherwise in a notice, the award process for the applicable program identified in §1980.1002 will be used to determine which Projects receive funding under this subpart.

(b) Projects not receiving funding under this subpart are eligible to compete for funding under the applicable program identified in §1980.1002. The scores for such Projects when competing for program funding will not include the score assigned to the application under §1980.1020(b).

[85 FR 59395, Sept. 22, 2020]

#### §§ 1980.1026–1980.1100 [Reserved]

### Subpart L [Reserved]

### Subpart M—Special Authority To Enable Funding of Broadband and Smart Utility Facilities Across Select Rural Development Programs

AUTHORITY: 7 U.S.C. 1981(e) and 7 U.S.C. 908.

SOURCE: 85 FR 57082, Sept. 15, 2020, unless otherwise noted.

#### § 1980.1201 Purpose.

This subpart establishes policies and procedures for the review, approval and servicing of projects authorized to use funding for broadband and smart utility facilities (Special Broadband Authority) in select Rural Development programs. This special broadband authority will leverage the federal resources available for the deployment broadband services in rural areas. The Secretary has discretion to allow recipients of RD grants, loans, or loan guarantees to use a limited amount of funds for broadband purposes.

#### § 1980.1202 Special broadband and smart utility facility funding.

(a) The Secretary, acting directly or through authority delegated to the RD agency heads, may allow a recipient of an RD grant, loan, or loan guarantee to use up to 10 percent of project funds for any purpose outlined in §1980.1205 and in compliance with this part.

(b) Prior to exercising authority under this part, the Agency with a request for special broadband authority (the Awarding Agency) shall consult with the Administrator of the affected RD Agency to determine:

(1) If the provision of broadband service by the recipient (or another party under a wholesale broadband service agreement) would cause competitive harm to a current Rural Development borrower, grantee, or guaranteed lender with respect to an active project for broadband deployment and provision of services With respect to a current RD awardee in the project service area that has significantly defaulted on, or not material complied with its award requirements, the affected RD agency may make a finding of no competitive harm unless it is necessary to protect the government's interest;



## § 1980.1203

(2) If the recipient intends to use the funds for the provision of retail broadband service and, if so, assist the agency in providing public notice and receiving responses from existing service providers, as provided in this rule, so that a determination can be made as to whether the minimum acceptable level of broadband service exists in the service area at the time of the request; and

(3) If the recipient does not intend to provide broadband service, and the funded facilities will only be used for internal use, such as smart utility, there shall be no finding of competitive harm and the recipient shall be relieved of the public notice provision requirement of §1980.1207 and reporting requirements of §1980.1209. Note that recipients funding broadband facilities for internal use under an RD program's existing authority would not be subject to this part with respect to the 10 percent funding limitation; however, if such facilities are contemplated to provide retail broadband service in the future, the public notice requirements of §1980.1206(b) and (c) will apply.

### § 1980.1203 Definitions.

*Agency.* One of the three Rural Development agencies, the Rural Housing Service, the Rural Business-Cooperative Service or the Rural Utilities Service.

*Agency head.* The Administrator of the applicable RD agency.

*Awarding Agency.* An agency which has received an application for special broadband authority or has approved an application for such authority.

*Broadband service.* Any technology identified by the Secretary as having the capacity to provide transmission facilities that enable a subscriber to originate and receive voice, data, graphics, and video.

*Con Act.* The Consolidated Farm and Rural Development Act of 1972, as codified and amended at 7 U.S.C. 1921 *et seq.*

*Minimum acceptable level of broadband service.* The minimum transmission capacity with respect to terrestrial service that will qualify as broadband service, as published by the RUS in the FEDERAL REGISTER pursuant to 7 CFR part 1738. If a new minimum transmission capacity is published in the

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FEDERAL REGISTER while a request for smart utility authority is pending, broadband service for the purpose of reviewing the request will be defined by the minimum transmission capacity that was in effect at the time the request was received by the Agency.

*Rural Development (RD).* A mission area of the United States Department of Agriculture (USDA) made up of the Rural Housing Service (RHS), Rural Business-Cooperative Service (RBCS) and the Rural Utilities Service (RUS).

*Retail broadband service.* For the purposes of this subpart, retail broadband service means any broadband service that is provided to the public at a charge. Broadband Service which is used exclusively by the recipient for its own purposes and is not sold to the public is not retail broadband. Broadband service which is sold to other service providers through wholesale agreements shall also not be considered retail broadband service.

*RE Act.* The Rural Electrification Act of 1936, as codified and amended at 7 U.S.C. 901 *et seq.*

*Secretary.* The Secretary of Agriculture.

*Special broadband authority.* Approval by an RD program to use up to 10 percent of the proceeds of an RD loan, grant, or loan guarantee for the purposes of constructing, improving, or acquiring broadband facilities and equipment in rural areas, whether or not retail or wholesale broadband service will be provided.

*Smart utility.* The use of broadband facilities and equipment that is only available internally by a recipient during the economic life of the assets financed by an RD loan, grant, or loan guarantee.

### § 1980.1204 Eligibility.

Programs eligible to be considered for smart utility and broadband service authority include RD programs under the Rural Electrification Act and the Consolidated Farm and Rural Development Act. Programs included, but not limited to, are as follows:

(a) 7 CFR part 1710—General and Pre-Loan Policies and Procedures Common to Electric Loans and Guarantees;

(b) 7 CFR part 1779—Water and Waste Disposal Programs Guaranteed Loans;

(c) 7 CFR part 1780—Water and Waste Loans and Grants;

(d) 7 CFR part 1783—Revolving Funds for Financing Water and Wastewater Projects (Revolving Fund Program);

(e) 7 CFR part 1942, subpart A—Community Facility Loans;

(f) 7 CFR part 3575, subpart A—Community Programs Guaranteed Loans;

(g) 7 CFR part 3560—Direct Multi-Family Housing Loans and Grants;

(h) 7 CFR part 3565—Guaranteed Rural Rental Housing Program;

(i) 7 CFR part 3570, subpart B—Community Facilities Grant Program;

(j) 7 CFR part 4274, subpart D—Intermediary Relending Program (IRP);

(k) 7 CFR part 4279, subpart B—Business and Industry Loans;

(l) 7 CFR part 4279, subpart C—Bio-refinery, Renewable Chemical and Biobased Product Manufacturing Assistance Loans;

(m) 7 CFR, part 4280, subpart A—Rural Economic Development Loan and Grant Programs;

(n) 7 CFR part 4280, subpart B—Rural Energy for American Program; and

(o) 7 CFR part 4280, subpart E—Rural Business Development Grants.

#### § 1980.1205 Eligible purposes.

Recipients may use funds for the costs of the construction, improvement, and acquisition of broadband facilities and equipment in rural areas, as set forth in this part. Rural area shall be defined by the applicable program regulations.

#### § 1980.1206 Application process and public notice requirement.

(a) *Initial notification to agency for all programs.* Applicants seeking to use program funds for eligible purposes under § 1980.1205 must inform the RD agency at the time of application, except for Smart Grid loans authorized under the RE Act and 7 CFR part 1710. This is to determine that sufficient funding is available in the applicable program to consider funding this special broadband authority in addition to the underlying RD project.

(b) *Notice for retail broadband.* All applicants that use special broadband authority to provide retail broadband service must provide the following information, which will be posted pub-

licly on RUS' fully searchable website, in addition to the identity of the applicant and the status of the application:

(1) A description of the proposed retail broadband project;

(2) A map of the proposed service area to be funded under smart utility authority of the applicant;

(3) The amount and type of support requested by the applicant;

(4) The estimated number and proportion of service points in the proposed service territory without fixed broadband service, whether terrestrial or wireless; and

(5) Any other information required of the applicant in a funding notice.

(c) *Information available to the public for approved applications.* For applications that are approved for the provision of retail broadband service under the special broadband authority, the following information will be made available to the public:

(1) The information provided in paragraph (a) of this section;

(2) Each annual report required under § 1980.1209, which will be redacted to protect any proprietary information; and

(3) Such other information as the Administrator of the RUS deems sufficient to allow the public to understand the assistance provided.

(d) *Alternative methods of public notice.* The Administrator of the RUS will provide instructions on the RUS website for alternative methods of public notice and responses by existing service providers related to projects seeking funding under the special broadband authority where the Administrator determines that existing procedures and systems used by applicants to RUS' broadband programs would be impracticable, costly, or impose excessive delay.

(e) *Additional requirements for guarantees, intermediaries and revolving loan programs.* In addition to paragraphs (a) through (d) of this section, participants and recipients of funds from eligible RD guarantee, intermediary, and revolving loan programs set forth in § 1980.1204 shall be subject to the following requirements:

## § 1980.1207

(1) No funds may be issued by program participants to recipients for special broadband authority without written approval from the Awarding Agency.

(2) Recipients must apply for special broadband authority on a project-by-project basis through program participants. Program participants shall serve as the applicant to the Awarding Agency and shall be responsible for ensuring that the public notice, reporting and other requirements of this part are contained in applicable agreements between the participant and the recipient.

### § 1980.1207 Approval to provide retail broadband service.

(a) *Service area assessment.* For applicants requesting to provide retail broadband service under the special broadband authority, applications must be posted publicly for 45 days.

(1) During the public notice period, service providers may voluntarily submit information required by the RUS Administrator onto the agency's mapping tool, or alternate methods if determined by the RUS Administrator under § 1980.1206(d). Information submitted by service providers shall be exempt from disclosure pursuant to 5 U.S.C. 552(b)(2)(B).552.

(2) If no broadband service provider submits information under paragraph (a)(1) of this section, the agency shall consider the number of providers in the proposed service area to be established by using any other data regarding the availability of broadband service that the RUS may collect or obtain through reasonable efforts.

(b) *Use of funds.* After review of information submitted from service providers, if any, and all available data on broadband availability, if the RUS determines that the minimum acceptable level of broadband service is available in the proposed retail service area, the Awarding Agency shall not approve the use of funds for such purpose. The Awarding Agency, however, may approve the use of funds for retail broadband service if:

(1) Areas with the minimum acceptable level of broadband service are eliminated from the proposed service area; and

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(2) The applicant covenants that it will not provide service in these areas with funds from the Awarding Agency.

(c) *Use of Funds for wholesale broadband service.* For applicants requesting that funds be used for wholesale broadband service, the applicant must agree:

(1) To publicly advertise in the service area that broadband service is available at wholesale to any service provider; and

(2) That the same wholesale contract will be used for all service providers requesting wholesale service and offered at the same per unit price.

### § 1980.1208 Award procedures and compliance.

(a) The Awarding Agency will inform applicants seeking consideration of funding under this part of the agency's disposition of the applicant's request;

(b) Except as provided in § 1980.1206(e), awards made under this part shall be managed and serviced by the Awarding Agency;

(c) Except as provided in § 1980.1206(e), the Agency shall be responsible for oversight and compliance of projects utilizing authority under this part;

(d) Requirements for providing retail broadband service or wholesale broadband service under §§ 1980.1206, 1980.1207, and this section shall be made part of the applicable loan or grant agreement between the recipient and the Awarding Agency, or, with respect to guarantees and intermediaries, between the program participants and the recipients;

(e) The applicable agreement must provide that non-compliance with this part or use of funds for retail broadband service or wholesale broadband service without having received agency authority to do so as required in this part, shall:

(1) Be an automatic event of default under the applicable agreement; and

(2) Require that the associated loan or grant funds used in violation of this part be disallowed or returned immediately to the awarding agency or to the program participant for eligible relending.

**RHS, RBS, RUS, FSA, USDA**

**§ 1980.1210**

**§ 1980.1209 Reporting.**

For three years starting the first January 31st after completion of the broadband project, recipients of funds used for retail broadband service under this part must submit the following information each year utilizing RUS' online reporting system:

(a) Existing network service improvements and facility upgrades, as well as new equipment and capacity enhancements that support high-speed broadband access for educational institutions, health care providers, and public safety service providers;

(b) The estimated number of end users who are currently using or forecast to use the new or upgraded infrastructure;

(c) The progress towards fulfilling the objectives for which the assistance was granted;

(d) The number and geospatial location of residences and businesses that will receive new broadband service;

(e) The speed and price of the Recipient's broadband service offerings; and

(f) The average price of broadband service in the project's service area.

**§ 1980.1210 OMB Control Number.**

The information collection requirements in this part are approved by the Office of Management and Budget and assigned OMB control number 0572-0156.

**PARTS 1981–1999 [RESERVED]**