

PART 4279 - GUARANTEED LOANMAKING

Subpart B - Business and Industry Guaranteed Loans

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PART 4279 - GUARANTEED LOANMAKING

Subpart B - Business and Industry Loans

§ 4279.101 Introduction.

(a) **Content.** This subpart contains loan processing regulations for the Business and Industry (B&I) Guaranteed Loan Program. It is supplemented by subpart A of this part, which contains general guaranteed loan regulations, and subpart B of part 4287 of this chapter, which contains loan servicing regulations. This subpart also contains regulations for Business and Industry loans under the authority of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116-136) to provide B&I guarantees for loans needed as a result of the Coronavirus Disease 2019 (COVID-19) pandemic for working capital loan purposes to support business operations and facilities in rural areas (B&I CARES Act Program Loans). Some of the requirements of this subpart are waived or altered for B&I CARES Act Program Loans. The waivers and alterations are provided in §§ 4279.190 of this subpart. (Revised 06-04-20, SPECIAL PN.)

(b) **Purpose.** The purpose of the B&I Guaranteed Loan Program is to improve, develop, or finance business, industry, and employment and improve the economic and environmental climate in rural communities. This purpose is achieved by bolstering the existing private credit structure through the guarantee of quality loans that will provide lasting community benefits. It is not intended that the guarantee authority will be used for marginal or substandard loans or for relief of lenders having such loans.

(c) **Documents.** Whether specifically stated or not, whenever Agency approval is required, it must be in writing. Copies of all forms and regulations referenced in this subpart may be obtained from any Agency office and from the USDA Rural Development Web site at <http://www.rd.usda.gov/publications>. Whenever a form is designated in this subpart, that designation includes predecessor and successor forms, if applicable, as specified by the Agency. *Any portion of this Instruction appearing in italicized type is considered by the Agency to be administrative procedure and has not been published as part of the regulation in the Federal Register.*

(d) Early Agency review. All inquiries, preapplications, and applications should be reviewed to determine that the proposal fits into the overall purpose of the program. The purpose of the early review is to advise the lender as soon as possible when eligibility problems are likely or when there are concerns about whether the project meets the intent of the program. This early communication can prevent unnecessary expense and frustration in the preparation of a full application. Credit quality and collateral should be scrutinized closely early in the process. All issues and concerns should be openly addressed with the lender, as soon as possible, to avoid any unnecessary time and expense if the concerns cannot be resolved. Loan officers should initiate the environmental review process early in the planning stage and should be alert for projects that may have a significant impact on the environment.

§ 4279.102 Definitions and abbreviations.

The definitions and abbreviations in § 4279.2 are applicable to this subpart.

§ 4279.103 Exception authority.

Section 4279.15 applies to this subpart.

§ 4279.104 Appeals.

Section 4279.16 applies to this subpart.

§§ 4279.105 - 4279.107 [Reserved]

§ 4279.108 Eligible borrowers.

(a) Type of entity. A borrower may be a cooperative organization, corporation, partnership, or other legal entity organized and operated on a profit or nonprofit basis not otherwise listed as ineligible in § 4279.117; an Indian tribe on a Federal or State reservation or other federally recognized tribal group; a public body; or an individual. A borrower must be engaged in or proposing to engage in a business. A business may include manufacturing, wholesaling, retailing, providing services, or other activities that will provide employment and improve the economic or environmental climate.

§ 4279.108 (Con.)

(b) **Citizenship.** Individual borrowers must be citizens of the United States or reside in the United States after being legally admitted for permanent residence. For purposes of this subpart, citizens and residents of the Republic of Palau, the Federated States of Micronesia, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Republic of the Marshall Islands are considered U.S. citizens. Individuals that reside in the United States after being legally admitted for permanent residence must provide a permanent green card as evidence of eligibility. *Temporary or conditional green cards or any type of visa, regardless of whether they may ultimately lead to acquiring a permanent green card, do not meet this requirement, e.g., E-2 or E-5 immigrant visas.* Private entity borrowers must demonstrate, to the Agency's satisfaction, that loan funds will remain in the United States and the facility being financed will primarily create new or save existing jobs for rural U.S. residents. *In order to ensure that loan funds remain in the U.S. as required above, loans must be collateralized with fixed assets that remain in the U.S. Applications may neither be approved nor a Conditional Commitment issued subject to meeting citizenship requirements.*

§ 4279.108 (Con.)

(c) **Rural area.** The business financed with a guaranteed loan under this subpart must be located in a rural area, except for cooperative organizations financed in accordance with § 4279.113(j) (2) and local foods projects financed in accordance with § 4279.113(y) (2). 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, except for those cooperative organizations financed in accordance with § 4279.113(j) (2) and those local foods projects financed in accordance with § 4279.113(y) (2).

(1) Rural areas are any area of a State other than a city or town that has a population of greater than 50,000 inhabitants and any urbanized area contiguous and adjacent to such a city or town. In making this determination, the Agency will use the latest decennial census of the United States. *Projects located within the boundaries of a federally recognized Indian Tribe's reservation or within Tribal trust lands or within land owned by an Alaska Native Regional or Village Corporation as defined by the Alaska Native Claims Settlement Act may be considered eligible under certain circumstances. If an inquiry is received from a Tribe whose reservation is located in an ineligible area, the inquiry should be forwarded to the National Office B&I Division for an eligibility determination.*

(2) For the purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self government, and legal powers set forth in a charter granted by the State.

(3) For the Commonwealth of Puerto Rico, the island is considered rural, except for the San Juan Census Designated Place (CDP) and any other CDP with greater than 50,000 inhabitants. However, CDPs with greater than 50,000 inhabitants, other than the San Juan CDP, may be eligible if they are determined to be "not urban in character." *Requests, with supporting documentation as to why the area is not urban in character, must be forwarded to the National Office Program Processing Division for review, analysis, and decision by the Administrator. (Revised 04-30-20, PN 536.)*

(4) For the State of Hawaii, all areas within the State are considered rural, except for the Honolulu CDP within the County of Honolulu.

(5) For the Republic of Palau, the Federated States of Micronesia, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Republic of the Marshall Islands, the Agency will determine what constitutes a rural area based on available population data.

(6) Notwithstanding any other provision of this definition, in determining which census blocks in an urbanized area are not in a rural area, the Agency will exclude any cluster of census blocks that would otherwise be considered not in a rural area only because the cluster is adjacent to not more than two census blocks that are otherwise considered not in a rural area under this definition. *This applies to areas that are considered not a rural area because they are attached to the urbanized area of a city or town of greater than 50,000 inhabitants by a "string" area that is two census blocks wide or less (which are typically interstates or major highways). As long as the "string" area is two census blocks wide or less, the area outside of the urbanized area, beginning with the "string" area, may be considered rural. See Appendix A for a diagram. Requests to verify exclusions must be submitted to the National Office Program Processing Division, with supporting documentation, for review and verification.*

(7) The Under Secretary, whose authority may not be redelegated, may determine that an area is "rural in character." Any determination made by the Under Secretary under this provision will be to areas that are determined to be "rural in character" and are within: an urbanized area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000 inhabitants or the urbanized area of such city or town; or an area within an urbanized area contiguous and adjacent to a city or town of greater than 50,000 inhabitants that is within $\frac{1}{4}$ mile of a rural area. *The site cannot lie within the city limits of the city of 50,000 or more; it must be within the urbanized area contiguous and adjacent to the city or town of 50,000 inhabitants. See Appendix A for diagrams.*

(i) Units of local government may petition the Under Secretary for a "rural in character" designation by submitting a petition to both the appropriate Rural Development State Director and the Administrator on behalf of the Under Secretary. The petition must document how the area meets the requirements of paragraph (c)(7) of this section and discuss why the petitioner believes the area is "rural in character," including, but not limited to, the area's population density; demographics; topography; and how the local economy is tied to a rural economic base. Upon receiving a petition, the Under Secretary will consult with the applicable Governor and Rural Development State Director and request comments within 10 business days, unless those comments were submitted with the petition. The Under Secretary will release to the public a notice of a petition filed by a unit of local government not later than 30 days after receipt of the petition by way of

§ 4279.108(c)(7)(i) (Con.)

notice in a local newspaper and notice on the applicable Rural Development State Office Web site. The Under Secretary will make a determination not less than 15 days, but no more than 60 days, after the release of the notice. The public notice will appear for at least 3 consecutive days if published in a daily newspaper or otherwise in two consecutive publications. Upon a negative determination, the Under Secretary will provide to the petitioner an opportunity to appeal a determination to the Under Secretary for reconsideration, and the petitioner will have 10 business days to appeal the determination and provide further information for consideration.

(ii) Rural Development State Directors may also initiate a request to the Under Secretary to determine if an area is "rural in character." A written recommendation should be sent to the Administrator, on behalf of the Under Secretary, that documents how the area meets the statutory requirements of paragraph (c)(7) of this section and discusses why the State Director believes the area is "rural in character," including, but not limited to, the area's population density; demographics; topography; and how the local economy is tied to a rural economic base. Upon receipt of such a request, the Administrator will review the request for compliance with the "rural in character" provisions and make a recommendation to the Under Secretary. Provided a favorable determination is made, the Under Secretary will consult with the applicable Governor and request comments within 10 business days, unless gubernatorial comments were submitted with the request. A public notice will be published by the State Office in accordance with paragraph (c)(7)(i) of this section. There is no appeal process for requests made on the initiative of the State Director.

(8) Applications may neither be approved nor a Conditional Commitment issued subject to meeting rural area requirements.

(d) Other credit. All applications for assistance will be accepted and processed without regard to the availability of credit from any other source. *Applicants should be encouraged to seek other sources of funding to leverage guaranteed loan funds (especially when funding is limited), which may improve the project's priority score.*

(e) Prohibition under Agency programs. No loans guaranteed by the Agency will be conditioned on any requirement that the recipients of such assistance accept or receive electric or other services from any particular utility, supplier, or cooperative.

§§ 4279.109 - 4279.112 [Reserved]

§ 4279.113 **Eligible uses of funds.**

Eligible uses of funds must be consistent with § 4279.101(b) and § 4279.108(a) and include, but are not limited to, the following:

(a) Purchase and development of land, buildings, and associated infrastructure for commercial or industrial properties, including expansion or modernization.

(b) Business acquisitions provided that jobs will be created or saved. A business acquisition is considered the acquisition of an entire business, not a partial stock acquisition in a business. Loans for stock purchases are limited to those allowed by §§ 4279.113(i), 4279.113(k), 4279.113(l) and 4279.115. (Revised 06-12-17, SPECIAL PN.)

(c) Leasehold improvements when the lease contains no reverter clauses or restrictive clauses that would impair the use or value of the property as security for the loan. The term of the lease must be equal to or greater than the term of the loan. Leasehold improvements are physical enhancements made to property by or on behalf of the property's lessee. When improvements are made to real property and those improvements are permanently affixed to the property, the title to those improvements automatically transfers to the owner of the property. The rationale behind this is that improvements, when permanently affixed, are inseparable from the real estate.

(d) Constructing or equipping facilities for lease to private businesses engaged in commercial or industrial operations. Financing for mixed-use properties, involving both commercial business and residential space, is authorized provided that not less than 50 percent of the building's projected revenue will be generated from business use. Leasehold interests are the right to hold or use property for a fixed period of time at a given price, without transfer of ownership, on the basis of a lease contract.

(e) Purchase of machinery and equipment.

(f) Startup costs, working capital, inventory, and supplies in the form of a permanent working capital term loan. Debt service reserves are considered working capital and are therefore subject to a 7-year term, as are any working capital loans.

§ 4279.113 (Con.)

(g) Debt refinancing when it is determined that the project is viable and refinancing is necessary to improve cash flow and create new or save existing jobs. Debt being refinanced must be debt of the borrower reflected on its balance sheet. The lender's analysis must document that, except for the refinancing of lines of credit, the debt being refinanced was for an eligible loan purpose under this subpart. Except as provided for in paragraph (j) (3) of this section, existing lender debt may be included provided that, at the time of application, the loan being refinanced has been closed and current for at least the past 12 months (current status cannot be achieved by the lender forgiving the borrower's debt or servicing actions that impact the borrower's repayment schedule), and the lender is providing better rates or terms. Unless the amount to be refinanced is owed directly to the Federal government or is federally guaranteed, existing lender debt may not exceed 50 percent of the overall loan. *Obtain a copy of the note(s) being refinanced with loan proceeds to document the case file. Lenders with different tax ID numbers are considered different lenders.*

(h) Takeout of interim financing. Guaranteeing a loan that provides for permanent, long-term financing after project completion to pay off a lender's interim loan will not be treated as debt refinancing provided that the lender submits a complete preapplication or application that proposes such interim financing prior to closing the interim loan. The borrower must take no action that would have an adverse impact on the environment or limit the range of alternatives to be considered by the Agency during the environmental review process. The Agency will not guarantee takeout of interim financing loans that prevent a meaningful environmental assessment prior to Agency loan approval. Even for projects with interim financing, the Agency cannot approve the loan and issue a Conditional Commitment until the environmental process is complete. The Agency assumes no responsibility or obligation for interim loans. *Interim financing is used to pay costs associated with a planned project, such as construction or installation of equipment. The lender may request Agency concurrence for a bridge loan to pay off an applicant's maturing loan with another creditor if it is in the best financial interests of the borrower. The takeout of interim financing is only eligible when the permanent loan on which the guarantee will be placed takes out the interim or bridge financing that financed the planned project and when the lender submits a complete preapplication or application that proposes the interim financing prior to closing the interim loan. If the interim or bridge financing does not meet these requirements, it is debt refinancing and must comply with paragraph (g) of this section. Unless the Agency agrees to issue the guarantee prior to construction, interim financing is not covered by the guarantee. If the guarantee is issued prior to construction, the note must contain the terms of both the construction period and the permanent financing.*
(Revised 04-30-20, PN 536.)

(i) Purchase of membership, stocks, bonds, or debentures necessary to obtain a loan from Farm Credit System institutions and other lenders provided the purchase is required for all of their borrowers and is the minimum amount required. *This paragraph allows a borrower to use guaranteed loan proceeds to purchase a membership, stock, etc., in the lender when the lender requires their borrowers to be members or own stock in order to obtain a loan.*

(j) Loans to cooperative organizations.

(1) Guaranteed loans to eligible cooperative organizations may be made in principal amounts up to \$40 million if the project is located in a rural area, the cooperative facility being financed provides for the value-added processing of agricultural commodities, and the total amount of loans exceeding \$25 million does not exceed 10 percent of the funds available for the fiscal year.

(2) Guaranteed loans to eligible cooperative organizations may also be made in non-rural areas provided:

(i) The primary purpose of the loan is for a facility to provide value-added processing for agricultural producers that are located within 80 miles of the facility;

(ii) The applicant satisfactorily demonstrates that the primary benefit of the loan will be to provide employment for rural residents;

(iii) The principal amount of the loan does not exceed \$25 million; and

(iv) The total amount of loans guaranteed under this paragraph does not exceed 10 percent of the funds available for the fiscal year.

(3) An eligible cooperative organization may refinance an existing B&I loan provided the existing loan is current and performing; the existing loan is not and has not been in monetary default (more than 30 days late) or the collateral of which has not been converted; and there is adequate security or full collateral for the new guaranteed loan.

(k) The purchase of cooperative stock by individual farmers or ranchers in a farmer or rancher cooperative or the purchase of transferable cooperative stock in accordance with § 4279.115(a); or the purchase of stock in a business by employees forming an Employee Stock Ownership Plan or worker cooperative in accordance with § 4279.115(c).

§ 4279.113 (Con.)

(l) The purchase of preferred stock or similar equity issued by a cooperative organization or a fund that invests primarily in cooperative organizations in accordance with § 4279.115(b).

(m) Taxable corporate bonds when the bonds are fully amortizing and comply with all provisions of § 4279.126, and the bond holder (lender) retains 5 percent of the bond in accordance with § 4279.77. The bonds must be fully secured with collateral in accordance with § 4279.131(b). The bonds must only provide for a trustee when the trustee is totally under the control of the lender. The bonds must provide no rights to bond holders other than the right to receive the payments due under the bond. For instance, the bonds must not provide for bond holders replacing the trustee or directing the trustee to take servicing actions, such as accelerating the bonds. Convertible bonds are not eligible under this paragraph due to the potential conflict of interest of a lender having an ownership interest in the borrower.

(1) The bond issuer (borrower) must not issue more than 11 bonds, with no more than 10 of those bonds being guaranteed under this program. The bond issuer must obtain the services and opinion of an experienced bond counsel who must present a legal opinion stating that the bonds are legal, valid, and binding obligations of the issuer and that the issuer has adhered to all applicable laws.

(2) The bond holder must purchase all of the bonds and comply with all Agency regulations. There must be a bond purchase agreement between the issuer and the bond holder. The bond purchase agreement must contain similar language to what is required to be in a loan agreement in accordance with § 4279.161(b)(11) and must not be in conflict with subparts A or B of part 4279 or subpart B of part 4287 of this chapter. The bond holder is responsible for all servicing of the loan (bond), although the bond holder may contract for servicing assistance, including contracting with a trustee who remains under the lender's total control. *Bond purchase agreements should be reviewed by the regional OGC for legal sufficiency.*

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

(o) Fees and charges outlined in § 4279.120(a), (c) and (d).

(p) Feasibility studies.

(q) Agricultural production, when not eligible for Farm Service Agency (FSA) farm loan programs assistance and when it is part of an integrated business also involved in the processing of agricultural products. Any agricultural production considered for guaranteed loan financing must be owned, operated, and maintained by the business receiving the loan for which a guarantee is provided. Except for cooperative stock purchase loans in accordance with § 4279.115(a), independent agricultural production operations are not eligible, even if not eligible for FSA farm loan programs assistance.

(1) The agricultural-production portion of any loan must not exceed 50 percent of the total loan or \$5 million, whichever is less.

Examples of potentially eligible agricultural production include, but are not limited to: an apple orchard in conjunction with a food processing plant; poultry buildings linked to a meat processing operation; or sugar beet production coupled with storage and processing.

(2) This paragraph does not preclude financing the following types of businesses:

(i) Commercial nurseries engaged in the production of ornamental plants, trees, and other nursery products, such as bulbs, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of plants from seed to the transplant stage; and forestry, which includes businesses primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities, such as reforestation.

(ii) The growing of mushrooms or hydroponics.

(iii) The boarding and/or training of animals.

(iv) Commercial fishing.

(v) Aquaculture, including conservation, development, and utilization of water for aquaculture.

(r) Educational or training facilities.

(s) Industries undergoing adjustment from terminated Federal agricultural price and income support programs or increased competition from foreign trade.

(t) Community facility projects that are not listed as an ineligible loan purpose in § 4279.117.

§ 4279.113 (Con.)

(u) **Nursing homes and assisted living facilities where constant medical care is provided and available onsite to the residents. Independent living facilities are considered residential in nature and are not eligible in accordance with § 4279.117(d).**

(v) **Tourist and recreation facilities, including hotels, motels, bed and breakfast establishments, and resort trailer parks and campgrounds, except as prohibited under ineligible purposes in § 4279.117.** *Tourism and recreation projects can be a vital part of a rural area's economic development strategy. On the other hand, they are typically difficult credit decisions due to the risks involved. You may want to obtain an independent feasibility study to make sure that demand, utilization, and related cash flow issues are looked at closely. Work closely with the lender, early in the process, on credit quality. Many requests will meet the "loan purpose" eligibility test but may not be credit worthy due to high risk.*

(w) **Pollution control and abatement.**

(x) **Energy projects that are not eligible for the Rural Energy for America Program (REAP) (7 CFR part 4280, subpart B), unless sufficient funding is not available under REAP, and when the facility has been constructed according to plans and specifications and is producing at the quality and quantity projected in the application. This does not preclude the guarantee of joint REAP/B&I projects. Eligible energy projects must be commercially available. Eligible energy projects also include those that reduce reliance on nonrenewable energy resources by encouraging the development and construction of solar energy systems and other renewable energy systems (including wind energy systems and anaerobic digesters for the purpose of energy generation), including the modification of existing systems in rural areas.**

(1) **Projects that produce renewable biomass or biofuel as an output must utilize commercially available technologies and have completed two operating cycles at design performance levels prior to issuance of a Loan Note Guarantee.** *"Operating cycle" is the average time between the acquisition of materials or the providing of services and the final cash realization of that acquisition or provision of services.*

(2) **Projects that produce steam or electricity as an output must have met acceptance test performance criteria acceptable to the Agency and be successfully interconnected with the purchaser of the output. An executed power purchase agreement acceptable to the Agency will be required prior to issuance of a Loan Note Guarantee.**

(3) Performance or acceptance test requirements for all other energy projects will be determined by the Agency on a case-by-case basis.

(y) Projects that process, distribute, aggregate, store, and/or market locally or regionally produced agricultural food products to support community development and farm and ranch income, subject to each of the following:

(1) The term "locally or regionally produced agricultural food product" means any agricultural food product that is raised, produced, and distributed in the locality or region in which the final product is marketed, so that the distance the product is transported is less than 400 miles from the origin of the product, or within the State in which the product is produced. Food products could be raw, cooked, or a processed edible substance, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

(2) Projects may be located in urban areas, as well as rural areas.

(3) A significant amount of the food product sold by the borrower is locally or regionally produced, and a significant amount of the locally or regionally produced food product is sold locally or regionally. The Agency is choosing not to set a threshold for "significant" but reserves the right to do so in periodic notices in the Federal Register.

(4) The borrower must include in an appropriate agreement, with retail and institutional facilities to which the borrower sells locally or regionally produced agricultural food products, a requirement to inform consumers of the retail or institutional facilities that the consumers are purchasing or consuming locally or regionally produced agricultural food products. *The Agency should include in its Conditional Commitment a requirement that the borrower has the required agreement(s) in place prior to issuance of the Loan Note Guarantee, but the Agency does not need to review the agreement(s). The lender's certification required by § 4279.181(a) (9) is adequate assurance that agreements are in place.*

§ 4279.113(y) (Con.)

(5) The Agency will give funding priority to projects that provide a benefit to underserved communities in accordance with § 4279.166(b)(4)(i)(G). An underserved community is a community (including an urban or rural community and an Indian tribal community) that has limited access to affordable, healthy foods, including fresh fruits and vegetables, in grocery retail stores or farmer to consumer direct markets and that has either a high rate of hunger or food insecurity or a high poverty rate as reflected in the most recent decennial census or other Agency-approved census. Funding priority will be given to the financing of projects that provide a benefit to underserved communities. A project does not have to be physically located in an underserved community, but its activities must provide a benefit to an underserved community to receive funding priority. As an example, an aggregation and distribution center that is physically located in an urban area would be eligible for priority funding if a meaningful portion of the aggregated product is made available to consumers at grocery or other retail establishments located within an underserved community or to food banks, schools, or other institutions serving low-income populations, thus providing a benefit to the underserved community. An aggregation and distribution center in an urban area would not be eligible for priority funding if it distributes all of its food to high-end markets. When there is a tie in priority scoring, projects that serve underserved communities will be funded over those that do not serve underserved communities. The Economic Research Service Food Access Research Atlas (formerly known as the Food Desert Locator) can be utilized to locate food deserts, which are low-income census tracts where either a substantial number or share of residents has low access to a supermarket or large grocery store. "Low income" tracts are defined as those where at least 20 percent of the people have income at or below the federal poverty levels for family size, or where median family income for the tract is at or below 80 percent of the surrounding area's median family income. Tracts qualify as "low access" tracts if at least 500 persons or 33 percent of their population live more than a mile from a supermarket or large grocery store (for rural census tracts, the distance is more than 10 miles). The Food Access Research Atlas can be found at the following Web site address:

<http://www.ers.usda.gov/data-products/food-access-research-atlas/go-to-the-atlas.aspx>

§ 4279.114 [Reserved]

§ 4279.115 Cooperative stock/cooperative equity.

(a) Cooperative stock purchase program. The Agency may guarantee loans for the purchase of cooperative stock by individual farmers or ranchers in a farmer or rancher cooperative established for the purpose of processing an agricultural commodity. The cooperative may use the proceeds from the stock sale to recapitalize, to develop a new processing facility or product line, or to expand an existing production facility. The cooperative may contract for services to process agricultural commodities or otherwise process value-added agricultural products during the 5-year period beginning on the operation startup date of the cooperative in order to provide adequate time for the planning and construction of the processing facility of the cooperative. Loan proceeds must remain in the cooperative from which stock was purchased, and the cooperative must not reinvest those funds into another entity. The Agency may also guarantee loans for the purchase of transferable stock shares of any type of existing cooperative, which would primarily involve new or incoming members. Such stock may provide delivery or some form of participation rights and may only be traded among cooperative members. Paragraphs (5) through (7) of this section are not applicable for guaranteed loans for the purchase of transferable cooperative stock.

(1) The maximum loan amount is the threshold established in § 4279.161(c), and all applications will be processed in accordance with § 4279.161(c).

(2) The maximum term is 7 years.

(3) The lender will, at a minimum, obtain a valid lien on the stock, an assignment of any patronage refund, and the ability to transfer the stock to another party, or otherwise liquidate and dispose of the collateral in the event of a borrower default. *In the event of default, the stock may not be sufficient to satisfy the debt. The borrower and lender must understand that the borrower is fully liable for the entire debt, regardless of the success or failure of the cooperative. The lender will be expected to maximize recovery on the loan, including collection of personal and corporate guarantees. In addition, provisions of the DCIA may impose significant restrictions on delinquent Federal debtors, including eligibility for other Federal programs.*

§ 4279.115(a) (Con.)

(4) **The lender must complete a written credit analysis of each stock purchase loan and a complete credit analysis of the cooperative prior to making its first stock purchase loan.**

(5) **The borrower may provide financial information in the manner that is generally required by commercial agricultural lenders.** *The Agency will not require the financial statements from the individual farmers and ranchers to be prepared in accordance with GAAP for cooperative stock purchase loans.*

(6) **A feasibility study of the cooperative is required for startup cooperatives and may be required by the Agency for existing cooperatives when the cooperative's operations will be significantly affected by the proceeds that were generated from the stock sale.** *State Directors are not authorized to approve or make any commitment on any application to purchase cooperative stock before the National Office has reviewed the feasibility study of the cooperative and authorized processing of cooperative stock purchase loans. The State Director should submit feasibility studies to the National Office Program Processing Division with an analysis and recommendation. (Revised 04-30-20, PN 536.)*

(7) **The Agency will conduct an appropriate environmental assessment on the processing facility and will not process individual applications for the purchase of stock until the environmental assessment on the cooperative processing facility is completed. Typically, an individual loan for the purchase of cooperative stock is considered a categorical exclusion.** *The State Office where the processing facility is located will be responsible for completing the environmental assessment in accordance with 7 CFR part 1970, "Environmental Policies and Procedures." The assessment must consider and document the potential cumulative impacts created by an increase in production necessary to meet the demand for supply by the cooperative. If the project requires a supply of raw materials from multiple States, information from each State Office must be considered in the overall assessment of the project. This includes, but is not limited to, public reaction to any substantial increase in production. An environmental consultant or other qualified professional may be required to complete the environmental analysis on a case-by-case basis.*

(b) Cooperative equity security guarantees. The Agency may guarantee loans for the purchase of preferred stock or similar equity issued by a cooperative organization or for a fund that invests primarily in cooperative organizations. In either case, the guarantee must significantly benefit one or more entities eligible for assistance under the B&I program.

- (1) "Similar equity" is any special class of equity stock that is available for purchase by non-members and/or members and lacks voting and other governance rights.
- (2) A fund that invests "primarily" in cooperative organizations is determined by its percentage share of investments in and loans to cooperatives. A fund portfolio must have at least 50 percent of its loans and investments in cooperatives to be considered eligible for loan guarantees for the purchase of preferred stock or similar equity.
- (3) The principal amount of the loan will not exceed \$10 million.
- (4) The maximum term is 7 years or no longer than the specified holding period for redemption as stated by the stock offering, whichever is less.
- (5) All borrowers purchasing preferred stock or similar equity must provide documentation of the terms of the offering that includes compliance with State and Federal securities laws and financial information about the issuer of the preferred stock to both the lender and the Agency.
- (6) Issuer(s) of preferred stock must be a cooperative organization or a fund and must be able to issue preferred stock to the public that, if required, complies with State and Federal securities laws.
- (7) A fund must use a loan guaranteed under this subpart to purchase preferred stock that is issued by cooperatives.
- (8) The lender will, at a minimum, obtain a valid lien on the preferred stock, an assignment of any patronage refund, and the ability to transfer the stock to another party, or otherwise liquidate and dispose of the collateral in the event of a borrower default. For the purpose of recovering losses from loan defaults, lenders may take ownership of all equities purchased with such loans, including additional shares derived from reinvestment of dividends.
- (9) Shares of preferred stock that are purchased with guaranteed loan proceeds cannot be converted to common or voting stock.

§ 4279.115(b) (Con.)

(10) In the absence of adequate provisions for investors' rights to early redemption of preferred stock or similar equity, a borrower must request from a cooperative or fund issuing such equities a contingent waiver of the holding or redemption period in advance of share purchases. This contingent waiver provides that in the event a borrower defaults on a loan financed under the guaranteed loan program, the borrower waives any ownership rights in the stock, and the lender and Agency will then have the right to redeem the stock.

(11) Guaranteed loans for the purchase of preferred stock must be prepaid in the event a cooperative or fund that issued the stock exercises an early redemption. If the cooperative enters into bankruptcy, to the extent the cooperative can redeem the preferred stock, the borrower is required to repay the loan from the redemption of the stock.

(c) Employee ownership succession. The Agency may guarantee loans for conversions of businesses to either cooperatives or Employee Stock Ownership Plans (ESOP) within 5 years from the date of initial transfer of stock.

(1) The maximum loan amount is the threshold established in § 4279.161(c), and all applications will be processed in accordance with § 4279.161(c).

(2) The maximum term is 7 years.

(3) The lender will, at a minimum, obtain a valid lien on the stock, an assignment of any patronage refund, and the ability to transfer the stock to another party, or otherwise liquidate and dispose of the collateral in the event of a borrower default. *In the event of default, the stock may not be sufficient to satisfy the debt. The borrower and lender must understand that the borrower is fully liable for the entire debt, regardless of the success or failure of the cooperative or ESOP. The lender will be expected to maximize recovery on the loan, including collection of personal and corporate guarantees. In addition, provisions of the DCIA may impose significant restrictions on delinquent Federal debtors, including eligibility for other Federal programs.*

(4) The lender must complete a written credit analysis of each stock purchase loan and a complete credit analysis of the cooperative or ESOP prior to making its first stock purchase loan.

(5) If a cooperative is organized, the selling owner(s) become members with special control rights to protect their stake in the business while a succession plan is implemented. At the completion of the stock transfer, selling owners may retain their membership in the cooperative provided that their control rights are the same as all other members. Any special covenants that selling owners may have held must be extinguished upon completion of the transfer.

(6) If an ESOP is organized for transferring ownership to employees, selling owner(s) may not retain ownership in the business after 5 years from the date of the initial transfer of stock. *Allowing selling owners to retain an ownership interest during a transitional period benefits the ESOP in that selling owners remain available to teach the employees how to run the business, so that the ESOP has a greater chance of being successful.*

§ 4279.116 New Markets Tax Credit program.

This section identifies the provisions specific to guaranteed loans involving projects that include new markets tax credits available under the New Markets Tax Credit (NMTC) program. Such applicants and applications must comply with the provisions in subparts A and B of this part, except as modified in this section.

(a) Loan guarantees for Qualified Active Low Income Community Businesses (QALICB).

(1) To be an eligible lender for a loan guarantee that involves NMTCs, the organization must meet the applicable eligibility criteria in § 4279.29 as otherwise modified by paragraphs (a)(1)(i) and (ii) of this section.

(i) Sub-entities under the control of a non-regulated lender approved as a lender for this program do not need to separately meet the requirements of § 4279.29(b). An eligible non-regulated lender may modify its list of eligible sub-entities under its control at any time by notifying the Agency in writing.

(ii) In order to take advantage of the requirement exemption in paragraph (a)(1)(i) of this section, the non-regulated lender must include in its application to be a lender each sub-entity under its control and must clearly define the multiple-entity organizational and control structure. In addition, the lender must include each such sub-entity in the audited financial statements, commercial loan portfolio, and commercial loan performance statistics.

§ 4279.116(a) (Con.)

(2) The provisions of § 4279.117(q) notwithstanding, a lender that is a Department of Treasury certified Community Development Entity (CDE) or subsidiary of a CDE (sub-CDE) may have an ownership interest in the borrower provided that each of the conditions specified in paragraphs (a) (2) (i) through (iv) of this section is met.

(i) The lender does not have an ownership interest in the borrower prior to the guaranteed loan application.

(ii) The lender does not take a controlling interest in the borrower.

(iii) The lender cannot provide equity or take an ownership interest in a borrower at a level that would result in the lender owning 20 percent or more interest in the borrower.

(iv) In its guaranteed loan application, the lender provides an Agency-approved exit strategy when the NMTCs expire after the seventh year. The CDE's (or sub-CDE's) exit strategy must include a general plan to address the lender's equity in the project, and, if the lender will divest its equity interest, how this will be accomplished and the impact on the borrower.

(3) Notwithstanding § 4279.117(p), a CDE's (or sub-CDE's) ownership interest in the borrower does not constitute a conflict of interest. The Agency will mitigate the potential for or appearance of a conflict of interest by requiring appropriate loan covenants regarding limitations on dividends and distributions of earnings be established, as well as other covenants in accordance with § 4279.161(b) (11). The Agency will also ensure that the lender limits waivers of loan covenants and future modifications of loan documents.

(4) For purposes of calculating tangible balance sheet equity, the CDE's or sub-CDE's loan that is subordinated to the guaranteed loan will be considered equity when calculating tangible balance sheet equity. The QALICB's financial statements must be prepared in accordance with GAAP.

(b) Loan guarantees for the leveraged lender. The provisions of § 4279.117(s) notwithstanding, an investor fund entity, such as an investor partnership or investor LLC, may be an eligible borrower as specified in paragraph (b)(1) of this section. Paragraphs (b)(2) through (13) of this section identify modifications to subpart B of this part that apply when the eligible borrower is an investor fund entity. An eligible borrower in a NMTC leveraged equity structured project may be either an investor fund entity, which is owned by a NMTC investor and the leveraged lender, or the leveraged lender entity. Loan proceeds to a leveraged lender entity must take the additional step of passing the loan funds through the investor fund entity before being provided to a Community Development Entity (CDE) or a sub-CDE for their loans to a Qualified Low-Income Community Borrower (QALICB), which is the ultimate use of the B&I loan funds. All B&I guaranteed loan funds must ultimately reach the QALICB for an eligible project through a direct tracing method. The guaranteed lender must hold a first lien position on all assets of the borrower, which includes, but is not limited to, all accounts, contracts, or investments of the borrower. A properly recorded lien will by reference cover the borrower's interest in the assets of the CDE or sub-CDE, including secured promissory notes executed by them to the QALICB. Additionally, for the purposes of § 4279.116(b), the assets of an investor fund entity or the investment in an investor fund entity by a leveraged lender may be considered tangible assets of that borrower when calculating the minimum tangible balance sheet equity requirement for a B&I borrower. (Revised 04-30-20, PN 536.)

(1) To be an eligible borrower for a NMTC loan, each of the following conditions must be met:

(i) The investor fund entity must be established for a single specific NMTC investment; (Revised 06-12-17, SPECIAL PN.)

(ii) The lender is not an affiliate of the investor fund entity; (Revised 06-12-17, SPECIAL PN.)

(iii) One hundred percent of the guaranteed loan funds are or will be invested in one or more sub-CDEs that will then be loaned directly to a QALICB, as defined by applicable regulations of the Internal Revenue Service and are or will be used by the QALICB in accordance with §§ 4279.113 and 4279.117 (eligibility). All of the B&I guaranteed loan funds must be "passed through" the sub-CDE to the QALICB through a direct tracing method. The QALICB's project must be the ultimate use of the B&I guaranteed loan funds; and (Revised 06-12-17, SPECIAL PN.)

§ 4279.116(b) (1) (Con.)

(iv) The QALICB meets the requirements of § 4279.108 (*eligible borrowers*).

(2) The provisions of § 4279.119 (*loan guarantee limits*) apply except that the loan guarantee limits apply to the QALICB and not to the investor fund entity, who would otherwise be understood to be the "borrower." (Revised 06-12-17, SPECIAL PN.)

(3) Section 4279.126 (*loan terms*) applies to both the borrower (investor fund entity) and the QALICB. The terms and payment schedule of the lender's loan to the investor fund entity must be at least equal to the terms and payment schedule of the sub-CDE's loan to the QALICB. An Agency approved unequal or escalating schedule of principal and interest payments may be used for a NMTC loan. The lender may require additional principal repayment by a co-borrower, such as an owner or principal of the QALICB. The lender or sub-CDE may require a debt repayment reserve fund or sinking fund; however, such fund is not in lieu of a principal repayment schedule in accordance with § 4279.126 as amended by this paragraph. *The CDE/sub-CDE may charge a higher interest rate to the QALICB borrower to reflect an interest spread premium versus the interest rate the*

§ 4279.116(b) (3) (Con.)

leverage lender is charging the CDE/sub-CDE. Aside from the interest rate, terms should be the same on the loan from the leverage lender to the CDE/sub-CDE as compared to the loan from the CDE/sub-CDE to the QALICB borrower. (Revised 06-12-17, SPECIAL PN.)

(4) Except for § 4279.131(b) (collateral), section 4279.131 (credit quality) applies to both the lender's loan to the investor fund entity and the sub-CDE's loan to the QALICB. Section 4279.131(b) applies only to the sub-CDE's loan to the QALICB. Section 4279.116(a) (4) also applies when calculating tangible balance sheet equity. The CDE's loan to the QALICB funded with the guaranteed loan funds should be a separate loan from any other loans the CDE is making to the QALICB and be secured by a senior lien position. (Revised 06-12-17, SPECIAL PN.)

(5) The personal and corporate guarantee provisions of § 4279.132 and the insurance provisions of § 4279.136 apply only to the QALICB and the sub-CDE's loan to the QALICB.

(6) Section 4279.137 (financial statements) applies to both the borrower (investor fund entity) and the QALICB. (Revised 06-12-17, SPECIAL PN.)

(7) Sections 4279.144 (appraisals) and 4279.150 (feasibility studies) apply to both the QALICB and the sub-CDE's loan to the QALICB.

(8) Section 4279.161 applies to both the borrower (investor fund entity) and the QALICB. As part of the application completed by the lender in accordance with § 4279.161, the application documentation must include comparable information for the loan (using the B&I guaranteed loan funds) between the sub-CDE and QALICB. The requirements of § 4279.161 apply to the loan application, application analysis and underwriting, and loan documents between the sub-CDE and QALICB. The lender must include these materials in its guaranteed loan application to the Agency. (Revised 06-12-17, SPECIAL PN.)

(9) The environmental requirements specified in § 4279.165(b) apply to both the loan between the sub-CDE and QALICB and the QALICB's project.

(10) When assigning the priority score to a NMTC loan application under § 4279.166, the Agency will score the project based on the sub-CDE's loan to the QALICB, the QALICB, and the QALICB's project as the ultimate use of B&I guaranteed loan funds.

(11) When complying with the planning and performing development provisions in § 4279.167, the lender is responsible for ensuring that both the sub-CDE's loan to the QALICB and the QALICB's project comply with the provisions in § 4279.167.

(12) Section 4279.180 (*changes in borrower*) applies to both the borrower (investor fund entity) and the QALICB. (Revised 06-12-17, SPECIAL PN.)

(13) Section 4279.181 (*conditions precedent to issuance of the Loan Note Guarantee*) applies to both the borrower (investor fund entity) and the QALICB. (Revised 06-12-17, SPECIAL PN.)

§ 4279.117 Ineligible purposes and entity types.

(a) Distribution or payment to an individual or entity that will retain an ownership interest in the borrower or distribution or payment to a beneficiary of the borrower. *For transfers of ownership/business acquisitions, see § 4279.113(b).* Distribution or payment to a member of the immediate family of an owner, partner, or stockholder will not be permitted, except for a change in ownership of the business where the selling immediate family member does not retain an ownership interest and the Agency determines the price paid to be reasonable.

As this type of transaction is not an arm's length transaction, reasonableness of the price paid will be based upon an appraisal. In situations where there is common ownership or an otherwise closely-related company is being paid to do construction or installation work for a borrower, only documented costs associated with construction or installation can be paid with loan proceeds. Documented construction or installation costs may not include any profit or wages to a related person, and all work must be done at cost with no profit built into the cost. This paragraph does not apply to transfers of ownership for ESOPs or worker cooperatives, to cooperatives where the cooperative pays the member for product or services, or where member stock is transferred among members of the cooperative in accordance with § 4279.115. *The payment of personal debt is considered a distribution or payment to an owner, except for the refinancing of debt for an asset that is used in the business when the owner is a co-borrower on the loan. The Conditional Commitment must contain a condition that prohibits the selling immediate family member from retaining an ownership interest in the business. This paragraph does not preclude the former owner from remaining as an employee of the business during a transitional period.* (Revised 06-12-17, SPECIAL PN.)

(b) **Projects in excess of \$1 million that would likely result in the transfer of jobs from one area to another and increase direct employment by more than 50 employees. However, this limitation is not to be construed to 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 establishment of such branch, affiliate, or subsidiary will not result in an increase in 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 branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area or its original location or in any other area where it conducts such operations.** *If the loan is in excess of \$1 million and will increase direct employment by more than 50 employees, the State Office should immediately send a copy of the completed Form RD 4279-2, "Certification of Non-Relocation and Market and Capacity Information Report," to the National Office Program Processing Division to begin the Department of Labor clearance process. (Revised 04-30-20, PN 536.)*

§ 4279.117 (Con.)

(c) Projects in excess of \$1 million that would increase direct employment by 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. *See administrative guidance in paragraph (b) of this section.*

(d) The financing of timeshares, residential trailer parks, housing development sites, apartments, duplexes, or other residential housing, except as authorized in § 4279.113(d). *If the vehicle/dwelling is a permanent residence, it is considered residential housing.* (Revised 10-05-16, PN 489.)

(e) Owner-occupied housing, such as bed and breakfasts, hotels and motels, storage facilities, etc., are only allowed when the pro rata value of the owner's living quarters, based on square footage, is deducted from the use of loan proceeds.

(f) Guaranteeing lease payments or any lines of credit.

(g) Guaranteeing loans made by other Federal agencies.

(h) Loans made with the proceeds of any obligation the interest on which is excludable from income under 26 U.S.C. 103 or a successor statute. Funds generated through the issuance of tax-exempt obligations shall neither be used to purchase the guaranteed portion of any Agency guaranteed loan nor shall an Agency guaranteed loan serve as collateral for a tax-exempt issue. The Agency may guarantee a loan for a project that involves tax-exempt financing only when the guaranteed loan funds are used to finance a part of the project that is separate and distinct from the part that is financed by the tax-exempt obligation, and the guaranteed loan has at least a parity security position with the tax-exempt obligation.

(i) Guarantees supporting inherently religious activities, such as worship, religious instruction, proselytization, or to pay costs associated with acquisition, construction, or rehabilitation of structures for inherently religious activities, including the financing of multi-purpose facilities where religious activities will be among the activities conducted. *As the word "inherently" means "the essential character of something," hospitals with chapels, funeral homes conducting religious funeral services or event centers that periodically host weddings are eligible because they are not inherently religious.*

(j) Businesses that derive more than 10 percent of annual gross revenue (including any lease income from space or machines) from gambling activity, excluding State-authorized lottery proceeds. *Annual gross revenue is considered the gross receipts, including any lease or rental income, less winner payouts.*

(k) Businesses deriving income from activities of a prurient sexual nature or illegal activities. *This includes marijuana dispensaries.*

(l) Racetracks or facilities for the conduct of races by animals, professional or amateur drivers, jockeys, etc.

(m) Golf courses and golf course infrastructure, including par 3 and executive golf courses. *This does not apply to miniature golf courses, independent driving ranges, pro shops, clubhouses, restaurants or lodging facilities.*

(n) Cemeteries.

(o) Research and development projects and projects that involve technology that is not commercially available.

(p) Any project that the Agency determines creates a conflict of interest or an appearance thereof between any party related to the project. *Examples of conflict of interest include but are not limited to: 1) refinancing debt held by an entity that also packaged the loan because the entity has a financial interest in getting the loan paid off that could prevent it from acting impartially when it packages the loan; 2) having a loan packaged by an entity that will also be involved with, or receive compensation from, the loan's sale in the secondary market because the loan packager has a financial interest in getting the loan approved; and 3) making a loan to a USDA employee or an elected official because there is an appearance of a conflict of interest that the loan is being approved due to the position of the person and not the merits of the project. If there is any doubt whether a situation may constitute a conflict of interest, please consult with the National Office Program Processing Division for guidance. (Revised 04-30-20, PN 536.)*

(q) Guarantees where the lender or any of the lender's officers has an ownership interest in the borrower or is an officer or director of the borrower or where the borrower or any of its officers, directors, stockholders, or other owners have more than a 5 percent ownership interest in the lender. Any of the lender's directors, stockholders, or other owners that are officers, directors, stockholders, or other owners of the borrower must be recused from the decisionmaking process.

§ 4279.117 (Con.)

(r) Other than cooperative stock purchase loans and cooperative equity security guarantees in accordance with § 4279.115, guarantees supporting investment or arbitrage or speculative real estate investment.

(s) Lending institutions, investment institutions, or insurance companies.

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(Added 06-12-17, SPECIAL PN)

(08-09-16) SPECIAL PN

(t) Charitable or fraternal organizations. Businesses that derive more than 10 percent of annual gross revenue from tax deductible charitable donations, based on historical financial statements required by § 4279.161(b), are considered charitable organizations for the purpose of this paragraph. Fees for services rendered or that are otherwise ineligible for deduction under the Internal Revenue Code are not considered tax deductible charitable donations. *To determine if the business is an organization subject to the 10 percent charitable donation maximum, you should either review the organization's Articles of Incorporation/Organization to see if they are a 501(c)(3) charitable organization or check to see if the organization is listed as a charitable organization on IRS's website:*
<http://apps.irs.gov/app/eos/mainSearch.do?mainSearchChoice=pub78&dispatchMethod=selectSearch>

(u) Any business located within the Coastal Barriers Resource System that does not qualify for an exception as defined in section 6 of the Coastal Barriers Resource Act, 16 U.S.C. 3501 et seq. *The State Office should obtain guidance from the U.S. Fish and Wildlife Service for all projects located in a Coastal Barriers area, and any exceptions require their concurrence. (Revised 04-30-20, PN 536.)*

(v) Any business located in a special flood or mudslide hazard area as designated by the Federal Emergency Management Agency in a community that is not participating in the National Flood Insurance Program unless the project is an integral part of a community's flood control plan.

(w) Any project that drains, dredges, fills, levels, or otherwise manipulates a wetland or engages in any activity that results in impairing or reducing the flow, circulation, or reach of water, except in the case of activity related to the maintenance of previously converted wetlands. This does not apply to loans for utility lines.

§ 4279.118 [Reserved]

§ 4279.119 Loan guarantee limits.

(a) Loan amount. The total amount of B&I loans to one borrower (including the guaranteed and unguaranteed portions, the outstanding principal and interest balance of any existing B&I guaranteed loans, and the new loan request) must not exceed \$10 million, except as outlined in paragraphs (a)(1) and (2) of this section. In addition to the borrower loan limit, there is a guarantor loan limit of \$50 million.

(1) The Administrator may, at the Administrator's discretion, grant an exception to the \$10 million limit for loans of \$25 million or less under the following circumstances:

- (i) The project to be financed is a high-priority project as defined in § 4279.2. Priority points will be awarded in accordance with the criteria contained in § 4279.166;
- (ii) The lender must document to the satisfaction of the Agency that the loan will not be made and the project will not be completed if the guaranteed loan is not approved; and
- (iii) The percentage of guarantee will not exceed 60 percent. No exception to this requirement will be approved under paragraph (b) of this section for loans exceeding \$10 million.
- (iv) *If the borrower and lender submit a preapplication for a loan exceeding \$10 million, the preapplication must be submitted to the National Office Program Processing Division for review and concurrence before encouraging a full application. (Revised 04-30-20, PN 536.)*

(2) The Secretary, whose authority may not be redelegated, may approve guaranteed loans in excess of \$25 million, at the Secretary's discretion, for rural cooperative organizations that process value-added agricultural commodities in accordance with § 4279.113(j) (1).

(b) Percentage of guarantee. The percentage of guarantee, up to the maximum allowed by this section, is a matter of negotiation between the lender and the Agency. The maximum percentage of guarantee is 80 percent for loans of \$5 million or less, 70 percent for loans between \$5 and \$10 million, and 60 percent for loans exceeding \$10 million. For subsequent guaranteed loans, the maximum percentage of guarantee will be based on the cumulative amount of outstanding principal and interest of any existing B&I guaranteed loans and the new loan request. *Frequently, negotiation of the percentage of guarantee between the lender and the Agency is limited to the lender requesting, and the Agency agreeing to, the maximum percentage of guarantee allowed by this section. However, there are situations where the Agency approval official should consider less than the maximum percentage of guarantee allowed. Situations where consideration should be given to reducing the percentage of guarantee include, but are not limited to, issuing the Loan Note Guarantee prior to substantial completion of construction, debt refinancing loans secured by specialized equipment, loans secured by second lien positions, and loans where there is an inordinate risk to the Agency.* **Notwithstanding the preceding, the Administrator may, at the Administrator's discretion, grant an exception allowing guarantees of up to 90 percent on loans of \$5 million or less if the conditions of either paragraph (b) (1) or (b) (2) are met. Each fiscal year, the Agency will establish a limit on the maximum portion of guarantee authority available for that fiscal year that may be used to guarantee loans with an increased percentage of guarantee. The Agency will publish a notice announcing this limit in the Federal Register.**

§ 4279.119(b) (Con.)

(1) The project to be financed is a high-priority project as defined in § 4279.2. Priority points will be awarded in accordance with the criteria contained in § 4279.166; or

(2) The lender documents, to the satisfaction of the Agency, that the loan will not be made and the project will not be completed due to the bank's legal or regulatory lending limit if the higher percentage of guarantee is not approved.

percentage of guarantee under this section must be forwarded to the National Office Program Processing Division prior to obligation of the guaranteed loan. The Administrator, via the National Office Program Processing Division, will notify the State Director whether or not the request is approved. After the guarantee authority for increased percentages of guarantee for a fiscal year has been exhausted, the National Office will notify the State Directors. (Revised 04-30-20, PN 536.)

§ 4279.120 Fees and charges.

There are two types of non-refundable fees--the guarantee fee and the annual renewal fee. These fees are to be paid by the lender but may be passed on to the borrower. Fees must be submitted to the Agency through Pay.gov via a pre-authorized debit. Annual renewal fees must also be forwarded to the Agency via an Automated Clearing House (ACH). (Revised 04-30-20, PN 536.)

(a) Guarantee fee. The guarantee fee is paid at the time the Loan Note Guarantee is issued and may be included as an eligible use of guaranteed loan proceeds. The amount of the guarantee fee is determined by multiplying the total loan amount by the guarantee fee rate by the percentage of guarantee. The rate of the guarantee fee is established by the Agency in an annual notice published in the Federal Register. Subject to annual limits set by the Agency in the published notice, the Agency may charge a reduced guarantee fee if requested by the lender for loans of \$5 million or less when the borrower's business:

- (1) Supports value-added agriculture and results in farmers benefiting financially,
- (2) Promotes access to healthy foods, or
- (3) Is a high impact business development investment as defined in § 4279.2 and applied in accordance with § 4279.166(b)(4) and is located in a rural community that:

- (i) Is experiencing long-term population decline;
- (ii) Has remained in poverty for the last 30 years;
- (iii) Is experiencing trauma as a result of natural disaster;
- (iv) Is located in a city or county with an unemployment rate 125 percent of the Statewide rate or greater; or
- (v) Is located within the boundaries of a federally recognized Indian tribe's reservation or within tribal trust lands or within land owned by an Alaska Native Regional or Village Corporation as defined by the Alaska Native Claims Settlement Act.

(4) All requests for approval of a guaranteed loan with a reduced guarantee fee must be forwarded to the National Office Program Processing Division prior to obligation of the guaranteed loan. The request must document eligibility for a reduced guarantee fee and include a priority scoresheet. The Administrator, via the National Office Program Processing Division, will notify the State Director whether or not the request is approved. After the guarantee authority for reduced guarantee fees for a fiscal year has been exhausted, the National Office will notify the State Directors. (Revised 04-30-20, PN 536.)

(b) Annual renewal fee. The annual renewal fee is paid by the lender to the Agency once a year. Payment of the annual renewal fee is required in order to maintain the enforceability of the guarantee as to the lender. *The annual renewal fee applies to loans with an obligation date on or after October 1, 2005, but does not apply to loans funded under the American Recovery and Reinvestment Act of 2009.*

(1) The Agency will establish the rate of the annual renewal fee in an annual notice published in the Federal Register. The amount of the annual renewal fee is determined by multiplying the outstanding principal loan balance as of December 31 of each year by the annual renewal fee rate by the percentage of guarantee. The rate that is in effect at the time the loan is obligated remains in effect for the life of the guarantee on the loan.

§ 4279.120(b) (Con.)

(2) Annual renewal fees are due on January 31. Payments not received by April 1 are considered delinquent and, at the Agency's discretion, may result in the Agency terminating the guarantee to the lender. The Agency will provide the lender 30 calendar days' notice that the annual renewal fee is delinquent before terminating the guarantee. Holders' rights will continue in effect as specified in Form RD 4279-5, "Loan Note Guarantee," and Form RD 4279-6, "Assignment Guarantee Agreement," unless the holder took possession of an interest in the Loan Note Guarantee knowing the annual renewal fee had not been paid. Until the Loan Note Guarantee is terminated by the Agency, any delinquent annual renewal fees will bear interest at the note rate, and any delinquent annual renewal fees, including any interest due thereon, will be deducted from any loss payment due the lender. For loans where the Loan Note Guarantee is issued between October 1 and December 31, the first annual renewal fee payment is due January 31 of the second year following the date the Loan Note Guarantee was issued.

(3) Lenders are prohibited from selling guaranteed loans on the secondary market if there are unpaid annual renewal fees.

(c) Routine lender fees. The lender may establish charges and fees for the loan provided they are similar to those normally charged other applicants for the same type of loan in the ordinary course of business, and these fees are an eligible use of loan proceeds. The lender must document such routine fees on Form RD 4279-1, "Application for Loan Guarantee." The lender may charge prepayment penalties and late payment fees that are stipulated in the loan documents, as long as they are reasonable and customary; however, the Loan Note Guarantee will not cover either prepayment penalties or late payment fees.

(d) Professional services. Professional services are those rendered by persons generally licensed or certified by States or accreditation associations, such as architects, engineers, accountants, attorneys, or appraisers, and those rendered by loan packagers. The borrower may pay fees for professional services needed for planning and developing a project. Such fees are an eligible use of loan proceeds provided that the Agency agrees that the amounts are reasonable and customary. The lender must document these fees on Form RD 4279-1, "Application for Loan Guarantee."

(e) Fee Review. The Agency has a responsibility to ensure that the fees charged are no more than those fees customarily charged borrowers under similar circumstances when there is no guarantee.

§§ 4279.121 - 4279.124 [Reserved]

§ 4279.125 Interest rates.

The interest rate for the guaranteed loan will be negotiated between the lender and the borrower and may be either fixed or variable, or a combination thereof, as long as it is a legal rate. Interest rates will not be more than those rates customarily charged borrowers for loans without guarantees and are subject to Agency review and approval. Lenders are encouraged to utilize the secondary market and pass interest-rate savings on to the borrower. *If an interest rate swap is utilized, the guarantee can only cover principal and interest. The guarantee does not cover any fees relating to the swap.*

(a) A variable interest rate must be a rate that is tied to a published base rate, published in a national or regional financial publication, agreed to by the lender and the Agency. The variable interest rate must be specified in the promissory note and may be adjusted at different intervals during the term of the loan, but the adjustments may not be more often than quarterly. The lender must incorporate, within the variable rate promissory note at loan closing, the provision for adjustment of payment installments. The lender must fully amortize the outstanding principal balance within the prescribed loan maturity in order to eliminate the possibility of a balloon payment at the end of the loan.

(b) It is permissible to have different interest rates on the guaranteed and unguaranteed portions of the loan provided that the rate of the guaranteed portion does not exceed the rate on the unguaranteed portion, except for situations where a fixed rate on the guaranteed portion becomes a higher rate than the variable rate on the unguaranteed portion due to the normal fluctuations in the approved variable interest rate.

(c) Any change in the base rate or fixed interest rate between issuance of Form RD 4279-3, "Conditional Commitment," and Form RD 4279-5, "*Loan Note Guarantee*," must be approved in writing by the Agency. Approval of such change must be shown as an amendment to the Conditional Commitment in accordance with § 4279.173(b) and must be reflected on Form RD 1980-19, "Guaranteed Loan Closing Report."

(d) The lender's promissory note must not contain provisions for default or penalty interest nor will default or penalty interest, interest on interest, or late payment fees or charges be paid under the Loan Note Guarantee.

§ 4279.125 (Con.)

(e) The Agency is responsible for ensuring the interest rate it approves is no more than the rate customarily charged borrowers under similar circumstances when there is no guarantee. You should advise lenders of the priority scoring system as it relates to interest rate structures and the awarding of points. Make sure that new lenders understand the requirements of this section early in the loan process.

§ 4279.126 Loan terms.

(a) The length of the loan term must be the same for both the guaranteed and unguaranteed portions of the loan. The maximum repayment for loans for real estate will not exceed 30 years; machinery and equipment repayment will not exceed the useful life of the machinery and equipment or 15 years, whichever is less; and working capital repayment will not exceed 7 years. The term for a debt refinancing loan may be based on the collateral the lender will take to secure the loan. Loan terms for loans with multiple uses or collateral must be rounded down to the nearest whole year. For structures affixed to real estate, including but not limited to cell towers, wind turbines and solar PV systems, the loan term shall not exceed the lesser of the economic life of the structure or 30 years. (Revised 04-30-20, PN 536.)

(b) A loan's maturity will take into consideration the use of proceeds, the useful life of assets being financed and those used as collateral, and the borrower's ability to repay the loan.

(c) Only loans that require a periodic payment schedule that will retire the debt over the term of the loan without a balloon payment will be guaranteed. This does not preclude debt with a balloon payment from being refinanced in accordance with § 4279.113(g).

(d) The first installment of principal and interest will, if possible, be scheduled for payment after the facility is operational and has begun to generate income. However, the first full installment must be due and payable within 3 years from the date of the promissory note and be paid at least annually thereafter. In cases where there is an interest-only period, interest will be paid at least annually from the date of the note. Monthly amortized payments will normally be expected except for seasonal-type businesses.

(e) There must be no "due-on-demand" clauses without cause. Regardless of any "due-on-demand" with cause provision in a lender's promissory note, the Agency must concur in any acceleration of the loan unless the basis for acceleration is monetary default.

§§ 4279.127 - 4279.130 [Reserved]

§ 4279.131 Credit quality.

The Agency will only guarantee loans that are sound and that have a reasonable assurance of repayment. The lender is responsible for conducting a financial analysis that involves the systematic examination and interpretation of information to assess a company's past performance, present condition, and future viability. The lender is primarily responsible for determining credit quality and must address all of the elements of credit quality in a comprehensive, written credit analysis, including capacity (sufficient cash flow to service the debt), collateral (assets to secure the loan), conditions (borrower, economy, and industry), capital (equity/net worth), and character (integrity of management), as further described in paragraphs (a) through (e) of this section. The lender's analysis is the central underwriting document and must be sufficiently detailed to describe the proposed loan and business situation and document that the proposed loan is sound. The lender's analysis must include a written discussion of repayment ability with a cash-flow analysis, history of debt repayment, borrower's management, necessity of any debt refinancing, and credit reports of the borrower, principals, and any parent, affiliate, or subsidiary. The lender's analysis must also include spreadsheets and discussion of the 3 years of historical balance sheets and income statements (for existing businesses) and 2 years of projected balance sheets, income statements, and cash flow statements, with appropriate ratios and comparisons with industrial standards (such as Dun & Bradstreet or the Risk Management Association). All data must be shown in total dollars and also in common size form, obtained by expressing all balance sheet items as a percentage of assets and all income and expense items as a percentage of sales. *Agency credit evaluation guidance is outlined in Appendix B. Credit evaluation for applications involving affiliated entities must include a global credit evaluation including a global historical and projected, as applicable, debt service coverage analysis. Applications involving a guarantor(s) must also include a global debt service coverage analysis of the guarantor including the cash flow of the guarantor(s). In addition, the lender must review all applicable contracts, management agreements, and leases to determine they will not adversely affect either the borrower's repayment ability or the value of the collateral securing the guaranteed loan. (Revised 04-30-20, PN 536.)*

§ 4279.131 (Con.)

(a) **Capacity/cash flow.** The lender must make all efforts to ensure the borrower has adequate working capital or operating capital and to structure or restructure debt so that the borrower has adequate debt coverage and the ability to accommodate expansion. *Working capital is defined as current assets minus current liabilities. A working capital term loan increases current assets and long-term liabilities, thus providing an improvement to a business' working capital position. Lines of credit are not working capital. A line of credit is operating capital, which increases current assets and current liabilities concurrently, thus having no impact on a business' working capital position. The ability to repay a loan from the cash flow of the business is the most important consideration in the loanmaking process. You should review the lender's analysis of cash flow, focusing on the historical operations of the business, and independently assess the repayment ability of the borrower(s). Debt coverage calculations must include all debt, not just the guaranteed loan debt. Projections should be compared to historical operations and industry averages for reasonableness. Do not approve loan guarantee requests that do not show repayment ability.*

§ 4279.131(a) (Con.)

(1) *While projects specifically for research and development are ineligible, it may be acceptable to make a loan to an existing business involved in research and development provided that it demonstrates reliable cash flow from other proven products or services that will retire the proposed indebtedness while allowing the business to remain economically viable. Unproven or unsuccessful product development inventory and equipment may be used by the borrower as over-valued collateral, which may prove to have little or no value if the research and development is a failure.*

(2) *Common credit issues inherent to the energy industry include the fluctuating price for raw material/inventory, the demand for the end product is often driven by State and Federal regulations and incentives and the price to the consumer, and the relatively high cost of production. There is no reliable tool to predict or control the pricing and availability of the feedstock materials, and it is impossible to predict the future interests of State and Federal legislators and the possible State mandates or subsidy assistance available. Therefore, any temporary tax credits or incentives should be deducted from cash flow to ensure repayment ability should the incentives or tax credits expire. While reviewing financial projections based on best-case and worst-case scenarios provide some realization of the volatility of the industry, these scenarios are usually prepared using historical industry data and short-term future predictions for long-term loans. Therefore, you may allow significant variance for the ability of new businesses to meet projections and existing businesses to perform at significantly greater capacity and achieve an increased profit.*

(b) Collateral. The lender must ensure that the collateral for the loan has a documented value sufficient to protect the interest of the lender and the Agency. The discounted collateral value must be at least equal to the loan amount.

(1) The lender must discount collateral consistent with the sound loan-to-discounted value policy outlined in paragraphs (b) (1) (i) through (iv) of this section. The type, quality, and location of collateral are relevant factors used to assess collateral adequacy and appropriate levels of discounting. Other factors to be considered in the discounted value of collateral must include the marketability and alternative uses of the collateral. That is, specialized buildings or

equipment will be discounted greater than multi-purpose facilities or equipment. When using discounts other than those outlined in paragraphs (b)(1)(i) through (b)(1)(iv) and when in accordance with paragraph (b)(2), the lender must document why such discounts are appropriate. *The Agency should never use a discount factor that is more favorable than what the lender used. The Agency, when using discounts other than those outlined in paragraphs (b)(1)(i) through (b)(1)(iv) of this section and when it meets the requirements of paragraph (b)(2), should document in the Project Summary why the higher discount factor is appropriate.*

(i) A maximum of 80 percent of current fair market value will be given to real estate. Special purpose real estate must be assigned less value.

(ii) A maximum of 70 percent of cost or current fair market value will be given to machinery, equipment, and furniture and fixtures and will be based on its marketability, mobility, useful life, specialization, and alternative uses, if any. *Equipment can be valued by its cost (if newly acquired and supported by a bill of sale) or by an appraisal that establishes a fair market value. (Revised 04-30-20, PN 536.)*

(iii) A maximum of 60 percent of book value will be assigned to acceptable inventory and accounts receivable; however, all accounts over 90 days past due, contra accounts, affiliated accounts, and other accounts deemed not to be acceptable collateral, as determined by the Agency, 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. At a minimum, reviewed annual financial statements will be required when there is a predominant reliance on inventory and/or receivable collateral that exceeds \$250,000. Except for working capital loans, term debt must not be dependent upon accounts receivable and inventory to meet collateral requirements. *The value of inventory and receivables is the book value of these assets on the balance sheet. The average historical levels should be considered when computing collateral coverage. Accounts receivables and inventory on a startup business are likely zero at loan closing and therefore cannot count as "needed" collateral coverage.*

§ 4279.131(b)(1) (Con.)

(iv) No value will be assigned to unsecured personal, partnership, or corporate guarantees.

(2) Some businesses are predominantly cash-flow oriented, and where cash flow and profitability are strong, loan-to-value discounts may be adjusted accordingly with satisfactory documentation. A loan primarily based on cash flow must be supported by a successful and documented financial history. Under no circumstances must the loan-to-value of the collateral (loan-to-fair market value) ever be equal to or greater than 100 percent. *It is expected that the business must have been profitable for at least 2 out of the last 3 years in order to be considered successful.*

(3) Intangible assets cannot serve as primary collateral. For purposes of determining compliance with this requirement, leasehold improvements are considered tangible assets and can serve as primary collateral. *When intangible assets are considered part of the collateral, they should be discounted to 30-50 percent of the asset's value. (Revised 03-19-18, PN 510.)*

(4) A parity or junior lien position may be considered provided the loan-to-discounted value is adequate to secure the guaranteed loan in accordance with this section. *Careful consideration should be given to junior lien positions since the chances of collecting anything if a loan is liquidated is slim.*

(5) The entire loan must be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan will neither be paid first nor given any preference or priority over the guaranteed portion.

(c) Conditions. The lender must consider the current status of the borrower, overall economy, and industry for which credit is being extended. The regulatory environment surrounding the particular business or industry must also be considered. Businesses in areas of decline will be required to provide strong business plans that outline how they differ from the current trends. Local, regional, and national condition of the industry must be addressed.

(d) Capital/equity.

(1) A minimum of 10 percent tangible balance sheet equity (or a maximum debt to tangible net worth ratio of 9:1) will be required at loan closing for borrowers that are existing businesses. *An existing business is a business that has been in operation for at least 1 full year. Newly-formed entities that are buying existing businesses or facilities may be considered an existing business as long as the business remains in operation. Mergers of new and*

existing businesses, a change in the business name, or applications involving a new business and an existing business as co-borrowers will be treated as an existing business as long as there is not a significant change in operations of the existing business. **A minimum of 20 percent tangible balance sheet equity (or a maximum debt to tangible net worth ratio of 4:1) will be required at loan closing for borrowers that are new businesses.** A new business is a newly opened establishment that has not been in operation for at least 1 full year. Newly-formed entities leasing space or building ground-up facilities, even if there are affiliated businesses doing the same kind of business, are new businesses. **For energy projects, the minimum tangible balance sheet equity requirement range will be between 25 percent and 40 percent (or a maximum debt to tangible net worth ratio between 3:1 and 1.5:1) at loan closing, considering whether the business is an existing business with a successful financial and management history or a new business; the value of personal/corporate guarantees offered; contractual relationships with suppliers and buyers; credit rating; and strength of the business plan/feasibility study.** (Revised 04-30-20, PN 536.)

(2) **Tangible balance sheet equity will be determined based upon financial statements prepared in accordance with GAAP except that, for the purposes of this subpart, leasehold improvements are to be considered tangible assets when making the tangible balance sheet equity calculation.** Prepared in accordance with GAAP simply means that the financial statements are presented in line with GAAP standards. Tangible balance sheet equity is not a GAAP concept but is calculated from GAAP-based financial statements. Refer to Appendix F, page 11, for step-by-step instructions on calculating tangible balance sheet equity. **The capital/equity requirement must be met in the form of either cash or tangible earning assets contributed to the business and reflected on the borrower's balance sheet. Transfers of assets at fair market value between related parties, which are not arm's length transactions, must be in accordance with GAAP and require evidence that the transaction was entered into at market terms. Copies of said evidence should be obtained to document the case file. Tangible equity cannot include appraisal surplus, bargain purchase gains, or intangible assets (except for leasehold improvements). Owner subordinated debt may be included when the subordinated debt is in exchange for cash injected into the business that remains in the business for the life of the guaranteed loan. The note or other form of evidence must be submitted to the Agency in order for subordinated debt to count towards meeting the tangible balance sheet equity requirement.** As

§ 4279.131(d) (2) (Con.)

it is the principal amount of cash being injected as owner subordinated debt that the Agency will consider equity when calculating tangible balance sheet equity, no payments can be made on this subordinated debt because the cash must remain in the business for the life of the loan. This does not, however, preclude interest from being paid on the subordinated debt as long as the guaranteed loan is current and there are no loan agreement/covenant violations. (Revised 03-19-18, PN 510.)

(i) Related party receivables are routinely classified as non-current assets, unless they will be repaid within 1 year. These receivables do not represent a liquid asset convertible to cash and available for business operations because of the nature of the affiliation and the absence of pressure to repay the receivables. The Agency should obtain a copy of any promissory note, determine why the receivable was incurred, and that repayment ability/collectability exists by checking to see if the historical financial statements demonstrate that payments have been made as scheduled and whether projections reflect payments will be made before considering the asset a tangible asset. Additionally, any amount due from officers, partners, affiliates or subsidiaries should be deducted from total equity. For example, an officer may have taken a loan from the company instead of a salary or bonus. This receivable is, in effect, an expense not recognized by the company, thus improving its profitability.

(ii) As a prudent lending practice, the Agency must make the appropriate adjustment in the event the lender does not.

(3) The lender must certify, in accordance with § 4279.181(a) (9) (i), that the capital/equity requirement was determined, based on a balance sheet prepared in accordance with GAAP, and met, as of the date the guaranteed loan was closed, giving effect to the entirety of the loan in the calculation, whether or not the loan itself is fully advanced. A copy of the loan closing balance sheet must be included with the lender's certification. The lender must certify the tangible balance sheet equity requirement was met using a balance sheet presented in line with GAAP standards. The lender's certification must be evidenced by submission of a balance sheet dated the day of loan closing, which must be signed and dated by the lender. This balance sheet must reflect post-closing/post-construction status and take into account any new

assets, the guaranteed loan amount, and non-guaranteed debt made in conjunction with the B&I loan (except for lines of credit that are generally not drawn upon at the time of loan closing) as liabilities of the borrower, regardless of whether the loan(s) has/have been fully disbursed or remain(s) to be disbursed.

(4) In situations where a real estate holding company and an operating entity are dependent upon one another's operations and are effectively one business, they must be co-borrowers, unless waived by the Agency when the Agency determines that adequate justification exists to not require the entities to be co-borrowers. The capital/equity requirement will apply to all borrowing entities on a consolidated basis, and financial statements must be prepared both individually and on a consolidated basis. Only in situations when the real estate ownership entity and the operating entity(ies) are truly independent and not reliant on the other's operation to survive should you allow one entity or the other to be a sole borrower, and the Project Summary should clearly document the reasoning. (Revised 04-30-20, PN 536.)

(5) In situations where co-borrowers are independent operations, the capital/equity requirement will apply to all co-borrowers on an individual basis. The purpose of this requirement is to prevent situations where a company unrelated to the project is made a co-borrower to compensate for the "borrower" not meeting the equity requirement.

(6) For sole proprietorships and other situations where business assets are held personally, financial statements must be prepared using only the assets and liabilities directly attributable to the business. Assets, plus any improvements, must be valued at the lower of cost or fair market value.

(7) Increases in the equity requirement may be imposed by the Agency loan approval official. The Agency should consider imposing a higher equity requirement when there is a change in ownership, management or location of a currently operating business or a business in an industry with serious problems as these factors could represent increased risk. The Agency should also consider the current status of the industry, concentration of the industry in the portfolio, collateral coverage, personal or corporate guarantees, cash flow, and management since riskier loans may necessitate a higher equity requirement. An existing business that has not been profitable also represents an increased risk that would justify the

§ 4279.131(d) (7) (Con.)

*Agency imposing a higher equity requirement (assuming the project demonstrates financial feasibility). Significant changes in operations of an existing business could result in the need for the Agency requesting a feasibility study or imposing increased equity requirements. Riskier loans such as startups, recreation and tourism projects, energy-related businesses and loans without personal guarantees may necessitate a higher equity requirement than the minimum equity requirements noted above. Solid equity positions provide incentive for principals to remain committed to the success of the business while reducing the debt burden. The Agency should assess the circumstances and risk of a project and, based on the perception of that risk, the equity requirement should be increased accordingly. The Project Summary should clearly document what equity requirement was imposed and all factors considered in making the decision. **A reduction in the capital/equity requirement for existing businesses may be permitted by the Administrator under the following conditions:***

(i) Collateralized personal and/or corporate guarantees, in accordance with § 4279.132, when feasible and legally permissible, are obtained; and

(ii) All pro forma and historical financial statements 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, and debt coverage ratio.

(iii) Requests for a reduction in the equity requirement should be submitted to the National Office B&I Division.

(e) Character. **The lender must conduct a thorough review of key management personnel to ensure that the business has adequately trained and experienced managers. The borrower and all owners with a 20 percent or more ownership interest must have a good credit history, reflecting a record of meeting obligations in a timely manner. If there have been credit problems in the past, the lender must provide a satisfactory explanation to show that the problems are unlikely to recur. Assessment of management in areas such as education, experience, and motivation is an important factor in loan analysis. Consider the lender's opinion on management, but do your own independent assessment and document your findings in the Project Summary. It is suggested that you document the management succession plan and research the company and names of**

management on the internet for any news stories that might have an impact on the success of the business. Comment briefly when management capacity is clearly satisfactory. Otherwise, address any weaknesses and document measures to bolster deficient areas. Work closely with the lender if there are concerns in the management of the business.

§ 4279.132 Personal and corporate guarantees.

(a) Full, unconditional personal and/or corporate guarantees for the full term of the loan are required from those owning 20 percent or more interest in the borrower, where legally permissible, unless the Agency loan approval official grants an exception. The Agency may grant an exception for existing businesses only when the lender requests it and documents to the Agency's satisfaction that collateral, equity, cash flow and profitability indicate an above-average ability to repay the loan. Partial guarantees for the full term of the loan at least equal to each owner's percentage of interest in the borrower times the loan amount may be required in lieu of full, unconditional guarantees when the guarantors' percentages equal 100 percent so that the loan is fully guaranteed. Full, unconditional guarantees should be obtained from each guarantor whenever possible, but there are cases when a partial, unconditional guarantee is justified. Partial, unconditional guarantees must be based upon each owner's percentage of ownership, not on dollar amounts. Exceptions must be approved by the Agency loan approval official on a case-by-case basis. Closely review collateral, equity, cash flow, and profitability before approving any exception to the guarantee requirement. Unsecured personal and corporate guarantees are not considered in determining whether a loan is adequately secured for loanmaking purposes.

(b) When warranted by an Agency assessment of potential financial risk, the Agency may require the following:

- (1) Guarantees to be secured;**
- (2) Guarantees of parent, subsidiaries, or affiliated companies owning less than a 20 percent interest in the borrower; and**
- (3) Guarantees from persons whose ownership interest in the borrower is held indirectly through intermediate entities.**

(c) All personal and corporate guarantors must execute Form RD 4279-14, "Unconditional Guarantee," and any guarantee form required by the lender. The Agency will retain the original, executed Form RD 4279-14. Borrowers/co-borrowers do not execute Form RD 4279-14; only personal and corporate guarantors are required to execute the guarantor form. A signature section must be created in accordance with applicable law. The signature block must include the legal name of the individual or

§ 4279.132(c) (Con.)

entity signing the document and, where applicable, the name and title of the authorized representative who will execute the document on its behalf. The lender's counsel must ensure that the guarantee is legally binding on the guarantors. The lender should be encouraged to use its own personal/corporate guarantee form in addition to Form RD 4279-14. The guarantor, key member, and co-borrower fields in GLS (View Application) are what is reported to Treasury for collection so it is important to include this data in those fields. (Revised 03-19-18, PN 510.)

(1) Any amounts paid by the Agency on behalf of an Agency guaranteed loan borrower will constitute a Federal debt owed to the Agency by the guaranteed loan borrower. In such case, the Agency may use all remedies available to it, including offset under DCIA, to collect the debt from the borrower.

(2) Any amounts paid by the Agency pursuant to a claim by a guaranteed program lender will constitute a Federal debt owed to the Agency by a guarantor of the loan, to the extent of the amount of the guarantor's guarantee. In such case, the Agency may use all remedies available to it, including offset under DCIA, to collect the debt from the guarantor.

(3) In all instances under paragraphs (c) (1) and (2) of this section, interest charges will be assessed in accordance with 7 CFR 1951.133. Based on Federal Claims Collection standards, Agencies may waive interest if the Agency determines that collection of these charges is not in the best interest of the Government. At this time, automation to charge interest would not be cost-effective due to minimal collections and volume.

§§ 4279.133 - 4279.135 [Reserved]

§ 4279.136 **Insurance.**

The lender is responsible for ensuring that required insurance is maintained by the borrower.

(a) Hazard. Hazard insurance with a standard clause naming the lender as mortgagee or loss payee, as applicable, is required for the life of the guaranteed loan. The amount must be at least equal to the replacement value of the collateral or the outstanding balance of the loan, whichever is the greater amount. Hazard insurance typically includes fire, windstorm, lightning, hail, explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder's risk during construction by the business, and property damage.

(b) Life. The lender may require a collateral assignment of life insurance to insure against the risk of death of persons critical to the success of the business. When required, coverage must be in amounts necessary to provide for management succession or to protect the business. *Typically, this should be a minimum of 1 year's worth of debt service.* The Agency may require life insurance on key individuals for loans where the lender has not otherwise proposed such coverage. The cost of insurance and its effect on the applicant's working capital must be considered, as well as the amount of existing insurance that could be assigned without requiring additional expense.

(c) Worker compensation. Worker compensation insurance is required in accordance with State law.

(d) Flood. National flood insurance is required in accordance with applicable law.

(e) Other. The lender must consider whether public liability, business interruption, malpractice, and other insurance is appropriate to the borrower's particular business and circumstances and must require the borrower to obtain such insurance as is necessary to protect the interests of the borrower, the lender, or the Agency.

§ 4279.137 Financial statements.

Except for audited financial statements required by § 4279.71, the lender will determine the type and frequency of submission of financial statements by the borrower and any guarantors. At a minimum, annual financial statements prepared by an accountant in accordance with GAAP are required, except for personal financial statements and cooperative stock purchase loans in accordance with § 4279.115(a) that do not have to be prepared in accordance with GAAP. However, if the loan amount exceeds \$10 million or if circumstances warrant, the Agency may require annual audited financial statements. *Prepared in accordance with GAAP simply means that the financial statements are presented in line with GAAP standards. While financial statements must be prepared by an accountant in accordance with GAAP, these financial statements may be company-prepared, compiled, reviewed or audited. Tax returns are not considered financial statements.* (Revised 03-19-18, PN 510.)

§§ 4279.138 - 4279.143 [Reserved]

§ 4279.144 Appraisals.

Lenders must obtain appraisals for real estate and chattel collateral when the value of the collateral exceeds \$250,000, unless the chattel is newly-acquired equipment and the value is supported by a bill of sale. For collateral values under this threshold, lenders must follow their primary regulator's policies relating to appraisals and evaluations or, if the lender is not regulated, normal banking practices and generally accepted methods of determining value. Lenders must use the fair market value as established by the appraisal and discounting policies outlined in § 4279.131(b) to meet the discounted collateral coverage requirements of this subpart. Lenders are responsible for ensuring that appraisal values adequately reflect the actual value of the collateral. The Agency will require documentation that the appraiser has the necessary experience and competency to appraise the property in question. Appraisals must not be more than 1 year old, and a more recent appraisal may be requested by the Agency in order to reflect more current market conditions. For loan servicing purposes, an appraisal may be updated in lieu of a complete new appraisal when the original appraisal is more than 1 year old but less than 2 years old. Failure by the lender to follow these requirements will be considered not acting in a reasonably prudent manner. (Revised 10-05-16, PN 489.)

(a) All real property appraisals associated with Agency guaranteed loanmaking and servicing transactions must meet the requirements contained in the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989, and the appropriate guidelines contained in Standards 1 and 2 of the Uniform Standards of Professional Appraisal Practices (USPAP) and be performed by a State Certified General Appraiser. Notwithstanding any exemption that may exist for transactions guaranteed by a Federal government agency, all appraisals obtained by the lender for loanmaking and servicing must conform to the Interagency Appraisal and Evaluations Guidelines established by the lender's primary Federal or State regulator. All appraisals must include consideration of the potential effects from a release of hazardous substances or petroleum products or other environmental hazards on the fair market value of the collateral, if applicable. The lender must complete and submit its technical review of the appraisal. For construction projects, the lender must use the "as-completed" market value of the real estate to determine value of the real estate property. *The "as-stabilized" market value must not be used to calculate collateral coverage as the Loan Note Guarantee is issued upon completion of the project, not stabilization of the project. Generally, a satisfactory appraisal will be one that uses the cost approach, the sales comparison approach, and the income approach to arrive at a reconciled fair market value. For additional guidance and information*

concerning the completion of real property appraisals and consideration of the potential effects from a release of hazardous substances or petroleum products or other environmental hazards on the fair market value, refer to "Standard Practices for Environmental Site Assessments: Transaction Screen Questionnaire" (TSQ) and "Phase I Environmental Site Assessment," (ESA) both published by the American Society of Testing and Materials. Potential contamination that has been observed on the property or identified through research or interviews with individuals knowledgeable about the property should be immediately reported to the Agency. For Agency-specific guidance, see RD Instruction 1970-J, Environmental Risk Management. (Revised 06-12-17, SPECIAL PN.)

(b) Values of both tangible and intangible assets, including values attributed to business valuation or as a going concern, must be reported individually/separately in the appraisal as values attributed to business valuation or as a going concern will be deducted from the reconciled fair market value of the hard assets for purposes of calculating collateral coverage. If an appraisal containing any value attributed to business valuation or as a going concern is received, the business valuation or going concern value must be deducted from the reconciled fair market value prior to discounting. The term "contributory value of business enterprise" is often used.

(c) Chattels with values under the \$250,000 threshold must be evaluated in accordance with the lender's primary regulator's policies relating to appraisals and evaluations or, if the lender is not regulated, normal banking practices and generally accepted methods of determining value. Chattel appraisals must reflect the age, condition, and remaining useful life of the equipment. If the appraisal is completed by a State licensed/certified appraiser, the appraisal report must comply with USPAP Standards 7 and 8. Book value of chattel may only be used when the value of the collateral is less than \$250,000.

§§ 4279.145 - 4279.149 [Reserved]

§ 4279.150 Feasibility studies.

A feasibility study, by a qualified independent consultant acceptable to the Agency, is required for new businesses. The Agency may require a feasibility study for existing businesses when the project will significantly affect the borrower's operations, and cash flow from the existing facility is not sufficient to service the new debt. At a minimum, a feasibility study must include an evaluation of the economic, market, technical, financial, and management feasibility and an executive summary that reaches an overall conclusion as to the business' chance of success. The income approach of an appraisal is not an acceptable feasibility study. *It is strongly suggested that a feasibility study be obtained on existing businesses entering a new market area, for business acquisitions, and on existing businesses where the loan will result in a significant expansion of the business. There may be times when a partial feasibility study is adequate. For example, a successful existing business expanding into a new market area may only require a market and financial feasibility report. Thoroughly document why any parts of a feasibility study were not required in the Project Summary. The feasibility study should address the feasibility of the specific site as part of the overall feasibility of the project. In cases where a specific site has not been chosen at the time the feasibility study is completed, the study should identify specific attributes of a site that are necessary for the project to be successful. Appendix E of this subpart contains a guide for completion of feasibility studies.*

§§ 4279.151 - 4279.160 [Reserved]

§ 4279.161 Filing preapplications and applications.

Borrowers and lenders are encouraged to file preapplications and obtain Agency comments before completing an application. However, if they prefer, borrowers and lenders may file a complete application without filing a preapplication. The Agency will neither accept nor process preapplications and applications unless a lender has agreed to finance the proposal. For borrowers other than individuals, a Dun and Bradstreet Universal Numbering System (DUNS) number is required, which can be obtained online at <http://fedgov.dnb.com/webform>. Guaranteed loans exceeding \$600,000 must be submitted under the requirements specified in paragraph (b) of this section. However, guaranteed loans of \$600,000 and less may be submitted under the requirements of either paragraph (b) or (c) of this section.

(a) Preapplications. Lenders may file preapplications by submitting the following to the Agency:

(1) A letter or preliminary lender credit analysis, signed by the lender, containing the following:

(i) Name of the proposed borrower, organization type, address, contact person, Federal tax identification number, e-mail address, and telephone number;

(ii) Name of the proposed lender, address, telephone number, contact person, e-mail address, and lender's Internal Revenue Service (IRS) identification number;

(iii) Amount of the loan request, percent of guarantee requested, and the proposed rates and terms;

(iv) Description of collateral to be offered with estimated value(s) and the amount and source of equity to be contributed to the project;

(v) A brief description of the project, products or services provided, and availability of raw materials and supplies; and

(vi) The number of current full-time equivalent jobs, the number of jobs to be created as a result of the proposed loan, and the overall average wage rate.

(2) The borrower's current (not more than 90 days old) balance sheet and year-to-date income statement. For existing businesses, also include balance sheets and income statements for the last 3 years; and

(3) A completed Form RD 4279-2, "Certification of Non-Relocation and Market Capacity Information Report," if the proposed loan is in excess of \$1 million and will increase direct employment by more than 50 employees. See administrative guidance in § 4279.161(b)(2).

(b) Applications. Lenders must submit the information specified in paragraphs (b)(1) through (19) of this section when filing an application with the Agency.

(1) A completed Form RD 4279-1, "Application for Loan Guarantee."

§ 4279.161(b) (Con.)

(2) A completed Form RD 4279-2, "Certification of Non-Relocation and Market Capacity Information Report," if the proposed loan is in excess of \$1 million and will increase direct employment by more than 50 employees, unless already submitted in accordance with § 4279.161(a)(3). *Ensure the correct six digit NAICS code is recorded on Form RD 4279-2. The National Office will submit Form RD 4279-2 to the Department of Labor (DOL) and obtain clearance before a Conditional Commitment may be issued. Should DOL determine that the project is not in compliance with provisions of the Con Act (referenced in § 4279.117(b) and (c)), the loan may not be made. The applicant may submit documentation in support of its position or to refute DOL findings. This documentation should be submitted through the State Office to the National Office, which will forward to DOL for reconsideration. If DOL reaffirms its denial after a review of available facts, the denial is considered final.*

(3) Environmental review documentation in accordance with 7 CFR part 1970, "Environmental Policies and Procedures," or successor regulation.

(4) A personal or commercial credit report from an acceptable credit reporting company for each individual or entity owning 20 percent or more interest in the borrower, except for those corporations listed on a major stock exchange. Credit reports are not required for elected and appointed officials when the applicant is a public body or non-profit corporation. The credit report must be a good credit report or have an explanation satisfactory to the Agency.

(5) Commercial credit reports for the borrower(s) and any parent, affiliate, and subsidiary companies. The credit report must be a good credit report or have an explanation satisfactory to the Agency. Many startup businesses will not have commercial credit reports available or the commercial credit reports will have minimal information. If this is the case, file the attempt in the case file and document in the Project Summary that a commercial credit report was not available or that it contained minimal information.

(6) Current (not more than 90 days old) financial statements for any parent, affiliate, and subsidiary companies.

(7) Current (not more than 90 days old) personal and corporate financial statements of any guarantors.

(8) For all borrowers, a current (not more than 90 days old) balance sheet and year-to-date income statement, a pro forma balance sheet projected for loan closing, and projected balance sheets, income statements, and cash flow statements for the next 2 years. Projections, including the pro forma balance sheet projected for loan closing, must be prepared in line with GAAP standards and supported by a list of assumptions showing the basis for the projections. In the event processing of the loan is not complete within 90 days, a current set of financial statements will be required every 90 days. As required by § 4279.131(d)(4), financial statements must be prepared both individually and on a consolidated basis for all borrowing entities. A current balance sheet is required for both new and existing businesses. New businesses will have a current balance sheet, even if there is very little on it. The pro forma balance sheet projected for loan closing must reflect the loan's post-loan closing status and take into account the full guaranteed loan amount and any non-guaranteed debt in addition to the associated assets. The 2 years of projected balance sheets, income statements, and cash flow statements should be yearend projections of the borrower's fiscal year. Cash flow statements are the link between what happens on the income statement and what appears on or disappears from the balance sheet. The business income or loss from historic and projected income statements should reconcile to any equity changes in the balance sheets for those periods. Projected cash flow statements are required in addition to projected balance sheets and income statements. Projected cash flow statements are required in addition to projected balance sheets and income statements. (Revised 04-30-20, PN 536.)

(9) For borrowers that are existing businesses, balance sheets and income statements for the last 3 years. If the business has been in operation for less than 3 years, balance sheets and income statements for all years for which financial information is available. Tax returns are not considered financial statements. Historical financial statements can be based upon tax returns but must be financial statements nonetheless. It is the lender's responsibility to provide financial statements with the application. (Revised 03-19-18, PN 510.)

(10) The lender's comprehensive, written credit analysis of the proposal, as described in § 4279.131.

§ 4279.161(b) (Con.)

(11) A draft loan agreement. A final loan agreement must be executed by the lender and borrower before the Agency issues a Loan Note Guarantee and must contain any additional requirements imposed by the Agency in its Conditional Commitment. *The purpose of requiring a draft loan agreement is to alert the lender of any concerns with the loan agreement, including missing requirements identified in sub-paragraphs (i) through (vii) of this paragraph. At the time of issuance of the Loan Note Guarantee is not the time to discover there are problems with the loan agreement because the loan has closed and the loan agreement has already been executed. For applications filed under § 4279.161(c), a draft loan agreement is not an application requirement, but it should be strongly suggested to the lender the loan agreement be reviewed by the Agency prior to execution. The loan agreement must establish prudent, adequate controls to protect the interests of the lender and Agency. At a minimum, the following requirements must be included in the loan agreement:*

- (i) Type and frequency of borrower and guarantor financial statements to be required for the duration of the loan;**
- (ii) Prohibition against assuming liabilities or obligations of others;**
- (iii) Limitations on dividend payments and compensation of officers and owners;**
- (iv) Limitation on the purchase and sale of equipment and other fixed assets;**
- (v) Restrictions concerning consolidations, mergers, or other circumstances and a limitation on selling the business without the concurrence of the lender;**
- (vi) Maximum debt-to-net worth ratio; and**
- (vii) Minimum debt service coverage ratio.**

(12) Intergovernmental consultation comments in accordance with RD Instruction 1970-I and 2 CFR part 415, subpart C, or successor regulation, unless exemptions have been granted by the State single point of contact. *If intergovernmental consultation comments are not required because an exemption has been obtained, include a copy of the exemption letter in the case file.*

(13) Appraisals, accompanied by a copy of the appropriate environmental site assessment, if available, and the technical review of the appraisals required by § 4279.144(a). *Conditional Commitments may be issued subject to receipt of adequate appraisals prior to issuance of the Loan Note Guarantee. An appraisal and an Affirmative Fair Housing Marketing Plan (if required by § 4279.161(b)(18)) are the only items required for a complete application that may be conditionalized for receipt in the Conditional Commitment.*

(14) A business plan or similar document that must include a description of the business and project; management experience; sources of capital; products, services, and pricing; marketing plan; proposed use of funds; availability of labor, raw materials, and supplies; contracts in place; distribution channels; and the names of any corporate parent, affiliates, and subsidiaries with a description of the relationship. A business plan may be omitted if the information is included in a feasibility study. A business plan may also be omitted when loan proceeds are used exclusively for debt refinancing and fees.

(15) Independent feasibility study, if required. *See § 4279.150.*

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

(17) For health care facilities, a certificate of need, if required by statute or State law. *If State statute or law does not require a certificate of need, so indicate in the Project Summary.*

(18) For guaranteed loan applications for five or more residential units, including nursing homes and assisted-living facilities, an Affirmative Fair Housing Marketing Plan that is in conformance with 7 CFR 1901.203(c)(3). *The Conditional Commitment may be issued subject to receipt of an adequate Affirmative Fair Housing Marketing Plan prior to issuance of the Loan Note Guarantee. An Affirmative Fair Housing Marketing Plan and an appraisal (required by § 4279.161(b)(13)) are the only items required for a complete application that may be conditionalized for receipt in the Conditional Commitment.*

§ 4279.161(b) (Con.)

(19) Any additional information required by the Agency to make a decision, including any information needed to score the project in accordance with § 4279.166.

(20) An application is not complete until all of the items (except for the appraisal and Affirmative Fair Housing Marketing Plan) required for an application are received; as such, do not enter the date of application in GLS or the Project Summary until you have a complete application.

(c) Applications of \$600,000 and less. Guaranteed loan applications may be processed under this paragraph if the request does not exceed \$600,000, provided the Agency determines that there is not a significant increased risk of a default on the loan. As this is a statutory requirement, the Project Summary must document why there is not a significant increased risk of a default on the guaranteed loan. An example might be that the business being financed is an existing business with a documented successful financial history. A lender may need to resubmit an application under paragraph (b) of this section if the application under this paragraph does not contain sufficient information for the Agency to make a decision to guarantee the loan. Applications submitted under this paragraph must include the information contained in paragraphs (b) (1) (with the short application box marked at the top of Form RD 4279-1), (b) (3), (b) (8) through (10), (b) (12), and (b) (13) of this section. The lender must have the documentation identified in paragraph (b) of this section, with the exception of paragraph (b) (2), available in its file for review. State Offices must spot check the lenders' files for loans processed under this paragraph during lender visits. If documentation is not present or is not adequate, that lender should be required to submit all of the documentation required to be in its file as outlined above for future applications. (Added 08-29-19, PN 527.)

§ 4279.162 Strategic economic and community development.

Applicants with projects that support the implementation of strategic community investment plans are encouraged to review and consider 7 CFR part 1980, subpart K, which contains provisions for providing priority to projects that support the implementation of strategic community investment plans on a Multi-jurisdictional and Multi-sectoral basis. (Revised 09-29-20, SPECIAL PN.)

§ 4279.163 [Reserved]

§ 4279.164 Preapplication processing.

The purpose of a preapplication is to allow a lender to submit a limited amount of information, most of which should be easily obtained, so that the Agency can determine and advise the lender whether the request is likely to meet the requirements of the program. Some lenders will skip the preapplication process and submit a full application as the first contact with the Agency. When you receive a preapplication, check to make sure the material is complete. Do not accept requests not signed by the lender. The review and response to a complete preapplication should occur within 30 days.

(a) Nonrelocation. If the loan is in excess of \$1 million and will increase direct employment by more than 50 employees, the State Office should immediately send a copy of the completed Form RD 4279-2, "Certification of Non-Relocation and Market Capacity Information Report," to the National Office Program Processing Division to begin the Department of Labor clearance process. You should discuss this issue with the lender to ensure the business information and employment projections are accurate and realistic to avoid delays in loan processing as a result of unnecessary Department of Labor clearances. (Revised 04-30-20, PN 536.)

(b) Privacy. If the loan applicant is either an individual or a partnership of five or fewer members, take the following actions:

(1) Send Form RD 410-7, "Notification to Applicant on Use of Financial Information from Financial Institution," to the applicant within 3 days.

(2) When requesting financial records from the lender or any other financial institution, send the following notification with the request:

I certify that the United States Department of Agriculture has complied with the applicable provisions of Title XI, Public Law 95-630, in seeking financial information regarding (borrower) .

(3) Provide any source from whom you obtain information concerning an individual with one copy of Form RD 410-10, "Privacy Act Statement to References," and document delivery for the file.

(c) Identification numbers.

(1) The borrower's case number will be the State and county code number followed by the random GLS borrower ID assigned.

(2) A lender's and holder's identification number will be their IRS tax identification number.

(3) Borrowers (other than individuals) must have a DUNS number in order to process the application in accordance with § 4279.161. If the borrower has an existing DUNS number, that number should be used.

§ 4279.164 (Con.)

(d) Guaranteed Loan System. Update GLS upon receipt of a preapplication and when any significant processing actions take place.

(e) Response. The State Office should immediately initiate a review of the preapplication materials to determine if the project meets the B&I program requirements. Preapplication loan requests in excess of the State Office loan approval authority must be forwarded to the National Office Program Processing Division for concurrence with the State Office recommendation. The State Office response to the lender must be clear that the response is not an approval or denial of the loan. The response should list all concerns or items that must be addressed if a full application will be submitted. If there is a lack of funding that will preclude timely approval of the request, the lender must be notified of that possibility at this time. (Revised 04-30-20, PN 536.)

§ 4279.165 Evaluation of application.

(a) General review. The Agency will evaluate the application and make a determination whether the borrower is eligible, the proposed loan is for an eligible purpose, there is reasonable assurance of repayment ability, there is sufficient collateral and equity, and the proposed loan complies with all applicable statutes and regulations. If the Agency determines it is unable to guarantee the loan, it will inform the lender in writing. State Directors have the authority to approve or deny an application if the loan amount is within the State Office loan approval authority. Loan requests in excess of the State Office loan approval authority must be forwarded to the National Office Program Processing Division for concurrence with the State Office approval or denial recommendation. The denial notification must include the reasons for denial of the guarantee. In the event a loan proposal includes the funding of multiple project sites in more than one State, the State Directors where the project sites are located and where the loan proceeds are to be funded for fixed asset acquisitions have the authority to process a guaranteed loan request for those funds that are intended to be utilized in their respective States. For loan proposals where funds are to be used exclusively for working capital or debt refinancing in more than one State, the State Director where the applicant's headquarters is located has the authority to process the loan request and to service the loan. Exceptions to this policy may be granted on a case-by-case basis by the National Office Program Processing Division. (Revised 04-30-20, PN 536.)

(1) Use a processing checklist to review the application for completeness. A processing checklist may be developed to suit State needs and used in lieu of the processing checklist in Appendix D of this subpart.

(2) As soon as an application is received, complete the priority score sheet (Appendix C of this subpart) in accordance with § 4279.166, recognizing that Appendix C may need to be revised during application processing. Document the action by filing the completed worksheet in the project case file; however, if Appendix C is updated or revised, only keep the most recent version in the case file. Enter the results in GLS.

(3) Complete the Project Summary (Appendix F of this subpart) using the guidance provided and ensure that the proposed borrower has adequate repayment ability based on a thorough analysis by the lender. An electronic fillable Project Summary is available on Sharepoint. There is also a special Project Summary for B&I/REAP combination loans on Sharepoint that alleviates the need to have a separate Project Summary for each program. (Revised 03-19-18, PN 510.)

(4) Review any concerns with the lender and develop any loan conditions that are necessary to mitigate risk and meet Agency requirements in such a manner that they are also acceptable to the lender and the borrower. Do not surprise the lender with unexpected conditions.

(5) An Agency representative must visit the project site and discuss the proposal with the lender and borrower. If there are multiple sites, visit a representative sample to develop a better understanding of the project operation. For businesses without a developed project site, the Agency representative only needs to visit the lender and borrower. Document all visits in writing.

(6) Organize applications into a case folder in accordance with RD Instruction 2033-A.

(7) Enter all appropriate information about the borrower, lender, and loan guarantee request in GLS and update as information or the application status changes.

(b) Environmental requirements. The environmental review process must be completed, in accordance with 7 CFR part 1970, "Environmental Policies and Procedures," or successor regulation, prior to loan approval (execution of Form RD 1940-3, "Request for Obligation of Funds - Guaranteed Loans"). The environmental review process should be initiated as early as possible to avoid delays in loan approval. The Agency should ensure that the lender and the borrower understand the environmental review process and their respective responsibilities for assisting the Agency in this process. Technical advice and guidance are available through the State Environmental Coordinator and should be obtained whenever any complex or controversial environmental issues are expected.

(c) State Loan Committee. The State Director will establish a State Loan Committee to review all guaranteed loan applications, changes in conditions, and loan servicing actions of a monetary-type nature. The makeup of such a committee is at the discretion of the State Director; however, only Agency employees may be members of a State Loan Committee. This committee is advisory in nature as the loan approval official is responsible for the decisions. Each State Office will develop and maintain written procedures that identify elements of the State Loan Committee process, such as the members of the committee, what documents are to be prepared for and signed by the committee, and procedures for resolving any differences of opinion among members. A State Loan Committee operational file should be established that contains copies of loan packages and related materials. However, minutes of the meeting (included as an attachment to the Project Summary in Appendix F) and recommendations of the committee should also be filed in the individual case file.

(d) National Office concurrence. When concurrence of the National Office is required, promptly send the entire case file, including the environmental review documents, with a written recommendation for review and concurrence. To help ensure a quick response, make sure the file is well organized and that pertinent information is easily accessible for National Office loan specialists. If public comments on environmental issues or assessments are required, the comment period should be completed as early as possible. However, if the Finding of No Significant Impact statement has been published (if applicable) and the comment period is the only loan docket item not completed, do not wait to submit the file to the National Office. The National Office will commence its review but withhold its concurrence until expiration of the comment period and the resolution of any comments.

(e) National Office Loan Committees. The Administrator will establish a National Office Executive Loan (NOEL) Committee and a National Office Business and Industry (NOBI) Committee to review all guaranteed loan applications, changes in conditions, and loan servicing actions of a monetary-type nature that are in excess of authorities delegated to State Directors. The NOEL Committee will be composed of the Administrator, as chairperson and loan approval official, and at least two other Agency staff members as designated by the Administrator. The NOBI Committee will be composed of the Program Processing Division Director, as the chairperson and loan approval official, and two other Program Processing staff members designated by the Division Director. Other members of the committees may be designated, in writing, by the chairperson and loan approval official as he/she determines to be appropriate; however, only Agency employees may be voting members. These committees are advisory in nature as the loan approval official is responsible for the decisions. All recommendations will be in written form based on an objective analysis conducted by a National Office loan specialist. All requests for exceptions being considered by the Administrator will be reviewed by the NOEL Committee in accordance with RD Instruction 4279-A, § 4279.15. Written procedures that identify elements of the loan committee process will be developed and maintained by the Program Processing Division. (Revised 04-30-20, PN 536.)

§ 4279.166 Loan priority scoring.

The Agency will consider applications and preapplications in the order they are received by the Agency; however, for the purpose of assigning priority points as described in paragraph (b) of this section, the Agency will compare an application to other pending applications that are competing for funding. The Agency may establish a minimum loan priority score to fund projects from the National Office reserve and will publish any minimum loan priority score in a notice published in the Federal Register. The Agency will cooperate fully with appropriate State, regional, and local agencies in guaranteeing loans in a manner that will ensure maximum support of their strategies for development of rural areas.

(a) When applications on hand otherwise have equal priority, the Agency will give preference to applications for loans from qualified veterans.

§ 4279.166 (Con.)

(b) The Agency will assign priority points on the basis of the point system contained in this section. The Agency will use the application and supporting information to determine an eligible proposed project's priority for available guarantee authority. To the extent possible, all lenders must consider Agency priorities when choosing projects for guarantee. The lender must provide necessary information related to determining the score, if requested. *The State Office will complete the priority score sheet (Appendix C). Short justifications clearly documenting points awarded should be reflected on the priority scoresheet.*

(1) **Population priority.** Projects located in an unincorporated area or in a city with a population under 25,000 (10 points).

Population data should be obtained from:

<http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>

(2) **Demographics priority.** The priority score for demographics priority will be the total score for the following categories:

(i) Located in an eligible area of long-term population decline according to the last three decennial censuses (5 points). *The following link should be used to document the long term population decline criterion:*

<https://www.ers.usda.gov/data-products/county-typology-codes/descriptions-and-maps/> (Revised 06-12-17, SPECIAL PN.)

(ii) Located in a rural county that has had 20 percent or more of its population living in poverty based on the last three decennial censuses (10 points). *A list of current persistent poverty counties should be downloaded from:*

<http://www.ers.usda.gov/topics/rural-economy-population/rural-poverty-well-being/geography-of-poverty.aspx>

(iii) Located in a rural community that is experiencing trauma as a result of natural disaster (5 points). *To be awarded these points, the community must still be recovering from the effects of the natural disaster (normally not to exceed 2 years from the date of issuance of the disaster declaration but major disasters, such as Hurricane Katrina, could be much longer). Presidentially declared disaster areas may be found at:*

<https://www.fema.gov/disasters/grid/year>, and disasters declared by the Secretary of Agriculture may be found at: <https://www.fsa.usda.gov/programs-and-services/disaster-assistance-program/disaster-designation-information/index>
(Revised 06-12-17, SPECIAL PN.)

(iv) Located in a city or county with an unemployment rate 125 percent of the Statewide rate or greater (5 points). *The most recent statewide unemployment rate may be found at:*

*<http://www.bls.gov/cps/>. For projects located in certain territories that may not have unemployment rates by localities or counties (e.g., Virgin Islands and territories in the Western Pacific), the unemployment rate in the applicant's proposed service area will be compared to the nearest of the 50 United States (e.g., Florida and Hawaii).
(Revised 04-30-20, PN 536.)*

(v) Located within the boundaries of a Federally recognized Indian tribe's reservation, within tribal trust lands, or within land owned by an Alaska Native Regional or Village Corporation as defined by the Alaska Native Claims Settlement Act (5 points). *Questions may be directed to the Agency's Native American Coordinator.*

(vi) Business is owned by a qualified veteran as defined by § 4279.2 (5 points).

(3) Loan features. **The priority score for loan features will be the total score for each of the following categories:**

(i) Lender will price the guaranteed loan at an interest rate equal to or less than the equivalent of the Wall Street Journal published Prime Rate plus 1.5 percent (5 points). *The rate the lender proposes to charge must be the equivalent of or less than WSJ Prime +1.5 percent. Floor rates in excess of these rates cannot be awarded priority points. The current WSJ Prime Rate may be found at:*

<http://www.bankrate.com/rates/interest-rates/wall-street-prime-rate.aspx>

§ 4279.166(b) (3) (Con.)

(ii) Lender will price the guaranteed loan at an interest rate equal to or less than the equivalent of the Wall Street Journal published Prime Rate plus 1 percent (5 points). The rate the lender proposes to charge must be the equivalent of or less than WSJ Prime +1 percent. Floor rates in excess of these rates cannot be awarded priority points. If this condition is met, the application will receive the five points under paragraph (b) (3) (i) and the five points under this paragraph. The current WSJ Prime Rate may be found at: <http://www.bankrate.com/rates/interest-rates/wall-street-prime-rate.aspx>

(iii) The Agency guaranteed loan is less than 60 percent of project cost (5 points).

(iv) The Agency guaranteed loan is less than 50 percent of project cost (5 points). If this condition is met, the application will receive the five points under paragraph (b) (3) (iii) and the five points under this paragraph.

(v) The Agency guaranteed loan is less than 40 percent of project cost (5 points). If this condition is met, the application will receive the five points under paragraph (b) (3) (iii), the five points under paragraph (b) (3) (iv), and the five points under this paragraph.

(vi) For loans not requesting an exception under § 4279.119(b), the percentage of guarantee is 10 or more percentage points less than the maximum allowable for a loan of its size (5 points). In order to receive these points, a project that would qualify for an 80 percent guarantee must have a 70 percent or less guarantee, a project that would qualify for a 70 percent guarantee must have a 60 percent or less guarantee, and a project that would qualify for a 60 percent guarantee must have a 50 percent or less guarantee. You may not consider 90 percent guarantees the maximum allowed since a 90 percent guarantee requires an exception to the regulation.

(4) High impact business investment priorities. The priority score for high impact business investment will be the total score for the following categories:

(i) **Business/industry.** The priority score for business/industry will be the total score for the following:

(A) **Industry that is not already present in the community (5 points).** *In order to receive these points, a project must be a new business with no businesses in that same industry already present in the community.*

(B) **Business that has 20 percent or more of its sales in international markets (5 points).** *Verifiable sales documentation or projections supported by a feasibility study must be provided to support these points.*

(C) **Business that offers high value, specialized products and/or services that command high prices (5 points).** *In order to receive these points, both criteria must be met (high value and specialized), and it must be thoroughly documented on the scoresheet what high value, specialized products or services the business provides.*

(D) **Business that provides an additional market for existing local businesses (5 points).** *This means that the business buys product or services from, sells product to, or provides services to existing local businesses.*

(E) **Business that is locally owned and managed (5 points).** *Locally owned and managed means that the owners and managers reside within the local commuting area.*

(F) **Business that will produce a natural resource value-added product (5 points).** *In order to receive these points, the business must manufacture a product from a natural resource. See definition for natural resource value-added product in § 4279.2 in subpart A of this part.*

(G) **Business that processes, distributes, aggregates, stores, and/or markets locally or regionally produced agricultural food products to underserved communities in accordance with § 4279.113(y) (5) (10 points).** *The Food Access Research Atlas can be found at:*

<http://www.ers.usda.gov/data-products/food-access-research-atlas/go-to-the-atlas.aspx>

(Revised 06-12-17, SPECIAL PN.)

§ 4279.166(b) (4) (Con.)

(ii) **Occupations**. The priority score for occupations will be the total score for the following:

(A) **Business that creates or saves jobs** (*more than one*) with an average wage exceeding 125 percent of the Federal minimum wage (5 points). The Federal minimum wage may be found at: <http://www.laborlawcenter.com/t-federal-minimum-wage.aspx>

(B) **Business that creates or saves jobs** (*more than one*) with an average wage exceeding 150 percent of the Federal minimum wage (5 points). If this condition is met, the application will receive the five points under paragraph (b) (4) (ii) (A) and the five points under this paragraph. The Federal minimum wage may be found at: <http://www.laborlawcenter.com/t-federal-minimum-wage.aspx>

(C) **Business that offers a healthcare benefits package to all employees, with at least 50 percent of the premium paid by the employer** (5 points). A copy of Internal Revenue Service/Department of Labor Form 5500 may be used to document the business offers a healthcare benefits package to all employees, with at least 50 percent of the premium paid by the employer.

(5) **Administrative points**. The State Director may assign up to 10 additional points to an application to account for Statewide distribution of funds, natural disasters or economic emergency conditions, community economic development strategies, State strategic plans, fundamental structural changes in a community's economic base, or projects that will fulfill an Agency initiative. An explanation of the assigning of these points by the State Director will be appended to the calculation of the project score maintained in the case file. In addition to the State Director assigned points, if an application is considered in the National Office, the Administrator may assign up to an additional 10 points to account for geographic distribution of funds, emergency conditions caused by economic problems or natural disasters, or projects that will fulfill an Agency initiative. "Considered in the National Office" means National Office concurrence is required because it exceeds the State's delegated loan approval authority. It does not mean the loan is being considered for funding from the National Office reserve nor does it mean loans submitted for cursory review prior to loan approval.

§ 4279.167 Planning and performing development.

(a) Design policy. The lender must ensure that all facilities constructed with program funds are designed, and costs estimated, by an independent professional, utilizing accepted architectural, engineering, and design practices. The Agency may require an independent professional architect on complex projects. The lender must ensure the design conforms to applicable Federal, State, and local codes and requirements. The lender must also ensure that the project will be completed with available funds and, once completed, will be used for its intended purpose and produce in the quality and quantity proposed in the completed application approved by the Agency. Once construction is completed, the lender must provide the Agency with a copy of the Notice of Completion or similar document issued by the relevant building jurisdiction.

(b) Issuing the Loan Note Guarantee prior to project completion. If the lender requests that the Loan Note Guarantee be issued prior to construction or completion of a project, the lender must have a construction monitoring plan acceptable to the Agency and undertake the added responsibilities set forth in this paragraph. The lender must monitor the progress of construction and undertake the reviews and inspections necessary to ensure that construction conforms to applicable Federal, State, and local code requirements; proceeds are used in accordance with the approved plans, specifications, and contract documents; and that funds are used for eligible project costs. **The lender must expeditiously report any problems in project development to the Agency.** *The Agency may issue the Loan Note Guarantee prior to completion of construction; however, there are added risks to the Agency and these risks must be considered. Agency consideration for issuing the Loan Note Guarantee up front must include the credit risk of the borrower and the project, in addition to the lender's experience in financing the type of project. The lender must evidence that there is sufficient cash flow to complete the project construction and that the business has sufficient working capital during the business start-up period. There may be increased risk to the Agency in that the project may not be satisfactorily completed with available funds, which could result in the need for additional loans or equity to complete the project or the possible failure of the business and loss to the Agency. An increased capital/equity requirement may be necessary to mitigate additional risk. (Revised 04-30-20, PN 536.)*

§ 4279.167(b) (Con.)

(1) In cases of takeout of interim financing where the Loan Note Guarantee is issued prior to construction or completion of a project, the promissory note must contain the terms and conditions of the interim financing and the permanent financing and convert the interim financing to the permanent note as the Loan Note Guarantee can only be placed on one note. *The promissory note payment terms should consider time for the construction period plus a reasonable time for the business to begin generation of working capital to repay the loan. (Revised 04-30-20, PN 536.)*

(2) Prior to disbursement of construction funds, the lender must have:

(i) A complete set of plans and specifications for the project on file;

(ii) A detailed timetable for the project with a corresponding budget of costs setting forth the parties responsible for payment. The timetable and budget must be agreed to by the borrower;

(iii) A person, who may be the project architect or engineer, with demonstrated experience relating to the project's industry, confirm that the budget is adequate for the planned development;

(iv) A firm, fixed-price construction contract with an independent general contractor with costs and provisions for change order approvals, a retainage percentage, and a disbursement schedule; a 100 percent performance/payment bond on the borrower's contractor; or a contract with an independent disbursement and monitoring firm where project construction and completion are guaranteed. *When the Loan Note Guarantee is issued prior to construction or project completion, there must be a requirement in the Conditional Commitment for either: 1) a firm, fixed-price construction contract; 2) a 100 percent performance/payment bond; or 3) a contract with an independent disbursement and monitoring firm where project construction and completion are guaranteed. Measures must be in place to reduce Agency risk and ensure that the project is completed as designed and within an established budget and timeline. The lender is ultimately responsible for monitoring the construction project to ensure its completion. A bonding agent must be listed on Treasury Circular 570; and (Revised 04-30-20, PN 536.)*

(v) Contingencies in place to handle unforeseen cost overruns without seeking additional guaranteed assistance. These are to be agreed to by the borrower.

(3) Once construction begins, the lender is to:

(i) Use any borrower funds in the project first;

(ii) Ensure that the project is built to support the functions at the level and quality contemplated by the borrower through the use of accepted architectural and engineering practices. There is no absolute requirement that the goal be achieved by the use of a professional inspection. However, if after careful review, it appears that the use of a professional inspector is the only method that ensures the project is built to support the functions at the level and quality contemplated by the borrower through the use of accepted architectural and engineering practices, one may be required by the Agency. If one is required, inspections must be made by a qualified, independent inspector prior to any progress payment. If other less expensive or rigorous methods will achieve the same result, they may be utilized. The decision will be made on a case-by-case basis and must be reasonable under the specific circumstances of the case;

(iii) Obtain lien waivers from all contractors and materialmen prior to any disbursement; and

(iv) Provide at least monthly, written reports to the Agency on fund disbursement and project status.

(4) Once construction is completed, the lender is to provide the Agency with a copy of the Notice of Completion or similar document issued by the relevant building jurisdiction.

(c) Compliance with other Federal laws. Lenders must comply with other applicable Federal laws, including Equal Employment Opportunities, the Equal Credit Opportunity Act, the Fair Housing Act, and the Civil Rights Act of 1964. Guaranteed loans that involve the construction of or addition to facilities that accommodate the public must comply with the Architectural Barriers Act Accessibility Standard. The borrower and lender are responsible for ensuring compliance with these requirements. *For additional information, see RD Instruction 1924-A.*

(d) Environmental responsibilities. The lender must ensure that the borrower has:

§ 4279.167(d) (Con.)

- (1) **Provided the necessary environmental information to enable the Agency to undertake its environmental review process in accordance with 7 CFR part 1970, "Environmental Policies and Procedures," or successor regulation, including the provision of all required Federal, State, and local permits;**
- (2) **Complied with any mitigation measures required by the Agency; and**
- (3) **Not taken any actions or incurred any obligations with respect to the proposed project that would either limit the range of alternatives to be considered during the Agency's environmental review process or that would have an adverse effect on the environment. See State Environmental Coordinator for environmental requirements.**

(e) Agency role. *Lenders may wish the Agency to take an active role in job meetings and inspections. Do not do this. You must avoid putting the Agency in a situation where it becomes responsible for decisions on such topics. Always make it clear that your presence is only for the Agency's benefit, not the lender's or borrower's. Use discretion to make sure that Agency involvement does not lead to the lender's abandonment of its responsibilities; however, if complex environmental issues surface, you may request that the State Environmental Coordinator meet with the lender and project architect or engineer. Likewise, on complicated construction projects, you may wish to have the Agency engineer meet with the lender and project architect or engineer.*

§ 4279.168 Timeframe for processing applications.

All complete guaranteed loan applications will be approved or disapproved within 60 days, unless approval is prevented by a lack of guarantee authority or there are delays resulting from public comment requirements of the environmental assessment or outstanding DOL clearance issues.

(a) *If an application is not complete, the lender will be notified in writing not later than 15 days after receipt of the application by the Agency of the reasons the application is incomplete. Enter as a complete application in GLS when everything needed to approve the loan has been received.*

(b) *If an application is disapproved, the written notification to the lender will state the reasons for denial, and appropriate appeal/review rights will be provided in accordance with § 4279.16.*

(c) Upon receipt of application materials for a loan that exceeds the State Office loan approval authority, including those States with no loan approval authority, the application materials must be immediately uploaded electronically to the National Office Program Processing Division to allow for joint review of the loan on a timely basis. The State Office will retain the primary underwriting function for the loan and rely on the National Office for program and policy guidance. This joint effort will reduce the total loan processing time and allow applications to be fully processed within the 60-day timeframe. (Added 04-30-20, PN 536.)

§§ 4279.169 - 4279.172 [Reserved]

§ 4279.173 Loan approval and obligating funds.

(a) Upon approval of a loan guarantee (execution of the 1940-3, "Request for Obligation of funds - Guaranteed Loans"), the Agency will obligate the loan and issue a Form RD 4279-3, "Conditional Commitment," and attachment to the Conditional Commitment to the lender, containing conditions under which a Loan Note Guarantee will be issued. Lenders must be advised not to close loans prior to accepting the Conditional Commitment in accordance with paragraph (d) of this section. No Conditional Commitment can be issued until the loan is obligated. If a Loan Note Guarantee is not issued by the Conditional Commitment expiration date, the Conditional Commitment may be extended at the request of the lender and only if there has been no material adverse change in the borrower or the borrower's financial condition since issuance of the Conditional Commitment. If the Conditional Commitment is not accepted, the Conditional Commitment may be withdrawn and funds may be deobligated. Likewise, if the Conditional Commitment expires, funds may be deobligated.

(b) If certain conditions of the Conditional Commitment cannot be met, the lender and borrower may request changes to the Conditional Commitment. Within the requirements of the applicable regulations and prudent lending practices, the Agency may negotiate with the lender and the borrower regarding any proposed changes to the Conditional Commitment. Any changes to the Conditional Commitment must be documented by written amendment to the Conditional Commitment. If there are changes made in the underwriting of the loan after its approval, the Project Summary should be updated to reflect the changes and basis for approval. If the loan amount exceeds the State Office loan approval authority, the requested changes to the loan underwriting or Conditional Commitment require concurrence of the National Office. The lender and borrower should accept the original Conditional Commitment and request changes simultaneously to not exceed the stated Conditional Commitment expiration date while the requested changes are being reviewed. (Revised 04-30-20, PN 536.)

(c) The borrower must comply with all Federal requirements then in effect for receiving Federal assistance.

(d) The Conditional Commitment is a key processing step in the guaranteed loan process. The Conditional Commitment should be issued to the lender and borrower on or after the obligation date but well before loan closing to ensure there is adequate time for any necessary requirements to be incorporated into the loan agreement. Requirements of the Conditional Commitment that continue after loan closing must be

§ 4279.173(d) (Con.)

incorporated into the loan agreement. As such, lenders must be advised not to close loans prior to accepting the Conditional Commitment. Utilize the standardized Conditional Commitment attachment (Appendix G of this subpart), tailor it to the loan, and ensure that the lender understands each condition. The Conditional Commitment attachment is available electronically on SharePoint. All required measures identified in the Agency's environmental assessment for the proposal and established for the purpose of avoiding or reducing adverse environmental impacts of the proposal's construction or operation must be listed in the Conditional Commitment and understood by both the lender and the borrower. (Revised 03-19-18, PN 510.)

(e) When the Conditional Commitment is issued to the lender, make sure that the lender understands that the Agency expects strong servicing of the loan and that the Agency will, except in the case of delinquencies and liquidations, play a very minimal servicing role. The lender should service the loan the way it does any loan in its portfolio. Make lenders aware of the ramifications of negligent loan origination and negligent loan servicing.

(f) As part of its oversight responsibilities, the National Office will review a sample of loans in the State's portfolio. Upon request by the National Office, the entire case file will be submitted for review. "Review findings" is one of the categories in RD Instruction 1901-A for establishing levels of loan approval authority. Failure to submit these reviews when requested by the National Office could result in suspension of loan approval authority.

§ 4279.174 Transfer of lenders.

(a) The Agency may approve the substitution of a new eligible lender in place of a former lender who has been issued and has accepted an outstanding Conditional Commitment when the Loan Note Guarantee has not yet been issued, provided that there are no changes in the borrower's ownership or control, loan purposes, or scope of project, and the loan terms and conditions in the Conditional Commitment and the loan agreement remain the same. Any request for a transfer of lender must be submitted in writing by the current lender, the proposed lender, and the borrower. The original lender must state the reason(s) it no longer desires to be the lender for the project.

(b) Unless the new lender is already an approved lender, the Agency will analyze the new lender's servicing capability, eligibility, and experience prior to approving the substitution. The substituted lender must execute a new part B of Form 4279-1, "*Application for Loan Guarantee*;" Form RD 4279-4, "*Lender's Agreement*" (unless a valid Lender's Agreement with the Agency already exists); and complete a new lender's analysis in accordance with § 4279.131. The new lender may also be required to provide other updated application items outlined in § 4279.161(b).

§§ 4279.175 - 4279.179 [Reserved]

§ 4279.180 Changes in borrower.

Any changes in borrower ownership or organization prior to the issuance of the Loan Note Guarantee must meet the eligibility requirements of the program and be approved by the Agency *loan approval official*.

§ 4279.181 Conditions precedent to issuance of the Loan Note Guarantee.

(a) The lender must not close the loan until all conditions of the Conditional Commitment are met. When loan closing plans are established, the lender must notify the Agency. Coincident with, or immediately after loan closing, the lender must provide the following to the Agency:

- (1) An executed Form RD 4279-4, "*Lender's Agreement*," unless a valid Lender's Agreement exists that was issued after August 2, 2016;
- (2) Form RD 1980-19, "*Guaranteed Loan Closing Report*," and appropriate guarantee fee;
- (3) Copy of the executed promissory note(s);
- (4) Copy of the executed loan agreement;
- (5) Copy of the executed settlement statement;
- (6) Original, executed Forms RD 4279-14, as required;
- (7) Any other documents required to comply with applicable law or required by the Conditional Commitment.

§ 4279.181(a) (Con.)

(8) Borrower's loan closing balance sheet, supporting paragraph (a)(9)(i) of the lender certification, demonstrating required tangible balance sheet equity; and

(9) The lender's certification to each of the following certifications: *The lender's certification letter must individually list each of items (i) through (xv) of this paragraph.*

(i) The capital/equity requirement was determined, based on a balance sheet prepared in accordance with GAAP, and met, as of the date the guaranteed loan was closed, giving effect to the entirety of the loan in the calculation, whether or not the loan itself is fully advanced.

(ii) All requirements of the Conditional Commitment have been met.

(iii) No major changes have been made in the lender's loan conditions and requirements since the issuance of the Conditional Commitment, unless such changes have been approved by the Agency in writing.

(iv) There is a reasonable prospect that the guaranteed loan and other project debt will be repaid on time and in full (including interest) from project cash flow according to the terms proposed in the application for loan guarantee.

(v) All planned property acquisition has been or will be completed, all development has been or will be substantially completed in accordance with plans and specifications, conforms with applicable Federal, State, and local codes, and costs have not exceeded the amount approved by the lender and the Agency.

(vi) The borrower has marketable title to the collateral then owned by the borrower, subject to the instrument securing the loan to be guaranteed and to any other exceptions approved in writing by the Agency.

(vii) The loan has been properly closed, and the required security instruments have been properly executed or will be obtained on any acquired property that cannot be covered initially under State law.

(viii) Lien priorities are consistent with the requirements of the Conditional Commitment. No claims or liens of laborers, subcontractors, suppliers of machinery and

equipment, materialmen, or other parties have been filed against the collateral, and no suits are pending or threatened that would adversely affect the collateral.

(ix) When required, personal and/or corporate guarantees have been obtained in accordance with § 4279.132.

(x) The loan proceeds have been or will be disbursed for purposes and in amounts consistent with the Conditional Commitment (or Agency-approved amendment thereof) and the application submitted to the Agency. When applicable, the entire amount of the loan for working capital has been disbursed to the borrower, except in cases where the Agency has approved disbursement over an extended period of time and funds are escrowed so that the settlement statement reflects the full amount to be disbursed.

(xi) All truth-in-lending and equal credit opportunity requirements have been met.

(xii) There has been neither any material adverse change in the borrower's financial condition nor any other material adverse change in the borrower, for any reason, during the period of time from the Agency's issuance of the Conditional Commitment to the issuance of the Loan Note Guarantee regardless of the cause or causes of the change and whether or not the change or causes of the change were within the lender's or borrower's control. The lender must address any assumptions or reservations in the requirement and must address all adverse changes of the borrower, any parent, affiliate, or subsidiary of the borrower, and guarantors.

(xiii) Neither the lender nor any of the lender's officers has an ownership interest in the borrower or is an officer or director of the borrower, and neither the borrower nor its officers, directors, stockholders, or other owners have more than a 5 percent ownership interest in the lender.

(xiv) The loan agreement includes all measures identified in the Agency's environmental impact analysis for this proposal with which the borrower must comply for the purpose of avoiding or reducing adverse environmental impacts of the project's construction or operation.

(xv) If required, hazard, flood, liability, workers compensation, and life insurance are in effect.

§ 4279.181 (Con.)

(b) **The Agency may, at its discretion, request copies of additional loan documents for its file.** *This could include lists of machinery and equipment with serial numbers, other assets pledged as collateral, copies of executed franchise agreements, etc.*

(c) **When the Agency is satisfied that all conditions for the guarantee have been met, the Agency will issue the Loan Note Guarantee and the following documents, as appropriate.** *Generally, the Loan Note Guarantee should be issued when the lender provides the items listed in paragraph (a) of this section and has met all conditions of the Conditional Commitment, which should be coincident with or immediately after loan closing. Use the Conditional Commitment as a checklist to ensure that all conditions have been met. If, at a later date, it is discovered that all conditions have not been met, the lender should be advised in writing that full enforceability of the guarantee by the lender may be compromised if the deficiencies are not corrected.*

(1) **Assignment Guarantee Agreement.** *In the event the lender uses the single note option and assigns the guaranteed portion of the loan to a holder, the lender, holder, and the Agency will execute Form RD 4279-6, "Assignment Guarantee Agreement," in accordance with § 4279.75(a); and*

(2) **Certificate of Incumbency.** *If requested by the lender, the Agency will provide the lender with a certification on Form RD 4279-7, "Certificate of Incumbency and Signature," of the signature and title of the Agency official who signs the Loan Note Guarantee, Lender's Agreement, and Assignment Guarantee Agreement. Form RD 4279-7 will be signed by an Agency official other than the Agency official who signs the Loan Note Guarantee, Lender's Agreement, and Assignment Guarantee Agreement. If the lender does not request use of this form, it does not have to be prepared.*

§§ 4279.182 - 4279.186 [Reserved]

§ 4279.187 **Refusal to execute Loan Note Guarantee.**

If the Agency determines that it cannot execute the Loan Note Guarantee, the Agency will promptly inform the lender of the reasons and give the lender a reasonable period within which to satisfy the objections. If the lender satisfies the objections within the time allowed, the Agency will issue the Loan Note Guarantee. If the lender requests additional time in writing and within the period allowed, the Agency may grant the request.

§§ 4279.188 - 4279.189 [Reserved]

§ 4279.190 Business and Industry national COVID-19 Public Health Emergency Loans. (Added 06-04-20, SPECIAL PN.)

(a) **Introduction.** This section contains regulations for the Business and Industry national COVID-19 Public Health Emergency loan program (B&I CARES Act Program loans). The purpose of the program is to provide loan guarantees under the authority of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116-136). These B&I CARES Act Program Loans cover costs to prevent, prepare for and respond to the coronavirus. Consistent with the purposes of the CARES Act, the Agency has determined that the most effective use of these program funds is to support the cost of guaranteed loans to rural businesses to respond to the coronavirus. No B&I CARES Act Program Loan guarantee will be approved after September 30, 2021. All provisions of Subparts A and B of Part 4279 and Subpart A of Part 4287 of this chapter apply to B&I CARES Act Program Loans, except as provided in this section. All forms used in connection with a B&I CARES Act Program Loan will be those used with other Business and Industry (B&I) loans, except as provided in this section.

(b) **Eligible borrowers.** § 4279.108 of this subpart applies to B&I CARES Act Program Loans. In addition, borrowers must have been in operation on February 15, 2020.

(c) **Eligible use of funds.**

(1) The purpose of any B&I CARES Act Program Loan must be to cover costs to prevent, prepare and respond to the coronavirus pandemic in accordance with paragraph (a) of this section. B&I CARES Act Program Loans should not exceed the amount needed to overcome the financial distress caused by the COVID19 National Emergency.

(2) Notwithstanding the provisions of 7 CFR 4279.113, B&I CARES Act Program guaranteed loans will be limited to loans for working capital loan purposes in accordance with paragraph (3). Loan proceeds may be used only to support facilities and business operations in rural areas and the Borrower must have been in operation on February 15, 2020. Loan proceeds must be disbursed through multiple draws on an as-needed monthly basis. *Total loan proceeds may not be disbursed at loan closing unless the borrower demonstrates, to the Agency's satisfaction, that there is an immediate need for all loan funds within the next 30 days.*

(3) **Eligible Working Capital uses of B&I CARES Act Program Loan funds are limited to:**

§ 4279.190(c)(3) (Con.)

(i) Wages, salaries, sales commissions to employees, group healthcare benefits, and other employee benefits. *Wages and salaries paid to an owner may be included if these costs are reasonable and constitute historical working capital costs;*

(ii) Administrative expenses and administrative service contracts;

(iii) Property insurance, hazard insurance, and other business insurance;

(iv) Principal and interest payments excluding owner/stockholder debt and related-party debts. *Existing loan payments are a working capital expense and an eligible use of B&I CARES Act Program funds without regard to their original loan purpose. Eligible loan payments include principal and interest payments on existing B&I loans. B&I CARES Act Program funds may be used to bring any of the borrower's third-party loans to a current repayment status. Any payments of principal or interest on existing loans from an owner, shareholder or affiliated entity are not eligible and that amount must be deducted from the maximum eligible loan amount calculation. B&I CARES Act Program funds may not be used for any payments to an owner, shareholder or affiliated entity during the term of the guaranteed loan.;*

(v) Rent, payments on leases, and routine maintenance;

(vi) Utilities;

(vii) Inventory, feed, seed, fertilizer and chemicals, livestock (excluding livestock for breeding) and supplies;

(viii) Marketing, shipping, and other expenses incurred through normal business operations or such additional expenses due to the national COVID-19 Public Health Emergency;

(ix) Taxes; and

(x) Loan costs and essential loan-related expenses.

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(Added 06-04-20, SPECIAL PN)

(08-09-16) SPECIAL PN

§ 4279.190(c) (Con.)

(4) Ineligible purposes. Notwithstanding the provisions of 7 CFR 4279.113, the following purposes are ineligible for B&I CARES Act Program guaranteed loans:

- (i) Purchase and development of land, buildings, and associated infrastructure for commercial or industrial properties, including expansion or modernization;
- (ii) Business acquisitions;
- (iii) Leasehold improvements;
- (iv) Constructing or equipping facilities;
- (v) Purchase of machinery and equipment; and
- (vi) Debt refinancing unless such debt refinancing is for debts incurred subsequent to February 15, 2020 for eligible purposes listed in paragraph (3).

(5) Agricultural Production. The provisions of § 4279.113(q) do not apply to B&I CARES Act Program Loans. Loans for working capital to support agricultural production, including independent agricultural production, is an eligible use of funds when the applicant's loan request exceeds Farm Service Agency (FSA) guaranteed loan authority or the applicant's request is otherwise ineligible for FSA loans. *The lender should verify ineligibility for FSA loan programs. If an agricultural producer is requesting a loan in an amount greater than FSA's maximum loan amount, \$1.776 million, the agricultural producer is not required to apply to FSA for the first \$1.776 million. The entire loan amount will be eligible under the B&I CARES Guaranteed Loan Program. Co-funding a loan request with FSA is an option available to the lender and borrower but not a requirement of the B&I CARES Act Program. Agricultural producers must be located in a rural area as defined in 7 CFR 4279.108(c) unless they meet the requirements provided for under 7 CFR 4279.113(y). The total amount of B&I CARES Act Program loans for agricultural production is limited to one half of the authorized Program lending authority. The National Office will track the amount of total loans made for agricultural production and notify State Offices if these funds have been depleted.*

§ 4279.190 (Con.)

(d) Loan amount limits.

(1) The provisions of § 4279.119(a) do not apply to B&I CARES Act Program Loans. The total amount of B&I and B&I CARES Act Program Loans to one borrower (including the guaranteed and unguaranteed portions, the outstanding principal and interest balance of any existing B&I guaranteed loans, and the new loan request) cannot exceed \$25 million. *None of the provisions of § 4279.119(a) apply to the B&I CARES Act Program Loans in excess of \$10 million and do not require an Administrator exception or need to meet the provisions of § 4279.119(a) (1) and (2). The guarantor loan limit of \$50 million does not apply to the B&I CARES Act Program.*

(2) The amount of the B&I CARES Act Program Loan shall be based on a cash flow analysis and must not be greater than the amount needed to cure problems caused by the COVID-19 emergency so that the business is reestablished on a successful basis. Losses and business operating expenses that were adequately paid by insurance or by loans or grants from other sources will not be covered by B&I CARES Act Program Loans. B B&I CARES Act Program Loans may be used to supplement insurance payments or assistance from other sources when the insurance coverage or other assistance is insufficient. *SBA Paycheck Protection Program (PPP) loans, other Federal assistance, or insurance proceeds received by the borrower may not be enough for the borrower to fully recover from the economic impacts of the coronavirus; the B&I CARES Act Program loan funds are intended to supplement any such assistance. The borrower should forecast their working capital and cash flow needs to reestablish the business as a successful and sustainable entity. This forecast should estimate their monthly shortfall of working capital for the period of time necessary for the business to recover. The shortfall is determined by the borrower's estimated revenues and other assistance, minus working capital expenses. Fixed asset purchases may not be included in the shortfall projections.*

(3) The maximum loan amount of the B&I CARES Act Program Loan for working capital purposes may not exceed 12 times the borrower's total average monthly costs of eligible working capital loan purposes less total amount of covered loans received under the provisions of section 1102 and Section 1110(a) (2) of the CARES Act and other Federal emergency assistance received. *Annual financial statements or tax returns may be utilized to calculate the maximum loan amount under the B&I CARES Act Program. It is the Agency's preference to review the last three full years of operations to calculate average working capital expenses for the borrower, with*

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(Added 06-04-20, SPECIAL PN)

(08-09-16) SPECIAL PN

§ 4279.190(d)(3) (Con.)

emphasis given to their 2019 expenses. If this financial information is not available, then actual working capital expenses for the most recent period may be evaluated. Borrowers who have not been in operation for a full year may estimate an average monthly cost of eligible working capital expenses based on the available historical months of their operations prior to February 15, 2020. After calculating the average annual working capital expenses to determine a maximum loan amount, the amount of any SBA PPP loans or other Federal assistance received must be subtracted from the maximum eligible amount of a B&I CARES Act Program loan. If the borrower receives additional Federal funding after the B&I CARES Act Program loan is approved or loan origination, the lender shall recalculate the borrower's maximum loan amount and recalculate the amount of working capital the business needs as their financial situation could have changed. If the resulting calculations are that the borrower received a larger B&I CARES Act Program loan than they are eligible for, the overage should be deobligated (if not disbursed) or repaid (if disbursed.)

(4) Borrowers receiving B&I CARES Act Program Loans in an amount less than the maximum loan amount in accordance with paragraph (3), may apply for subsequent loans under this section up to an accumulative amount of B&I CARES Act Program loans not to exceed the maximum loan amount. The maximum loan amount (paragraph 3) must be calculated at the time of the borrower's first B&I CARES Act Program loan application and this calculation may be used to establish the maximum amount of a subsequent loan.

(e) Percentage of guarantee. The provisions of § 4279.119(b) do not apply to B&I CARES Act Program Loans. The percentage of guarantee is 90 percent. All B&I CARES Act Program loans shall receive a 90 percent guarantee.

(f) Guarantee fee. The provisions § 4279.120(a) do not apply to B&I CARES Act Program Loans. The guarantee fee for the B&I CARES Act Program Loans shall be two (2) percent. The guarantee fee is paid at the time the Loan Note Guarantee is issued and may be included as an eligible use of guaranteed loan proceeds. The amount of the guarantee fee is determined by multiplying the total loan amount by the guarantee fee rate by the percentage of guarantee. There is no provision to decrease the guarantee fee for B&I CARES Act Program loans; all loans will be charged a 2% guarantee fee regardless of the amount.

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(g) **Annual renewal fee.** Notwithstanding the provisions of § 4279.120(b), the annual renewal fee for B&I CARES Act Program Loans shall be one half of one (0.5) percent (50 basis points.)

(h) **Loan terms.** Notwithstanding the provisions of § 4279.126, the maximum allowable repayment term of loans for working capital purposes is 10 years. Loan repayment may defer principal payments or principal and interest payments for a period up to 12 months from loan closing and may extend deferral of principal payments up to a total of three years with a maximum repayment term of 10 years from the date of loan closing. *The lender must include any proposed payment deferral actions in their application documents and the promissory note must indicate the loan repayment terms regarding when the principal and interest amounts are due during its term. No balloon payments are allowed. The B&I CARES Act Program loans must be paid in full by the borrower as there are no forgiveness provisions for B&I loans under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).*

(i) **Credit quality.** Notwithstanding the provisions of § 4279.131(a), the lender's evaluation of the borrower's repayment ability shall include an emphasis on the borrower's successful financial history and on the borrower's 2019 financial performance, present condition, and future viability.

(j) **Collateral.** B&I CARES Act Program loans must be adequately secured. Notwithstanding the provisions of § 4279.131(b), loan-to-value discounting by the lender is not required for B&I CARES Act Program Loans for working capital purposes. The value of the collateral (fair market value) must be equal to or greater than the loan amount. *Discounting of collateral values is not required when calculating adequate collateral coverage. Current assets, such as inventory and receivables, may be valued by their current balance sheet amount or borrowing base certificate, if applicable.*

(k) **Capital/equity.** Notwithstanding the provisions of § 4279.131(d), the business must meet one of the following requirements at loan closing:

- (1) A minimum of 10 percent balance sheet equity (including subordinated debt when subject to a standstill agreement), or a maximum debt-to-balance sheet equity ratio of 9 to 1;

(2) **A Borrower investment of equity or other funds into the project equal to 10 percent or more of total eligible project costs, (such investment may include grants or subordinated debt when subject to a standstill agreement).** *Additional sources of matching funds may be derived from income and other loan funds, including SBA PPP loans, however, these must be classified as cash injected toward the total eligible project costs. In-kind contributions are not eligible to meet equity requirements.; or*

(3) **The balance sheet equity includes owner-contributed capital of 10 percent or more of total fixed assets (net total fixed assets plus depreciation).** *This calculation is derived from: (total contributed capital) divided by (total balance sheet fixed assets plus depreciation).*

(1) **Appraisals.** *In accordance with § 4279.144, appraisals of real estate and chattel collateral are required when the amount of the loan exceeds \$1,000,000, unless the chattel is newly acquired equipment and the value is supported by a bill of sale. Notwithstanding the provisions of § 4279.144, the Agency will accept appraisals older than 1 year but completed within 2 years of the application date. Lenders may provide an updated appraisal in lieu of a new complete appraisal when the original appraisal is more than 2 years old. All appraisals of real estate must be compliant with Uniform Standards of Professional Appraisal Practices (USPAP) requirements and reflect the current market value of the collateral as required by § 4279.144(a). To protect lenders, appraisers and Agency staff during the COVID-19 pandemic, an interior or on-site inspection of the collateral is not required if an assumption can be made by the appraiser on a reasonable basis or is based on previous inspections and condition reports completed by the lender or third party for the collateral. Current appraisals are not required if the B&I CARES Act Program loan amount is \$1 million or less. This differs from the \$250,000 threshold for a single piece of collateral as stated in § 4279.144. Lenders should be familiar with the collateral provided as security for the loan and assure the Agency that its stated value is accurate.*

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(m) Filing preapplications and applications. *Applications are to be received and processed in the State Office in the State where the business is located. Funds will be maintained in a National Office Reserve and the Agency will consider applications in the order they are received by the Agency on a first-come, first served basis. Priority scoring will not be needed initially, however towards the end of the funding period the Agency may need to assign priority points for the limited remaining funds. For this purpose the Agency will compare an application to other pending applications that are competing for funding in accordance with 7 CFR 4279.166. Business Program Directors are encouraged to contact the National Office Program Processing Division with any questions regarding borrower eligibility, use of B&I loan proceeds, calculations of the loan amount or borrower equity, and any other questions related to a specific project.*

(1) B&I CARES Act Program Loan borrowers with existing B&I loans do not need to resubmit their historical financial statements that have been previously submitted through routine loan servicing actions.

(2) Loans for working capital are classified as categorical exclusions for purposes of the Agency's environmental review policies and procedures in accordance with 7 CFR 1790. These actions normally do not require an applicant to submit environmental documentation with the application. However, based on the review of the project description, the Agency may request additional environmental documentation from the applicant at any time, specifically if the Agency determines that extraordinary circumstances may exist.

(3) Notwithstanding the provisions of § 4279.161(b), a draft loan agreement is not required, a business plan or feasibility study is not required, and lenders may substitute and rely on the borrower's tax returns when financial statements prepared in accordance with GAAP are not available from the borrower. Agricultural producers' financial records must meet the industry's standard accounting practices.

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§ 4279.190(m) (Con.)

(4) Combined applications. A lender or borrower may combine applications for a B&I CARES Act Program loan for working capital with an application for B&I appropriated fiscal year funds. The provisions of this section do not apply to applications for B&I appropriated fiscal year funds. *State Offices are allowed to use the same lender's analysis for each request, however, the regulation provisions of the respective requests must be met. This means that none of the B&I CARES Act Program provisions outlined in § 4279.190 may be used for the regular B&I Program. The lender will need to document the collateral lien position of each loan request to ensure adequate collateral coverage, which includes discounting collateral value for loans guaranteed using appropriated fiscal year funds. The provisions of this section do not apply to applications for B&I appropriated fiscal year funds.*

§§ 4279.191 - 4279.199 [Reserved]

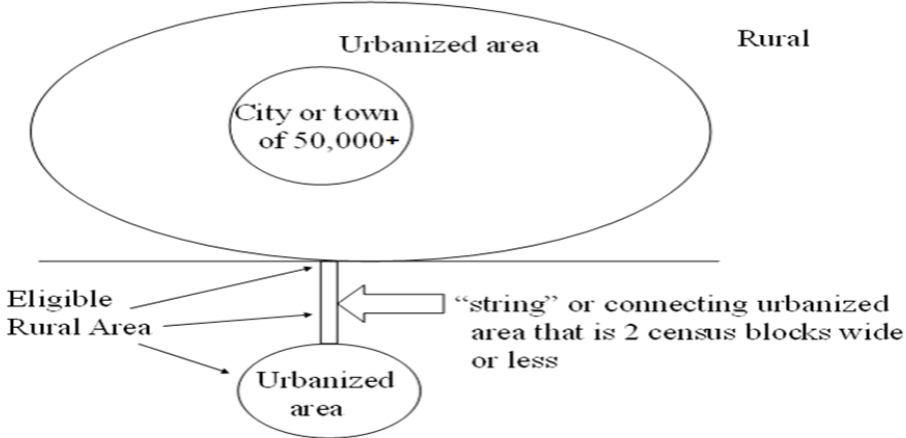
§ 4279.200 OMB control number.

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) under OMB Control Number 0570-0069 for OMB approval.

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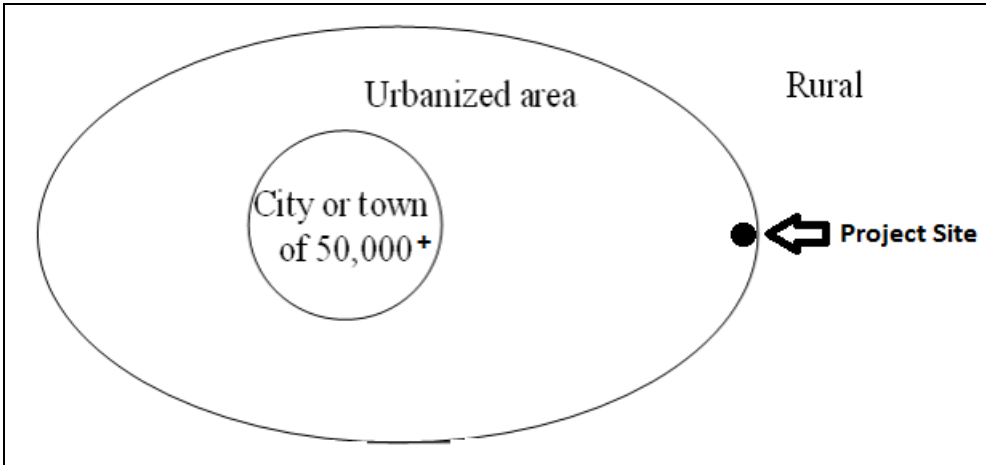
Rural Area Exceptions

"Strings"



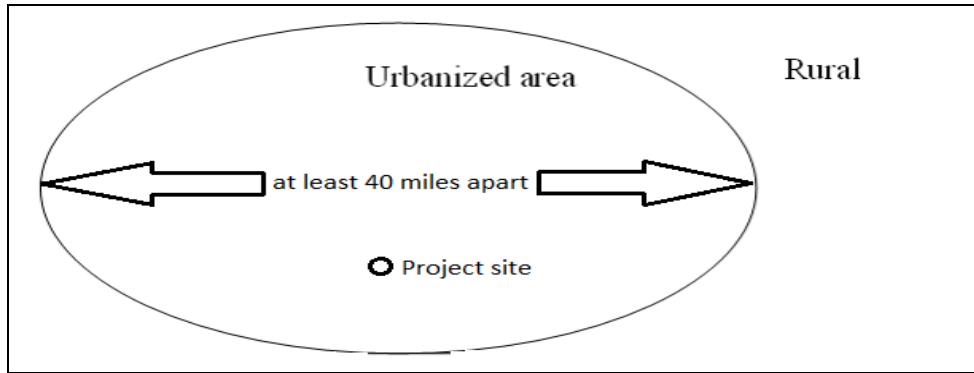
Applies to areas that are currently considered not a rural area because they are attached to the urbanized area of a city or town of greater than 50,000 inhabitants by a "string" area that is two census blocks wide or less (which are typically interstates or major highways). As long as the "string" area is two census blocks wide or less, the area outside of the urbanized area, beginning with the "string" area, may be considered rural.

"Rural in character"



An area within an urbanized area contiguous and adjacent to a city or town of greater than 50,000 inhabitants that is within 1/4 mile of a rural area.

"Rural in character"



An urbanized area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000 inhabitants or the urbanized area of such city or town.

For either of the rural in character exceptions, the site cannot lie within the city limits; it must be within the urbanized area contiguous and adjacent to the city or town.

CREDIT EVALUATION GUIDANCE

Loan Processing

Part A -	Five Factors of Credit
Part B -	Lender's Financial Analysis and Financial Ratios
Part C -	Classification of Balance Sheet Items

(A) Five Factors of Credit.

While every lending institution is unique, most evaluate loans based on five credit factors, or the 5 C's of credit. Accurate credit classification requires an analysis of these factors. The 5 C's of credit are frequently referred to as capacity, capital, collateral, character, and conditions; although other similar terms are often used. The relative weight assigned to each credit factor varies with the circumstances of the loan being evaluated.

The regulation requires lenders' credit evaluations to address each of the following factors. The general description of each credit factor is provided below.

(1) Character or Credit-Worthiness.

This factor refers to the borrower's integrity and management ability. Responsible and cooperative management must be evident. This factor is of such significance that it can affect the weight placed on the other credit factors, particularly if the evaluation of character is negative. Analyses should include a careful evaluation of management of finance and operations. Points to consider include:

- Realistic production and financial goals;
- Adequate financial records;
- Proven management/leadership experience;
- Borrower's marketing plan/approach; and
- Compliance with loan terms.

(2) Cash flow or Capacity.

This factor refers to the borrower's ability to repay. The determination of repayment capacity requires an analysis of cash flow, sources of repayment, and earnings history. Cash-flow projections should be based on reasonable and documented assumptions and be realistic in relation to past performance (or industry averages for start-ups) and should identify the source(s) of repayment. The source of repayment should be assessed to ensure repayments are expected from normal operations or from other recurring and reliable sources. Earnings history should evidence that future income is sufficient to meet all obligations with some left for capital replacement and contingencies. Points to consider include:

- *Historic earnings performance;*
- *Repayment history;*
- *Stable and reliable income;*
- *Sources of repayment;*
- *Projected earnings;*
- *Cash flow projections; and*
- *Ratio analysis and comparison to industry averages.*

(3) Capital/equity.

This factor refers to the amount of money the owner(s) has/have invested in the company to provide assurance that the owner has a financial commitment. It also relates to the ability to meet obligations, continue business operations, and protect against undue risk. The business' total loans, working capital and liquidity, amount of equity, contingent liabilities, financial progress, and history of earnings to date are significant measures of a borrower's capital position. Points to consider include:

- *Loan/liability structure;*
- *Working capital and liquidity;*
- *Owner equity position;*
- *Owner's personal financial statement/ability to invest additional funds;*
- *Financial trends;*
- *Earned net worth as a percent of total net worth; and*
- *Limits on owners withdrawing funds by way of salaries, dividends, and loans. (Revised 03-19-18, PN 510.)*

(4) Collateral.

This factor refers to the security pledged on the loan. The amount of collateral taken must comply with regulatory requirements. It should reasonably protect the lender, provide the necessary control of repayment, and leave the borrower in a position to constructively manage the business. Make sure that all worthwhile collateral is pledged to the project, but do not require assets with little or no collateral support to be pledged mainly for cosmetic reasons. Intangible assets cannot serve as primary collateral.

A parity or junior lien position may be considered provided the discounted collateral values are adequate to secure the guaranteed loan. Careful consideration should be given to junior lien positions since the chances of collecting anything if a loan is liquidated are slim.

Personal and/or corporate guarantees may provide added strength to the loan if analysis provides assurance that such guarantors can reasonably provide support. However, these guarantees should not be considered collateral when calculating the loan-to-value ratio. If the guarantee is secured, the value of that collateral may be used in the calculations.

Points to consider include:

- Appropriately appraised collateral is essential, contact Rural Development appraiser if necessary;*
- Reasonable lender protection;*
- Perfected security interest;*
- Current and accurate evaluation reports;*
- Appropriate discounting;*
- Availability of additional collateral;*
- Collateral risk (potential to decline in value); and*
- Income producing and debt servicing ability of the collateral relative to its current market value.*

Market value is discounted when determining the loan-to-discounted value ratio depending on the type of collateral. Collateral must have documented value sufficient to protect the interest of the lender and the Agency. The discounted value of the collateral must be at least

equal to the loan amount. Under no circumstances should the loan-to-value of the collateral (loan-to-fair market value) ever be equal to or greater than 100 percent. Lenders must discount collateral consistent with the sound loan-to-discounted value policy set forth in § 4279.131(b)(1)(i) through (iv) of this subpart. The type, quality, and location of collateral should be considered in order to assess collateral adequacy and appropriate levels of discounting. Other factors to be considered by the Agency in the discounted value of collateral should include the marketability and alternative uses of the collateral. That is, specialized buildings or equipment should be discounted greater than multi-purpose facilities or equipment.

A maximum of 80 percent of current fair market value will be given to real estate, a maximum of 70 percent of cost or current fair market value will be given to machinery, equipment, and furniture and fixtures and will be based on its marketability, mobility, useful life, specialization, and alternative uses, if any. A maximum of 60 percent of book value will be assigned to acceptable inventory and accounts receivable; however, all accounts over 90 days past due, contra accounts, affiliated accounts, and other accounts deemed not to be acceptable collateral will be omitted. Accounts receivables and inventory on a startup business are likely zero at loan closing and therefore cannot count as "needed" collateral coverage. 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. Typically, work in process (inventory) and receivables older than 90 days are discounted to \$0 value. Individual cases, local markets, audits of inventory and receivables, and other economic factors will impact discounted collateral values. Except for working capital loans, term debt should not be dependent upon accounts receivable and inventory to meet collateral requirements, except as a small percentage of the collateral package.

When using higher discount factors than those outlined above and when it meets the requirements of § 4279.131(b)(2), the Agency should document in the Project Summary why the higher discounting is appropriate. In order to utilize § 4279.131(b)(2), it is expected that the business must have been profitable for at least 2 out of the last 3 years in order to be considered successful.

(5) Conditions.

This factor refers to the current economic condition and how the borrower fits in. It also refers to the use of loan proceeds and loan terms over which the lender has direct control. The conditions of a loan should be constructive in amount and purpose and practical as to repayment terms for both the borrower and lender. Points to consider include:

- *Current economic conditions;*
- *Sensitivity to economic downturns;*
- *Economic political policy issues;*
- *Prudent and productive loan purposes; past experience in fulfilling conditions;*
- *Loan maturities coinciding with the purpose of the loan;*
- *Proper structure of loans financing specific major capital items; and*
- *Appropriate repayment plans/schedules established consistent with the source of repayment.*

B. LENDER FINANCIAL ANALYSIS AND FINANCIAL RATIOS.

1. Lender Financial Analysis Requirements.

a. The lender is responsible for obtaining and forwarding to the Agency the financial statements required by § 4279.161(b). The lender is also responsible for spreading and analyzing the borrower's financial statements and providing a comprehensive, written credit analysis in accordance with § 4279.131.

(i) The lender's credit analysis must consist of a complete, written analysis discussing: (1) adequacy of capital/equity; (2) cash flow and repayment ability (including a cash-flow analysis); (3) collateral; (4) borrower's management; (5) the borrower's history of credit/credit reports and debt repayment; (6) the necessity of any debt refinancing (which should address the eligibility criteria set forth in § 4279.113(g)); and (7) the current conditions of the borrower, economy, and industry.

(ii) The lender's analysis must also include spreadsheets of the balance sheets and income statements for 3 historical years, 2 years of projected balance sheets, income statements, and cash-flow statements. The lender must also submit a pro forma balance sheet projected for loan closing that reflects the borrower's post-closing status. This balance sheet must take into account any new assets and reflect all debt, whether guaranteed or unguaranteed, as liabilities of the borrower, regardless of whether the loan(s) has/have been fully disbursed or remain(s) to be disbursed.

b. Section 4279.131 also requires common-sizing, appropriate ratios and comparisons with industrial standards. A reasonably prudent lender will likely include a number of the ratios identified below in its written credit analysis.

2. *Financial Ratios.* The formulas for these ratios come from RMA, which is what is used to compare to industry averages.

a. Current Ratio: Measures the ability of a company to pay its currently maturing obligations on a timely basis. It shows the amount of protection provided by a company's current assets relative to its current liabilities.

$(\text{Total current assets}) / (\text{Total current liabilities})$

b. Quick Ratio: Expresses the degree to which current liabilities of a company are covered by the most liquid current assets. This acid test ratio is a more stringent measure of liquidity than the current ratio, because the quick ratio includes only the most liquid current assets or those that can be quickly converted to cash at amounts close to their book value.

$(\text{Cash} + \text{Accounts receivable (trade)} + \text{Marketable securities}) / (\text{Total current liabilities})$

c. Days Accounts Receivable Ratio: Expresses the average time in days that receivables are outstanding. The collection period varies greatly for different types of companies, and it is important to make comparisons with similar companies or look at trends over time.

$365 / (\text{Net sales}/\text{Accounts receivable})$

d. Days Inventory Ratio: Measures the company purchasing, selling, and manufacturing efficiency, but is meaningful only in relation to the company's past performance and the performance of similar companies in the same industry.

$$365 / (\text{Cost of goods sold}/\text{Inventory})$$

e. Debt-to-Worth Ratio: Provides an indication of how well the investment of the shareholder(s) in the company protects a creditor debt. It also measures how much the shareholders have at risk versus how much the creditors have at risk and, thus, the strength of the company capital structure.

$$(\text{Total liabilities}) / (\text{Tangible net worth})$$

f. Times-Interest-Earned Ratio: Measures what proportion of the company earnings is needed to pay interest on its debt. A ratio of 1x is almost mandatory, since a lower ratio would indicate company earnings are insufficient to cover the interest on its debt.

$$(\text{Earnings before taxes} + \text{Interest expense}) / (\text{Interest expense})$$

g. Debt Service Coverage Ratio: Measures the proportion of a company's net profit and noncash expenses that will be needed to pay the principal portion of long-term debt in the coming year.

$$(\text{Net profit} + \text{Depreciation} + \text{Other non-cash charges}) / (\text{Current maturities of long-term debt})$$

h. Return-On-Sales Ratio (or Net Profit Margin): Measures the extent to which revenues of a company exceed all its expenses, that is, how much profit the company earns on each dollar of sales.

$$(\text{Profits before taxes}) / (\text{Net sales})$$

i. Return-on-Assets: Measures the profitability of a company in terms of how efficiently it uses its assets.

$$(\text{Profit before taxes}) / (\text{Total assets})$$

j. Return-on-Equity Ratio: A high return, normally associated with effective management, could indicate an under-capitalized firm. A low return, usually an indicator of inefficient management performance, could reflect a highly capitalized, conservatively operated business.

(Profit before taxes) / (Tangible net worth)

C. CLASSIFICATION OF BALANCE SHEET ITEMS.

ASSETS	C	N	I		C	N	I
	U	O	N		U	O	N
	R	N	T		R	N	T
	R	C	A		R	C	A
	E	U	N		E	U	N
	N	R	G		N	R	G
	T	R	I		T	R	I
		E	B			E	B
		N	L			N	L
		T	E			T	E
Accounts Receivable				Advances			
Trade (less reserves)	X			For Merchandise	X		
From affiliate, subsidiary, director, employee, officer, owner, stockholder, or partner, if there is no evidence of repayment ability and accounts are not being paid on regular terms.			X	For Mining Royalties		X	
From affiliate, subsidiary, director, employee, officer, owner, stockholder, or partner, if there is evidence of repayment ability and accounts are being paid on regular terms.		X		For Traveling		X	
Miscellaneous/other		X		To Affiliate/ Subsidiary/Employees		X	

ASSETS	C	N	I		C	N	I
	U	O	N		U	O	N
	R	N	T		R	N	T
	R	C	A		R	C	A
	E	U	N		E	U	N
	N	R	G		N	R	G
	T	E	R		T	E	R
		N	I			N	I
		T	B			T	B
			L				L
			E				E
Advertising			X	Debenture Discount			X
Automobiles		X		Deferred Charge			X
Bond Discount			X	Deficit (profit and loss)			X
Bonds	X			Delivery Equipment		X	
Bookplates				Deposits With Factor	X		
At Cost			X	Deposits With Mutual Ins. Co.		X	
Metal Value		X		Deposits With Workman's Comp. Commission		X	
Bottling Rights			X	Design/Engineering Costs		X	
Brands, Trade			X	Development Expense			X
Building and Loan Shares	X			Dies (at cost)		X	
Buildings		X		Docks		X	
Cash				Drawings			X
In Bank or On Hand	X			Emergency Plant Facilities		X	
In Closed Bank		X		Equipment		X	
In Sinking Fund		X		Experimental Expense			X
Restricted		X		Exploration Expense			X
Cash Value of Life Insurance	X			Financing Expense			X
Catalogs			X	Fixtures		X	
Certificates of Need			X	Formulas			X
Claims for refunds under carry back provisions of Tax Law	X			Franchises			X
Coal Lands		X		Furniture		X	
Contracts			X	Goodwill			X
Copyrights			X	Improvements		X	
Customer Lists			X	Insurance Deposits		X	

ASSETS	C	N	I		C	N	I
	U	O	N		U	O	N
	R	N	T		R	N	T
	R	C	A		R	C	A
	E	U	N		E	U	N
	N	R	G		N	R	G
	T	E	B		T	E	B
		N	L			N	L
		T	E			T	E
*For Leaseholds to count as tangible assets, the lease must be a capital lease. i.e., long-term, lessee retains asset at end of lease, etc.							
Insurance Premiums, Prepaid	X			Marketable Securities	X		
Interest, Accrued		X		Merchandise (see Inventory)			
Inventory				Mines/Mineral Rights		X	
Advances on Merchandise	X			Miscellaneous Receivables		X	
Finished Goods	X			Models			X
In Transit	X			Mortgages Receivables		X	
On Consignment	X			Municipal Bonds	X		
Raw Materials	X			Municipal Bonds in Default		X	
Supplies		X		Notes Receivable (Same as Accounts Receivable)			
Work in Process	X			Organization Expense			X
Investments		X		Packaging and Shipping Items		X	
Investments in subsidiaries & affiliates			X	Patents			X
Land		X		Patterns			X
Leasehold Improvements			X	Pension Funds		X	
Leaseholds*			X	Plant		X	
Licenses			X	Prepaid			
Life Ins. Cash Surrender Value	X			Insurance	X		
Limited Securities	X			Rent	X		
Machinery		X		Royalties		X	
Magazine Titles			X	Supplies	X		
Mailing Lists			X	Taxes	X		
Maintenance materials and parts		X		Processes			X

ASSETS	C	N	I		C	N	I
	U	O	N		U	O	N
	R	N	T		R	N	T
	R	C	A		R	C	A
	E	U	N		E	U	N
	N	R	G		N	R	G
	T	R	I		T	R	I
		E	B			E	B
		N	L			N	L
		T	E			T	E
Property		X		Trademarks			X
Quarries		X		Trade Name			X
Real Estate		X		Treasury Bonds (less than 1 yr)	X		
Research Expense			X	Treasury Bonds (more than 1 yr)		X	
Revenue Stamps	X			Trucks		X	
Rights, Publishing			X	Unamortized mort./bond exp.			X
Securities		X		U.S. Government Securities (less than 1 yr.)	X		
Ships		X		U.S. Government Securities (more than 1 yr)		X	
Sight Drafts Outstanding	X			Vessels		X	
Sinking Fund		X					
State Bonds	X						
Stock Subscription			X				
Subscription Lists			X				
Timber (standing or uncut)		X					
Tools		X					
Tracings			X				
Trade Acceptances	X						
Trade Brand			X				

LIABILITIES AND EQUITY	C	N	E		C	N	E
	U	O	Q		U	O	E
	R	N	U		R	N	U
	R	C	I		R	C	I
	E	U	T		E	U	T
	N	R	R		N	R	R
	T	R	E		T	R	E
		N	T			N	T
Accounts Payable				Capital Stock			
For Merchandise	X			A, B, C Stock			X
For Services	X			Common Stock			X
To Directors, Employees, Officers, Partners, and Related Concerns	X			Minority Interest			X
Sundry	X			Preferred Stock			X
Accruals				Capital Surplus			X
Commission	X			Chattel Mortgage		X	
Interest	X			Conditional Bill of Sale	X		
Other Expenses	X			Contracts Payable	X		
Payroll	X			Credit Balance	X		
Rent	X			Debentures			
Salaries/Wages	X			Maturing within 1 yr.	X		
Taxes	X			Maturing after 1 yr.		X	
Advances from Customers	X			Deferred Credits or Income		X	
Bills Payable (same as Notes Payable)				Deferred Income	X		
Bonds				Deposits			
Maturing within 1 yr.	X			From Customers	X		
Maturing after 1 yr.		X		From Officers/Employees	X		
No Definite Maturity Date		X		From Salesman	X		
Capital (partnership or proprietorship)			X	Depreciation (deduct from related assets)		X	

LIABILITIES AND EQUITY	C	N	E		C	N	E
	U	O	Q		U	O	Q
	R	N	U		R	N	U
	R	C	I		R	C	I
	E	U	T		E	U	T
	N	R	Y		N	R	Y
	T	R			T	R	
		E				E	
		N				N	
		T				T	
Dividends Payable	X			Officers' Deposits	X		
Donated Surplus		X		Paid-in-Surplus			X
Due Factor	X			Profit and Loss (deficit)			X
Earned Surplus		X		Provision for Income Taxes	X		
Employees' Deposits	X			Rent, Unpaid	X		
Federal Income Taxes	X			Reserves			
Funded Debt				Bad Debts (deduct from A/R)			
Maturing within 1 yr.	X			Contingencies		X	
Maturing after 1 yr.		X		Depletion (deduct from related assets)			
Income Taxes	X			Discounts (deduct from A/R)			
Loans from Factor	X			Inventory Adjustments (deduct from related assets)			
Loans Payable (same as Notes Payable)				Obsolescence (deduct from related assets)			
Mortgages maturing within 1 yr.	X			Retirement Capital Stock	X		
Mortgages maturing after 1 yr.		X		Salaries	X		
Net Worth			X	Salesman's Deposits	X		
Notes Payable				Sales Lien	X		
For Merchandise	X			Self-Insurance		X	
To Individuals	X			Separation Allowances	X		
To Banks	X			Social Security Taxes	X		
To Others	X			Stock			X
To Partners	X			Stock Subscriptions	X		
To Stockholders	X			Subordinated Debentures (same as Debentures)			

LIABILITIES AND EQUITY	C	N	E		C	N	E
	U	O	Q		U	O	Q
	R	N	U		R	N	U
	R	C	I		R	C	I
	E	U	T		E	U	T
	N	R	Y		N	R	Y
	T	R			T	R	
		E				E	
		N				N	
		T				T	
Sundry Accounts Payable	X			Taxes, unpaid	X		
Surplus Account				Taxes, Withheld at Source	X		
Capital Surplus			X	Term Loans (same as Bonds)			
Deficit (deduct)			X	Trade Acceptances Payable	X		
Donated			X	Treasury Stock (deficit)			X
Earned			X	Unearned Income		X	
Paid-in			X	Unexpired Subscriptions		X	
Profit/Loss			X	Unrealized Profit		X	
From Undivided Profits			X	Wages, Unpaid	X		

BUSINESS AND INDUSTRY
APPLICATION PRIORITY POINTS SCORING

Date: _____

Name: _____

State: _____

List the maximum points the applicant is eligible for under each category.
See § 4279.166 of this subpart for information on how to determine points.

(1) Population priority. Projects located in an unincorporated area or in a city with a population under 25,000 (10 points). _____

Population data should be obtained from:

<http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>

(2) Demographics priority. The priority score for demographics priority will be the total score for the following categories:

(i) Located in an eligible area of long-term population decline according to the last three decennial censuses (5 points). _____

The following link should be used to document the long term population decline criterion: <https://www.ers.usda.gov/data-products/county-typology-codes/descriptions-and-maps/> (Revised 06-12-17, SPECIAL PN.)

(ii) Located in a rural county that has had 20 percent or more of its population living in poverty based on the last three decennial censuses (10 points). _____

A list of current persistent poverty counties should be downloaded from: <http://www.ers.usda.gov/topics/rural-economy-population/rural-poverty-well-being/geography-of-poverty.aspx>

(iii) Located in a rural community that is experiencing trauma as a result of natural disaster (5 points). _____

To be awarded these points, the community must still be recovering from the effects of the natural disaster (normally not to exceed 2 years from the date of issuance of the disaster declaration but major disasters, such as Hurricane Katrina, could be much longer). Presidentially declared disaster areas may be found at:

<https://www.fema.gov/disasters/grid/year>, and disasters declared by the Secretary of Agriculture may be found at: <https://www.fsa.usda.gov/programs-and-services/disaster-assistance-program/disaster-designation-information/index> (Revised 06-12-17, SPECIAL PN.)

(iv) Located in a city or county with an unemployment rate 125 percent of the Statewide rate or greater (5 points). _____

*The most recent statewide unemployment rate may be found at:
<http://www.bls.gov/cps/>*

(v) Located within the boundaries of a Federally recognized Indian tribe's reservation, within tribal trust lands, or within land owned by an Alaska Native Regional or Village Corporation as defined by the Alaska Native Claims Settlement Act (5 points). _____

Questions may be directed to the Agency's Native American Coordinator.

(vi) Business is owned by a qualified veteran as defined by § 4279.2 of this chapter (5 points). _____

(3) Loan features. The priority score for loan features will be the total score for each of the following categories:

(i) Lender will price the guaranteed loan at an interest rate equal to or less than the equivalent of the Wall Street Journal published Prime Rate plus 1.5 percent (5 points). _____

The rate the lender proposes to charge must be the equivalent of or less than WSJ Prime +1.5 percent. Floor rates in excess of these rates cannot be awarded priority points. The current WSJ Prime Rate may be found at: <http://www.bankrate.com/rates/interest-rates/wall-street-prime-rate.aspx>

(ii) Lender will price the guaranteed loan at an interest rate equal to or less than the equivalent of the Wall Street Journal published Prime Rate plus 1 percent (5 points). _____

The rate the lender proposes to charge must be the equivalent of or less than WSJ Prime +1 percent. Floor rates in excess of these rates cannot be awarded priority points. If this condition is met, the application will receive the five points under paragraph (b) (3) (i) and the five points under this paragraph. The current WSJ Prime Rate may be found at: <http://www.bankrate.com/rates/interest-rates/wall-street-prime-rate.aspx>

(iii) The Agency guaranteed loan is less than 60 percent of project cost (5 points). _____

(iv) The Agency guaranteed loan is less than 50 percent of project cost (5 points). _____

If this condition is met, the application will receive the five points under paragraph (b) (3) (iii) and the five points under this paragraph.

(v) The Agency guaranteed loan is less than 40 percent of project cost (5 points). _____

If this condition is met, the application will receive the five points under paragraph (b) (3) (iii), the five points under paragraph (b) (3) (iv), and the five points under this paragraph.

(vi) For loans not requesting an exception under § 4279.119(b) of this subpart, the percentage of guarantee is 10 or more percentage points less than the maximum allowable for a loan of its size (5 points). _____

In order to receive these points, a project that would qualify for an 80 percent guarantee must have a 70 percent or less guarantee, a project that would qualify for a 70 percent guarantee must have a 60 percent or less guarantee, and a project that would qualify for a 60 percent guarantee must have a 50 percent or less guarantee. You may not consider 90 percent guarantees the maximum allowed since a 90 percent guarantee requires an exception to the regulation.

(4) High impact business investment priorities. The priority score for high impact business investment will be the total score for the following categories:

(i) Business/industry. The priority score for business/industry will be the total score for the following:

(A) Industry that is not already present in the community (5 points). _____

In order to receive these points, a project must be a new business with no businesses in that same industry already present in the community.

(B) Business that has 20 percent or more of its sales in international markets (5 points). _____

Verifiable sales documentation or projections supported by a feasibility study must be provided to support these points.

(C) Business that offers high value, specialized products and/or services that command high prices (5 points). _____

In order to receive these points, both criteria must be met (high value and specialized), and it must be thoroughly documented on the scoresheet what high value, specialized products or services the business provides.

(D) Business that provides an additional market for existing local businesses (5 points). _____

This means that the business buys product or services from, sells product to, or provides services to existing local businesses.

(E) Business that is locally owned and managed (5 points). _____

Locally owned and managed means that the owners and managers reside within the local commuting area.

(F) Business that will produce a natural resource value-added product (5 points). _____

In order to receive these points, the business must manufacture a product from a natural resource. See definition for natural resource value-added product in § 4279.2 in subpart A of this part.

(G) Business that processes, distributes, aggregates, stores, and/or markets locally or regionally produced agricultural food products to underserved communities in accordance with § 4279.113(y) (5) (10 points). _____

*The Food Access Research Atlas can be found at:
<http://www.ers.usda.gov/data-products/food-access-research-atlas/go-to-the-atlas.aspx> (Revised 06-12-17, SPECIAL PN.)*

(ii) Occupations. The priority score for occupations will be the total score for the following:

(A) Business that creates or saves jobs (more than one) with an average wage exceeding 125 percent of the Federal minimum wage (5 points). _____

*The Federal minimum wage may be found at:
<http://www.laborlawcenter.com/t-federal-minimum-wage.aspx>*

(B) Business that creates or saves jobs (more than one) with an average wage exceeding 150 percent of the Federal minimum wage (5 points). _____

*If this condition is met, the application will receive the five points under paragraph (b) (4) (ii) (A) and the five points under this paragraph. The Federal minimum wage may be found at:
<http://www.laborlawcenter.com/t-federal-minimum-wage.aspx>*

(C) Business that offers a healthcare benefits package to all employees, with at least 50 percent of the premium paid by the employer (5 points). _____

A copy of Internal Revenue Service/Department of Labor Form 5500 may be used to document the business offers a healthcare benefits package to all employees, with at least 50 percent of the premium paid by the employer.

(5) Administrative points. The State Director may assign up to 10 additional points to an application to account for Statewide distribution of funds, natural disasters or economic emergency conditions, community economic development strategies, State strategic plans, fundamental structural changes in a community's economic base, or projects that will fulfill an Agency initiative. _____

An explanation of 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 assign up to an additional 10 points to account for geographic distribution of funds, emergency conditions caused by economic problems or natural disasters, or projects that will fulfill an Agency initiative. _____

"Considered in the National Office" means National Office concurrence is required because it exceeds the State's delegated loan approval authority. It does not mean the loan is being considered for funding from the National Office reserve nor does it mean loans submitted for cursory review prior to loan approval.

Total points _____

Signature _____

Date _____

Title _____

oOo

BUSINESS AND INDUSTRY LOAN PROCESSING CHECKLIST

This checklist contains nationwide requirements that may be supplemented as needed. Tabs should be used within a filing position to separate specific types of records within a case folder. The application file and processing checklist should be marked to clearly indicate where the required information can be found.

Borrower:				
Name:				
Address:				
Loan Amount:				
DUNS Number:				
NAICS Code: http://www.census.gov/eos/www/naics/				
Lender:				
Name:				
Address:				
Phone Number:				
Email:				
APPLICATION TIMELINE				
Preapplication Received <i>(GLS Status Code 101)</i>				Date:
Application Received				
Letter notifying lender of incomplete application items, if applicable <i>*Lender must be informed of the reasons an application is incomplete within 15 days of the date of application receipt.</i>				
Application 100% complete <i>(GLS Status Code 201)</i> <i>*There is a 60-day requirement for approval/rejection of an application.</i>				
APPLICATION DOCUMENTS				
Document	Form No.	To Be Provided By	File Position/Tab No.	Date Rec'd or Completed
Application for Loan Guarantee	RD 4279-1 Part A Part B	Borrower Lender	Processing File 3/	

APPLICATION DOCUMENTS (CONTINUED)

Document	Form No.	To Be Provided By	File Position/Tab No.	Date Rec'd or Completed
Certification of Non-Relocation and Market and Capacity Information Report <i>*Form only required for loans in excess of \$1 million and where direct employment increases by more than 50 employees.</i>	RD 4279-2	Borrower	Processing File 3/	
Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants <i>*Incorporated borrowers and co-borrowers are required to complete Form AD-3030. Guarantors do not complete Form AD-3030.</i>	AD-3030	Borrower/ Lender	Processing File 3/	
Environmental review documentation <i>*As required by the RD Instruction 1970 series</i>		Borrower	Processing File 3/ or Environmental File	
Credit Reports Owners (20% or more interest) Borrower(s) Parent Affiliates Subsidiaries <i>*If commercial credit reports are not available, file the attempt to obtain the report in the case file and document the Project Summary.</i>		Lender	Processing File 3/	
Financial Statements <i>*See Application Processing</i>		Borrower	Processing File 3/	
Lender's Analysis <i>*Must include spreads in total dollars and common size form with comparisons to industrial standards.</i>		Lender	Processing File 3/	
Draft Loan Agreement <i>*Ensure seven requirements in 4279.161(b)(11)(i)-(vii) are included.</i>		Lender	Processing File 3/	

APPLICATION DOCUMENTS (CONTINUED)

Document	Form No.	To Be Provided By	File Position/Tab No.	Date Rec'd or Completed
Intergovernmental Consultation Comments <i>*Include a copy of the State exemption letter or clearance letter in file</i>		Borrower	Processing File 3/	
Business Plan <i>*A business plan may be omitted when loan proceeds are used for refinancing and fees or when the feasibility study contains all required elements.</i>		Borrower	Processing File 3/	
Appraisal(s) <i>*A copy of the technical review of the appraisal(s) is also required. *See Application Processing</i>		Lender	Processing File 8/ or Appraisal File	
Feasibility Study, if required <i>*A feasibility study is required for new businesses and may be required for existing businesses when there is a significant change in operations or when cash flow from the existing facility is not sufficient to service the new debt.</i>		Borrower <i>Prepared by an independent qualified consultant</i>	Processing File 8/ or Feasibility Study File	
If Applicable:				
"Annual Report Pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934" <i>*For companies listed on a major stock exchange or subject to SEC regulations.</i>	Form 10-K	Borrower	Processing File 3/	
Certificate of Need <i>*For health care facilities only. If State does not require a Certificate of Need, document in Project Summary.</i>		Borrower	Processing File 3/	

APPLICATION DOCUMENTS (CONTINUED)

Document	Form No.	To Be Completed By	File Position/Tab No.	Date Rec'd or Completed
Affirmative Fair Housing Marketing Plan <i>*For 5 or more residential units, such as nursing homes and assisted living facilities. Plan must conform to 7 CFR 1901.203(c)(3).</i>		RD	Processing File 6/ & Servicing File 1/	
APPLICATION PROCESSING				
Do Not Pay Portal Check				Date
Preapplication				
Application				
Obligation				
Issuance of Loan Note Guarantee				
Priority Scoresheet <i>*Justifications for awarding points must be documented on the scoresheet.</i>	Appendix C of 4279-B	RBS Specialist	Processing File 1/	
Site Visit Report		RBS Specialist	Processing File 3/	
GLS - Code all relevant "Special Initiatives"		RBS Specialist or Technician		
Status of a Guaranteed Loan Account (Guaranteed Only)	GLSST01	RBS Specialist	Processing File 3/	
Loans, Obligations, Applications, and Pre-Applications by Lender (Guaranteed Only)	GLS2335 or GLSLN02	RBS Specialist	Processing File 3/	
Environmental Review				
Request for Environmental Information <i>*Obtain suitable project description to assess eligibility for a Categorical Exclusion. Must consider all "extraordinary circumstances" listed in section 1970.52.</i>	Exhibit D of 1970-B (optional)	Borrower	Processing File 3/ or Environmental File	

APPLICATION PROCESSING (CONTINUED)

Document	Form No.	To Be Prepared By	File Position/Tab No.	Date Rec'd or Completed
Categorical Exclusion- No Environmental Report <i>*Or see below</i>	Exhibit D of 1970-B	RD	Processing File 3/ or Environmental File	
Categorical Exclusion- Environmental Report Required <i>*Refer to Exhibit C of 1970-B for guidance on the preparation of an Environmental Report.</i>	Exhibit D of 1970-B	RD	Processing File 3/ or Environmental File	
Environmental Assessment (EA) <i>*Refer to Exhibit B of 1970-C for guidance on the preparation of an Environmental Assessment.</i>		RD	Processing File 3/ or Environmental File	
Public Notice of Availability of the EA		Borrower	Processing File 3/ or Environmental File	
Finding of No Significant Impact (FONSI)		RD	Processing File 3/ or Environmental File	
Public Notice of Availability of FONSI <i>*Refer to Exhibit F of 1970-C for guidance on the preparation of Public Notices and FONSI.</i>		RD/ Borrower	Processing File 3/ or Environmental File	
Environmental Impact Statement (EIS) <i>*EIS reserved for only the most environmentally sensitive, controversial or complex projects. Consult with State Engineer or SEC. Refer to Exhibits B and F of 1970-D for guidance on the preparation of EIS and Public Notice.</i>		EIS Contractor	Environmental Folder	
Public Notice of Availability of EIS		RD/ Borrower	Environmental Folder	

APPLICATION PROCESSING (CONTINUED)

Document	Form No.	To Be Prepared By	File Position/Tab No.	Date Rec'd or Completed
Environmental Justice (EJ) and Civil Rights Impact Analysis (CRIA) Certification	RD 2006-38	RD	Processing File 3/ or Environmental File	
Standard Flood Hazard Determination Form (SFHDF)	FEMA Form 086-0-32	Lender	Processing File 3/ or Environmental File	
Financial Statements				
<i>Borrower/Co-Borrower(s) that are existing businesses:</i>				
Historical Financial Statements for the Last 3 Years (Spreads are not a substitute)				
Balance Sheets		Borrower	Processing File 3/ or Financials File	YR 1: YR 2: YR 3:
Income Statements <i>*If less than 3 years of operating history exists, statements for each year of operation are required.</i>		Borrower	Processing File 3/ or Financials File	YR 1: YR 2: YR 3:
<i>All Borrower/Co-Borrower(s):</i>				
Current Financial Statements (not more than 90 days old)				
<i>*Current financial statements are required for all borrowers including startup businesses. An updated set of financial statements MUST be obtained every 90 days.</i>				
Balance Sheet		Borrower	Processing File 3/ or Financials File	
Year-to-Date Income Statement		Borrower	Processing File 3/ or Financials File	
Projected Financial Statements				
<i>*The Pro Forma Balance Sheet and projected financial statements must be prepared in line with GAAP standards and clearly state intangibles, depreciation, amortization, and interest expense. For entities that apply as "Co-Borrowers," section 4279.131(d)(4) requires both "individual" and "consolidated" statements.</i>				
Pro Forma Balance Sheet Projected for Loan Closing		Lender	Processing File 3/ or Financials File	

APPLICATION PROCESSING (CONTINUED)

<i>Document</i>	<i>Form No.</i>	<i>To Be Prepared By</i>	<i>File Position/Tab No.</i>	<i>Date Rec'd or Completed</i>
Balance Sheets		Borrower	Processing File 3/ or Financials File	YR 1: YR 2:
Income Statements		Borrower	Processing File 3/ or Financials File	YR 1: YR 2:
Cashflow Statements		Borrower	Processing File 3/ or Financials File	YR 1: YR 2:
List of Assumptions Supporting Projections <i>*May be in the Business Plan</i>		Borrower	Processing File 3/ or Financials File	
<i>Any Parent/Affiliates/Subsidiaries: Current Financial Statements (not more than 90 days old)</i>				
Balance Sheet and Income Statement for Parent, Affiliates or Subsidiaries		Borrower	Processing File 3/ or Financials File	
<i>All Personal/Corporate Guarantors: Current Financial Statements (not more than 90 days old)</i>				
Personal Financial Statements for individuals Balance Sheet and Income Statement for Corporate		Borrower	Processing File 3/ or Financials File	
Other Reports				
<i>Environmental Site Assessment (ESA)</i> <i>*Any remediation must be assessed by State SEC and be included in the Conditional Commitment.</i>				
TSQ Report <i>*Rarely applicable to B&I</i>		Consultant /Borrower	Environmental File	
Phase I ESA		Consultant /Borrower	Environmental File	
Phase II ESA		Consultant /Borrower	Environmental File	

APPLICATION PROCESSING (CONTINUED)

Document	Form No.	To Be Prepared By	File Position/Tab No.	Date Rec'd or Completed
Appraisal(s)				
<i>*Agency should be listed as an "authorized user" to protect rights of recourse</i>				
Real Property <i>*Must meet requirements of FIRREA and USPAP Standards 1 and 2.</i>		Lender	Processing File 8/ or Appraisal File	
Equipment		Lender	Processing File 8/ or Appraisal File	
Technical Review of Appraisal <i>*Review should meet the requirements of USPAP Standard 3. Upload requests to the USDA Regional Appraisal Service Sharepoint site when technical review cannot be obtained from lender or is deemed unsatisfactory.</i>		Lender	Processing File 8/ or Appraisal File	
NATIONAL OFFICE CONCURRENCE (As Applicable)				
Transmit TO National Office Via Courier Service and/or Electronic File				
State Office "Cover Memorandum" <i>*Memo should be addressed to the B&I Division Director, include a specific recommendation, and be signed by whomever has loan approval authority. GLS Status Code 214.</i>		RD	Processing File 4/	
"Draft" Attachment to the Conditional Commitment	Appendix G of 4279-B	RD	Processing File 3/	
Signed and dated Project Summary	Appendix F of 4279-B	RD	Processing File 3/	
State Loan Committee Minutes <i>*Minutes must be signed with ink or electronic signature. Electronic email replies from remote participants must be attached to the primary minutes document.</i>	Appendix F of 4279-B	RD	Processing File 3/	

NATIONAL OFFICE CONCURRENCE (CONTINUED)

Document	Form No.	To Be Prepared By	File Position/Tab No.	Date Rec'd or Completed
Receive FROM National Office:				
National Office Response <i>*Confirm National Office Concurrence Required box checked in GLS.</i>		RD	Processing File 4/	
OBLIGATION STAGE				
Request for Obligation of Funds Guaranteed Loans <i>*Form RD 1940-3 is required to obligate funds.</i>	RD 1940-3	RD	Processing File 2/	
Project Announcement and Project Information Sheet <i>*The Project Information Sheet can be generated automatically with the Project Announcement Module (PAM). For more information on utilizing PAM, refer to the OEA SharePoint site.</i>		RD	Processing File 1/	
Notification of Approval		RD	Processing File 4/ Correspondence	
Conditional Commitment (CC) and Attachment <i>*CC is null and void if not signed and accepted within 60 days of issuance. It should be executed and returned prior to closing.</i>	RD 4279-3 & Appendix F of 4279-B	RD	Processing File 2/ & Closing File	
CLOSING STAGE				
Assurances Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants <i>*Form AD 3031 must be received for every incorporated borrower/co-borrower and lender.</i>	Form AD-3031	Borrower/ Lender	Processing File 5/ or Closing File	

CLOSING STAGE (CONTINUED)

Document	Form No.	To Be Prepared By	File Position/Tab No.	Date Rec'd or Completed
Lender's Agreement	RD 4279-4	Lender/RD	Processing File 2/ or Closing File & Servicing File	
Guaranteed Loan Closing Report	RD 1980-19	Lender/RD	Processing File 2/ or Closing File	
Guarantee Fee Paid		Lender	Processing File 2/ or Closing File	
Executed Promissory Note		Lender	Processing File 2/ or Closing File & Servicing File 2/	
Executed Loan Agreement		Lender	Processing File 2/ or Closing File & Servicing File 1/	
Executed Settlement Statement <i>*Counsel lender early to submit a settlement statement that is clear and specifically reconciles to the Sources/Uses outlined in the Attachment to the Conditional Commitment.</i>		Lender	Processing File 5/ or Closing File	
Closing Balance Sheet <i>*Verify closing balance sheet is GAAP compliant, reflects the entire loan transaction, and demonstrates TBSE is met.</i>		Lender	Processing File 5/ or Closing File	
Lender's Certification <i>*Ensure all 15 requirements in 4279.181(a)(9) are included.</i>		Lender	Processing File 5/ or Closing File	
Verify All Requirements of the CC are Met		RD	Processing File 5/ or Closing File	
Guarantee Issuance Letter Notification		RD	Processing File 4/ or Closing File	

CLOSING STAGE (CONTINUED)

Document	Form No.	To Be Prepared By	File Position/Tab No.	Date Rec'd or Completed
Loan Note Guarantee <i>*Approval official must sign and date the Loan Note Guarantee. Use of delivery signature with USPS, FedEx, UPS, etc., is recommended to confirm delivery and shipment tracking. Document replacement is costly and complex.</i>	RD 4279-5	RD	Processing File 2/ or Closing File & Servicing File	
Security Instruments				
<i>*Lenders should submit copies of all relevant security documents.</i>				
Unconditional Guarantee(s)	RD 4279-14	Guarantors	Processing File 5/ or Closing File	
Real Estate Mortgage		Lender	Processing File 5/ or Closing File & Servicing File 1/	
Security Agreement(s)		Lender	Processing File 5/ or Closing File & Servicing File 1/	
Universal Commercial Code Filing(s)		Lender	Processing File 5/ or Closing File & Servicing File 1/	
POST CLOSING				
Assignment Guarantee Agreement	RD 4279-6		Processing File 2/ or Closing File & Servicing File	
Certificate of Incumbency	RD 4279-7		Processing File 2/ or Closing File	

POST CLOSING (CONTINUED)

Update and Cross-Check GLS	Date
Verify "Projected Jobs" and "Projected Businesses Assisted" <i>*Check both "Businesses" and "Sub-Category."</i>	
Input "Jobs Verified"	
Cross-Check Special Initiatives	
Enter Loan Closing Date	
Complete all information and elements pertaining to Assignment Guarantee Agreements/Secondary Market. <i>*Ensure sold and unsold portions add to 100 percent.</i>	
Enter Loan Classification <i>(Supplied by lender at loan closing)</i>	
Update Status Code <i>(Typically a "402")</i>	
Populate Servicing Actions in GLS (based on State policy)	
Typical actions include:	
Annual Lender Conference	
Borrower Visit <i>*At Program Director's discretion</i>	
Annual Lender's Analysis	
Borrower/Co-Borrower Annual Financial Statements	
Guarantor Annual Financial Statements <i>*Populate for <u>every</u> guarantor.</i>	

Guide for Completion of Feasibility Studies

An acceptable feasibility study includes, but is not limited to:

(A) Executive Summary

	<i>Introduction/Project Overview (Brief general overview of project location, size, etc.)</i>
	<i>Economic feasibility determination/opinion</i>
	<i>Technical feasibility determination/opinion</i>
	<i>Market feasibility determination/opinion</i>
	<i>Financial feasibility determination/opinion</i>
	<i>Management feasibility determination/opinion</i>
	<i>Recommendations for implementation, including an overall conclusion as to the business' chance of success (Revised 10-05-16, PN 489.)</i>

(B) Economic Feasibility

	<i>Information regarding project site;</i>
	<i>Availability of trained or trainable labor;</i>
	<i>Availability of infrastructure, including utilities, and rail, air and road service to the site.</i>

(C) Market Feasibility

	<i>Information on the sales organization and management;</i>
	<i>Nature and extent of market and market area;</i>
	<i>Marketing plans for sale of projected output - principal products and by-products;</i>
	<i>Extent of competition including other similar facilities in the market area;</i>

	<i>Commitments from customers or brokers - principal products and by-products.</i>
	<i>Adequacy of raw materials and supplies.</i>
	<i>Projected total supply from members and non-members.</i>
	<i>Projected competitive demand for raw materials.</i>
	<i>Procurement plan and projected procurement costs.</i>
	<i>Form of commitment of raw materials (marketing agreements, etc.).</i>

(D) Technical Feasibility

	<i>Suitability of the selected site for the intended use including an environmental impact analysis.</i>
	<i>Report must 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 or production that are projected in the financial statements.</i>
	<i>Report must 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.</i>
	<i>Report must also identify and estimate project operation and development costs and specify the level of accuracy of these estimates and the assumptions on which these estimates have been based.</i>
	<i>Project engineer or architect may be considered an independent party provided neither the principals of the firm nor any individual of the firm who participates in the technical feasibility report has a financial interest in the project and provided further that no other individual or firm with the expertise necessary to make such a determination is reasonably available to perform the function.</i>
	<i>Commercial Replication</i>
	<i>Risks Related: Construction Production Regulation and Governmental Action</i>

(E) Financial Feasibility

	<i>Reliability of the financial projections and assumptions on which the financial statements are based. Two years (minimum) projected Income Statements and Cash Flow Statements, including Sensitivity Analysis. The income approach of an appraisal is not an acceptable feasibility study. (Revised 10-05-16, PN 489.)</i>
	<i>Ability of the business to achieve the projected income and cash flow.</i>
	<i>Assessment of the cost accounting system.</i>
	<i>Availability of short-term credit for seasonable business.</i>
	<i>Risks Related to: The offering Applicant financing plan Operational units Tax issues</i>

(F) Management Feasibility

	<i>Discuss adequacy of management (experience, training, and education of management).</i>
	<i>Discuss continuity of management (is there a continuity of management plan and is there depth of management?)</i>
	<i>Evidence that continuity and adequacy of management has been evaluated and documented as being satisfactory.</i>
	<i>Discuss motivation and character of management.</i>
	<i>Risks Related to: Applicant as a company (i.e. development-stage) Conflicts of interest or appearances thereof</i>

(G) Qualifications

	<i>A resume or statement of qualifications of the author of the feasibility study, including prior experience, should be submitted. The Consultant must be qualified and independent. (Revised 06-12-17, SPECIAL PN.)</i>
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OWNERSHIP (List all owners so that 100% of business ownership is accounted for)

<u>Owners</u>	<u>Share</u>	<u>Position</u>	<u>Citizenship</u>	<u>Personal/ Corporate Guarantee</u>	<u>Outside Net Worth</u>
	%		US	yes/no	\$
	%		US	yes/no	\$

LENDER

<u>Lender Name and Address</u>	<u>Loan Officer</u>	<u>Loan Officer Phone Number</u>
<u>Safe & Sound CAEL Rating from</u> http://www.bankrate.com/brm/safesound/s home.asp	<u>Number of Previous B&I Loans</u>	<u>Commercial Lending Experience</u>

B&I LOAN

<u>Loan</u>	<u>Amount</u>	<u>Rate</u>	<u>IR Formula</u>	<u>V/F</u>	<u>Term</u>	<u>Monthly Payment</u>	<u>Annual Debt Service</u>
Initial/ Subsequent	\$			—	—	\$	\$

<u>Approval Level</u> State or National Office	<u>Funding Plan</u> FY Regular State allocation or National Office Reserve
--	---

SOURCE & USE OF FUNDS

<u>Purpose</u>	<u>Borrower Contribution</u>	<u>B&I Loan</u>	<u>Other *</u>	<u>Total</u>	
Land	-	-	-	-	%
RE Improvements	-	-	-	-	%
Contingency & Reserve	-	-	-	-	%
M&E	-	-	-	-	%
Working Capital	-	-	-	-	%
Refinance **	-	-	-	-	%
Fees & Costs	-	-	-	-	%
Other	-	-	-	-	%
Total =	-	-	-	-	
Percent Contribution =	%	%	%		

Detailed/itemized list of fees and costs:

If there is an "Other" source of funds, use the following table as appropriate:

*** Other source of funds:**

Source	Type of Assistance	Amount	Rates & Terms	Comment
	Grant	\$		
	Loan	\$		
	Line of credit	\$		

If there is debt refinancing, use the following table as appropriate:

**** Explanation of refinance:** The debt being refinanced is owed to .
The original purpose of the loan(s) was .

Annual debt service before refinance	Annual debt service after refinance	Annual savings	Additional benefits:
\$ /yr	\$ /yr	\$ /yr	<ul style="list-style-type: none"> Creates and/or saves *** jobs. Removes balloon payment Allows lender to gain needed lien priority add or delete benefits as appropriate

If the lender is refinancing its own debt, edit the following comment as appropriate:

The debt being refinanced that is in the lender's existing portfolio has been current for the last 12 months not due to debt restructuring. This refinance represents % (not >50%) of the loan, excluding any debt that is Federally guaranteed.

COMMUNITY & JOBS IMPACT

<u>Jobs created</u>	<u>Jobs retained</u>	<u>Total Jobs</u>	<u>Average Wage Rate</u>	<u>NAICS Code</u>	<u>Loan to Job Ratio:</u> <i>(Loan ÷ No. Jobs)</i>	<u>Priority Points Score</u>
			\$ /hour		\$ /job	

Community Benefits

Targeted Area?

Dept. of Labor Clearance

BUSINESS REPUTATION, CREDIT HISTORY & CHARACTER

Personal and commercial credit reports indicate . All existing loans are .

FINANCIAL POSITION

Historical Balance Sheets

None. This is a start-up. OR

	xx/xx/20xx		xx/xx/20xx		xx/xx/20xx		Current xx/xx/20xx		RMA
Current Assets	-	%	-	%	-	%	-	%	?
Fixed Assets	-	%	-	%	-	%	-	%	?
<u>Other Assets</u>	-	%	-	%	-	%	-	%	-
Total Assets	-	%	-	%	-	%	-	%	-
Current Liabilities	-	%	-	%	-	%	-	%	?
Term Liabilities	-	%	-	%	-	%	-	%	?
<u>Other Liabilities</u>	-	%	-	%	-	%	-	%	-
Total Liabilities	-	%	-	%	-	%	-	%	-
Equity (Not TBSE)	-	%	-	%	-	%	-	%	?

Discussion of Significant Changes or Trends in Liquidity and Solvency:

Compared to RMA industry standards,

Pro Forma Tangible Balance Sheet Equity Calculation

	Current xx/xx/20xx		less Intangibles	Debits/ Additions	Credits/ Subtractions	Tangible Pro Forma	
Current Assets	-	%		-	-	-	%
Fixed Assets	-	%		-	-	-	%
<u>Other Assets</u>	-	%	-	-	-	-	%
Total Assets	-	%				-	%
Current Liabilities	-	%		-	-	-	%
Term Liabilities	-	%		-	-	-	%
<u>Other Liabilities</u>	-	%		-	-	-	%
Total Liabilities	-	%				-	%
Equity	-	%				-	%

*See detailed instructions for completion of this chart in Appendix F, page 11.

Detailed/Itemized Explanation of TBSE Adjustments (include source of funds for loan fees and whether they are being amortized):

Pro forma Equity Position and Solvency:

Equity is comprised of .
The business will meet the % minimum pro forma equity requirement for an (existing or startup) business.
Compared to RMA industry standards,

Pro forma Working Capital Position and Liquidity:

The business' working capital position is and has available operating capital from .

Compared to RMA industry standards,

FEASIBILITY & REPAYMENT ABILITY

Feasibility Study:

Management Experience:

Conditions - Current status of the borrower, overall economy, and industry for which credit is being extended:

Market - Supply/demand, competition, industry trends, locational factors, & demographics:

Lease or Contractual Commitments:

Support from Related Enterprises:

Historical & Projected Income Statements

	xx/xx/20xx	xx/xx/20xx	xx/xx/20xx	Current xx/xx/20xx	Yearend Extrapolation	RMA	Year 1	Year 2
Gross Revenue	-	-	-	-	-		-	-
Other Revenue	-	-	-	-	-		-	-
<u>CGS</u>	-	-	-	-	-		-	-
	%	%	%	%	%	?	%	%
Gross Profit	-	-	-	-	-		-	-
Operating Expenses	-	-	-	-	-		-	-
<u>Other Expenses</u>	-	-	-	-	-		-	-
	%	%	%	%	%	?	%	%
Net Profit	-	-	-	-	-		-	-
<i>Add Back</i>								
+Rent	-	-	-	-	-		-	-
+Depreciation	-	-	-	-	-		-	-
+Interest	-	-	-	-	-		-	-
<u>+Other Funds Available</u>	%	%	%	%	%	%	%	%
Debt Service Ability (comparing historical/projected Funds Available with projected Debt Service)								
New B&I Loan	-	-	-	-	-		-	-
<u>Continuing Debt</u>	-	-	-	-	-		-	-
Debt Service	-	-	-	-	-		-	-
Margin	-	-	-	-	-		-	-
Debt Coverage	-	-	-	-	-		-	-

*Extrapolation column is designed to take the current balance sheet and extrapolate a yearend balance sheet. Default formula is for a balance sheet that represents a half year. Formula may be adjusted by dividing the number of months represented by the current balance sheet and multiplying by 12.

Historical Trends:

Comparison with RMA Industry Averages:

Basis for Projections:

Discussion of Repayment Ability:

COLLATERAL

B&I Loan=		\$				
Type	Description	Source	Value	Discount Factor	Prior Liens *	Collateral Value
RE		FMV	-	0%	-	-
RE		FMV	-	0%	-	-
M&E		Cost	-	0%	-	-
Inventory		Book	-	0%	-	-
A/R		Book	-	0%	-	-
Other		Book	-	0%	-	-
Total =			-		-	-

Loan-to-Value =	%
Loan to Net Market Value	%

Coverage =	-
------------	---

* Prior Lienholders:

Collateral Description and Adequacy Discussion:

Key Person Life Insurance Proposed Rationale

LOAN SUPERVISION

<u>Level of Financials Proposed</u>	<u>FYE Date</u>	<u>Additional Loan Covenants Needed</u>

ENVIRONMENTAL

<u>Type of Environmental Analysis</u>	<u>Status</u>	<u>Environmental Concerns</u>
<input type="checkbox"/> Categorical Exclusion (CE) w/o report (\$ 1970.53)	<input type="checkbox"/> In Progress	<input type="checkbox"/> None
<input type="checkbox"/> CE w/report (\$ 1970.54)	<input type="checkbox"/> Completed	<input type="checkbox"/> Mitigation Required (See Environmental Comments below)
<input type="checkbox"/> Environmental Assessment (EA)		
<input type="checkbox"/> Environmental Impact Statement (EIS)		

Studies Required

<input type="checkbox"/> Archeological Cost \$ _____	<input type="checkbox"/> Wetland Delineation Cost \$ _____	<input type="checkbox"/> Other Cost \$ _____
<input type="checkbox"/> Biological Cost \$ _____	<input type="checkbox"/> TSQ Screening Cost \$ _____	<input type="checkbox"/> Other Cost \$ _____
<input type="checkbox"/> Flood Insurance Cost \$ _____	<input type="checkbox"/> Phase I ESA Cost \$ _____	<input type="checkbox"/> Other Cost \$ _____
<input type="checkbox"/> Historic Structures Cost \$ _____	<input type="checkbox"/> Phase II ESA Cost \$ _____	

Environmental Comments:

SUMMARY

<u>Strengths</u>	<u>Weaknesses</u>

RECOMMENDATION

Approval is recommended subject to the attached draft conditions.

 B&I LOAN OFFICER SIGNATURE

 Date

 B&I LOAN OFFICER NAME

STATE LOAN COMMITTEE MINUTES
(Attach to Project Summary)

BORROWER:
LOCATION:
LENDER:
AMOUNT OF REQUEST: \$

	YES	NO	
[]	[]	[]	borrower is eligible (including being in a rural area),
[]	[]	[]	the proposed loan is for an eligible purpose,
[]	[]	[]	there is reasonable assurance of repayment ability,
[]	[]	[]	there is sufficient collateral,
[]	[]	[]	there is sufficient equity,
[]	[]	[]	the proposed loan complies with all applicable statutes and regulations, and
[]	[]	[]	the environmental is complete and any mitigation measures listed in the Environmental Assessment are included in the Conditional Commitment.

Percent of guarantee authorized is _____ percent. Justification (for increase or decrease):

Other requirements:

Date:

Recommend:

APPROVE	REJECT		APPROVE	REJECT	
[]	[]	_____	[]	[]	_____
		<i>Approval Official</i>			<i>Committee Member</i>
[]	[]	_____	[]	[]	_____
		<i>Committee Member</i>			<i>Committee Member</i>
[]	[]	_____	[]	[]	_____
		<i>Committee Member</i>			<i>Committee Member</i>

Project Summary Guidance

The Project Summary should be considered a living document until closing of the guaranteed loan and should reflect the terms of a project as it closed. If changes occur during processing, for example, if the value of collateral changes, ensure that the Project Summary is updated. Most of the Project Summary is self explanatory but additional guidance to improve the Project Summary information is provided below.

1. Project: The loan purpose should reflect what the use of loan proceeds is for: real estate purchase or construction, machinery and equipment, working capital, debt refinancing, etc., and the project description should give a detailed description of the project itself.
2. Lender: In addition to the information listed in this section, please include the lender's proximity to the business and State, if different than your own. Include information on the lender's capitalization, which can be obtained from the following Web site: <http://www.bankrate.com/rates/safe-sound/bank-ratings-search.aspx>. Also include GLS report GLSLN02 as an attachment. You also should document the lender's commercial lending experience and expertise to ensure the lender meets the requirements of RD Instruction 4279-A, § 4279.29.
3. Community and Jobs Impact:
 - (i) Jobs Impact - The job information should be tied to application information, especially Form RD 4279-2, if completed. Discrepancies in numbers should be resolved and the final figures reflected here. This information should also be the same as information reported in GLS. The average wage rate of the business should also be obtained. You can include information for average salary by State and by industry which can be found through research on the internet. Most States have a Web site for Department of Labor, Workforce Development, etc., where this information is published. The U.S. Department of Labor, Bureau of Labor Statistics has a substantial amount of information (www.bls.gov/cew/home.htm). Indicate source used to obtain the information and the date of the information.
 - (ii) Community Benefits - Explain how the community would benefit from the loan guarantee.
4. Business Reputation, Credit History and Character: The history of the borrower in meeting past obligations (credit report) should be discussed. Indicate the financial strength of the guarantors and the results of the review of personal and corporate guarantors' financial statements.
5. Financial Position: Indicate the historical equity position for each year based upon the historical financial statements (or if not applicable, leave "None. This is a startup").

The Tangible Balance Sheet Equity (TBSE) chart should align with the Source and Use of Funds chart.

SOURCE & USE OF FUNDS CHART

Purpose	Borrower Contribution	B&I Loan	Other *	Total
Land	-	-	-	A -
RE Improvements	-	-	-	A -
Contingency & Reserve	-	-	-	A -
M&E	-	-	-	A -
Working Capital	-	-	-	B -
Refinance **	-	-	-	C -
Fees & Costs	-	-	-	D -
Other	-	-	Lines of Credit -	-
Total =	-	E -	-	-

The Source and Use of Funds chart shows all the sources of funds, such as proceeds from the B&I loan, borrower contribution, and any other loans or grants, and how all these funds will be used to pay for the entire project.

TANGIBLE BALANCE SHEET EQUITY CHART

	Current xx/xx/20xx	Less Intangibles	Debits/ Additions	Credits/ Subtractions	Tangible Pro Forma
Current Assets	- %		B, D -	- D	- %
Fixed Assets	- %		A	-	- %
Other Assets	- %	-	-	-	- %
Total Assets	- %				- %
Current Liabilities	- %		-	-	- %
Term Liabilities	- %		E	- C	- %
Other Liabilities	- %		-	-	- %
Total Liabilities	- %				- %
Equity	- %				- %

The TBSE table depicts how the project affects the borrower's balance sheet.

- A** Land, real estate improvements, contingency & reserve, and machinery & equipment are classified on the balance sheet as fixed assets; therefore, these assets are reflected as an addition to the Fixed Assets row in the TBSE chart.
- B** Working capital proceeds are cash, which is a current asset on the balance sheet; therefore, working capital is shown as an addition to the Current Assets row in the TBSE chart.
- C** Debt refinancing debt is paying off one loan and replacing it with a new loan; therefore, debt being refinanced is shown as a subtraction from Term Liabilities.
- D** Loan fees and closing costs - If loan proceeds are being used to pay for loan fees and closing costs, reflect this use of funds as an addition to current assets. Reflect payment of loan fees and closing costs (whether paid by the borrower or with loan proceeds) as a subtraction from current assets.
- E** On the Source and Use of Funds chart, show how the B&I loan is being used. On the TBSE chart, show the new B&I loan as well as any other new term loans as an addition to liabilities. Lines of credit are sometimes granted to a borrower with the expectation that at a future date the borrower may draw from the line. Lines of credit are repaid annually and are shown on the balance sheet as a current liability, not a term liability. If the line of credit made in conjunction with the B&I loan has a zero balance at loan closing, then it is not reflected on the TBSE chart, although the full line of credit amount should be reflected in the "other" row of the "other" column of the Source and Use of Funds chart to reflect the leveraging of funds.

Calculate projected tangible balance sheet equity of the applicant at loan closing using the following step-by-step instructions:

1. Enter the information from the current balance sheet required by § 4279.161(b)(8) in the first (far left) column of the TBSE chart.
2. Deduct any intangible assets from the current balance sheet in the "less intangibles" column, "other assets" row.
3. Add any new assets in the "debits/additions" column. Additions of assets should align with the Source and Use of Funds chart. Real estate and machinery and equipment should be reflected in the "fixed assets" row. Working capital should be reflected in the "current assets" row.
4. Add the new debt in the "debits/additions" column, "liabilities" row (including loans made in conjunction with the B&I loan, except for lines of credit not drawn upon at the time of loan closing).

5. Subtract any debt being refinanced in the "credits/subtractions" column, "liabilities" row.
6. Account for loan fees:

If loan proceeds are being used to pay fees, add that amount to the "debits/additions" column, "current assets" row, and deduct the amount of fees paid in the "credits/subtractions" column, "current assets" row to show the funds coming in and going out.

If the borrower is paying the fees out of pocket, reflect the fees paid amount in the "credits/subtractions" column, "current assets" row.

Finally, look at the lender's pro forma balance sheet required by § 4279.161(b)(8). If the loan fees are not amortized on the pro forma balance sheet, nothing further is needed. If the fees are being amortized on the pro forma balance sheet, add the amount of the fees being converted to an asset in the "debits/additions" column, "other assets" row, and add the amount to the "less intangibles" column, "other assets" row.

The result should accurately reflect the borrower's post-closing status, assuming no profit or loss. It is generally not necessary to reflect the borrower's contribution because by adding the asset with a lesser amount of debt, the difference is accounted for in equity. The far right column should mirror the pro forma balance sheet submitted by the lender, less intangible assets that were deducted in the table. If there is a difference, find out why.

Indicate what the proposed minimum requirement by the Agency is and how they are meeting the requirement if an additional cash or tangible earning asset injection is necessary. If proposing more than the stated minimum in the regulations, discuss why. Verify questionable classifications of assets that are typically intangible if the lender states it is normal for the industry. Comments should also cover the lender's intent, or lack thereof, to provide additional working capital for borrower's ongoing cash needs.

Section 4279.131(d) requires minimum tangible balance sheet equity of 10 percent, or a debt-to-tangible net worth ratio of 9:1, for existing businesses; 20 percent, or a debt-to-tangible net worth ratio of 4:1, for new businesses; or 25-40 percent, or debt-to-tangible net worth between 3:1 and 1.5:1, for energy projects. The table below converts tangible balance sheet equity to debt-to-tangible net worth ratios.

% TBSE	Debt to Tangible Net Worth Ratio		%	Ratio
5	19:1		5	1:19
10	9:1		10	1:9
15	17:3 or 5.67:1		15	3:17 or 1:5.67
20	4:1		20	1:4
25	3:1		25	1:3
30	7:3 or 2.33:1		30	3:7 or 1:2.33
35	13:7 or 1.86:1		35	7:13 or 1:1.86
40	3:2 or 1.5:1		40	2:3 or 1:1.5
45	11:9 or 1.22:1		45	9:11 or 1:1.22
50	1:1		50	1:1
55	9:11 or 1:1.22		55	11:9 or 1.22:1
60	2:3 or 1:1.5		60	3:2 or 1.5:1
65	7:13 or 1:1.86		65	13:7 or 1.86:1
70	3:7 or 1:2.33		70	7:3 or 2.33:1
75	1:3		75	3:1
80	1:4		80	4:1
85	3:17 or 1:5.67		85	17:3 or 5.67:1
90	1:9		90	9:1
95	1:19		95	19:1

To convert a percentage to a ratio:

Let's look at 30%. Remember that 100% is the total. Accordingly, if 30% is on one side, 70% is on the other.

Step 1: Drop the percent sign from the number: 30% becomes 30

Step 2: Subtract the number from 100: $100 - 30 = 70$

Step 3: Write a ratio with the number from step 1 first, followed by the number from step 2: 30:70
 This is your preliminary ratio - but it needs to be reduced to either its simplest form, or put into a format that looks like 1:x

Step 4: **Either:** Reduce these numbers to their simplest form, that is, keep dividing both numbers until they can't be further divided as whole numbers...

$30/10 = 3$; $70/10 = 7$
you're left with 3 and 7
So the ratio becomes: 3:7

OR: Divide both numbers by the lowest of the two numbers, so the result will always have a "1"...

$30/30 = 1$; $70/30 = 2.33$
you're left with 1 and 2.33
So the ratio becomes: 1:2.33

To convert a ratio to a percentage:

Let's look at 3:7. Another way of looking at 3:7 is that we have a whole (100%) with 3 parts on one side and 7 parts on the other side. So, a ratio represents two numbers that make up the whole 100%.

Step 1: Add the two numbers together. If the ratio is 3:7, we would add 3 plus 7 to get 10. $3+7=10$

Step 2: We want to solve for 3. So divide 3 by the result from step 1, which is 10: $3/10 = 30\%$
If we had wanted to solve for 7, we would divide 7 by 10: $7/10 = 70\%$
Notice that 30% plus 70% equals 100%. Once you have one side converted to a percentage, the other side is easy to solve for.

Example: 7:13 Add $7 + 13$ to get 20. Solve for 7: 7 divided by 20 = .35, or 35%

6. Feasibility and Repayment Ability:

a. Feasibility Study - Include a discussion of market, technical, financial, economic, and management aspects, identify who completed the feasibility study and their qualifications, and if the consultant is considered "independent." Comments should include if and why a feasibility study was/was not required, as well as the results of the study. Also, comment on any discrepancies between recommendations in the study and the borrower's plan of operations.

b. Management Experience - Indicate the experience of existing management, proposed changes to management, etc. Identify by person who is responsible for operating the business (plant manager, CEO, CFO, President, Vice Presidents of Marketing, etc.).

- c. Conditions - Discuss current status of the borrower, overall economy, and industry for which credit is being extended.
 - d. Market - Discuss supply/demand, competitors, industry trends, etc. Address any plans by the borrower to redirect their efforts or change markets, products, client base, consultants, etc. Conclude with the anticipated impact on changes supported by any independent verification or research of the facts.
 - e. Lease or Contractual Commitments - Describe any lease relationships that are existing and planned. Also describe any contractual agreements for products or services. Include such items as signed contracts, contracts in negotiations, etc.
 - f. Historical and Projected Income Statements - Indicate historical debt service (if applicable), complete current debt service based on the current income statement and change the formula for the extrapolation column as appropriate, and include debt service coverage information for the 2 projected years. As required by § 4279.161(b), financial statements required by the application process include cash flow statements. The lender is responsible for conducting a cash-flow analysis as part of determining repayment ability.
 - g. Historical Trends - This should be a brief overview describing the business as it has operated in the past and how it is operating currently. Discuss how the loan will affect the operations, efficiencies, and plans of the business.
 - h. Comparison with RMA Industry Averages - This section addresses the trends of the critical ratios concerning debt coverage and profitability, including the impact of major changes to the operating cycle. All of these activities affect cash flow and the need for additional working capital.
 - i. Basis for Projections - Comment on the assumptions and if they support the financial projections. Assumptions include items such as cost of supplies, prices of end product, existing and proposed contracts, cost of labor, controlling expenses, expanding or maintaining markets, and industry information on the future of the business. Comment on any projections to increase product, sales, income, etc., or the decrease in operating expenses which will also affect the net income.
 - j. Discussion of Repayment Ability - Tie everything in the section together to give an assessment of repayment ability.
7. Collateral: Identify the source of the value, i.e., appraisal, cost, or book value and indicate the value of the collateral. Indicate what discounting was used and whether there are going to be prior liens on the collateral. The collateral value should self calculate. Discuss adequacy of the appraisal; the results of the Administrative Review of the appraisal; and the lien position proposed and recommended. The loan-to-value, loan-to-discounted market value, and coverage ratio should self calculate. State if

the coverage is acceptable and in accordance with regulation. Consider greater discounting if collateral is specialized. Identify the condition of the existing collateral and any concerns or mitigating measures necessary to secure or enhance collateral position. If refinancing another lender's debt, discuss the collateral position of the lender in relation to the position being accepted by the Agency on the guaranteed loan.

8. Environmental: Include a discussion of any permits required, violations, etc. Indicate the level of environmental review completed by the Agency and why. Environmental forms supporting the review should be completed in their entirety. If the Finding of No Significant Environmental Impact statement has been published (if applicable) and the comment period is the only item remaining to complete the Environment Assessment, you may submit the request to the National Office, but the National Office will not take action until the comment period has expired and all comments have been addressed. Identify mitigation measures necessary during the environmental process and state if they have been discussed with the lender. Mitigation measures should be identified in the proposed Conditional Commitment and included in the final loan agreement, including any remediation measures recommended by any Phase I or II Environmental Site Assessment. Discuss if the lender is aware of the mitigation measures at the time of this recommendation.

9. Summary: Include a discussion of all strengths and weaknesses. All weaknesses should include a mitigating factor. Having more strengths than weaknesses does not necessarily mitigate the weaknesses. For example, if management is identified as a weakness due to a recent change or a proposed change, identify the development plan for the new management proposed by the applicant.

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Attachment to Form RD 4279-3, "Conditional Commitment"

BORROWERNAME STATE/COUNTY CODE and GLS Case Number *****

\$\$\$ Business & Industry (B&I) Guaranteed Loan

Approval Date: **[Insert Date the 1940-3 was signed]**

LOAN PURPOSE:

1. The purpose of the loan is to provide long-term financing for **PURPOSE** at a commercial property located at **ADDRESS** to be used as a **BUSINESSTYPE** facility. Funds will be used for **(use all that are applicable)** real estate acquisition (\$***), construction costs of the facility (\$***), machinery & equipment (\$***), working capital (\$***), the refinance of debt owed to *** (\$***), and fees & costs associated with this loan (\$***). These funds are to be matched by contributions from the borrower of approximately \$*** **(use the remainder of sentence only if applicable)** and from a loan/grant from **OTHERSOURCE** of approximately \$***. Upon final disbursement of loan funds, a copy of the lender's detailed loan settlement must be provided to Rural Development as evidence that all funds were disbursed in amounts and for purposes outlined above. **Add if applicable:** By signing and accepting this Conditional Commitment, the lender certifies that its loan which is being refinanced with this B&I loan has been closed and current (not due to debt restructuring) for at least 12 months prior to the refinancing. No activity that is in violation of Federal law shall be permitted on the borrower's premises nor shall any equipment or other assets funded by the USDA guaranteed loan be used for activities that are in violation of Federal law.

PERCENTAGE OF GUARANTEE:

2. A(n) ** % guarantee will be issued after any development work is completed and the terms of this Conditional Commitment have been met.

or

2. A(n) ** % guarantee will be issued prior to the substantial completion of development work when the terms of this Conditional Commitment have been met. Construction conditions are outlined below which will address construction requirements.

INTEREST RATE AND TERM:

3. The term of the loan is to be ** years. The interest rate is to be established by the formula: $IR = \text{BASE RATE} + \text{BASIS POINTS}$ or $\text{BASE RATE} / \text{20-year/5-year reset index} + \text{BASIS POINTS}$. The interest rate is not to vary more often than quarterly. The loan is to be fully amortized with **(PICKONE)** monthly/quarterly/annual installments. When the rate changes,

installments are to be adjusted to assure there are no balloon payments. Reasonable and customary prepayment penalties will not be prohibited; however, the lender's promissory note must not contain provisions for default or penalty interest nor will default or penalty interest, interest on interest, or late payment fees be covered by the guarantee. If an interest rate swap is utilized, the guarantee will only cover principal and interest. The guarantee will not cover any fees relating to the swap.

or

3. The term of the loan is to be ** years. The interest rate is to be fixed at ** % per annum. The loan is to be fully amortized over the life of the loan with no balloon payments. Reasonable and customary prepayment penalties will not be prohibited; however, the lender's promissory note must not contain provisions for default or penalty interest nor will default or penalty interest, interest on interest, or late payment fees be covered by the guarantee.

RENEWAL FEE:

4. This loan guarantee is subject to an annual renewal fee of ** percent of the guaranteed portion of the outstanding principal as of December 31 of each year. The calculation is ** of the outstanding principal multiplied by the guarantee percentage. Payments are due to Rural Development by January 31 of each year. For loans where the Loan Note Guarantee is issued between October 1 and December 31, the first annual renewal fee will be due January 31 of the second year following the date the Loan Note Guarantee is issued. Payments not received by April 1 of the following year are considered delinquent and may result in cancellation of the guarantee to the lender. Holder's rights will continue in effect as specified in the Loan Note Guarantee and Assignment Guarantee Agreement. (Revised 03-19-18, PN 510.)

COLLATERAL:

5. This loan is to be secured by a first mortgage or deed of trust (including assignment of rents) on a ***-acre commercial property at **ADDRESS**. All taxes and assessments are to be current at loan closing. Lender must certify that the borrower has obtained a title opinion by its attorney showing ownership of real estate and any mortgages, restrictions, lien defects or encumbrances.

and/or

5. This loan is to be secured by a second mortgage or deed of trust (including assignment of rents) on a ***-acre commercial property at **ADDRESS** -- junior only to a first mortgage or deed of trust pledged to **LIENHOLDER**, with a balance not to exceed \$*** at loan closing. All taxes and assessments are to be current at loan closing. Lender must certify that the borrower has obtained a title opinion by its attorney showing ownership of real estate and any mortgages, restrictions, lien defects or encumbrances.

or

5. This loan is to be secured by a first mortgage or deed of trust (including assignment of rents) on the borrower's leasehold interest in the land and improvements located on a ***-acre commercial property at ADDRESS. The lender is to secure a transferable assignment of the lessor's ground lease. The term of the borrower's leasehold interest must exceed the term of the B&I loan.

and/or

5. This loan is to be secured by a first lien on all of the borrower's machinery & equipment

add as applicable:

, including the items listed in the appraisal by *** dated ***.
, including all items financed with this B&I loan. A final list of all equipment financed with this loan, with a matching cost breakdown, will be provided with the loan settlement statement. - **appended with the following, if applicable:** indicating not more than ** percent of the total cost of acquisition, delivery, and installation was financed with the B&I loan.
, including a security interest in the borrower's rights under its equipment leases, junior only to the outstanding lease obligations at the time of loan closing.

or

This loan is to be secured by a first lien on all business assets including machinery & equipment, inventory, and accounts receivable.

It is also to be secured by a first lien on all furnishings, fixtures, and equipment associated with the facility.

As additional security only, a lien will also be taken on . . .

There are to be no construction or mechanics liens against the security.
(Use on all construction projects)

Add this paragraph at the end:

The lender will not require compensating balances or other collateral as a means of eliminating the lender's exposure for the unguaranteed portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan will neither be paid first nor given any preference or priority over the guaranteed portion.

GUARANTOR(S) :

6. In addition to the full liability of **BORROWERNAME**, ******* are to pledge full personal guarantees for the loan. **(Use the following only if applicable)** ******* is to pledge a full commercial guarantee for the loan. **(Use only if applicable)** Pro rata guarantees are required from ******* in an amount equal to their ownership interests. **(Use only if applicable)** The ******* Tribe is to be fully liable for this loan, and the lender is to obtain all waivers of sovereign immunity that are necessary.

Each guarantor must execute Form RD 4279-14, "Unconditional Guarantee."

or, if there will be no guarantors:

6. **BORROWERNAME** is to have full liability for the loan.

INSURANCE:

7. Hazard insurance naming the lender as mortgagee or loss payee, as applicable, will be maintained in an amount at least equal to the outstanding loan balance or the replacement value (whichever is greater) of the collateral. Hazard insurance includes fire, windstorm, lightning, hail, explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder's risk during construction, and property damage. Worker's Compensation must be carried in accordance with State law.

Add if applicable:

Flood insurance coverage is required.

Key person life insurance naming the lender as collateral assignee, as applicable, will be maintained on the life of ******* in the amount of **\$*****.

or

Key person life insurance is not required.

EQUITY:

8. A minimum of ****** percent tangible balance sheet equity will be required at loan closing. Tangible balance sheet equity must be met in the form of either cash or tangible earning assets contributed to the business and reflected on the business' balance sheet. Tangible balance sheet equity will be determined using a balance sheet prepared in accordance with Generally Accepted Accounting Principles and will not include appraisal surplus, bargain purchase gains, or intangible assets. Owner subordinated debt may be included when the subordinated debt is in exchange for cash injected into the business that remains in the business for the life of the guaranteed loan. The note or other form of evidence must be submitted to the Agency in order for subordinated debt to count towards meeting the tangible balance sheet equity requirement. Prior to issuance of the

Loan Note Guarantee, the lender must provide Rural Development with a balance sheet as of loan closing that reflects the business' post-closing status and demonstrates the required tangible balance sheet equity as a part of the lender certification. This balance sheet must take into account any new assets, the guaranteed loan amount, and any non-guaranteed debt as liabilities of the borrower, regardless of whether the loan(s) has/have been fully disbursed or remain(s) to be disbursed.

Add if applicable:

Based upon the borrower's **(INSERT DATE)** balance sheet, a cash or tangible earning asset injection in the amount of \$** must be raised and injected into the business prior to loan closing in order to meet the minimum tangible balance sheet equity requirement.

LOAN AGREEMENT:

9. A loan agreement between the lender and borrower will be executed which conforms to RD Instruction 4279-B, § 4279.161(b) (11).
 - a. The borrower must obtain **(PICK ONE)** compiled/reviewed/audited financial statements annually, prepared in accordance with Generally Accepted Accounting Principles, and submit them to the lender within 90 days of the business' fiscal yearend. Financial statements will contain, at a minimum, a balance sheet and a profit and loss statement reflecting the financial condition of the borrower as of its yearend. The lender is responsible for obtaining all required financial statements from the borrower, analyzing them, and providing copies of statements with a detailed written analysis to Rural Development within 120 days.
 - b. All personal and commercial guarantors of this loan must provide annual financial statements to the lender within 90 days of guarantor's fiscal or calendar yearend.

or, use the following (a) and (b) if the borrower is a sole proprietorship:

- a. The borrower must provide annual financial statements *on the business operation being financed with this loan* and submit them to the lender within 90 days of the business' fiscal yearend. Financial statements will contain, at a minimum, a balance sheet and a profit and loss statement reflecting the financial condition of the borrower as of its yearend. The lender is

responsible for obtaining all required financial statements from the borrower, analyzing them, and providing copies of statements with an analysis to Rural Development within 120 days.

- b. The borrower must provide complete, current personal financial statements annually.
- c. The borrower will refrain from co-signing or otherwise becoming liable for obligations or liabilities of others.
- d. Dividend payments and compensation of officers and owners will be limited to an amount that, when taken, will not adversely affect the repayment ability of the borrower. No dividend payments or increases in compensation will be made unless (1) an after-tax profit was made in the preceding fiscal year, (2) the borrower is and will remain in compliance with covenants of the loan agreement and Conditional Commitment, (3) all borrower debts are paid to a current status, and (4) prior written concurrence of the lender is obtained. This is not intended to apply to dividend payments to cover personal tax liability resulting from profitability of the business.
- e. Borrower will not invest in additional fixed asset purchases in an annual aggregate of more than \$*** without concurrence of the lender. Borrower will not lease, sell, transfer, or otherwise encumber fixed assets without the concurrence of the lender. Disposition of fixed assets serving as collateral for this loan must also have the concurrence of Rural Development.
- f. Borrower's debt-to-net worth, based upon yearend financial statements, shall not exceed *** to 1, and the Borrower's debt service coverage ratio shall not fall below *** to 1.
- g. Borrower shall not enter into any merger or consolidation or sell the business without prior written concurrence of the lender.
- h. Outside investment and loans/advances to stockholders, owners, officers, or affiliates require the prior written consent of the lender. Loans from stockholders, owners, officers or affiliates must be subordinated to the guaranteed loan or converted to stock. No payments are to be made on these debts unless the B&I loan is current and in good standing.

Add for health care, assisted living, child care and similar businesses subject to public licensing:

- i. The business is to take all necessary steps to remain in good standing with all of its licensing authorities. The borrower is to notify the lender of any adverse findings made by licensing authorities if these cannot be corrected within 30 days.

Add for franchises:

- *. The business will have a valid franchise agreement with *** as a condition of receiving a guarantee and will take all necessary steps to remain in good standing under the terms of its franchise agreement. A copy of the borrower's executed franchise agreement will be provided to Rural Development. The borrower is to notify the lender of any violation of its franchise agreement that cannot be corrected within 30 days.

Add for projects subject to Affirmative Fair Housing Marketing Plan:

- *. An Affirmative Fair Housing Marketing Plan is required to be prepared and submitted to Rural Development prior to issuance of the Loan Note Guarantee for this project. In accordance with RD Instruction 1901-E, section 1901.203(c), Rural Development Business Programs requires an Affirmative Fair Housing Marketing Plan when a project involves the development of projects with five or more units, including nursing homes and assisted living facilities.

Add as applicable:

- *. The final tenant list will be provided, with copies of the executed lease agreements, and a matching income projections showing capacity to service the B&I debt.

ENVIRONMENTAL:

10. The lender will take action to ensure that all construction associated with this credit facility and the continuing operations of the business are completed in accordance with applicable Federal, State, and local laws, regulations, and ordinances, as related to any adverse impact the project/operations may potentially have on the environment.

Add the following if the Agency environmental assessment contains mitigation measures:

The borrower will be required to comply with the following measures, identified in Rural Development's environmental review process, to avoid or reduce adverse environmental impacts from this project's construction or operation as follows:

INSERT MITIGATION MEASURES HERE

Add the following special environmental conditions, if applicable:

- *. The lender is to provide evidence of approval by State and/or local environmental enforcement authorities of the completed clean-up and closure of the known environmental problems associated with the security property -- specifically, ***
- *. The lender is to provide evidence of approval by State and/or local environmental enforcement authorities of the remediation and/or monitoring plans on the known environmental problems associated with the security property -- specifically, ***
- *. The environmental indemnification agreement from *** will be reviewed by the lender's legal counsel and an opinion provided that it is both enforceable and transferable to the borrower and future owners (including the lender should they acquire the property).
- *. Documentation is to be provided from a qualified expert indicating that the security property's underground tanks meet all current and known future standards for underground fuel tanks and leak detection monitoring systems.

Add the following only if the business is expected to handle hazardous materials:

- *. Documentation that is required to be submitted to the State Department of Environmental Quality for hazardous material permit compliance is to be provided to the Agency.
- *. Indicate restrictions on storage of hazardous materials on the security property.

APPRAISAL:

11. A current (less than 12 months old) appraisal acceptable to Rural Development, completed in accordance with USPAP and FIRREA indicating that the fair market value of the real property security is not less than \$***, excluding any value attributed to business valuation, and a copy of the technical review of the appraisal. Lenders are responsible for ensuring that appraisal values adequately reflect the actual value of the collateral. A qualified appraiser must determine the appraised market value in accordance with RD Instruction 4279-B, section 4279.144. Collateral must have documented value sufficient to protect the interest of the lender and the Agency. The discounted collateral value must be at least equal to the loan amount. **Add if applicable:** A chattel appraisal reflecting a fair market value of not less than \$*** will be required on the existing machinery and equipment. (Revised 10-05-16, PN 489.)

CONSTRUCTION:

12. This project involves construction. The lender must ensure that all project facilities are designed, and costs estimated, by an independent professional utilizing accepted architectural, engineering and design practices and conform to applicable Federal, State, and local codes and to approved plans, specifications, and contract documents. The lender will also ensure that the project will be completed with available funds and, once completed, will be used for its intended purpose and produce products in the quality and quantity proposed in the completed application approved by the Agency. Furthermore, B&I Guaranteed Loans that involve the construction of or addition to commercial facilities that accommodate the public must comply with the Architectural Barriers Act Accessibility Standard. For all construction contracts in excess of \$10,000, the contractor must comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented by Department of Labor regulations 41 CFR, part 60. The borrower and lender are responsible for ensuring that the contractor complies with these requirements.

Add the following if the LNG is issued after construction is completed:

It is not the intention of Rural Development to issue the Loan Note Guarantee for this loan until all construction has been completed, equipment has been purchased and installed, and the facility is certified as operational by the appropriate official.

Use the following in lieu of the paragraph directly above only if the LNG will be issued prior to construction or completion of development work:

The lender must have a construction monitoring plan acceptable to the Agency and undertake the added responsibilities set forth in this paragraph. The lender will monitor the progress of construction and undertake the reviews and inspections necessary to ensure that construction conforms to applicable Federal, State, and local code requirements; proceeds are used in accordance with the approved plans, specifications, and contract documents; and that funds are used for eligible project costs. The lender must expeditiously report any problems in project development to the Agency.

(a) Prior to disbursement of construction funds, the lender must have:

- (i) A complete set of plans and specifications for the project on file.

(ii) A detailed timetable for the project with a corresponding budget of costs, setting forth the parties responsible for payment. The timetable and budget must be agreed to by the borrower.

(iii) A person, with demonstrated experience relating to the project's industry, confirm that the budget is adequate for the planned development.

(iv) A firm, fixed-price construction contract with an independent general contractor with costs and provisions for change order approvals, a retainage percentage, and a disbursement schedule; a 100 percent performance/payment bond on the borrower's contractor; or a contract with an independent disbursement and monitoring firm where project construction and completion is guaranteed. A bonding agent must be listed on Treasury Circular 570.

(vi) Contingencies in place to handle unforeseen cost overruns without seeking additional guaranteed assistance. These are to be agreed to by the borrower.

(b) Once construction begins, the lender is to:

(i) Use any borrower funds in the project first.

(ii) Ensure that the project is built to support the functions at the level and quality contemplated by the borrower through the use of accepted architectural and engineering practices. There is no absolute requirement that the goal be achieved by the use of a professional inspection. However, if after careful review, it appears that the use of a professional inspector is the only method that ensures that the project is built to support the functions at the level and quality contemplated by the borrower through the use of accepted architectural and engineering practices, one may be required by the Agency. If one is required, inspections must be made by a qualified, independent inspector prior to any progress payment. If other less expensive or rigorous methods will achieve the same result, they may be utilized. The decision will be made on a case-by-case basis and be reasonable under the specific circumstances of the case.

(iii) Obtain lien waivers from all contractors and materialmen prior to any disbursement.

(iv) Provide at least monthly, written reports to Rural Development on fund disbursement and project status.

(c) Once construction is completed, the lender is to provide Rural Development with a copy of the Certificate of Occupancy or Notice of Completion or similar document issued by the relevant building jurisdiction.

Add the following only if it is likely that construction work may be done by an affiliate of the borrower:

Construction work will be performed at least in part by an affiliate of the borrower. Loan funds cannot be used as profit for any of the principals or their affiliates. A copy of the contractor's cost breakdown should indicate no profit.

LOAN GUARANTEE CLOSING:

13. **LENDERNAME** and **BORROWERNAME** must each execute Form AD-3031, "Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants," at loan closing and provide the forms to the Agency prior to issuance of the Loan Note Guarantee.
14. Coincident with, or immediately after loan closing, and prior to issuance of the guarantee, the lender will provide Rural Development with the following:
 - a. A guarantee fee of \$*** (= \$*** x **% x **%) made payable to the U.S. Treasury.
 - b. An executed RD Form 4279-4, "Lender's Agreement."
 - or**
 - b. This guarantee will be governed by the previously executed RD Form 4279-4, "Lender's Agreement," dated ***.
 - c. Form RD 1980-19, "Guaranteed Loan Closing Report."
 - d. A copy of the executed loan agreement that contains any continuing loan conditions set forth by the Agency in this Conditional Commitment.
 - e. A copy of the executed promissory note(s).
 - f. A copy of the executed settlement statement.
 - g. Original, executed Forms RD 4279-14, "Unconditional Guarantee," as required;
 - h. Original, executed Forms AD-3031, "Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants," for both the lender and borrower.

- i. Written lender certification in accordance with RD Instruction 4279-B, § 4279.181(a).
 - j. Borrower's loan closing balance sheet, supporting paragraph (i) of the lender's certification, demonstrating required tangible balance sheet equity as of the date the guaranteed loan is closed.
15. The lender is required to hold in its own portfolio or retain a minimum of 5 percent of the total loan amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another. The lender may sell the remaining amount of the unguaranteed portion of the loan only through participation.
16. Agency personnel and any person(s) accompanying Agency personnel shall be authorized to enter upon the premises and into any building thereon, whether permanent or temporary, jointly or separately, with personnel of the lender to carry out the functions involving their interests. Scheduled and unscheduled inspections may be conducted by these personnel to determine the effectiveness of the loan program.
17. The lender will always retain responsibility for servicing the entire loan and for notifying the Agency of any violations of the terms of the loan agreement or Conditional Commitment. The lender will advise the Agency of the loan classification on the loan closing report and whenever the lender revises its classification of the loan.
18. Any public body or nonprofit corporation that receives a guaranteed loan that meets the thresholds established by OMB Circulars A-128 or A-133 or successor regulations or circulars must provide an audit in accordance with the applicable circular or regulation 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.
19. Lender will become an approved participant in Rural Development's Lender Interactive Network Connection (LINC). The USDA eAuthentication is the system used by USDA agencies to enable customers to obtain accounts that will allow them to access USDA Web applications and services via the Internet. To conduct official business transactions, such as submitting annual renewal fees and borrower account status reporting using the LINC, the customer must have Level 2 eAuthentication credentials. You may work directly with the Rural Development *** State Office to accomplish this. The contact person is *** who can be reached at (***) ***-****. Please see attachment for additional information. **Attach the eAuthentication instructions.**

20. **LENDERNAME** (lender) certifies by accepting this Conditional Commitment for a **\$***** guarantee the lender understands that no adverse change may occur during the period of time from Agency issuance of the Conditional Commitment to issuance of the Loan Note Guarantee relating to **BORROWERNAME** (borrower) regardless of the cause or causes of the change and whether the change or cause(s) of the change were within the lender's or borrower's control. Prior to each disbursement, lender shall be in receipt of satisfactory evidence that there has been no unremedied adverse change in the financial or any other condition of the Borrower since the date of the application or since any preceding disbursements which would warrant withholding or not making further disbursements.
21. By accepting Form 4279-3, "Conditional Commitment, **BORROWERNAME** certifies that it is not delinquent on any Federal debt, including tax debt.
22. By signing this Conditional Commitment, the lender and borrower certify that they understand and accept the conditions outlined herein. No provision stated herein shall be amended or waived without the prior written consent of the lender and Rural Development. Any loans or advances made to the Borrower by the Lender after issuance of the Loan Note Guarantee will not be covered by the guarantee, except authorized protective advances. Regulations contained in RD Instructions 4279-A and 4279-B, and Form RD 4279-4, "Lender's Agreement," will apply.
23. Any request for an extension of the expiration date of this Conditional Commitment must be made in writing and received by Rural Development prior to the expiration date. This request must be accompanied by a full explanation as to why the extension is needed.

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