



United States Department of Agriculture

# Business & Industry Guaranteed Loan Program

## Program Eligibility Training

RD Instructions

4279-A (General)

4279-B (Processing)

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4279.29

# Eligible Lenders



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# Eligible Lenders – 4279.29

- **All lenders:**

- Must be domiciled in a State or in DC
- Must not be debarred or suspended by the Federal government
- Must have adequate capital, experience and expertise to make, secure, service, and collect B&I loans
- Must provide documentation as to their capital and experience in commercial lending

# Eligible Lenders – 4279.29 continued

- Each lender must execute a Lender's Agreement (Form RD 4279-4, "Lender's Agreement")
- A new Lender's Agreement must be executed with any existing lenders making new loans on or after August 2, 2016
- Once a valid Lender's Agreement exists, it is not necessary to execute a new Lender's Agreement for each loan guarantee

# Eligible Lenders – 4279.29(a)

- **Regulated lenders:**

- Any Federal or State chartered bank or other financial institution, Farm Credit Bank, other Farm Credit System institution with direct lending authority, Bank for Cooperatives, Savings and Loan, Savings Bank, or mortgage company that is part of a bank-holding company

- Must be subject to credit examination and supervision by either an agency of the United States or a State

- Credit unions

- Must be subject to credit examination and supervision by either the National Credit Union Administration or a State agency

- **No longer includes insurance companies**

# Eligible Lenders – 4279.29(b)

- **Non-regulated lenders:**

- May be approved for a 3-year eligibility period with legal authority to operate a lending program and sufficient lending expertise and financial strength
- Insurance companies and previously approved non-traditional lenders must:
  - Reapply to become approved non-regulated lenders in order to originate new guaranteed loans
  - Continue to service guaranteed loans in their portfolios in accordance with the Lender's Agreement they executed

# Eligible Lenders – 4279.29(b) continued

- **Non-regulated lenders must:**
  - Have been making commercial loans for at least 5 years;
  - Have a record of successfully making at least 10 commercial loans annually totaling at least \$1 million for each of the last 5 years;
    - Delinquent loans cannot exceed 6 percent
    - Losses cannot exceed 3 percent
  - Have and maintain tangible balance sheet equity of at least 10 percent and sufficient funds available to disburse the guaranteed loans it proposes to approve within the first 6 months;



# Eligible Lenders – 4279.29(b) cont'd

- **Non-regulated lenders must:**
  - Have and maintain a line of credit issued by a regulated lender;
  - Establish and maintain a loss reserve equal to 3 percent of each B&I loan closed and agree to increase the loss reserve for anticipated losses;
  - Have adequate policies and procedures to ensure that internal credit controls provide adequate loanmaking and servicing guidance; and
  - Have undergone a credit examination at its own expense from a recognized independent reviewer.

# Request for Lender Eligibility – 4279.29(b)(2)

- **Non-regulated lenders must submit a written request containing:**
  - Audited financial statement less than 1 year old demonstrating adequate TBSE and resources
  - Copy of any license, charter, or other evidence of authority to engage in the proposed loanmaking and servicing activities
    - If licensing by the State is not required, an attorney's opinion stating that licensing is not required and that the entity has the legal authority to engage in the proposed loanmaking and servicing activities must be submitted



## Request for Lender Eligibility – 4279.29(b)(2) continued

### – Information on lending experience, including:

- Length of time in the lending business
- Range and volume of lending and servicing activity
  - including a list of the industries financed
- Status of loan portfolio
  - including a list of loans with each loan's current loan classification code and delinquency and loss rates
- Experience of management and loan officers
- Sources of funds for the proposed loans
- Office location and proposed lending area
- An estimate of the number and size of guaranteed loan applications the lender will develop, and
- Proposed rates and fees
  - including loan origination, loan preparation, and servicing fees

# Request for Lender Eligibility – 4279.29(b)(2) cont'd

- Copy of the lender's credit examination
- Documentation as to how the lender will fulfill its functions and responsibilities
- The National Office must approve a lender's initial eligibility
- The State Office where the lender's activity takes place reviews and forwards the request, with a recommendation, to the National Office B&I Division

# Request for Lender Eligibility – 4279.29(b)(2) cont'd

- If eligibility is requested for multiple States, the State Office where the lender is headquartered will take the lead in coordinating submission of the request to the National Office
  - A State Office receiving a multi-State request notifies each affected State of the request and provides information for review and comment prior to making a recommendation and submission to the National Office

# Non-Regulated Lenders – 4279.29(b)(3)

- Non-regulated lenders must submit audited financial statements to the Agency annually



## Renewal of Eligible Lender Status — 4279.29(b)(4)

- Renewal of eligible lender status is not automatic
- Eligible lender status lapses 3 years from the date of Agency approval and execution of the Lender's Agreement (Form RD 4279-4, "Lender's Agreement,") unless the lender obtains a renewal
- A lender whose eligible status has lapsed must continue to service any outstanding loans guaranteed but may not submit requests for new loan guarantees until status is renewed

## Renewal of Eligible Lender Status — 4279.29(b)(4) continued

- Lenders requesting renewal must complete and execute a new Lender's Agreement and submit a written update of the eligibility criteria required for approval
  - State Offices process renewals of eligible lender status





## Revocation of Eligible Lender Status — 4279.29(c)

- The Agency may revoke a lender's eligible status at any time for cause
  - Revocation provisions apply to both regulated and non-regulated lenders
- Revocation may apply to all branches of the lender, specific branches, or personnel
- The Agency may also debar a lender in addition to revocation of the lender's status

4279.108

# Eligible Borrowers



COOPERATIVES



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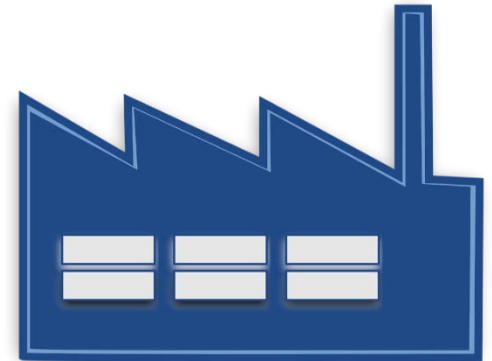


# Type of Entity – 4279.108(a)

- 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

# Type of Entity – 4279.108(a) continued

- A borrower must be engaged in or proposing to engage in a business, including:
  - Manufacturing
  - Wholesaling
  - Retailing
  - Providing services
  - Other activities that will provide employment and improve the economic or environmental climate



# Citizenship – 4279.108(b)

- Individual borrowers must be citizens of the U.S. or reside in the U.S. after being legally admitted for permanent residence
- Individuals residing in the U.S. 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 do not meet this requirement

# Citizenship – 4279.108(b) continued

- Private entity borrowers must demonstrate that loan funds will remain in the U.S. and the facility being financed will primarily create new or save existing jobs for rural U.S. residents
  - 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

# Rural Area – 4279.108(c)

- Business must be located in a rural area, except for:
  - Cooperative facilities that provide value-added processing for agricultural producers located within 80 miles of the facility
  - 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

# Rural Area – 4279.108(c) continued

- 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







## Eligible Uses of Funds – 4279.113(a) – (b)

- 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

## Eligible Uses of Funds – 4279.113 (c) – (d)

- c) Leasehold improvements when the lease contains no reverter/restrictive clauses that would impair the use or value of the property
  - The term of the lease must be equal to or greater than the term of the loan
- d) Constructing or equipping facilities for lease to private businesses engaged in commercial or industrial operations
  - Financing for mixed-use properties (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

# Eligible Uses of Funds – 4279.113(e) – (f)

- 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 Refinancing – 4279.113(g)

- Debt refinancing is eligible when all of the following apply:
  - The project is viable
  - 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
  - Debt being refinanced must have been for an eligible loan purpose (except for refinancing of lines of credit)
- The lender's analysis should document all of the above

# Debt Refinancing – 4279.113(g) continued

- Existing lender debt may be included provided:
  - The loan being refinanced has been **closed and current** for at least the past 12 months, and
  - The lender is providing better rates or terms
- Existing lender debt may not exceed 50 percent of the overall loan
  - Federally guaranteed debt does not count toward the existing lender debt limitation

# Takeout of Interim Financing – 4279.113(h)

- Guaranteeing a loan that provides for permanent 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 prior to closing the interim loan
  - If a complete preapp or app is not submitted prior to closing the interim loan, it is considered debt refinancing and is subject to the 50 percent existing lender debt rule

# Takeout of Interim Financing – 4279.113(h) continued

- Interim financing is not covered by the guarantee unless the Agency agrees to issue the Loan Note Guarantee (LNG) prior to substantial completion of construction
- If the LNG is issued prior to substantial completion of construction, the promissory note must be a note that:
  - Converts the interim financing to the permanent note and
  - Contains the terms of the interim financing and the permanent financing



# Takeout of Interim Financing – 4279.113(h) cont'd

- The borrower must take no action that would have an adverse impact on the environment or limit the range of alternatives to be considered during the environmental review process
- The Agency cannot approve the loan and issue a Conditional Commitment until the environmental process is complete

# Eligible Uses of Funds – 4279.113(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 borrowers **and is the minimum amount required**
  - Allows use of loan proceeds to purchase a membership, stock, etc., in the lender when the lender requires borrowers to be members or own stock in order to obtain a loan

# Loans to Cooperative Organizations – 4279.113(j)

- Loans to coop orgs may be guaranteed 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
  - The total amount of loans exceeding \$25 million does not exceed 10% of the funds available for the fiscal year



# Loans to Cooperative Organizations – 4279.113(j) continued

- Loans to cooperative organizations may be guaranteed in non-rural areas provided:
  - 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
  - The applicant demonstrates that the primary benefit of the loan will be to provide employment for rural residents
  - The principal amount of the loan does not exceed \$25 million
  - The total amount of loans for coop orgs in non-rural areas does not exceed 10% of funds available for the fiscal year

# Loans to Cooperative Organizations – 4279.113(j) cont'd

- 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
  - There is adequate security or full collateral for the new guaranteed loan

# Eligible Uses of Funds – 4279.113(k) and (l)

- The purchase of cooperative stock by individual farmers or ranchers in a farmer/rancher cooperative
- The purchase of transferable cooperative stock
- The purchase of stock in a business by employees forming an Employee Stock Ownership Plan or worker cooperative
- The purchase of preferred stock or similar equity issued by a cooperative organization
- A fund that invests primarily in cooperative organizations

# Eligible Uses of Funds – 4279.113(m)

- Taxable corporate bonds

- Bonds must be fully amortizing and comply with all loan term requirements
- Bonds must be fully secured with collateral
- Bond holder (lender) must retain 5% of the bond
- Bond issuer (borrower) must not issue more than 11 bonds (10 guaranteed and one unguaranteed)
- Bond issuer must obtain a legal opinion stating the bonds are legal, valid, and binding obligations and that the issuer has adhered to all applicable laws

# Eligible Uses of Funds – 4279.113(n) – (p)

- n) Interest before the first principal payment becomes due or when the facility becomes income producing, whichever is earlier
- o) Fees
  - Guarantee Fee
  - Routine Lender Fees
  - Professional Services
- p) Feasibility studies





# Agricultural Production – 4279.113(q)

- Agricultural production is eligible when:
  - Not eligible for FSA farm loan programs assistance, and
  - When part of an integrated business also involved in the processing of ag products
- The agricultural production portion of any loan must not exceed 50 percent of the total loan or \$5 million, whichever is less

# Agricultural Production – 4279.113(q) continued

- The following are NOT considered agricultural production:

- Commercial nurseries engaged in the production of ornamental plants, trees, and other nursery products
- Forestry
- The growing of mushrooms or hydroponics
- The boarding and/or training of animals
- Commercial fishing
- Aquaculture



# Eligible Uses of Funds – 4279.113(r) – (t)

- 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 ineligible



## Eligible Uses of Funds – 4279.113(u) – (w)

- u) Nursing homes and assisted living facilities where constant medical care is provided and available onsite to residents
  - Independent living facilities are not eligible
- v) Tourist and recreation facilities
  - Includes hotels, motels, bed and breakfasts, resort trailer parks and campgrounds
- w) Pollution control and abatement

# Energy Projects – 4279.113(x)

- Energy projects are eligible when:
  - Not eligible for REAP (unless sufficient funding is not available under REAP)
    - Does not preclude joint REAP/B&I projects
  - The facility **has been constructed** according to plans and specifications **and is producing** at the quality and quantity projected in the application (**No LNG can be issued prior to construction**)
  - Commercially available



# Energy Projects – 4279.113(x) continued

- Projects that produce renewable biomass or biofuel must utilize commercially available technologies and have completed 2 operating cycles at design performance levels prior to issuance of the LNG
  - An operating cycle is the average time between the acquisition of materials or the providing of services and the cash realization of that acquisition or provision of services

# Energy Projects – 4279.113(x) cont'd

- Projects that produce steam or electricity must have met acceptance test performance criteria and be successfully interconnected with the purchaser of the output
  - An executed power purchase agreement is required prior to issuance of the LNG
- Performance or acceptance test requirements for all other energy projects will be determined on a case-by-case basis

# Local Foods Projects – 4279.113(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





# Local Foods Projects – 4279.113(y) continued

- What is a locally or regionally produced agricultural food product?
  - 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 transported is less than 400 miles from the origin of the product or within the State in which the product is produced



# Local Foods Projects – 4279.113(y) cont'd

- **Projects may be located in urban areas**
- 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
- Borrower must include - in an agreement with retail and institutional facilities to which it sells local foods - a requirement to inform consumers that they are purchasing or consuming local foods

## Local Foods Projects – 4279.113(y) cont'd

- Funding priority will be given to projects that provide a benefit to underserved communities
  - An underserved community is an urban, rural or Indian tribal community that has limited access to affordable, healthy foods, including fresh fruits and vegetables, in grocery and 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

# New Markets Tax Credits – 4279.116

- Loan guarantees for Qualified Active Low Income Community Businesses (QALICB), (the project)
- Loan guarantees for the leveraged lender
- 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

4279.117

# Ineligible Purposes and Entity Types



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# Ineligible Purposes and Entity Types – 4279.117(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
- ⊘ 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

# Ineligible Purposes and Entity Types – 4279.117(b) and (c)

- ⊘ Projects in excess of \$1 million where direct employment is increased by more than 50 employees that would:
  - likely result in the transfer of jobs from one area to another
  - likely 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, or services

# Ineligible Purposes and Entity Types – 4279.117(d) and (e)

- ⊘ Timeshares, residential trailer parks, housing development sites, apartments, duplexes, or other residential housing
  - Except mixed-use facilities eligible under 4279.113(d)



- ⊘ Owner-occupied housing, such as bed and breakfasts, hotels, etc.
  - Pro rata value of the owner's living quarters is deducted from the use of loan proceeds



# Ineligible Purposes and Entity Types – 4279.117(f) – (h)

- ❌ Guaranteeing lease payments or any line of credit



*Commercial Lease Agreement Template*

**Commercial Lease Agreement**

This Lease agreement is made on this \_\_\_\_\_ day of \_\_\_\_\_ (Month), \_\_\_\_\_ (Year) by and between \_\_\_\_\_ (hereinafter "Landlord")

**AND**

\_\_\_\_\_ (hereinafter "Tenant")

In consideration for the shared promises and agreements contained herein, and for other good and valuable consideration, the parties hereby agree as follows:

1. The Landlord leases to the Tenant, and the Tenant rents from the Landlord the following stated grounds: \_\_\_\_\_
2. The tenure of the Lease shall be for \_\_\_\_\_ beginning \_\_\_\_\_ and ending \_\_\_\_\_
3. The Tenant shall pay to Landlord as rent \$ \_\_\_\_\_ per year in equal monthly installments of \$ \_\_\_\_\_ payable in advance \_\_\_\_\_ (Time Period)
4. This Lease is subject to all present or prospect mortgages affecting the property.

- ❌ Guaranteeing loans made by other Federal agencies

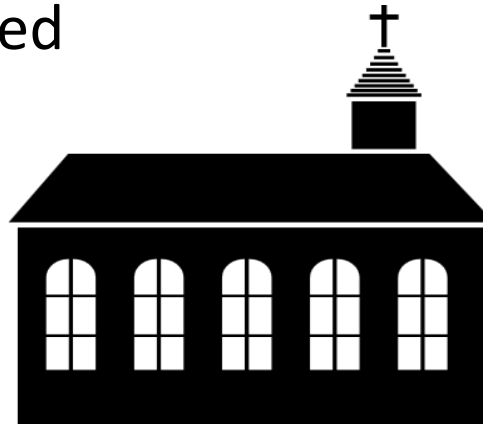


- ❌ Loans made with the proceeds of any obligation the interest on which is excludable from income

# Ineligible Purposes and Entity Types – 4279.117(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



# Ineligible Purposes and Entity Types – 4279.117(j) and (k)

- ⊘ Businesses that derive more than 10% of annual gross revenue from gambling activity, excluding State-authorized lottery proceeds



- ⊘ Businesses deriving income from activities of a prurient sexual nature or illegal activities

# Ineligible Purposes and Entity Types – 4279.117(l) and (m)

- ⊘ Racetracks or facilities for the conduct of races by animals, professional or amateur drivers, jockeys, etc.



- ⊘ Golf courses and golf course infrastructure, including par 3 and executive golf courses

# Ineligible Purposes and Entity Types – 4279.117(n) – (p)

⊘ Cemeteries



⊘ Research and development projects and projects that involve technology that is not commercially available

⊘ Any project that the Agency determines creates a conflict of interest or an appearance thereof between any party related to the project

# Ineligible Purposes and Entity Types – 4279.117 (q) and (r)

- ⊘ 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
  - the borrower or any of its officers, directors, stockholders, or other owners have more than a 5% ownership interest in the lender
- ⊘ Guarantees supporting investment or arbitrage or speculative real estate investment

# Ineligible Purposes and Entity Types – 4279.117(s) and (t)

- ⊘ Lending institutions, investment institutions, or insurance companies



- ⊘ Charitable or fraternal organizations
  - Businesses that derive more than 10% of annual gross revenue from tax deductible charitable donations are charitable organizations

CHARITY

# Ineligible Purposes and Entity Types – 4279.117(t) and (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
- ⊘ Any business located in a special flood or mudslide hazard area as designated by FEMA 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



# Ineligible Purposes and Entity Types – 4279.117(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





# Thank you!

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