PART 4279 - GUARANTEED LOANMAKING

Subpart B - Business and Industry Loans

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PART 4279 - Guaranteed Loanmaking

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§ 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.

(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 which 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. Copies of all forms, regulations, and Instructions referenced in this subpart are available in any Agency office. *Whenever a form is designated in this subpart, that designation includes predecessor and successor forms, if applicable, as specified by the field or National Office. 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 B&I inquiries, preapplications, or applications should be reviewed by loan officers at the first contact with the Agency 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 B&I application. Credit quality and collateral should be scrutinized closely early in the process. Loan officers should likewise initiate the environmental review process early in the planning stage and should be alert for projects which may have a significant impact on the environment. As soon as an application is received, make a priority ranking using the worksheet provided in appendix C of this subpart. Document the action by filing the completed worksheet in the project case file.

§ 4279.102 Definitions.

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

§ 4279.103 Exception Authority.

Section 4279.15 of subpart A of this part applies to this subpart.

§ 4279.104 Appeals.

Section 4279.16 of subpart A of this part applies to this subpart.

§§ 4279.105 - 4279.106 [Reserved]

§ 4279.107 Guarantee fee.

The guarantee fee will be paid to the Agency by the lender and is nonrefundable. The fee may be passed on to the borrower. Except as provided in this section, the guarantee fee will be 2 percent multiplied by the principal loan amount multiplied by the percent of guarantee and will be paid one time only at the time the Loan Note Guarantee is issued.

(a) The guarantee fee may be reduced to 1 percent if the Agency determines that the business meets the following criteria:

(1) High impact business development investment (It is the goal of this program to encourage high impact business investment in rural areas. The weight given to business investments will be in accordance with § 4279.155(b)(5) of this subpart); and

(2) The business is located in a community that is experiencing long term population decline and job deterioration; or

(3) The business is located in a rural community that has remained persistently poor over the last 60 years; or

(4) The business is located in a rural community that is experiencing trauma as a result of natural disaster or that is experiencing fundamental structural changes in its economic base.

(b) Each fiscal year, the Agency shall establish a limit on the maximum portion of guarantee authority available for that fiscal year that may be used to guarantee loans with a guarantee fee of 1 percent. The limit will be announced by publishing a notice in the Federal Register. Once the limit has been reached, the guarantee fee for all additional loans obligated during the remainder of that fiscal year will be 2 percent.

Written requests for approval of a guaranteed loan with the reduced guarantee fee must be forwarded to the National Office, Attn: Director, Business Programs Processing Division, for review and consideration prior to obligation of the guaranteed loan. The Administrator will provide a written response to the State Director concerning the request confirming approval or disapproval of the request to approve the guaranteed loan with the reduced guarantee fee. After the guaranteed authority has been exhausted, the National Office will provide guidance to the State Directors.

§ 4279.108 <u>Eligible borrowers</u>.

(a) <u>Type of entity</u>. A borrower may be a cooperative, corporation, partnership, or other legal entity organized and operated on a profit or nonprofit basis; an Indian tribe on a Federal or State reservation or other Federally recognized tribal group; a public body; or an individual. A borrower must be engaged in or proposing to engage in a business. Business may include manufacturing, wholesaling, retailing, providing services, or other activities that will:

(1) Provide employment;

(2) Improve the economic or environmental climate;

(3) Promote the conservation, development, and use of water for aquaculture; or

(4) Reduce reliance on nonrenewable energy resources by encouraging the development and construction of solar energy systems

(b) Citizenship. Individual borrowers must be citizens of the United States (U.S.) or reside in the U.S. after being legally admitted for permanent residence. Citizens and residents of the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands shall be considered U.S. citizens. Corporations or other nonpublic body organization-type borrowers must be at least 51 percent owned by persons who are either citizens of the U.S. or reside in the U.S. after being legally admitted for permanent residence.

(c) Rural area. The business financed with a B&I Guaranteed Loan must be located in a rural area. Loans to borrowers with facilities located in both rural and non-rural areas will be limited to the amount necessary to finance the facility located in the eligible rural area. Rural areas are any areas other than: (Revised 12-23-02, SPECIAL PN.)

(1) a city or town that has a population of greater than 50,000 inhabitants; and

(2) the urbanized area contiguous and adjacent to such a city or town, as defined by the U.S. Bureau of the Census using the latest decennial census of the United States.

(d) <u>Other credit</u>. All applications for assistance will be accepted and processed without regard to the availability of credit from any other source. *Applicants are to be advised of other potential sources of credit but are not encouraged or required to pursue financing from any of these sources in lieu of assistance from the Agency.*

§§ 4279.109 - 4279.112 [Reserved]

§ 4279.113 <u>Eligible loan purposes</u>.

Loan purposes must be consistent with the general purpose contained in § 4279.101 of this subpart. They include but are not limited to the following:

(a) Business and industrial acquisitions when the loan will keep the business from closing, prevent the loss of employment opportunities, or provide expanded job opportunities.

(b) Business conversion, enlargement, repair, modernization, or development.

(c) Purchase and development of land, easements, rights-of-way, buildings, or facilities.

(d) Purchase of equipment, leasehold improvements, machinery, supplies, or inventory.

(e) Pollution control and abatement.

(f) Transportation services incidental to industrial development.

(g) Startup costs and working capital.

(h) Agricultural production, when not eligible for Farm Service Agency (FSA) farmer program assistance and when it is part of an integrated business also involved in the processing of agricultural products.

(1) Examples of potentially eligible 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. Any agricultural production considered for B&I financing must be owned, operated, and maintained by the business receiving the loan for which a guarantee is provided. Independent agricultural production operations, even if not eligible for FSA farmer programs assistance, are not eligible for the B&I program.

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

(i) Purchase of membership, stocks, bonds, or debentures necessary to obtain a loan from Farm Credit System institutions and other lenders provided that the purchase is required for all of their borrowers. Purchase of startup cooperative stock for family-sized farms where commodities are produced to be processed by the cooperative.

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

(k) Commercial fishing.

(l) Commercial nurseries engaged in the production of ornamental plants and 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.

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

(n) The growing of mushrooms or hydroponics.

(o) 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.

(p) Feasibility studies.

(q) To refinance outstanding debt when it is determined that the project is viable and refinancing is necessary to improve cash flow and create new or save existing jobs. Existing lender debt may be included provided that, at the time of application, the loan has been current for at least the past 12 months (unless such status is achieved by the lender forgiving the borrower's debt), the lender is providing better rates or terms, and the refinancing is a secondary part (less than 50 percent) of the overall loan.

(r) Takeout of interim financing. Guaranteeing a loan 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 which proposes such interim financing prior to completing the interim loan. A lender that is considering an interim loan should be advised that the Agency assumes no responsibility or obligation for interim loans advanced prior to the Conditional Commitment being issued.

(s) Fees and charges for professional services and routine lender fees.

(t) Agency guarantee fee.

(u) Tourist and recreation facilities, including hotels, motels, and bed and breakfast establishments, except as prohibited under ineligible purposes.

(1) 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.

(2) Projects that are commonly not successful in the area normally should not be financed. This does not mean that new ventures should not be considered. It means, as a hypothetical example, that if 5 out of 10 ski areas without snowmaking capabilities in Vermont have failed, such a recreational proposal probably carries excessive risk. Similar examples might be hotels or motels in many rural areas, outdoor tennis or swimming pools, or water slides in northern climates.

(3) 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.

(v) Educational or training facilities.

(w) Community facility projects which are not listed as an ineligible loan purpose such as convention centers.

(x) Constructing or equipping facilities for lease to private businesses engaged in commercial or industrial operations.

(y) The financing of housing development sites provided that the community demonstrates a need for additional housing to prevent a loss of jobs in the area or to house families moving to the area as a result of new employment opportunities.

(z) Community antenna television services or facilities.

(aa) Provide loan guarantees to assist industries adjusting to terminated Federal agricultural programs or increased foreign competition.

§ 4279.114 <u>Ineligible purposes</u>.

(a) Distribution or payment to an individual owner, partner, stockholder, or beneficiary of the borrower or a close relative of such an individual when such individual will retain any portion of the ownership of the borrower.

(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.

(c) Projects in excess of $1 million that would increase direct employment by more than 50 employees, if the project would result in an increase in the production of goods for which there is not sufficient demand, or if the availability of services or facilities is insufficient to meet the needs of the business.

(d) Charitable institutions, churches, or church-controlled or fraternal organizations.

(e) Lending and investment institutions and insurance companies.

(f) Assistance to Government employees and military personnel who are directors or officers or have a major ownership of 20 percent or more in the business.

(g) Racetracks for the conduct of races by professional drivers, jockeys, etc., where individual prizes are awarded in the amount of $500 or more.

(h) Any business that derives more than 10 percent of annual gross revenue from gambling activity.

(i) Any illegal business activity.

(j) Prostitution.

(k) Any line of credit.

(l) The guarantee of lease payments.

(m) The guarantee of loans made by other Federal agencies.

(n) Owner-occupied housing. Bed and breakfasts, storage facilities, et al, are allowed when the pro rata value of the owner's living quarters is deleted.

(o) Projects that are eligible for the Rural Rental Housing and Rural Cooperative Housing loans under sections 515, 521, and 538 of the Housing Act of 1949, as amended.

(p) 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 may neither be used to purchase the guaranteed portion of any Agency guaranteed loan nor may an Agency guaranteed loan serve as collateral for a tax-exempt issue. The Agency may guarantee a loan for a project which 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 which is financed by the tax-exempt obligation, and the guaranteed loan has at least a parity security position with the tax-exempt obligation.

(q) The guarantee of loans where there may be, directly or indirectly, a conflict of interest or an appearance of a conflict of interest involving any action by the Agency. *An example of a conflict of interest would be where guaranteed funds are used to finance a Federal office building where one of the tenants leasing the space is a USDA agency or organization.*

(r) Golf courses.

§ 4279.115 Prohibition under Agency programs.

No B&I loans guaranteed by the Agency will be conditioned on any requirement that the recipients of such assistance accept or receive electric service from any particular utility, supplier, or cooperative.

§§ 4279.116 - 4279.118 [Reserved]

§ 4279.119 Loan guarantee limits.

(a) Loan amount. The total amount of Agency loans to one borrower, including the guaranteed and unguaranteed portions, the outstanding principal and interest balance of any existing Agency guaranteed loans, and new loan request, must not exceed $10 million. The Administrator may, at the Administrator's discretion, grant an exception to the $10 million limit *with the concurrence of the Under Secretary* **under the following circumstances:**

(1) The project to be financed is a high-priority project. Priority will be determined in accordance with the criteria contained in § 4279.155 of this subpart;

(2) 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 guarantee is not approved; and

(3) Under no circumstances will the total amount of guaranteed loans to one borrower, including the guaranteed and unguaranteed portions, the outstanding principal and interest balance of any existing Agency guaranteed loans, and new loan request, exceed $25 million;

(4) 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; and

(5) Any request for a guaranteed loan exceeding the $10 million limit must be submitted to the Agency in the form of a preapplication. The preapplication must be submitted to the National Office for review and concurrence before encouraging a full application.

(b) Percent 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. Notwithstanding the preceding, the Administrator may, at the Administrator's discretion, grant an exception allowing guarantees of up to 90 percent on loans of $10 million or less under the following circumstances:

(1) The project to be financed is a high-priority project. Priority will be determined in accordance with the criteria contained in § 4279.155 of this subpart;

(2) 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 higher guarantee percentage is not approved; and

(3) The State Director may grant an exception for loans of up to 90 percent on loans of $2 million or less subject to the State Director's delegated loan approval authority and meeting all of the conditions as set forth in this section. In cases where the State Director does not have the loan approval authority to approve a loan of $2 million or less or the proposed percentage, the case must be submitted to the National Office for review.

(4) 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 a guarantee percentage exceeding 80 percent. The limit will be announced by publishing a notice in the Federal Register. Once the limit has been reached, the guarantee percentage for all additional loans guaranteed during the remainder of that fiscal year will not exceed 80 percent.

(5) Written requests for approval of a guaranteed loan with a guarantee percentage above 80 percent must be forwarded to the National Office, Attn: Director, Business Programs Processing Division, for review and consideration prior to obligation of the guaranteed loan. The Administrator will provide a written response to the State Director concerning the request confirming approval or disapproval of the request. After the guaranteed authority has been exhausted, the National Office will provide guidance to the State Directors.

§ 4279.120 Fees and charges.

(a) 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.

(b) Professional services. Professional services are those rendered by entities generally licensed or certified by States or accreditation associations, such as architects, engineers, packagers, accountants, attorneys, or appraisers. The borrower may pay fees for professional services needed for planning and developing a project provided that the amounts are reasonable and customary in the area. Professional fees may be included as an eligible use of loan proceeds.

(c) Fee Review. You should review fees in the application but rely on the opinion of the lender as to their reasonableness.

§§ 4279.121 - 4279.124 [Reserved]

§ 4279.125 Interest rates.

The interest rate for the guaranteed loan will be negotiated between the lender and the applicant and may be either fixed or variable as long as it is a legal rate. Interest rates will not be more than those rates customarily charged borrowers in similar circumstances in the ordinary course of business 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.

(a) A variable interest rate agreed to by the lender and borrower must be a rate that is tied to a base rate agreed to by the lender and the Agency. The variable interest rate may be adjusted at different intervals during the term of the loan, but the adjustments may not be more often than quarterly and must be specified in the Loan Agreement. The lender must incorporate, within the variable rate Promissory Note at loan closing, the provision for adjustment of payment installments coincident with an interest-rate adjustment. The lender will ensure that the outstanding principal balance is properly amortized within the prescribed loan maturity to eliminate the possibility of a balloon payment at the end of the loan.

(b) Any change in the interest rate between the date of issuance of the Conditional Commitment and before the issuance of the Loan Note Guarantee must be approved in writing by the Agency approval official. Approval of such a change will be shown as an amendment to the Conditional Commitment.

(c) It is permissible to have one interest rate on the guaranteed portion of the loan and another rate on the unguaranteed portion of the loan provided that the rate on the guaranteed portion does not exceed the rate on the unguaranteed portion.

(d) A combination of fixed and variable rates will be allowed.

(e) While the lender and applicant negotiate the interest rate on a B&I loan, you have a responsibility as an Agency loan officer to make sure that the rate is no more than that rate customarily charged borrowers under similar circumstances when there is no guarantee. You should encourage lenders, by counseling and the use of the priority ranking system, to pass the savings of the secondary market on to the borrower. Make sure that new lenders understand the requirements of this section early in the loan process.

§ 4279.126 Loan terms.

(a) The maximum repayment for loans on real estate will not exceed 30 years; machinery and equipment repayment will not exceed the useful life of the machinery and equipment purchased with loan funds or 15 years, whichever is less; and working capital repayment will not exceed 7 years. The term for a loan that is being refinanced may be based on the collateral the lender will take to secure the loan. *See appendix B of this subpart for structuring multiple note loans.*

(b) The first installment of principal and interest will, if possible, be scheduled for payment after the project 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. Interest-only payments will be paid at least annually from the date of the note. *Monthly payments will normally be expected except for seasonal-type businesses.*

(c) Only loans which require a periodic payment schedule which will retire the debt over the term of the loan without a balloon payment will be guaranteed.

(d) A loan's maturity will take into consideration the use of proceeds, the useful life of assets being financed, and the borrower's ability to repay the loan. The lender may apply the maximum guidelines specified above only when the loan cannot be repaid over a shorter term.

(e) All loans guaranteed through the B&I program must be sound, with reasonably assured repayment.

§§ 4279.127 - 4279.130 [Reserved]

§ 4279.131 Credit quality.

The lender is primarily responsible for determining credit quality and must address all of the elements of credit quality in a written credit analysis including adequacy of equity, cash flow, collateral, history, management, and the current status of the industry for which credit is to be extended. *In reviewing the lender's analysis and related materials, pay particular attention to working capital since it is usually critical to project success.*

(a) Cash flow. All efforts will be made to structure or restructure debt so that the business has adequate debt coverage and the ability to accommodate expansion. *The ability to repay a loan from the cash flow of the business is the most important consideration in the loanmaking process. You should not approve loan guarantee requests that do not* *show repayment ability. Historical operation reports are the best basis to evaluate cash flow. Review interim operating statements carefully, for they are just that, interim statements. Use a realistic projection of future earnings. Test such a projection against industry averages and historical operations to assess reasonableness and explain any significant variations.*

(b) Collateral.

(1) Collateral must have documented value sufficient to protect the interest of the lender and the Agency and, except as set forth in paragraph (b)(2) of this section, the discounted collateral value will normally be at least equal to the loan amount. Lenders will discount collateral consistent with sound loan-to-value policy.

(2) Some businesses are predominantly cash-flow oriented, and where cash flow and profitability are strong, loan-to-value coverage may be discounted accordingly. A loan primarily based on cash flow must be supported by a successful and documented financial history.

(3) Do not reject B&I applications automatically when weak collateral is the only unfavorable factor. Other factors, such as a strong indication of repayment ability and managerial ability, can offset this deficiency.

(4) 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.

(c) Industry. Current status of the industry will be considered and businesses in areas of decline will be required to provide strong business plans which outline how they differ from the current trends. The regulatory environment surrounding the particular business or industry will be considered.

(d) Equity. A minimum of 10 percent tangible balance sheet equity will be required for existing businesses at the time the Loan Note Guarantee is issued. A minimum of 20 percent tangible balance sheet equity will be required for new businesses at the time the Loan Note Guarantee is issued. Tangible balance sheet equity will be determined in accordance with Generally Accepted Accounting Principles. Modifications to the equity requirements may be granted by the Administrator or designee. For the Administrator to consider a reduction in the equity requirement, the borrower must furnish the following:

(1) Collateralized personal and corporate guarantees, including any parent, subsidiary, or affiliated company, when feasible and legally permissible (in accordance with § 4279.149 of this subpart), and

(2) Pro forma and historical financial statements which indicate the business to be financed meets or exceeds the median quartile (as identified in Robert Morris Associates Annual Statement Studies or similar publication) for the current ratio, quick ratio, debt-to-worth ratio, debt coverage ratio, and working capital.

(3) The Agency may require higher equity requirements if conditions warrant. As a loan officer, you will expect to see tangible balance sheet equity meeting at least the minimum requirement unless an exception is granted by the Administrator or designee. 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 applicant while reducing the debt burden.

(e) Lien priorities. 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. A parity or junior position may be considered provided that discounted collateral values are adequate to secure the loan in accordance with paragraph (b) of this section after considering prior liens.

(f) Management. A thorough review of key management personnel will be completed to ensure that the business has adequately trained and experienced managers. *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 loan docket. 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 - 4279.136 [Reserved]

§ 4279.137 Financial statements.

(a) The lender will determine the type and frequency of submission of financial statements by the borrower. At a minimum, annual financial statements prepared by an accountant in accordance with Generally Accepted Accounting Principles will be required.

(b) If specific circumstances warrant and the proposed guaranteed loan will exceed $3 million, the Agency may require annual audited financial statements. For example, the need for audited financial statements will be carefully considered in connection with loans that depend heavily on inventory and accounts receivable for collateral.

§§ 4279.138 - 4279.142 [Reserved]

§ 4279.143 Insurance.

(a) Hazard. Hazard insurance with a standard mortgage clause naming the lender as beneficiary will be required on every loan in an amount that is at least the lesser of the depreciated replacement value of the collateral or the amount of the loan. Hazard insurance 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 life insurance to insure against the risk of death of persons critical to the success of the business. When required, coverage will be in amounts necessary to provide for management succession or to protect the business. The cost of insurance and its effect on the applicant's working capital must be considered as well as the amount of existing insurance which 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 7 CFR, part 1806, subpart B (RD Instruction 426.2, available in any field office or the National Office).

(e) Other. Public liability, business interruption, malpractice, and other insurance appropriate to the borrower's particular business and circumstances will be considered and required when needed to protect the interests of the borrower.

§ 4279.144 Appraisals.

Lenders will be responsible for ensuring that appraisal values adequately reflect the actual value of the collateral. All real property appraisals associated with Agency guaranteed loanmaking and servicing transactions will 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). All appraisals will include consideration of the potential effects from a release of hazardous substances or petroleum products or other environmental hazards on the market value of the collateral. For additional guidance and information concerning the completion of real property appraisals, refer to subpart A of part 1922 of this title and to "Standard Practices for Environmental Site Assessments: Transaction Screen Questionnaire" and "Phase I Environmental Site Assessment," both published by the American Society of Testing and Materials. Chattels will be evaluated in accordance with normal banking practices and generally accepted methods of determining value.

§§ 4279.145 - 4279.148 [Reserved]

§ 4279.149 Personal and corporate guarantees.

(a) Personal and corporate guarantees, when obtained, are part of the collateral for the loan. However, the value of such guarantee is not considered in determining whether a loan is adequately secured for loanmaking purposes.

(b) Personal and corporate guarantees for those owning greater than 20 percent of the borrower will be required where legally permissible, except as provided for in this section. Guarantees of parent, subsidiaries, or affiliated companies and secured guarantees may also be required.

(c) Exceptions to the requirements for personal guarantees must be requested by the lender and concurred in by the Agency approval official on a case-by-case basis. The lender must document that collateral, equity, cash flow, and profitability indicate an above average ability to repay the loan. *Closely review collateral, equity, cash flow, and profitability before concurring in any exception to guarantees.*

§ 4279.150 <u>Feasibility studies</u>.

A feasibility study by a qualified independent consultant may be required by the Agency for start-up businesses or existing businesses when the project will significantly affect the borrower's operations. An acceptable feasibility study should include, but not be limited to, economic, market, technical, financial, and management feasibility. *Feasibility studies will normally be conducted in accordance with appendix A of this subpart.*

§§ 4279.151 - 4279.154 [Reserved]

§ 4279.155 <u>Loan priorities</u>.

Applications and preapplications received by the Agency will be considered in the order received; however, for the purpose of assigning priorities as described in paragraph (b) of this section, the Agency will compare an application to other pending applications. *The Agency will cooperate fully with appropriate State, regional, and local agencies in guaranteeing loans in a manner which will ensure maximum support of their strategies for development of rural areas.*

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

(b) Priorities will be assigned by the Agency to eligible applications on the basis of a point system as contained in this section. The application and supporting information will be used to determine an eligible proposed project's priority for available guarantee authority. All lenders, including CLP lenders, will consider Agency priorities when choosing projects for guarantee. The lender will provide necessary information related to determining the score, as requested. *The State Office will complete the priority scoresheet (appendix C).*

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

(2) Community priority. The priority score for community will be the total score for the following categories:

(i) Located in an eligible area of long term population decline and job deterioration based on reliable statistical data (5 points).

(ii) Located in a rural community that has remained persistently poor over the last 60 years (5 points).

(iii) Located in a rural community that is experiencing trauma as a result of natural disaster or experiencing fundamental structural changes in its economic base (5 points).

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

(3) Empowerment Zone/Enterprise Community (EZ/EC).

(i) Located in an EZ/EC designated area (10 points).

(ii) Located in a designated Champion Community (5 points). A Champion Community is a community which developed a strategic plan to apply for an EZ/EC designation, but not selected as a designated EZ/EC Community.

(4) Loan features. The priority score for loan features will be the total score for the following categories.

(i) Lender will price the loan at the Wall Street Journal published Prime Rate plus 1.5 percent or less (5 points).

(ii) Lender will price the loan at the Wall Street Journal published Prime Rate plus 1 percent or less (5 points).

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

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

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

(i) Industry. The priority score for industry will be the total score for the following except that the total score for industry cannot exceed 10 points:

(A) Industry that has 20 percent or more of its sales in international markets (5 points).

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

(ii) Business. The priority score for business will be the total score for the following:

(A) Business that offers high value, specialized products and services that command high prices (2 points).

(B) Business that provides an additional market for existing local business (3 points).

(C) Business that is locally owned and managed (3 points).

(D) Business that will produce a natural resource value-added product (2 points).

(iii) Occupations. The priority score for occupations will be the total score for the following, except that the total score for job quality cannot exceed 10 points:

(A) Business that creates jobs with an average wage exceeding 125 percent of the Federal minimum wage (5 points).

(B) Business that creates jobs with an average wage exceeding 150 percent of the Federal minimum wage (10 points).

(6) Administrative points. The State Director may assign up to 10 additional points to an application to account for such factors as statewide distribution of funds, natural or economic emergency conditions, or area economic development strategies. 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 also assign up to an additional 10 points. The Administrator may assign the additional points to an application to account for items such as geographic distribution of funds and emergency conditions caused by economic problems or natural disasters.

§ 4279.156 <u>Planning and performing development</u>.

(a) <u>Design policy</u>. The lender must ensure that all project facilities must be designed utilizing accepted architectural and engineering practices and must conform to applicable Federal, state, and local codes and requirements. 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.

(b) <u>Project control</u>. The lender will monitor the progress of construction and undertake the reviews and inspections necessary to ensure that construction conforms with 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. *Normally, you should expect the lender to:*

(1) Have inspections made by a qualified individual prior to any progress payment.

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

(3) Make sure the borrower has 100 percent performance/payment bonds on the contractor.

(4) Have a complete set of plans and specifications at the lending institution.

(5) Have a firm construction contract cost and provisions for change order approval, retainage percentage, and disbursement schedule.

(6) Obtain lien waivers from all contractors prior to any disbursement.

(c) <u>Equal opportunity</u>. 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 as supplemented by applicable Department of Labor regulations (41 CFR, part 60). The borrower and lender are responsible for ensuring that the contractor complies with these requirements.

(d) <u>Americans with Disabilities Act (ADA)</u>. B&I Guaranteed Loans which involve the construction of or addition to facilities that accommodate the public and commercial facilities, as defined by the ADA, must comply with the ADA. The lender and borrower are responsible for compliance.

(e) Agency role. You may wish, on complicated construction projects, to have the Agency engineer meet with the lender and the project architect or engineer. Lenders, knowing the Agency's expertise in construction monitoring, may wish you 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. Likewise, if complex environmental issues surface, you may request that the state environmental coordinator meet with the lender and project architect or engineer.

§§ 4279.157 - 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, they may file a complete application as the first contact with the Agency. Neither preapplications nor applications will be accepted or processed unless a lender has agreed to finance the proposal.

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

(1) A letter signed by the borrower and lender containing the following:

(i) Borrower's name, organization type, address, contact person, and federal tax identification and telephone numbers.

(ii) Amount of the loan request, percent of guarantee requested, and the proposed rates and terms.

(iii) Name of the proposed lender, address, telephone number, contact person, and lender's Internal Revenue Service (IRS) identification number.

(iv) Brief description of the project, products, services provided, and availability of raw materials and supplies.

(v) Type and number of jobs created or saved.

(vi) Amount of borrower's equity and a description of collateral, with estimated values, to be offered as security for the loan.

(vii) If a corporate borrower, the names and addresses of the borrower's parent, affiliates, and subsidiary firms, if any, and a description of the relationship.

(2) A completed Form 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.

(3) For existing businesses, a current balance sheet and a profit and loss statement not more than 90 days old and financial statements for the borrower and any parent, affiliates, and subsidiaries for at least the 3 most recent years.

(4) For start-up businesses, a preliminary business plan must be provided.

(b) <u>Applications</u>. Except for CLP lenders, applications will be filed with the Agency by submitting the following information: (CLP applications will be completed in accordance with § 4279.43(g)(1) of subpart A of this part but CLP lenders must have the material listed in this paragraph in their files.)

(1) A completed Form 4279-1, "Application for Loan Guarantee (Business and Industry)".

(2) The information required for filing a preapplication, as listed above, if not previously filed or if the information has changed.

(3) Form RD 1940-20, "Request for Environmental Information," and attachments, unless the project is categorically excluded under Agency environmental regulations.

(4) A personal credit report from an acceptable credit reporting company for a proprietor (owner), each partner, officer, director, key employee, and stockholder owning 20 percent or more interest in the applicant, 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.

(5) Intergovernmental consultation comments in accordance with *RD Instruction 1940-J and* **7 CFR, part 3015, subpart V.**

(6) Appraisals, accompanied by a copy of the appropriate environmental site assessment, if available. (Agency approval in the form of a Conditional Commitment may be issued subject to receipt of adequate appraisals.)

(7) For all businesses, a current (not more than 90 days old) balance sheet, a pro forma balance sheet at startup, and projected balance sheets, income and expense statements, and cash flow statements for the next 2 years. Projections should be supported by a list of assumptions showing the basis for the projections.

(8) Lender's complete written analysis, including spreadsheets of the balance sheets and income statements for the 3 previous years (for existing businesses), pro forma balance sheet at startup, and 2 years projected yearend balance sheets and income statements, with appropriate ratios and comparisons with industrial standards (such as Dun & Bradstreet or Robert Morris Associates). 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. The lender's credit analysis must address the borrower's management, repayment ability including a cash-flow analysis, history of debt repayment, necessity of any debt refinancing, and the credit reports of the borrower, its principals, and any parent, affiliate, or subsidiary.

(9) Commercial credit reports obtained by the lender on the borrower and any parent, affiliate, and subsidiary firms.

(10) Current personal and corporate financial statements of any guarantors.

(11) A proposed Loan Agreement or a sample Loan Agreement with an attached list of the proposed Loan Agreement provisions. The Loan Agreement must be executed by the lender and borrower before the Agency issues a Loan Note Guarantee. The following requirements must be addressed in the Loan Agreement:

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

(ii) Restriction on dividend payments.

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

(iv) Limitation on compensation of officers and owners.

(v) Minimum working capital or current ratio requirement.

(vi) Maximum debt-to-net worth ratio.

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

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

(ix) Repayment and amortization of the loan.

(x) List of collateral and lien priority for the loan including a list of persons and corporations guaranteeing the loan with a schedule for providing the lender with personal and corporate financial statements. Financial statements on the corporate and personal guarantors must be updated at least annually.

(xi) Type and frequency of financial statements to be required for the duration of the loan.

(xii) The final Loan Agreement between the lender and borrower will contain any additional requirements imposed by the Agency in its Conditional Commitment.

(xiii) A section *within the Loan Agreement will be established at this time* **for the later insertion of any necessary measures by the borrower to avoid or reduce adverse environmental impacts from this proposal's construction or operation. Such measures, if necessary, will be determined by the Agency through the completion of the environmental review process.**

(12) A business plan, which includes, at a minimum, a description of the business and project, management experience, products and services, proposed use of funds, availability of labor, raw materials and supplies, and the names of any corporate parent, affiliates, and subsidiaries with a description of the relationship. Any or all of these requirements may be omitted if the information is included in a feasibility study.

(13) Independent feasibility study, if required.

(14) 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 15D of the Act of 1934."

(15) For health care facilities, a certificate of need, if required by statute.

(16) A certification by the lender that it has completed a comprehensive analysis of the proposal, the applicant is eligible, the loan is for authorized purposes, and there is reasonable assurance of repayment ability based on the borrower's history, projections and equity, and the collateral to be obtained.

(17) Any additional information required by the Agency.

§§ 4279.162 - 4279.163 [Reserved]

§ 4279.164 Preapplication processing.

The purpose of a preapplication is to allow a lender and borrower 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 B&I program. The review and response to any complete preapplication must be timely. When you receive a preapplication, check to make sure the material is complete and signed by the appropriate parties. Do not accept any request not signed by a lender. Do the following when you receive a complete preapplication:

(a) Nonrelocation. If the loan is in excess of $1 million and will increase direct employment by more than 50 employees, immediately send seven copies of the completed Form 4279-2 to the National Office. You should discuss this issue with the lender to ensure employment projections are realistic to avoid delays in loan processing as a result of unnecessary Department of Labor clearances.

(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) Decision.

(1) Favorable response. Encourage the lender, in writing, to file a complete application if the project appears likely to meet the requirements to receive a B&I guarantee. Make it clear in your letter that your response is not an approval and list any major concerns that you have. Make sure that the lender knows exactly what items are required for a full application.

(2) Unfavorable response. Discourage the lender, in writing, from filing a complete application if your review indicates that the project will not meet minimum credit standards for a sound loan, if it is ineligible, if it lacks sufficient priority, or if there are other reasons, such as lack of funds, that will preclude the timely approval of the request. List all reasons for discouraging the application in your letter to the lender. Such a letter is not a denial and cannot be appealed. The lender and borrower may file a complete application in spite of receiving a letter of discouragement from the Agency, and you must accept and process it.

(d) Identification numbers.

(1) Case number. Use the state and county code number followed by:

(i) The Social Security Number of a borrower applying as a proprietorship. If the borrower is a husband and wife, either Social Security Number may be used.

(ii) The IRS tax identification number of an organization-type borrower.

(2) <u>Lender and holder identification</u>. A lender's and holder's IRS tax identification number will be used when an identification number is needed.

(e) <u>Rural Community Facilities Tracking System (RCFTS)</u>. Update RCFTS upon receipt of a preapplication and when any significant processing actions take place.

§ 4279.165 <u>Evaluation of application</u>.

(a) <u>General review</u>. 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, the lender will be informed in writing. Such notification will include the reasons for denial of the guarantee.

(1) Some lenders and borrowers will skip the preapplication process and submit a full application as the first contact with the Agency. In such cases, make sure that you take the nonrelocation and privacy actions described under preapplication review.

(2) Complete the priority worksheet (appendix C of this subpart) in accordance with § 4279.155 of this subpart. Enter the results in RCFTS.

(3) Use a processing checklist to review the application for completeness. Develop a processing checklist specific to the State or use appendix D of this subpart. Complete Part C of Form 4279-1 carefully. Ensure that the proposed borrower has adequate repayment ability based on a thorough analysis by the lender.

(4) As you review the application, attempt to review any concerns with the lender and develop any loan conditions that are necessary to meet Agency requirements in such a manner that they are also acceptable to the lender and the borrower.

(5) You or a designee 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, you only need 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 RCFTS and update as information or the application status changes.

(b) Environmental requirements. The environmental review process must be completed, in accordance with subpart G of part 1940 prior to the issuance of the Conditional Commitment, loan approval, or obligation of funds, whichever occurs first. *The environmental review process must be initiated as early as possible. 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 is 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 may establish a State loan committee on an ad hoc basis to review any B&I application. The makeup of such a committee is at the discretion of the State Director. If you hold a loan review meeting, minutes of the meeting, including any recommendations of the group, will be filed in the case file. Only Agency employees will be voting members of a State loan review committee. However, such a committee is advisory in nature. The State Director is solely responsible for all decisions, not the committee.

(d) Concurrence. *If concurrence of the National Office is necessary, promptly send the whole case file, with recommendations and the environmental review documents, 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 officers. If public comments on environmental issues or assessments are required, you should attempt to have the comment period completed as early as possible. However, if 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 the expiration of the comment period and the resolution of any comments.*

(e) National Office Executive Loan Committee. There will be a National Office Executive Loan (NOEL) Committee evaluation and recommendation for all B&I Guaranteed Loan making and servicing actions which are

in excess of delegated authorities given to Rural Development field offices. The core of the NOEL Committee will be composed of the Administrator, as the chairperson, Deputy Administrator for Business Programs, and Deputy Administrator for Cooperative Services. Other members of the NOEL may be designated, in writing, by the Administrator as he/she determines to be appropriate. All recommended actions presented to the NOEL Committee will be in written form with an oral presentation based on an objective analysis conducted by a National Office loan specialist. All general exceptions being considered by the Administrator will be reviewed by the NOEL Committee to determine consistency with applicable regulations, and the reasons will be documented prior to the granting of a general exception by the Administrator. An Informational Memorandum outlining the reasons for the general exceptions; recommendation of the State Director and the NOEL Committee; and reasons for granting the general exception, if inconsistent with recommendations with recommendations of the State Director and NOEL Committee, will be provided to the Under Secretary and to the Office of the General Counsel (OGC). The Administrator will address any concerns raised by either the Under Secretary or the OGC prior to issuing the exception. If no response is received within 48 hours (2 business days), the Administrator may issue the exception. (Added 07-25-01, PN 334.)

§ 4279.166 <u>Timeframe for processing applications.</u>

All guaranteed loan applications should be approved or disapproved, and the lender notified in writing not later than 60 days after receipt of a completed application, unless approval is prevented by lack of guarantee authority.

(a) If an application is not complete, the lender will be notified in writing not later than 20 days after receipt of the application by the Agency of the reasons the application is incomplete.

(b) When an application is disapproved, the written notification to the lender will state the reasons for disapproval and appropriate appeal rights will be provided.

§§ 4279.167 - 4279.172 [Reserved]

§ 4279.173 <u>Loan approval and obligating funds</u>.

(a) Upon approval of a loan guarantee, the Agency will issue a Conditional Commitment to the lender containing conditions under which a Loan Note Guarantee will be issued.

(b) If certain conditions of the Conditional Commitment cannot be met, the lender changes to the Conditional Commitment. Within the requirements of the applicable regulations and instructions and prudent lending practices, the Agency may negotiate with the lender and the applicant regarding any proposed changes to the Conditional Commitment

(c) The Conditional Commitment is a key processing step in the B&I process. You should make sure that the lender knows each condition of the guarantee listed in the commitment. You should tailor each Conditional Commitment to the project and go over each item in person with the lender's loan officers. All required measures identified in the Agency's environmental impact analysis for this 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. Most Conditional Commitment items should be incorporated into the Loan Agreement.

(d) 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 new lenders aware of the ramifications of negligent servicing.

(e) On loan applications within the State Director's loan approval authority, the State Director will submit to the National Office, Attn: Director, Business Programs Processing Division, the following information within 30 days after the Form 4279-3, "Conditional Commitment," has been accepted:

(1) A copy of Form 4279-3, "Conditional Commitment," as accepted by the lender and borrower.

(2) A copy of the State loan committee minutes, if available.

(3) A copy of the lender's credit analysis, financials, appraisals, etc.

(4) A copy of the proposed Loan Agreement between the lender and the borrower.

(5) When debt refinancing is involved, a copy of the justification for refinancing.

(6) The cover memorandum must indicate whether Form 4279-5, "Loan Note Guarantee," has been issued. If the Loan Note Guarantee has been issued, enclose a copy of the Lender Certification required by § 4279.181 of this subpart, and if not, a proposed date for issuance of the Loan Note Guarantee.

§ 4279.174 Transfer of lenders.

(a) The loan approval official may approve the substitution of a new eligible lender in place of a former lender who holds 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 loan conditions in the Conditional Commitment and the Loan Agreement remain the same.

(b) The new lender's servicing capability, eligibility, and experience will be analyzed by the Agency prior to approval of the substitution. The original lender will provide the Agency with a letter stating the reasons it no longer desires to be a lender for the project. The substituted lender must execute a new part B of Form 4279-1.

§ 4279.175 Domestic lamb industry adjustment assistance program set aside. (Added 10-30-00, SPECIAL PN.)

A 3-year set aside of B&I Guaranteed Loan Program funds has been established in the National Office to fund loans to lamb processors for real estate purchases and improvements, working capital, debt refinancing, and upgrading, replacing, and installing new processing and packaging equipment for domestic lamb packing and processing plants. The set aside is $15 million

for FY 2001, $5 million for FY 2002, and $5 million for FY 2003. These funds will be available through the third quarter of each year and, if not used, will revert to the general account.

§§ 4279.176 - 4279.179 [Reserved]

§ 4279.180 <u>Changes in borrower</u>.

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 <u>Conditions precedent to issuance of Loan Note Guarantee</u>.

The Loan Note Guarantee will not be issued until the lender, including a CLP lender, certifies to the following:

(a) 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.

(b) 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.

(c) Required hazard, flood, liability, worker compensation, and personal life insurance, when required, are in effect.

(d) Truth-in-lending requirements have been met.

(e) All equal credit opportunity requirements have been met.

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

(g) 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.

(h) When required, the entire amount of the loan for working capital has been disbursed except in cases where the Agency has approved disbursement over an extended period of time.

(i) When required, personal, partnership, or corporate guarantees have been obtained.

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

(k) Lien priorities are consistent with the requirements of the Conditional Commitment. No claims or liens of laborers, subcontractors, suppliers of machinery and equipment, or other parties have been or will be filed against the collateral and no suits are pending or threatened that would adversely affect the collateral when the security instruments are filed.

(l) The loan proceeds have been or will be disbursed for purposes and in amounts consistent with the Conditional Commitment and Form 4279-1. A copy of the detailed loan settlement of the lender must be attached to support this certification.

(m) 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 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.

(n) None of the lender's officers, directors, stockholders, or other owners (except stockholders in an institution that has normal stockshare requirements for participation) has a substantial financial interest in the borrower and neither the borrower nor its officers, directors, stockholders, or other owners has a substantial financial interest in the lender. If the borrower is a member of the board of directors or an officer of a Farm Credit System (FCS) institution that is the lender, the lender will certify that an FCS institution on the next highest level will independently process the loan request and act as the lender's agent in servicing the account.

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

(p) For projects other than turnkey operations where the Loan Note Guarantee will be issued at the time of loan closing, there are added risks to the Agency. During the review, the Agency should consider the added risk associated with issuing the Loan Note Guarantee prior to the substantial completion of the project. When negotiating the percent of guarantee with the lender, these risks should be considered in conjunction with the credit risks and the lender's experience in financing the type of project.

§§ 4279.182 - 4279.185 [Reserved]

§ 4279.186 <u>Issuance of the guarantee</u>.

(a) When loan closing plans are established, the lender will notify the Agency. Coincident with, or immediately after loan closing, the lender will provide the following to the Agency:

(1) Lender's certifications as required by § 4279.181 of this subpart.

(2) Executed Lender's Agreement.

(3) Form RD 1980-19, "Guaranteed Loan Closing Report," and appropriate guarantee fee.

(b) When the Agency is satisfied that all conditions for the guarantee have been met, the Loan Note Guarantee and the following documents, as appropriate, will be issued:

(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 the Assignment Guarantee Agreement; and

(2) Certificate of Incumbency. If requested by the lender, the Agency will provide the lender with a certification on Form 4279-7, "Certificate of Incumbency and Signature (Business and Industry)," of the signature and title of the Agency official who signs the Loan Note Guarantee, Lender's Agreement, and Assignment Guarantee Agreement. *Form 4279-7 will be signed by the supervisor of the Agency official who signs the Loan Note Guarantee, Lender's Agreement, and Assignment Guarantee Agreement.*

(c) The Agency may, at its discretion, request copies of loan documents for its file.

(d) There may be instances when not all of the working capital has been disbursed, and it appears practical to disburse the balance over a period of time. The State Director, after review of a disbursement plan, may amend the Conditional Commitment in accordance with the disbursement plan and issue the guarantee.

§ 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 requests additional time in writing and within the period allowed, the Agency may grant the request. If the lender satisfies the objections within the time allowed, the guarantee will be issued.

§§ 4279.188 - 4279.199 [Reserved]

§ 4279.200 OMB control number.

The information collection requirements contained in this regulation have been approved by OMB and have been assigned OMB control number 0575-0170. Public reporting burden for this collection of information is estimated to vary from 30 minutes to 54 hours per response, with an average of 27 hours per response, including time for reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, OIRM, Stop 7630, Washington, D.C. 20250. You are not required to respond to this collection of information unless it displays a currently valid OMB control number.

Attachments: Appendices A, B, C, and D.

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Guide for Completion of Feasibility Studies

A feasibility study by a recognized independent consultant may be required by the Agency for start-up businesses or existing businesses when the project will significantly affect the borrower's financial operations. An acceptable feasibility study should include, but not be limited to:

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

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

(c) Technical feasibility. Technical feasibility reports shall be prepared by individuals who have previous experience in the design and analysis of similar facilities or processes proposed in the application. The technical feasibility reports shall address the suitability of the selected site for the intended use including an environmental impact analysis. The report shall be based upon verifiable data and contain sufficient information and analysis so that a determination may be made on the technical feasibility of achieving the levels of income or production that are projected in the financial statements. The report shall also identify any constraints or limitations in these financial projections and any other facility or design-related factors which might affect the success of the enterprise. The report shall also identify and estimate project operating and development costs and specify the level of accuracy of these estimates and the assumptions on which these estimates have been based. For the purpose of the technical feasibility reports, the project engineer or architect may be considered an independent party provided 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.

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

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

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Guide for Sale or Structure of Guaranteed Loans

A. Methods of structuring loans.

(1) Treat the entire financial package of the borrower as one loan. Loan purposes may include one or any combination of working capital, machinery and equipment, real estate, etc.

(i) The loan must be amortized to provide repayment within the time limits established by Agency regulations.

(ii) One interest rate may be used for the entire loan or one interest rate on the unguaranteed portion and a lower interest rate on the guaranteed portion. A combination of fixed and variable rates will be allowed only when the guaranteed portion is the fixed rate.

(2) Treat the financial package of the borrower as separate loans that are processed as a single application.

(i) A separate loan is made for each term. For example, an approved application could include provisions for working capital and real estate. One loan for the working capital could be amortized over 7 years with another loan for the real estate amortized over 30 years.

(ii) Separate Form 4279-3, "Conditional Commitment," and Forms RD 1940-3, "Request for Obligation of Funds - Guaranteed Loans," and RD 1980-19, "Guaranteed Loan Closing Report," are required for each loan.

B. Methods for structuring notes for sale. Sale or assignment of the guaranteed portion of the loan must be in compliance with Agency regulations. The loan may be structured as follows:

(1) Single note system. The entire loan is evidenced by one note and one Loan Note Guarantee is issued. The lender may assign all or part of the guaranteed portion of the loan to one or more holders by using the Agency's Assignment Guarantee Agreement. The holder, upon written notice to the lender and the Agency, may reassign the unguaranteed portion of the loan sold under the Assignment Guarantee Agreement. Upon notice to the Agency and completion of the assignment through the use of Form 4279-6, "Assignment Guarantee Agreement (Business and Industry)," the assignee shall succeed to all rights and obligations of the holder thereunder. If this option is selected, the lender may not at a later date cause any additional notes to be issued.

Guide for Sa1(2) *__Multinote system__. Under this option the lender may provide for one note for the unguaranteed portion of the loan and no more than 10 notes for the guaranteed portion. When this option is selected by the lender, upon disposition the holder will receive one of the borrower's executed notes and a Loan Note Guarantee. The Agency will issue a Loan Note Guarantee for each note, including the unguaranteed note, to be attached to the note. An Assignment Guarantee Agreement will never be used when the multinote option is utilized.*

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BUSINESS AND INDUSTRY
APPLICATION PRIORITY POINTS SCORING

Date: ________________

Name____________________

State _____________________

List the maximum points the applicant is eligible for under each category. See § 4279.155 of this subpart for information on how to determine points.

1. Population priority.

Located in an unincorporated area or in a city with under 25,000 population. (10 points) ____

2. Community priority.

A. Located in an eligible area of long term population decline and job deterioration based on reliable statistical data. (5 points) ____

B. Located in a rural community that has remained persistently poor over the last 60 years. (5 points) ____

C. Located in a rural community that is experiencing trauma as the result of a natural disaster or experiencing fundamental structural changes in its economic base. (5 points) ____

D. Located in a city or county with an unemployment rate 125 percent of the statewide rate or greater. (5 points) ____

3. Empowerment Zone/Enterprise Community (EZ/EC). (Cannot exceed a total of 10 points).

A. Located in EZ/EC designated area. (10 points) ____

B. Located in a non-designated EZ/EC applicant community. (5 points) ____

4. *Loan features.*

A. Lender will price the loan at the Wall Street Journal published Prime Rate plus 1.5 percent or less. (5 points) ____

B. Lender will price the loan at the Wall Street Journal published Prime Rate plus 1 percent or less. (5 points) ____

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

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

5. *High impact business investment priorities (Total score for the following three categories:*

A. Industry.

(i) Industry that has 20 percent or more of its sales in international attractions. (5 points)

(ii) Industry that is not already present in the community. (5 points) ____

B. Business.

(i) Business that offers high value, specialized products and services that command high prices. (2 points) ____

(ii) Business that provides an additional market for existing local businesses. (3 points) ____

(iii) Business that is locally owned and managed. (3 points) ____

(iv) Business that will produce a natural resource value-added product. (2 points) ____

C. <u>Occupations</u> (Cannot exceed 10 points).

(i) Business that creates jobs with an average wage exceeding 125 percent of the Federal minimum wage. (5 points) ____

(ii) Business that creates jobs with an average wage exceeding 150 percent of the Federal minimum wage. (10 points) ____

6. State Director's administrative points: (May be up to 10 points). Attach justification. ____

Total points ____

__________________________ __________________

Signature *Date*

____

Title

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BUSINESS AND INDUSTRY LOAN PROCESSING CHECKLIST

Borrower ____ *State* _________________

Phone # ______________________

Lender ________________________________ *Type of Project* _________________

Purpose ____

LOAN PROCESSING

DOCUMENT	FORM NO.	TO BE PREPARED BY	TARGET DATE	DATE REC'D
Application for Loan Guarantee (Business and Industry)	4279-1 Part A Part B Part C			
Site Visit Report				
Business and Industry Application Priority Points Scoresheet	Appendix C RD Instruction 4279-B			
Request for Environmental Information	RD 1940-20			
Environmental Assessment for Class I Action	RD 1940-21			
Environmental Assessment for Class II Action	Exhibit H RD Instruction 1940-G			
Environmental Checklist for Categorical Exclusions	RD 1940-22			
Civil Rights Impact Analysis Certification	RD 2006-38			

LOAN PROCESSING (CONTINUED)

DOCUMENT	FORM NO.	TO BE PREPARED BY	TARGET DATE	DATE REC'D
Certification of Non-Relocation and Market and Capacity Information Report	4279-2			
Intergovernmental Consultation Comments				
Financial Statements for past 3 years Balance Sheet & Profit & Loss Statement				
2 years of Projected Financial Statements Pro-forma Balance Sheet & Profit and Loss Statement				
Guarantor's Financial Statements				
Copy of Lender's Loan Analysis				
Credit Reports Business Personal				
Interim Financial Statements				
Feasibility Study or Business Plan				

LOAN PROCESSING (CONTINUED)

DOCUMENT	FORM NO.	TO BE PREPARED BY	TARGET DATE	DATE REC'D
Appraisals Real Property- General Real Property Appraiser Certification				
Lender's Proposed Loan Agreement				
Securities & Exchange Commission Report				
Conditional Commitment	4279-3			
State Loan Committee Minutes				
State Director's Cover memorandum to National Office				
Project Announcement to Congressional Liaison	Exhibit B of RD Instruction 2015-C			
Request for Obligation of Funds Guaranteed Loans	RD 1940-3			

LOAN CLOSING

DOCUMENT	FORM NO.	TO BE PREPARED BY	TARGET DATE	DATE REC'D
Lender Certification §4279.181 of this subpart				
No major changes				
Planned acquisitions and development complete				
Required insurance in effect				
Truth in Lending				
Equal credit opportunity requirements met				
Loan properly closed				
Marketable title to all collateral				
Entire loan advanced				
Personal/corporate guarantees obtained				
All requirements of the Conditional Commitment are met				
Required liens obtained				
Loan proceeds advanced for approved purposes				
No adverse change in borrower				

LOAN CLOSING (CONTINUED)

DOCUMENT	FORM NO.	TO BE PREPARED BY	TARGET DATE	DATE REC'D
Loan Settlement Statement				
Promissory Note				
Security Documents				
Current financial statement obtained				
Guaranteed Loan Closing Report	RD 1980-19			
Lender's Agreement (Business and Industry)	4279-4			
Loan Note Guarantee (Business and Industry)	4279-5			
Assignment Guarantee Agreement (Business and Industry)	4279-6			

Note: The above are nationwide requirements and may be supplemented as needed to meet State needs.

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