

PART 4279 - GUARANTEED LOANMAKING

Subpart B - Business and Industry Loans

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PART 4279 - Guaranteed Loanmaking

Subpart B - Business and Industry Loans

§ 4279.101 Introduction.

(a) **Content.** This subpart contains loan processing regulations for the Business and Industry (B&I) Guaranteed Loan Program. It is supplemented by subpart A of this part, which contains general guaranteed loan regulations, and subpart B of part 4287 of this chapter, which contains loan servicing regulations.

(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 fees. (Revised 10-03-05, SPECIAL PN.)

For all new loans there are two types of non-refundable guarantee fees to be paid by the lender. The fees may be passed on to the borrower. The fees may be forwarded to the Agency through an electronic funds transfer system or, at the Agency's discretion, by a check payable to USDA using a USDA-approved form.

(a) Initial guarantee fee. The initial fee is paid at the time the Loan Note Guarantee is issued. The fee may be included as an eligible loan purpose in the guaranteed loan. The fee will be the rate (a specified percentage not to exceed 2 percent) multiplied by the principal loan amount, multiplied by the percent of guarantee. Subject to specified annual limits set by the Agency, the initial guarantee fee may be reduced to 1 percent if the borrower's business supports value-added agriculture and results in farmers benefiting financially, or

(1) is a high impact business development investment in accordance with § 4279.155(b)(5), and

(2) is located in a rural community that:

(i) is experiencing long-term population decline and job deterioration, or

(ii) has remained persistently poor over the last 60 years, or

§ 4279.107(a)(2) (Con.)

(iii) is experiencing trauma as a result of natural disaster,
or

(iv) is experiencing fundamental structural changes in its
economic base.

(3) 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.

(b) Annual renewal fee. The annual renewal fee is paid once a year and is required to maintain the enforceability of the guarantee as to the lender.

(1) The rate of the annual renewal fee (a specified percentage) is established by Rural Development in an annual notice published in the Federal Register, multiplied by the outstanding principal loan balance as of December 31 of each year, multiplied by the percent of guarantee. The rate is the rate in effect at the time the loan is obligated, and will remain in effect for the life of the loan.

(2) Annual renewal fees are due on January 31. Payments not received by April 1 are considered delinquent and, at the Agency's discretion, may result in cancellation of the guarantee to the lender. Holders' rights will continue in effect as specified in the Loan Note Guarantee and Assignment Guarantee Agreement. Any delinquent annual renewal fees will bear interest at the note rate and will be deducted from any loss payment due the lender. For loans where the Loan Note Guarantee is issued between October 1 and December 31, the first annual renewal fee payment will be due January 31 of the second year following the date the Loan Note Guarantee was issued.

§ 4279.108 Eligible borrowers.

(a) Type of entity. A borrower may be a cooperative organization, corporation, partnership, or other legal entity organized and operated on a profit or nonprofit basis; an Indian tribe on a Federal or State reservation or other Federally recognized tribal group; a public body; or an individual. A cooperative organization is a cooperative or an entity, not chartered as a cooperative, that operates as a cooperative in that it is owned and operated for the benefit of its members, including the manner in which it distributes its dividends and assets. 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: (Revised 12-22-04, PN 381.)

- (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 and other renewable energy systems (including wind energy systems, geothermal energy systems, and anaerobic digesters for the purpose of energy generation). (Revised 12-22-04, PN 381.)

(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, except for cooperative organizations financed in accordance with paragraph (d)(3) of this section. Loans to borrowers with facilities located in both rural and non-rural areas will be limited to the amount necessary to finance the facility located in the eligible rural area, except for cooperative organizations financed in accordance with paragraph (d)(3) of this section. Rural areas are any areas other than: (Revised 12-22-04, PN 381.)

(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.

(3) *Individuals that reside 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, regardless of whether they may ultimately lead to acquiring a permanent green card, do not meet this requirement, e.g., E-2 or E-5 immigrant visas. (Added 10-26-11, PN 452.)*

(4) *Applications may not be approved subject to meeting citizenship requirements. (Added 10-26-11, PN 452.)*

(d) Loans to cooperative organizations. (Added 12-22-04, PN 381.)

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

(2) Cooperative organizations that are headquartered in a non-rural area may be eligible for a B&I loan if the loan is used for a project or venture that is located in a rural area.

(3) B&I loans to eligible cooperative organizations may also be made in non-rural areas provided:

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

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

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

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

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

(e) Other Credit. 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.* (Renumbered 12-22-04, PN 381.)

§§ 4279.109 - 4279.112 [Reserved]

§ 4279.113 Eligible loan purposes.

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. (Revised 12-22-04, PN 381.)

(j) Purchase of cooperative stock by individual farmers or ranchers in a farmer or rancher cooperative established for the purpose of processing an agricultural commodity. (Added 12-22-04, PN 381.)

(1) The cooperative may contract for services to process agricultural commodities or otherwise process value-added agricultural products during the 5-year period beginning on the operation startup date of the cooperative in order to provide adequate time for the planning and construction of the processing facility of the cooperative.

(2) Notwithstanding §§ 4279.131(d) and 4279.137, the individual farmer or rancher may provide financial information in the manner that is generally required by commercial agricultural lenders in order to obtain a loan.

§ 4279.113 (Con.)

(k) Aquaculture, including conservation, development, and utilization of water for aquaculture. (Renumbered 12-22-04, PN 381.)

(l) Commercial fishing. (Renumbered 12-22-04, PN 381.)

(m) 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. (Renumbered 12-22-04, PN 381.)

(n) Forestry, which includes businesses primarily engaged in the operation of timber tracts, tree farms, and forest nurseries and related activities such as reforestation. (Renumbered 12-22-04, PN 381.)

(o) The growing of mushrooms or hydroponics. (Renumbered 12-22-04, PN 381.)

(p) 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. (Renumbered 12-22-04, PN 381.)

(q) Feasibility studies. (Renumbered 12-22-04, PN 381.)

(r) 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. Except as provided for in § 4279.108(d)(4) of this subpart, 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) and the lender is providing better rates or terms. Subordinated owner debt is not eligible under this paragraph. Unless the amount to be refinanced is owed directly to the Federal government or is Federally guaranteed, the existing lender debt refinancing must be a secondary part (less than 50 percent) of the overall loan. (Revised 03-21-07, PN 407.)

(s) 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. (Renumbered 12-22-04, PN 381.)

(t) Fees and charges for professional services and routine lender fees. (Renumbered 12-22-04, PN 381.)

(u) Agency guarantee fee. (Renumbered 12-22-04, PN 381.)

(v) Tourist and recreation facilities, including hotels, motels, and bed and breakfast establishments, except as prohibited under ineligible purposes. (Renumbered 12-22-04, PN 381.)

(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.

(w) Educational or training facilities. (Renumbered 12-22-04, PN 381.)

(x) Community facility projects which are not listed as an ineligible loan purpose such as convention centers. (Renumbered 12-22-04, PN 381.)

(y) Constructing or equipping facilities for lease to private businesses engaged in commercial or industrial operations. (Renumbered 12-22-04, PN 381.)

(z) 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. (Renumbered 12-22-04, PN 381.)

§ 4279.113 (Con.)

(aa) Community antenna television services or facilities. (Renumbered 12-22-04, PN 381.)

(bb) Provide loan guarantees to assist industries adjusting to terminated Federal agricultural programs or increased foreign competition. (Renumbered 12-22-04, PN 381.)

(cc) To finance energy projects. Commercially available energy projects that produce biomass fuel or biogas as an output must have completed two operating cycles at design performance levels submitted to the Agency. Projects that produce steam or electricity as an output must have met or exceeded acceptance test performance criteria submitted to the Agency and be successfully interconnected with the purchaser of the output. Performance or acceptance test requirements for all other energy projects will be determined by the Agency on a case by case basis. Financing for energy projects will only be allowed when the facility has been constructed according to plans and specifications and is producing at the quality and quantity projected in the application. (Added 07-26-06, PN 400.)

§ 4279.114 Ineligible purposes.

(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: (1) the guaranteed and unguaranteed portions; (2) the outstanding principal and interest balance of any existing Agency guaranteed loans; and (3) new loan request, must not exceed \$10 million, except as outlined in paragraphs (a)(1) and (2) of this section.
(Revised 12-22-04, PN 381.)

(1) The Administrator may, at the Administrator's discretion, grant an exception to the \$10 million limit for loans of \$25 million or less under the following circumstances: (Revised 12-22-04, PN 381.)

(i) 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;

(ii) The lender must document to the satisfaction of the Agency that the loan will not be made and the project will not be completed if the guarantee is not approved;

(iii) The percentage of guarantee will not exceed 60 percent. No exception to this requirement will be approved under subsection (b) of this section for loans exceeding \$10 million; and

(iv) 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.

(2) The Secretary, whose authority may not be redelegated, may approve guaranteed loans in excess of \$25 million, at the Secretary's discretion, for rural cooperative organizations that process value-added agricultural commodities in accordance with § 4279.108(d)(1) of this subpart.

(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;

§ 4279.119(b)

(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.

(1) A minimum of 10 percent tangible balance sheet equity will be required for existing businesses at loan closing. A minimum of 20 percent tangible balance sheet equity will be required for new businesses at loan closing. For energy projects, the minimum tangible balance sheet equity requirement range will be between 25 percent and 40 percent. Criteria for considering the minimum equity required for an individual application will be based on: existing businesses with successful financial and management history

vs. start-up businesses; personal/corporate guarantees offered; contractual relationships with suppliers and buyers; credit rating; and strength of the business plan/feasibility study. Where the application is a request to refinance outstanding Federal direct or guaranteed loans, without any new financing, the equity requirement may be determined using adjusted tangible net worth. An application that combines a refinancing guarantee request with a new loan guarantee request is subject to the standard, unadjusted, equity requirement except as provided in paragraphs (d)(1)(i) or (d)(1)(ii) of this section. Increases or decreases in the equity requirements may be imposed or granted as follows: (Revised 07-26-06, PN 400.)

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

(A) 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

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

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

(2) The equity requirement must be met in the form of either cash or tangible earning assets contributed to the business and reflected on the balance sheet. *For sole proprietorships, financial statements should be prepared using only the assets and liabilities directly attributable to the business. Additionally, personal financial statements typically list assets at market values. The business assets must be valued at the lower of cost or market value*

§ 4279.131 (d)(2) (Con.)

before calculating tangible balance sheet equity. Related party receivables routinely are classified as non-current assets, unless they will be repaid within one year. These receivables do not represent a liquid asset convertible to cash and available for business operations because of the nature of the affiliation and the absence of pressure to repay the receivables. The Loan Specialist should determine why the receivable was incurred and that repayment ability exists. Most banks deduct any amount due from officers or partners from total equity. For example, an officer may have taken a loan from the company instead of a salary or bonus. This receivable is, in effect, an expense not recognized by the company, thus improving its profitability. As a prudent lending practice, the Agency must make the appropriate adjustment in the event the lender does not. Obtain a copy of any applicable promissory note to document collectibility.

(3) The lender must certify that the equity requirement was determined using balance sheets prepared in accordance with GAAP and met upon giving effect to the entirety of the loan in the calculation, whether or not the loan itself is fully advanced, as of the date the guaranteed loan is closed. The final Loan Agreement must contain all conditions of the Conditional Commitment, including the tangible balance sheet equity requirement. Therefore, the business must meet the requirement before the lender executes the final loan documents and closes the loan. The lender must provide a certification to the Agency that tangible balance sheet equity was calculated from financial statements presented in accordance with GAAP and supported by attaching a copy of the balance sheet on which the certification is based.

(4) 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. 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.

§ 4279.131(d) (Con.)

(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). In accordance with USPAP, the Agency will require documentation that the appraiser has the necessary experience and competency to appraise the property in question. 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. *To protect the interest of the lender and Agency, the lender should complete and submit its technical review of the appraisal.* For additional guidance and information concerning the completion of real property appraisals, refer 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. (Revised 10-26-11, PN 452.)

§§ 4279.145 - 4279.148 [Reserved]

§ 4279.149 Personal and corporate guarantees. (Revised 05-16-07, PN 409.)

(a) Unconditional personal and corporate guarantees are part of the collateral for the loan, but are not considered in determining whether a loan is adequately secured for loanmaking purposes. Agency approved personal and corporate guarantees for the full term of the loan and at least equal to the guarantor's percent interest in the borrower, times the loan amount are required from those owning at least 20 percent interest in the borrower, unless the lender documents to the Agency's satisfaction that collateral, equity, cashflow, and profitability indicate an above-average ability to repay the loan. The guarantors will execute Form RD 4279-14, "Unconditional Guarantee." *A signature section must be created and in accordance with applicable law. The signature block must include the legal name of the individual or entity signing the Guarantee and, where applicable, the name and title of the authorized representative who will execute the document on its behalf. For instructions on how to complete an enforceable signature block that complies with applicable state law, consult with the Regional Attorney.* When warranted by an Agency assessment of potential financial risk, Agency approved guarantees may also be required of parent, subsidiaries, or affiliated companies (owning less than a 20 percent interest in the borrower) and require security for any guarantee provided under this section.

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

§ 4279.150 Feasibility studies.

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 Loan priorities.

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 lender's 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).

§ 4179.155 (b) (Con.)

(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).

§ 4279.155(b)(2) (Con.)

- (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 Planning and performing development.

(a) Design policy. 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) Project control. 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) Equal opportunity. 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) Americans with Disabilities Act (ADA). 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. Guaranteed loans of \$600,000 and less may be processed under paragraph (b) or (c) of this section, but guaranteed loans exceeding \$600,000 must be processed under paragraph (b) of this section. (Revised (Revised 12-22-04, PN 381.)

(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.

§ 4279.161(a)(1) (Con.)

(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) Applications. 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 1970-I and 7 CFR, part 3015, subpart V.* (Revised 01-18-12, SPECIAL PN.)

(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.

§ 4279.161(b)(11) (Con.)

- (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.

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(c) Applications of \$600,000 and less. Guaranteed loan applications may be processed under this paragraph if the request does not exceed \$400,000. Beginning in fiscal year 2004, this limit may be increased on a case-by-case basis to \$600,000 provided that the Agency determines that there is not a significant increased risk of a default on the loan. *State Offices should document in the case file why there is not a significant increased risk of a default on the guaranteed loan.* Applications may be resubmitted under paragraph (b) of this section when the application under this paragraph contains insufficient information for the Agency to guarantee the loan. Applications submitted under this paragraph must use the Agency's short application form [Form 4279-1A, "Application for Loan Guarantee (Business and Industry Short Form - One-Doc)] and include the information contained in paragraphs (b)(3), (5), (7), (8), and (11) of this section. The lender must have the documentation identified in paragraph (b) of this section, with the exception of paragraphs (b)(1), (2), (14), and (15), available in its file for review. *State Offices will spot check the lenders' files, especially appraisals for compliance with § 4279.144 of this subpart, for loans processed under this paragraph during lender visits. If documentation is not present or is not adequate, that lender should be required to submit all of the documentation required to be in its file as outlined above for future applications.* (Added (Revised 12-22-04, PN 381.)

§§ 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.

§ 4279.164(b) (Con.)

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

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

§ 4279.165 Evaluation of application.

(a) General review. The Agency will evaluate the application and make a determination whether the borrower is eligible, the proposed loan is for an eligible purpose, there is reasonable assurance of repayment ability, there is sufficient collateral and equity, and the proposed loan complies with all applicable statutes and regulations. If the Agency determines it is unable to guarantee the loan, 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.

§ 4279.165(a) (Con.)

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

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

(b) Environmental requirements. The environmental review process must be completed, in accordance with 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 are available through the State Environmental Coordinator and should be obtained whenever any complex or controversial environmental issues are expected.

(c) State loan committee. The State Director will establish a State loan committee to review all B&I loan applications, changes in conditions, and loan servicing actions of a monetary-type nature. The makeup of such a committee is at the discretion of the State Director; however, only Agency employees will be members of a State loan committee. This committee is advisory in nature as the State Director is solely responsible for all decisions. Each State Office will develop and maintain written procedures that identify elements of the State loan committee process, such as the members of the committee, what documents are to be prepared for and signed by the committee, and procedures for resolving any differences of opinion among members. A State loan committee operational file should be established that contains copies of loan packages and related materials. However, minutes of the meeting, including recommendations of the committee, should also be filed in the individual case file. (Revised 03-23-05, PN 384.)

(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 specialists. 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 Loan Committees. The Administrator will establish a National Office Executive Loan (NOEL) Committee and a National Office Business and Industry (NOBI) Committee to review all B&I loan applications, changes in conditions, and loan servicing actions of a monetary-type nature that are in excess of authorities delegated to State Directors. The NOEL Committee will be composed of the Administrator, as the chairperson and approval official, and at least two other Agency staff members as designated by the Administrator. The NOBI Committee will be composed of the Business and Industry Division Director, as the chairperson and approval official, and two other B&I staff members designated by the B&I Division Director. Other members of the committees may be designated, in writing, by the chairperson and approval official as he/she determines to be appropriate; however, only Agency employees may be voting members. These committees are advisory in nature as the approval official is responsible for the decisions. All recommendations will be in written form based on an objective analysis conducted by a National Office loan specialist. All requests for exceptions being considered by the Administrator will be reviewed by the NOEL Committee in accordance with RD Instruction 4279-A, § 4279.15. Written procedures that identify elements of the loan committee process will be developed and maintained by the B&I Division.
(Revised 11-18-10, PN 443.)

§ 4279.166 Timeframe for processing applications.

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 Loan approval and obligating funds.

(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.

§ 4279.173 (Con.)

(b) If certain conditions of the Conditional Commitment cannot be met, the lender and applicant may propose alternate conditions. 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. The Conditional Commitment should be issued to the lender and borrower on or after the obligation date. You should tailor each Conditional Commitment to the project and ensure that the lender understands each item. All required measures identified in the Agency's environmental assessment 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. Requirements of the Conditional Commitment, including the equity requirement, must be incorporated into the Loan Agreement in accordance with § 4279.161(b)(11)(xii). (Revised 03-23-05, PN 384.)

(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 lenders aware of the ramifications of negligent servicing.

(e) The National Office will review a sample of loans based on the number of loans approved by the State Office. Failure to submit these reviews when requested by the National Office could result in suspension of loan approval authority. Upon request by the National Office, the entire case file will be submitted to the attention of the Director, B&I Division. (Revised 11-18-10, PN 443.)

§ 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 Changes in borrower.

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

§ 4279.181 Conditions precedent to issuance of Loan Note Guarantee.

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.

§ 4279.181 (Con.)

(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.

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(Added 10-30-00, SPECIAL PN.)

(12-23-96) SPECIAL PN

§ 4279.181 (Con.)

(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 Issuance of the guarantee.

(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, D, and E.

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Guide for Completion of Feasibility Studies

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

(A) Executive Summary

	<i>Introduction/Project Overview (Brief general overview of project location, size, etc.)</i>
	<i>Economic feasibility determination/opinion</i>
	<i>Technical feasibility determination/opinion</i>
	<i>Market feasibility determination/opinion</i>
	<i>Financial feasibility determination/opinion</i>
	<i>Management feasibility determination/opinion</i>
	<i>Recommendations for implementation</i>

(B) Economic Feasibility

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

(C) Market Feasibility

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

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

(D) Technical Feasibility

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

(E) Financial Feasibility

	<i>Reliability of the financial projections and assumptions on which the financial statements are based. Two years (minimum) projected Balance Sheets, Income Statements, and Cash Flow Statements, including Sensitivity Analysis.</i>
	<i>Ability of the business to achieve the projected income and cash flow.</i>
	<i>Assessment of the cost accounting system.</i>
	<i>Availability of short-term credit for seasonable business.</i>
	<i>Risks Related to: The Offering Applicant Financing Plan Operational Units Tax Issues</i>

(F) Management Feasibility

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

(G) Qualifications

	<i>A resume or statement of qualifications of the author of the feasibility study, including prior experience, should be submitted.</i>
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Additional resources, that may be useful, include the following guides:

Considerations When Selecting a Consultant at:

<http://www.extension.iastate.edu/agdm/wholefarm/html/c5-60.html>

When to do and How to Use a Feasibility Study at:

<http://www.extension.iastate.edu/agdm/wholefarm/pdf/c5-64.pdf>

What is a Feasibility Study at:

<http://www.extension.iastate.edu/agdm/wholefarm/pdf/c5-65.pdf>

Feasibility Study Outline at:

<http://www.extension.iastate.edu/agdm/wholefarm/pdf/c5-66.pdf>

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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 Sal(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. Occupations (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 Instruc- tion 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 Instruc- tion 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 Instruc- tion 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 opportu- nity 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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CREDIT EVALUATION GUIDANCE

Part A -	Five Factors of Credit
Part B -	Lender's Financial Analysis and Financial Ratios
Part C -	Project Summary Guidance
Part D -	Loan Classifications

(A) Five Factors of Credit.

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

The regulations require lender's credit evaluations to address each of the following factors.

The relative weight assigned to each credit factor varies with the circumstances of the loan being evaluated. The general description of each credit factor is provided below.

(i) Credit-Worthiness or Character.

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

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

(ii) Cash flow or Capacity.

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

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

(iii) Capital.

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

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

(iv) Collateral.

This factor refers to the security pledged on the loan. The amount of collateral taken must comply with regulatory requirements. It should reasonably protect the lender, provide the necessary control of repayment, and leave the borrower in a position to constructively manage the business. The type, quality, and location of collateral are relevant factors used to assess collateral adequacy and appropriate level of discounting.

A parity or junior lien position may be considered provided the value of the collateral is adequate to secure the loan.

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

Points to consider include:

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

Depending on the program and type of collateral, market value is discounted when determining the loan-to-value ratio. Collateral must have documented value sufficient to protect the interest of the lender and the Agency. The discounted value of the collateral will normally be at least equal to the loan amount. Lenders shall discount collateral consistent with sound loan-to-value policy and the lender's policies, procedures, and lending practices.

It may be acceptable for businesses that are predominately cash flow orientated that are supported by a successful and documented financial history where cash flow is strong to have loan-to-value coverage discounted accordingly. Under no circumstances shall the loan-to-value ratio (loan to market value) exceed 1.0. (See §4279.131 b of this Instruction) Factors to be considered in the discounted value of collateral should include the type and marketability of collateral and alternative uses of the collateral. That is, specialized buildings or equipment will be discounted greater than multipurpose facilities or equipment. General guidelines typically include discounting general-use real estate and improvements to 70 - 80% of market value, equipment to 50 - 70% of market value, raw inventory and finished inventory to 50 - 60% of book value, and receivables (less than 90 days) 50 - 75% of book value. Typically, work (inventory) in process and receivables older than 90 days are discounted to \$0 value. Individual cases, local markets, audits of inventory and receivables, and other economic factors will impact discounted collateral values. If more generous discounting is used, the decision to do so and the reasoning involved in the decision should be thoroughly documented in the loan file.

(v) Conditions.

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

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

B. LENDER FINANCIAL ANALYSIS AND FINANCIAL RATIOS.

1. Lender Financial Analysis Requirements.

- a. *The lender is responsible for obtaining and forwarding to the Agency the financial statements required by the Loan Agreement. The lender is responsible for providing the Agency with:*
 - i. *an analysis of the borrower's financial statements (including spreadsheets); and*
 - ii. *a written trend analysis that compares the borrower's year-to-year historical financial information. The lender's analysis should also include a borrower ratio comparison to industry standards for similar size businesses. The lender's written analysis to the Agency must include the borrower's strengths, weaknesses, and extraordinary transactions. The analysis should identify any loan agreement violations and other indications of the financial condition of the borrower. The lender will submit the annual financial statements to the Agency, along with its spreadsheets and written analysis, within 120 days of the end of the borrower's fiscal year. Upon receipt, your office should spread and analyze the borrower's annual financial statements. A copy of the analysis will be filed in the case file.*

- b. *It is the Agency's position that, at a minimum, a reasonably prudent lender would prepare the ratios identified below and provide this information to the Agency, along with its written summary of the analysis. Promptly obtaining and reviewing financial information from the borrower can reveal financial red flags that indicate problems the borrower may be experiencing and has not disclosed. These indicators provide guidance for adequately servicing the loan. A review of the financial statements assists the lender and State Office in determining the appropriate action that will maximize recovery to the Agency. It is important to note that every borrower is different. As such, we recognize economic conditions change, industry conditions are not constant, and public policy and community relations affect how lenders deal with problem loans.*

- c. A nonexclusive list of the lender's servicing responsibilities is contained on Form RD 4279-4, "Lender's Agreement," paragraph IV. The lender's servicing responsibilities include obtaining compliance with the loan covenants and getting the borrower's periodic financial statements, as required by the Loan Agreement.
- d. We must increase our efforts to obtain financial statements, review lenders analyses, and provide follow-up to lenders on servicing deficiencies. Our files should be documented to show our attempts to obtain the required information.
- e. For loan processing, it is the Agency's position that a reasonably prudent lender's financial analysis would consist of a complete, written analysis discussing: (1) adequacy of equity; (2) cash flow and repayment ability (including a cash-flow analysis); (3) collateral; (4) borrower's management; (5) the borrower's history of credit and debt repayment; and (6) the necessity of any debt refinancing, (which should address the eligibility criteria outlined in RD Instruction 4279-B). The lender's analysis must also include spreadsheets of the balance sheets and income statements for 3 historical years and 2 projected years as well as a pro forma balance sheet at loan closing that reflects the post-closing status. These spreadsheets should be common-sized and the figures compared to industry standards.
- f. In addition, the State Office should place increased emphasis on maintaining the GLS in a current status on all Business and Industry (B&I) guaranteed loans, which includes reporting all nondelinquent problem loans into GLS. The B&I Guaranteed Loan Program is growing, and it is important that the Agency properly monitor guaranteed lenders to minimize potential losses to the Government. As part of the Business and Cooperative Programs Assessment Reviews, the National Office has implemented an observation and comparison of nondelinquent problem loans serviced by the State Office and the numbers reported in the GLS. Periodically, you may also be asked to submit your GLS reports of nondelinquent problem loans to the National Office for spot reviews.
- g. In accordance with RD Instruction 4280-B, §4280.152(a), all Section 9007 Rural Energy for America guaranteed loans are to be serviced in accordance with RD Instruction 4287-B, §4287.107.

2. Financial Ratios

The Agency would generally expect the lender's credit analysis to include the following financial ratios in the credit analysis.

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

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

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

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

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

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

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

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

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

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

- f. Times-Interest-Earned Ratio: Measures what proportion of the company earnings is needed to pay interest on its debt. A ratio of 1 is almost mandatory, since a lower ratio would indicate company earnings are insufficient to cover the interest on its debt.
(Earnings before taxes + Interest expense) / (Interest expense)
- g. Debt Service Coverage Ratio: Measures the proportion of a company's net profit and noncash expenses that will be needed to pay the principal portion of long-term debt in the coming year.
(Net profit + Depreciation + Other non-cash charges) / (Current maturities of long-term debt)
- h. Return-On-Sales Ratio (or Net Profit Margin): Measures the extent to which revenues of a company exceed all its expenses, that is, how much profit the company earns on each dollar of sales.
(Profits before taxes) / (Net sales)
- i. Return-on-Assets: Measures the profitability of a company in terms of how efficiently it uses its assets.
(Profit before taxes) / (Total assets)
- j. Return-on-Equity Ratio: A high return, normally associated with effective management, could indicate an under-capitalized firm. A low return, usually an indicator of inefficient management performance, could reflect a highly capitalized, conservatively operated business.
(Profit before taxes) / (Tangible net worth)

C. Project Summary Guidance, Form RD 4279-1 Part C.

1. Lender: In addition to the lender's name, address, and loan officer, please include the lender's proximity to the business and State. If it is within the lender's normal servicing area, include information on the lender's capitalization, which can be obtained for federally insured institutions, from (http://www2.fdic.gov/Call_TFR_Rpts/). It will not have information for State chartered banks. Also indicate if the lender has any previous experience with Agency programs and include Guaranteed Loan Service (GLS) report GLSLN02 as an attachment. You also should document the lender's commercial lending experience and expertise to ensure the lender meets the requirements of RD Instruction 4279-A, § 4279.29(c).

2. Community and Jobs Impact:

- a. Jobs Impact - The job information should be tied to application information, especially Form RD 4279-2, if completed. Discrepancies in numbers should be resolved and the final figures reflected here. This information should also be the same as information reported in GLS.
- b. Community Benefits - Include information for average salary by State and by industry which can be found through research on the internet. Most States have a Web site for Department of Labor, Workforce Development, etc., where this information is published. The U.S. Department of Labor, Bureau of Labor Statistics has a substantial amount of information (www.bls.gov/cew/home.htm). Indicate source used to obtain the information and the date of the information.

3. Business Reputation and Credit History: The history of the borrower in meeting past obligations (credit report) should be discussed. Indicate the financial strength of the guarantors and the results of the review of personal and corporate guarantors' financial statements.

4. Financial Position (Pro Forma Equity Position and Solvency): Indicate the existing tangible balance sheet equity (TBE) position of the applicant, the proposed TBE of the applicant at loan closing, what the proposed minimum requirement by the Agency is and how they are meeting the requirement if additional cash injection is necessary. If proposing more than the stated minimum in the regulations, discuss why. Discuss intangible assets (including loan closing costs) that will not be considered in the calculation. Verify questionable classifications of assets that are typically intangible if the lender states it is normal for the industry.

5. Feasibility and Repayment Ability:

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

- b. Management Experience - Indicate the experience of existing management, proposed changes to management, etc. Identify by person who is responsible for operating the business (plant manager, CEO, CFO, President, Vice Presidents of Marketing, etc.).
- c. Lease or Contractual Commitments - Describe professional relationships (consultants) that are existing and planned. Also describe any contractual agreements for products or services. Include such items as signed contracts, contracts in negotiations, etc.
- d. Historical Trends - This should be a brief overview describing the business as it has operated in the past and how it is operating currently. Discuss how the loan will affect the operations, efficiencies, and plans of the business.
- e. Comparison with RMA Industry Averages - This section addresses the trends of the critical ratios (liquidity, leverage, coverage, profitability, and activity), including the impact of major changes to the operating cycle. All of these activities affect cash flow and the need for additional working capital. Comments should cover the lender's intent, or lack thereof, to provide additional working capital for borrower's ongoing cash needs. As required by § 4279.161(b), financial statements required by the application process include cash flow statements. The lender is responsible for conducting a cash-flow analysis as part of determining repayment ability.
- f. Basis for Projections - Comment on the assumptions and if they support the financial projections. Assumptions include items such as cost of supplies, prices of end product, existing and proposed contracts, cost of labor, controlling expenses, expanding or maintaining markets, and industry information on the future of the business. Indicate the applicable coverage ratios (including debt service coverage, times interest earned) in addition to an opinion on the borrower's projections to increase product, sales, income, etc., or the decrease in operating expenses which will also affect the net income.
- g. Outlook - Address the current and future plans of the business to support the loan request. Specifically, address any plans by the borrower to redirect their efforts or change markets, products, client base, consultants, etc. Conclude with the anticipated impact on changes supported by any independent verification or research of the facts.

6. Collateral: Identify the appraised value of the collateral; the adequacy of the appraisal; the results of the Administrative Review of the appraisal; the lien position proposed and recommended; and the loan-to-market value and loan-to-discounted value. State if the coverage is acceptable and in accordance with regulation. Consider greater discounting if collateral is specialized. Identify the condition of the existing collateral and any concerns or mitigating measures necessary to secure or enhance collateral position. If refinancing another lender's debt, discuss the collateral position of the lender in relation to the position being accepted by the Agency on the guaranteed loan.
7. Environmental: Include a discussion of any permits required, violations, etc. Indicate the level of environmental review completed by the Agency and why. Environmental forms supporting the review should be completed in their entirety. If the Finding of No Significant Environmental Impact comment period is the only thing remaining to complete the Environment Assessment, you may submit the request to the National Office, but the National Office will not take action until the comment period has expired and all comments have been addressed. Identify mitigation measures necessary during the environmental process and state if they have been discussed with the lender. Mitigation measures should be identified in the proposed Conditional Commitment and included in the final Loan Agreement, including any remediation measures recommended by any Phase I or II Environmental Site Assessment. Discuss if the lender is aware of the mitigation measures at the time of this recommendation.
8. Summary: Include a discussion of all strengths and weaknesses. All weaknesses should include a mitigating factor. Having more strengths than weaknesses does not necessarily mitigate the weaknesses. For example, if management is identified as a weakness due to a recent change or a proposed change, identify the development plan for the new management proposed by the applicant.

D. Loan Classification.

Guaranteed loans must be properly classified. Properly classified loans will enable the Agency to focus oversight activities on higher risk loans and enable the State and National Offices to conduct effective portfolio management and assess the quality or risk in the portfolio.

The regulations require the lender to provide the classification within 90 days of receipt of the guarantee. However, the lender has classified loans by loan closing and should be asked to provide it as a condition of receiving the guarantee.

The lender should also be required to notify the Agency whenever there is a change in the loan classification (not only when a loan's classification is lowered, as required by the regulations). This will assist the Agency in portfolio management.

All guaranteed loans are to be classified as if they were not supported by a loan guarantee.

When the Agency receives a loan classification from a lender or otherwise feels a change in classification may be warranted, the Agency should conduct its own analyses of the loan. If the Agency disagrees with the lender's classification, the Agency should discuss concerns with the lender and attempt to reach agreement. In any event, the Agency's opinion of the appropriate loan classification should be entered into GLS within 30 days of receipt of the lender's classification. The integrity of the data in GLS is vitally important, and every effort should be made to maintain GLS in a current status.

The loan classification codes are maintained within GLS on the Business Programs Loan/Grant Detail screen. The screen can be found by going to the Request List, inputting the borrower's ID, and on the Action dropdown box, highlight "Maintain Loan/Grant Detail" and click on the type of assistance code. The loan classification is a dropdown box with the codes as described below. If a borrower has a direct loan, an 8N transaction must be completed in Automated Discrepancy Processing System (ADPS), and will interface with GLS with the corresponding code listed below. For further instructions, please review the GLS User Guide.

Many lenders use variations of the Uniform Classification System (UCS), or entirely different systems. When a lender submits its loan classifications using a different system or code, ask the lender to explain how its risk rating system codes correlate to the UCS descriptions used by Rural Development.

Lenders may assign more than one classification to different portions of a loan when portions of the loan meet different classification standards. Because GLS will accept only one classification per loan, when this occurs, the most adverse classification should be entered for the entire loan.

Two elements are necessary to develop classification results into meaningful data: 1) clear, well-understood classification definitions and 2) uniform application of the definitions. The Agency has essentially adopted the UCS which provides classification definitions necessary to develop meaningful data on the quality of the loan portfolio. UCS credit classifications are assigned on the basis of risk and include the following categories: Acceptable, Special Mention, Substandard, Doubtful, and Loss. The category Seasoned is not recognized by the UCS, but is an option in GLS.

Loans classified Substandard, Doubtful, and Loss are considered adversely classified; while Special Mention loans are not.

A general description and application of each classification category and credit factor is provided below.

Acceptable (or Current Non-Problem) - GLS code 10

These loans are high quality. They are current and in compliance with all loan conditions and the program regulations, but do not meet all of the criteria for a Seasoned classification.

Seasoned - GLS code 20

A loan which (1) the borrower has a remaining principal guaranteed loan balance of two-thirds or less of the original aggregate of all existing B&I and REAP guaranteed loans made to that business; (2) is in compliance with all loan conditions and applicable program regulations; and (3) has been current on loan payments for 24 consecutive months, and is secured by collateral which is determined to be adequate to ensure there will be no loss on the loan.

Special Mention - GLS code 30

Loans in this category are currently protected but are potentially weak. They do not presently expose the lender and Agency to a sufficient degree of risk to warrant a Substandard classification but do possess potential weaknesses that may, if not checked or corrected, weaken the loan or inadequately protect the Agency's position at some future date. Special Mention loans therefore deserve close attention.

All loans, regardless of collateral, financial stability, and responsibility of the borrower, have certain risks. Typically (but not always), there is a credit reason for the lender to request a loan guarantee. It is therefore anticipated that a high percentage of the new guaranteed loans made will be Special Mention, but not Substandard. The credit risk may be relatively minor yet constitute identifiable risks in light of the circumstances surrounding a specific loan. Some examples of credit risk that could warrant a Special Mention classification may include:

- Business is a startup with limited or no operating history.
- Adverse trends in the borrower's operation or industry.
- Business is subject to economic or market conditions that may, in the future, affect the borrower.
- Recent change in borrower management.
- Lack proper lender oversight (possibly due to lack of lender expertise), credit support, on-site appraisals or inspections, failure of the lender to act prudently, or other similar matters that could lead the reviewer to question the quality of the loan.
- Collateral coverage is tight, the collateral is highly specialized, or the lender lacks control over the collateral.

Loans in which actual weaknesses, rather than potential weaknesses, are evident and significant should be considered for an adverse classification.

Substandard - GLS code 40

These loans are inadequately protected by the current sound worth, repayment capacity, equity, and/or collateral pledged. Loans so classified must have a well-defined weakness or weaknesses that could jeopardize normal collection of the debt. They are characterized by the distinct possibility that the lender will sustain some loss if the deficiencies are not corrected.

All delinquent loans and loans where the borrower is in bankruptcy should be adversely classified, even when a loss is not likely.

Doubtful - GLS code 50

Loans classified Doubtful have all the weaknesses inherent in those classified Substandard with the added characteristic that weaknesses make collection or liquidation in full, on the basis of currently existing facts, conditions, and values, highly questionable and improbable.

Loss - GLS code 60

Loans classified Loss are considered uncollectible and of such little value that their continuance as bookable loans is not warranted. This classification does not mean the loan has absolutely no recovery or salvage value, but rather it is not practical or desirable to defer writing off this basically worthless loan even though partial recovery may be affected in the future. Delaying the recognition of losses due to the remote possibility that a restructure will occur is not considered consistent with the definitions contained in the UCS or generally accepted accounting principles. Loans in liquidation where a significant loss is anticipated should be classified Loss. Unfortunately, GLS cannot accommodate split classifications where only the estimated loss amount would be classified Loss.

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