

RD AN No. 4471 (4279-B)
August 20, 2009

TO: State Directors, Rural Development
ATTN: Business Programs Directors
SUBJECT: Business and Industry Guaranteed Loan Program
The American Recovery and Reinvestment Act of 2009

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to provide guidance regarding funds made available for the Business and Industry (B&I) Guaranteed Loan Program under the American Recovery and Reinvestment Act of 2009 (ARRA).

COMPARISON WITH PREVIOUS AN:

There is no previous AN on this subject.

IMPLEMENTATION RESPONSIBILITIES:

This AN will assist in processing and submitting projects for consideration for ARRA funding. Additional information may be found in the Notice of Funding Availability (NOFA) announcing the ARRA funds. The NOFA was published in the Federal Register on Friday, July 24, 2009, Vol. 74, No. 141, page 36649.

- **Funding level.** The ARRA provides a maximum of \$1,717,983,651 in B&I funding in addition to the Omnibus and Disaster funding. The subsidy factor for B&I ARRA funding is 7.34 percent for fiscal year 2009. These funds will be held in the National Office. B&I ARRA funding expires September 30, 2010, and all ARRA loans must be obligated by then. Attached are goals for each State Office. These are not allocations, but rather expectations for obligations by state. Our goal is to expend all funds, Omnibus, Disaster, and ARRA, by the end of fiscal year 2010. However, please be reminded that the ARRA funds expire at the end of fiscal year 2010, and are above and beyond your regular state allocation.

EXPIRATION DATE:
August 31, 2010

FILING INSTRUCTIONS:
Preceding RD Instruction 4279-B

- Loan processing. For the most part, ARRA funded loans will be processed and serviced the same as regular B&I loans using existing program regulations. Underwriting standards have not been relaxed for ARRA funded loans. The only differences include:
 1. Additional ineligible loan purposes and entities;
 2. Unique criteria for awarding discretionary points when scoring applications and granting guarantees exceeding the maximum percent of guarantee allowed by RD Instruction 4279-B, section 4279.119(b);
 3. Reduced fees. All ARRA loans will be charged a 1 percent initial guarantee fee and no annual renewal fee;
 4. Borrower reporting;
 5. Davis Bacon and Buy American requirements; and
 6. 55 points required to obtain a 90 percent guarantee.

- Definitions. The NOFA established the following definitions that apply only to B&I ARRA loans and only when awarding State Director and Administrator discretionary points. Some of the definitions are new; others vary somewhat from the existing regulations.
 1. High unemployment. Any area that has an unemployment rate that is 125 percent of the nationwide rate or greater. The State should use the unemployment rate as of the date of application. Although RD Instruction 4279-B, section 4279.155(b)(2)(iv), refers to the “statewide” unemployment rate, we are using the “nationwide” unemployment rate found at <http://www.bls.gov/cps/>.

 2. Outmigration. Any area of long-term population decline and job deterioration based on reliable statistical data. If a community has lost population based on 1980, 1990, and 2000 decennial census data, States should assume that outmigration has occurred. RD Instruction 4279-B, section 4279.155(b)(2)(i), does not specify the data to use. This information can be found at the following sites:

Source for 1970 census data:
<http://www.census.gov/population/www/censusdata/cencounts/index.html>

Source for 1980 census data:
<http://www.census.gov/population/www/censusdata/cencounts/index.html>

Source for 1990 census data:
<http://www.census.gov/population/www/censusdata/cencounts/index.html>

Source for 2000 census data:
http://factfinder.census.gov/servlet/DTGeoSearchByListServlet?_lang=en&_ts=265734257691

Population loss, particularly which results in loss of jobs, can result from a lower rate of births than deaths and prolonged movement from a place of origin to another location. Outmigration of jobs is the result of traditional jobs not being replaced by new types of jobs. Communities that experience seasonal fluctuations due to tourism will not be considered under this definition.

3. Persistent poverty. Any county that has had 20 percent or more of its population living in poverty over the past 30 years, as measured by the 1980, 1990, and 2000 decennial census. RD Instruction 4279-B, section 4279.155(b)(2)(ii), requires 60 years of persistent poverty, rather than 30 years.
4. Quality jobs. This relates to the quality of the jobs provided by the borrower. To qualify, the business must meet at least one of the following three criteria:
 - (a) Pay wages that average at least 125 percent of the Federal minimum wage. The Federal minimum wage increased from \$6.55 per hour to \$7.25 per hour on July 24, 2009. The State should use the Federal minimum wage as of the date of the application;
 - (b) Qualify under the Work Opportunity Tax Credit Program authorized by the Small Business and Work Opportunity Tax Act of 2007; or
 - (c) Offer healthcare benefits package to all employees, with at least 50 percent of the premium paid by the employer.
5. Under-served groups and under-represented areas. Any geographic area and population group that have not historically received the benefits of the B&I program as compared to other areas and groups.

In order to award priority points for under-served groups/under-represented areas, the State will need to develop and implement a meaningful outreach plan to assist in eliminating disparity in program delivery.

When awarding discretionary priority points for under-served groups/under-represented areas, the State will provide documentation with the priority scoresheet for how the loan will serve an under-served group or under-represented area.

In preparation for developing an outreach plan, the State will:

- (a) analyze their State loan participation data;
- (b) determine areas and groups that typically have not participated in Agency programs in the areas that are under-served and under-represented (no loans in areas that have need for the benefits of the loans); and

- (c) determine where projects have been funded and give priority to projects that could be located in areas of greatest need based on the data analysis (under-served groups/under-represented areas).

Under-served groups and under-represented areas generally concern a “protected class.” Protected class, a term used in Civil Rights anti-discrimination law, describes groups of people who historically have been treated differently because of their race, color, gender or national origin and are now protected from discrimination and harassment. Civil Rights laws cover individuals’ Ethnicity - Hispanic or Latino or non-Hispanic; and Race - American Indians and Alaska Natives, Asian, Black or African American, Native Hawaiians and Pacific Islanders and White. Racial and ethnic disparities exist in providing Federal assistance through administration of program funds. Statistics show people of the “protected class” have not participated to the level of non-minority participants. To become more transparent and to be proactive in the elimination of disparity, we embrace enhanced program outreach, education, and technical assistance to under-served areas and groups to eliminate disparities.

- Guaranteed Loan System. For tracking purposes, please use the special initiative dropdown box in the Guaranteed Loan System (GLS) for qualified projects: Persistent Poverty County; Outmigration; Under-served Area; Under-represented Group; and High Unemployment.
- Priority scoresheet. Please document on the priority scoresheet, qualified projects for Persistent Poverty County; Outmigration; Under-served Area; Under-represented Groups; and High Unemployment. If necessary, you may include an attachment that lists the source of your documentation of compliance with these demographic criteria. To document that the business qualifies under the Work Opportunity Tax Credit Program authorized by the Small Business and Work Opportunity Tax Act of 2007, lenders must obtain a copy of the certification from the state workforce agency from the borrower. To document that the business offers healthcare benefits package to all employees, with at least 50 percent of the premium paid by the employer, the lender must obtain from the borrower a copy of Internal Revenue Service Department of Labor Form 5500 and provide a written certification that the employer pays at least 50 percent of the premiums.
- Persistent poverty set-aside. Ten percent of ARRA funds will be allocated to businesses located in persistent poverty counties, as provided for in the statute.
- Ineligible loan purposes and entities. Notwithstanding the provisions in RD Instruction 4279-B, section 4279.113, and in addition to those in section 4279.114, the following loan purposes and entities are not eligible for ARRA funded B&I loans:

- (1) Zoos;
 - (2) Aquariums;
 - (3) Convenience stores, unless the store provides quality jobs and sells or will sell E85 fuel upon completion of the project;
 - (4) Pools;
 - (5) Water parks;
 - (6) Hotels/motels and other facilities that have pools or water parks;
 - (7) Golf courses;
 - (8) Museums; and
 - (9) Casinos or other gambling establishments. The Agency has agreed not to use ARRA funds to finance businesses that have any gambling revenue (other than revenue from state-run lotteries).
- Percentage of Guarantee. The maximum percentage of guarantee will be determined in accordance with RD Instruction 4279-B, section 4279.119(b), except that loans must score at least 55 points to qualify for a 90 percent guarantee.
 - Priority Scoring - Assigning Discretionary Points. States are to score applications consistent with the criteria specified in RD Instruction 4279-B, section 4279.155, with the following exception. As stated in the NOFA, State Directors and the Administrator will each award 10 discretionary priority points to projects when, and only when, the borrower provides quality jobs (as defined above) and meets at least one of the other four demographic criteria (area of outmigration, high unemployment, under-served groups/under-represented areas, and persistent poverty county).
 - Guarantee fees. All ARRA loans will be charged a 1 percent initial guarantee fee and no annual renewal fee for the life of the loan.
 - Transfer authority. States have **no** authority to transfer budget authority between programs (e.g., between ARRA B&I and ARRA Rural Business Enterprise Grants).
 - Prevailing wages. All loans that include more than \$2,000 for construction, alteration and/or repair (including painting and decorating) must comply with Davis Bacon and related Acts. All laborers and mechanics employed by contractors and subcontractors must be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of 40 U.S.C. For additional guidance, please refer to RD AN No. 4449 (1940-C), "Application of Davis-Bacon Wage Rate Requirements to Projects Funded with American Recovery and Reinvestment Act Funds," dated June 15, 2009. Prevailing wage rates may be found by following this link: <http://www.wdol.gov/dba.aspx#0>.

- Buy American. Buy American provisions in the statute apply only when ARRA funds are used to finance public buildings and public works. If an ARRA application is received from a public entity, refer to the NOFA or the B&I Processing Branch in the National Office for guidance. Exceptions may be granted by the Secretary, unless that authority is delegated, if adequate justification is provided by the State Director. Requests for exceptions need to include a detailed justification that explains why an exception should be granted. Requests may be based on the following factors: non-availability, unreasonable cost, or inconsistency with the public interest. A policy decision was made that all vehicles purchased with ARRA funds, whether by private businesses or public bodies, must be manufactured in the United States, but the exceptions apply only when financing public buildings and public works.
- Borrower and lender reporting. Recipient reporting for ARRA guaranteed loans is not required.
- Certifications Pursuant to Section 1511 of the Recovery Act. With respect to these funds made available to State or local governments for infrastructure investments, the Governor, mayor, or other chief executive, as appropriate, shall certify that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Such certification shall include a description of the investment, the estimated total cost, and the amount of these funds to be used, and shall be posted on <http://www.recovery.gov>. A State or local agency may not receive infrastructure investment funding from funds made available in the Recovery Act unless this certification is made and posted.
- Submitting applications for funding. Applications must be submitted to the National Office using the SharePoint site. The deadline for the first round of funding is August 21, 2009.
 - Upload requests for B&I ARRA funds to SharePoint site, as they are ready to be obligated. The current folder is under ARRA project submissions; Business Programs; BI (projects obligated by August 21). Future folders will be identified by date.
 - The submission consists of the B&I scoresheet, the regular B&I funding request/LAPAS announcement, the ARRA Project Summary Template, and an attachment of the documentation of compliance with the quality jobs and demographics criteria.
 - B&I applications initially submitted for ARRA funding, but subsequently funded with Omnibus or Disaster funding, must be removed from the SharePoint list by the State Office.
 - Once the loans have been reviewed by the Secretary's Office, Office of Management and Budget, and the White House, State Offices will be notified of the loans selected.
 - Funding will be allocated to States on a loan by loan basis. Funding of the selected loans will be moved to the appropriate State accounts.

- State Directors will be advised of loans that meet the criteria for a 90 percent guarantee (priority score at least 55 priority points). The Administrator will award discretionary points, as appropriate.
- Type of Assistance Codes. Currently, on Monday, August 3, 2009, the field will be able to begin processing B&I ARRA guaranteed loan obligations with 1 percent fees under Type of Assistance (TOA) codes 549 in GLS. This is based on the National Office Budget Staff loading ARRA funds into the system. Although a TOA code was prepared for B&I ARRA loans with a 2 percent fee, that code will not be used since all B&I ARRA guaranteed loans will have a 1 percent fee.

In the interim, the field will need to process any B&I ARRA 1 percent obligations in GLS using TOA code 308 (Native American B&I 1 percent).

In order to continue ARRA obligation activity prior to the conversion, until July 31, 2009, the 6-day reservation period for ARRA and non-ARRA obligations will be disabled. All obligations processed in GLS during this timeframe will have an obligation date of July 31, 2009.

Starting August 3, 2009, or thereafter, the Guaranteed Loan Branch (GLB) at the Finance Office will do the following for any B&I ARRA obligations made using TOA code 308:

- Day 1: De-obligate in GLS (process 1D(s)).
- Day 2: Work with the Fiscal Control Branch in the Finance Office to move all funds from TOA code 308 to TOA code 549 in the Program Funds Control System.
- Day 3: Re-obligate in GLS (process 1A(s) using the original obligation date (ok code of 8 for current year)

Note: Starting August 3, 2009, TOA 308 should no longer be used for processing ARRA obligations in GLS.

If any obligations have an obligation date of August 3-10, 2009, please request a 6-day reservation period waiver letter from the National Office to allow the Finance Office to process the obligation in GLS with the correct obligation date on or after August 3, 2009.

- Conditional Commitment requirements. Paragraphs (a) and (b) below should be included in all Conditional Commitments for ARRA funded loans. Include paragraphs (c), (d), and (e) as applicable:

American Recovery and Reinvestment Act (ARRA) provisions:

- (a) B&I ARRA funds may not be used for the following loan purposes/entities:
 - (1) Zoos;
 - (2) Aquariums;
 - (3) Convenience stores, unless the store provides quality jobs (as defined in this AN) and sells or will sell E85 fuel upon completion of the project;
 - (4) Pools;
 - (5) Water parks;
 - (6) Hotels/motels and other facilities that have pools or water parks;
 - (7) Golf courses;
 - (8) Museums; and
 - (9) Casinos, other gambling establishments, and other businesses that derive any income from gambling (other than State-run lotteries).
- (b) To maximize the transparency and accountability of funds authorized under the Recovery Act as required by Congress and in accordance with 2 CFR 215, subpart 21 and Office of Management and Budget Circular A-102 Common Rules provisions, borrowers agree to maintain records that identify adequately the source and application of Recovery Act funds.
- (c) Prevailing wages requirements - *for only loans that include more than \$2,000 for construction, alteration and/or repair (including painting and decorating).*

Wage Rate Requirements Under Section 1606 of the American Recovery

(1) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of 40 U.S.C. Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration and/or repair (including painting and decorating). Projects exceeding \$100,000 must also incorporate requirements of 29 CFR 5.5(b).

(2) For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan No. 14.

- (d) Buy American provisions – *only when ARRA funds are used to finance public buildings and public works, including the purchase of vehicles.*

Notice of Required Use of American, Iron, Steel, and Manufactured Goods— Section 1605 of the American Recovery and Reinvestment Act, 2009

The Program Support Staff (PSS) is clearing an Administrative Notice on the Buy American provisions of ARRA. The approved language is not yet available. In the interest of time and as the financing of public buildings and public works is an atypical use of B&I guaranteed loan proceeds, please follow the guidance issued by PSS.

- (e) *For loans to States, Local Governments, and Non-Profit Organizations* - For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations,” recipients agree to separately identify the expenditures for Federal awards under ARRA on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix “ARRA” in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

If you have any questions, please contact the Business and Industry Division, Processing Branch at (202) 690-4103.

JUDITH A. CANALES
Administrator
Business and Cooperative Programs

Attachment

Attachment I

Business and Industry Guaranteed Loan
Program

<u>State</u>	<u>FY 2009-2010 Goal</u>
Alabama	\$44,917,000
Alaska	\$10,324,000
Arizona	\$25,288,000
Arkansas	\$31,264,000
California	\$47,864,000
Colorado	\$20,141,000
Delaware	\$8,403,000
Maryland	\$16,291,000
Florida	\$46,608,000
Virgin Islands	\$5,000,000
Georgia	\$58,944,000
Hawaii	\$8,983,000
W. Pacific Areas	\$5,000,000
Idaho	\$14,696,000
Illinois	\$38,274,000
Indiana	\$39,341,000
Iowa	\$25,390,000
Kansas	\$18,480,000
Kentucky	\$46,394,000
Louisiana	\$30,101,000
Maine	\$19,320,000
Massachusetts	\$11,430,000
Connecticut	\$11,768,000
Rhode Island	\$6,007,000
Michigan	\$57,597,000
Minnesota	\$32,881,000
Mississippi	\$40,871,000
Missouri	\$39,921,000
Montana	\$14,279,000
Nebraska	\$14,547,000
Nevada	\$12,748,000
New Jersey	\$11,331,000
New Mexico	\$15,187,000

New York	\$45,024,000
North Carolina	\$64,764,000
North Dakota	\$9,747,000
Ohio	\$56,447,000
Oklahoma	\$28,439,000
Oregon	\$21,723,000
Pennsylvania	\$53,124,000
Puerto Rico	\$13,991,000
South Carolina	\$41,294,000
South Dakota	\$11,985,000
Tennessee	\$51,226,000
Texas	\$64,764,000
Utah	\$11,027,000
Vermont	\$12,316,000
New Hampshire	\$13,138,000
Virginia	\$39,624,000
Washington	\$25,903,000
West Virginia	\$22,074,000
Wisconsin	\$35,616,000
Wyoming	\$8,468,000
Totals	\$1,460,284,000
National Office Reserve	\$257,699,651
Grand Total	\$1,717,983,651