DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1980, 4279 and 4287

RIN 0570–AA09

Business and Industrial Loan Program

AGENCIES: Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), Rural Utilities Service (RUS), and Farm Service Agency (FSA), USDA.

ACTION: Final rule.

SUMMARY: The Rural Business-Cooperative Service (RBS) is the successor to the Rural Business and Cooperative Development Service, which was the successor to the Rural Development Administration (RDA), which was the successor to the Farmers Home Administration (FmHA).

RBS is issuing new Business and Industry (B&I) Guaranteed Loan Program regulations to replace the FmHA regulations for the program. This action is needed to streamline and update the program. The intended effect is to shorten, simplify, and clarify the regulation; shift some responsibility for loan documentation and analysis from the Agency to the lenders; make the program more responsive to the needs of lenders and businesses; and provide for smoother and faster processing of applications.

EFFECTIVE DATE: December 23, 1996.

FOR FURTHER INFORMATION CONTACT: Dwight A. Carmon, Business Programs Processing Division Director, RBS, U.S. Department of Agriculture, Stop 3221, 1400 Independence Avenue, SW., Washington, DC 20250–3221, Telephone (202) 690–4100.

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been determined to be a ''significant regulatory action'' and was reviewed by OMB under Executive Order 12866.

Programs Affected

The Catalog of Federal Domestic Assistance program impacted by this action is: 10.768, Business and Industrial Loans.

Intergovernmental Review

As set forth in the final rule related Notice to 7 CFR, part 3015, subpart V, 48 FR 29112, June 24, 1983, Business and Industry (previously ''Industrial'') Loans are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. RBS has conducted intergovernmental consultation in the manner delineated in FmHA Instruction 1940–J, ''Intergovernmental Review of Farmers Home Administration Programs and Activities.''

Civil Justice Reform

The final rule has been reviewed under Executive Order 12778, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with the regulations of the Agency at 7 CFR, part 11 must be exhausted before bringing suit in court challenging action taken under this rule.

Environmental Impact Statement

The action has been reviewed in accordance with 7 CFR, part 1940, subpart G, ''Environmental Program.'' RBS has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Unfunded Mandate Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RBS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RBS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives or the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector. Thus today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Background

This action replaces the Business and Industrial (B&I) loan program regulations at 7 CFR, part 1980, with regulations published at 7 CFR, parts 4279 and 4287, and significantly departs from the previous program of loan guarantees for businesses in rural areas. The new Business and Industrial Guaranteed Loan Program will be more flexible and will place more reliance on lenders. There are fewer specific requirements for lenders and businesses. Eligible loan purposes are broader. The lender has added responsibility for analyzing credit quality; for making, securing, and servicing the loan; and monitoring construction. The priority system will give increased priority to underserved communities. Application processing procedures will be more efficient, less burdensome for borrowers, lenders, and RBS staff and will provide for more rapid decisions in making, servicing, and liquidating loans.

The B&I loan program is authorized by the Rural Development Act of 1972. The loans are made by private lenders to rural businesses for the purpose of creating new businesses, expanding existing businesses, and for other purposes that create employment opportunities in rural areas. Eligibility for this program includes businesses located in cities of up to 50,000 population, but priority is given to areas outside cities of 25,000 or fewer population.

Loans can be made for a variety of purposes including business acquisition, expansion, or improvement; purchase of land, easements, or buildings; purchase of equipment, machinery, or supplies; repair and modernization; pollution control; transportation services; start up and working capital; and feasibility studies. The rate and term of the loan is negotiated between the business and the lender.

The Agency is promulgating these regulations to make the program more usable by lenders and borrowers. More importantly, the Agency recognizes the changes are necessary to make the program more effective in creating jobs and stimulating economic activity, particularly in chronically low income rural areas. Under these B&I regulations, the material that must be submitted to and reviewed by the Agency before approval of the guarantee is reduced and responsibilities for credit analysis and application processing tasks will be shifted from the Agency's National Office to field offices and from the Agency to the lender where feasible.

Following is a discussion of some of the most significant policy revisions included in the new regulations.

Automatic eligibility to be a lender under the program is limited to certain types of organizations. This regulation allows the Agency to approve additional lenders when they are determined by the Agency to have sufficient legal authority, lending expertise, and financial strength. Currently, most lenders participating in the B&I program are commercial banks.

The Agency is reducing the loan guarantee fee if it is determined that the business seeking the guarantee provides high impact business development and is located in a community experiencing long term population decline and job deterioration, a community that has remained persistently poor over the past 60 years, or a community experiencing economic trauma due to natural disaster or fundamental economic structural change. The intent of this provision is to encourage businesses to locate in areas with persistent economic problems.

During the preparation of this rule, it was proposed that loans could be guaranteed to businesses with a majority ownership by a foreign entity. During the comment period, no one responded to the proposed rule concerning this issue. Because of uncertainty of how this provision may relate to the provisions of the Welfare Reform Act, the Agency has determined to remove this provision so as to provide an opportunity to further examine this relationship. This will avoid a delay in implementation of this rule that could be caused by conducting a potentially lengthy investigation.

Presently, agricultural-production loans are not eligible for B&I guarantees. This new regulation will allow guarantees for agricultural production, but limit eligibility to integrated businesses involved in both production and processing.

Previous regulations would not allow a lender to bring loans it had previously made under a guarantee through refinancing unless the percentage of guarantee was adjusted to maintain the previous unguaranteed exposure. The new regulations will allow the previous exposure to be guaranteed, provided the refinancing is a secondary part of the loan and the rates and terms will be restructured to improve cash flow.

Eligible loan purposes are expanded to include hotels, motels, and other tourism and recreational facilities which have been ineligible for the past several years. Loans for such facilities will be evaluated on the merits and financial feasibility of each proposal, except for racetracks, golf courses, and gambling facilities which will remain ineligible.

Previous regulations limited the size of loans considered for guarantee to $10 million. The new regulations will give the Administrator the authority to approve exceptions to the $10 million ceiling for high-priority projects of up to $25 million. The regulations limit the guarantee percentage to 80 percent for loans of $5 million or less, 70 percent for loans between $5 million and $10 million, and 60 percent for loans exceeding $10 million. Authority is provided for the Administrator to approve exceptions so that up to 90-percent of loans of $10 million may be guaranteed when the higher percentage is necessary to approve a high-priority project as specified in the regulation. The State Director has the authority to approve exceptions so that up to a 90 percent guarantee may be approved for loans of up to $2 million (within the State Director's loan approval authority) when the higher percentage is necessary to approve a high-priority project.

In conjunction with implementation of the new regulations, the Agency intends to provide a new application form that will serve the function of 10 forms now in use. The application form will be supplemented by additional information provided by the lender.

The regulations provide for certain experienced lenders to apply for status as certified lenders. Certified lenders will submit significantly less information for Agency review as regular lenders.

Agency staff will be authorized to rely on an acceptable written credit analysis prepared by the lender rather than the Agency completing its own complete credit analysis.

Usually, the lender will determine the frequency of financial statements to be required from the business after the loan is closed and whether or not the statements must be audited.

The lender and its legal counsel will be responsible for loan closing without a required review by the Office of the General Counsel.

Loan servicing is simplified. Loans will be classified by the lender. Lenders will be able to release collateral with a cumulative value of up to 20 percent of the original loan amount, over the life of the loan, if the proceeds will be used to reduce the loan amount due or buy replacement collateral. Lenders may make protective advances of up to $5,000 without prior Agency approval. If unsecured personal or corporate guarantees cannot be settled promptly, a final loss report may be filed and paid and the guarantees treated as future recovery.

RBS believes the streamlining of the regulations for this program will enhance the use of the program's effect by improving the prosperity of rural residents through guarantees of targeted investments that enhance rural competitiveness, facilitate industrial conversion, and enable rural residents to profit from private sector activity. The revisions are consistent with the Administration's efforts to streamline Government functions, improve efficiency and the effectiveness of Government activities, and be more customer friendly. The changes will enable the Agency to deliver a larger program with less staff resources and simultaneously meet the objectives of the National Performance Review concerning the Regulatory Reinvention Initiative dated March 4, 1995, as related to the President's initiative to improve customer service, provide for less regulations, and streamline Agency operations.

Incorporation of the changes will provide more flexibility for both lenders and Agency staff. Many errors will be reduced because the guidelines and requirements are clearer and items are more easily found in a reduced and better organized volume of regulations. Lenders will be more interested in using the program because the procedures are simpler and more direct. The ultimate benefit of these changes will be increased lending activity resulting in the expansion of business opportunities and the creation of more jobs in rural areas, particularly in those areas that have historically experienced economic distress.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in these final regulations is displayed at the end of the affected section of the regulations. The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control numbers 0575–0168, 0575–0170, 0575–0171, 0575–0029, and 0575–0024 and in accordance with the Paperwork Reduction Act of 1995. This final rule does not impose any new information collection requirements from those approved by OMB.

1996 Farm Bill Initiatives

The Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–

127) requires the Agency to include language in the B&I regulations that will expand eligible loan purposes to allow the purchase of startup capital stock in a cooperative to allow family-sized farmers be eligible if selling their products to the cooperative. The definition of a family-sized farmer will be the same as used by the Farm Service Agency (FSA).

In addition, the Agency will include language to allow B&I loan guarantees to assist agriculture-related industries adjusting to the terminated Federal agricultural programs or increased competition from foreign competitors.

Discussion of Revision and Comments

The proposed rule was published in the Federal Register on February 2, 1996 (61 FR 3853), and provided for a comment period ending April 2, 1996.

In response to the proposed rule, 86 respondents provided comments to the Agency. Of the 86 comments, 18 comments were considered late because they were received after April 2, 1996. However, the Agency reviewed and addressed all issues raised by all of the comments.

Of the 86 commenters that responded to various sections of the proposed rule, 34 were lenders, mortgagors or related to the lending industry, 15 were Agency employees, 7 were various Government officials, 5 were housing authorities, chambers of commerce or planning commissions, 1 was a railroad association, 2 or more businesses, 2 cooperatives, and the remaining were a combination of council members and others.

Of the 86 respondents, 24 respondents provided general comments supporting the regulation. Several respondents provided editorial changes that indicated a personal preference which were not adopted. These changes included changes in sentence structure, wording, etc., that do not improve the regulation.

The Agency requested comments from the public concerning the paperwork burden of the streamlined regulations and the loan priority system. Several respondents responded favorably to the changes, supporting the reduction in the paperwork, the streamlining of the regulations, moving more of the credit decisions to the lender, and increasing the enterprises that would be eligible under these streamlined regulations. Five comments suggested the proposed loan priority system is too complicated, time consuming, and difficult to explain to potential customers. The commenters further suggested that the criteria are too subjective, vague, difficult as a tool of measurement, and should be revised. The priority system has been modified to be more user friendly, however, the integrity of the system still meets the goal of reaching high-impact areas.

Of the 86 respondents, 45 respondents provided comments on § 4279.113, ''Eligible loan purposes,'' and § 4279.114, ''Ineligible loan purposes.'' Of the 45 respondents, 20 respondents were in favor of recreation and tourism and agricultural production as eligible loan purposes. There were no adverse comments concerning recreation and tourism. One of the respondents in favor of recreation and tourism suggested that the Agency require a minimum of 25–35 percent tangible balance sheet equity because of the risk involved with these types of businesses. This comment was not adopted. The Agency feels that the regulations (§ 4279.131(d)) sufficiently address this concern.

Another respondent felt that agricultural production as defined under § 4279.113(h)(2) should be expanded to allow the agricultural-production portion of any loan up to 50 percent of the total loan and that the Agency should not restrict it to integrated processing. This suggestion was not adopted. The Agency feels that to adopt such a broad change in the coverage of agricultural production without processing would result in the Agency competing with other farm lender organizations.

One respondent felt that the guaranteed mortgage should be exempt from taxes like the FSA programs. Congress and the Internal Revenue Service control tax questions. The Agency has no authority to implement this proposal.

One respondent is in favor of racetracks and gambling being included as eligible loan purposes. Under § 4279.114(h), the Agency does not allow any business that derives more than 10 percent of annual gross revenue from gambling activities to be included as an eligible purpose. The Agency will not adopt the proposed change. Gambling is not a high priority loan purpose. Racetracks will continue to be an ineligible loan purpose as noted under § 4279.114(g) because professional racetracks are not a high priority loan purpose. However, slicktracks and related amusement park entertainment, in which a participant is not receiving a cash award exceeding $500 for performance, will be considered eligible under the guaranteed loan program covered in § 4279.113(u).

Several respondents recommended that golf courses be an eligible loan purpose. This program is intended to provide long-term economic development to all segments of rural area populations. It has not been demonstrated that golf courses would provide the benefits intended. Therefore, the Agency will not adopt the recommendation to allow golf courses to be an eligible loan purpose.

Several respondents recommended that § 4279.114(n) be revised to allow multiple-family housing and residential housing. The Agency agrees and has adopted this change to allow all housing to be an eligible loan purpose, except guaranteed funds being used for owner-occupied housing or any types of projects that would be 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. Mobile home parks are considered eligible under this section.

One respondent recommended that the Agency revise the definition of a rural area under § 4279.108(c) to allow guaranteed funds to be utilized in urban areas which are not presently allowed under the current definition. The statutory authority prohibits a broader definition.

Several respondents suggested that § 4279.113(q), debt refinancing, be revised to eliminate the requirement in the proposed rule that the existing lender debt being refinanced only be a secondary part of the overall loan. It was also suggested that the Agency include language that would allow guaranteed funds to be offered on long-term rates to customers just as freely as other bank customers. One respondent recommended that the ''secondary part'' be defined as less than 50 percent of the debt being refinanced. The Agency will provide more clarification concerning ''secondary part'' adopting the 50 percent requirement. However, the other comment concerning long-term rates being freely offered will not be adopted because the Agency wants flexibility to match interest rates or loan term adjustments to the individual loan.

One respondent suggested that § 4279.113(r), Interim Financing, be revised to allow the guaranteed lender to provide the appropriate documentation by a credit memorandum that the intent of the lender was that interim financing be considered as a take-out loan, and not to making this request a part of the preapplication or application request thereby reducing paperwork burden. This comment was not adopted because the request is not considered to be an excessive paperwork burden. It is a reasonable request for a credit review. The Agency feels that proper documentation should be included as

part of the preapplication and application to support the justification for using loan funds for this purpose.

One respondent asked for a clarification of § 4279.113(u), education and training, as an eligible loan purpose as compared to § 4279.114(d), prohibition of funding for charitable institutions, churches, or church-controlled or fraternal organizations. Guarantees for education and training would not be available to any charitable institutions, churches, or church-controlled or fraternal organization, either directly or indirectly, even without any religious affiliation. The Agency has adopted the position that guaranteed funds will not be utilized for the above organizations because they are not cash generating business institutions.

One respondent stated facilities constructed for lease to Government agencies, including USDA Rural Development, should be eligible. This comment will not be adopted because such a guarantee could lead to a perception of a conflict of interest.

One comment asked ''what determines not being eligible for Farm Credit Programs'' under § 4279.113(h). The Agency relies upon the referenced regulations as published by the FSA concerning what constitutes a customer not being eligible for farm credit programs.

One comment suggested that the Agency limit guaranteed funds for housing-related loans due to the excessive demand that may be placed on our funds in future years. This comment will not be adopted. The Agency feels that the priority scoring system set up in the regulations will limit funding for housing-related loans to a manageable level.

One respondent suggested that the definition under § 4279.114(o) be clarified to note that guaranteed funds are eligible for taxable bond issues. The Agency will not adopt this comment because the regulation is clear as currently written.

One respondent recommended that a ''line of credit'' be determined as an eligible loan purpose under § 4279.113. This change will not be considered until further research can be concluded to determine the actual need for a line of credit guarantee.

Twenty respondents provided comments on § 4279.43, Certified Lender Program (CLP). Four comments requested clarification whether the CLP approval determination is made at the State or National level. The intent of the regulation is that the State Office will be point of approval.

Two comments suggested establishing a turnaround time for application processing ranging from 3 to 20 working days. At this point in time, no turnaround time is established but the comments will be considered in our customer service activities.

A comment suggested the CLP designation be made available only to active lenders, recognized in the area instead of in the State as a commercial lender, who has made at least two B&I loans in the last 24 months. The lender who is recognized as a commercial lender in the area will also meet the requirement of being recognized in the State as a commercial lender. The intent of the regulation is to expand lender participation; therefore, the suggestion of only issuing a CLP designation to an active recognized lender is not adopted.

Two comments suggested the requirements to become a CLP lender be waived for a lender already designated as a Small Business Administration (SBA) Certified or FSA Approved or Certified lender. The Agency will not adopt the proposed change because the requirements with which the lender must comply for this program are, to some extent, unique to this program.

Two comments were received concerning Agency funding reserves. One was concerned that the CLP designation and the associated ability to reserve funds for 30 days will defeat the priority scoring system since a CLP lender with a low-priority project could reserve funds over a non-CLP lender with a high-priority project. This is a valid concern. Therefore, the rule has been changed to provide that there will be no reservation of funds during the last 60 days of the fiscal year in an effort to ensure full utilization of program funding authority. While this solution may not entirely eliminate the comments' concern, it should reduce the problem perceived, at least at the end of the year.

The other comment wanted to establish a mechanism to create and operate a sufficiently funded National Reserve account to ensure adequate funds are available when requested, especially in smaller States. This concern will be addressed by a National Office reserve in an amount of not less than 10 percent of the total yearly allocation.

A comment was made that the CLP feature should be eliminated altogether because of the excessive paperwork, complexity of the requirements, revocation of CLP status could appear to be onerous and punitive in nature, and because use of the CLP designation would be minimal due to lack of repeat lenders. This comment was not adopted because the Agency believes that with sufficient safeguards, the concept is workable.

A comment suggested that CLP lenders be required to repurchase loans for servicing rather than having the ''option'' as is now the case. The Agency does not wish to place such a requirement on CLP lenders because the objective of the program is to improve customer service and encourage use of the program.

A comment suggested Form 4279–2 be completed by the borrower not the lender. The Agency is relying on the lender to process most aspects of a loan. Therefore it is appropriate for the lender to complete and submit the form.

A comment suggested basing the CLP designation on lender ratings available from examiner reports instead of published guidelines. The Agency did not adopt this suggestion because it believes the published guidelines are sufficient to allow the Agency to decide which lenders have requisite expertise to fulfill CLP responsibilities.

A comment asked (1) if lenders could utilize their forms instead of Rural Development forms; and (2) whether approval authority is held by the lender or the Agency. The Agency agrees. The lenders can utilize their own forms as long as the form includes all of the information of the approved Agency forms, is approved by the Regional OGC and State Offices, and will not add additional burden to the public.

Fourteen respondents submitted comments on § 4279.137, Financial Statements. Nine of the comments were favorable. Two comments suggested eliminating loan size as the overriding factor while two other comments suggested different levels of CPA-developed statements based on loan size. One comment suggested having the principals (and their financial strength) provide a personal guarantee as the determining factor regarding the loan threshold size audited statement requirement. The Agency determines the application of this option on a case-by case-basis due to individual circumstances. This section will remain the same.

Nine respondents provided comments on § 4279.155, Loan priorities, that ranged from short statements of support to substantial regulation rewrites. Five comments stated the proposed system is too complicated, time consuming, and difficult to explain to potential customers. The criteria are subjective, vague, difficult to determine, complex, defy measurement or are overly exacting. The Agency considered the concerns and the following sections were changed:

Section 4279.155(b)(1)(ii) was eliminated because, as suggested by the comments, the language was unclear and the factors not measurable.

Sections 4279.155(b)(5)(i) (A) and (B) were eliminated because the criteria requested was not measurable or not available. Sections 4279.155(b)(5)(i)(C) and (D) were changed to (A) and (B) because of the elimination of the above items. These changes added clarity to this section and will be more measureable in determining priority points. The words ''potential to achieve'' were eliminated under the new (A), and the points changed from 3 to 5 to place more weight on this category. Under the new (B), the sentence was amended to end after the word ''community'', deleting the balance of the sentence because the information required was not measureable. The points in new (B) were changed from 3 to 4 to place more weight on the category.

Section 4279.155(b)(5)(ii)(A) revises the sentence to end after the word ''prices''. This change provided more clarity to the sentence, and the points were reduced from 3 to 2 to place less weight on this category because of the criteria measured.

Section 4279.155(b)(5)(ii)(B) is changed to eliminate the words ''has a significant potential to stimulate the development of a broader complex of business activities that provide inputs to or serve as the market for the initial business''. The words ''provides an additional market for existing local business'' will be inserted. This change was adopted to clarify this category.

As one commenter noted, proposed § 4279.155(b)(5)(ii)(D) eliminated the current language which favors the cooperative form of organization. The comment suggested that the wording be changed to refer to a business that produces a natural resource value-added product which is more measureable. The Agency agrees and has changed the language to read: ''Business that will produce a natural resource value-added product.'' Points were changed from 3 to 2, to add less weight to this category as compared to other categories.

Section 4279.155(b)(5)(iii)(A) is deleted as recommended by one comment which suggested that this category was not measureable and should be removed.

As a result of another comment, § 4279.155(b)(5)(iii)(B) is modified to read: ''average wage exceeding 125 percent of the Federal minimum wage'', instead of ''150 percent of minimum wage'' to allow more points to be scored at lower minimum wage categories, and more weight will be placed on this category. With the deletion of (A) under this section, this category becomes (A). The points increased from 4 to 5. The Agency adopted the recommended change.

One comment suggested § 4279.155(b)(5)(iii)(C) be modified to read: ''average wage exceeding 150 percent of the Federal minimum wage'', instead of ''200 percent of the minimum wage'' to allow more points to be scored at lower minimum wage categories. The Agency adopted the change and placed more weight on the category. The points increased from 4 to 10.

One comment suggested developing points for improving the environmental climate in rural communities or eliminating this objective from B&I program purposes. This comment was not adopted by the Agency because ''improving the environmental climate'' is one purpose of the program and no other program purposes are given priority points. The Agency does not feel one program purpose is more valuable than another.

One comment suggested that the phrase ''persistently poor'' in § 4279.155(b)(2)(ii), Community Priority, be defined. Instead, a list of eligible communities will be made available through State Offices.

One comment suggested increasing the points in § 4279.155(b)(4), Loan features, points to 20. The Agency feels that this category should receive more emphasis and adopted the suggestion.

Two comments requested a clarification for the secondary market rate in §§ 4279.155(b)(4) (i) and (ii). It was also noted that there is no point difference between these two criteria. The words ''secondary market'' are changed to ''Wall Street Journal published Prime Rate''. This change provides a reference that is readily available for comparison with the rate proposed by the lender. While there is no difference in points between the two criteria, if an interest rate is low enough, it can qualify for the points awarded in each subsection.

Two comments pointed out that there is no priority point differentiation between §§ 4279.155(b)(5)(iii) (A) and (B) regarding the wages of jobs created with assistance. These criteria are cumulative which means a project that creates higher wage jobs can obtain points for both. No change is made.

Two comments suggesting the elimination of §§ 4279.155(b)(3) (i) and (ii) will not be adopted since the initiatives were included to provide emphasis on the location of businesses in EZ/EC communities where job creation is important.

One respondent suggested that the priority system be amended to include points for transportation improvement and infrastructure safety. The Agency did not adopt this recommendation. The Agency has determined that specific emphasis should be directed to the areas already included. While these areas are important, we do not believe they promote program purposes to the extent as the included areas. Transportation improvement and infrastructure safety remain eligible purposes and desirable goals.

One comment suggested eliminating § 4279.155(b)(1)(i) regarding the 25,000 population limit while another comment suggested giving 10,000 population communities priority. The section retains the 25,000 population guideline because previous Congressional guidance has indicated 25,000 population is a reasonable application of the priority rule.

One respondent provided a comment on § 4279.165(b), Evaluation of application, suggesting the words, ''the Agency's'' prior to the last two words in the sentence, ''environmental requirements''. This section was rewritten to provide clarity concerning the evaluation process.

Thirteen respondents provided comments on § 4279.161, ''Filing preapplications and applications,'' and of the 13 respondents, eight comments were favorable. One comment suggested eliminating the requirement for the lender to submit any item beyond those mentioned in §§ 4279.161(a)(1) (i)–(iv). This comment was not adopted because the Agency needs this information to evaluate the proposal and to determine if the proposal is feasible and reasonable.

One comment suggested eliminating written subjective information and data that are intended for the lender's internal reference and guidance and always requiring instead that the lender include only ratios and comparisons with industrial standards. The Agency needs the lender's complete written analysis and requested associated material in order to determine whether the lender is exercising due diligence and meeting the intent of this regulation which places more reliance on lenders for analyzing credit quality.

Two comments suggested changes in proposed forms which were not a part of this regulation. They will be considered in the form development process.

One comment suggested the need to specify that the business plan include economic, market, technical, financial and management information to ensure uniformity. This suggestion is not

adopted. The Agency feels that the requirements in §§ 4279.150 and 4279.161(b)(12) are sufficient for the intended purposes.

One comment suggested changing the word ''must'' to ''should'' in § 4279.161(b)(11) regarding items to be addressed in the Loan Agreement. These are minimal requirements. The Agency will not adopt this change because the items are mandatory.

One comment suggested eliminating the intergovernmental consultation requirement to expedite loan processing and protect the applicant's privacy. Executive Order 12372 requires this action on all projects. The suggestion is not implemented.

One comment proposed the adoption of another agency's application. The instant program focuses entirely on rural development. This comment was not adopted because this application is better suited to this program's missions and objectives.

One respondent provided a comment on § 4279.126, Loan terms, suggesting that the term of the loan for refinancing purposes be determined based on the weighted average of the underlying collateral's life. The regulation already provides for this.

Five respondents provided comments on § 4279.131, Credit quality. Four comments identified a need for the Agency to establish objective, minimum standards for tangible balance sheet equity to avoid abuse of the program and vulnerability in the appeals process. Suggested minimum standards ranged from 10 percent to 20 percent tangible balance sheet equity at time of issuance of the Loan Note Guarantee based on a variety of subjective criteria. The Agency adopts these suggestions changing the regulation to indicate that the minimum tangible balance sheet equity required at the time of issuance of the Loan Note Guarantee will be 10 percent for existing and 20 percent for new businesses. An exception to this requirement may be granted by the Administrator or designee based upon the objective standard delineated in the section.

One comment supported establishing written discounting standards for collateral to ensure consistency but also recommended that an exception authority provision be developed. The regulation requires lenders to discount collateral consistent with sound loan-to-value policy. The Agency believes that this requirement is sufficient to protect the Agency and yet provide needed flexibility. Therefore, the suggestion is not adopted.

Sixteen respondents provided comments on § 4279.108, Eligible borrowers, and of the sixteen comments, four were favorable. Nine comments requested the Freely Associated States be determined eligible for program assistance. Under § 4279.2, Definitions, ''State'' encompasses this area making it eligible. The Agency added language under § 4279.108, Eligible borrowers, to amend the citizenship and residence requirements in § 4279.108(b)(3). Under this section, citizens and residents of the United States include citizens and residents of the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Two comments suggested that the college student population not be included in determining population limits because student populations are seasonal and truly do not add to the industrial and tax base of a community. The Agency will not adopt this change since it cannot determine U.S. decennial census methodology upon which a statutory provision requires the determination to be made.

One comment questioned whether communities under 25,000 population, § 4279.155(b)(1)(i), population priority, is consistent with the preamble to the proposed rule. The Agency was unable to locate any such inconsistency and no change was made.

Seven respondents provided comments on § 4279.150, Feasibility studies. Three comments suggested establishing a dollar threshold for determining when to require a study. This suggestion was not adopted because, in the Agency's view, the business, not loan size, should be the determining factor in deciding whether to require a feasibility study.

Two comments suggested adding the five elements of a feasibility study as outlined in the current program regulation, FmHA Instruction 1980–E. It was suggested that the term ''significantly affect'' is vague and should be defined to limit appeal situations. The five elements of a feasibility study will be added; however, ''significantly affect'' was purposefully not defined to allow for determination on a case-by-case basis.

One comment suggested feasibility studies are important only in start-up businesses. The Agency disagrees with this suggestion. There may be occasions when a significant impact on an existing business needs to be discussed via a feasibility study.

Two respondents provided comments on § 4279.75, Sale or assignment of guaranteed loan. One respondent was concerned that allowing lenders to sell the guaranteed portion for premium prices will allow the lender to cover its risk and encourage aggressive, high risk lending practices. The Agency does not dictate lender asset management practices. A prudent lender will work with the secondary market to achieve maximum benefits for its customer. Furthermore, the guarantee by its terms does not cover any premium an investor may pay.

One comment suggested a provision be added which, at the lender's request, would require the Agency to purchase the loan at default. The Agency will not adopt this suggestion. It neither has the staff nor the resources to conduct liquidations of defaulted loans. The program requires the lender to make and service the loan. The Agency is to ensure a fair and equitable loss management is made to the lender.

Four respondents provided comments on § 4279.181, Conditions precedent to issuance of Loan Note Guarantee. Two comments proposed the creation of a single, standard form like FSA is developing containing all of the required lender certifications. The Agency does not agree because we guarantee different loans than FSA does. This mission of this Agency is to enhance the ability of rural citizens to create, build, and sustain non-farming ventures and communities.

One comment suggested modifying the certification language to allow lenders to make determinations based on third party representations. This suggestion is not adopted because the lender is the one the Agency relies upon to ascertain the representations it makes in the certifications are true. Both the regulations and the Lender's Agreement make it clear that the lender must act as a reasonable and prudent lender.

Two comments supported the elimination of lender's legal counsel certifying to the sufficiency of loan and security instruments and the efficacy of liens. Section 4279.181 requires certain lender certifications including this. The Agency has limited its internal legal review and feels the lender's legal counsel is needed. No change is made.

One comment proposed changing § 4279.181(1) from ''the Conditional Commitment Form 4279–1'' to ''Form 4279–1 as amended by the Conditional Commitment''. The regulation is correct as written, Form 4279–1 is the Conditional Commitment.

Two comments proposed expanding § 4279.173, Loan approval and obligating funds, to explain that when the guarantee is approved and funding authority is available, the guarantee will be obligated and the Conditional Commitment issued on the obligation date. No change can be made since FmHA Instruction 2015–C (available in any RBS field office) provides for a

reservation period that is not covered by this Instruction. The 6 day reservation period gives political leaders an opportunity to announce projects which have a positive impact on the program. The recommendation is not adopted.

Two respondents provided comments on § 4279.161(b)(11), Filing preapplications and applications, suggesting either eliminating certain subsections or the Agency allowing lender discretion to modify the requirements. The sections that the respondents suggested be eliminated for preapplication submissions include the amount of borrower's equity and description of collateral; for existing businesses, a current balance sheet and a profit and loss statement; and for start-up businesses, a preliminary business plan. The respondents felt that this is excessive paperwork for a preapplication submission and suggested that only the application, environmental information, and a personal credit report be submitted. In addition, one respondent suggested that the lender has the ability to modify financial ratios for businesses and other requirements for an application submission and should not have to share internal bank information concerning the credits with the Agency. The suggestions will not be adopted by the Agency because these items requested from the lender under § 4279.161 for a preapplication or application are items required to meet the standards of good prudent lending practices (see § 4279.161).

One respondent provided a comment on § 4279.126, Loan terms, which supported § 4279.131, Credit quality, paragraph (b)(2), which allows less than normal loan-to-value coverage for predominately cash flow oriented businesses. It proposed that the ''useful life or 15 year loan limit, whichever is less'' standard in § 4279.126 not apply on certain equipment which has clear useful life beyond 15 years. The Agency disagrees because the established criteria outlined in this section are standard prudent lending criteria used by financial institutions to determine the term of the loan. The suggestion is not adopted.

A comment on § 4279.144, Appraisals, recommended that language be added discharging lenders from responsibility for assuring that appraisal values adequately reflect the actual value of all collateral if appraisals meet the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), the Uniform Standards of Professional Appraisal Practices (USPAP), and generally accepted methods of determining value. The suggestion is not adopted because a reasonable, prudent lender will ensure that appraisal values reflect actual values.

Four respondents provided comments on § 4279.125, Interest rates. Two comments support the regulation which allows different interest rates on the unguaranteed and guaranteed portion of the loan; however, they want the restriction that the rate on the guaranteed portion cannot exceed the rate on the unguaranteed portion eliminated. This suggestion will not be adopted because the lender is already receiving the benefit of a guarantee on the guaranteed portion and allowing a higher rate on that portion causes the Agency to exceed its stated percentage.

One comment recommended allowing daily changes in variable interest rate loans. The Agency will not adopt this suggestion because the quarterly adjustment limitation provides borrowers with a financial planning tool in that they have at least some assurance of these costs for the quarter.

One comment suggested combining fixed and variable rates on the same loan to allow a fixed rate for the guaranteed portion and a variable rate for the unguaranteed portion. The regulation allows this as long as the guaranteed portion rate is not higher.

Seven respondents provided generally supportive comments for the entire regulation. Several individual items raised included the hope that RBS staff will maintain involvement regarding due diligence. The Farm Credit System requested any reference on farm credit programs anywhere in the rule be in lower case to prevent misinterpretation by the reader. The Agency complied with that request. The Agency will continue to maintain the oversight needed to protect the taxpayer.

Four respondents provided comments about § 4279.113(r), Eligible loan purpose, regarding construction and interim loans. Comments suggested consideration be given to developing a mechanism for partial interim advances, making construction loans an eligible purpose, and issuing the guarantee at closing instead of at project completion. Additionally, two other comments suggested such a change so that in those instances the guaranteee could be sold sooner in the secondary market. The time period in which material adverse changes could occur would be reduced. The Agency agrees and has adopted the comments to allow the Loan Note Guarantee to be issued at closing on the interim financing based on certain conditions as set forth in the final regulations instead of when the project is substantially complete.

Four respondents provided comments on § 4279.186, Issuance of the guarantee. One comment suggested adding ''unless a valid lender's agreement already exists per § 4279.72'' after Executed Lender's Agreement in § 4279.186(a)(2). This comment is adopted because a valid Lender's Agreement may already be in existence.

One respondent provided a comment on § 4279.78(c), Purchase for servicing, disagreeing with not allowing the repurchase from the holder for arbitrage or other purposes to further its own financial gain. The secondary market option provides a risk management tool for the lender; however, it is also necessary to consider financial stability for the business. The language will not be changed.

One respondent provided a comment on § 4279.101, Introduction, recommending ''field office'' replace ''district, regional or area office''. This change is adopted.

Five respondents provided comments on § 4279.107, Guarantee fee, supporting the 1 percent option. Two of those comments requested clarification of the term ''high impact''. Section 4279.155, Loan priorities, paragraph (b)(5), was changed to provide clarification.

One respondent felt § 4279.107(a)(4) allowing a reduction in the guarantee fee in certain circumstances was too general. The Agency feels the language provides flexibility to respond to unique and unusual situations. This comment is not adopted.

Seven respondents provided comments suggesting other guarantee fee structures. Four comments supported the determination of lower fees being made at the State Office level. This regulation provides that the Agency will have the authority to reduce the guarantee fee if the business meets the criteria in § 4279.107. In writing this provision, budget considerations and OMB limitations must be considered since the program loan level is affected adversely if the guarantee fee is reduced. The National Office must monitor the loan level to ensure funds are available to provide the greatest benefit to rural customers that utilize this program. However, the State Director does have the authority to reduce guarantee fees if it is determined that the business meets the criteria in § 4279.107.

A commenter was concerned that the reduced fee option provided the Agency an unfair marketing advantage over another agency. It is not the intent to compete with any other agency for loans. The focus is on rural development and the intent of the lower

fee option is to help lenders assist business development in the areas that need it the most.

One comment recommended elimination of a lower guarantee fee because the amount does not matter to the lender or business. The Agency will not adopt this change because the lower guarantee fee will benefit businesses located in high-priority areas.

One comment suggested changing the § 4270.107(a)(3) requirement that a community be persistently poor for 60 years or more to a requirement of 60 years and eliminate the words ''or more''. The Agency agrees nothing is added by the use of the phrase ''or more.'' The phrase has been deleted.

One comment suggested an editorial change to § 4279.113(r) regarding removing the hyphen between the words ''take-out''. The regulation will be conformed to the Government Style Manual which says the term used as a noun is ''takeout'' but if it were used as an adjective, for example ''take-out financing'', it would be two words with a hyphen.

One comment recommends packager fees be limited in amount but still be considered eligible. The regulation already allows packager fees as an eligible purpose, provided it is an amount that is reasonable and customary in the local area. See § 4279.120(b), fees and charges.

One respondent provided comments on § 4279.115, Prohibition under Agency programs, recommending this entire section be eliminated. This is a statutory requirement and cannot be eliminated.

Twenty-three respondents provided comments on § 4279.119, Loan guarantee limits.

Two comments recommended the percentage of guarantee determined by the Agency not be subject to the appeal process. The comment was not adopted because the Agency does not determine the appealability of any decision.

Six comments suggested alternative options for issuing guarantee percentages. No change is made because the Agency is satisfied that as written it provides sufficient flexibility in providing program benefits.

One comment suggested determining the percentage of guarantee based on the size of the lender. The comment was not adopted because such a requirement is already inherent in the regulation. Variations in loan sizes, lender capitalization, and lender loan size limits established by lender regulators limit the sizes of lenders and the loans they can make.

One comment suggested that increasing the guarantee percentage is more important than reducing the guarantee fee. The Agency prefers to retain the latitude to allow both options.

Five respondents recommended the State Director be able to grant an exception to allow 90 percent guarantees. The respondents; suggestion is already in effect because the regulation has been changed to give the State Director limited authority to approve projects with a decreased guarantee fee for high-priority projects not exceeding $2 million when it is within the State Director's approval authority to do so. If not within the State Director's approval authority, the loan request will be submitted to the National Office for review.

One comment suggested the guarantee percentage be stairstepped versus a single rate to provide more increased coverage for loan requests that exceed the $5 million and $10 million thresholds. This was not adopted for a variety of loan servicing considerations involving variations in lender payment applications and effective maximum percentage of loss payments which would not make application of program regulations consistent.

One comment wants the Agency to determine whether a loan is eligible for a 90 percent guarantee without submitting an application. The Agency can make this determination from a preapplication.

Three comments did not support loans over $10 million being eligible because of possible funding concerns and credit quality issues. The commenters' concerns were considered. The Agency believes the revised regulations will provide measures through the priority scoring system, by reducing the guarantee percentage to 60 percent or less, and oversight of the Under Secretary's office for loans exceeding $10 million to control credit quality and aggressive use of funding.

One comment suggested the State Director's loan approval authority be increased to $5 million based on staff expertise. This is internal management and is not a regulatory requirement.

One comment suggested an exception authority be established for 7 CFR, subpart B of parts 4279 and 4287. This comment has been adopted to include the exception authority language in subpart B of parts 4279 and 4287.

One comment expressed a concern for development of a standardized application software package for lenders. Such a package is being developed but it will not be part of this regulation.

Nine respondents provided comments on § 4279.29, Eligible lenders. Of the nine comments, three comments were from existing non-lenders that desire consideration be given to eligibility under § 4279.29. The Agency will not make any changes to the regulation since the current language will allow any lender the right to request an eligibility determination under the regulations.

One comment suggested that ''adequately'' be removed from § 4279.29(c). The Agency agrees and the word will be removed.

Four comments support expanding eligible lender determination; however, two of the comments contained qualifying criteria. Of the four comments, two contained qualifying criteria such as audits by State or Federal Government auditing bodies at least every 12 months and non-bank lenders be limited by their past experience in other Government guaranteed programs. The Agency feels that a change is not necessary because the proposed regulations provide the flexibility to make a determination of eligibility.

Two comments objected to nonbanks being considered possible eligible lenders. The Agency does not agree. The program offers a variety of lenders an opportunity to participate and provide credit in rural areas so as to provide a greater availability of credit to rural residents.

Two respondents provided editorial change comments on § 4279.2, Definitions. The Agency adopted the comment that for the definition of ''Deficiency balance,'' the words ''including the personal guarantee'' be eliminated.

One respondent suggested reducing the State allocation of guarantee authority only by the guaranteed portion of the loan. Federal budget procedures require scoring the entire amount of a loan against the allocation regardless of the percentage of guarantee.

Two comments recommended § 4279.84, Replacement of document, be changed to indicate that the notarized certificate of loss should include limited information since the Agency has copies of the noted documents. This proposal is not adopted because the information requested is necessary to ensure the legal sufficiency of the replacement documents.

One comment requested § 4279.113, Eligible loan purposes, be changed to allow the growing of seed crops. Production of agriculture alone is not an eligible purpose. Section 4279.113(b)(h) addresses eligible agricultural production in a manner to ensure that no one area of business receives a disproportionate amount of funding.

One comment recommended the adverse change period be changed to

cover from the date the application is submitted to the Agency to the date of the issuance of the Loan Note Guarantee. The Agency will not adopt this change since the final conditions are established at the time the Agency issues the Conditional Commitment.

Two respondents provided comments on § 4279.149, Personal and corporate guarantees. One supported the section, the other comment raised a concern that the language would appear to require a guarantee from significant customers. This concern is valid and the section language was revised to clarify intercompany relationships.

Twelve respondents provided comments on 7 CFR, part 4287, subpart B—Servicing Business and Industry Guaranteed Loans.

One comment on § 4287.106, Routine servicing, suggested that the Agency establish internal monitoring of account servicing requirements. These are the lender's loans and as such the lender is accountable for its actions. The Agency is to pay the appropriate loss to those lenders which have exercised due diligence.

One comment on § 4287.106(d), Financial reports, proposed relaxing the requirement that lenders must obtain and provide the borrower's financial statements to the Agency within 120 days of the borrower's fiscal yearend.

The lenders requested specific actions they are to use when they are unable to comply with these regulations due to uncooperative borrowers. Current regulations are appropriate and conform with industry standards so no change was made.

One comment questioned § 4287.106(e), Additional expenditures, asking why the Agency requires concurrence for additional expenditures if the loans security position is not altered. Additional expenditures may deplete operating capital which could cause default. The Agency has an interest to see that a loan is repaid by the borrower rather than the Agency having to provide funds pursuant to its guarantee.

Five respondents provided comments on § 4287.113(a), Release of collateral, stating they did not support the requirement that all releases of collateral must be supported by a current appraisal on the remaining collateral. They proposed several alternatives including prorating values established at loanmaking and documenting by means other than appraisal. The Agency agrees, and the language in this section has been revised.

One respondent provided a comment about §§ 4287.113 (a)(4), (b), and (c) regarding whether the 20-percent figure is for each instance or cumulative over the life of the loan. Lenders may, over the life of the loan, release collateral (other than personal and corporate guarantees) with a cumulative value of up to 20 percent of the original loan amount without Agency concurrence. The regulation has been changed to make this clear.

One respondent provided a comment about § 4287.156(a), Protective advances, pointing out that it does not reference a dollar amount. A ceiling will not be established because each case is unique and flexibility is desired.

Two respondents made comments on § 4287.157, Liquidation, suggesting the authority to approve liquidation plans be at the State Office and not the National Office level. This comment is adopted and the authority to approve liquidation plans will be at the State Office based on the State's delegated loan servicing authority without National Office concurrence.

Two comments stated paragraphs (b)(2) and (c) of § 4287.158, Determination of loss and payment, are in direct conflict. It appears that the writer may have felt there was a conflict concerning interest accrual. Under certain circumstances, interest accrual may continue. The language will not change as noted in the proposed rule.

One comment suggested retaining the existing option which allows the Agency to permit the lender to calculate the final loss settlement using net proceeds received from the collateral at the time of ultimate disposition rather than at liquidation. Lenders feel it is unfair to settle when they acquired the collateral as it reflects what is actually received for the collateral. The Agency feels settlement at ultimate disposition is preferable because it reflects what is actually received for the collateral.

One respondent provided a comment on § 4287.170, Bankruptcy, expressing displeasure with the Agency's position that Chapter 11 reorganization legal expenses are not considered liquidation costs. Reorganization legal expenses are not incurred in contemplation of liquidation. Therefore, they should not be treated as a liquidation expense which by definition is only deductible during a liquidation when there are adequate proceeds from collateral liquidation to cover the expense. This provision was not changed.

One respondent provided editorial changes for the entire section. The editorial changes were not substantive and reflected a preference of the respondent. To ensure no confusion concerning the meaning of the regulation and to ensure consistency of language, the editorial changes were not adopted with the exception of the following items:

In § 4287.157, Liquidation, paragraph (c), Submission of liquidation plan, the third sentence which reads, ''State Directors have no authority to exercise the option to liquidate by the Agency without National Office approval'' is changed to state under what authority liquidation is carried out by the Agency, not the lender. The Agency clarified the language to indicate that in cases where the Agency carries out liquidation of the loan, the State Director must request approval from the National Office; and

In § 4287.157, Liquidation, paragraph (j), Abandonment of collateral, the words, ''National Office'' are replaced by ''Agency''.

Those sections of the regulation that are administrative in nature and apply only to procedures within the Agency have been removed from the document. These procedures are available from any Agency office upon request.

List of Subjects

7 CFR Part 1980

Loan programs—Agriculture, Loan programs—Business and industry—Rural development assistance, Loan programs—Housing and community development, Loan programs—Community programs—Rural development assistance, Rural areas.

7 CFR Part 4279

Loan programs—Business and Industry—Rural development assistance, Rural areas.

7 CFR Part 4287

Loan programs—Business and Industry—Rural development assistance, Rural areas.

Accordingly, chapters XVIII and XLII, title 7 of the Code of Federal Regulations are amended as follows:

CHAPTER XVIII—RURAL HOUSING SERVICE, RURAL BUSINESS-COOPERATIVE SERVICE, RURAL UTILITIES SERVICE, AND FARM SERVICE AGENCY, DEPARTMENT OF AGRICULTURE.

PART 1980—GENERAL

1. The authority citation for part 1980 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C 1480.

Subpart A—General

2. Section 1980.6(a) is amended by removing the definitions for ''Borrower,'' ''Disaster Assistance for Rural Business Enterprises,'' and ''Drought and Disaster Guaranteed

loans;'' in the heading for the definition of ''Assignment Guarantee Agreement,'' removing '', 1980–70 or 1980–73;'' in the third sentence of the definition of ''Holder,'' removing the parenthetical phrase ''(or 1980–70 or 1980–73);'' in the heading for the definition of ''Lender's Agreement,'' removing the comma and adding the word ''or'' in its place immediately following ''449–35''; removing '', 1980–68, or 1980–71'' immediately following ''1980–38;'' in the heading for the definition of ''Loan Note Guarantee,'' removing the parenthetical phrase '', (or 1980–69, 1980–72)''; and revising the definition of ''Guaranteed loan'' to read as follows:

§ 1980.6 Definitions and abbreviations.

(a) * * *

Guaranteed loan. A loan made and serviced by a lender for which FmHA or its successor agency has entered into a Form FmHA 449–35 or Form FmHA 1980–38, ''Lender's Agreement,'' and for which FmHA or its successor agency has issued a Form FmHA 449–34, ''Loan Note Guarantee.''

* * * * *

§ 1980.6 [Amended]

3. Section 1980.6(b) is amended by removing the entries for ''B&I,'' ''DARBE,'' and ''D&D'' from the list of abbreviations.

§ 1980.13 [Amended]

4. Section 1980.13 is amended in the introductory text of paragraph (a) in the second sentence by revising the reference ''paragraphs (a) (1), (2) and (3)'' to read ''paragraphs (a) (1) and (2);'' in paragraph (a)(2) by removing ''; or'' and adding a period at the end of the paragraph; by removing paragraph (a)(3); and in paragraph (c) by removing the parenthetical phrase ''(See subpart E of this part.)''.

§ 1980.20 [Amended]

5. Section 1980.20 is amended in the introductory text of paragraph (a) by removing the third and fourth sentences; in the fifth sentence, by removing the words ''for all other loans covered by this section;'' and in the sixth sentence by removing the words ''in regards to D&D and DARBE guaranteed loans (see Subpart E of this part) or''.

§ 1980.41 [Amended]

6. Section 1980.41 is amended in the first sentence of paragraph (b)(3)(iii)(A) by removing the parenthetical phrase ''(State Director for B&I)''.

§ 1980.46 [Amended]

7. Section 1980.46 is amended in paragraph (a)(2) by removing the parenthetical phrase ''(State Director for B&I)'' at the end of the paragraph.

§ 1980.47 [Amended]

8. Section 1980.47 is amended in the first sentence of paragraph (d) by removing the words ''and Business''.

9. Section 1980.60 is amended by revising paragraph (a)(2) to read as follows:

§ 1980.60 Conditions precedent to issuance of the Loan Note Guarantee or Contract of Guarantee.

(a) * * *

(2) All planned property acquisition has been completed and all development has been substantially completed in accordance with plans and specifications. All costs have not exceeded the amounts approved by the lender and the Agency.

* * * * *

§ 1980.61 [Amended]

10. Section 1980.61 is amended in the first sentence of paragraph (b)(3) by revising the words ''Forms FmHA or its successor agency under Public Law 103–354 449–35'' to read ''Form FmHA 449–35'' and removing the words ''FmHA or its successor agency under Public Law 103–354 1980–68, and FmHA or its successor agency under Public Law 103–354 1980–71;'' in paragraph (b)(4) by revising the word ''request'' to read ''requests,'' revising ''Forms FmHA or its successor agency under Public Law 103–354 449–35'' to read ''Form FmHA 449–35'' removing, ''FmHA or its successor agency under Public Law 103–354 1980–68, and FmHA or its successor agency under Public Law 103–354 1980–71;'' and removing the parenthetical phrase ''(State Director for B&I);'' and in paragraph (h) by removing the words '', except for B&I where the State Director and State B&I or C&BP Chief will execute these forms.''

§ 1980.63 [Amended]

11. Section 1980.63 is amended in paragraph (b) by removing the parenthetical phrase ''(State Director for B&I)'' from the second and fourth sentences and removing the parenthetical phrase ''(except for B&I)'' from the third sentence.

§ 1980.67 [Amended]

12. Section 1980.67 is amended in the first sentence of paragraph (a) by removing the reference ''E,''.

§ 1980.68 [Amended]

13. Section 1980.68 is amended by revising the reference ''paragraph 5'' to read ''paragraph 6'' in the second sentence and removing the parenthetical phrase ''(State Director for B&I)'' from the third and fourth sentences.

Subpart E—Business and Industrial Loan Program

14. Section 1980.401 is amended by revising paragraph (a) to read as follows:

§ 1980.401 Introduction.

(a) Direct Business and Industry (B&I) loans are disbursed by the Agency under this subpart. B&I loan guarantees are to be processed and serviced under the provisions of subparts A and B of part 4279 and subpart B of part 4287 of this title. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to relatives, or business or close personal associates, is subject to the provisions of part 1900 subpart D of this chapter. Applicants for this assistance are required to identify any known relationship or association with any Agency employee.

* * * * *

15. A new part 4279, consisting of 4279.1 through 4279.200, is added to chapter XLII to read as follows:

PART 4279—GUARANTEED LOANMAKING

Subpart A—General

Sec.

4279.1 Purpose.
4279.2 Definitions and abbreviations.
4279.3–4279.14 [Reserved]
4279.15 Exception authority.
4279.16 Appeals.
4279.17–4279.28 [Reserved]
4279.29 Eligible lenders.
4279.30 Lenders' functions and responsibilities.
4279.31–4279.42 [Reserved]
4279.43 Certified Lender Program.
4279.44 Access to records.
4279.45–4279.57 [Reserved]
4279.58 Equal Credit Opportunity Act.
4279.59 [Reserved]
4279.60 Civil Rights Impact Analysis
4279.61–4279.70 [Reserved]
4279.71 Public bodies and nonprofit corporations.
4279.72 Conditions of guarantee.
4279.73–4279.74 [Reserved]
4279.75 Sale or assignment of guaranteed loan.
4279.76 Participation.
4279.77 Minimum retention.
4279.78 Repurchase from holder.
4279.79–4279.83 [Reserved]
4279.84 Replacement of document.
4279.85–4279.99 [Reserved]
4279.100 OMB control number.

Subpart B—Business and Industry Loans

4279.101 Introduction.
4279.102 Definitions.
4279.103 Exception Authority.
4279.104 Appeals.
4279.105–4279.106 [Reserved]

4279.107 Guarantee fee.
4279.108 Eligible borrowers.
4279.109–4279.112 [Reserved]
4279.113 Eligible loan purposes.
4279.114 Ineligible purposes.
4279.115 Prohibition under Agency programs.
4279.116–4279.118 [Reserved]
4279.119 Loan guarantee limits.
4279.120 Fees and charges.
4279.121–4279.124 [Reserved]
4279.125 Interest rates.
4279.126 Loan terms.
4279.127–4279.130 [Reserved]
4279.131 Credit quality.
4279.132–4279.136 [Reserved]
4279.137 Financial statements.
4279.138–4279.142 [Reserved]
4279.143 Insurance.
4279.144 Appraisals.
4279.145–4279.148 [Reserved]
4279.149 Personal and corporate guarantees.
4279.150 Feasibility studies.
4279.151–4279.154 [Reserved]
4279.155 Loan priorities.
4279.156 Planning and performing development.
4279.157–4279.160 [Reserved]
4279.161 Filing preapplications and applications.
4279.162–4279.164 [Reserved]
4279.165 Evaluation of application.
4279.166–4279.172 [Reserved]
4279.173 Loan approval and obligating funds.
4279.174 Transfer of lenders.
4279.175–4279.179 [Reserved]
4279.180 Changes in borrower.
4279.181 Conditions precedent to issuance of Loan Note Guarantee.
4279.182–4279.185 [Reserved]
4279.186 Issuance of the guarantee.
4279.187 Refusal to execute Loan Note Guarantee.
4279.188–4279.199 [Reserved]
4279.200 OMB control number.

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart A—General

§ 4279.1 Purpose.

(a) This subpart contains general regulations for making and servicing Business and Industry (B&I) loans guaranteed by the Agency and applies to lenders, holders, borrowers and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans.

(b) It is the responsibility of the lender to ascertain that all requirements for making, securing, servicing, and collecting the loan are complied with.

(c) 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.

§ 4279.2 Definitions and abbreviations.

(a) *Definitions.*

Agency. The Rural Business-Cooperative Service or successor Agency assigned by the Secretary of Agriculture to administer the B&I program. References to the National Office, Finance Office, State Office or other Agency offices or officials should be read as prefaced by Agency or ''Rural Development'' as applicable.

Arm's-length transaction. The sale, release, or disposition of assets in which the title to the property passes to a ready, willing, and able disinterested third party that is not affiliated with or related to and has no security, monetary or stockholder interest in the borrower or transferor at the time of the transaction.

Assignment Guarantee Agreement (Business and Industry). Form 4279–6, the signed agreement among the Agency, the lender, and the holder containing the terms and conditions of an assignment of a guaranteed portion of a loan, using the single note system.

Borrower. All parties liable for the loan except for guarantors.

Conditional Commitment (Business and Industry). Form 4279–3, the Agency's notice to the lender that the loan guarantee it has requested is approved subject to the completion of all conditions and requirements set forth by the Agency.

Deficiency balance. The balance remaining on a loan after all collateral has been liquidated.

Deficiency judgment. A monetary judgment rendered by a court of competent jurisdiction after foreclosure and liquidation of all collateral securing the loan.

Existing lender debt. A debt not guaranteed by the Agency, but owed by a borrower to the same lender that is applying for or has received the Agency guarantee.

Fair market value. The price that could reasonably be expected for an asset in an arm's-length transaction between a willing buyer and a willing seller under ordinary economic and business conditions.

Farmers Home Administration (FmHA). The former agency of USDA that previously administered the programs of this Agency. Many Instructions and forms of FmHA are still applicable to Agency programs.

Finance office. The office which maintains the Agency financial accounting records located in St. Louis, Missouri.

High-impact business. A business that offers specialized products and services that permit high prices for the products produced, may have a strong presence in international market sales, may provide a market for existing local business products and services, and which is locally owned and managed.

Holder. A person or entity, other than the lender, who owns all or part of the guaranteed portion of the loan with no servicing responsibilities. When the single note option is used and the lender assigns a part of the guaranteed note to an assignee, the assignee becomes a holder only when the Agency receives notice and the transaction is completed through use of Form 4279–6 or predecessor form.

Interim Financing. A temporary or short-term loan made with the clear intent that it will be repaid through another loan. Interim financing is frequently used to pay construction and other costs associated with a planned project, with permanent financing to be obtained after project completion.

Lender. The organization making, servicing, and collecting the loan which is guaranteed under the provisions of the appropriate subpart.

Lender's Agreement (Business and Industry). Form 4279–4 or predecessor form between the Agency and the lender setting forth the lender's loan responsibilities when the Loan Note Guarantee is issued.

Loan Agreement. The agreement between the borrower and lender containing the terms and conditions of the loan and the responsibilities of the borrower and lender.

Loan Note Guarantee (Business and Industry). Form 4279–5 or predecessor form issued and executed by the Agency containing the terms and conditions of the guarantee.

Loan-to-value. The ratio of the dollar amount of a loan to the dollar value of the collateral pledged as security for the loan.

Natural resource value-added product. Any naturally occurring product that is processed to add value to the product. For example, straw is processed into particle board.

Negligent Servicing. The failure to perform those services which a reasonably prudent lender would perform in servicing (including liquidation of) its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act, but also not acting in a timely manner, or acting in a manner contrary to the manner in which a reasonably prudent lender would act.

Parity. A lien position whereby two or more lenders share a security interest of equal priority in collateral. In the event of default, each lender will be affected on a *pro rata* basis.

Participation. Sale of an interest in a loan by the lender wherein the lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

Poor. A community or area is considered poor if, based on the most recent decennial census data, either the county, city, or census tract where the community or area is located has a median household income at or below the poverty line for a family of four; has a median household income below the nonmetropolitan median household income for the State; or has a population of which 25 percent or more have income at or below the poverty line.

Promissory Note. Evidence of debt. ''Note'' or ''Promissory Note'' shall also be construed to include ''Bond'' or other evidence of debt where appropriate.

Rural Development. The Under Secretary for Rural Development has policy and operational oversight responsibilities for RHS, RBS, and RUS.

Spreadsheet. A table containing data from a series of financial statements of a business over a period of time. Financial statement analysis normally contains spreadsheets for balance sheet items and income statements and may include funds flow statement data and commonly used ratios. The spreadsheets enable a reviewer to easily scan the data, spot trends, and make comparisons.

State. Any of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Subordination. An agreement between the lender and borrower whereby lien priorities on certain assets pledged to secure payment of the guaranteed loan will be reduced to a position junior to, or on parity with, the lien position of another loan in order for the Agency borrower to obtain additional financing, not guaranteed by the Agency, from the lender or a third party.

Veteran. For the purposes of assigning priority points, a veteran is a person who is a veteran of any war, as defined in section 101(12) of title 38, United States Code.

(b) *Abbreviations.*

B&I—Business and Industry
CF—Community Facilities
CLP—Certified Lender Program
FSA—Farm Service Agency
FMI—Forms Manual Insert
NAD—National Appeals Division
OGC—Office of the General Counsel
RBS—Rural Business-Cooperative Service
RHS—Rural Housing Service
RUS—Rural Utilities Service
SBA—Small Business Administration
USDA—United States Department of Agriculture

§§ 4279.3–4279.14 [Reserved]

§ 4279.15 Exception authority.

The Administrator may, in individual cases, grant an exception to any requirement or provision of this subpart which is not inconsistent with any applicable law provided, the Administrator determines that application of the requirement or provision would adversely affect USDA's interest.

§ 4279.16 Appeals.

Only the borrower, lender, or holder can appeal an Agency decision made under this subpart. In cases where the Agency has denied or reduced the amount of final loss payment to the lender, the adverse decision may be appealed by the lender only. An adverse decision that only impacts the holder may be appealed by the holder only. A decision by a lender adverse to the interest of the borrower is not a decision by the Agency, whether or not concurred in by the Agency. Appeals will be handled in accordance with 7 CFR, part 11. Any party adversely affected by an Agency decision under this subpart may request a determination of appealability from the Director, National Appeals Division, USDA, within 30 days of the adverse decision.

§§ 4279.17–4279.28 [Reserved]

§ 4279.29 Eligible lenders.

(a) *Traditional lenders.* An eligible lender is any Federal or State chartered bank, Farm Credit Bank, other Farm Credit System institution with direct lending authority, Bank for Cooperatives, Savings and Loan Association, or mortgage company that is part of a bank-holding company. These entities must be subject to credit examination and supervision by either an agency of the United States or a State. Eligible lenders may also include credit unions provided, they are subject to credit examination and supervision by either the National Credit Union Administration or a State agency, and insurance companies provided they are regulated by a State or National insurance regulatory agency. Eligible lenders include the National Rural Utilities Cooperative Finance Corporation.

(b) *Other lenders.* Rural Utilities Service borrowers and other lenders not meeting the criteria of paragraph (a) of this section may be considered by the Agency for eligibility to become a guaranteed lender provided, the Agency determines that they have the legal authority to operate a lending program and sufficient lending expertise and financial strength to operate a successful lending program.

(1) Such a lender must:

(i) Have a record of successfully making at least three commercial loans annually for at least the most recent 3 years, with delinquent loans not exceeding 10 percent of loans outstanding and historic losses not exceeding 10 percent of dollars loaned, or when the proposed lender can demonstrate that it has personnel with equivalent previous experience and where the commercial loan portfolio was of a similar quantity and quality; and

(ii) Have tangible balance sheet equity of at least seven percent of tangible assets and sufficient funds available to disburse the guaranteed loans it proposes to approve within the first 6 months of being approved as a guaranteed lender.

(2) A lender not eligible under paragraph (a) of this section that wishes consideration to become a guaranteed lender must submit a request in writing to the State Office for the State where the lender's lending and servicing activity takes place. The National Office will notify the prospective lender, through the State Director, whether the lender's request for eligibility is approved or rejected. If rejected, the reasons for the rejection will be indicated to the prospective lender in writing. The lender's written request must include:

(i) Evidence showing that the lender has the necessary capital and resources to successfully meet its responsibilities.

(ii) Copy of any license, charter, or other evidence of authority to engage in the proposed loanmaking and servicing activities. If licensing by the State is not required, an attorney's opinion to this effect must be submitted.

(iii) Information on lending experience, including length of time in the lending business; range and volume of lending and servicing activity; status of loan portfolio including delinquency rate, loss rate as a percentage of loan amounts, and other measures of success; experience of management and loan officers; audited financial statements not more than 1 year old; sources of funds for the proposed loans; office location and proposed lending area; and proposed rates and fees, including loan

origination, loan preparation, and servicing fees. Such fees must not be greater than those charged by similarly located commercial lenders in the ordinary course of business.

(iv) An estimate of the number and size of guaranteed loan applications the lender will develop.

(c) *Expertise.* Loan guarantees will only be approved for lenders with adequate experience and expertise to make, secure, service, and collect B&I loans.

§ 4279.30 Lenders' functions and responsibilities.

(a) *General.* (1) Lenders have the primary responsibility for the successful delivery of the B&I loan program. All lenders obtaining or requesting a B&I loan guarantee are responsible for:

(i) Processing applications for guaranteed loans,

(ii) Developing and maintaining adequately documented loan files,

(iii) Recommending only loan proposals that are eligible and financially feasible,

(iv) Obtaining valid evidence of debt and collateral in accordance with sound lending practices,

(v) Supervising construction

(vi) Distribution of loan funds,

(vii) Servicing guaranteed loans in a prudent manner, including liquidation if necessary,

(viii) Following Agency regulations, and

(ix) Obtaining Agency approvals or concurrence as required.

(2) This subpart, along with subpart B of this part and subpart B of part 4287 of this chapter, contain the regulations for this program, including the lenders' responsibilities.

(b) *Credit evaluation.* This is a key function of all lenders during the loan processing phase. The lender must analyze all credit factors associated with each proposed loan and apply its professional judgment to determine that the credit factors, considered in combination, ensure loan repayment. The lender must have an adequate underwriting process to ensure that loans are reviewed by other than the originating officer. There must be good credit documentation procedures.

(c) *Environmental responsibilities.* Lenders have a responsibility to become familiar with Federal environmental requirements; to consider, in consultation with the prospective borrower, the potential environmental impacts of their proposals at the earliest planning stages; and to develop proposals that minimize the potential to adversely impact the environment. Lenders must alert the Agency to any controversial environmental issues related to a proposed project or items that may require extensive environmental review. Lenders must help the borrower prepare Form FmHA 1940–20, ''Request for Environmental Information'' (when required by subpart G of part 1940 of this title); assist in the collection of additional data when the Agency needs such data to complete its environmental review of the proposal; and assist in the resolution of environmental problems.

(d) *Loan closing.* The lender will conduct loan closings.

§§ 4279.31–4279.42 [Reserved]

§ 4279.43 Certified Lender Program.

(a) *General.* This section provides policies and procedures for the Certified Lender Program (CLP) for loans guaranteed under this part. The objectives are to expedite loan approval, making, and servicing.

(b) *CLP eligibility criteria.* The lender must meet established eligibility criteria as follows:

(1) Be an ''eligible lender'' as defined in 4279.29 of this subpart and authorized to do business in the State in which CLP status is desired.

(2) Demonstrate to the Agency's satisfaction that it has a thorough knowledge of commercial lending. The lender will demonstrate such knowledge by providing a summary of its guaranteed and unguaranteed business lending activity. At a minimum, the summary must include the dollar amount and number of loans in the lender's portfolio, unguaranteed and guaranteed by any Federal agency, with information on delinquencies and losses and, if applicable, the performance of the lender as a Small Business Administration (SBA) certified or preferred lender. A certified lender must be recognized throughout the State as a commercial lender and have a track record of successfully making at least five commercial loans per year for at least the most recent 5 years, with delinquent commercial loans outstanding not exceeding 6 percent of commercial loans outstanding and historic losses not exceeding 6 percent of dollars loaned, or it must demonstrate that it has personnel with equivalent previous experience where the commercial loan portfolio was of a similar quantity and quality. The lender will provide a written certification to this effect along with a statistical analysis of its commercial loan portfolio for the last 3 of its fiscal years.

(3) The percentage of guarantee will not exceed 80 percent.

(4) If the lender is a bank or savings and loan, it must have a financial strength rating in the upper half of possible ratings as reported by a lender rating service selected by the Agency.

(5) Possess loan officers and other appropriate personnel who have received training conducted by the Agency. Additional training may be required if the lender's contact person changes or if the Agency determines further instruction is needed.

(6) Have committed no action within the most recent 2 years prior to requesting CLP status which would be considered cause for revoking CLP status under paragraph (e) of this section.

(c) *CLP approval.* The Agency may grant CLP status for a period not to exceed 5 years by executing Form 4279–8, ''Certified Lender, Business and Industry Program,'' with the lender. CLP status will not apply to branches or suboffices of the lender unless so specified in the agreement. Such branches or suboffices may submit loans as regular lenders or apply for their own CLP status. Any lender who desires CLP status must prepare a written request to the State Director where it desires CLP status. The request must address each of the required criteria outlined in paragraph (b) of this section, except paragraph (b)(3), and should be accompanied by any other information the lender believes will be helpful. The request will also include Form 4279–8 completed and executed by the lender and an executed Lender's Agreement if it does not already have a valid Lender's Agreement on file with the Agency. Loans made by the lender and guaranteed by the Agency prior to the lender receiving CLP status shall continue to be governed by the forms and agreements executed between the lender and the Agency for those loans.

(d) *Renewal of CLP status.* Renewal of CLP status is not automatic. CLP status will lapse upon the expiration date of Form 4279–8 unless the lender obtains a renewal. A lender whose CLP status has lapsed may continue to submit loan guarantee requests as a regular lender. A new Form 4279–8 completed and executed by the lender must be provided, along with a written update of the eligibility criteria required by this section for CLP approval. This information must be supplied at least 60 days prior to the expiration of the existing agreement to be assured of uninterrupted status. The information must address how the lender is complying with each of the required criteria described in paragraph (b) of this section. It must include any proposed changes in the designated

persons for processing guaranteed loans or operating methods used in processing and servicing Agency guaranteed loans.

(e) *Revocation of CLP status.* The lender's CLP status may be revoked at any time for cause. The debarment of a lender is an additional alternative the Agency may consider. A lender which has lost its CLP status, but has not been debarred and still meets the requirements of § 4279.29 of this subpart may continue to submit loan guarantee requests as a regular lender. Cause for revoking CLP status includes:

(1) Failure to maintain status as an eligible lender as set forth in § 4279.29 of this subpart;

(2) Knowingly submitting false information when requesting a guarantee or basing a guarantee request on information known to be false or which the lender should have known to be false;

(3) Making a guaranteed loan with deficiencies which may cause losses not to be covered by the Loan Note Guarantee;

(4) Conviction for acts in connection with any loan transaction whether or not the loan was guaranteed by the Agency;

(5) Violation of usury laws in connection with any loan guaranteed by the Agency;

(6) Failure to obtain the required security for any loan guaranteed by the Agency;

(7) Using loan funds guaranteed by the Agency for purposes other than those specifically approved by the Agency in the Conditional Commitment;

(8) Violation of any term of the Lender's Agreement;

(9) Failure to correct any cited deficiency in loan documents in a timely manner;

(10) Failure to submit reports required by the Agency in a timely manner;

(11) Failure to process Agency guaranteed loans in a reasonably prudent manner;

(12) Failure to provide for adequate construction planning and monitoring in connection with any loan to ensure that the project will be completed with the available funds and, once completed, will be suitable for the borrower's needs;

(13) Repetitive recommendations for guaranteed loans with marginal or substandard credit quality or that do not comply with Agency requirements;

(14) Repetitive recommendations for servicing actions that do not comply with Agency requirements;

(15) Negligent servicing; or

(16) Failure to conduct any approved liquidation of a loan guaranteed by the Agency or its predecessors in a timely and effective manner and in accordance with the approved liquidation plan.

(f) *General loan processing and servicing guidelines.* All requests for guaranteed loans will be processed and serviced under subparts A and B of this part and subpart B of part 4287 of this chapter except as modified by this section. When determining whether or not to request a guarantee for a proposed loan, lenders must consider the priorities set forth in § 279.155 of subpart B of this part.

(1) Prior to processing an application, the CLP lender may give written notice to the State Director of its intention to submit an application. Upon receipt of such written notice, the Agency will notify the CLP lender whether or not there is sufficient guarantee authority for the loan. Such guarantee authority will be held for 30 days pending receipt of the application. If a complete application for which guarantee authority is being held is not received within 30 days of the notice of intent to file or is rejected, the guarantee authority for this application will no longer be held in reserve. Notwithstanding the preceding, no guarantee authority will be held in reserve the last 60 days of the Agency's fiscal year.

(2) Refinancing of existing lender debt in accordance with § 4279.113(q) of subpart B of this part will not be permitted without prior Agency approval.

(3) CLP lenders will process all guaranteed loans as a ''complete application'' by obtaining and completing all items required by § 4279.161(b) of subpart B of this part. The CLP lender must maintain all information required by § 4279.161(b) in its loan file and determine that such material complies with all requirements.

(4) CLP lenders will make all material relating to any guarantee application available to the Agency upon request.

(5) At the time of the Agency's issuance of the Loan Note Guarantee, the CLP lender will provide the Agency with copies of the following documents:

(i) Executed Loan Agreement;

(ii) Executed Promissory Notes; and

(iii) Executed security documents including personal and corporate guarantees.

(g) *Unique characteristics of the CLP.* A proposed loan by a CLP lender requires a review by the Agency of the information submitted by the lender, plus satisfactory completion of the environmental review process by the Agency. The Agency may rely on the lender's credit analysis.

(1) The following will constitute a complete application submitted by a CLP lender:

(i) Form 4279–1, ''Application for Loan Guarantee (Business and Industry),'' (marked with the letters ''CLP'' at the top) completed in its entirety and executed by the borrower and CLP lender;

(ii) Copy of the proposed Loan Agreement or a list of proposed requirements;

(iii) Form FmHA 1940–20, completed and signed, with attachments;

(iv) The lender's complete written analysis of the proposal, 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 industry 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 include 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;

(v) Intergovernmental consultation comments in accordance with 7 CFR part 3015, subpart V; and

(vi) If the loan will exceed $1 million and will increase direct employment by more than 50 employees, Form 4279–2, ''Certification of Non-Relocation and Market Capacity Information Report,'' must be completed by the lender. For such loans, the Agency will submit Form 4279–2 to the Department of Labor and obtain clearance before a Conditional Commitment may be issued.

(2) The Agency will make the final credit decision based primarily on a review of the credit analysis submitted by the lender and approval of the Agency's completed environmental analysis, if required, except that refinancing of existing lender debt in accordance with § 4279.113(q) of subpart B of this part will not be approved without a credit analysis by the Agency of the borrower's complete financial statements; and completion by the Agency of the environmental analysis. The Agency may request such additional information as it determines is needed to make a decision.

(h) *Lender loan servicing responsibilities.* CLP lenders will be fully responsible for all aspects of loan servicing and, if necessary, liquidation as described in subpart B of part 4287 of this chapter.

§ 4279.44 Access to records.

The lender will permit representatives of the Agency (or other agencies of the United States) to inspect and make copies of any records of the lender pertaining to the Agency guaranteed loans during regular office hours of the lender or at any other time upon agreement between the lender and the Agency.

§§ 4279.45–4279.57 [Reserved]

§ 4279.58 Equal Credit Opportunity Act.

In accordance with title V of Public Law 93–495, the Equal Credit Opportunity Act, with respect to any aspect of a credit transaction, neither the lender nor the Agency will discriminate against any applicant on the basis of race, color, religion, national origin, sex, marital status or age (providing the applicant has the capacity to contract), or because all or part of the applicant's income derives from a public assistance program, or because the applicant has, in good faith, exercised any right under the Consumer Protection Act. The lender will comply with the requirements of the Equal Credit Opportunity Act as contained in the Federal Reserve Board's Regulation implementing that Act (see 12 CFR part 202). Such compliance will be accomplished prior to loan closing.

§ 4279.59 [Reserved]

§ 4279.60 Civil Rights Impact Analysis

The Agency is responsible for ensuring that all requirements of FmHA Instruction 2006–P, ''Civil Rights Impact Analysis'' are met and will complete the appropriate level of review in accordance with that instruction.

§§ 4279.61–4279.70 [Reserved]

§ 4279.71 Public bodies and nonprofit corporations.

Any public body or nonprofit corporation that receives a guaranteed loan that meets the thresholds established by OMB Circulars A–128 or A–133 or successor regulations or circulars must provide an audit in accordance with the applicable circular or regulation for the fiscal year (of the borrower) in which the Loan Note Guarantee is issued. If the loan is for development or purchases made in a previous fiscal year through interim financing, an audit will also be provided for the fiscal year in which the development or purchases occurred. Any audit provided by a public body or nonprofit corporation in compliance with OMB Circulars A–128 or A–133 or their successors will be considered adequate to meet the audit requirements of the B&I program for that year.

§ 4279.72 Conditions of guarantee.

A loan guarantee under this part will be evidenced by a Loan Note Guarantee issued by the Agency. Each lender will execute a Lender's Agreement. If a valid Lender's Agreement already exists, it is not necessary to execute a new Lender's Agreement with each loan guarantee. The provisions of this part and part 4287 of this chapter will apply to all outstanding guarantees. In the event of a conflict between the guarantee documents and these regulations as they exist at the time the documents are executed, the regulations will control.

(a) *Full faith and credit.* A guarantee under this part constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which a lender or holder has actual knowledge at the time it becomes such lender or holder or which a lender or holder participates in or condones. The guarantee will be unenforceable to the extent that any loss is occasioned by a provision for interest on interest. In addition, the guarantee will be unenforceable by the lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which the Agency acquires knowledge thereof. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by the Agency in its Conditional Commitment. The Agency will guarantee payment as follows:

(1) To any holder, 100 percent of any loss sustained by the holder on the guaranteed portion of the loan and on interest due on such portion.

(2) To the lender, the lesser of:

(i) Any loss sustained by the lender on the guaranteed portion, including principal and interest evidenced by the notes or assumption agreements and secured advances for protection and preservation of collateral made with the Agency's authorization; or

(ii) The guaranteed principal advanced to or assumed by the borrower and any interest due thereon.

(b) *Rights and liabilities.* When a guaranteed portion of a loan is sold to a holder, the holder shall succeed to all rights of the lender under the Loan Note Guarantee to the extent of the portion purchased. The lender will remain bound to all obligations under the Loan Note Guarantee, Lender's Agreement, and the Agency program regulations. A guarantee and right to require purchase will be directly enforceable by a holder notwithstanding any fraud or misrepresentation by the lender or any unenforceability of the guarantee by the lender, except for fraud or misrepresentation of which the holder had actual knowledge at the time it became the holder or in which the holder participates or condones. In the event of material fraud, negligence or misrepresentation by the lender or the lender's participation in or condoning of such material fraud, negligence or misrepresentation, the lender will be liable for payments made by the Agency to any holder.

(c) *Payments.* A lender will receive all payments of principal and interest on account of the entire loan and will promptly remit to the holder its *pro rata* share thereof, determined according to its respective interest in the loan, less only the lender's servicing fee.

§§ 4279.73–4279.74 [Reserved]

§ 4279.75 Sale or assignment of guaranteed loan.

The lender may sell all or part of the guaranteed portion of the loan on the secondary market or retain the entire loan. The lender shall not sell or participate any amount of the guaranteed or unguaranteed portion of the loan to the borrower or members of the borrower's immediate families, officers, directors, stockholders, other owners, or a parent, subsidiary or affiliate. If the lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default. Loans made with the proceeds of any obligation the interest on which is excludable from income under 26 U.S.C. 103 (interest on State and local banks) or any successor section will not be guaranteed.

(a) *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 unpaid guaranteed portion of the loan sold under the Assignment Guarantee Agreement. Upon notification and completion of the assignment through the use of Form 4279–6, 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.

(b) *Multinote system.* Under this option the lender may provide 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, 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 not be used when the multinote option is utilized.

(c) *After loan closing.* If a loan is closed using the multinote option and at a later date additional notes are desired, the lender may cause a series of new notes, so that the total number of notes issued does not exceed the total number provided for in paragraph (b) of this section, to be issued as replacement for previously issued guaranteed notes, provided:

(1) Written approval of the Agency is obtained;

(2) The borrower agrees and executes the new notes;

(3) The interest rate does not exceed the interest rate in effect when the loan was closed;

(4) The maturity date of the loan is not changed;

(5) The Agency will not bear or guarantee any expenses that may be incurred in reference to such reissuances of notes;

(6) There is adequate collateral securing the notes;

(7) No intervening liens have arisen or have been perfected and the secured lien priority is better or remains the same; and

(8) All holders agree.

(d) *Termination of lender servicing fee.* The lender's servicing fee will stop when the Agency purchases the guaranteed portion of the loan from the secondary market. No such servicing fee may be charged to the Agency and all loan payments and collateral proceeds received will be applied first to the guaranteed loan and, when applied to the guaranteed loan, will be applied on a pro rata basis.

§ 4279.76 Participation.

The lender may obtain participation in the loan under its normal operating procedures; however, the lender must retain title to the notes if any of them are unguaranteed and retain the lender's interest in the collateral.

§ 4279.77 Minimum retention.

The lender is required to hold in its own portfolio a minimum of 5 percent of the total loan amount. The amount required to be maintained must be of the unguaranteed portion of the loan and cannot be participated to another. The lender may sell the remaining amount of the unguaranteed portion of the loan only through participation.

§ 4279.78 Repurchase from holder.

(a) *Repurchase by lender.* A lender has the option to repurchase the unpaid guaranteed portion of the loan from a holder within 30 days of written demand by the holder when the borrower is in default not less than 60 days on principal or interest due on the loan; or the lender has failed to remit to the holder its pro rata share of any payment made by the borrower within 30 days of the lender's receipt thereof. The repurchase by the lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest less the lender's servicing fee. The holder must concurrently send a copy of the demand letter to the Agency. The guarantee will not cover the note interest to the holder on the guaranteed loan accruing after 90 days from the date of the demand letter to the lender requesting the repurchase. The lender will accept an assignment without recourse from the holder upon repurchase. The lender is encouraged to repurchase the loan to facilitate the accounting of funds, resolve the problem, and prevent default, where and when reasonable. The lender will notify the holder and the Agency of its decision.

(b) *Agency purchase.* (1) If the lender does not repurchase the unpaid guaranteed portion of the loan as provided in paragraph (a) of this section, the Agency will purchase from the holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase, less the lender's servicing fee, within 30 days after written demand to the Agency from the holder. (This is in addition to the copy of the written demand on the lender.) The guarantee will not cover the note interest to the holder on the guaranteed loan accruing after 90 days from the date of the original demand letter of the holder to the lender requesting the repurchase.

(2) The holder's demand to the Agency must include a copy of the written demand made upon the lender. The holder must also include evidence of its right to require payment from the Agency. Such evidence will consist of either the original of the Loan Note Guarantee properly endorsed to the Agency or the original of the Assignment Guarantee Agreement properly assigned to the Agency without recourse including all rights, title, and interest in the loan. The holder must include in its demand the amount due including unpaid principal, unpaid interest to date of demand, and interest subsequently accruing from date of demand to proposed payment date. The Agency will be subrogated to all rights of the holder.

(3) The Agency will notify the lender of its receipt of the holder's demand for payment. The lender must promptly provide the Agency with the information necessary for the Agency to determine the appropriate amount due the holder. Upon request by the Agency, the lender will furnish a current statement certified by an appropriate authorized officer of the lender of the unpaid principal and interest then owed by the borrower on the loan and the amount then owed to any holder. Any discrepancy between the amount claimed by the holder and the information submitted by the lender must be resolved between the lender and the holder before payment will be approved. Such conflict will suspend the running of the 30 day payment requirement.

(4) Purchase by the Agency neither changes, alters, nor modifies any of the lender's obligations to the Agency arising from the loan or guarantee nor does it waive any of Agency's rights against the lender. The Agency will have the right to set-off against the lender all rights inuring to the Agency as the holder of the instrument against the Agency's obligation to the lender under the guarantee.

(c) *Repurchase for servicing.* If, in the opinion of the lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the holder must sell the guaranteed portion of the loan to the lender for an amount equal to the unpaid principal and interest on such portion less the lender's servicing fee. The guarantee will not cover the note interest to the holder on the guaranteed loan accruing after 90 days from the date of the demand letter of the lender or the Agency to the holder requesting the holder to tender its guaranteed portion. The lender must not repurchase from the holder for arbitrage or other purposes to further its own financial gain. Any repurchase must only be made after the lender obtains the Agency's written approval. If the lender does not repurchase the portion from the holder, the Agency may, at its option, purchase such guaranteed portion for servicing purposes.

§§ 4279.79–4279.83 [Reserved]

§ 4279.84 Replacement of document.

(a) The Agency may issue a replacement Loan Note Guarantee or Assignment Guarantee Agreement which was lost, stolen, destroyed, mutilated, or defaced to the lender or holder upon receipt of an acceptable certificate of loss and an indemnity bond.

(b) When a Loan Note Guarantee or Assignment Guarantee Agreement is lost, stolen, destroyed, mutilated, or defaced while in the custody of the lender or holder, the lender will coordinate the activities of the party who seeks the replacement documents and will submit the required documents to the Agency for processing. The requirements for replacement are as follows:

(1) A certificate of loss, notarized and containing a jurat, which includes:

(i) Name and address of owner;

(ii) Name and address of the lender of record;

(iii) Capacity of person certifying;

(iv) Full identification of the Loan Note Guarantee or Assignment Guarantee Agreement including the name of the borrower, the Agency's case number, date of the Loan Note Guarantee or Assignment Guarantee Agreement, face amount of the evidence of debt purchased, date of evidence of debt, present balance of the loan, percentage of guarantee, and, if an Assignment Guarantee Agreement, the original named holder and the percentage of the guaranteed portion of the loan assigned to that holder. Any existing parts of the document to be replaced must be attached to the certificate;

(v) A full statement of circumstances of the loss, theft, or destruction of the Loan Note Guarantee or Assignment Guarantee Agreement; and

(vi) For the holder, evidence demonstrating current ownership of the Loan Note Guarantee and Note or the Assignment Guarantee Agreement. If the present holder is not the same as the original holder, a copy of the endorsement of each successive holder in the chain of transfer from the initial holder to present holder must be included if in existence. If copies of the endorsement cannot be obtained, best available records of transfer must be submitted to the Agency (e.g., order confirmation, canceled checks, etc.).

(2) An indemnity bond acceptable to the Agency shall accompany the request for replacement except when the holder is the United States, a Federal Reserve Bank, a Federal corporation, a State or territory, or the District of Columbia. The bond shall be with surety except when the outstanding principal balance and accrued interest due the present holder is less than $1 million verified by the lender in writing in a letter of certification of balance due. The surety shall be a qualified surety company holding a certificate of authority from the Secretary of the Treasury and listed in Treasury Department Circular 580.

(3) All indemnity bonds must be issued and payable to the United States of America acting through the USDA. The bond shall be in an amount not less than the unpaid principal and interest. The bond shall hold USDA harmless against any claim or demand which might arise or against any damage, loss, costs, or expenses which might be sustained or incurred by reasons of the loss or replacement of the instruments.

(4) In those cases where the guaranteed loan was closed under the provision of the multinote system, the Agency will not attempt to obtain, or participate in the obtaining of, replacement notes from the borrower. It will be the responsibility of the holder to bear costs of note replacement if the borrower agrees to issue a replacement instrument. Should such note be replaced, the terms of the note cannot be changed. If the evidence of debt has been lost, stolen, destroyed, mutilated or defaced, such evidence of debt must be replaced before the Agency will replace any instruments.

§§ 4279.85–4279.99 [Reserved]

§ 4279.100 OMB control number.

The information collection requirements contained in this regulation have been approved by OMB and have been assigned OMB control number 0575–0171. Public reporting burden for this collection of information is estimated to vary from 1 hour to 8 hours per response, with an average of 4 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.

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.

§ 4279.102 Definitions.

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

§§ 4279.103 Exception Authority.

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

§ 4279.104 Appeals.

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

§ 4279.105–4279.106 [Reserved]

§ 4279.107 Guarantee fee.

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

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

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

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

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

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

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

§ 4279.108 Eligible borrowers.

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

(1) Provide employment;

(2) Improve the economic or environmental climate;

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

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

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

(c) *Rural area.* The business financed with a B&I Guaranteed Loan must be located in a rural area. Loans to borrowers with facilities located in both urban and rural areas will be limited to the amount necessary to finance the facility located in the eligible rural area.

(1) Rural areas include all territory of a State that is:

(i) Not within the outer boundary of any city having a population of 50,000 or more; and

(ii) Not within an area that is urbanized or urbanizing as defined in this section.

(2) All density determinations will be made on the basis of minor civil divisions or census county divisions as used by the Bureau of the Census in the latest decennial census of the U.S. In making the density calculations, large nonresidential tracts devoted to urban land uses such as railroad yards, airports, industrial sites, parks, golf courses, cemeteries, office parks, shopping malls, or land set aside for such purposes will be excluded.

(3) An urbanized area is an area immediately adjacent to a city with a population of 50,000 or more, that for general social and economic purposes forms a single community with such a city. An urbanizing area is an area immediately adjacent to a city with a population of 50,000 or more with a population density of more than 100 persons per square mile or is an area with a population density of less than 100 persons per square mile which appears likely, based on development and population trends, to become urbanized in the foreseeable future. The corporate status of an urbanized or urbanizing area is not material. An area located in recognizable open country or separated from any city of 50,000 or more population by recognizable open country or by a river, will be assumed to be not urbanized or urbanizing.

(d) *Other credit.* All applications for assistance will be accepted and processed without regard to the availability of credit from any other source.

§§ 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. Purchase of startup cooperative stock for family-sized farms where commodities are produced to be processed by the cooperative.

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

(k) Commercial fishing.

(l) Commercial nurseries engaged in the production of ornamental plants and trees and other nursery products such as bulbs, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of plants from seed to the transplant stage.

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

(n) The growing of mushrooms or hydroponics.

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

(p) Feasibility studies.

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

secondary part (less than 50 percent) of the overall loan.

(r) Takeout of interim financing. Guaranteeing a loan after project completion to pay off a lender's interim loan will not be treated as debt refinancing provided that the lender submits a complete preapplication or application which proposes such interim financing prior to completing the interim loan. A lender that is considering an interim loan should be advised that the Agency assumes no responsibility or obligation for interim loans advanced prior to the Conditional Commitment being issued.

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

(t) Agency guarantee fee.

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

(v) Educational or training facilities.

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

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

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

(z) Community antenna television services or facilities.

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

§ 4279.114 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.

(r) Golf courses.

§ 4279.115 Prohibition under Agency programs.

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

§§ 4279.116–4279.118 [Reserved]

§ 4279.119 Loan guarantee limits.

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

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

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

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

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

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

(b) *Percent of guarantee.* The percentage of guarantee, up to the maximum allowed by this section, is a matter of negotiation between the lender and the Agency. The maximum percentage of guarantee is 80 percent for loans of $5 million or less, 70 percent for loans between $5 and $10 million, and 60 percent for loans exceeding $10 million. Notwithstanding the preceding, the Administrator may, at the Administrator's discretion, grant an exception allowing guarantees of up to 90 percent on loans of $10 million or less under the following circumstances:

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

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

(3) The State Director may grant an exception for loans of up to 90 percent on loans of $2 million or less subject to the State Director's delegated loan 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.

§ 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.

§§ 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.

§ 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.

(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.

(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.

(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.

(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 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.

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

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

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

(2) Pro forma and historical financial statements which indicate the business to be financed meets or exceeds the median quartile (as identified in Robert Morris Associates Annual Statement Studies or similar publication) for the

current ratio, quick ratio, debt-to-worth ratio, debt coverage ratio, and working capital.

(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.

§§ 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 (FmHA Instruction 426.2, available in any field office or the National Office).

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

§ 4279.144 Appraisals.

Lenders will be responsible for ensuring that appraisal values adequately reflect the actual value of the collateral. All real property appraisals associated with Agency guaranteed loanmaking and servicing transactions will meet the requirements contained in the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989 and the appropriate guidelines contained in Standards 1 and 2 of the Uniform Standards of Professional Appraisal Practices (USPAP). All appraisals will include consideration of the potential effects from a release of hazardous substances or petroleum products or other environmental hazards on the market value of the collateral. For additional guidance and information concerning the completion of real property appraisals, refer to subpart A of part 1922 of this title and to ''Standard Practices for Environmental Site Assessments: Transaction Screen Questionnaire'' and ''Phase I Environmental Site Assessment,'' both published by the American Society of Testing and Materials. Chattels will be evaluated in accordance with normal banking practices and generally accepted methods of determining value.

§§ 4279.145–4279.148 [Reserved]

§ 4279.149 Personal and corporate guarantees.

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

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

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

§ 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.

§§ 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Administrative points. The State Director may assign up to 10 additional points to an application to account for such factors as statewide distribution of funds, natural or economic emergency conditions, or area economic development strategies. An explanation of the assigning of these points by the State Director will be appended to the calculation of the project score maintained in the case file. If an application is considered in the National Office, the Administrator may also assign up to an additional 10 points. The Administrator may assign the additional points to an application to account for items such as geographic distribution of funds and emergency conditions caused by economic problems or natural disasters.

§ 4279.156 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 using the 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.

(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.

§§ 4279.157–4279.160 [Reserved]

§ 4279.161 Filing preapplications and applications.

Borrowers and lenders are encouraged to file preapplications and obtain Agency comments before completing an application. However, if they prefer, they may file a complete application as the first contact with the Agency. Neither preapplications nor applications will be accepted or processed unless a lender has agreed to finance the proposal.

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

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

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

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

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

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

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

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

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

(2) A completed Form 4279–2, ''Certification of Non-Relocation and Market Capacity Information Report,'' if the proposed loan is in excess of $1 million and will increase direct employment by more than 50 employees.

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

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

(b) *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) 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 FmHA 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 7 CFR, part 3015, subpart V.

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

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

(8) Lender's complete written analysis, including spreadsheets of the balance sheets and income statements for the 3 previous years (for existing businesses), pro forma balance sheet at startup, and 2 years projected yearend balance sheets and income statements, with appropriate ratios and comparisons with industrial standards (such as Dun & Bradstreet or Robert Morris Associates). All data must be shown in total dollars and also in common size form, obtained by expressing all balance sheet items as a percentage of assets and all income and expense items as a percentage of sales. The lender's credit analysis must address the borrower's management, repayment ability including a cash-flow analysis, history of debt repayment, necessity of any debt refinancing, and the credit reports of the borrower, its principals, and any parent, affiliate, or subsidiary.

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

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

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

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

(ii) Restriction on dividend payments.

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

(iv) Limitation on compensation of officers and owners.

(v) Minimum working capital or current ratio requirement.

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

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

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

(ix) Repayment and amortization of the loan.

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

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

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

(xiii) A section 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 (SEC) regulations, a copy of SEC Form 10–K, ''Annual Report Pursuant to Section 13 or 15D of the Act of 1934.''

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

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

(17) Any additional information required by the Agency.

§§ 4279.162–4279.164 [Reserved]

§ 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.

(b) *Environmental requirements.* The environmental review process must be completed, in accordance with subpart G of part 1940 of this title, prior to the issuance of the Conditional Commitment, loan approval, or obligation of funds, whichever occurs first.

§§ 4279.166–4279.172 [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.

(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.

§ 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.

§§ 4279.175–4279.179 [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.

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

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

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

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

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

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

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

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

§ 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.

(2) Executed Lender's Agreement.

(3) Form FmHA 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.

(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, DC 20250. You are not required to respond to this collection of information unless it displays a currently valid OMB control number.

16. A new part 4287, consisting of §§ 4287.101 through 4287.200, is added to chapter XLII to read as follows:

PART 4287—SERVICING

Subpart A—[Reserved]

Subpart B—Servicing Business and Industry Guaranteed Loans

Sec.

4287.101 Introduction.
4287.102 Definitions.
4287.103 Exception Authority.
4287.104–4287.105 [Reserved]
4287.106 Appeals.
4287.107 Routine servicing.
4287.108–4287.111 [Reserved]
4287.112 Interest rate adjustments.
4287.113 Release of collateral.
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4287.123 Subordination of lien position.
4287.124 Alterations of loan instruments.
4287.125–4287.133 [Reserved]
4287.134 Transfer and assumption.
4287.135 Substitution of lender.
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4287.145 Default by borrower.
4287.146–4287.155 [Reserved]
4287.156 Protective advances.
4287.157 Liquidation.
4287.158 Determination of loss and payment.
4287.159–4287.168 [Reserved]
4287.169 Future recovery.
4287.170 Bankruptcy.
4287.171–4287.179 [Reserved]
4287.180 Termination of guarantee.
4287.181–4287.199 [Reserved]
4287.200 OMB control number.

Authority: 5 U.S.C. 301; 7 U.S.C. 1989

Subpart A—[Reserved]

Subpart B—Servicing Business and Industry Guaranteed Loans

§ 4287.101 Introduction.

(a) This subpart supplements part 4279, subparts A and B, by providing additional requirements and instructions for servicing and liquidating all Business and Industry (B&I) Guaranteed Loans. This includes Drought and Disaster (D&D), Disaster Assistance for Rural Business Enterprises (DARBE), and Business and Industry Disaster (BID) loans.

(b) The lender will be responsible for servicing the entire loan and will remain mortgagee and secured party of record notwithstanding the fact that another party may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of a loan will neither be paid first nor given any preference or priority over the guaranteed portion of the loan.

(c) 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.

§ 4287.102 Definitions.

The definitions and abbreviations contained in § 4279.2 of subpart A of part 4279 of this chapter apply to this subpart.

§ 4287.103 Exception authority.

Section 4279.15 of subpart A of part 4279 of this chapter applies to this subpart.

§§ 4287.104–4287.105 [Reserved]

§ 4287.106 Appeals.

Section 4279.16 of subpart A of part 4279 of this chapter applies to this subpart.

§ 4287.107 Routine servicing.

The lender is responsible for servicing the entire loan and for taking all servicing actions that a prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The Loan Note Guarantee is unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, use of loan funds for unauthorized purposes, negligent servicing, or failure to obtain the required security interest regardless of the time at which the Agency acquires knowledge of the foregoing. This responsibility includes but is not limited to the collection of payments, obtaining compliance with the covenants and provisions in the Loan Agreement, obtaining and analyzing financial statements, checking on payment of taxes and insurance premiums, and maintaining liens on collateral.

(a) *Lender reports.* The lender must report the outstanding principal and interest balance on each guaranteed loan semiannually using Form FmHA 1980–41, ''Guaranteed Loan Status Report.''

(b) *Loan classification.* Within 90 days of receipt of the Loan Note Guarantee, the lender must notify the Agency of the loan's classification or rating under its regulatory standards. Should the classification be changed at a future time, the Agency must be notified immediately.

(c) *Agency and lender conference.* At the Agency's request, the lender will meet with the Agency to ascertain how the guaranteed loan is being serviced and that the conditions and covenants of the Loan Agreement are being enforced.

(d) *Financial reports.* The lender must obtain and forward to the Agency the financial statements required by the Loan Agreement. The lender must submit annual financial statements to the Agency within 120 days of the end of the borrower's fiscal year. The lender must analyze the financial statements and provide the Agency with a written summary of the lender's analysis and conclusions, including trends, strengths, weaknesses, extraordinary transactions, and other indications of the financial condition of the borrower. Spreadsheets of the new financial statements must be included.

(e) *Additional expenditures.* The lender will not make additional loans to the borrower without first obtaining the prior written approval of the Agency, even though such loans will not be guaranteed.

§§ 4287.108–4287.111 [Reserved]

§ 4287.112 Interest rate adjustments.

(a) *Reductions.* The borrower, lender, and holder (if any) may collectively initiate a permanent or temporary reduction in the interest rate of the guaranteed loan at any time during the life of the loan upon written agreement among these parties. The Agency must be notified by the lender, in writing, within 10 calendar days of the change. If any of the guaranteed portion has been purchased by the Agency, then the Agency will affirm or reject interest rate change proposals in writing. The Agency will concur in such interest-rate changes only when it is demonstrated to the Agency that the change is a more viable alternative than initiating or proceeding with liquidation of the loan or continuing with the loan in its present state.

(1) Fixed rates can be changed to variable rates to reduce the borrower's interest rate only when the variable rate has a ceiling which is less than or equal to the original fixed rate.

(2) Variable rates can be changed to a fixed rate which is at or below the current variable rate.

(3) The interest rates, after adjustments, must comply with the requirements for interest rates on new loans as established by § 4279.125 of subpart B of part 4279 of this chapter.

(4) The lender is responsible for the legal documentation of interest-rate changes by an endorsement or any other legally effective amendment to the promissory note; however, no new notes may be issued. Copies of all legal documents must be provided to the Agency.

(b) *Increases.* No increases in interest rates will be permitted except the normal fluctuations in approved variable interest rates unless a temporary interest-rate reduction had occurred.

§ 4287.113 Release of collateral.

(a) All releases of collateral with a value exceeding $100,000 must be supported by a current appraisal on the collateral released. The appraisal will be at the expense of the borrower and must meet the requirements of § 4279.144 of subpart B of part 4279 of this chapter. The remaining collateral must be sufficient to provide for repayment of the Agency's guaranteed loan. The Agency may, at its discretion, require an appraisal of the remaining collateral in cases where it is determined that the Agency may be adversely affected by the release of collateral. Sale or release of collateral must be based on an arm's-length transaction.

(b) Within the parameters of paragraph (a) of this section, lenders may, over the life of the loan, release collateral (other than personal and corporate guarantees) with a cumulative value of up to 20 percent of the original loan amount without Agency concurrence if the proceeds generated are used to reduce the guaranteed loan or to buy replacement collateral.

(c) Within the parameters of paragraph (a) of this section, release of collateral with a cumulative value in excess of 20 percent of the original loan or when the proceeds will not be used to reduce the guaranteed loan or to buy replacement collateral must be requested in writing by the lender and concurred in by the Agency in writing in advance of the release. A written evaluation will be completed by the lender to justify the release.

§§ 4287.114–4287.122 [Reserved]

§ 4287.123 Subordination of lien position.

A subordination of the lender's lien position must be requested in writing by the lender and concurred in by the Agency in writing in advance of the subordination. The subordination must enhance the borrower's business and the Agency's interest. After the subordination, collateral must be adequate to secure the loan. The lien to which the guaranteed loan is subordinated must be for a fixed dollar limit and fixed or limited term, after which the guaranteed loan lien priority will be restored. Subordination to a revolving line of credit will not exceed 1 year. There must be adequate consideration for the subordination.

§ 4287.124 Alterations of loan instruments.

The lender shall neither alter nor approve any alterations of any loan instrument without the prior written approval of the Agency.

§§ 4287.125–4287.133 [Reserved]

§ 4287.134 Transfer and assumption.

(a) *Documentation of request.* All transfers and assumptions must be approved in writing by the Agency and must be to eligible applicants in accordance with subpart B of part 4279 of this chapter. An individual credit report must be provided for transferee proprietors, partners, officers, directors, and stockholders with 20 percent or more interest in the business, along with such other documentation as the Agency may request to determine eligibility.

(b) *Terms.* Loan terms must not be changed unless the change is approved in writing by the Agency with the concurrence of any holder and the transferor (including guarantors) if they have not been or will not be released from liability. Any new loan terms must be within the terms authorized by 4279.126 of subpart B of part 4279 of this chapter. The lender's request for approval of new loan terms will be supported by an explanation of the reasons for the proposed change in loan terms.

(c) *Release of liability.* The transferor, including any guarantor, may be released from liability only with prior Agency written concurrence and only when the value of the collateral being transferred is at least equal to the amount of the loan being assumed and is supported by a current appraisal and a current financial statement. The Agency will not pay for the appraisal. If the transfer is for less than the debt, the lender must demonstrate to the Agency that the transferor and guarantors have no reasonable debt-paying ability considering their assets and income in the foreseeable future.

(d) *Proceeds.* Any proceeds received from the sale of collateral before a transfer and assumption will be credited to the transferor's guaranteed loan debt in inverse order of maturity before the transfer and assumption are closed.

(e) *Additional loans.* Loans to provide additional funds in connection with a transfer and assumption must be considered as a new loan application under subpart B of part 4279 of this chapter.

(f) *Credit quality.* The lender must make a complete credit analysis which is subject to Agency review and approval.

(g) *Documents.* Prior to Agency approval, the lender must advise the Agency, in writing, that the transaction can be properly and legally transferred, and the conveyance instruments will be filed, registered, or recorded as appropriate.

(1) The assumption will be done on the lender's form of assumption agreement and will contain the Agency case number of the transferor and transferee. The lender will provide the Agency with a copy of the transfer and assumption agreement. The lender must ensure that all transfers and assumptions are noted on all original Loan Note Guarantees.

(2) A new Loan Agreement, consistent in principle with the original Loan Agreement, should be executed to establish the terms and conditions of the loan being assumed. An assumption agreement can be used to establish the loan covenants.

(3) The lender will provide to the Agency a written certification that the transfer and assumption is valid, enforceable, and complies with all Agency regulations.

(h) *Loss resulting from transfer.* If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor (including personal guarantors) is released from liability, the lender, if it holds the guaranteed portion, may file an estimated report of loss to recover its *pro rata* share of the actual loss. If a holder owns any of the guaranteed portion, such portion must be repurchased by the lender or the Agency in accordance with 4279.78(c) of subpart A of part 4279 of this chapter. In completing the report of loss, the amount of the debt assumed will be entered as net collateral (recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption will be included in the calculations.

(i) *Related party.* If the transferor and transferee are affiliated or related parties, any transfer and assumption must be for the full amount of the debt.

(j) *Payment requests.* Requests for a loan guarantee to provide equity for a transfer and assumption must be considered as a new loan under subpart B of part 4279 of this chapter.

(k) *Cash downpayment.* When the transferee will be making a cash downpayment as part of the transfer and assumption:

(1) The lender must have an appropriate appraiser, acceptable to both the transferee and transferor and currently authorized to perform appraisals, determine the value of the collateral securing the loan. The appraisal fee and any other costs will not be paid by the Agency.

(2) The market value of the collateral, plus any additional property the transferee proposes to offer as collateral, must be adequate to secure the balance of the guaranteed loans.

(3) Cash downpayments may be paid directly to the transferor provided:

(i) The lender recommends that the cash be released, and the Agency concurs prior to the transaction being completed. The lender may wish to require that an amount be retained for a defined period of time as a reserve against future defaults. Interest on such account may be paid periodically to the transferor or transferee as agreed;

(ii) The lender determines that the transferee has the repayment ability to meet the obligations of the assumed guaranteed loan as well as any other indebtedness;

(iii) Any payments by the transferee to the transferor will not suspend the transferee's obligations to continue to meet the guaranteed loan payments as they come due under the terms of the assumption; and

(iv) The transferor agrees not to take any action against the transferee in connection with the assumption without prior written approval of the lender and the Agency.

§ 4287.135 Substitution of lender.

After the issuance of a Loan Note Guarantee, the lender shall not sell or transfer the entire loan without the prior written approval of the Agency. The Agency will not pay any loss or share in any costs (i.e., appraisal fees, environmental studies, or other costs associated with servicing or liquidating the loan) with a new lender unless a relationship is established through a substitution of lender in accordance with paragraph (a) of this section. This includes cases where the lender has failed and been taken over by a regulatory agency such as the Federal Deposit Insurance Corporation (FDIC) and the loan is subsequently sold to another lender.

(a) The Agency may approve the substitution of a new lender if:

(1) the proposed substitute lender:

(i) is an eligible lender in accordance with 4279.29 of subpart A of part 4279 of this chapter;

(ii) is able to service the loan in accordance with the original loan documents; and

(iii) agrees in writing to acquire title to the unguaranteed portion of the loan held by the original lender and assumes all original loan requirements, including liabilities and servicing responsibilities.

(2) the substitution of the lender is requested in writing by the borrower, the proposed substitute lender, and the original lender if still in existence.

(b) Where the lender has failed and been taken over by FDIC and the guaranteed loan is liquidated by FDIC rather than being sold to another lender, the Agency will pay losses and share in costs as if FDIC were an approved substitute lender.

§§ 4287.136–4287.144 [Reserved]

§ 4287.145 Default by borrower.

(a) The lender must notify the Agency when a borrower is 30 days past due on a payment or is otherwise in default of the Loan Agreement. Form FmHA 1980–44, ''Guaranteed Loan Borrower Default Status,'' will be used and the lender will continue to submit this form bimonthly until such time as the loan is no longer in default. If a monetary default exceeds 60 days, the lender will arrange a meeting with the Agency and the borrower to resolve the problem.

(b) In considering options, the prospects for providing a permanent cure without adversely affecting the risk to the Agency and the lender is the paramount objective.

(1) Curative actions include but are not limited to:

(i) deferment of principal (subject to rights of any holder);

(ii) an additional unguaranteed loan by the lender to bring the account current;

(iii) reamortization of or rescheduling the payments on the loan (subject to rights of any holder);

(iv) transfer and assumption of the loan in accordance with § 4287.134 of this subpart;

(v) reorganization;

(vi) liquidation;

(vii) subsequent loan guarantees; and

(viii) changes in interest rates with the Agency's, the lender's, and holder's approval, provided that the interest rate is adjusted proportionately between the guaranteed and unguaranteed portion of the loan and the type of rate remains the same.

(2) In the event a deferment, rescheduling, reamortization, or moratorium is accomplished, it will be limited to the remaining life of the collateral or remaining limits as contained in § 4279.126 of subpart B of part 4279 of this chapter, whichever is less.

§§ 4287.146–4287.155 [Reserved]

§ 4287.156 Protective advances.

Protective advances are advances made by the lender for the purpose of preserving and protecting the collateral where the debtor has failed to, will not, or cannot meet its obligations. Sound judgment must be exercised in determining that the protective advance preserves collateral and recovery is actually enhanced by making the advance. Protective advances will not be made in lieu of additional loans.

(a) The maximum loss to be paid by the Agency will never exceed the original principal plus accrued interest regardless of any protective advances made.

(b) Protective advances and interest thereon at the note rate will be guaranteed at the same percentage of loss as provided in the Loan Note Guarantee.

(c) Protective advances must constitute an indebtedness of the borrower to the lender and be secured by the security instruments. Agency written authorization is required when cumulative protective advances exceed $5,000.

§ 4287.157 Liquidation.

In the event of one or more incidents of default or third party actions that the borrower cannot or will not cure or eliminate within a reasonable period of time, liquidation may be considered. If the lender concludes that liquidation is necessary, it must request the Agency's concurrence. The lender will liquidate the loan unless the Agency, at its option, carries out liquidation. When the decision to liquidate is made, if the loan has not already been repurchased, provisions will be made for repurchase in accordance with § 4279.78 of subpart A of part 4279 of this chapter.

(a) *Decision to liquidate.* A decision to liquidate shall be made when it is determined that the default cannot be cured through actions contained in § 4287.145 of this subpart or it has been determined that it is in the best interest of the Agency and the lender to liquidate. The decision to liquidate or continue with the borrower must be made as soon as possible when any of the following exist:

(1) A loan has been delinquent 90 days and the lender and borrower have

not been able to cure the delinquency through one of the actions contained in § 4287.145 of this subpart.

(2) It has been determined that delaying liquidation will jeopardize full recovery on the loan.

(3) The borrower or lender has been uncooperative in resolving the problem and the Agency or the lender has reason to believe the borrower is not acting in good faith, and it would enhance the position of the guarantee to liquidate immediately.

(b) *Liquidation by the Agency.* The Agency may require the lender to assign the security instruments to the Agency if the Agency, at its option, decides to liquidate the loan. When the Agency liquidates, reasonable liquidation expenses will be assessed against the proceeds derived from the sale of the collateral. Form FmHA 1980–45, ''Notice of Liquidation Responsibility,'' will be forwarded to the Finance Office when the Agency liquidates the loan.

(c) *Submission of liquidation plan.* The lender will, within 30 days after a decision to liquidate, submit to the Agency in writing its proposed detailed method of liquidation. Upon approval by the Agency of the liquidation plan, the lender will commence liquidation.

(d) *Lender's liquidation plan.* The liquidation plan must include, but is not limited to, the following:

(1) Such proof as the Agency requires to establish the lender's ownership of the guaranteed loan promissory note and related security instruments and a copy of the payment ledger if available which reflects the current loan balance and accrued interest to date and the method of computing the interest.

(2) A full and complete list of all collateral including any personal and corporate guarantees.

(3) The recommended liquidation methods for making the maximum collection possible on the indebtedness and the justification for such methods, including recommended action:

(i) for acquiring and disposing of all collateral; and

(ii) to collect from guarantors.

(4) Necessary steps for preservation of the collateral.

(5) Copies of the borrower's latest available financial statements.

(6) Copies of the guarantor's latest available financial statements.

(7) An itemized list of estimated liquidation expenses expected to be incurred along with justification for each expense.

(8) A schedule to periodically report to the Agency on the progress of liquidation.

(9) Estimated protective advance amounts with justification.

(10) Proposed protective bid amounts on collateral to be sold at auction and a breakdown to show how the amounts were determined.

(11) If a voluntary conveyance is considered, the proposed amount to be credited to the guaranteed debt.

(12) Legal opinions, if needed.

(13) If the outstanding balance of principal and accrued interest is less than $200,000, the lender will obtain an estimate of fair market and potential liquidation value of the collateral. If the outstanding balance of principal and accrued interest is $200,000 or more, the lender will obtain an independent appraisal report meeting the requirements of § 4279.144 of subpartB of part 4279 of this chapter on all collateral securing the loan which will reflect the fair market value and potential liquidation value. In order to formulate a liquidation plan which maximizes recovery, collateral must be evaluated for the release of hazardous substances, petroleum products, or other environmental hazards which may adversely impact the market value of the collateral. The appraisal shall consider this aspect. The independent appraiser's fee, including the cost of the environmental site assessment, will be shared equally by the Agency and the lender.

(e) *Approval of liquidation plan.* The Agency will inform the lender in writing whether it concurs in the lender's liquidation plan. Should the Agency and the lender not agree on the liquidation plan, negotiations will take place between the Agency and the lender to resolve the disagreement. When the liquidation plan is approved by the Agency, the lender will proceed expeditiously with liquidation.

(1) A transfer and assumption of the borrower's operation can be accomplished before or after the loan goes into liquidation. However, if the collateral has been purchased through foreclosure or the borrower has conveyed title to the lender, no transfer and assumption is permitted.

(2) A protective bid may be made by the lender, with prior Agency written approval, at a foreclosure sale to protect the lender's and the Agency's interest. The protective bid will not exceed the amount of the loan, including expenses of foreclosure, and should be based on the liquidation value considering estimated expenses for holding and reselling the property. These expenses include, but are not limited to, expenses for resale, interest accrual, length of time necessary for resale, maintenance, guard service, weatherization, and prior liens.

(f) *Acceleration.* The lender, or the Agency if it liquidates, will proceed to accelerate the indebtedness as expeditiously as possible when acceleration is necessary including giving any notices and taking any other legal actions required. A copy of the acceleration notice or other acceleration document will be sent to the Agency (or lender if the Agency liquidates). The guaranteed loan will be considered in liquidation once the loan has been accelerated and a demand for payment has been made upon the borrower.

(g) *Filing an estimated loss claim.* When the lender is conducting the liquidation and owns any or all of the guaranteed portion of the loan, the lender will file an estimated loss claim once a decision has been made to liquidate if the liquidation will exceed 90 days. The estimated loss payment will be based on the liquidation value of the collateral. For the purpose of reporting and loss claim computation, the lender will discontinue interest accrual on the defaulted loan in accordance with Agency procedures, and the loss claim will be promptly processed in accordance with applicable Agency regulations.

(h) *Accounting and reports.* When the lender conducts liquidation, it will account for funds during the period of liquidation and will provide the Agency with reports at least quarterly on the progress of liquidation including disposition of collateral, resulting costs, and additional procedures necessary for successful completion of the liquidation.

(i) *Transmitting payments and proceeds to the Agency.* When the Agency is the holder of a portion of the guaranteed loan, the lender will transmit to the Agency its *pro rata* share of any payments received from the borrower; liquidation; or other proceeds using Form FmHA 1980–43, ''Lender's Guaranteed Loan Payment to FmHA.''

(j) *Abandonment of collateral.* There may be instances when the cost of liquidation would exceed the potential recovery value of the collection. The lender, with proper documentation and concurrence of the Agency, may abandon the collateral in lieu of liquidation. A proposed abandonment will be considered a servicing action requiring the appropriate environmental review by the Agency in accordance with subpart G of part 1940 of this title. Examples where abandonment may be considered include, but are not limited to:

(1) The cost of liquidation is increased or the value of the collateral is decreased by environmental issues;

(2) The collateral is functionally or economically obsolete;

(3) There are superior liens held by other parties in excess of the value of the collateral;

(4) The collateral has deteriorated; or

(5) The collateral is specialized and there is little or no demand for it.

(k) *Disposition of personal or corporate guarantees.* The lender should take action to maximize recovery from all collateral, including personal and corporate guarantees. The lender will seek a deficiency judgment when there is a reasonable chance of future collection of the judgment. The lender must make a decision whether or not to seek a deficiency judgment when:

(1) a borrower voluntarily liquidates the collateral, but the sale fails to pay the guaranteed indebtedness;

(2) the collateral is voluntarily conveyed to the lender, but the borrower and personal and corporate guarantors are not released from liability; or

(3) a liquidation plan is being developed for forced liquidation.

(1) *Compromise settlement.* A compromise settlement may be considered at any time.

(1) The lender and the Agency must receive complete financial information on all parties obligated for the loan and must be satisfied that the statements reflect the true and correct financial position of the debtor including all assets. Adequate consideration must be received before a release from liability is issued. Adequate consideration includes money, additional security, or other benefit to the goals and objectives of the Agency.

(2) Before a personal guarantor can be released from liability, the following factors must be considered.

(i) Cash, either lump sum or over a period of time, or other consideration offered by the guarantor;

(ii) Age and health of the guarantor;

(iii) Potential income of the guarantor;

(iv) Inheritance prospects of the guarantor;

(v) Availability of the guarantor's assets.

(vi) Possibility that the guarantor's assets have been concealed or improperly transferred; and

(vii) Effect of other guarantors on the loan.

(3) Once the Agency and the lender agree on a reasonable amount that is fair and adequate, the lender can proceed to effect the settlement compromise.

(4) A compromise will only be accepted if it is in the best interest of the Agency.

§ 4287.158 Determination of loss and payment.

In all liquidation cases, final settlement will be made with the lender after the collateral is liquidated, unless otherwise designated as a future recovery or after settlement and compromise of all parties has been completed. The Agency will have the right to recover losses paid under the guarantee from any party which may be liable.

(a) *Report of loss form.* Form FmHA 449–30, ''Loan Note Guarantee Report of Loss,'' will be used for calculations of all estimated and final loss determinations. Estimated loss payments may only be approved by the Agency after the Agency has approved a liquidation plan.

(b) *Estimated loss.* In accordance with the requirements of § 4287.157(g) of this subpart, an estimated loss claim based on liquidation appraisal value will be prepared and submitted by the lender.

(1) The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by the Agency will be applied by the lender on the guaranteed portion of the loan debt. Such application does not release the borrower from liability.

(2) An estimated loss will be applied first to reduce the principal balance on the guaranteed loan and the balance, if any, to accrued interest. Interest accrual on the defaulted loan will be discontinued.

(3) A protective advance claim will be paid only at the time of the final report of loss payment, except in certain transfer and assumption situations as specified in § 4287.134 of this subpart.

(c) *Final loss.* Within 30 days after liquidation of all collateral, except for certain unsecured personal or corporate guarantees as provided for in this section, is completed, a final report of loss must be prepared and submitted by the lender to the Agency. The Agency will not guarantee interest beyond this 30-day period other than for the period of time it takes the Agency to process the loss claim. Before approval by the Agency of any final loss report, the lender must account for all funds during the period of liquidation, disposition of the collateral, all costs incurred, and any other information necessary for the successful completion of liquidation. Upon receipt of the final accounting and report of loss, the Agency may audit all applicable documentation to determine the final loss. The lender will make its records available and otherwise assist the Agency in making any investigation. The documentation accompanying the report of loss must support the amounts shown on Form FmHA 449–30.

(1) A determination must be made regarding the collectibility of unsecured personal and corporate guarantees. If reasonably possible, such guarantees should be promptly collected or otherwise disposed of in accordance with § 4287.157(k) of this subpart prior to completion of the final loss report. However, in the event that collection from the guarantors appears unlikely or will require a prolonged period of time, the report of loss will be filed when all other collateral has been liquidated, and unsecured personal or corporate guarantees will be treated as a future recovery with the net proceeds to be shared on a pro rata basis by the lender and the Agency.

(2) The lender must document that all of the collateral has been accounted for and properly liquidated and that liquidation proceeds have been properly accounted for and applied correctly to the loan.

(3) The lender will show a breakdown of any protective advance amount as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper and that payment was actually made.

(4) The lender will show a breakdown of liquidation expenses as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper and that payment was actually made. Liquidation expenses are recoverable only from collateral proceeds. Attorney fees may be approved as liquidation expenses provided the fees are reasonable and cover legal issues pertaining to the liquidation that could not be properly handled by the lender and its in-house counsel.

(5) Accrued interest will be supported by documentation as to how the amount was accrued. If the interest rate was a variable rate, the lender will include documentation of changes in both the selected base rate and the loan rate.

(6) Loss payments will be paid by the Agency within 60 days after the review of the final loss report and accounting of the collateral.

(d) *Loss limit.* The amount payable by the Agency to the lender cannot exceed the limits set forth in the Loan Note Guarantee.

(e) *Rent.* Any net rental or other income that has been received by the lender from the collateral will be applied on the guaranteed loan debt.

(f) *Liquidation costs.* Liquidation costs will be deducted from the proceeds of the disposition of primary collateral. If changed circumstances after submission of the liquidation plan require a

substantial revision of liquidation costs, the lender will procure the Agency's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the lender will be allowed. In-house expenses include, but are not limited to, employee's salaries, staff lawyers, travel, and overhead.

(g) *Payment.* When the Agency finds the final report of loss to be proper in all respects, it will approve Form FmHA 449–30 and proceed as follows:

(1) If the loss is greater than any estimated loss payment, the Agency will pay the additional amount owed by the Agency to the lender.

(2) If the loss is less than the estimated loss payment, the lender will reimburse the Agency for the overpayment plus interest at the note rate from the date of payment.

(3) If the Agency has conducted the liquidation, it will pay the lender in accordance with the Loan Note Guarantee.

§§ 4287.159–4287.168 [Reserved]

§ 4287.169 Future recovery.

After a loan has been liquidated and a final loss has been paid by the Agency, any future funds which may be recovered by the lender will be pro rated between the Agency and the lender based on the original percentage of guarantee.

§ 4287.170 Bankruptcy.

The lender is responsible for protecting the guaranteed loan and all collateral securing the loan in bankruptcy proceedings.

(a) *Lender's responsibilities.* It is the lender's responsibility to protect the guaranteed loan debt and all of the collateral securing it in bankruptcy proceedings. These responsibilities include but are not limited to the following:

(1) The lender will file a proof of claim where necessary and all the necessary papers and pleadings concerning the case.

(2) The lender will attend and, where necessary, participate in meetings of the creditors and all court proceedings.

(3) When permitted by the Bankruptcy Code, the lender will request modification of any plan of reorganization whenever it appears that additional recoveries are likely.

(4) The Agency will be kept adequately and regularly informed in writing of all aspects of the proceedings.

(5) In a Chapter 11 reorganization, if an independent appraisal of collateral is necessary in the Agency's opinion, the Agency and the lender will share such appraisal fee equally.

(b) *Reports of loss during bankruptcy.* When the loan is involved in reorganization proceedings, payment of loss claims may be made as provided in this section. For a liquidation proceeding, only paragraphs (b)(3) and (5) of this section are applicable.

(1) *Estimated loss payments.* (i) If a borrower has filed for protection under Chapter 11 of the United States Code for a reorganization (but not Chapter 13) and all or a portion of the debt has been discharged, the lender will request an estimated loss payment of the guaranteed portion of the accrued interest and principal discharged by the court. Only one estimated loss payment is allowed during the reorganization. All subsequent claims of the lender during reorganization will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by the Agency, at its option, in accordance with any court-approved changes in the reorganization plan. Once the reorganization plan has been completed, the lender is responsible for submitting the documentation necessary for the Agency to review and adjust the estimated loss claim to reflect any actual discharge of principal and interest and to reimburse the lender for any court-ordered interest-rate reduction under the terms of the reorganization plan.

(ii) The lender will use Form FmHA 449–30 to request an estimated loss payment and to revise any estimated loss payments during the course of the reorganization plan. The estimated loss claim, as well as any revisions to this claim, will be accompanied by documentation to support the claim.

(iii) Upon completion of a reorganization plan, the lender will complete a Form FmHA 1980–44 and forward this form to the Finance Office.

(2) *Interest loss payments.* (i) Interest losses sustained during the period of the reorganization plan will be processed in accordance with paragraph (b)(1) of this section.

(ii) Interest losses sustained after the reorganization plan is completed will be processed annually when the lender sustains a loss as a result of a permanent interest rate reduction which extends beyond the period of the reorganization plan.

(iii) If an estimated loss claim is paid during the operation of the Chapter 11 reorganization plan and the borrower repays in full the remaining balance without an additional loss sustained by the lender, a final report of loss is not necessary.

(3) *Final loss payments.* Final loss payments will be processed when the loan is liquidated.

(4) *Payment application.* The lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event a bankruptcy court attempts to direct the payments to be applied in a different manner, the lender will immediately notify the Agency servicing office.

(5) *Overpayments.* Upon completion of the reorganization plan, the lender will provide the Agency with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained as a result of the reorganization is less than the estimated loss, the lender will reimburse the Agency for the overpayment plus interest at the note rate from the date of payment of the estimated loss. If the actual loss is greater than the estimated loss payment, the lender will submit a revised estimated loss in order to obtain payment of the additional amount owed by the Agency to the lender.

(6) *Protective advances.* If approved protective advances were made prior to the borrower having filed bankruptcy, these protective advances and accrued interest will be considered in the loss calculations.

(c) *Legal expenses during bankruptcy proceedings.* (1) When a bankruptcy proceeding results in a liquidation of the borrower by a trustee, legal expenses will be handled as directed by the court.

(2) Chapter 11 pertains to a reorganization of a business contemplating an ongoing business rather than a termination and dissolution of the business where legal protection is afforded to the business as defined under Chapter 11 of the Bankruptcy Code. Consequently, expenses incurred by the lender in a Chapter 11 reorganization can never be liquidation expenses unless the proceeding becomes a Chapter 11 liquidation. If the proceeding should become a Liquidating 11, reasonable and customary liquidation expenses may be deducted from proceeds of collateral as provided in the Lender's Agreement. Chapter 7 pertains to a liquidation of the borrower's assets. If, and when, liquidation of the borrower's assets under Chapter 7 is conducted by the bankruptcy trustee, then the lender cannot claim expenses.

§§ 4287.171–4287.179 [Reserved]

§ 4287.180 Termination of guarantee.

A guarantee under this part will terminate automatically:

(a) upon full payment of the guaranteed loan;

(b) upon full payment of any loss obligation; or

(c) upon written notice from the lender to the Agency that the guarantee will terminate 30 days after the date of notice, provided that the lender holds all of the guaranteed portion and the Loan Note Guarantee is returned to the Agency to be canceled.

§§ 4287.181–4287.199 [Reserved]

§ 4287.200 OMB control number.

The information collection requirements contained in this regulation have been approved by OMB and have been assigned OMB control number 0575–0168. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 8 hours per response, with an average of 4 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, DC 20250. You are not required to respond to this collection of information unless it displays a currently valid OMB control number.

Dated: December 12, 1996.

Jill Long Thompson,

Under Secretary for Rural Development.

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