

§ 4279.120

7 CFR Ch. XLII (1-1-01 Edition)

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 condi-

tions 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.

RBS and RUS, USDA

§ 4279.131

(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