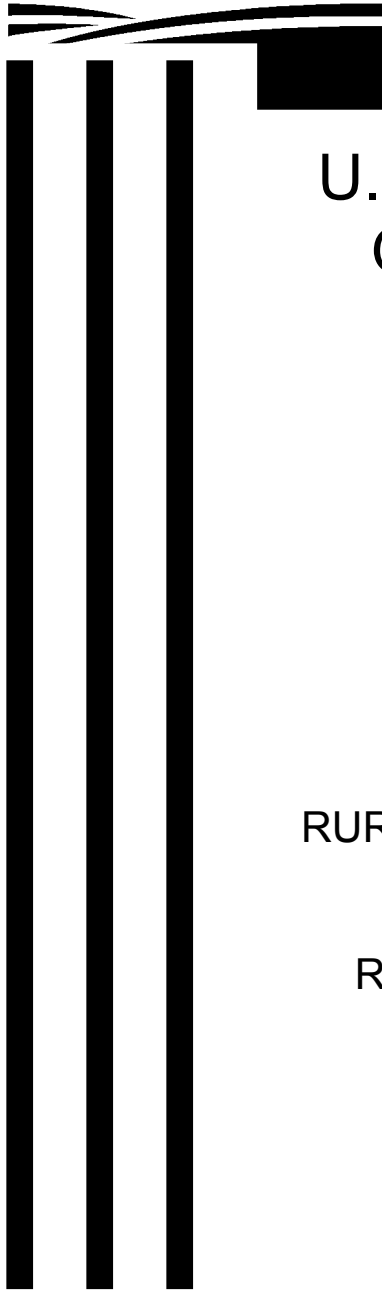


USDA



U.S. Department of Agriculture
Office of Inspector General
Southwest Region
Audit Report

RURAL BUSINESS-COOPERATIVE SERVICE
BUSINESS AND INDUSTRY
GUARANTEED LOANS
RURAL DEVELOPMENT STATE OFFICE
AMHERST, MASSACHUSETTS



**Report No.
34601-6-Te
NOVEMBER 2001**



UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL

South West Region - Audit

101 South Main, Room 324

Temple, TX 76501

TEL: 254-743-6565 FAX: 254-298-1373



DATE: November 2, 2001

REPLY TO

ATTN OF: 34601-6-Te

SUBJECT: RBS B&I Guaranteed Loans – Rural Development State Office,
Amherst, Massachusetts

TO: Mr. David H. Tuttle
State Director
Rural Development
451 West Street, Suite 2
Amherst, MA 01002-2999

This report presents the results of our audit of lender servicing in the Rural Development Business and Industry (B&I) guaranteed loan program in Massachusetts. Based on discussions with members of your audit staff and your letter dated October 25, 2001, we elevated the discussion draft to the final report. The letter is included in exhibit D, with excerpts and the Office of the Inspector General's (OIG) position incorporated into the relevant sections of the report.

Management decision has been reached for the recommendation in the report. Since the borrower refinanced the guaranteed loan on October 3, 2001, we believe final action has been completed.

We appreciate the courtesies and cooperation extended to us by members of your staff during the audit.

/s/ R. E. Gray
ROBERT E. GRAY
Regional Inspector General
for Audit

EXECUTIVE SUMMARY

RURAL BUSINESS-COOPERATIVE SERVICE BUSINESS AND INDUSTRY GUARANTEED LOANS RURAL DEVELOPMENT STATE OFFICE AMHERST, MASSACHUSETTS

AUDIT REPORT NO. 34601-6-Te

RESULTS IN BRIEF

This report presents the results of our audit of lender servicing in the Rural Development Business and Industry (B&I) guaranteed loan program in Massachusetts. This audit was part of a nationwide review and the results may be included in an overall report to the Rural Business–Cooperative Service (RBS) National Office. We performed this audit to determine if lenders were properly servicing their B&I guaranteed loans.

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. The lender who received the guarantee 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 Massachusetts Rural Development State Office (SO) has B&I loan authority for three States: Massachusetts, Connecticut, and Rhode Island. At the time of our audit, the State’s guaranteed loan portfolio consisted of 52 loans totaling \$136.9 million. From this portfolio, we selected two borrowers (borrower A and B) for an in-depth evaluation. Borrower A was delinquent in making loan payments and borrower B was not complying with all loan requirements.

Although we did not find any reportable conditions in our review of borrower B, we found that the lender for borrower A (lender A) was not adequately servicing the guaranteed loan. We found that lender A:

1. Did not adequately account for the collateral securing the B&I debt. We could not account for \$1.7 million of \$4.2 million (appraised value) of rolling stock and equipment.
2. Failed to obtain an adequate appraisal for the rolling stock and equipment, therefore, it was impossible to determine the total value of this collateral.
3. Did not prevent the borrower from withdrawing about \$1.2 million from businesses' retained earnings, which was contrary to loan requirements.
4. Did not forward the borrower's annual financial statements to the SO as required.

Inadequate servicing actions on the part of the lender increase the likelihood of a loss on the guaranteed loan should liquidation occur.

It should be noted that the SO took positive actions to correct these discrepancies when they were brought to its attention. The SO notified lender A that material discrepancies had occurred in lender A's servicing of the loan and that these actions brought into question lender A's certified lender status.

In a letter dated August 22, 2001, the SO notified us that borrower A was refinancing the guaranteed debt with a non-guaranteed loan from another lender.

KEY RECOMMENDATION

We recommend that, in the case borrower A does not refinance the B&I debt with a non-guaranteed loan, the SO should put the lender on notice that negligent servicing could jeopardize the guarantee should a loss on the loan occur.

AGENCY RESPONSE

In a letter dated October 25, 2001, the SO informed us the borrower chose to take its financing to another bank and refinanced the guaranteed loan on October 3, 2001. The guarantee was terminated, without loss to the government. See exhibit D.

OIG POSITION

We agree with the management decision.

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INTRODUCTION

BACKGROUND

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. B&I guaranteed loans achieve this purpose by bolstering the existing private credit structure through the guarantee of quality loans, which provide lasting community benefits. It is not intended to use the guarantee authority for marginal or substandard loans or for the relief of lenders having such loans.

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 is 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.

Generally, the total amount of agency loans to one borrower cannot exceed \$10 million. This limit includes the guaranteed and non-guaranteed portions, the outstanding principal, and the interest balance for any new loan requests. The Administrator, with the concurrence of the Under Secretary for Rural Development, may grant an exception to the \$10 million limit under certain circumstances. Total guaranteed loans to one borrower may not exceed \$25 million under any circumstances. Generally, the maximum guaranteed percentages are 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.

The SO has B&I loan authority for three States: Massachusetts, Connecticut, and Rhode Island. The SO services these loans from six area offices located in Northampton, Holden, and West Wareham, Massachusetts; Warwick, Rhode Island; and Norwich and Windsor, Connecticut. The SO B&I guaranteed loan portfolio consists of 52 loans totaling \$136.9 million.

Borrower A obtained a Rural Development B&I guaranteed loan from lender A of Boston, Massachusetts. Rural Development guaranteed 80 percent of the \$3 million loan; lender A closed the loan on July 26, 1996. The purpose of the loan was to restructure debt and provide working capital.

OBJECTIVE

Our audit objective was to determine if lenders were properly servicing B&I guaranteed loans.

SCOPE

We performed this audit as part of a nationwide review of the B&I guaranteed loan program. Massachusetts was selected based on the number of loans outstanding and the total dollar value of those loans, the total delinquent amount, and the total loss payments made by the agency to honor its guarantees. The SO also makes and services B&I loans in Connecticut and Rhode Island. The SO maintains its B&I loan files at six area offices. We conducted the fieldwork from November 2000 to April 2001. We conducted interviews, reviewed loan files, and conducted collateral inspections in Amherst, Massachusetts; West Wareham, Massachusetts; East Greenwich, Rhode Island; Warwick, Connecticut; Boston, Massachusetts; Hartford, Connecticut; and Kingston, Massachusetts. Coverage included B&I guaranteed loan activity during fiscal years (FY) 1998, 1999, and 2000.

Since January 1, 1990, the SO has issued 61 loan note guarantees with lending institutions totaling over \$133.2 million, a segment of the 3,150 loans totaling over \$4.1 billion made nationally by the agency. As of October 17, 2000, the Massachusetts B&I guaranteed loan portfolio had 49 unpaid loans with an outstanding balance of \$103.9 million on loans made since January 1, 1990, a segment of the 2,420 loans totaling over \$2.8 billion made nationally by the agency. From this universe, we judgmentally selected five loans totaling \$13.519 million for review. We based our selection on loans \$1 million or greater that were classified as either delinquent or problem. From these five loans, we identified two with potential problem areas for an in-depth evaluation. Of the selected loans, one was delinquent and one was violating loan covenants. During our initial review of the other three borrowers, we did not find any reportable conditions.

We conducted this audit in accordance with the Government Auditing Standards issued by the Comptroller General of the United States. Accordingly, the audit included such tests of program and accounting records as considered necessary to meet the audit objective.

METHODOLOGY

To accomplish the audit objective, we conducted fieldwork at the SO in Amherst, Massachusetts, and Rural Development area offices in West Wareham, Massachusetts, and Warwick, Connecticut. We performed an initial review of Rural Development B&I loan files on five borrowers. From the five, we conducted reviews of financial and administrative records at two lenders and two borrowers. We completed collateral inspections and interviewed two borrowers. We also examined: (1) Rural Development instructions, policies, and procedures relating to the B&I guaranteed loan program, (2) Rural Development SO records related to the borrowers' loans, (3) the lenders' records related to the borrowers' loans, and (4) the borrowers' records. We interviewed certified public accountants (CPA), lenders, and Rural Development SO personnel.

FINDINGS AND RECOMMENDATIONS

CHAPTER 1	LENDER'S INADEQUATE SERVICING INCREASED THE RISK OF LOSS ON THE B&I LOAN
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Of the five loans reviewed, we found that lender A did not adequately service the \$3 million guaranteed B&I loan provided to borrower A for the purpose of restructuring debt and providing working capital. We found that the lender did not adequately appraise and account for the collateral securing the B&I debt. We could not account for \$1.7 million of \$4.2 million (appraised value) of rolling stock and equipment. Therefore, it was impossible to determine the actual value of this collateral.

Also, the lender did not prevent the borrower from withdrawing about \$1.2 million from its businesses' retained earnings, which was contrary to loan requirements. Further, the lender did not forward the borrower's annual financial statements to the SO as required.

Rural Development Form 4279-4, Lender's Agreement Business and Industry Guaranteed Loan Program, section IV.C.1, states that the lender's servicing responsibilities include obtaining compliance with the covenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements.

The lender's agreement also states that the loan note guarantee will be unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which the United States Department of Agriculture (USDA) acquires knowledge of the foregoing. Negligent servicing is defined as the failure to perform those services, which a reasonable, prudent lender would perform in servicing its own portfolio of loans that are not guaranteed.

FINDING NO. 1 COLLATERAL UNACCOUNTED FOR AND INADEQUATELY APPRAISED
--

During our audit, we could not account for machinery and equipment pledged as collateral for borrower A's B&I guaranteed loan. This occurred because lender A did not conduct annual inspections on all collateral borrower A had pledged as security for the loan. As a result, borrower A had unaccounted-for collateral totaling \$1.7 million, which placed Rural

Development's guarantee in jeopardy. Due to an inadequate appraisal, we also could not determine the actual value of this collateral.

Rural Development Form 4279-4, paragraph IV.C.3, states the lender's servicing responsibilities include, but are not limited to, inspecting the collateral as often as necessary to properly service the loan.

On January 12, 2001, we conducted a collateral inspection with borrower A. During our collateral inspection, we noted several pieces of equipment were missing. When asked about the missing equipment, lender A stated the equipment was secondary collateral and they were not concerned about its existence. The lender stated that the loan is a real estate loan and the equipment was not necessary to collateralize the loan. The lender also stated the equipment was never kept at the business site. Lender A had been meeting annually with the borrower but failed to check for missing equipment.

We informed the lender that we wanted to physically see each piece of equipment and verify the serial number on the equipment to the appraisal list. Exhibit C lists the equipment discovered missing by us on a collateral inspection conducted April 18, 2001. We could not account for collateral with an appraised value of over \$1.7 million.

Borrower A offered the following comments for the unaccounted-for equipment listed in Exhibit C:

ITEM OF EQUIPMENT	COMMENT
1	Missing
2	Swapped for motor put in another loader
3	Used as down payment for cone crusher
5	Sold
6	Traded for cone planter
8	Sold at auction
15	Traded for screen plant
16	Missing
17	Missing
18	Missing
20	Sold
45	Sold
49	Sold
Parts of 53	Sold
54	Sold

The SO stated in a letter to lender A dated April 9, 2001, "Lender A indicated to OIG and Rural Development representatives that all UCC – Article Nine personal property was accounted for. A field inspection revealed that several of the excavators, loaders and all trucks were disposed of. We conclude that Lender A's representatives have not adequately inspected the collateral, did not discover apparently unauthorized dispositions of secured equipment, and have taken no apparent action to account for the proceeds. Security property sold or transferred must be released and the proceeds accounted for in accordance with the standards of RD Instruction 4287-B, Section 4287.113 [Title 7 Code of Federal Regulations, Part 4287, Subpart B, Section 4287.113]."

The SO notified lender A in a letter dated July 10, 2001, that in the event of a failure of this account, bringing about a liquidation of the security and recovery of the proceeds therefrom, if a loss claim is made under Form FmHA 449-34, Loan Note Guarantee, it is the intent of Rural Development to bring about a complete accounting of all security, including all equipment and other personal property covered by the Uniform Commercial Code (UCC) filings, with all unaccounted/nonconsented dispositions quantified and subtracted from the loss claim as liquidated damages under the contract of guarantee.

In addition, a proper appraisal was not conducted on the machinery and equipment. From our review of the written appraisal, we found the appraiser used a "desktop appraisal" to value the equipment. The appraiser provided the following definition of a desktop appraisal: "A desktop appraisal is based upon information supplied which we cannot guarantee as to the accuracy of age, model, serial number, type of machine or manufacturer. We have based our values on the assumption that the information furnished is valid and the machines are operable and in a condition that would be consistent with ordinary wear and tear as defined by industry standards." The appraisal document also stated that the appraiser never inspected the equipment, and based his appraised values on the assumption the equipment was in good operating condition with normal wear and tear.

It should be noted that the SO took positive actions to correct these discrepancies when they were brought to its attention. The SO notified lender A that material discrepancies had occurred in lender A's serving of the loan and that these actions brought into question lender A's certified lender status.

In a letter dated August 22, 2001, the SO notified us that borrower A was refinancing the guaranteed debt with a non-guaranteed loan from another lender.

RECOMMENDATION NO. 1

We recommend that, in the case borrower A does not refinance the B&I debt with a non-guaranteed loan, the SO should put the lender on notice that negligent servicing could jeopardize the guarantee should a loss on the loan occur.

Rural Development Response

In a letter dated October 25, 2001, the SO informed us the borrower chose to take its financing to another bank and refinanced the guaranteed loan on October 3, 2001. The guarantee was terminated, without loss to the government. See exhibit D.

OIG Position

We agree with the management decision.

FINDING NO. 2
BORROWER MADE
UNAUTHORIZED DISTRIBUTIONS
FROM RETAINED EARNINGS

We found documentation that borrower A had withdrawn amounts exceeding \$1.2 million from its businesses' retained earnings. Lender A apparently knew about these withdrawals but failed to stop them. These actions were contrary to borrower A's loan agreement and constituted negligent servicing if known by the lender. This increased the risk of a loss should liquidation occur.

The lender's agreement, Rural Development Form 4279-4, section IV.C.1, states that the lender's servicing responsibilities include obtaining compliance with the covenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements.

Borrower A's loan agreement, paragraph 4(d), states that the borrower will not, "without the prior written consent of lender or FmHA, declare or pay any commercially unreasonable dividends or make any commercially unreasonable distribution upon its capital stock, * * * or make any commercially unreasonable advance, directly or indirectly by way of loan, gift, bonus, or otherwise, * * * to any officer, director, or employee of borrower * * *"

In addition, according to the Fundamentals of Financial Management¹, dividend payments cannot exceed the balance sheet item “retained earnings.” This legal restriction, known as the impairment of capital rule, is designed to protect creditors and prevents a company from distributing assets to stockholders and not to its creditors.

For FY’s 1997 through 1999, we found the following documentation showing the withdrawals from retained earnings. The FY 1997 spreadsheet listed a charge to “distribution to beneficiary of \$14,000.” The income statement for 1998 listed distributions paid from retained earnings of \$576,708. After this distribution, borrower A’s retained earnings had a deficit of \$872,298. The consolidated income statement for 1999 listed distributions of retained earnings of \$643,095. This distribution put borrower A’s retained earnings in a deficit position of a negative \$983,277.

We could not determine if this also occurred in FY 1996 because the borrower did not submit the required financial statements.

We also found documentation that indicated that lender A knew about these withdrawals from retained earnings. In its submission of the USDA Financial Compliance and Analysis Worksheet, dated May 2000, the lender stated that, “it should be noted that even with the improved balance sheet, the company is still insolvent and is in violation of the loan agreement requiring a minimum debt to net worth ratio of 10x. The company has realized a positive net income in the past two periods but large cash distributions of \$643,000 and \$577,000 in 1999 and 1998, respectively, have aided in making the company highly leveraged.”

The SO notified lender A on April 9, 2001, that “financial statements indicate that substantial retained earnings have been paid from the borrower and co-borrower companies, to the extent that significant assets have left the consolidated balance sheet. (Lender A) indicated to OIG and Rural Development representatives that the bank was not monitoring the distribution of retained earnings. Limits on distributions and compensation are part of the Loan Agreement, which (lender A) is responsible to audit and enforce.”

Since borrower A is refinancing the guaranteed debt with a non-guaranteed loan from another lender, no recommendation is needed for this finding. See Recommendation No. 1.

¹ Fundamentals of Financial Management, The Concise Edition, Eugene F. Brigham, and Joel F. Houston, Copyright 1996 by Harcourt Brace & Co., page 480.

FINDING NO. 3
**LENDER NEGLIGENT IN
FORWARDING ANNUAL
FINANCIAL STATEMENTS**

Lender A did not enforce the requirement to obtain and forward borrower A's financial statements and analysis to Rural Development within the 120 days of the end of the borrower's fiscal year. This occurred because lender A failed to conduct routine servicing on B&I guaranteed loans as required in Rural Development Instruction 4287-B, Section 4287-107(d). As a result, the delay of this information placed the government's \$2.4 million guarantee at an unnecessary risk. The lender's action further delayed Rural Development's ability to take appropriate action to protect its financial interest.

Rural Development Instruction 4287-B, Section 4287.107(d), Financial Reports, asserts the lender must obtain and forward to the agency annual 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 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 also be included.

Lender A failed to provide Rural Development with CPA-audited financial statements (balance sheet, income statement, and statement of cash flow) within the required 120 days of the borrower's close of its fiscal year for 3 consecutive years starting with FY 1998.

For example, Rural Development notified lender A, in a letter dated June 28, 2000, that the lender had failed to provide the required financial data and analysis for borrower A. The required financial statement for borrower A was for the year ending December 31, 1999. Borrower A's CPA sent the completed financial statement to the board of directors attached to a letter dated February 3, 2000, but the lender did not provide a copy to Rural Development until November 3, 2000.

For 1998 and 1999, the SO also had to notify the lender that it was late in providing the required financial statements.

Since borrower A is refinancing the guaranteed debt with a non-guaranteed loan from another lender, no recommendation is needed for this finding. See Recommendation No. 1.

EXHIBIT A – SUMMARY OF MONETARY RESULTS

FINDING NUMBER	RECOMMENDATION NUMBER	DESCRIPTION	AMOUNT	CATEGORY
1	1	Lender negligent in servicing B&I guaranteed loans	\$2,400,000	FTBPTBU ² - Deobligations
TOTAL			\$2,400,000	

² FTBPTBU - Funds To Be Put To Better Use.

EXHIBIT B – BORROWER A’S SALARIES AND DISTRIBUTIONS OF RETAINED EARNINGS

Borrower A, et al. - Salaries, Bonuses, Commissions, or Other Payouts

	OSG	OCC	OFT	
1996 Salary	(a)	(a)	(a)	
1996 Stock Distributions Paid (Dividends)	(a)	(a)	(a)	
Total Combined Compensation	(a)	(a)	(a)	N/A
Salary Limit per Loan Agreement				\$ 150,000
In Compliance w/ Para. 4(d)				?
1997 Salary				
1997 Stock Distributions Paid (Dividends)	\$ -	\$ -	\$ -	\$ 14,000
Salary Limit per Loan Agreement				\$ 165,000
In Compliance w/ Para. 4(d)				No
1998 Salary	\$ 60,000	\$ -	\$ -	\$ 60,000
1998 Stock Distributions Paid (Dividends)		\$ -	\$ 516,708	\$ 576,708
Salary Limit per Loan Agreement				\$ 180,000
In Compliance w/ Para. 4(d)				No
1999 Salary	\$ -	\$ 60,000.00	\$ -	\$ 60,000
1999 Stock Distributions Paid (Dividends)	\$ 518,813	\$ -	\$ 124,282.00	\$ 643,095
Salary Limit per Loan Agreement				\$ 195,000
In Compliance w/ Para. 4(d)				No

OSG = Borrower A Sand and Gravel
OCC = Borrower A Construction Co.
OFT = Borrower A Family Trust
(a) = Income Statement not available

EXHIBIT C – UNACCOUNTED-FOR LOAN COLLATERAL

ITEM	DESCRIPTION	APPRAISED VALUE	EQUIPMENT ON HAND 04/18/01	UNACCOUNTED FOR
1	1994 Komatsu Loader, Model WA500, S/N 20911	\$175,000	NO	\$175,000
2	1986 Komatsu Loader, Model WA500, S/N 10272	67,500	NO	67,500
3	1994 Komatsu Loader, Model WA450, S/N N/A	135,000	Traded for collateral	N/A
5	Detroit Generator, Model V12	7,500	NO	7,500
6	1992 Komatsu Loader, Model WA450, S/N 25096	125,000	Traded for collateral	N/A
8	1986 Gradall MOC, S/N 878008	50,000	NO	50,000
10	1993 Komatsu Excavator, Model PC300, S/N 22410	125,000	NO	125,000
11	1993 Komatsu Loader, Model WA500, S/N 20824	165,000	Traded for collateral	N/A
13	Komatsu Excavator, Model PC650, S/N N/A	125,000	Traded for collateral	N/A
15	1993 Komatsu Excavator, Model PC400, S/N 70855	175,000	NO	175,000
16	1989 Komatsu Excavator, Model PC400R, S/N 12526	75,000	NO	75,000
17	1993 Komatsu Loader, Model WA500, S/N 20862	165,000	NO	165,000
18	1993 Komatsu Excavator, Model PC300, S/N 22584	125,000	NO	125,000
20	Case Backhoe, Model 580, S/N 5447690	10,000	NO	10,000
45	Excavator Bucket (124) 300, Excavator Bucket (125) 650, Excavator Bucket (127) 400, Loader Bucket 500	12,000	NO	12,000
49	Alfa Scale (Maiden), Model 2FT7010	10,000	NO	10,000
53	Cherry Picker – Model XL175, Power Screen Commander, Conveyor 30"x60' – Model M60, Conveyor 24"x50' Model M50, Stump Grinder, 16x18 Impact Crusher, Conveyor 48"x80', Impact Crusher Trailer	527,000	NO	527,000
54	El Jay Cone, Telesmith Screener, Hewitt Robbins, Telesmith Jaw, Conveyor 42x80, Conveyor 30x80, Conveyor 30x60, Conveyor 36x24, Conveyor 24x50, Conveyor 30x80, Conveyor 24x50, Conveyor 36x60, Conveyor 30x50	200,000	NO	200,000
TOTAL		\$2,274,000		\$1,724,000³

³ The final total of equipment does not include the value of equipment traded for other collateral.

EXHIBIT D – AUDITEE’S RESPONSE TO DRAFT REPORT



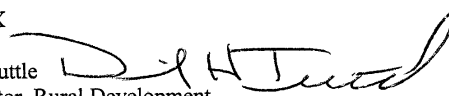
UNITED STATES
DEPARTMENT OF
AGRICULTURE

RURAL DEVELOPMENT
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October 25, 2001

To: USDA Office of Inspector General
Attn: Robert E. Gray
Regional Inspector General for Audit
3401-6-Te
Temple, TX

From: David H. Tuttle 
State Director, Rural Development
Amherst, MA (MA, CT & RI)

Subject: RBS B&I Guaranteed Loans
Rural Development State Office Amherst, MA
Draft Report

This is in response to the Draft Report for Audit Report No. 34601-6-Te, conducted in this State Office in November 2000, January and April 2001. An exit conference is not seen as necessary; unless, you determine it otherwise.

Comments on borrower A: there were no report findings.

Comments on borrower B: we accept the auditor's findings. We note for finding 3., however, that the borrower had adequate collateral, debt service capacity and a loss was never reasonably contemplated on this account. Whether the lender was negligent in allowing the borrower to withdraw retained earnings is a subjective determination. The lender made credible counter arguments to this finding.

The findings have been rendered moot in this case. The borrower chose to take its financing to another bank and refinanced the guaranteed loan on 10/3/01. The guarantee was terminated, without loss to the government.

The findings in the above case were lender deficiencies, and we hope that readers recognize that Rural Development actions in servicing this case were timely and appropriate.

We appreciated () involvement in this particular case. Thank you for the opportunity to review the report and make comments. If there are any questions, contact us at 413-253-4302.

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, D.C. 20250-9410, or call 202/720-5964 (voice and TDD).
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