

## RBS and RUS, USDA

## § 4279.2

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: 7 U.S.C. 1989.

SOURCE: 61 FR 67633, Dec. 23, 1996, unless otherwise noted.

### 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 non-metropolitan 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

## RBS and RUS, USDA

## § 4279.29

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.