

RBS, RHS, and RUS, USDA

§ 5001.6

(1) *Lender and borrower eligibility.* No exception to lender or borrower eligibility can be made.

(2) *Project eligibility.* No exception to project eligibility can be made.

(3) *Rural area definition.* No exception to the definition of rural area, as defined in § 5001.2, can be made.

(4) *Term length.* No exception to the maximum length of the loan term, as specified in § 5001.31(c), can be made.

(b) *Review or appeal rights.* A person has review or appeal rights in accordance with 7 CFR part 11.

§ 5001.4 Oversight and monitoring.

(a) *General.* The lender will cooperate fully with Agency oversight and monitoring of all lenders involved in any manner with any guarantee under this program to ensure compliance with this part, including ensuring lenders continue to meet the criteria for being an approved lender or a preferred lender. Such oversight and monitoring will include, but is not limited to, reviewing lender records and meeting with lenders. In addition, the Agency will review all approved and preferred lenders for eligibility at least every two years.

(b) *Reports and notifications.* The Agency will require lenders to submit to the Agency reports and notifications to facilitate the Agency's oversight and monitoring. These reports and notifications include, but are not necessarily limited to:

(1) Periodic reports, to be submitted semiannually, regarding the condition of its Agency guaranteed loan portfolio (including borrower status and loan classification) and any material change in the general financial condition of the borrower since the last periodic report was submitted.

(2) Monthly default reports for each loan in monetary default using a form approved by the Agency.

(3) Notification within 15 calendar days of:

(i) Any loan agreement violation by any borrower, including when a borrower is 30 days past due or is otherwise in default;

(ii) Any permanent or temporary reduction in interest rate; and

(iii) Any downgrade in the loan classification of any loan made under this part.

(4) If a lender receives a final loss payment, an annual report on its collection activities for each unsatisfied account for 3 years following payment of the final loss claim.

§ 5001.5 Forms, regulations, and instructions.

Copies of all forms, regulations, and instructions referenced in this part may be obtained through the Agency.

BASIC ELIGIBILITY PROVISIONS

§ 5001.6 Project eligibility.

To be eligible for a guaranteed loan under this part, at a minimum, a borrower and project, as applicable, must meet each of the requirements specified in paragraphs (a) through (c) of this section.

(a) The project must meet the requirements specified in subpart B of this part.

(b) The borrower must meet the financial metric criteria specified in paragraphs (b)(1) through (b)(3) of this section. These financial metric criteria shall be calculated from the realistic information in the pro forma statements or borrower financial statements, submitted in accordance with § 5001.12(a)(10), of a typical operating year after the project is completed and stabilized. For projects that the Agency deems to be more risky, such as racetracks and water parks, the Agency will require higher underwriting standards for such projects.

(1) A debt coverage ratio of 1.0 or higher;

(2) A debt-to-tangible net worth ratio of 4:1 or lower for startup businesses and of 9:1 or lower for existing businesses.

(3) A loan-to-value ratio of no more than 1.0.

(c) For projects that are determined by a service area, boundaries for the proposed service area must be chosen in such a way that no user or area will be excluded because of race, color, religion, sex, marital status, age, disability, or national origin. This does not preclude:

§ 5001.7

7 CFR Ch. I (1–1–09 Edition)

(1) Financing or constructing projects in phases when it is not practical to finance or construct the entire project at one time, and

(2) Financing or constructing facilities where it is not economically feasible to serve the entire area, provided economic feasibility is determined on the basis of the entire system or facility and not by considering the cost of separate extensions to, or parts thereof. Additionally, the borrower must publicly announce a plan for extending service to areas not initially receiving service. Also, the borrower must provide written notice to potential users located in the areas not to be initially served.

§ 5001.7 Unauthorized projects and purposes.

Loans guaranteed under this part must not be used for any projects other than those authorized in subpart B of this part. In addition, loan funds may not be used to finance:

(a) Investment or arbitrage, or speculative real estate investment.

(b) Golf courses or similar recreational facilities listed in the annual Notice of Funds Availability.

(c) Any business deriving more than 10% of its annual gross revenue from gambling activity, excluding State-authorized lottery proceeds and, for public bodies and for not-for-profit approved projects only, any other funds derived from gambling activity, as approved by the Agency, conducted for the purpose of raising funds for the approved project.

(d) Prostitution or businesses deriving income from activities of a prurient sexual nature.

(e) Any guarantee of a:

(1) Line of credit;

(2) Lease payment; or

(3) Loan made by other Federal agencies.

(f) Any project eligible for Rural Rental Housing and Rural Cooperative Housing loans under sections 515, 521, and 538 of the Housing Act of 1949, as amended.

(g) Finders', packagers', or loan brokers' fees.

(h) Any business deriving income from illegal drugs, drug paraphernalia,

or any other illegal product or activity.

(i) To pay the borrower for the rental of equipment or machinery owned by the borrower.

(j) The payment of either a Federal judgment or a debt owed to the United States, excluding other Federal loans.

(k) Any project that creates, directly or indirectly, a conflict of interest or an appearance of a conflict of interest.

(l) Properties to be used for commercial rental when the borrower has no control over tenants and services offered except for industrial-site infrastructure development and limited sections of essential community facilities when the activity in the leased space is related to and enhances the primary purpose for which the facility is being established by the borrower.

(m) Any project located within the Coastal Barriers Resource System that does not qualify for an exception as defined in section 6 of the Coastal Barriers Resource Act, 16 U.S.C. 3501 *et seq.*

(n) Any project located in a special flood or mudslide hazard area as designated by the Federal Emergency Management Agency in a community that is not participating in the National Flood Insurance Program unless the project is an integral part of a community's flood control plan.

(o) Any other similar project or purpose that the Agency determines is ineligible for funding under this part and publishes in a FEDERAL REGISTER notice.

§ 5001.8 Borrower eligibility.

(a) *Eligible entities.* To be eligible, a borrower must meet the requirements specified in paragraphs (a)(1) and (2) of this section and in subpart B to this part, as applicable.

(1) *Citizenship.* Citizenship requirements are as follows:

(i) Individual borrowers must be citizens of the United States (U.S.), the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, or American Samoa, or reside in the U.S. after legal admittance for permanent residence.

(ii) Entities other than individuals must be at least 51% owned or controlled by persons who are either citizens as identified under paragraph

(a)(1)(i) of this section or are legally admitted permanent residents residing in the U.S.

(2) *Legal authority and responsibility.* Each borrower must have, or obtain, the legal authority necessary to construct, operate, and maintain the proposed facility and services and to obtain, give security for, and repay the proposed loan.

(b) *Ineligible entities.* A borrower will be considered ineligible for a guarantee if either the borrower or any owner with more than 20% ownership interest in the borrower:

(1) Has an outstanding judgment obtained by the U.S. in a Federal Court (other than U.S. Tax Court),

(2) Is delinquent on the payment of Federal income taxes,

(3) Is delinquent on a Federal debt, or

(4) Is debarred or suspended from receiving Federal assistance.

§ 5001.9 Participation eligibility requirements.

Only lenders are eligible to participate in the guaranteed loan programs described in this part.

(a) *General requirements.* The requirements in this paragraph apply to all lending entities who wish to participate in the guaranteed loan programs described in this part.

(1) *Loan origination and servicing policies and procedures.* The lending entity must submit a written summary of its loan origination and servicing policies and procedures, addressing, at a minimum, the areas specified in paragraphs (a)(1)(i) through (ix) of this section. At the Agency's request, the lending entity must make available any or all of its loan origination and servicing policies and procedures.

(i) Internal credit review process.

(ii) Underwriting process.

(iii) Portfolio management.

(iv) Delinquent loan handling.

(v) Liquidation process.

(vi) Releases.

(vii) Termination.

(viii) Final loss claims.

(ix) Exceptions to loan policies and procedures and other information relevant to Agency guaranteed loans.

(2) *Audit and management control system.* The lending entity must maintain internal audit and management control

systems to evaluate and monitor the overall quality of its loan origination and servicing activities.

(3) *Debarment and suspension.* The lending entity must not be otherwise debarred or suspended by the Federal government.

(b) *Regulated or supervised lending entities.* The requirements for a regulated or supervised lending entity that has no outstanding guaranteed loans with the Agency to be eligible to participate are identified in paragraph (b)(1) of this section. The requirements for a regulated or supervised lending entity that has at least one outstanding guaranteed loan with the Agency to be eligible to participate are identified in paragraph (b)(2) of this section.

(1) *No outstanding Agency guaranteed loans.* A regulated or supervised lending entity that does not have any outstanding guaranteed loans as of January 16, 2009 with the Agency must apply for lender approval.

(i) *Lender application.* If the lending entity is a state chartered entity, the lending entity must submit the application, and other required documentation, to the State in which it is chartered. If the lending entity is a federally chartered entity, the lending entity must submit the application, and other required documentation, to the State in which the entity's headquarters is located.

(ii) *Policies and procedures.* The lending entity must submit with the lender application a written summary of its loan origination and servicing policies and procedures, as specified in paragraph (a)(1) of this section.

(iii) *Lending history and experience.* The lending entity must submit with the lender application a description of its lending history and experience, including:

(A) Evidence of demonstrated expertise in loan origination, making, securing, servicing, and collecting loans;

(B) Length of time in the commercial lending business;

(C) Its experience with government guaranteed lending, particularly within any of the subject programs;

(D) The range and volume of its lending and servicing activity;

(E) The current status of its loan portfolio;

(F) Its commercial loan fee structure;

(G) The level of experience of its management, lending, and servicing staff; and

(H) Audited financial statements not more than 1 year old.

(iv) *Approval process.* The Agency will review the application, including the summary of the lending entity's loan origination and servicing policies and procedures, submitted under paragraph (b)(1) of this section, to determine whether the lending entity is approved for participation under this part. The Agency may request additional clarification or information as necessary in its determination of lender approval.

(A) The Agency will approve or disapprove the lending entity on the basis of the information in the application, including the information describing the lending entity's loan origination and servicing policies and procedures.

(B) The lending entity must be in good standing with its regulator to be approved for participation.

(2) *With outstanding Agency guaranteed loans.* A regulated or supervised lending entity that has at least one outstanding guaranteed loan with the Agency as of January 16, 2009 is required to certify to the Agency that the lending entity is in good standing with its regulator and to submit a written summary of its loan origination and servicing policies and procedures, as specified in paragraph (a)(1) of this section.

(i) The lending entity must submit this certification and description either with, or prior to, its first application for loan guarantee under this part.

(ii) Such lending entity is approved for participation under this part when the Agency receives the lending entity's certification that the lending entity is in good standing with its regulator and the written summary of the lending entity's loan origination and servicing policies and procedures, as specified in paragraph (a)(1) of this section.

(3) *Lender's agreement.* If approved, the lender may sign a Lender's Agreement with the Agency. If the Lender's Agreement is executed by the lender and the Agency, the lender may submit an application for guarantee in any

State in which it is authorized to do business. Approval for participation constitutes approval to participate in all guaranteed loan programs described in this part.

(4) *Maintenance of approved status.* Approved status is maintained as long as the lender remains in good standing with its regulator, in conformance with this part, or until otherwise notified by the Agency. If a lender fails to maintain its status as a Lender or has no outstanding loans with the Agency for two consecutive years, it must reapply under this section for lender approval.

(c) *Other lending entities.* Any lending entity not eligible in paragraph (b) of this section that wishes to originate a new loan under this part may apply for approved status, as specified in paragraph (c)(2) of this section, provided it meets the criteria specified in paragraph (c)(1) of this section.

(1) *Criteria for submitting an application for lender approval.* An other lending entity may submit an application for lender approval provided the lending entity has:

(i) A minimum net worth of \$2.5 million;

(ii) Liquid assets of at least \$500,000;

(iii) Acceptable line(s) of credit that totals \$5 million or more; and

(iv) Undergone an examination acceptable to the Agency.

(2) *Application for lender approval.* The lending entity must submit an application to the Rural Development State Office in the State in which the entity is chartered providing the information specified in paragraphs (c)(2)(i) through (viii) of this section.

(i) A written summary of its loan origination and servicing policies and procedures, as specified in paragraph (a)(1) of this section.

(ii) Evidence showing that it has the necessary capital, resources, and funding capacity to successfully meet its responsibilities.

(iii) Copies of any license, charter, or other evidence of its legal authority to engage in the proposed loan making and servicing activities.

(iv) Certificate(s) of good standing from the States in which the lender is licensed and intends to conduct business.

(v) A description of its lending history and experience, including:

(A) Evidence of demonstrated expertise in loan origination, making, securing, servicing, and collecting loans;

(B) Length of time in the commercial lending business;

(C) Its experience with government guaranteed lending, particularly within any of the subject programs;

(D) The range and volume of its lending and servicing activity;

(E) The current status of its loan portfolio;

(F) Its commercial loan fee structure;

(G) The level of experience of its management, lending, and servicing staff; and

(H) Its audited financial statements not more than 1 year old.

(vi) Documented sources of its funds for funding and closing loans.

(vii) Office location(s) and its proposed geographic lending area(s).

(viii) Results of the examination required under paragraph (c)(1) of this section.

(3) *Agency review.* The Agency will review the application, including the lending entity's loan origination and servicing policies and procedures, submitted under paragraph (b)(1) of this section to determine whether the lending entity is approved for participation under this part. The Agency may request additional clarification or information as necessary in its determination of lender approval. The Agency will approve or disapprove the lending entity on the basis of the information in the application, including the information describing the entity's loan origination and servicing policies and procedures.

(4) *Lender's agreement.* If approved, the lender may sign a Lender's Agreement with the Agency. If the Lender's Agreement is executed by the lender and the Agency, the lender may submit an application for guarantee in any State in which it is authorized to do business.

(5) *Maintenance of approved status.* Approved status is maintained as long as the lender meets or exceeds minimum Agency requirements. If the Lender fails to maintain its status as a lender or has no outstanding loans with

the Agency for two consecutive years, it becomes a lending entity and must reapply under this section for lender approval.

(d) *Preferred lenders.* Approved lenders may apply to the Agency for preferred lender status for the Business and Industry (B&I) guaranteed loan program in subpart B of this part. In addition, this preferred lender status may be expanded to include other programs contained in this part pursuant to notice published in the FEDERAL REGISTER.

(1) *Criteria for receiving preferred lender status.* The lender must meet each of the requirements specified in paragraphs (d)(1)(i) through (vii) of this section to obtain preferred lender status.

(i) Have a lender loss rate not in excess of the maximum "preferred lender" loss rate established by the Agency and published in a FEDERAL REGISTER Notice.

(ii) Have made a minimum of 10 guaranteed Business and Industry loans, unless another minimum number is specified in a notice in the FEDERAL REGISTER.

(iii) Show a consistent practice of submitting applications for guaranteed loans containing accurate information supporting a sound loan proposal.

(iv) Have no more than one instance of Federal government negligent loan origination or servicing where a loss has been paid.

(v) Not be under any regulatory enforcement action, such as a cease and desist order, written agreement, or an appointment of conservator or receiver.

(vi) Demonstrated high standards of professional competence for the lender's staff, particularly key underwriting and servicing staff.

(vii) Adequate lender facilities to conduct its Agency business at a high level of performance.

(2) *Locations.* The lender must identify in its application for preferred lender status the States in which the lender desires to receive preferred lender status and its branch offices which the lender desires to be considered by the Agency for approval. The Agency will determine which branches of the lender have the necessary experience

§ 5001.10

and ability to participate in the preferred lender program based on the information submitted in the lender application and on Agency experience.

(3) *Timeframe and renewal.* A lender who is determined to be eligible for preferred lender status will be granted such status for a period not to exceed four years from the date the Lender's Agreement is executed. A lender must submit a written request for renewal of a Lender's Agreement with preferred lender status which includes information:

(i) Updating the material submitted in the initial application; and

(ii) Addressing any new criteria established by the Agency since the initial application.

(4) *Revocation of preferred lender status.* The Agency may revoke a lender's preferred lender status at any time during the four-year term for cause. Any of the following instances constitute cause for revoking or not renewing preferred lender status:

(i) Violation of a term of the Lender's Agreement;

(ii) Failure to maintain preferred lender eligibility criteria;

(iii) Knowingly submitting false or misleading information to the Agency;

(iv) Basing a request on information known to be false;

(v) Deficiencies that indicate an inability to process or service Agency guaranteed loan programs loans in accordance with this part;

(vi) Failure to correct cited deficiencies in loan documents upon notification by the Agency;

(vii) Failure to submit status reports in a timely manner;

(viii) Failure to use forms, or follow its loan origination and servicing policies and procedures accepted by the Agency; or

(ix) Failure to reimburse the holder the amount of repurchase, with accrued interest, in accordance with § 5001.17(i)(1).

7 CFR Ch. I (1-1-09 Edition)

§ 5001.10 [Reserved]

BASIC GUARANTEE APPLICATION PROVISIONS

§ 5001.11 Guarantee application process.

(a) *Beginning the process.* Any lender may submit a pre-application or a full application to begin an application for guarantee.

(1) *Pre-application.* Based on the information in the pre-application, the Agency will make an informal assessment of the eligibility of the borrower and project. The Agency will provide written informal comments regarding the pre-application's strengths and weaknesses. The Agency's assessment may change based on subsequently submitted information, is solely advisory in nature, does not obligate the Agency to approve a guarantee request, and is not considered a favorable or adverse decision by the Agency.

(2) *Guarantee application.* For each guarantee request, the lender must submit to the Agency an application that is in conformance with § 5001.12.

(b) *Guarantee application evaluation.* All loan guarantee applications will be evaluated according to this part.

(1) The Agency will notify the lender in writing of its decision.

(2) In the evaluation of the application, the Agency may require the lender to obtain additional assistance in those areas where the lender does not have the requisite expertise to originate or service the loan. For the purposes of this paragraph "those areas" mean:

(i) The type and complexity of the financing (e.g., asset based financing, cash flow financing, bond financing), and

(ii) The industries with which the lender has little or no origination and/or servicing experience.

(c) *Loan approval and issuing the guarantee.* Complete applications from preferred lenders will be approved, subject to the availability of funds, or rejected not later than 10 business days after receipt. For the purpose of determining the application processing timeframes, an application will not be considered complete until all information required