

## RBS and RUS, USDA

## § 4280.128

money market indices. In no case, however, shall the rate be more than the rate customarily charged borrowers in similar circumstances in the ordinary course of business. The interest rate charged is subject to Agency review and approval.

(b) Comply with § 4279.125(a), (b), and (d) of this chapter.

### § 4280.125 Terms of loan.

(a) The repayment term for a loan for:

(1) Real estate must not exceed 30 years;

(2) Machinery and equipment must not exceed 20 years, or the useful life, including major rebuilds and component replacement, whichever is less;

(3) Combined loans on real estate and equipment must not exceed 30 years; and

(4) Working capital loans must not exceed 7 years.

(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.

(c) Payment terms must comply with § 4279.126(c) of this chapter.

(d) The maturity of a loan will be based on the use of proceeds, the useful life of the assets being financed, and the borrower's ability to repay.

(e) All loans guaranteed through this program must be sound, with reasonably assured repayment.

(f) Guarantees must be provided only after consideration is given to the borrower's overall credit quality and to the terms and conditions of renewable energy and energy efficiency subsidies, tax credits, and other such incentives.

(g) A principal plus interest repayment schedule is permissible.

### § 4280.126 Guarantee/annual renewal fee percentages.

(a) *Fee ceilings.* The maximum guarantee fee that may be charged is 1 percent. The maximum annual renewal fee that may be charged is 0.5 percent. The Agency will establish each year the guarantee fee and annual renewal fee and a notice will be published in the FEDERAL REGISTER.

(b) *Guarantee fee.* The guarantee fee will be paid to the Agency by the lend-

er and is nonrefundable. The guarantee fee may be passed on to the borrower. The guarantee fee must be paid at the time the Loan Note Guarantee is issued.

(c) *Annual renewal fee.* The annual renewal fee will be calculated on the unpaid principal balance as of close of business on December 31 of each year. It will be calculated by multiplying the outstanding principal balance times the percent of guarantee times the annual renewal fee. The fee will be billed to the lender in accordance with the FEDERAL REGISTER publication. The annual renewal fee may not be passed on to the borrower.

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### § 4280.128 Application and documentation.

The requirements in this section apply to guaranteed loan applications under this subpart.

(a) *General.* Applications must be submitted in accordance with the requirements specified in § 4280.111(a).

(b) *Application content for guaranteed loans greater than \$600,000.* Applications and documentation for guaranteed loans greater than \$600,000 must provide the required information organized pursuant to a Table of Contents in a chapter format presented in the order shown in paragraphs (b)(1) and (2) of this section.

(1) *Guaranteed loan application content.* (i) *Table of Contents.* Include page numbers for each component of the application in the table of contents. Begin pagination immediately following the Table of Contents.

(ii) *Project Summary.* Provide a concise summary of the proposed project and applicant information, project purpose and need, and project goals, including the following:

(A) *Title.* Provide a descriptive title of the project (identified on SF 424).

(B) *Borrower eligibility.* Describe how each of the criteria, identified in § 4280.107(a)(1) through (4), is met.

(C) *Project eligibility.* Describe how each of the criteria, as applicable in § 4280.108(a) through (g), is met. Clearly state whether the application is for the purchase of a renewable energy system (including making necessary capital

improvements to an existing renewable energy system) or to make energy efficiency improvements. The response to § 4280.108(a) must include a brief description of the system or improvement. This description is to provide the reader with a frame of reference for reviewing the rest of application. Additional project description information will be needed later in the application.

(D) *Operation description.* Describe the applicant's total farm/ranch/business operation and the relationship of the proposed project to the applicant's total farm/ranch/business operation as specified in § 4280.111(b)(3)(iv).

(iii) *Financial information for size determination.* Provide financial information to allow the Agency to determine the applicant's size as specified in § 4280.111(b)(3)(v).

(iv) *Matching funds.* Submit a spreadsheet identifying sources, amounts, and status of matching funds as specified in § 4280.111(b)(5).

(v) *Self-evaluation score.* Self-score the project using the evaluation criteria in § 4280.112(e) as specified in § 4280.111(b)(6).

(vi) *Renewable energy and energy efficiency technical report.* For both renewable energy projects and energy efficiency improvement projects, submit a Technical Report in accordance with applicable provisions of Appendix B of this subpart and as specified in § 4280.111(b)(7)(ii). For loan requests in excess of \$600,000, the services of a licensed professional engineer (P.E.) or a team of licensed P.E.'s is required. If none of the Technology Reports in Appendix B apply to the proposed technology, the applicant may submit a Technical Report that conforms to the overall outline and subjects specified in applicable provisions of § 4280.111(b)(7)(ii)(A) through (G).

(vii) *Business-level feasibility study for renewable energy systems.* For each application for a renewable energy system project submitted by a start-up or existing business, a business-level feasibility study by an independent qualified consultant will be required by the Agency. An acceptable business-level feasibility study must at least include an evaluation of economic, market, technical, financial, and management feasibility.

(2) *Lender forms, certifications, and agreements.* Each application submitted under paragraph (b)(1) of this section must contain applicable items described in paragraphs (b)(2)(i) through (xii) of this section.

(i) A completed Form RD 4279–1, "Application for Loan Guarantee."

(ii) Form RD 1940–20.

(iii) A personal credit report from an Agency approved credit reporting company for each owner, partner, officer, director, key employee, and stockholder owning 20 percent or more interest in the borrower's business, except passive investors and those corporations listed on a major stock exchange.

(iv) Appraisals completed in accordance with § 4280.141. Completed appraisals should be submitted when the application is filed. If the appraisal has not been completed when the application is filed, the applicant must submit an estimated appraisal. In all cases, a completed appraisal must be submitted prior to the loan being closed.

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

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

(vii) Intergovernmental consultation comments in accordance with 7 CFR part 3015, subpart V, of this title.

(viii) Financial statements as specified in § 4280.111(b)(4)(i) through (iii). Financial information is required on the total operation of the agricultural producer/rural small business and its parent, subsidiary, or affiliates at other locations. All information submitted under this paragraph must be substantiated by authoritative records.

(ix) Business-level feasibility study.

(x) Lender's complete comprehensive written analysis in accordance with § 4280.139.

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

(xi) A proposed Loan Agreement or a sample Loan Agreement with an attached list of the proposed Loan Agreement provisions. The following requirements must be addressed in the proposed or sample Loan Agreement:

(A) Prohibition against assuming liabilities or obligations of others;

(B) Restriction on dividend payments;

(C) Limitation on the purchase or sale of equipment and fixed assets;

(D) Limitation on compensation of officers and owners;

(E) Minimum working capital or current ratio requirement;

(F) Maximum debt-to-net worth ratio;

(G) Restrictions concerning consolidations, mergers, or other circumstances;

(H) Limitations on selling the business without the concurrence of the lender;

(I) Repayment and amortization of the loan;

(J) 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 for corporate and personal guarantors must be updated at least annually once the guarantee is provided;

(K) Type and frequency of financial statements to be required from the borrower for the duration of the loan;

(L) The addition of any requirements imposed by the Agency in Form RD 4279-3;

(M) A reserved section for any Agency environmental requirements; and

(N) A provision for the lender or the Agency to have reasonable access to the project and its performance information during its useful life or the term of the loan, whichever is longer, including the periodic inspection of the project by a representative of the lender or the Agency.

(c) *Application content for guaranteed loans of \$600,000 or less.* Applications and documentation for guaranteed loans \$600,000 or less must comply with paragraphs (c)(1) and (2) of this section.

(1) *Application Contents.* Applications and documentation for guaranteed loans \$600,000 or less must provide the

required information organized pursuant to a Table of Contents in a chapter format presented in the order shown in § 4280.111(b)(2) through (8), except as specified in paragraphs (c)(1)(i) through (iii) of this section.

(i) Section 4280.111(b)(7)(i) does not apply.

(ii) Technical Reports must be submitted according to paragraph (c)(1)(ii)(A) or (B) of this section, as applicable.

(A) For renewable energy projects and energy efficiency projects utilizing commercially available systems or improvements and with total eligible project costs of \$200,000 or less, submit a Technical Report as described in Appendix A of this subpart. If a renewable energy project does not fit on of the technologies identified in Appendix A, the applicant must submit a Technical Report that conforms to the overall outline and subjects specified in § 4280.111(b)(7)(ii)(G).

(B) For renewable energy projects and energy efficiency projects utilizing pre-commercial technology or with total eligible project costs greater than \$200,000, submit a Technical Report as described in Appendix B of this subpart and as specified in § 4280.111(b)(7)(ii)(G)(I) through (I), as applicable.

(iii) *Business-level feasibility study for renewable energy systems.* For each application for a renewable energy system project submitted by a start-up or existing business, a business-level feasibility study by an independent qualified consultant will be required by the Agency. An acceptable business-level feasibility study must at least include an evaluation of economic, market, technical, financial, and management feasibility. Renewable energy projects with total eligible project costs of \$200,000 or less are exempt from the feasibility study requirement.

(2) *Lender forms, certifications, and agreements.* Applications submitted under paragraph (c) of this section must use Form RD 4279-1A, "Application for Loan Guarantee, Short Form," and include the documentation contained in paragraphs (b)(2)(ii), (vii), (viii), (ix), (x), and (xii) of this section. The lender must have the documentation contained in paragraphs (b)(2)(iii),

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(iv), (v), (vi), and (xi) available in its files for the Agency's review.

### § 4280.129 Evaluation of guaranteed loan applications.

(a) *General review.* The Agency will evaluate each application to confirm that both the borrower and project are eligible, the project has technical merit, there is reasonable assurance of repayment, 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) *Ineligible applications.* If either the borrower or the project is ineligible, the Agency will inform the lender in writing of the reasons and provide any appeal rights. No further evaluation of the application will occur.

(c) *Incomplete applications.* If the application is incomplete, the Agency will identify those parts of the application that are incomplete and return it, with a written explanation, to the lender for possible future resubmission. Upon receipt of a complete application, the Agency will complete its evaluation.

(d) *Technical merit determination.* The Agency's determination of a project's technical merit will be based on the information provided by the applicant. The Agency may engage the services of other government agencies or recognized industry experts in the applicable technology field, at its discretion, to evaluate and rate the application. The Agency may use this evaluation and rating to determine the level of technical merit of the proposed project. Projects determined by the Agency to be without technical merit shall be deemed ineligible.

(e) *Evaluation criteria.* The Agency will score each application based on the evaluation criteria specified in § 4280.112(e) (except for the criteria specified in § 4280.112(e)(5)) and in paragraphs (e)(1) and (2) of this section. Points will be awarded for either paragraph (e)(1) or (2) of this section, but not both.

(1) If the interest rate on the loan is to be below the prime rate (as pub-

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lished in The Wall Street Journal) plus 1.5 percent, 5 points will be awarded.

(2) If the interest rate on the loan is to be below the prime rate (as published in The Wall Street Journal) plus 1 percent, 10 points will be awarded.

### § 4280.130 Eligible lenders.

Eligible lenders are those identified in § 4279.29 of this chapter, excluding mortgage companies that are part of a bank-holding company.

### § 4280.131 Lender's functions and responsibilities.

(a) *General.* Lenders are responsible for implementing the guaranteed loan program under this subpart. All lenders requesting or obtaining a loan guarantee must comply with § 4279.30(a)(1)(i) through (ix) of this chapter.

(b) *Credit evaluation.* The lender's credit evaluation must comply with § 4279.30(b) of this chapter.

(c) *Environmental information.* Lenders must ensure that borrowers furnish all environmental information required under 7 CFR part 1940, subpart G, of this title and must comply with § 4279.30(c) of this chapter.

(d) *Construction planning and performing development.* The lender must comply with § 4279.156(a) and (b) of this chapter, except under paragraph § 4279.156(a) of this chapter, the lender must also ensure that all project facilities are designed utilizing accepted architectural and engineering practices that conform to the requirements of this subpart.

(e) *Loan closing.* The loan closing must be in compliance with § 4279.30(d) of this chapter.

### § 4280.132 Access to records.

Both the lender and borrower must permit representatives of the Agency (or other agencies of the U.S.) to inspect and make copies of any records pertaining to any Agency guaranteed loan during regular office hours of the lender or borrower or at any other time upon agreement between the lender, the borrower, and the Agency, as appropriate.

### § 4280.133 Conditions of guarantee.

All loan guarantees will be subject to § 4279.72 of this chapter.