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(1) *Type of borrower.* The borrower must be either an agricultural producer or a rural small business.

(2) *Ownership.* The borrower must:

(i) Own the project; and

(ii) Own or control the site for the project at the time of application and for the term of the guaranteed loan.

(3) *Revenues and expenses.* The borrower must have available or be able to demonstrate, at the time of application, satisfactory sources of revenue in an amount sufficient to provide for the operation, management, maintenance, and any debt service of the project for the term of the loan. In addition, the borrower must control the revenues and expenses of the project, including its operation and maintenance. The borrower may employ a qualified consultant under contract to manage revenues and expenses of the project and its operation and/or maintenance.

(4) *Matching funds.* The borrower must demonstrate evidence of injection of matching funds in the project of not less than 25 percent of total eligible project costs. Passive third-party contributions are acceptable as matching funds for RES projects, including those raised from the sale of Federal tax credits.

§5001.127 Borrower ineligibility conditions.

A potential borrower is ineligible for a guaranteed loan under this part as identified in paragraphs (a) through (g) of this section. The borrower remains ineligible until the condition causing ineligibility is resolved.

(a) An entity is ineligible if any of the conditions identified in paragraphs (a)(1) through (4) of this section applies to the borrower, any owner with more than 20 percent ownership interest in the borrower, or any owner with control of the borrower.

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

(2) Delinquency on the payment of Federal income taxes.

(3) Delinquency on a Federal Debt.

(4) Debarment or suspension from receiving Federal assistance.

(b) An entity is ineligible if it derives more than 15 percent of its annual gross revenue (including any lease in-

come from space or machines) from gambling activity, excluding State-authorized lottery proceeds or Tribal-authorized gaming proceeds, as approved by the Agency, conducted for the purpose of raising funds for the approved project.

(c) An entity is ineligible if it derives income from activities of a prurient sexual nature.

(d) An entity is ineligible if it derives income from illegal drugs, drug paraphernalia, or any other illegal product or activity as defined under Federal statute.

(e) An entity is ineligible under B&I projects if it is a charitable or fraternal organization. For purposes of this section, an organization that derives more than 10 percent of its annual gross revenue from tax deductible charitable donations, based on historical financial statements, is considered a charitable organization. Fees for services rendered or that are otherwise ineligible for deduction under the Internal Revenue Code are not considered tax deductible charitable donations.

(f) An entity is ineligible if its lender or any of the lender's officers has an ownership interest in the borrower or is an officer or director of the borrower with management control or where the borrower or any of its officers, directors, stockholders, or other owners have more than a five percent ownership interest in the lender. Any of the lender's directors, stockholders, or other owners that are officers, directors, stockholders, or other owners of the borrower must be recused from any decision-making process associated with the guaranteed loan.

(g) A borrower is ineligible if it is a lending institution, investment institution, or insurance company with exception of REAP or projects for a fund that invests primarily in cooperatives in accordance with §5001.140, and NMTC projects in accordance with §5001.141.

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§5001.130 Lender eligibility requirements.

To become a lender under this part, the lending entity must meet the requirements specified in paragraphs (a)

through (d) of this section, as applicable, and become an approved participant in the Agency's electronic system. Paragraph (e) of this section contains provisions associated with lenders that have already been approved by the Agency under one of the guaranteed loan programs identified in § 5001.1 of this part. If not yet an Agency-approved lender, the lending entity must include with the application a request for lender approval in accordance with this section.

(a) *General.* The lending entity must:

- (1) Be domiciled in a State;
- (2) Not be debarred or suspended by the Federal Government or be an affiliated person of such entity that was suspended or debarred;
- (3) Inform the Agency if it is under a consent order, or similar constraint, from a Federal or State agency. The Agency will evaluate the lending entity's eligibility on a case-by-case basis, and assess the risk of loss posed by the consent order or similar constraint, as applicable;
- (4) Maintain written standards of conduct covering conflicts of interest; and
- (5) Maintain internal audit and management control systems to evaluate and monitor the overall quality of its loan origination and servicing activities.

(b) *Regulated lending entities.* Regulated lending entities identified in paragraphs (b)(1) through (10) of this section are eligible to receive a loan guarantee under this part without documentation to the Agency provided they are subject to supervision and credit examination by the applicable agency of the United States or a state, or were created specifically by state statute and operate under the direct supervision of a state government authority.

- (1) Federal and State chartered banks.
- (2) Farm Credit Bank of the Federal Land Bank and other Farm Credit System institutions with direct lending authority to make loans of the type guaranteed under this part.
- (3) Bank for Cooperatives.
- (4) Savings and Loan Associations.
- (5) Savings banks.

(6) Mortgage companies that are part of a bank-holding company.

(7) The National Rural Utilities Cooperative Finance Corporation.

(8) Credit unions.

(9) State Bond Banks or State Bond Pools.

(10) Other lending entities not specified in paragraphs (b)(1) through (9) of this section that meet the requirements as specified in this paragraph (b).

(c) *Non-regulated lending entities.* The Agency may approve a lending entity that does not meet the criteria of paragraph (b) of this section to become a lender for a period up to five years. Non-regulated lending entity eligibility will expire on January 31 of the fifth year after the date of Agency approval.

(1) *Conditions.* When the lending entity is a multi-tiered entity, the Agency will consider the lending entity in its entirety. In order to be approved as a lender, a non-regulated lending entity must:

- (i) Have the legal authority to operate a lending program;
- (ii) Be a financially sound institution that has a record of successfully originating at least five commercial loans annually totaling at least \$1 million for each of the last three years, with the lending entity's commercial loan portfolio in last five years not exceeding:
 - (A) Six percent average delinquency of all commercial loans, and
 - (B) Three percent in commercial loan losses (based on the original principal loan amount);
- (iii) Have and agree to maintain balance sheet equity in accordance with Section 5001.105(d) of this part of at least 10 percent of assets and sufficient funds available to disburse the guaranteed loans it proposes to approve within the first six months of being approved as a Lender;
- (iv) Have and agree to maintain a line of credit issued by a regulated lending entity that is acceptable to the Agency;
- (v) Agree to establish and maintain an Agency-approved loan loss reserve equal to one percent reserve of the unguaranteed portion of all guaranteed

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loans plus an amount equal to the identified anticipated losses.

(vi) Have written policies and procedures to ensure that internal credit controls provide adequate loan making and servicing guidance that adheres to Federal and State fair lending practices;

(vii) Document and assure to the Agency that the lending entity has the capacity to fulfill the lender functions and responsibilities identified in this part, including, but not limited to §§5001.201, 5001.202, 5001.207, and 5001.501.

(2) *Written request.* A non-regulated lending entity that seeks to become a lender must submit a written request to the Agency including the following information:

(i) The request must clearly define the multiple-entity organizational and control structure with a listing of each entity under its control, including any Community Development Entity (CDE) that may request guaranteed loans under §5001.141. In addition, the non-regulated lending entity must include each such sub-entity in their audited financial statements, commercial loan portfolio, and commercial loan performance statistics;

(ii) Bylaws;

(iii) Audited financial statements for the most recent fiscal year that evidences the required balance sheet equity and that the lending entity has available resources to successfully meet its responsibilities;

(iv) Auditor's most recent management letter and management's response;

(v) An interim financial statement dated within 90 days of the written request, if applicable;

(vi) A copy of any license, charter, State statute, or other third-party evidence of authority to engage in the proposed guaranteed loan making and servicing activities. If licensing by the State is not required, an attorney's opinion stating that licensing is not required and that the lending entity has the legal authority to engage in the proposed guaranteed loan making and servicing activities must be submitted;

(vii) The lender's loan classification scale including their loan classification criteria;

(viii) Information on lending experience, including—

(A) Length of time in the lending business;

(B) Range and volume of lending and servicing activities for the last five years, including a list of the industries for which it has provided financing;

(C) Status of its loan portfolio, including a summary of loans in the portfolio by current loan classification code, a list of any loans restructured or charged off in the previous five years, and the calculated delinquency and loss rates as outlined in paragraph (c)(1)(ii) of this section;

(D) Lending experience of management and loan officers, including staff organizational chart, including names and titles for senior staff;

(E) Largest sources of funds for the last five years and source of funds for the proposed guaranteed loans;

(F) Office location(s) and proposed lending area(s);

(G) An estimate of the number, size, and type of applications the lending entity will develop over the next six months; and

(H) Proposed Interest rate structure and loan fees, including any loan origination, loan preparation, and servicing fees.

(ix) Description of programs, financial, and non-financial products and services.

(x) Its lending policies including underwriting standards, credit analysis policies and procedures, and its problem credit management policies and procedures.

(xi) A third-party external loan origination, lending portfolio, and management review acceptable to the Agency conducted in the previous two years, or a copy of a credit examination less than two years old conducted under an approved credit examination criterion such as CAMELS.

(3) *Approval or disapproval.* The Agency will notify the non-regulated lending entity whether its request to become a lender is approved or rejected. If the Agency rejects the request, the Agency will include in the notification the reason(s) for the rejection.

(4) *Renewals.* To maintain its status as an approved lender, the non-regulated lending entity must submit a request to the Agency for renewal of its approved lender status at least 60 calendar days prior to the expiration of the existing lender's agreement to be assured of a timely renewal. The lender must provide in this written request the information specified in paragraphs (c)(2)(i) and (iii) through (v) of this section; and

(i) A written update of any change in the persons designated to process and service Agency guaranteed loans or change in the operating methods used in the processing and servicing of loans since the original or last renewal date of lender status.

(ii) A description of how the lender is complying with each of the required criteria described in (c)(1) of this section and § 5001.501.

(iii) A new executed lender's agreement.

(iv) The Agency may require lenders with limited guaranteed loan activity over the previous five years, or a lender that has originated guaranteed loans with servicing issues or a loss to the Agency, to resubmit all the information required by paragraph (c)(2) of this section.

(d) *Non-regulated lending entities serving tribal trust lands.* The Agency may approve a lending entity serving tribal trust lands that does not meet the criteria of paragraph (b) or (c) of this section to become a lender for a five-year period. A non-regulated lending entity approved to originate and service guaranteed loans for projects located only on tribal trust lands is restricted to such areas. To make and service guaranteed loans not on tribal trust lands, the lending entity must meet the criteria of paragraph (b) or (c) of this section. When the lending entity is a multi-tiered entity, the Agency will consider the lending entity in its entirety for approval.

(1) *Conditions.* To be approved as a lender, a non-regulated lending entity serving only tribal trust lands must—

(i) Have the legal authority necessary to operate a lending program to borrowers located on tribal trust lands.

(ii) Meet the requirements of paragraph (c)(1) of this section, and prove

to be a financially sound institution, as determined by the Agency, on a case by case basis, based on the Agency's risk assessment of the lending entity's capital, adequate liquidity, management capabilities, repayment ability, credit underwriting, balance sheet equity and other financial factors as determined appropriate. On a case-by-case basis, the Agency may reduce the loan origination requirements of paragraph (c)(1)(ii) of this section for lenders serving only projects located on tribal trust lands.

(2) *Written request.* A non-regulated lending entity serving tribal trust lands must submit a written request to the Agency that includes the following information:

(i) Documentation required by paragraph (c)(2) of this section;

(ii) Written certification that the lender intends to only originate guaranteed loans under the regulation for projects located in certain (or specified) tribal lands held in trust for tribes and for tribal members not in such tribal lands but are in their service area;

(iii) Bylaws; and

(iv) Lending experience of management and loan officers, including staff organizational chart, including names and titles for senior staff.

(3) *Approval or disapproval.* The Agency will notify the non-regulated lending entity servicing tribal trust land whether its request to become a lender is approved or rejected. If the Agency rejects the request, the Agency will include in the notification the reason(s) for the rejection.

(4) *Renewals.* To maintain its status as an approved lender, the non-regulated lending entity serving tribal trust land must submit a request to the Agency for renewal of its approved lender status at least 60 calendar days prior to the expiration of the existing lender's agreement to be assured of a timely renewal. The lender must provide in this written request the information specified in paragraphs (c)(2)(i) and (iii) through (v) of this section; and

(i) A written update of any change in the persons designated to process and service Agency guaranteed loans or change in the operating methods used in the processing and servicing of loans

since the original or last renewal date of lender status.

(ii) A description of how the lender is complying with each of the required criteria described in (c)(1) of this section and §5001.501.

(iii) A new executed lender's agreement.

(iv) The Agency may require lenders with limited guaranteed loan activity over the previous five years, or a lender that has originated guaranteed loans with servicing issues or a loss to the Agency, to resubmit all information required by paragraph (c)(2) of this section.

(e) Previously approved lenders. Lenders that have been previously approved by the Agency under one of the guaranteed loan programs identified in §5001.1(b)(1) through (4) of this part cannot originate new guaranteed loans after the effective date of this rule unless the lender is approved under the applicable conditions of paragraphs (a) through (d), as applicable, of this section.

[85 FR 42518, July 14, 2020, as amended at 85 FR 62197, Oct. 2, 2020]

§5001.131 Lender's agreement.

When approved to participate as a lender under this part, the Lender must execute a lender's agreement before the Agency will issue a loan note guarantee. A new lender's agreement must be executed with any existing lender making new loans on or after October 1, 2020.

§5001.132 Maintenance of approved lender status.

Continuation of approved lender status under this part is not automatic. Lenders may lose their approved lender status as described in paragraph (a) of this section. The Agency may also revoke a lender's status as an approved lender or debar the approved lender, as described in paragraph (b) of this section.

(a) *Loss of approved lender status.* A lender will lose its approved status if it—

(1) Fails to conform with the provisions of this part or the applicable guaranteed loan program identified in §5001.1 of this part;

(2) Has no outstanding guaranteed loans with the Agency for five consecutive years;

(3) A regulated lending entity fails to remain in good standing with its regulator;

(4) A non-regulated lending entity fails to renew its approval status 5 years from the date the Agency executes the lender's agreement.

(b) *Revocation of approved status and debarment of lender.* The Agency can revoke a lender's status as an approved lender at any time for cause as specified in the lender's agreement. A decision to revoke a lender's approved status will be made by the Agency and the lender will be notified in writing. Cause for revoking lender status includes, but is not necessarily limited to, the circumstances identified in paragraphs (b)(1) through (14) of this section.

(1) Guaranteed loans originated by the lender cause substantial financial loss to the Agency.

(2) Failure to maintain status as an approved lender under the applicable regulations in effect when the lender obtained approved lender status. For lenders approved under this part, this means maintaining compliance with the requirements set forth in §5001.130.

(3) Conviction of the lender or any of its officers for criminal acts in connection with any loan transaction, whether or not the loan was guaranteed by the Agency.

(4) Violation of usury laws in connection with any loan transaction whether or not the loan was guaranteed by the Agency.

(5) Negligent loan origination.

(6) Knowingly submitting false information when requesting a loan guarantee or basing a loan guarantee request on information known to be false or which the lender should have known to be false.

(7) Failure to correct any Agency-cited deficiency in loan documents in a timely manner.

(8) Failure to provide for adequate construction planning and monitoring in connection with any guaranteed loan to ensure that the project will be completed with the available funds.

(9) Negligent loan servicing.