

§ 4280.140

7 CFR Ch. XLII (1–1–11 Edition)

(d)(2) of this section for loans of \$600,000 or less. Cash equity injection, as discussed in paragraphs (d)(1) and (2) of this section, must be in the form of cash. Federal grant funds may be counted as cash equity.

(1) For loans over \$600,000, borrowers shall demonstrate evidence of cash equity injection in the project of not less than 25 percent of eligible project costs. The fair market value of equity in real property that is to be pledged as collateral for the loan may be substituted in whole or in part to meet the cash equity requirement. However, the appraisal completed to establish the fair market value of the real property must not be more than 1 year old and must meet Agency appraisal standards.

(2) For loans of \$600,000 or less, borrowers shall demonstrate evidence of cash equity injection in the project of not less than 15 percent of eligible project costs. The fair market value of equity in real property that is to be pledged as collateral for the loan may be substituted in whole or in part to meet the cash equity requirement. However, the appraisal completed to establish the fair market value of the real property must not be more than 1 year old and must meet Agency appraisal standards.

(e) *Lien priorities.* The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan will neither be paid first nor given any preference or priority over the guaranteed portion. A parity or junior position may be considered provided that discounted collateral values are adequate to secure the loan in accordance with paragraph (b) of this section after considering prior liens.

§ 4280.140 Financial statements.

(a) The financial information required in § 4280.111(b)(3)(v) and (b)(4) is required for the guaranteed loan program.

(b) If the proposed guaranteed loan exceeds \$3 million, the Agency may require annual audited financial statements, at its sole discretion when the Agency is concerned about the applicant's credit risk.

§ 4280.141 Appraisals.

(a) *Conduct of appraisals.* All appraisals must be in accordance with § 4279.144 of this chapter.

(1) For loans of \$600,000 or more, a complete self-contained appraisal must be conducted. Lenders must complete at least a Transaction Screen Questionnaire for any undeveloped sites and a Phase I environmental site assessment on existing business sites, which should be provided to the appraiser for completion of the self-contained appraisal.

(2) For loans for less than \$600,000, a complete summary appraisal may be conducted in lieu of a complete self-contained appraisal as required under paragraph (a)(1) of this section. Summary appraisals must be conducted in accordance with Uniform Standards of Professional Appraisal Practice (USPAP).

(b) *Specialized appraisers.* Specialized appraisers will be required to complete appraisals in accordance with paragraphs (a)(1) and (2) of this section. The Agency may approve a waiver of this requirement only if a specialized appraiser does not exist in a specific industry or hiring one would cause an undue financial burden to the borrower.

§ 4280.142 Personal and corporate guarantees.

(a) All personal and corporate guarantees must be in accordance with § 4279.149(a) of this chapter.

(b) Except for passive investors, unconditional personal and corporate guarantees for those owners with a beneficial interest greater than 20 percent of the borrower will be required where legally permissible.

§ 4280.143 Loan approval and obligation of funds.

The lender and applicant must comply with § 4279.173 of this chapter, except that either or both parties may also propose alternate conditions to the Conditional Commitment if certain conditions cannot be met.

§ 4280.144 Transfer of lenders.

All transfers of lenders must be in accordance with § 4279.174 of this chapter,

RBS and RUS, USDA

§ 4280.149

except that it will be the Agency rather than the loan approval official who may approve the substitution of a new eligible lender.

§ 4280.145 Changes in borrower.

All changes in borrowers must be in accordance with § 4279.180 of this chapter, but the eligibility requirements of this program apply.

§ 4280.146 Conditions precedent to issuance of Loan Note Guarantee.

(a) The Loan Note Guarantee will not be issued until the lender certifies to the conditions identified in paragraphs § 4279.181(a) through (o) of this chapter and paragraph (b) of this section.

(b) All planned property acquisitions and development have been performing at a steady state operating level in accordance with the technical requirements, plans, and specifications, conforms with applicable Federal, State, and local codes, and costs have not exceeded the amount approved by the lender and the Agency.

§ 4280.147 Issuance of the guarantee.

(a) When loan closing plans are established, the lender must notify the Agency in writing. At the same time, or immediately after loan closing, the lender must provide the following to the Agency:

(1) Lender's certifications as required by § 4280.146;

(2) An executed Form RD 4279-4; and

(3) An executed Form RD 1980-19, "Guaranteed Loan Closing Report," and appropriate guarantee fee.

(b) When the Agency is satisfied that all conditions for the guarantee have been met, the Loan Note Guarantee and the following documents, as appropriate, will be issued:

(1) *Assignment Guarantee Agreement*. If the lender assigns the guaranteed portion of the loan to a holder, the lender, holder, and the Agency must execute the Assignment Guarantee Agreement;

(2) *Certificate of Incumbency*. If requested by the lender, the Agency will provide the lender with a copy of Form RD 4279-7, "Certificate of Incumbency and Signature," with the signature and title of the Agency official responsible for signing the Loan Note Guarantee,

Lender's Agreement, and Assignment Guarantee Agreement;

(3) Copies of legal loan documents; and

(4) Disbursement plan, if working capital is a purpose of the project.

§ 4280.148 Refusal to execute Loan Note Guarantee.

If the Agency determines that it cannot execute the Loan Note Guarantee, § 4279.187 of this chapter will apply.

§ 4280.149 Requirements after project construction.

Once the project has been constructed, the lender must provide the Agency periodic reports from the borrower. The borrower's reports will include the information specified in paragraphs (a) and (b) of this section, as applicable.

(a) *Renewable energy projects*. For renewable energy projects, commencing the first full calendar year following the year in which project construction was completed and continuing for 3 full years, provide a report detailing the information specified in paragraphs (a)(1) through (7) of this section.

(1) The actual amount of energy produced in BTUs, kilowatt-hours, or similar energy equivalents.

(2) If applicable, documentation that any identified health and/or sanitation problem has been solved.

(3) The annual income and/or energy savings of the renewable energy system.

(4) A summary of the cost of operating and maintaining the facility.

(5) A description of any maintenance or operational problems associated with the facility.

(6) Recommendations for development of future similar projects.

(7) Actual jobs created or saved.

(b) *Energy efficiency improvement projects*. For energy efficiency improvement projects, commencing the first full calendar year following the year in which project construction was completed and continuing for 2 full years, provide a report detailing the actual amount of energy saved due to the energy efficiency improvements.