

§ 4279.230

7 CFR Ch. XLII (1-1-14 Edition)

\$200,000. This leaves \$800,000 in other funding needed to implement the project. If the borrower receives no other direct Federal funding for this project and requests a guarantee for the \$800,000, the Agency will consider a guarantee on the \$800,000. However, if this borrower receives \$100,000 in other direct Federal funding for this project, the Agency will only consider a guarantee on \$700,000.

(d) The maximum guarantee on the principal and interest due on a loan guaranteed under this subpart will be determined as specified in paragraphs (d)(1) through (d)(4) of this section.

(1) If the loan amount is equal to or less than \$125 million, 80 percent for the entire loan amount unless all of the conditions specified in paragraphs (d)(1)(i) through (d)(1)(iii) of this section are met, in which case 90 percent for the entire loan amount.

(i) Equity of 40 percent, excluding qualified intellectual property;

(ii) Feedstock and off-take contracts of at least 1 year in duration; and

(iii) Collateral coverage ratio, total discounted collateral value divided by total loan request, exceeding 1.5 to 1.

(2) If the loan amount is more than \$125 million and less than \$150 million, 80 percent for the entire loan amount.

(3) If the loan amount is equal to or more than \$150 million but less than \$200 million, 70 percent on the entire loan amount.

(4) If the loan amount is \$200 million up to and including \$250 million, 60 percent on the entire loan amount.

(e) Eligible project costs are only those costs associated with the items listed in paragraphs (e)(1) through (e)(7) of this section, as long as the items are an integral and necessary part of the total project, as determined by the Agency.

(1) Purchase and installation of equipment (new, refurbished, or remanufactured), except agricultural tillage equipment, used equipment, and vehicles.

(2) Construction or retrofitting.

(3) Permit and license fees.

(4) Working capital.

(5) Land acquisition.

(6) Cost of financing, excluding guarantee and renewal fees.

(7) Any other item identified by the Agency in a notice published in the FEDERAL REGISTER.

(f) Loans made with the proceeds of any obligation the interest on which is excludable from income under the Internal Revenue Code are ineligible. Funds generated through the issuance of tax-exempt obligations cannot be used to purchase the guaranteed portion of any Agency guaranteed loan and an Agency guaranteed loan cannot serve as collateral for a tax-exempt issue. The Agency may guarantee a loan with respect to a project at a facility that has received, or will receive, tax-exempt financing only when the guaranteed loan funds are used to finance a project that is separate and distinct from the activities at the facility that have been or will be financed by the tax-exempt obligation, and the guaranteed loan has at least a parity security position with the tax-exempt obligation.

§ 4279.230 [Reserved]

§ 4279.231 Interest rates.

The provisions found in § 4279.125 apply to loans guaranteed under this subpart, except as provided in paragraphs (a) through (c) of this section. Lenders are encouraged to pass interest-rate savings realized through the secondary market on to the borrower.

(a) The rate on the unguaranteed portion of the loan shall not exceed the rate on the guaranteed portion of the loan by more than 500 basis points;

(b) Variable rate loans will not provide for negative amortization nor will they give the borrower the ability to choose its payment among various options.

(c) Both the guaranteed and unguaranteed portions of the loan must be amortized over the same term, as provided in § 4279.232(a).

§ 4279.232 Terms of loan.

Instead of the provisions found in § 4279.126, the provisions of this section apply to loans guaranteed under this subpart, except as provided in § 4279.232(e).

(a) The repayment term for a loan under this subpart will be for a maximum period of 20 years or the useful

life of the project, as determined by the lender and confirmed by the Agency, whichever is less. The length of the loan term shall be the same for both the guaranteed and unguaranteed portions of the loan.

(b) Guarantees shall be provided only after consideration is given to the borrower's overall credit quality and to the terms and conditions of any applicable subsidies, tax credits, and other such incentives.

(c) All loans guaranteed under this subpart must be financially sound and feasible, with reasonable assurance of repayment.

(d) A loan's maturity will take into consideration the use of proceeds, the useful life of assets being financed, and the borrower's ability to repay the loan.

(e) Repayment of the loan shall be in accordance with § 4279.125(a) and § 4279.126(b) and (c).

§ 4279.233 [Reserved]

§ 4279.234 Credit evaluation.

Instead of the provisions found in § 4279.131, the provisions of this section apply to loans guaranteed under this subpart. For all applications for guarantee, the lender must prepare a credit evaluation. An acceptable credit evaluation must:

(a) Use credit documentation procedures and an underwriting process that are consistent with generally accepted commercial lending practices, and

(b) Include an analysis of the credit factors associated with each guarantee application, including consideration of each of the following five elements.

(1) *Credit worthiness.* Those financial qualities that generally make the borrower more likely to meet its obligations as demonstrated by its credit history.

(2) *Cash flow.* A borrower's ability to produce sufficient cash to repay the loan as agreed.

(3) *Capital.* The financial resources that the borrower currently has and those it is likely to have when payments are due. The borrower must be adequately capitalized.

(4) *Collateral.* The assets pledged by the borrower in support of the loan, including processing technology owned

by the borrower and excluding assets acquired with other Federal funds. Collateral must have documented value sufficient to protect the interest of the lender and the Agency, and the discounted collateral value must be at least equal to the loan amount. Lenders will discount collateral consistent with sound loan-to-value policy. The Agency may consider the value of qualified intellectual property, as defined in § 4279.2, arrived at in accordance with GAAP standards. The value of the intellectual property may not exceed 30 percent of the total value of all collateral.

(i) If there is an established market for the intellectual property, the value of the intellectual property will be valued according to the lender's standard discounting practice for intellectual property for determining adequacy of collateral.

(ii) If there is no established market for the intellectual property, the value of the intellectual property will be valued not greater than 25 percent, as determined by the Agency, for determining adequacy of collateral.

(5) *Conditions.* The general business environment and status of the borrower's industry.

(c) When determining the credit quality of the borrower, the lender must include the following in its analysis:

(1) The borrower shall demonstrate that it will be able to provide equity in the project of not less than 20 percent of eligible project costs at the time the loan is closed. For existing biorefineries, the fair market value of project equity (including the guaranteed loan being applied for) in real property and equipment and the value of qualified intellectual property based on the audited financial statements in accordance with Generally Accepted Accounting Principles may be substituted in whole or in part to meet the equity requirement. However, the appraisal completed to establish the fair market value of the real property and equipment must not be more than 1 year old. The Agency may require the lender to provide a more recent appraisal in order to reflect current market conditions. The appraisal used to establish fair market value of the real property