

OneRD Guarantee Loan Initiative

Lender Guide

Introduction

The United States Department of Agriculture (USDA) is removing unnecessary regulations to increase private investment in rural businesses and rural economic development projects and to improve customer service within four flagship loan guarantee programs. As part of a series of regulatory reforms, USDA is eliminating duplicative processes and launching a common loan note guarantee application for the following programs:

- [Community Facilities Guaranteed Loan Program](#);
- [Water and Waste Disposal Loan Guarantees](#);
- [Business and Industry Guaranteed Loan Program](#); and
- [Rural Energy for America Program](#).

This guide provides information supported by the regulation to apply for programs under the OneRD Guarantee Loan Initiative. Supporting documents, templates and resources have been created to support you and can be found in topic-related chapters throughout this guide.

[USDA Rural Development State Office contacts](#) are available to be your direct connection to information about the new processes and requirements for programs under the initiative.

The information provided in this guide in no way takes the place of the regulation language; please refer to the regulation for the official guidance.

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Chapter 1. Getting Started

Webpage

[USDA's OneRD Guarantee Loan Initiative website](#) is available to help you get started.

Resources available on this webpage include:

- [A Form to Subscribe to OneRD Updates](#)
- [OneRD Guarantee Loan Initiative Final Rule](#)
- [OneRD Guarantee Loan Initiative Fact Sheet](#)
- [Frequently Asked Questions \(FAQS\)](#)
- [Instructions on How to Submit a Lender Approval Request](#)

USDA Rural Development is making resources available to help lenders get started on their applications to programs under the OneRD Guarantee Loan Initiative. Resources will be added to this website as they become available. Learn more about each resource below:

Instructions on How to File an Application

To file an application for programs under this initiative, lenders are encouraged to complete the following steps:

1. Download the [5001-1 – Application for Loan Guarantee document](#) and [5001-2 – Lender's Agreement document](#). **Important Notice:** Potential applicants can view these documents in the **Internet Explorer (IE)** and **Edge** browsers. In **Chrome** or **Safari**, you must first download the documents to view form content. For assistance, please contact OneRDGuarantee@usda.gov.
2. Review the [final rule](#) to ensure your application meets requirements under the initiative. General application requirements can be found in Subpart D of the regulation and starts at §5001.301.
3. Email a completed application to your [local state USDA Rural Development office](#).

Submit Requests Online: Non-Regulated Lenders Seeking Approved Status

All non-regulated lenders must request approval status with the Agency to participate in programs under the OneRD Guarantee Loan Initiative. All previously granted lender approval authorities are no longer valid. Rural Development has created a portal to upload all of your documents to request approval status. To use this portal, complete the following steps:

1. Review the [sample](#) document as an example of the intro, cover letter to submit first.
2. Email your intro cover letter to OneRDlenderapproval@usda.gov. Upon receipt of that document, RD will send you a link to the Non-Regulated Lender Portal with instructions to upload and submit all your supporting files listed in the sample document.

For more information on eligibility and requirements for approval, please review the [final rule](#). Lenders unable to submit their application package through this portal may contact OneRDlenderapproval@usda.gov for assistance.

Technical Corrections

1. Based on comments and feedback, corrections to the regulation have been made
2. It is important that you use the new version of the regulation. We have updated the OneRD Guarantee website with the new version and you may also find the new version through the Electronic Code of Federal Regulations website.
3. A discussion of the specific corrections can be found in the Final Rule technical correction document published on Friday, October 2, 2020.
4. Link to Final Rule Technical Correction Document:
<https://www.govinfo.gov/content/pkg/FR-2020-10-02/pdf/2020-21917.pdf>

Lender Help Desk:

USDA has created an email inbox for lenders to submit questions to about the OneRD Guarantee Loan Initiative. As the Agency's four flagship guarantee loan programs are streamlined under the OneRD Guarantee Loan Initiative, program experts are available to help you prepare for the new policies and procedures included in the final rule.

Questions may be submitted to OneRDGuarantee@usda.gov.

Stay Connected

Interested parties may join the [OneRD Guarantee Loan Initiative subscription list](#) to receive updates from USDA on this initiative.

Chapter 2. Major Highlights

OneRD Guarantee Loan Initiative Outline of Regulatory Changes

Structure of Regulation - § [5001.2](#)

- Subpart A – General Provisions
- Subpart B – Eligibility of Project, Borrower and Lender
- Subpart C – Loan Origination
- Subpart D – Application Provisions, Evaluation and Award Process
- Subpart E – Loan and Guarantee Provisions
- Subpart F - Servicing

The regulation is divided into six Subparts, A through F. Each Subpart covers a topic as defined in the title of the Subpart. At 5001.2, which is found in Subpart A – General Provisions, you will find a description of each Subpart. Until you get more familiar with the regulation, this section is a good source to help you find where you can locate a specific topic. For instance, if you were looking for information on appraisal requirements, you would find that specific topic is mentioned in Subpart C – Loan Origination. The Table of Contents is also another source for finding specific topics as each Chapter is clickable.

A tool to help you compare sections between the new and old regulations is found beginning on [page 42497](#) of the [July 14 Federal Register](#). Table 1, Column 1 provides, in order, each of the sections of OneRD Guarantee. Column 2 provides the location of the same topic sections in the new and old regulations for each of the four programs. For example, exception authority language is found at section 5001.4 in the new regulation. In the old REAP regulation, exception authority was located at section 4280.104. This allows you to look up these two sections and compare any differences.

Major Regulatory Changes

For some programs, the changes will be significant while for others there may be no change to how the program currently functions.

Rural and Rural Area Definition - § [5001.3](#)

OneRD Guarantee implements Sec 6402 of the 2018 Farm Bill to expand access to credit for rural communities. With the effective date of OneRD Guarantee, all four programs will operate under the same rural and rural area definition. Rural and rural area means any area of a State not in a city or town that has a population of more than 50,000 inhabitants according to the latest decennial census of the United States. Urbanized areas contiguous to cities and towns with a population of more than 50,000 will not be eligible. Ineligible areas may be determined “rural in character” by the Under Secretary, but this can only be done on a project-by-project basis. Unique rural area eligibility requirements for Puerto Rico, Hawaii, and the Western Pacific can be found in the Definitions Section at paragraphs (3), (4), and (5).

The best place to determine rural area eligibility is to use the [eligibility map](#) located on the USDA Rural Development website. Every effort is made to provide accurate and complete information regarding eligible and ineligible areas on this website, based on Rural Development rural area requirements. Rural Development, however, does not guarantee the accuracy, or completeness of any information, product, process, or determination provided by this system. Final determination of property eligibility must be made by Rural Development upon receipt of a complete application. Viewing eligibility maps on this website does not constitute a final determination by Rural Development.

For the Business and Industry Program (B&I) and Rural Energy for America Program (REAP) the rural definition remains unchanged. For the Community Facilities (CF) Guaranteed Loan Program, a certain amount of funds will be reserved each year for projects in rural areas with a population of not more than 20,000 inhabitants. For Water and Waste Disposal (WWD) Loan Guarantees, priority points will be awarded for projects serving a rural area having a population under 10,000 inhabitants.

Debt Refinancing - § 5001.102(d)(1) – (5) (CF, WWD, and B&I) and 5001.121(d)(14) (REAP)

Refinancing will be administered consistently across CF, WWD, and B&I. If the existing debt is owed to a lender who is not the lender applying for the loan guarantee, then the request for a loan guarantee can be for 100% of the loan(s) to be refinanced. If the existing debt is owed to you, the lender applying for the guarantee, then the refinancing amount owed to you cannot exceed 50% of the total loan request. Additional criteria include that the loan to be refinanced must not have been delinquent for the past six months. If the debt is guaranteed by the Federal government, or a direct loan from the Federal government, the full amount can be refinanced.

Refinancing of rural hospital debt is a new provision implementing Sec 6103 of the 2018 Farm Bill. Its purpose is to help preserve access to rural health services, and meaningfully improve the financial position of the hospital. If the borrower is a hospital, per the definition at 5001.3, then the refinancing request must meet the requirements of paragraph (d)(5) of section 5001.102. Because of statutory requirements, debt being refinanced under REAP cannot exceed 50 percent of the total use of funds in the new REAP guaranteed loan. Complete REAP refinancing provisions are found at 5001.121 (d)(14).

Balance Sheet Equity - § 5001.105(d)

The following table summarizes the capital and equity requirements for B&I projects and can be found in the regulation as Table 1 to 5001.105(d). With the OneRD Guarantee regulation, B&I removed its requirement for tangible balance sheet equity and replaced it with the requirement to have sufficient capital or equity to mitigate the ongoing financial and operational risks of the business. There are now several ways for each type of borrower to meet the B&I equity requirement, which must be met at the time you close the guaranteed loan. You can also find the details of this information at 5001.105(d)(5).

Table 1: Table summarizes the capital and equity eligibility requirements for B&I projects and can be found in the regulation as Table 1 to [5001.105\(d\)](#). Borrower must meet one of the following at the time of closing the guaranteed loan:

Borrower	Percent balance sheet equity:	Borrower investment as percent of total eligible project cost:	Balance sheet equity includes owner contributed capital as percentage of total fixed assets:
Existing Business	≥10%	≥10%	≥10%
Borrowers that are new businesses with sales contract(s) at least equal to the term of the guaranteed loan	≥10%	≥10%	N/A
Borrowers that are new businesses for a project involving construction and the lender will request the loan note guarantee prior to the complete of construction	≥25%	≥25%	N/A
All other borrowers that are new businesses	≥20%	≥25%	N/A

REAP loans must show other funds of at least 25 percent of eligible project costs.

Collateral Discounting - § 5001.202(b)(4)(ii)

Collateral discounting will be a lender driven process. The OneRD Guarantee regulation does not provide standard discounting factors. Rather, you will rely on discounts that are consistent with sound lending and loan-to-discounted value practices while ensuring that adequate security exists for the guaranteed loan. Placing the collateral discounting responsibility on you and requiring you to justify your discounting factor is a better alternative than a “one size fits all” approach that is currently found in Agency regulation. This change provides some subjectivity for you but does not remove the Agency’s responsibility to review and conclude that the discounting factor is reasonable.

Issuing Loan Note Guarantee (LNG) Prior to Project Completion - § 5001.205(e)(2) and (f)

Issuing the loan note guarantee prior to project completion has only been an option in the B&I program. With OneRD Guarantee, all programs will make this option available. Lenders who want to provide construction financing and the long-term loan, may find this to be advantageous because only one loan closing is required. However, there are risks to the Agency when issuing the loan note guarantee prior to project completion which means you will need to meet additional requirements. These requirements are outlined in section 5001.205(e)(2) and (f). Some of the key requirements are:

- You must make a specific request to have the loan note guarantee issued prior to completion and the Agency must concur.
- If the project involves non-proven technologies, you cannot make a request to issue the loan note guarantee prior to completion.
- You will pay a 0.5% fee in addition to the one-time guarantee fee upon requesting the loan note guarantee. This 0.5% fee cannot be passed on to the borrower.
- You will need to provide evidence that the borrower has entered into a firm, fixed-price construction contract along with other construction and contract requirements.
- You will also be required to provide monthly construction reports to the Agency as outlined in paragraph (f) of 5001.205.

This is not an all-inclusive list of the requirements.

Engineering Documentation - § 5001.305(a)

For the WWD program, you are responsible for processing engineering documents through Federal, state, and local regulatory design approval to get construction completed and for following all applicable Federal, state, and local requirements. Documentation must meet the level of detail you would typically require for a standard commercial loan.

Minimum documentation:

- Description of project
- Cost Estimate

For reporting purpose only:

- Residential users served
- Other users served
- Population served

Loan Term Length - § 5001.402(a)

Each program previously had its own separate loan term limits and, in some cases, provided specific limits based on the type of collateral. With OneRD Guarantee, you will establish and justify the guaranteed loan term for each loan which the Agency will review and, if acceptable, concur with the proposed amortization term. The Agency's parameters are a maximum term of 40 years, the useful life of the collateral, or state statute, whichever is less.

Loan Amount Limits - § 5001.406(a) – (d)

With OneRD Guarantee, all four programs have established maximum loan amounts which include the outstanding principal and interest on existing guaranteed loans and the proposed new loan(s). For REAP and B&I, the maximum outstanding loan amount to one borrower is statutory. For CF and WWD, these new maximum amounts have been established to help mitigate risk where previously there was no threshold. The maximum loan limits are as follows:

- CF - \$100 million (*new*)
- WWD - \$50 million (*new*)
- REAP - \$25 million
- B&I - \$25 million (up to *\$40 million for rural cooperatives that process value-added agricultural commodities, subject to approval of the USDA Secretary*)

Guaranteed Percentage - § 5001.407

[\[The current fiscal year's annual notice will be found on the OneRD Website\]](#)

The regulation sets the maximum amount of guarantee at 90% for all programs. However, each program can set a guarantee percent below this maximum based on its evaluation of current Federal credit policy in order to effectively manage its portfolio. Each program will set its percent of guarantee on an annual basis and publish the percent in a Federal Register notice – there will be one Annual Notice that covers all programs under OneRD Guarantee. Once the guarantee percent is set, it will apply to all loans obligated that fiscal year. For example, if the Notice for a FY sets CF's guarantee percent at 80%, all guarantees obligated in that FY will be at 80%. The approval official will not have the authority to adjust the percent, up or down, from this set guarantee percent. Also, the percent of guarantee will not vary based on the loan amount. All loans, regardless of the size of the loan, will be guaranteed at the percentage set by the program as published in the annual Federal Register notice.

Increased Lender Loan Retention - § 5001.408(a)(3)(i)

You must retain a minimum of 7.5% of the total loan amount in your portfolio. The percentage must be retained for the life of the loan. This amount will be from the unguaranteed portion of the loan and cannot be participated to another lender or person.

Guarantee Fee - § 5001.454

For all programs, you will pay a one-time guarantee fee prior to receiving the loan note guarantee. The guarantee fee may vary from program to program, but the fees for each program will be announced in the Agency's annual Federal Register notice. The Federal Register notice will provide consistency in communicating information to you.

In some circumstances, subject to annual publication in the Federal Register, a reduced guarantee fee may be approved by the Agency. The details of when this is eligible are at 5001.454(d)(1) through (5).

If you request and are approved for a loan note guarantee prior to project completion, an additional 0.5% will be added to the one-time guarantee fee. For example, if the program's one-time guarantee fee is 1% and you are approved for a loan note guarantee prior to project completion, the total fee will be 1.5% of the guaranteed loan amount. This additional 0.5% fee cannot be passed on to the borrower, though the standard one-time guarantee fee may be charged to the borrower.

Periodic Retention Fee - § 5001.455

Each program has the option to charge and collect a periodic retention fee from you, the lender. We have chosen to name this a “periodic retention” fee instead of an “annual” fee to give flexibility in the future if the Agency or a program wants to collect the fee on a schedule other than annually – for instance, monthly or semi-annually. Like the guarantee percent and the one-time guarantee fee, the periodic retention fee will be set by each program and announced in an annual Federal Register notice. The fee is set at the time of obligation, documented in the conditional commitment, and remains in effect for the life of the loan note guarantee. The fee is calculated based on the outstanding principal balance as of a certain date – which is also published in the Federal Register notice. In this calculation example based on the principal balance as of December 31, (\$4,825,000 loan principal balance x 80% guarantee x 0.5% retention fee), the retention fee is equal to \$19,300.

Other Fees - § 5001.456

OneRD Guarantee provides an option for any of the programs to charge additional fees. Some examples include a prepayment fee, a refinancing fee, or a fee for a certain type of project or business.

In summary, all programs have fees. The fees will be announced in an annual Federal Register notice and will apply to all guarantees obligated that fiscal year. The type of fee, amount of the fees, and the schedule for assessing fees may vary from program to program based on each program’s analysis of its portfolio risk and in consideration of current Federal credit policy.

Supporting Resources:

Definitions

§ 5001.3 Definitions.

Administrator means the Administrator of the Rural Housing Service, the Rural Utilities Service, or the Rural Business-Cooperative Service (or the applicable Service’s successor), as applicable, within the Rural Development mission area of the U.S. Department of Agriculture (USDA).

Affiliates means persons who control or have the power to control another entity, or a third party or parties that control or have the power to control both.

Agency means USDA Rural Development, which includes the Rural Housing Service; the Rural Utilities Service; and the Rural Business-Cooperative Service or their successors.

Agricultural producer means a person, including non-profits, directly engaged in the production of agricultural products through labor management and operations, including the cultivating, growing, and harvesting plants and crops (including farming); breeding, raising, feeding, or housing of livestock (including ranching); forestry products; hydroponics; nursery stock; or aquaculture, whereby 50 percent or greater of their gross income is derived from the operations. The percentage is calculated as the average of gross agricultural operations income of the concern divided by the gross non-farm income of the concern for the five most recent years. If the concern has been operation for less than 60 months but for at least 12 months, use average gross agricultural operations income and gross non-farm income for as long as the concern has been in

operation.

Agricultural production means the cultivation, growing, or harvesting of plants and crops (including farming) breeding, raising, feeding, or housing of livestock (including ranching); forestry products, hydroponics, or nursery stock; or aquaculture.

Anaerobic digester means a renewable energy system that uses animal waste or other renewable biomass and may include other organic substrates to produce biogas that is sold in a gaseous or compressed liquid state or used to produce thermal or electrical energy.

Applicant lender debt means an existing debt owed by a borrower to the same lender that is applying for or has received the Agency guarantee.

Appraisal surplus means the excess between the market value of an asset and its cost or depreciated book value when the market value is higher.

Architectural report means a report, prepared by a professional, licensed architect, or other qualified party that describes the existing situation, analyzes alternatives and proposes a specific course of action from an architectural perspective.

Arm's length transaction means a transaction in which the buyer and seller act independently and have no relationship to each other. The concept of an arm's length transaction allows the market to ensure that both parties in the deal are acting in their own self-interest and are not subject to any pressure or duress from the other party.

Assignment guarantee agreement means a signed, Agency-approved agreement between the Agency, the lender, and the holder setting forth the terms and conditions of an assignment of a guaranteed portion of a loan.

Biofuel means a fuel derived from renewable biomass.

Biogas means a gaseous fuel (including landfill and sewage waste treatment gas) derived from the degradation and decomposition of renewable biomass.

Bond means a form of debt security in which the authorized issuer (borrower) owes the bond holder (lender) a debt and is obligated to repay the principal and interest (coupon) at a later date(s) (maturity). An explanation of the type of bond and other bond stipulations must be attached to the bond issuance.

Borrower means the person that borrows, or seeks to borrow, money from the lender (including any party or parties liable for the guaranteed loan except guarantors) through a loan guaranteed under this part.

Business plan means a comprehensive document that clearly describes the borrower's ownership structure and management experience including, if applicable, discussion of a parent company, any subsidiaries and affiliates of the borrower and discussion of how the borrower will operate the proposed project. If a business or industry is in decline or financial distress, the business plan must describe in detail how the project differs from the current industry trends or improves the borrower's financial position.

Byproduct means an incidental or secondary product, regardless of whether it has a readily identifiable commercial use or value, generated under normal operations of the proposed Project that can be reasonably measured and monitored.

Certificate of incumbency means an Agency-approved form used to validate authenticity of Agency representatives' signature and title.

Collateral means the asset(s) pledged by the borrower to the lender as security for the guaranteed loan.

Commercially available means a system that meets the requirements of either paragraph (1) or (2) of this definition.

(1) A domestic or foreign system that:

(i) Has both a proven and reliable operating history and proven performance data for at least one year specific to the use and operation to the proposed application;

(ii) Is based on established design and installation procedures and practices and is replicable;

(iii) Has professional service providers, trades, large construction equipment providers, and labor who are familiar with installation procedures and practices;

(iv) Has proprietary and balance of system equipment and spare parts that are readily available;

(v) Has service that is readily available to properly maintain and operate the system; and

(vi) Has an existing established warranty that is valid in the United States for major parts and labor; or

(2) A domestic or foreign system that has been certified by a recognized industry organization whose certification standards are acceptable to the Agency.

Complete application means an application that contains all parts necessary for the Agency to determine borrower and project eligibility, the financial feasibility and technical merit of the project, and contains sufficient information to determine a priority score for the application, if applicable.

Conditional commitment means an Agency-approved form in which the Agency agrees that, in accordance with applicable provisions of the program regulations contained in this part and related forms, it will execute the loan note guarantee, subject to the conditions and requirements specified in applicable provisions of the program regulations contained in this part and in the conditional commitment itself.

Conflict of interest means a situation in which a person has personal, professional, or financial interests that prevent, or appears to prevent the person from acting impartially.

For purposes of this part, conflict of interest also includes, but is not limited to:

- (1) A person acting as a compensated agent of the borrower and the lender on the same guaranteed loan,
- (2) Distribution or payment of guaranteed loan funds to an individual owner, partner, stockholder, or member of the borrower, or to a beneficiary or immediate family member of the borrower;
- (3) Refinancing debt that is owned by a loan packager, broker, or referral agent or its affiliates.

Cooperative means an entity that is legally chartered by the State in which it operates as a cooperatively-operated business, or an entity that is not legally chartered as a cooperative but is owned and operated for the benefit of its members, with returns of residual earnings paid to such members on the basis of patronage.

Credit evaluation means the analysis and evaluation by the lender of the credit factors associated with each application to ensure loan repayment through the use of credit documentation procedures and an underwriting process that is consistent with industry standards and the lender's written policy and procedures.

Debt Collection Improvement Act means the Debt Collection Improvement Act of 1996, [31 U.S.C. 3701 et seq.](#)

Debt service coverage ratio means the ratio obtained when taking earnings before interest, taxes, depreciation, and amortization less reasonably expected replacement capital expenditures divided by the annual debt service (principal and interest payments) of the borrower.

Default means the condition that exists when a borrower is in non-compliance under the terms of any of the promissory notes, the loan agreements, security documents, program regulations *and guidance*, or other documents evidencing or collateralizing the loan. Default can be a monetary or non-monetary default.

Deficiency judgment means a monetary judgment rendered by a court of competent jurisdiction after foreclosure and liquidation of all collateral securing the loan.

Delinquency means a situation that exists when a scheduled loan payment on a guaranteed loan made under this part is more than 30 calendar days past due and cannot be cured within the next 30 calendar days.

Departmental regulations means the regulations of the Agency's Office of Chief Financial Officer (or successor office) as codified in 2 CFR chapter IV.

Eligible project costs means those expenses approved by the Agency for the project as eligible uses of funds.

Energy assessment means an Agency-approved report assessing energy use, cost, and efficiency by analyzing energy bills and surveying the target building and/or equipment sufficiently to provide an Agency-approved energy assessment.

Energy assessor means a qualified consultant who has at least 3 years of experience and completed at least five energy assessments or energy audits on similar type projects and who adheres to generally recognized engineering principles and practices.

Energy audit means a comprehensive report that meets an Agency-approved standard prepared by an energy auditor or an individual supervised by an energy auditor that documents current energy usage; recommended potential improvements (typically called energy conservation measures) and their costs; energy savings from these improvements; dollars saved per year; and simple payback. The methodology of the energy audit must meet professional and industry standards. The final energy audit must be validated and signed off by the energy auditor who conducted the audit or by the supervising energy auditor of the individual who conducted the audit, as applicable.

Energy auditor means a qualified consultant that meets one of the following criteria:

- (1) A certified energy auditor certified by the Association of Energy Engineers;
- (2) A certified energy manager certified by the Association of Energy Engineers;
- (3) A licensed professional engineer in the State in which the audit is conducted with at least 1 year of experience and who has completed at least two similar type energy audits; or
- (4) An individual with a 4-year engineering or architectural degree with at least three years of experience and who has completed at least five similar type energy audits.

Energy efficiency improvement (EEI) means improvements to or replacement of an existing building or systems or equipment that reduces measurable energy consumption on an annual basis.

Energy efficient equipment and systems (EEE) means equipment or systems for agricultural production or processing that exceed any of the following standards:

- (1) Energy efficiency building codes, if available;
- (2) Federal or State energy efficiency standards, if available
- (3) Energy efficiency standards determined appropriate by the Secretary. If no codes or standards described in paragraphs (1) through (3) of this definition apply to the EEE proposed, then the Secretary shall require such equipment or system to meet the same efficiency measurement as the most efficient available equipment or system in the market and the Secretary shall not provide such a loan guarantee for the purchase and installation of any energy efficient equipment or system unless more than one type of such equipment or system is available in the market.

Engineering documentation means a document, normally prepared by the borrower's consulting engineer or other qualified party, that describes the existing system, analyzes alternatives, and proposes a specific course of action from an engineering perspective.

Essential community facility means a public improvement, operated on a non-profit basis, needed for the orderly development of a rural community where the rural community is a city or town, or its equivalent, county, or multi-county area. The term “facility” refers to both the physical structure financed, and the resulting service provided to rural residents or rural businesses. Facilities may include, but are not be limited to, courthouses, community centers, libraries, firehouses, health care, education, transportation, and industrial parks. An industrial park consists of land and the necessary access ways and utilities to the site, but not improvements erected on such site.

Existing business means a business that has been in operation for at least one full year. The following will be treated as existing businesses provided there is not a significant change in operations of the existing business: mergers by an existing business with a new or existing businesses, a change in the business name, or a new business and an existing business applying as co-borrowers.

Farmer or rancher cooperative means an entity that is owned and controlled by agricultural producers and that is incorporated, or otherwise recognized by the State in which it operates as a cooperatively-operated business or an entity that is not legally chartered as a cooperative but is owned and operated for the benefit of its members, with returns of residual earnings paid to such members on the basis of patronage.

Feasibility study means a report including an opinion or finding conducted by an independent qualified consultant(s) evaluating the economic, market, technical, financial, and management feasibility of the proposed project or operation in terms of its expectation for success.

Federal debt means debt owed to the Federal Government that is subject to collection under the Debt Collection Improvement Act of 1996, [31 U.S.C. 3701, et seq.](#)

Federal fiscal year means the 12-month period beginning October 1 of each year and ends on September 30 of the following year; it is designated by the calendar year in which it ends.

Final loss claim means the Agency’s payment of a final settlement amount with the lender after the collateral is liquidated or after settlement and compromise actions have been completed and as further set forth in § 5001.521(d)(3)(e).

Financial feasibility means the ability of a project to achieve sufficient income, credit, and cash flow to financially sustain the project over the long term and meet all debt obligations.

Future recovery means funds to be collected by the lender after a final loss claim is processed as set forth in § 5001.522.

Geothermal direct generation means a system that uses thermal energy directly from a geothermal source.

Geothermal electric generation means a system that uses thermal energy from a geothermal source to produce electricity.

Guaranteed loan means a loan made and serviced by a lender for which the Agency and lender have entered into a lender's agreement and for which the Agency has issued a loan note guarantee. Unless otherwise specified, guaranteed loan refers to a loan that the Agency has guaranteed under this part § 5001.1.

Guarantor means a person giving assurance to the Agency under an Agency-approved written agreement that the borrower's obligations will be fulfilled and promising *its undertaking of responsibility* for repayment of a guaranteed loan if the borrower should default.

Holder means a person, other than the lender, who owns all or part of the guaranteed portion of the guaranteed loan with no servicing responsibilities.

Hospital

(1) For the purpose of refinancing rural hospital debt in accordance with § 5001.102(d)(5), hospital means the following types of facilities defined in the Social Security Act, Section 1861 ([42 U.S.C. 1395x](#)):

(i) Hospital (section 1861(e))

(ii) Psychiatric hospital (section 1861(f))

(iii) Long-term care hospital (section 1861(ccc)); and shall also include the following other provider types defined in the Social Security Act, Section 1861 (42 U.S.C. 1395x):

(A) Critical access hospital (section 1861(mm)(1))

(B) Religious nonmedical health care institution (section 1861(ss)(1)).

(2) The Agency will use the applicant provider's *Centers for Medicare and Medicaid Services* (CMS) Certification Number (CCN) to verify the applicant provider is listed as a "Hospital" for the "Provider or Supplier Type" category on the CMS Quality Certification and Oversight Reports (QCOR) website https://qcor.cms.gov/index_new.jsp.

Hybrid means a combination of two or more renewable energy technologies that are incorporated into a unified system to support a single project.

Hydroelectric source means a renewable energy system producing electricity using various types of moving water including, but not limited to, diverted run-of-river water, in-stream run-of-river water, and in-conduit water.

Hydrogen project means a system that produces hydrogen derived from renewable biomass or water using wind, solar, ocean (including tidal, wave, current, and thermal), geothermal, or hydroelectric sources; or that uses hydrogen derived from renewable biomass or water using wind, solar, ocean (including tidal, wave, current, and thermal), geothermal or hydroelectric sources as an energy transport medium in the production of mechanical or electric power or thermal energy.

Immediate family(ies) means individuals who live in the same household or who are closely related by blood, marriage, or adoption, such as a spouse, domestic partner, parent, child, sibling, aunt, uncle, grandparent, grandchild, niece, nephew, or first cousin.

Indian tribe means the term as defined in [25 U.S.C. 5304\(e\)](#).

In-house expenses means expenses associated with activities that are routinely the responsibility of a lender's internal staff, including in-house lawyers, or its agents and that are normally incurred for administration of the loan. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel, and overhead.

Inspector means a qualified consultant who has at least 3 years of experience and has completed at least five inspections on similar type projects.

Insurance means a means of protection from financial loss by which a company provides a guarantee of compensation for a specified loss, damage, illness, or death in return for payment of a premium.

Intangible assets means an asset that lacks physical substance. This includes, but is not limited to, copyrights, patents, capitalized franchise fees, goodwill, customer lists, software, organizational expenses, loan closing expenses, social media assets, and bond fees.

Interconnection agreement means a contract containing the terms and conditions governing the interconnection and parallel operation of the borrower's electric generation equipment and the utility's electric power system or a borrower's biogas production system and a gas pipeline.

Interest means an amount paid by a borrower to a lender as a form of compensation for the use of money. When money is borrowed, interest is typically paid over a certain period of time (typically months or years) to the lender as percentage of the principal amount owed. The term interest does not include default charges, penalty interest, or late payment fees.

Interest termination date means the date on which no further interest will be payable by the Agency under the loan note guarantee.

Interim financing means a temporary or short-term loan made with the clear intent when the loan is made that it will be repaid through another loan that provides permanent financing. Interim financing is frequently used to pay construction and other costs associated with the proposed project, with permanent financing to be obtained after project completion.

Lender means a lending entity that the Agency has approved to originate, service, and collect payments on loans guaranteed under this part.

Lender's agreement means the Agency-approved form of contract between the Agency and the lender setting forth the lender's guaranteed loan responsibilities.

Liquidation expenses means costs directly associated with the liquidation of collateral,

including, without limitation, costs associated with preparing collateral for sale (e.g., repairs and transport), the sale (e.g., advertising, public notices, auctioneer expenses, and foreclosure fees), and conducting appraisals. Legal fees are considered liquidation expenses provided that the fees are reasonable as determined by the Agency and cover legal issues pertaining to the liquidation that could not be properly handled by the lender and its in-house legal staff. Liquidation expenses do not include in-house expenses.

Loan agreement means the agreement between the borrower and lender containing the specified terms and conditions of the guaranteed loan and the responsibilities of the borrower and lender.

Loan classification means the process by which loans are examined and categorized by the probability of default and degree of potential loss in the event of default.

Loan documents mean the loan agreement, promissory note, mortgage/deed of trust, and other security documents entered into by the borrower and the lender in connection with the guaranteed loan.

Loan note guarantee means the Agency-approved form containing the terms and conditions of the guarantee of an identified guaranteed loan.

Loan packager means a person, including a loan referral agent, broker, or an agent other than the borrower or lender that prepares a guaranteed loan application on behalf of the borrower or lender.

Local government means a county, municipality, town, township, village, or other unit of general government below the State level. The term also includes Tribal governments when tribal lands are within the service area.

Local owner means an individual who owns any portion of an entity that is the eligible borrower and whose primary residence is located within the normal commuting area of the guaranteed loan project.

Locally or regionally produced agricultural food product means any agricultural food product that is raised, produced, and distributed in the locality or region in which the final product is marketed, so that the distance the product is transported is less than 400 miles from the origin of the product, or within the State in which the product is produced. Food products could be raw, cooked, or a processed edible substance, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

Market value means the most probable price that an asset should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby—

- (1) Buyer and seller are typically motivated;
- (2) Both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest;

- (3) A reasonable time is allowed for exposure in the open market;
- (4) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- (5) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Matching funds means those project funds required by [7 U.S.C. 8107 \(REAP\)](#) to be eligible to receive the guaranteed loan, funds provided by the borrower in excess of matching funds are not matching funds.

Material adverse change means any change in circumstances associated with a guaranteed loan, including, without limitation, any change in the purpose of the loan, the borrower's financial condition or collateral, that, individually or in the aggregate, have jeopardized, or could be reasonably expected to jeopardize, the borrower's repayment of the guaranteed loan.

Monetary default means a failure to make a scheduled or required payment on a guaranteed loan.

Multi-note system means an option for the lender to provide one promissory note for the unguaranteed portion and a separate promissory note(s) for the guaranteed portion of the loan. All promissory notes must reflect the same payment terms.

National Appeals Division (NAD) means the division of the United States Department of Agriculture pursuant to [7 CFR part 11](#).

Natural resource value-added product means a product derived from any naturally occurring resource, including agricultural resources, that is further processed to add value or used to generate energy or renewable energy.

Negligent loan origination means the failure of a lender to perform those services or actions that a reasonably prudent lender would perform in originating its own portfolio of loans that are not guaranteed. The term includes the concepts of failure to act, not acting in a timely manner, and acting in a manner contrary to the manner in which a reasonably prudent lender would act.

Negligent loan servicing means the failure of a lender to perform those services that a reasonably prudent lender would perform in servicing (including liquidation of) its own portfolio of loans that are not guaranteed. The term includes the concepts of failure to act, not acting in a timely manner, and acting in a manner contrary to the manner in which a reasonably prudent lender would act.

New business means a business that has been in operation for less than one full year, including a new enterprise or new affiliate of an existing business moving or expanding into a new location involving new market or labor areas.

Non-monetary default means a situation where a borrower is not in compliance with the

covenants or requirements of the loan documents, program requirements or loan.

Non-regulated lending entity means a lending entity that is not subject to supervision and examination by an agency of the United States or a State.

Ocean energy means energy created by use of various types of moving water in the ocean and other large bodies of water (e.g., Great Lakes) including, but not limited to, tidal, wave, current, and thermal changes.

Off-take agreement means the terms and conditions governing the sale and transportation of products produced by the borrower and sold to another party.

Otherwise improve means, but is not limited to, the following:

- (1) The purchase of necessary equipment that will itself provide an essential service to the rural community, such as vehicles, emergency and medical equipment, telecommunication equipment, computers, water meters and pumps;
- (2) The purchase of equipment necessary to maintain, protect, operate, or use the eligible facility or service;
- (3) The purchase of existing eligible facilities, when necessary, to either improve or prevent a loss of service provided the price paid for the facility is fair and reasonable and not directly related to the dollar amount of any debt to be retired by the seller; and
- (4) Payment of tap fees and other utility connection charges as provided in utility purchase contracts.

Parity means a lien position whereby two or more separate lending entities or separate loans share a security interest of equal priority in collateral.

Participation means the sale of an interest in a loan by the lead lender to one or more participating lenders wherein the lead lender retains the note, collateral securing the note, and all responsibility for managing and servicing the loan. Participants have credit risk and are dependent upon the lead lender for protection of their interests in the loan. The relationship is typically formalized by a participation agreement between the lenders. The participant lender(s) and the borrower have no rights or obligations to one another.

Passive investor means an equity investor who does not actively participate in management and operation decisions of the borrower or any affiliate of the borrower as evidenced by a contractual agreement.

Person means an individual or entity organized under the laws of a State or a Tribe.

Power purchase agreement means the terms and conditions governing the sale and transportation of electricity produced by the borrower to another party.

Problem loan means a designation for a loan that is not complying with its terms and conditions or is rated by a lender and/or a regulatory agency as substandard or below.

Professional service means services used by the borrower for planning and developing a project, including, but not limited to, appraisals, architectural services, surveys, environmental impact analyses, implementing mitigation measures, and establishing or acquiring property rights. Such services are generally rendered by persons licensed or certified by States or accreditation associations, such as architects, engineers, accountants, attorneys, or appraisers, and those rendered by loan packagers, but not including loan finders.

Project means the activity identified by a lender in its application for a loan guarantee for which the guaranteed loan funds will be used.

Promissory note means the legal instrument evidencing debt executed by the borrower to a lender with stipulated repayment terms. The term promissory note includes bonds and other related debt instruments issued by the lender to a borrower.

Protective advance means an advance made by the lender for the purpose of preserving and protecting the collateral where the borrower has failed to, and will not or cannot, meet its obligations to protect or preserve collateral. Protective advances include, but are not limited to, advances for property taxes, rent, hazard and flood insurance premiums, emergency repairs and annual assessments that protect the collateral. Legal and accounting fees are not a protective advance.

Public body means a state, county, city, township, incorporated town or village, borough, authority, district, or other political subdivision of a State, or Indian tribe.

Qualified consultant(s) means an independent third-party person possessing the knowledge, expertise, and experience to perform the specific task required.

Rated power means the maximum amount of energy that can be created at any given time.

Refurbished means a piece of equipment or renewable energy system (*RES*) that has been brought into a commercial facility, thoroughly inspected, and worn parts replaced and has a warranty that is approved by the Agency or its designee.

Regulated lending entity means a lending entity that is subject to supervision and examination by an agency of the United States or a State; or a lending entity created specifically by State statute and operating under the direct supervision of a State government authority.

Renewable biomass means—

(1) Materials, pre-commercial thinning, or invasive species from National Forest System land or public lands (as defined in Section 103 of the Federal Land Policy and Management Act of 1976 ([43 U.S.C. 1702](#))) that—

(i) Are by-products of preventive treatments that are removed to reduce hazardous fuels; to reduce or contain disease or insect infestation; or to restore ecosystem health;

- (ii) Would not otherwise be used for higher-value products; and
- (iii) Are harvested in accordance with applicable law and land management plans and the requirements for old-growth maintenance, restoration, and management direction of paragraphs (2), (3), and (4) of subsection (e) of section 102 of the Healthy Forests Restoration Act of 2003 ([16 U.S.C. 6512](#)) and large-tree retention of subsection (f) of section 102; or

(2) Any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including the following items:

- (i) Renewable plant material (including feed grains, other agricultural commodities, other plants and trees, and algae); and
- (ii) Waste material (including crop residue, other vegetative waste material (including wood waste and wood residues), animal waste and byproducts (including fats, oils, greases, and manure), and food and yard waste.

Renewable energy means energy derived from—

- (1) A wind, solar, renewable biomass, ocean (including tidal, wave, current, and thermal), geothermal or hydroelectric source; or
- (2) Hydrogen derived from renewable biomass or water using an energy source described in paragraph (1) of this definition.

Renewable energy site assessment means a report providing information regarding and recommendations for the use of commercially available renewable energy technologies in the borrower's operation. The report must be prepared by a qualified consultant for the specific energy system and project proposed.

Renewable energy system (RES) means a system that produces usable energy from a Renewable Energy source and may include:

- (1) Distribution components necessary to move energy produced by such system to the initial point of sale; and
- (2) Other components and ancillary infrastructure of such system, such as a storage system; however, such system may not include a mechanism for dispensing energy at retail

Report of loss means an Agency-approved form used by lenders when reporting a financial loss under a guaranteed loan.

Retrofitting means a modification to an existing building or installed equipment that incorporates a function or feature(s) not included in the original design when built or for the replacement of existing components with components that improve the original

design and does not affect original warranty if the warranty is still in existence.

Rural and rural area means any area of a State not in a city or town that has a population of more than 50,000 inhabitants, and which excludes certain populations pursuant to [7 U.S.C. 1991\(a\)\(13\)\(H\)](#), according to the latest decennial census of the United States and not in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants. In making this determination, the Agency will use the latest decennial census of the United States. The following exclusions apply:

(1) Any area in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants that has been determined to be “rural in character” as follows:

(i) The determination that an area is “rural in character” will be made by the Under Secretary of Rural Development. The process to request a determination under this provision is outlined in paragraph (1)(ii) of this definition. The determination that an area is “rural in character” under this definition will apply to areas that are within:

(A) An urbanized area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000 inhabitants or the urbanized area of such a city or town; or

(B) An urbanized area contiguous and adjacent to a city or town of greater than 50,000 inhabitants that is within 1/4 mile of a rural area.

(ii) Units of local government may petition the Under Secretary of Rural Development for a “rural in character” designation by submitting a petition to the appropriate Rural Development State Director for recommendation to the Administrator on behalf of the Under Secretary. The petition shall document how the area meets the requirements of paragraph (1)(i)(A) or (B) of this definition and discuss why the petitioner believes the area is “rural in character,” including, but not limited to, the area’s population density, demographics, and topography and how the local economy is tied to a rural economic base. Upon receiving a petition, the Under Secretary will consult with the applicable governor or leader in a similar position and request comments to be submitted within 5 business days, unless such comments were submitted with the petition. The Under Secretary will release to the public a notice of a petition filed by a unit of local government not later than 30 days after receipt of the petition by way of publication in a local newspaper and posting on the Agency’s website at <https://www.rd.usda.gov/onerdguarantee>, and the Under Secretary will make a determination not less than 15 days, but no more than 60 days, after the release of the notice. Upon a negative determination, the Under Secretary will provide to the petitioner an opportunity to appeal a determination to the Under Secretary, and the petitioner will have 10 business days to appeal the determination and provide further information for consideration. The Under Secretary will

make a determination of the appeal in not less than 15 days, but no more than 30 days.

(iii) Rural Development State Directors may also initiate a request to the Under Secretary to determine if an area is “rural in character.” A written recommendation should be sent to the Administrator, on behalf of the Under Secretary, that documents how the area meets the statutory requirements of paragraph (1)(i)(B) of this definition and discusses why the State Director believes the area is “rural in character,” including, but not limited to, the area’s population density, demographics, topography, and how the local economy is tied to a rural economic base. Upon receipt of such a request, the Administrator will review the request for compliance with the “rural in character” provisions and make a recommendation to the Under Secretary. Provided a favorable determination is made, the Under Secretary will consult with the applicable Governor and request comments within 10 business days, unless gubernatorial comments were submitted with the request. A public notice will be published by the State Office in accordance with paragraph (1)(ii) of this definition. There is no appeal process for requests made on the initiative of the State Director.

(2) An area that is attached to the urbanized area of a city or town with more than 50,000 inhabitants by a contiguous area of urbanized census blocks that is not more than two census blocks wide. Applicants from such an area should work with their Rural Development State Office to request a determination of whether their project is located in a rural area under this provision.

(3) For the Commonwealth of Puerto Rico, the island is considered Rural and eligible except for the San Juan Census Designated Place (CDP) and any other CDP with greater than 50,000 inhabitants. Areas within CDPs with greater than 50,000 inhabitants, other than the San Juan CDP, may be determined to be Rural if they are “not urban in character.”

(4) For the State of Hawaii, all areas within the State are considered rural and eligible except for the Honolulu CDP within the County of Honolulu and any other CDP with greater than 50,000 inhabitants. Areas within CDPs with greater than 50,000 inhabitants, other than the Honolulu CDP, may be determined to be Rural if they are “not urban in character.”

(5) For the purpose of defining a rural area in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, the Agency shall determine what constitutes rural and rural Area based on available population data.

Rural small business means a small business that is located in a rural area or that can demonstrate the proposed project for which assistance is being applied for under this part is located in a rural area.

Service area means the area identified to be served.

Significant ties means, as determined by the agency, a facility under private control will carry out a public purpose and continue to primarily serve rural areas for CF projects (not applicable to public bodies and Federally Recognized Tribes) as evidenced by the

following: Association with or control by a public body or bodies; or Broadly based membership and controlled primarily by members residing in the project service area. Membership must be open without regard to race, color, religion, national origin, sex, age, disability, sexual orientation, or marital or familial status.

Simple payback means the estimated simple payback of a project funded under this part as calculated using paragraph (1), (2), or (3), as applicable, of this definition.

(1) Energy efficiency improvement projects simple payback = (Total Project Costs) ÷ (Dollar value of energy saved).

(i) Energy saved will be determined by subtracting the projected energy (determined by the method in paragraph (1)(i)(B) of this definition) to be consumed from the historical energy consumed (determined by the method in paragraph (1)(i)(A) of this definition), and converting the result to a monetary value using a constant value or price of energy (determined by the method in paragraph (1)(i)(C) of this definition).

(A) Actual energy used in the original building and/or equipment, as applicable, prior to the EEI project, must be based on the actual average annual total energy used in British thermal units (BTU) over the most recent 12, 24, 36, 48, or 60 consecutive months of operation.

(B) Projected energy use if the proposed EEI project had been in place for the original building and/or equipment, as applicable, for the same time period used to determine that actual energy use under paragraph (1)(i)(A) of this definition.

(C) Value or price of energy must be the actual average price paid over the same time period used to calculate the actual energy used under paragraph (1)(i)(A) of this definition.

(ii) Energy efficiency improvement projects simple payback does not allow EEI to monetize benefits other than the dollar amount of the energy savings the agricultural producer or rural small business realizes as a result of the improvement.

(2) Renewable energy systems projects simple payback = (total project costs) ÷ (dollar value of energy units replaced, credited, sold, or used and fair market value of byproducts as applicable in a typical year).

(i) Value of energy replaced will be calculated based on the borrower entity's historical energy consumption with actual average price paid for the energy replaced, following the methodology outlined in paragraph (1)(i) of this definition.

(ii) Value of energy credited or sold will be calculated based on the amount of energy units to be sold at the proposed rate per unit, as documented in utility net metering or crediting policies and/or a purchase agreement.

(iii) If proposed energy will be used in a new facility, value of energy used will be calculated based on the amount of energy units to be used at the documented price per unit of conventional fuel alternative.

(iv) Value of byproducts produced by and used in the project or related enterprises should be documented at the fair market value to be received for the byproducts in a typical year.

(v) Renewable energy systems projects simple payback does not include any one-time benefits such as but not limited to construction and investment-related benefits, nor credits which do not provide annual income to the project, such as tax credits.

(3) Energy efficiency equipment and systems projects simple payback = (total project costs) ÷ (dollar value of efficiency savings). Efficiency savings will be determined by subtracting the annual value of energy to be consumed by the proposed energy efficient equipment from the annual value of energy that a conventional equipment alternative would have consumed. Adequate documentation must be provided for all consumption estimates and values utilized in the calculation.

Small business means:

(1) An entity or utility, as applicable, as further defined in paragraphs (2)(i) through (iv) and meeting the requirements in paragraph (2) of this definition. With the exception of the entities identified in this paragraph, all other non-profit entities are not small businesses for the purposes of REAP program eligibility:

(i) A private for-profit entity, including a sole proprietorship, partnership, or corporation;

(ii) A cooperative (including a cooperative qualified under section 501(c)(12) of the Internal Revenue Code);

(iii) An electric utility (including a Tribal or governmental electric utility) that provides service to rural consumers and operates independent of direct government control; or

(iv) A Tribal corporation or other Tribal business entities that are chartered under Section 17 of the Indian Reorganization Act (25 U.S.C. 477) or have similar structures and relationships with their Tribal governments and are acceptable to the Agency. The Agency will determine the small business status of such Tribal entity without regard to the resources of the Tribal government; and

(2) An entity that meets Small Business Administration (SBA) size standards in accordance with [13 CFR part 121](#) and criteria of [13 CFR 121.301](#) as applicable to financial assistance programs, including paragraph (2)(i) or (ii) of this section. The size of the concern alone and the size of the concern combined with other entity(ies) it controls or entity(ies) it is controlled by, must not exceed the size standard thresholds designated for the industry in which the concern alone or the

concern and its controlling entity(ies), whichever is higher, is primarily engaged.

(i) The concern's tangible net worth is not in excess of \$15 million and average net income (excluding carry-over losses) for the preceding two completed fiscal years is not in excess of \$5.0 million;

(ii) The size of the concern does not exceed the SBA size standard thresholds designated for the industry in which it is primarily engaged, as measured by number of employees or annual receipts. Industry size standard designations to be utilized are listed in the SBA's table of size standards found in [13 CFR part 121.201](#). Number of employees and annual receipts are calculated as follows:

(A) Number of employees is calculated as the average number of all individuals employed by a concern on a full-time, part-time, or other basis, based upon numbers of employees for each of the pay periods for the preceding completed 12 calendar months. If a concern has not been in business for 12 months, the average number of employees is used for each of the pay periods during which it has been in business.

(B) Annual receipts are calculated as average total income plus cost of goods sold for the five most recent years. If a concern has been in operation for less than 60 months, average annual receipts for as long as the concern has been in operation are used.

State means any of the 50 States of the United States, the Commonwealth of Puerto Rico, the District of Columbia, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

State bond banks and State bond pools mean an entity authorized by the State to issue State debt instruments and use the funds received to finance eligible projects under this part.

Steady state operating level means that there is an adequate and consistent supply of the applicable renewable energy resource(s) for the project, both on a short-term (current) and long-term basis, and the renewable energy system and process(es) are operating at projected capacity, consistently yielding an adequate quantity and quality of renewable energy.

Subordination means the reduction of the lender's lien priority on certain assets pledged by the borrower to secure payment of the guaranteed loan to a position junior to, or on parity with, the lien position of another loan.

Total eligible project costs means the sum of all eligible project costs.

Total project costs means the sum of all costs associated with a completed project.

Transfer and assumption means the Agency-approved conveyance by a borrower to an

assuming borrower of the assets, collateral, and liabilities of the borrower in return for the assuming borrower's binding promise to pay the outstanding debt.

Underserved communities mean communities (including urban or rural communities and Indian tribal communities) that have limited access to affordable, healthy foods, including fresh fruits and vegetables, in grocery retail stores or farmer-to-consumer direct markets and that have either a high rate of hunger or food insecurity or a high poverty rate as reflected in the most recent decennial census or other Agency-approved census.

Uniform Standards of Professional Appraisal Practice (USPAP) means the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation.

Used equipment means any equipment that has been used and is provided in an "as is" condition.

Useful life means estimated durations of utility placed on a variety of assets, including buildings, machinery, equipment, vehicles, electronics, and furniture. Useful life estimations terminate at the point when assets are expected to become obsolete, require major repairs, or cease to deliver economical results.

Veteran means a person who served in the active military, naval, or air service and was discharged or released therefrom under conditions other than dishonorable as defined in 38 U.S.C. 101(2).

Waste disposal means sanitary sewer (treatment and collection), solid waste, or storm drainage facilities.

Working Capital means current assets available to support a business' operations and growth. Working capital is calculated as current assets less current liabilities.

Chapter 3. Eligibility

Lender Eligibility

Lender Eligibility Requirements - § [5001.130](#)

Requirements to become a lender under OneRD are:

- (1) Be domiciled in a State;
- (2) Not debarred or suspended by the federal government or be an affiliated person of such an entity;
- (3) Inform the Agency if under a consent order from a Federal or State Agency;
- (4) Maintain written standards of conduct covering conflict of interest;
- (5) Maintain internal audit and management control systems to evaluate and monitor loan portfolio; and
- (6) Become an approved participant in Agency's electronic System

All lenders wishing to participate in the OneRD guaranteed loan program must complete their Level 2 E-authentication (see link at the end of this chapter) in order to access the Agency's electronic systems. Please note that if you are already approved by the Agency under one of the existing guaranteed loan programs you may already have Level 2 E-Authentication.

Types of Lending Entities

There are three types of lenders under the OneRD guarantee program: Regulated Lenders, Non-Regulated Lenders, and Non-Regulated Lenders Serving Tribal Trust Lands.

Regulated lenders are organized by a federal or state statute and are subject to supervision and credit examination by an Agency of the United States or a State. A majority of the lending institutions that Rural Development assists fall under the category of regulated lenders.

Non-regulated lenders are just as the name implies, they are not subject to regulatory review, examination and oversight by Federal or State statutes.

The third type of lender is a new addition to program regulations, a non-regulated lender serving tribal trust lands. This entity is also unregulated by Federal or State statutes and has a specific mission to make loans only on tribal trust lands.

How to become an OneRD Guarantee Lender

All lenders wishing to make loans under the OneRD guarantee program must meet the general provisions which were previously discussed. This includes obtaining a Level 2 E-authentication so that you may access the Agency's electronic systems, such as (LINC) and the electronic application system currently being developed.

If you are a non-regulated lending entity, you must apply to the Agency for approval under the new regulation.

All lenders will sign a new Lender's Agreement with the Agency with an effective date of 10/1/2020 or later.

Non-regulated Lending Entity - § 5001.130(c)

Non-regulated lending entities are any type of entity that does not meet the definition of a regulated entity. Section 5001.130 (c) provides information for you on the requirements to become an eligible Lender if you are unregulated. Approval of a non-regulated lending entity is for a period up to five years with an expiration on January 31 of the fifth year after the date of Agency approval. A non-regulated lender includes CDFI lenders, who are authorized and must meet certain criteria of the U.S. Treasury, but are not under the regulatory or internal credit examination requirements of a banking regulator.

It is important to note that the OneRD Guaranteed rule presents only one set of eligibility requirements for non-regulated lending entities. Under the new rule, a non-regulated entity which is approved by the Agency is approved to make loans under all four OneRD guarantee loan programs.

Additional considerations to become an approved Non-regulated Lender

Considerations to become an approved non-regulated lender under the OneRD regulation include being a financially sound institution that is at least five years old and has made commercial loans totaling at least \$1 million in each of the past three years. You must provide information on the lending experience of your management and loan officers, your lending policies, and a third-party external loan review acceptable to the Agency.

Your loan portfolio must have lower than a six percent delinquency rate in the last five years, with no greater than a three percent loan loss, based on the original principal balance. In addition, you must have at least 10 percent equity, a line of credit issued by a regulated lending entity, and sufficient funds available to disburse the guaranteed loans that you propose to make in the first six months of being approved as a lender.

The current approval status of all non-regulated lenders expired on September 30, 2020 when the OneRD Guarantee Loan Initiative final rule became effective. All non-regulated lenders wishing to make application for guarantees under OneRD Guarantee will need to refile an application for non-regulated lender approval. The Agency has created a portal to upload all of your documents to request approval status. To use this portal, complete the following steps:

1. Review the [sample](#) document as an example of the intro, cover letter to submit first.
2. Email your intro cover letter to OneRDlenderapproval@usda.gov. Upon receipt of that document, we will send you a link to the Non-Regulated Lender Portal with instructions to upload and submit all your supporting files listed in the sample document.

If you are unable to submit your application package through this portal, you may contact OneRDlenderapproval@usda.gov for assistance.

Non-regulated Lenders Serving Tribal Trust Lands

The new regulation expands opportunities to allow for approval of non-regulated entities serving only tribal trust lands. These provisions can be found in Section 5001.130(d). Lenders approved to originate and service loans only on tribal trust lands will be reviewed under slightly different criteria than other non-regulated lenders. If the entity wishes to originate or service loans outside of tribal trust lands, they must meet the criteria and apply under provisions found in part (b) or (c) of this section.

If you are a non-regulated lender serving Tribal Trust Lands, you can submit your request for approval using the portal and instructions listed above in the non-regulated lender section.

Lender's Agreement - § 5001.131

All Lenders participating in the OneRD program after October 1, 2020, must execute a new lender's agreement with the Agency. The Agency will track lender agreements on file and will publicly post the list of all approved lenders, both regulated and non-regulated. This refined process will reduce multiple sets of lender agreements and help streamline this process. Lender's agreements are issued based on Tax ID Numbers (TIN). It is possible for a lender to have more than one TIN, so agreements would have to be issued to each TIN. Multiple TINs, however, would be the only case where a lender would have multiple lender agreements. Remember, lender agreements are not issued for individual loans, loan officers or branches.

Maintenance of Approved Lender Status - § 5001.132

By signing the lender's agreement, you agree that the continuation of your status as an approved lender under this program is not automatic. You must continue to meet the lender eligibility provisions of the regulation, be in good standing with your regulators, and use the OneRD guaranteed loan program. The provision of use is new to this regulation.

Lenders which have no outstanding guaranteed loans with the Agency for five consecutive years will be removed from the list of approved OneRD guaranteed lenders.

In addition, non-regulated lending entities must renew their status every five years. If a non-regulated lending entity fails to submit renewal documentation for Agency approval, they may lose their approved lender's status. If removal for either non-use or revocation for non-renewal occur, the lender may reapply for lender status.

Provisions to revoke a Lender's status

The Agency may also revoke a lender's status or debar the approved lender at any time for cause as specified in the lender's agreement, some examples include:

- (1) Guaranteed loans originated cause substantial loss to the Agency
- (2) You or any of your officers are convicted for criminal acts
- (3) Negligent loan origination or loan servicing
- (4) Failure to correct any Agency-cited deficiency in a timely manner
- (5) Construction planning and monitoring is not adequate
- (6) You fail to submit timely, required reports to the Agency

If you lose your approved lender status for any reason, you must still service all outstanding guaranteed loans

Borrower Eligibility

Borrower Eligibility - § 5001.126(a)(1) – (2)

Borrower eligibility begins in section 5001.126 of the OneRD Guaranteed Loan regulation, with provisions that apply to all programs. Provisions specific to a program area are called out accordingly.

The borrower must meet the eligibility requirements at the time of guaranteed loan approval and through issuance of the loan note guarantee. The borrower is responsible for operating, maintaining and managing the facility, even if operated, maintained or managed by a third party under contract, agreement or lease. Ownership structures, such as those to bring in passive investor equity are permitted as long as the borrower maintains control.

Except for CF guaranteed loans, if a business or affiliate is dependent upon another's operations or relies upon another for loan repayment, they must be co-borrowers and both entities must meet borrower eligibility requirements. If an operating entity is truly independent and does not rely on another operation to remain viable or repay the debt, the Agency will allow one entity to be the sole borrower.

Borrower Eligibility under Community Facility (CF) - § 5001.126(b)(1) – (4)

There are four borrower eligibility provisions specific to CF. They include:

The Borrower must be a public body, which includes Indian tribes or non-profit organizations. If a borrower is organized under for-profit corporation laws, it may still be eligible if it will operate on a not-for-profit basis for the duration of the guaranteed loan. In addition, single member, not-for-profit corporations or not-for profit corporations owned or substantially controlled by other corporations are eligible if the member organization has significant ties with the project service area and provides a payment guarantee.

- (1) The borrower must have significant ties to the project service area. Typically, the organizational documents of the borrower will outline an association with or control by a public body. The entity must have broad-based, open and non-discriminatory membership controlled primarily by members who reside in the service area.
- (2) The requirement of "Credit Elsewhere" remains in the regulation. This means that the borrower must be unable to finance project costs from their own resources or through commercial credit at reasonable rates and terms without a guarantee. Documentation for "Credit Elsewhere" may include information from you on rates and terms which are not reasonable or affordable, or a statement from you that you will not make the loan without a guarantee. The final determination on the availability of other credit is the Agency's.
- (3) The last requirement is evidence of community support. The statement of community support is a certification from each affected local government stating that the essential community facility will provide needed services to the community without adversely impacting existing community facilities providing similar services.

Borrower Eligibility Water and Waste Disposal (WWD) - § 5001.126(c)(1) – (3)

To be eligible for a loan guarantee under WWD, a borrower must meet the following:

- (1) Borrower must be a public body, including Indian tribes on Federal and State reservations and other Federally recognized Indian tribes, or non-profit organization.
- (2) Borrower is unable to finance project costs from their own resources or through commercial credit without a guarantee, at reasonable rates and terms. Documentation

for “Credit Elsewhere” may include information from you on rates and terms which are not reasonable or affordable, or a statement from you that you will not make the loan without a guarantee.

- (3) Evidence of significant community support in the form of a certification of support for the project from each affected local government.

Borrower Eligibility Business and Industry (B&I) - § 5001.126(d)(1) – (4)

Borrower eligibility provisions for the B&I program remain the same and include:

- (1) The borrower must be:
 - i. A cooperative, corporation, partnership, or other legal entity organized and operated on a profit or non-profit basis;
 - ii. An Indian Tribe;
 - iii. A Public Body;
 - iv. An Individual
- (2) Borrower must be engaged in or proposing to engage in a business which will provide employment or improve the economic or environmental climate in rural communities.
- (3) Borrower who is an individual must:
 - i. Be a citizen of United States;
 - ii. Reside in U.S. after being legally admitted for permanent residence; or
 - iii. Be a resident of the Republic of Palau, Federated States of Micronesia, American Samoa, Guan, The Commonwealth of the Northern Mariana Islands, and the Republic of the Marshall Islands.
- (4) Borrower must demonstrate that the project will primarily create new or save existing jobs for rural U.S. residents.

Borrower Eligibility Rural Energy for America Program (REAP) - § 5001.126(e)(1) – (4)

Borrower eligibility provisions for REAP include:

- (1) Borrowers must **certify** on the application form to meeting the definition of either an agricultural producer or a rural small business*. (**Energy Efficiency equipment and systems (EEE) funding is limited to agriculture producers.*)
- (2) Borrowers must own the project **and** own or control the site for the project (*At the time of application or no later than loan closing and for term of the guaranteed loan*)
- (3) Borrowers must have satisfactory sources of revenue for operation and maintenance (O&M) and debt service of project
- (4) Borrowers must inject matching funds of not less than 25% of total eligible project costs

Borrower Ineligibility Conditions - § 5001.127 (a – g)

Section 5001.127 discusses borrower ineligibility conditions. While some of the ineligibility conditions listed may directly apply to only one or two programs, they do generally limit participation in all programs. Ineligibility applies to the borrower and any owner with more than 20 percent ownership interest or control of the borrower. A borrower entity is ineligible if:

- 1) It has an outstanding US Federal court judgement(s), delinquency on federal taxes or federal debt, or has been debarred or suspended from receiving Federal assistance
- 2) It derives more than 15 percent of its annual gross revenue from gambling activity
- 3) It derives income from activities of a prurient sexual nature
- 4) It derives income from illegal drugs, drug paraphernalia, or any other illegal product or activity as defined under Federal statute. In regarding leasing space or entering into a power purchase agreement with marijuana operations, because marijuana is a controlled substance under federal law and our borrower would be receiving income from the marijuana operation, this is not eligible under our guaranteed loan programs.
- 5) It is a charitable or fraternal organization (*applies only to B&I*)
- 6) You or any of your officers have 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 in your lending institution.
- 7) It is a lending institution, investment institution, or insurance company (*with exception of REAP*).

Project Eligibility

The four areas that are covered under this section are: project eligibility, ineligible projects, eligible use of funds, and ineligible use of funds.

OneRD distinguishes between project eligibility and use of funds eligibility. In this regulation, a “project” is defined as the broad activity for which guaranteed loan funds will be used – such as: fire hall construction, installation of a drinking water system or installation of a renewable energy system. “Use of funds” is specific to a cost to be paid with guaranteed loan fund, such as – equipment and labor costs, legal fees, or interest.

Project Eligibility – General - § 5001.102 (a) – (d)

General Project Eligibility Provisions:

- (1) Service Area boundaries must be chosen in such a way that no user or area will be excluded based on discrimination. This does not exclude:
 - a. phased projects, provided each phase is financially sustainable without regard to future phases; and

- b. projects which are not economically feasible to serve the entire service area, provided the economic feasibility is determined on the basis of the entire system or facility and not separate parts.
- (2) Must be located in a State and meet rural or rural area requirements
- (3) Agency is prohibited from guaranteeing projects funded with tax-exempt financing or if the guaranteed loan is essential to the issuance of the tax-exempt obligation. *(The portion of the project which is taxable may be eligible)*
- (4) Agency can guarantee loans for debt refinancing *(including rural hospital debt)*

Debt Refinancing - § 5001.102 (d)(1) – (4)

Debt refinancing will be administered consistently across three of the four guaranteed loan programs. Due to statute limitations, these provisions do not apply to the REAP program.

Eligible debt refinancing projects include:

- (1) New Lender: One or more loans owed to another creditor – 100%
- (2) Applicant Lender: Refinanced debt owed to applicant lender =<50% total use of funds, provided:
 - (i) Loan is current for six months
 - (ii) New loan provides better rates and terms
 - (iii) Current loan status cannot be achieved by lender forgiveness or servicing actions
- (3) Federal Debt: Debt owed directly to federal government or is federally guaranteed
 - (i) This debt, while eligible for refinancing, shall not be included in the amount of applicant lender debt when calculating maximum percentage of the total use of funds in the new guaranteed loan.
- (4) When considering refinancing as described in Paragraphs (1) through (3) above, the following items must be met:
 - (i) The project is viable, and refinancing is necessary to improve cash flow
 - (ii) Debt is reflected on the borrower's balance sheet and the funds were originally used for eligible purposes *(Refinance of existing lines of credit is eligible in the B&I program only)*
 - (iii) When refinance is the majority purpose of the guaranteed loan, the borrower must demonstrate historical cash flow available to provide a total debt service coverage ratio of not less than 1.1 times its new debt service or demonstrate it has corrected or recovered from past adverse issues.

Refinancing Hospital Debt - § 5001.102 (d)(5)

Refinancing of rural hospital debt is a new provision implementing Sec 6103 of the 2018 Farm Bill. Its purpose is to help preserve access to a health service and meaningfully improve the financial position of the hospital. Provisions include:

- (1) Facility must meet the definition of hospital found at §5001.3
- (2) All requests must demonstrate:

- (i) The new annual debt repayment will be less than the existing amount of annual debt repayment AND
- (ii) Provide a total debt service coverage ratio of 1.1 to 1.0 based on historic cash flow. To calculate the ratio, the debt service amount will include annual capital expense reserve and annual debt repayment reserve requirements

Rural Energy for America Program (REAP) Refinancing - § 5001.121 (d)(14)

The main difference between the refinancing provisions of REAP compared to the three other guaranteed loan programs, is that REAP cannot entertain 100 percent refinance; the debt being refinanced cannot exceed 50 percent of the total use of funds in the new REAP guaranteed loan.

REAP does not distinguish between applicant lender debt or other lender debt, the 50 percent rule applies to all. Refinancing provisions include:

- (i) Original purpose of debt being refinanced must meet project requirements for Renewable Energy System (RES) (§5001.106) (Energy Efficiency Improvement (EEI) (§5001.107) and Energy Efficiency Equipment and Systems (EEE) (§5001.108).
- (ii) Debt being refinanced does not exceed 50% of the total use of funds in the new REAP guarantee loan
- (iii) Refinancing is necessary to improve cash flow and viability of the project
- (iv) Loan being refinanced must be current for at least the past six months (*excludes lender forgiveness of debt*); and
- (v) Lender is providing better rates or terms for refinanced loan

Eligible Community Facilities Projects and Requirements - § 5001.103 (a)(1) - (10)

The project must be for construction, enlargement, extensions or otherwise improve essential community facilities including but are not limited to:

- (1) Health care facilities and services;
- (2) Fire, rescue, and public safety facilities and services;
- (3) Community, public, social, educational, or cultural facilities or services;
- (4) Transportation facilities such as streets, bridges, roads, ports and airports;
- (5) Utility projects;
- (6) Telecommunications end user equipment related to public safety, medical or educational telecommunications links when not eligible for RUS financing;
- (7) Water Infrastructure defined as levees, dams, reservoirs, inland waterways, canals and irrigations systems;
- (8) Purchase and install renewable energy system (RES) for use by an essential community facility when:

- (i) RES will help defray costs of facility operation;
 - (ii) RES will improve borrower's ability to provide service;
 - (iii) Borrower does not/will not have contract to sell power generated by RES; however, receiving credit for excess production is permitted;
 - (iv) RES will be scaled to meet energy needs in a consecutive 12-month period;
 - (v) RES is commercially available; and
 - (vi) Borrower provides technical report in accordance with sufficient detail to enable the agency to determine technical merit of the project and vendor/installer certified projections on energy to be replaced and/or generated accompanied by the quality and availability of the renewable resource to the project.
- (9) Land acquisition and site preparation including access ways and utility extensions to and throughout an industrial park site; and
- (10) Community parks, community activity centers, and similar types of facilities that are an integral part of the orderly development of a community. Recreational components including, but not limited to, playground equipment of an otherwise non-recreational facility such as childcare, education, or health care facilities are also eligible.

Eligible Community Facilities Projects and Requirements Public Use - § 5001.103 (b)

The community facilities program will only finance projects which will be for public use. The borrower cannot restrict use of, or membership to the facility or service, based on race, color, religion, sex, national origin, age, disability, sexual orientation or marital or familial status. There are a few exceptions to this rule: The Young Men's Christian Association (YMCA), Young Women's Christian Association (YWCA), the Girl Scouts, Boy Scouts, and Camp Fire Girls are exempt from open membership on the basis of sex.

For membership-based entities, any applicant must be granted membership, admitted or placed on a on a first-come, first-served waiting list if the facility is at capacity. This does not prevent community facilities from having a threshold admission requirement, such as college and universities. The standard must be applied consistently to all applicants and be common to the industry standard.

Eligible Community Facilities (CF) Project Location - § 5001.103 (c)

CF projects must be located in a rural area as defined at 5001.3 unless it is a utility project that will serve both the rural and non-rural areas. The part of the facility located in a non-rural area must be necessary to provide essential services to rural areas.

The availability of funds for CF projects is contingent on its rural area population and the reservation of funds outlined in § 5001.316(e).

Eligible Water Waste Disposal (WWD) Project Types - § 5001.104 (a) – (d)

In addition, a detailed plan to complete the installation of any equipment must be supplied.

A WWD project must be one of the following types:

- a) Construct, enlarge, extend, or improve the following types of facilities:
 - i. Drinking water
 - ii. Sanitary sewage
 - iii. Solid waste disposal
 - iv. Storm wastewater disposal

Purchase equipment to operate or maintain project facility. WWD has added the purchase of equipment to operate, maintain or protect facilities as an eligible project. Qualifying equipment purchases do not have to be done in conjunction with a larger project. Under this provision, the Agency is not purchasing inventory. If the equipment requires installation, it must be completed prior to the issuance of the loan note guarantee, unless the lender requests and receives Agency approval to receive the loan note guarantee prior to completion of construction in accordance with §5001.205 (e) (2)

- b) Projects must be for a public purpose.
- c) The project location must be in a rural area meaning an area of a state not in a city or town that has a population of more than 50,000 inhabitants. For utility services serving both rural and non-rural areas, the Agency will guarantee only the portion of the project necessary to provide essential services to rural areas. Projects must serve any user within the service area who desires service and can be feasibly and legally served.
- d) Lender must determine that, when feasible and legally possible, inequities within the project's service area for the same type of service will be remedied by the borrower, on or before, completion of the project. Inequities are defined as unjustified variations in availability, adequacy, or quality of service. User rate schedules of existing systems or facilities that were developed under different financing rates, terms, or conditions do not necessarily constitute inequities.

Eligible Business and Industry Projects (B&I) Projects and Requirements - § 5001.105

The purpose of the project must be to improve, develop, or finance business, industry and employment and improve the economic and environmental climate in rural communities; the conservation, development, and use of water for aquaculture purposes; and reduce reliance on nonrenewable energy resources through development and construction of solar energy and other renewable energy systems.

Eligible Business and Industry(B&I) Project Types - § 5001.105(b)

The B&I program is a very diverse program. The following provides a list of the types of projects that are eligible for a guarantee under the B&I program:

- 1) Purchase, development of land, associated infrastructure, expansion or building upgrades to commercial or industrial properties
- 2) Business acquisitions, start-ups, and expansions to create or save jobs
- 3) Purchase and installation of machinery and equipment
- 4) Permanent working capital loan for startup costs, inventory, and/or supplies
- 5) Pollution control and abatement
- 6) Purchase of membership, stocks, bonds or debenture necessary to obtain a loan

- 7) Agriculture production when not eligible for a USDA Farm Service Agency loan, and is part of an integrated business also doing processing
 - a) Agriculture production portion must not exceed 50 percent of the total loan or \$5 million, whichever is less
 - b) This paragraph does not preclude financing the following type of business:
 - i. Commercial nurseries producing ornamental plants, trees, flowers, sod or other nursery products, etc.
 - ii. Forestry, including engagement in operation of timber tracts, tree farms, harvesting of forest projects, reforestation, etc.
 - iii. Growing or harvesting mushrooms
 - iv. Hydroponics
 - v. Boarding and/or training of animals
 - vi. Commercial fishing, and
 - vii. Production of algae and aquaculture, including conservation, development and utilization of water for aquaculture.
- 8) Tourist and recreation facilities, including hotels, motels, bed and breakfast establishments, and resort trailer parks and campgrounds
- 9) Education and training facilities
- 10) Community Facility projects consistent with Community Facility project type, public use and project location requirements (§5001.103 (a) - (c)) when not eligible for financing through the Rural Housing Service or Community Facility programs
- 11) Industries undergoing adjustment due to terminated Federal agriculture prices and income support programs or increased competition from foreign trade
- 12) Constructing or equipping facilities for lease to private businesses engaged in commercial or industrial operations
- 13) Financing for mixed-use property involving both commercial business and residential space is authorized with limitations
- 14) Leasehold improvements when the lease contains no reverter clauses or restrictive clauses that would impair use or value as security for the guaranteed loan
- 15) Projects that process, distribute, aggregate, store and/or market locally or regionally produced agricultural food projects to support community development and farm and ranch income.
 - a) Projects may be located in non-rural areas subject to the following:
 - i) Expands or preserves availability of staple food in an underserved area with moderate and low-income populations
 - ii) Create and retain quality jobs for low-income residents of the community
 - iii) Significant amount of the food is locally or regionally produced and sold
 - iv) Includes appropriate agreement to inform customers that they are purchasing locally or regionally produced agriculture food products
 - b) Priority is given to projects involving businesses processing, distributing, aggregating, storing and marketing locally or regionally produced agriculture food products to underserved communities (§5001.318(d)(5)).
- 16) Purchase of
 - a) cooperative stock by individual farmers or ranchers in a farmer or rancher cooperative established for the purpose of processing an agriculture commodity. The cooperative may contract for services to process agricultural commodities or otherwise process value-added agricultural products during the five-year period beginning on the operation

startup date of the cooperative in order to provide adequate time for the planning and construction of the processing facility of the cooperative (§5001.140 (a)).

- (1) The proceeds from the stock sale may be used to recapitalize, to develop a new processing facility or product line, or to expand an existing production facility. Guaranteed loan funds must remain in the cooperative from which stock was purchased, and the cooperative must not reinvest those funds into another entity.
- (2) The maximum guaranteed loan amount is \$600,000.

17)

- a) purchase of preferred stock or similar equity issued by a cooperative or may guarantee loans to a fund that invests primarily in cooperatives. In either case, the project must significantly benefit one or more entities eligible for assistance under B&I guaranteed loans (§5001.140 (c)).
 - (1) "Similar equity" is any special class of equity stock that is available for purchase by non-members and/or members and lacks voting and other governance rights.
 - (2) A fund that invests "primarily" in cooperatives is determined by its percentage share of investments in and loans to cooperatives. A fund portfolio must have at least 50 percent of its loans and investments in cooperatives to be considered eligible for loan guarantees for the purchase of preferred stock or similar equity.
 - (3) The principal amount of the guaranteed loan cannot exceed \$10 million.
 - (4) The maximum term of the guaranteed loan is seven years when the proceeds are used by the cooperative for working capital and;
 - (i) In all other cases the maximum term of the guaranteed loan is equal to the lesser of the following but not exceeding 40 years:
 - (ii) The justified useful life of the funded project assets,
 - (iii) The maximum term under any applicable State statute; or
 - (iv) The specified holding period for redemption as stated by the stock offering.
 - (5) All borrowers purchasing preferred stock or similar equity must provide documentation of the terms of the offering that includes compliance with State and Federal securities laws and financial information about the issuer of the preferred stock to both the lender and the Agency.
 - (6) Issuer(s) of preferred stock must be a cooperative organization and must be able to issue preferred stock to the public that, if required, complies with State and Federal securities laws.
 - (7) The lender will, at a minimum, obtain a valid lien on the preferred stock, an assignment of any patronage refund, and the ability to transfer the stock to another party, or otherwise liquidate and dispose of the collateral in the event of a default by a borrower. For the purpose of recovering losses from guaranteed loan defaults, lenders may take ownership of all equities purchased with such loans, including additional shares derived from reinvestment of dividends.
 - (8) Shares of preferred stock that are purchased with guaranteed loan funds cannot be converted to common or voting stock.
 - (9) In the absence of adequate provisions for investors' rights to early redemption of preferred stock or similar equity, a borrower must request from a cooperative or fund issuing such equities a contingent waiver of the holding or redemption period in advance of share purchases. This contingent waiver provides that in the event a default by a borrower on a B&I guaranteed loan, the borrower waives any

ownership rights in the stock, and the lender and Agency will then have the right to redeem the stock.

- (10) Guaranteed loans for the purchase of preferred stock must be prepaid in the event a cooperative that issued the stock exercises an early redemption. If the cooperative enters into bankruptcy, to the extent the cooperative can redeem the preferred stock, the Borrower is required to repay the guaranteed loan from the redemption of the stock.
- b) for conversions of businesses to either cooperatives or Employee Stock Option Program (ESOP) within five years from the date of initial transfer of stock (§5001.140(d))
- c) Loans to Cooperatives:
 - (1) Principal amounts up to \$40 million; guarantee in excess of \$25 million may be approved by the Secretary
 - (2) Guarantee to eligible cooperatives may be made in non-rural areas provided:
 - i. Project is value-added processing for agriculture producers with 80 miles
 - ii. Provides employment for rural residents as a primary benefit
 - iii. Does not exceed \$25 million; and
 - iv. Total of guaranteed loans of this type does not exceed 10% of funds for the fiscal year
 - (3) Eligible cooperative may refinance an existing B&I if the existing loan is current and performing; is not, and has not been, in monetary default or the collateral has not been converted and there is adequate security and collateral for the new guaranteed loan.
- d. Taxable corporate bonds when the bonds are fully amortizing and comply with all applicable provisions of 7 CFR - Part 5001, bond proceeds were used for an eligible purpose and the lender, as bond holder, retains 7.5 percent of the total loan amount (§5001.408(3)(i)).
 - (1) Convertible bonds are not eligible under this paragraph due to the potential conflict of interest of a lender having ownership interest in the borrower
 - (2) 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.
 - (3) An explanation of the type of bond and other bond stipulations must be attached to the bond
 - (4) Bond issuer must obtain the services and opinion of an experienced bond counsel
 - (5) Bond holder (Lender) must purchase all the bonds issued pursuant to the guarantee and comply with all Agency regulations
- e. Nursing homes and assisted living facilities where constant medical care is provided and available onsite to the residents. Independent living facilities are not eligible (§5001.118(a))
- f. Development and construction of Renewable Energy Systems (RES), including modification of existing systems that are commercially available and that are not

otherwise eligible under the Rural Energy for America Program (REAP), or if funding is not available in REAP

- g. Integrated processing equipment and systems, such as biorefineries, renewable energy systems, and chemical manufacturing facilities, must utilize commercially available technology, equipment, and systems, and demonstrate technical merit. The Agency will evaluate the following areas in making the technical merit determination:
 - a. Qualifications of the project team;
 - b. Agreements and permits;
 - c. Resource assessment;
 - d. Design and engineering;
 - e. Project Development;
 - f. Equipment procurement and installation; and
 - g. Operations and maintenance.

Eligible Business and Industry (B&I) Facility Location - § 5001.105(c)

B&I projects must be located in rural areas, except for loans to cooperatives and local food projects. If a portion of a project is located in both a rural and a non-rural area, the Agency will only guarantee the amount necessary to finance the portion of the project located in the eligible rural area. An example would be a manufacturing company that has locations in Omaha and Beatrice, Nebraska and has working capital needs along with wanting to refinance equipment loans. The Beatrice location is rural; however, the Omaha location is non-rural. Only the equipment located in Beatrice and working capital needs of the Beatrice location would be eligible for B&I financing.

With the OneRD Guarantee Regulation, B&I removed its requirement for tangible balance sheet equity and replaced it with the requirement to have sufficient capital or equity to mitigate the ongoing financial and operational risks of the business.

Regardless of when the loan note guarantee (LNG) is requested, an existing business borrower must meet one of these 3 options at loan closing: 1) show 10% or greater balance sheet equity, 2) 10% or greater borrower investment as a percent of total eligible project costs or 3) the balance sheet must show that owner contributed capital in the amount of 10% or greater as a percentage of total fixed assets.

A new business which has sales contracts in place for the term of the loan, adequate to meet debt service can provide either 10% or greater balance sheet equity or 10% or greater borrower investment as a percent of total eligible project costs.

In the situation where a new business for a project where the LNG will be requested prior to construction or completion, the borrower will need to provide 25% or greater balance sheet equity or 25% or greater borrower investment as a percent of total eligible project costs.

All other borrowers that are new businesses may either provide 20% or greater balance sheet equity, or 25% or greater borrower investment as a percent of total eligible project costs.

Also, there are circumstances where the Agency can increase or decrease the equity requirement for a B&I loan guarantee (5001.105(d)(5)). These circumstances are as follows:

(i) *Increases.* The Agency may increase the capital or equity requirement specified under paragraphs (d)(1) through (4) of this section for guaranteed loans the Agency determines carry a higher risk. In determining whether a project or guaranteed loan carries a higher risk, the Agency will consider the current status of the industry, concentration of the industry in the Agency's portfolio, collateral coverage, value of personal or corporate guarantees, cash flow, and contractual relationships with suppliers and buyers; credit rating of the borrower; and the strength of the feasibility study and experience of management. The Agency may also increase the capital or equity requirement for new businesses using integrated processing equipment and systems such as biorefineries, renewable energy systems, chemical manufacturing facilities, and businesses producing new products to sell into new and emerging markets.

(ii) *Reductions.* The Agency may reduce the minimum equity requirement for an existing business when personal or corporate guarantees are obtained in accordance with §5001.204 of this part; and all pro forma and historical financial statements indicate the business to be financed meets or exceeds the median quartile (as identified in the Risk Management Association's Annual Statement Studies or similar publication) for the current ratio, quick ratio, debt-to-worth ratio, and debt service coverage ratio.

Eligible Rural Energy for America Programs (REAP) Projects - § 5001.106 - § 5001.108

It is important to understand that there are three specific sections of REAP project provisions organized by the type of REAP project. Section 5001.106 outlines Renewable Energy System (RES) provisions, and Energy Efficiency Improvements (EEI) can be found at 5001.107. Energy Efficient Equipment and Systems (EEE) for agricultural production and processing, is a new use of funds, limited only to guaranteed loans. This use of funds was authorized by the 2018 Farm Bill and provisions can be found at 5001.108.

Eligible REAP Renewable Energy System (RES) Projects with Residence - § 5001.106(d)

The REAP program retains the restriction on residential projects. When a residence is closely associated with an agriculture operation or rural small business, 50% or more of the energy to be generated by the renewable energy system project, must be used by the non-residential operation and only that portion of the project will be eligible.

In the application, one of the following must be documented:

1. A renewable energy site assessment documenting 50 percent or more of the energy to be generated by the RES being used for the ag operation or rural small business
2. Borrower may install or elect to conditionalize funding upon installation of device (such as a second meter) which restricts energy to business use

Eligible REAP Renewable Energy System (RES) Projects Technical Merit - § 5001.106(e)

All REAP Projects must have technical merit. The amount of information required to be provided to document technical merit continues to follow the 3-tier application thresholds as required by statute.

- i. Total Project Costs \$80,000 or less

- A. Project Description
- B. Resource Assessment
- C. Project Economic Assessment; and
- D. Qualifications of key service providers
- ii. Total Project Costs Less than \$200,000, but more than \$80,000
 - A. Project Description
 - B. Resource Assessment
 - C. Project Economic Assessment
 - D. Project Construction and Equipment; and
 - E. Qualification of key service providers
- iii. Total Project Costs of \$200,000 or greater
 - A. Qualification of project team
 - B. Agreements and permits
 - C. Resource Assessment
 - D. Design and engineering
 - E. Project development
 - F. Equipment procurement and installation; and
 - G. Operations and maintenance

While all projects must have technical merit, a new provision of the regulation is that solar, wind and geothermal direct use technologies, which are more mature technologies and pose less risk to the Agency, do not require a full technical report.

The OneRD regulation allows for three assignments on the technical merit review. This provision differs from the existing regulation which did not allow for a pass with conditions assignment.

- (vii) Pass – no major weaknesses and meets or exceed requirement – eligible
- (viii) Pass with conditions – minor weaknesses which could be conditioned and reasonable resolved by the borrower – eligible
- (ix) Fail – information provided is deemed to show a major weakness(s) – ineligible to compete for funding

Eligible REAP Energy Efficiency Improvement (EEI) Projects and Requirements - § 5001.107

Energy Efficiency Improvement (EEI) projects must use less energy on an annual basis than the original building and/or equipment that it will improve or replace as demonstrated in an Energy Assessment or Energy Audit, as applicable:

- 1) Total project costs greater than \$80,000, the energy assessment must be conducted by:
 - a. Energy Auditor
 - b. Energy Assessor
 - c. Individual supervised by an auditor or assessor
- 2) Total project costs \$80,000 or less, energy assessment may be conducted by:
 - a. Individuals listed above in (1), or
 - b. A person with at least 3 years of experience and has completed at least 5 similar type audits or assessments.

Eligible energy efficiency improvements include improvements to existing renewable energy systems, and construction of a new building that will use less energy on an annual basis than

the existing business and is the same size. Technology must be commercially available and rural area requirements also apply unless borrower is an agriculture producer and the project supports the processing, vertical integration or marketing of agriculture products.

The project must have Technical Merit, technical report areas:

- i. Total Project Costs of \$80,000 or less:
 - a) Project description
 - b) Qualifications of EEI provider(s); and
 - c) Energy assessment (or audit if applicable)
- ii. Total Project Costs of greater than \$80,000:
 - a) Project information
 - b) Energy Assessment (or audit as applicable); and
 - c) Qualifications of the contractor in stallers

As with the Renewable Energy System (RES), the Technical Merit will be assigned pass, pass with conditions or fail.

Eligible REAP Energy Efficiency Equipment and Systems (EEE) Projects and Requirements - § 5001.108

This is a new provision to the rule that was authorized by the 2018 Farm Bill, and allows for the purchase and installation of energy efficient equipment or systems for agricultural production and processing as listed below:

- a) Project must be for the purchase and installation of energy efficient equipment or systems for agricultural processing that exceed the following standards:
 - 1) Energy efficiency building codes, if available;
 - 2) Federal or State energy efficiency standard, if available; and
 - 3) Other energy efficiency standards determined appropriate by the Secretary.
- b) Project must be for commercially available technology
- c) Project must have technical merit as certified by vendor/installer. Applications without certification will be incomplete and ineligible.

Ineligible Projects

Ineligible Community Facilities (CF) Projects - § 5001.116

The following is a list of ineligible Community Facility projects:

- a) Industrial parks – financing of on-site utility systems or business and industrial buildings
- b) Inherently commercial enterprises
- c) Construction completed by or for the borrower prior to an application to the Agency
- d) Projects where the borrower circumvents the regulation to become eligible
- e) Projects which retire debt of the seller to allow the seller continued use of the facility at a lower cost

Ineligible Water Waste Disposal (WWD) Projects - § 5001.117

The following is a list of ineligible Water Waste Disposal projects:

- a) That portion of a project normally provided by a business or industrial user, such as wastewater pretreatment
- b) Funds may not be used to take away customers or service areas of existing USDA WWD program direct or guaranteed loan borrowers, unless existing borrower lacks the capacity to provide adequate service.
- c) Projects where the borrower circumvents the regulation to become eligible.
- d) Project which retires debt of the seller to allow the seller continued use of the facility at a lower cost.

Ineligible Business and Industry (B&I) Projects - § 5001.118

The following is a list of ineligible Business and Industry projects:

- a) Timeshares, residential trailer parks, apartments, duplexes or other residential housing where the primary purpose is independent housing, or housing development sites. Limited exceptions may be found in § 5001.105(b)(1) and (b)(8).
- b) Projects otherwise eligible for B&I funding in excess of \$1 million that would either:
 - 1) Result in transfer of jobs by more than 50 employees. (This does not preclude business expansion of a new branch, affiliate, or subsidiary as long as it will not result in an increase in unemployment in the original location.)
 - 2) Increase direct employment by more than 50 employees: When there is insufficient demand for the increase in production of goods, materials, commodities or availability of service of facilities in the area, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.
 - 3) These projects that have significant impact to jobs are only eligible upon approval by the Department of Labor.

Ineligible Rural Energy for America Program (REAP) Projects - § 5001.119

Owner-occupied Bed and Breakfasts are ineligible REAP projects.

Uses of Loan Funds

Community Facility (CF) Eligible Uses of Loan Funds - § 5001.121 (a) (1) – (3)

Guaranteed loan funds can only be used for the items specified in this section:

1. When necessary to ensure successful operation or protection of the project: costs from construction or relocation of public or private buildings, roads, bridges, fences, utilities or make other public or private improvements.
2. Cost of conduit, such as pipe or tube, for protecting wires or cables, and installation in conjunction with financing facilities when the cost of the conduit is less than 25 percent of the total project cost. Borrower must own the conduit, must be installed at the time of the project construction, and must be for public use.
3. When necessary as part of a loan to finance a project:
 - a. Guarantee Fees
 - b. Lender Fees
 - c. Reasonable and customary professional service fees
 - d. Interest of Guaranteed loans until the facility is self-supported, but not more than three years.

- e. Interest on guaranteed loans secured by general obligation bonds, not more than two years.
- f. Interest on interim financing.
- g. Costs of acquiring interest in land, rights, water rights, leases, permits, etc. necessary for development
- h. Costs of purchases or renting necessary equipment
- i. Obligations for construction worked performed prior to filing an application with the agency. Construction work must not be started (and obligations for such work or materials must not be incurred) before the Conditional Commitment is issued. If there are compelling reasons for proceeding with construction before the Conditional Commitment is issued, Lenders may request Agency approval to pay such obligations and not jeopardize the receipt of the loan note guarantee from the Agency. Such request must comply with the following conditions:
 - i. Provide conclusive evidence that the contract was entered into without intent to circumvent the Agency regulations, including but not limited to 7 CFR 1970;
 - ii. Modify the outstanding contract to conform to the provisions of this part. When this is not possible, modifications will be made to the extent practicable and, at a minimum, the contract must comply with all State and local laws and regulations as well as statutory requirements and Executive Orders related to the Agency guarantee;
 - iii. When construction is complete and it is impracticable to modify the contract, the borrower and lender must provide a certification by an engineer or architect that any construction performed compiles fully with the plans and specifications; and
 - iv. The borrower and the contractor must have complied with all statutory and Executive Order requirements related to the Agency guarantee for construction already performed even though the requirements may not have been included in the contract documents.

Water Waste Disposal (WWD) Eligible Uses of Loan Funds - § 5001.121 (b) (1) – (10)

Expenses identified below are eligible when they are a necessary part of the Water Waste Disposal project:

- (a) Guarantee fees
- (b) Lender fees
- (c) Reasonable and customary professional service fees
- (d) Costs of acquiring interests in land, rights, water rights, leases, permits etc. necessary for project development
- (e) Costs of purchasing or renting equipment necessary to install, maintain, extend, protect, or operate the project
- (f) Additional borrower labor and other expenses necessary to install and extend service
- (g) Interest during construction related to interim financing
- (h) Initial operating expenses, typically not exceeding one year

- (i) Purchase of existing facilities when necessary to improve or prevent loss of service
- (j) Purchase of equipment for operations, maintenance or protection of facility

Ineligible Uses of Loan Funds - § 5001.122

Unless specifically stated, the items listed below apply to all programs:

- (a) Payment in excess of actual costs
- (b) Other than debt refinancing, payment on any other Federal loan or debt
- (c) Payment of Federal judgment, State or Federal tax lien or other debt to U.S.
- (d) Loan finder or broker fees
- (e) Refinancing of debt owned by loan packager or broker or affiliates
- (f) CF and WWD, costs normally provided by a business or industrial user
- (g) CF and WWD, any portion of a project that does not serve a rural area
- (h) Rental or use of equipment or machinery owned by borrower
- (i) Purposes not directly related to operating and maintaining the project
- (j) Any EEI not identified in the energy assessment or audit
- (k) REAP agricultural tillage equipment, used equipment and vehicles
- (l) Funds can only be used for a change in ownership where the price paid is reasonable based on an independent appraisal and distribution or payment is not to member of the immediate family of an owner, partner, stockholder or member of the borrower.
- (m) CF initial or annual operating expenses, short-term, working capital or operating loans

Other Provisions

Cooperative Stock/Cooperative Equity - § 5001.140

Loan guarantees described in this section are only available under the Business and Industry (B&I) guaranteed loan program:

- Cooperative Stock Purchase Program
- Purchase of transferable stock shares
- Cooperative Equity Security Guarantees
- Employee Ownership Succession

New Markets Tax Credits (NMTC) - § 5001.141

NMTC provisions apply to all programs under OneRD. NMTC investments must comply with the provisions in this section. To be a lender for a guaranteed loan project that involves financing under the NMTC provisions, the lending entity must meet the applicable lender eligibility criteria.

The Agency will not waive its servicing rights to a guaranteed loan or be a party to any forbearance agreement in conjunction with a NMTC project.

Eligibility Supporting Resources

E-Authentication

[Website Link](#): USDA eAuthentication (eAuth) is the system used by USDA agencies to enable individual customers and employees to obtain accounts that will allow them to access USDA Web applications and services via the Internet.

A single eAuth account saves time and reduces the number of passwords for users by providing effortless access to multiple online resources, programs and benefits to view or conduct official business via the Internet with USDA. This includes submitting forms electronically, completing surveys online, and checking the status of USDA accounts.

LINC Instructions-Website Link

All OneRD lenders will need a Level 2 eAuthentication (eAuth) account to access the Lender Interactive Network Connection (LINC). Here ([Document linked here](#)) are instructions on both. This includes obtaining eAuth Level 2 (verified), access to LINC, add staff to LINC, and add bank accounts to LINC.

Chapter 4. Origination

Credit Evaluation

Lender's Credit Evaluation - § 5001.202

In determining whether to advance credit, you will conduct evaluations using the credit factors of Character, Capacity, Capital, Collateral and Conditions. Together, these factors are commonly called the Five Cs of credit. you are responsible for completing and submitting a credit evaluation to the Agency which includes these factors. The Agency's responsibility is to review the information provided and make a funding recommendation based on that information.

Credit Factor: Character - § 5001.202(b)(1)

Character refers to the borrower's record on previous financial transactions. It follows the adage that past behavior is the best predictor of future behavior. Does the borrower have a history of paying their debts? Do they pay on time? Have they declared bankruptcy?

Note: while a past bankruptcy does not automatically make a borrower ineligible, you should review the whys of the filing and what operational or organizational changes have been made since the discharge.

Credit History Evaluation

- Ownership or membership structure of project and borrower should be reviewed
- Negative history requires lender to provide explanations
- Review includes entities providing management or administrative services to be evaluated as well

Community Facility (CF)

- Commitment of rural community or area to be served by the project should be evaluated
- Borrowers management or governing board will be evaluated to ensure key personnel are trained and experienced

Credit Factor: Capacity - § 5001.202(b)(2)

Capacity is the borrower's ability to repay the debt based on the proposed amount and terms. Is there reasonable expectation that they will continue to generate enough revenue to pay operations and maintenance costs as well as debt service and fund required reserves? You may have specific formulas to determine whether a borrower's capacity is acceptable.

Capacity Evaluation

- Sufficient cash/revenue to repay debt, operations and maintenance and fund reserves
- Address safeguards of the projects
 - Capital expenditure budgeting, reserve funds, or contingency reserve funds
- Make all effort to:
 - Ensure adequate working capital, operations and reserves, debt service and maintenance
 - Structure or restructure debt so borrower has adequate debt coverage; the evaluation will be supported by a cash flow analysis

Credit Factor: Capital - § 5001.202(b)(3)

Capital consists of personal investment in the operation, retained earnings and other assets controlled by the operation. Capital is an additional means of repaying debt should income or revenue be reduced or interrupted during the loan term. It shows a level of commitment to their operation by the borrower and there is a sense that it provides an added incentive to not default on the loan.

Capital Evaluation

- Adequate resources to capitalize the project
- Demonstrate the ability to maintain sufficient cash flow

Credit Factor: Collateral - § 5001.202(b)(4)

Collateral refers to the security pledged for the loan and is a loss mitigation issue. This factor boils down to “If this loan goes bad, what does the lender have the ability to sell to get their money back?” It is your responsibility to obtain and maintain proper and adequate collateral for the guaranteed loan. It is your responsibility to ensure that the collateral obtained is adequate and proper. In some instances, the collateral obtained may not be related to the loan purpose. Primary collateral is also, usually, a tangible asset. Intangible assets, such as a customer list, may be part of the collateral package, but may not be the only or primary source of collateral.

Collateral Evaluation

- Security pledged for Guarantee Loan
- Lender Responsibility:
 - Obtaining and maintaining adequate capital
 - Lender is **prohibited** from taking separate collateral for Guaranteed and Unguaranteed portions of the loan
 - Collateral may be tangible or intangible
 - Intangible assets cannot be primary collateral
 - Leasehold interests in buildings are tangible and can serve as primary collateral
 - Determine market value by an appraisal in accordance with § 5001.203
 - Discount collateral with sound loan-to-discount value practices
 - Provide satisfactory justification of the discounts used
- Collateral may include, but is not limited to:
 - General Obligation Bonds
 - Revenue Bonds
 - Pledges of Taxes or Assessments
 - Assignments of Facility Revenue and Byproduct Revenue
 - Land, Easements, Rights-of-Way
 - Water Rights
 - Buildings
 - Machinery
 - Equipment
 - Inventory
 - Accounts Receivable or Other Accounts, Contracts, Leasehold Interests, etc.

Credit Factor: Conditions - § 5001.202(b)(5)

Conditions refer to the terms of the loan itself, including the size, the interest rate and term. It also includes economic conditions that may impact the operation such as regulations, competition and customer perception. This is the most subjective of the Five Cs.

Conditions Evaluation

Consideration will be given to these items, and when applicable, you should submit supporting documentation:

- Availability and depth of resource/feedstock market, strength and duration of purchase agreements and availability of substitutes;
- Analysis of current and future market potential and off-take agreements, competition, type of project (service, product, or commodity based),
- Energy infrastructure, availability and dependability, transportation and other infrastructure, and environmental considerations;
- Technical feasibility including demonstrated performance of the technology and integrated processing equipment and systems, developer system performance guarantees, or technology insurance;
- Complexity of construction and completion, terms of construction contracts, experience and financial strength of the construction contractor or engineering, procurement, and construction (EPC) contractor;
- Contracts and intellectual property rights, licenses, permits, and state and local regulations;
- Creditworthiness of any counterparties, as applicable;
- Industry-related public policy issues; and
- Other criteria that the lender or Agency deems relevant to the project.

Credit Factor: Content - § 5001.202(b)(6)

There is no specific credit evaluation format, and the information may not be in one document, but the overall package must include these items:

- Evaluation of the Five Cs
- Evaluation of any studies, plans or reports
- Financial spreadsheets and analysis; ratios and comparisons to industry data
- Substantiate differences in projections compared to historical performance
- Seasonal operations – quarterly projected cash flow analysis

When you request the loan note guarantee prior to completion for a construction project, the credit evaluation will include an operational cash flow analysis on a quarterly basis from the current financial statements through the borrower's start-up or occupancy.

Appraisals

Section [5001.203](#) provides you with the requirements for appraisals of collateral. You are responsible for ensuring appraised values adequately reflect the actual value of the collateral. This value is defined as "Market Value".

Market value means the most probable price that an asset should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- (1) Buyer and seller are typically motivated;

- (2) Both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest;
- (3) A reasonable time is allowed for exposure in the open market;
- (4) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- (5) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Ideally, the completed appraisal should be submitted with the application. If this is not possible, you will submit an estimated appraised value. In this case, the Agency can approve the guarantee loan subject to an acceptable appraisal. This condition will be included in the Agency's conditional commitment issued to you.

In all cases - even when the loan note guarantee is issued prior to completion of the project - you are responsible for submitting an acceptable appraisal prior to the Agency issuing the loan note guarantee.

Appraisals Requirements - Chattel- § 5001.203

Listed are the requirements for chattel appraisals when chattel is taken as security:

- (a) Newly acquired chattel: bill of sale
- (b) Existing chattel > \$250,000
 - (i) Appraised by an independent qualified appraiser
 - (ii) Based on industry recognized standards – age, condition, and remaining useful life
- (c) Existing chattel \$250,000 or less
 - (i) Evaluated per lender's primary regulator's policies, or
 - (ii) Evaluated per normal banking practices and methods for determining value (non-regulated lenders)

Appraisals Requirements – Real Estate- § 5001.203

Listed are the requirements for appraisals when you take real estate as collateral:

- (a) Real Estate greater than \$500,000*
 - (i) "As Is" market value and "prospective" market value, or
 - (ii) Income-based appraisal
 - (iii) Performed by a State Certified General Appraiser (state licensed)
 - a. In accordance with USPAP Standards 1 and 2
 - b. Meeting the requirements of FIRREA
- (b) Real Estate \$500,000* or less
 - (i) Evaluated per lender's primary regulator's policies, or
 - (ii) Evaluated per normal banking practices and methods for determining value (non-regulated lenders)

(* or the current limitation established under the Financial Institutions Reform, Recovery, and Enforcement Act, commonly referred to as FIRREA).

- (c) Construction Projects
 - (i) Obtain the "As Is" market value and the "prospective" market value as of the date of construction completion to determine the value of the real estate property, or
 - (ii) Obtain an income-based appraisal as of the date of completion to determine the value of revenues to be generated by the real estate.

Appraisal Review Report- § 5001.203

- (a) You will submit a technical review –
 - (i) In the form of an appraisal review report
 - (ii) Prepared in compliance with USPAP Standards 3 and 4
 - (iii) Before guaranteed loan closing
- (b) You will submit documentation of appraiser experience and competency
- (c) Appraisals must not be more than 1 year old

Personal, Partnership and Corporate Guarantees

Personal, partnership, and Corporate Guarantees- Guarantor § 5001.204

What is a “guarantor” in relation to a OneRD guaranteed loan? A guarantor means that you have an individual person, a partnership entity, or a corporate entity, that will give assurance to the Agency, through a written agreement, that the borrower’s obligations will be met and they also promise repayment of the loan in the event of borrower default.

A guarantee may be a full guarantee for the entire amount of the loan, or a partial guarantee, which may be equal to the guarantor’s percent interest or membership in the borrower, times the loan amount. Note: OneRD does not require that the aggregate guarantor percentages for each loan total 100%, which is a slight change from existing regulations. All guarantees, full or partial, remain in effect for the full term of the guaranteed loan.

The Agency finds that most guarantees which are obtained by lenders are unsecured guarantees, meaning they are not backed by collateral. Secured guarantees, however, may be required if necessary.

Personal, partnership, and Corporate - Guarantees Required § 5001.204

Guarantor provisions do not apply to passive investors or any affiliate of the borrower, as evidenced by a contractual agreement. Passive investors are equity investors who do not actively participate in the management and operations decisions of the borrower. When any person or entity owns more than 20% interest or membership in the borrower, the answer is yes, that person or entity is required to provide a guarantee at least equal to the guarantor’s current interest or membership in the borrower.

If the assessment of the proposal finds potential financing risk, the guarantee may apply to a person or entity owning less than a 20% interest or membership in the borrower, or to persons whose ownership interest in the borrower is held indirectly through intermediate or affiliated entities. In addition, the Agency may also require guarantees to be secured.

Personal, partnership, and Corporate - Exceptions § 5001.204(c)

The regulation provides exception provisions in 5001.204 (c). You must request an exception as part of the Lender’s credit evaluation submitted with the application. The credit evaluation must show that collateral, equity, cash flow, and profitability indicate an above-average ability of the borrower to repay the loan for the Agency to consider an exception request.

For example, if an existing borrower’s collateral coverage ratio is 1.5, tangible balance sheet equity is 25%, available cash flow exceeds debt service by .5, and the business is profitable based on historical financial statements, we may allow an exception to the guarantee requirement.

The Agency reviews exceptions to guarantee requirements on a case-by-case basis.

When the guaranteed loan is closed, each guarantor must execute an Agency approved guarantee form. You may also have your own form that each guarantor must sign. If there is an event of default, and the Agency pays a loss associated with the guaranteed loan, the loss constitutes a federal debt owed to the Agency by the Guarantor and is subject to provisions of the Debt Collection Improvement Act (DCIA) provisions. Note: the loss may be limited to the extent of the amount of the guarantor's guarantee, if only a partial guarantee is provided.

General Project Monitoring §Section [5001.205](#) (a) - (h)

You are responsible for monitoring the development of the project. While it is your responsibility to monitor the project, you can rely on written materials and other reports provided by an independent third party, such as an engineer or other qualified consultant, to assist in meeting your responsibility.

General Project Monitoring – Design Requirements § 5001.205 (a)

Your first responsibility is related to design requirements. You must ensure that all facilities constructed with guaranteed loan funds are designed using accepted architectural, engineering, and design practices. Secondly, the facilities must be designed conforming to applicable Federal, Tribal, State and local codes and requirements. And, the facilities are to be constructed to support operations at the level and quality contemplated by the borrower. In general, the burden is yours. You will provide a certification at the time of requesting the Loan Note Guarantee that these requirements have been met.

For Community Facilities (CF) and Water and Waste Disposal (WWD), you will provide an architectural report or engineering document, but the Agency will not provide any technical oversight or recommendations as to the technical feasibility of the project. If it is determined that the project was not designed utilizing accepted engineering or architectural practices, the loss claim may be reduced.

Lastly, keep in mind that if you request the Loan Note Guarantee be issued prior to completion of the project, you will provide additional evidence to the Agency, and the Agency will review this information.

General Project Monitoring – Rights-of-Way, Easements, and Property Rights § 5001.205 (b)

You are responsible for ensuring the borrower has the necessary rights-of-way, easements, and property rights secured. This is critical to the construction, operation and maintenance of the project and to you when it comes to obtaining the required security.

You are responsible for ensuring that the Borrower has:

- (1) Obtained valid, continuous and adequate rights-of-way and easements needed for the construction, operations, and maintenance of a project; and
- (2) Obtained and recorded such releases, consents or subordinations to such property rights from holders of outstanding liens or other instruments as may be necessary for the construction, operation, and maintenance of the projects and to provide adequate loan security.

General Project Monitoring – Permits, Agreements, and Licenses § 5001.205 (c)

You are responsible to ensure the borrower has obtained all the necessary permits, agreements and licenses that are applicable to the project.

General Project Monitoring – Insurance § 5001.205 (d)

Ensuring the borrower obtains and maintains borrower and project insurance in substance and amount similar to that ordinarily required by lenders in the industry is your responsibility.

General Project Monitoring – Construction § 5001.205 (e) (1)

For construction projects, you will be required to monitor construction, conduct inspections, and notify the Agency of its scheduled inspections.

The Agency is not required to attend the inspections, but if we do, it is only for the benefit of the Agency. The Agency's inspection does not relieve you or any other party of their responsibility to monitor project construction. Agency inspections, if they are conducted, should be reserved for more complex, higher risk projects. Agency personnel, including engineers and architects, will not provide technical review or comments to you, the borrower or any other party involved in the project's development.

The regulation also gives the Agency the option to require you to hire a qualified, independent inspector. This would only be used in circumstances where the Agency determines there are additional risks. This might be identified in your inspection report or an issue might be disclosed to the Agency by a local inspector or contractor. Under any of these examples, the Agency would first reach out to you to discuss the issue and give you an opportunity to resolve the situation.

General Project Monitoring – Loan Note Guarantee (LNG) prior to Completion § 5001.205 (e) (2)

The Agency takes on additional risk when the Loan Note Guarantee (LNG) is issued before the project is complete. Therefore, more due diligence is required on the Agency's behalf to ensure adequate risk mitigation is in place during project construction.

Any project, for any one of the four programs, will charge an additional upfront/onetime fee of 0.5% when issuing the LNG prior to completion. This fee cannot be passed on to the borrower.

There is one exception. An LNG issued prior to project completion will not be an option for projects with non-proven technologies.

To request the LNG prior to completion, you will be required to submit evidence the following has been completed, contracted and/or obtained (5001.205 (e)(2)(i) – (viii)):

- (i) The promissory note specifying the full term of the note and containing the terms and conditions of each draw period;
- (ii) Evidence you and the borrower have entered into a contract with an independent disbursement and monitoring firm with a construction monitoring plan acceptable to and approved by the Agency;
- (iii) The borrower and you have agreed to a detailed timetable for the project with a corresponding budget of costs setting forth the parties responsible for payment. The timetable and budget will be confirmed as adequate for the planned development by a qualified independent consultant (e.g., the project architect or engineer) with demonstrated experience relating to the project's industry.

(iv) The borrower has entered into a firm, fixed-price construction contract with an independent general contractor with costs outlined in detail and terms specifying change order approvals, the agreed retainage percentage, and the disbursement schedule;

(v) Evidence you have properly vetted the financial feasibility and past performance of the contractor to show they are able to complete the project or that you have mitigated risk in the event the project is never completed, such as requiring a 100-percent performance/payment bond on the borrower's contractor to be maintained until the contractor is released from its obligation. The bonding agent must be listed on Treasury Circular 570;

(vi) Evidence, which the Agency at its sole discretion determines is satisfactory, that you have completed the due diligence necessary to confirm that the contractor is able to complete the project based on information including but not limited to the financial statements and past performance of the contractor;

(vii) When applicable, the borrower has entered into a contract with an independent technology development firm guaranteeing the following: Completion of the project with the necessary technology to successfully run the project and system performance for projects that utilize integrated processing equipment and systems, such as biorefineries, renewable energy systems, and chemical manufacturing plants. The credit underwriting of the independent technology development firm must be satisfactory to and approved by the Agency; and;

(viii) Evidence, in form and substance satisfactory to the Agency, that there is sufficient contingency funding in place to handle unforeseen cost overruns without seeking additional guaranteed assistance.

Based upon submission and review of the documentation, the Agency will then approve or not approve issuing the LNG prior to completion request.

General Project Monitoring – Reporting during Construction § 5001.205 (f)

For all construction projects, you must report any problems in project development within 15 calendar days of identifying the problem.

If you have received the loan note guarantee prior to project completion, then additional reporting to the Agency is required (§ 5001.205 (f) (1) – (6)).

You must provide monthly construction reports containing:

- (1) Certifications for each draw. There are two certifications required.
 - (i) The engineer or qualified consultant certifies the work referred to in the draw has been completed, and
 - (ii) The borrower and the engineer or qualified consultant certify the loan funds from the prior draw have been disbursed for eligible projects costs and mechanics lien waivers have been delivered.
- (2) List of invoices – you do not need to provide the invoices on a list of them
- (3) Details regarding the borrower's equity, other funds, and guaranteed loan funds disbursed to date
- (4) Status of construction
- (5) Inspection reports; and

(6) Concerns, potential problems, cost overruns, etc.

The Agency will review the monthly reports and discuss any concerns with you. If project development is in jeopardy, early intervention by you (and the Agency if necessary) may be needed to mitigate any future loss.

Monthly reports are only required for projects where the loan note guarantee is issued prior to project completion and requires additional review and oversight by the Agency.

General Project Monitoring – Use of Guaranteed Loan Funds § 5001.205 (g)

You are responsible for ensuring that all borrower funds are used before the guaranteed loan funds. You are to ensure the guaranteed loan funds are only used for eligible project costs – as provided in the conditional commitment, plans, specs and contract documents. Lastly, you must ensure the project will be completed within the approved budget. At the time you request the loan note guarantee, you will certify to these items and provide a copy of the settlement statement.

General Project Monitoring – Project Completion § 5001.205 (h)

Once the project is complete – which may be before or after the loan note guarantee is issued – you will provide the following items for all construction projects:

- (1) A Notice of Completion. This may also be referred to as an occupancy permit or similar type of document issued by a local authority responsible for building codes.
- (2) A certification that all funds were used for authorized purposes.
- (3) A certification that the project will be used for its intended purpose and meets the borrower's needs and guaranteed loan purpose per the approved application.

You are also required to have on file all mechanic's lien waivers or releases from contractors and materialmen, but these items are not provided to the Agency.

The requirements listed below only apply when the loan note guarantee is issued after construction.

- Renewable Energy Systems (RES) and Energy Efficiency (EEI) Projects that utilize integrated processing systems and equipment require a certification, from you, when the loan note guarantee is requested, certifying that the RES or EEI project has been constructed, installed and is operating as described in the technical report or on the vendor certification.
- For RES projects, you must certify the system has been operating at the steady state operating level for not less than 30 calendar days. Steady state operating level means there is an adequate and consistent supply of renewable energy resource(s) for the project, both on a short-term (current) and long-term basis, and the renewable energy system and process(es) are operating at projected capacity, consistently yielding an adequate quantity and quality of renewable energy.

If the loan note guarantee is issued prior to completion of the RES or EEI project, the provisions required for issuing the loan note guarantee prior to completion provide the Agency the assurance they need, and no further certification is required by the lender.

Compliance

Compliance with USDA Departmental Regulations Policies and Other Federal Laws § 5001.206

Projects receiving a loan guarantee are subject to USDA's Departmental regulations. You and your borrowers are also subject to other federal laws including but not limited to Equal Employment Opportunities, Americans with Disabilities Act, Equal Credit Opportunity Act and the Fair Housing Act. You should also be aware of the Uniform Relocation Assistance (URA) and Real Property Act of 1970. If relocation assistance compensation is required under the Act, it may have a significant financial impact on the project and borrower.

Environmental Responsibilities

The Agency is responsible for ensuring all requirements of the National Environmental Policy Act of 1969 (40 CFR part 1500) and related compliance actions, such as Section 106 of the National Historic Preservation Act (36 CFR part 800) and section 7 of the Endangered Species Act, are met. The Agency will complete the appropriate level of environmental review in accordance with 7 CFR part 1970, "Environmental Policies and Procedures."

(a) Borrower and lender responsibilities. The Agency, borrower and lender must take into consideration the potential environmental impacts of the project at the earliest planning stages. The Agency recommends that you contact the Agency to determine environmental requirements as soon as practicable after deciding to apply for a guarantee under this part.

(1) Lender. You are responsible for becoming familiar and ensuring compliance with Federal environmental requirements. You must alert the Agency to any environmental issues related to a project or items that may require extensive environmental review. Proposals that minimize the potential of any project to adversely impact the environment must be developed and provided upon request by the Agency.

(2) You must ensure that the borrower has—

- (i) Provided the necessary environmental information to enable the Agency to undertake its environmental review process in accordance with 7 CFR part 1970, including the provision of all required Federal, State, and local permits;
- (ii) Not taken any actions or incurred any obligations with respect to the project that would either limit the range of alternatives to be considered during the Agency's environmental review process or which would have an adverse impact on the environment, such as the initiation of construction. Taking any such actions or incurring any such obligations could result in project ineligibility; and
- (iii) Complied with any environmental mitigation measures required by the Agency.

(b) Environmental reviews. The Agency must complete all required environmental reviews, identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects on minority populations and low-income populations.

- (1) The Agency may schedule a site visit if the Agency determines one is necessary in order to determine the scope of the environmental review.
- (2) You must assist in the collection of additional data when the Agency needs such data to complete its environmental review of the project and mitigation of environmental issues.

It is not the Agency's responsibility to gather the environmental information for you or borrower. However, the Agency can provide you technical assistance regarding environmental requirements, such as the scope of the environmental review, but the Agency does not prepare the environmental documentation.

Conflicts of Interest

Conflicts of Interest § [5001.208](#)

You must report all conflicts of interests in writing to the Agency. Circumstances of conflicts of interests may preclude the borrower or you from participating in the transaction. Or, it may mean a project or use of the guaranteed loan funds is ineligible. In some cases, a conflict of interest may be mitigated. Conflict of interest means a situation in which a person has personal, professional or financial interests that prevent, or appears to prevent, the person from acting impartially. Conflict of interest also includes, but is not limited to:

- (1) A person acting as a compensated agent of the borrower and the lender on the same guaranteed loan,
- (2) Distribution or payment of guaranteed loan funds to an individual owner, partner, stockholder, or member of the borrower, or to a beneficiary or immediate family member of the borrower;
- (3) Refinancing debt that is owned by a loan packager, broker, or referral agent or its affiliates.

Chapter 5. Guarantee Application Provisions

Preliminary Eligibility

[Beginning the Application Process § 5001.301](#)

Instructions on How to File an Application

To file an application for programs under this initiative, you are encouraged to complete the following steps:

1. Download the [5001-1 – Application for Loan Guarantee Form](#). **Important Notice:** Potential applicants can view these forms in the **Internet Explorer (IE)** and **Edge** browsers. In **Chrome** or **Safari**, you must first download the forms to view form content. For assistance, please contact OneRDGuarantee@usda.gov.
2. Guidance, if needed, to access forms in Chrome is as follows:
 1. Open Chrome. Click on Settings (dots icon).
 2. Select '*Privacy and Security*'.
 3. Click on *Site Settings*
 4. Scroll to the bottom and select '*Additional Content Settings*' and select '*PDF Documents*'
 5. Make sure '*Download PDF files instead of automatically opening them in Chrome*' switch is 'On
 6. Close the browser.
3. Review the [final rule https://www.rd.usda.Final](https://www.rd.usda.Final) to ensure your application meets requirements under the initiative. General application requirements can be found in Subpart D of the regulation and starts at §5001.301.
4. Email a completed application to your [local state office](#).

Updated information on how to apply can be found at <https://www.rd.usda.gov/onerdguarantee>.

You may complete either a request for preliminary eligibility review or a full application to begin the process for obtaining a guaranteed loan. The Agency encourages, but does not require, filing requests for preliminary eligibility reviews in order to obtain Agency comments before submitting a full Application.

Preliminary Eligibility Review

[Preliminary Eligibility Review § 5001.302](#)

Preliminary eligibility reviews are suggested if you have questions about borrower or project eligibility and would like more information to determine the need to incur costs to develop a full application. This process is not mandatory.

The purpose of the preliminary review is to advise you as soon as possible when eligibility problems are likely or when there are concerns about whether the project meets the intent of the program. This early communication can prevent unnecessary expense and frustration in the

preparation of a full application. If the borrower and project appear to be eligible, the Agency encourages you to begin preparing the environmental information. Each request for a preliminary eligibility review must contain the material identified below. This information may be submitted in a narrative format or you may utilize your preliminary analysis or preliminary credit memo.

Regardless of format, you must provide the following information:

- (i) Name of the proposed borrower and co-borrower(s) as applicable, organization type, address, contact person, email address, and telephone number;
- (ii) Name of the proposed lender, address, telephone number, contact person, email address;
- (iii) Amount of the guaranteed loan request; and if known, the percentage of guarantee requested; the proposed rates and terms of the guaranteed loan; and the source(s) of other funding;
- (iv) If known, a description of collateral to be offered with estimated value(s), identity of guarantors, and the amount and source of equity, other capital, and matching funds to be contributed to the project; and
- (v) A brief description of the project, its location, products or services provided, service area, and, as applicable, availability of raw materials and supplies.

The information provided should be sufficient documentation to enable the Agency to assess borrower, lender, and project eligibility, including summaries or spreadsheets of financial statements or audits, relationships and identity of any affiliates; and copies of organizational documents, organizational charts, and existing debt instruments.

For REAP projects the following borrower and project information must be provided:

- (a) *Borrower eligibility information.* (1) Eligible borrowers must be:
 - (i) an agricultural producer meaning a person, including non-profits, directly engaged in the production of agricultural products through labor management and operations, including the cultivating, growing, and harvesting plants and crops (including farming); breeding, raising, feeding, or housing of livestock (including ranching); forestry products; hydroponics; nursery stock; or aquaculture, whereby 50 percent or greater of their gross income is derived from the operations. The percentage is calculated as the average of gross agricultural operations income of the concern divided by the gross non-farm income of the concern for the five most recent years. If the concern has been operation for less than 60 months but for at least 12 months, use average gross agricultural operations income and gross non-farm income for as long as the concern has been in operation. Agricultural producers seeking funding for a RES or EEI project may apply as either a rural small business or as an agricultural producer, provided they meet the applicable eligibility requirements. Agricultural producers seeking funding for an EEE project must be eligible and apply as an Agricultural Producer; or
 - (ii) a rural small business means a small business that is located in a rural area or that can demonstrate the proposed project for which assistance is being applied for is located in a rural area.

(2) The Borrower must provide the primary NAICS code applicable to the borrower's business concern and certify on the Agency approved application form or system that it meets the definition of agricultural producer or rural small business. The Agency reserves the right to request supporting documentation to verify borrower eligibility.

(b) *Borrower description.* Describe the ownership of the Borrower, including the information specified below, as applicable. Include a description of the Borrower's existing farm, ranch, or business operation, including how long the borrower has been in operation.

(1) Describe how the borrower owns the project and owns or controls the site for the project at the time of application and for the term of the guaranteed loan.

(2) For each entity or entities, the borrower controls or entity or entities it is controlled by, provide a list of the individual owners with their contact information. Describe the relationship between the borrower and the other entity or entities, including percentage of ownership and control, management, passive investor ownership, and any products exchanged. Organizational charts to demonstrate the structure of the borrower should be submitted when available.

(3) Identify the ethnicity, race, and gender of the borrower. Identify if the borrower is a veteran. This information is optional and is not required for a complete application but may be used by the Agency to award priority points.

Each request for REAP project preliminary eligibility review must provide information concerning the project as a whole and its relationship to the borrower's operations, including:

(1) Identification as to whether the project is an RES, EEI, or EEE project. Include a description and the location of the project;

(2) Description of how the project will have a positive effect on resource conservation, public health, and the environment;

(3) Identification of the amount of funds and the source(s) of funds the borrower is proposing to use for the project. Provide written commitments for funds at the time the application is submitted to receive points under this scoring criterion.

(i) For project funding provided by the borrower, documentation may include bank statements that demonstrates availability of funds.

(ii) For project funding that comes from a third party, a commitment letter signed by an authorized official of the third party. The letter must be specific to the project and must identify the dollar amount of any loan or other funding and any applicable rates and terms. If the third-party commitment is for a loan, the commitment must be firm; a letter-of-intent or pre-qualification letter subject to underwriting requirements or contingencies is not acceptable.

(ii) For REAP RES projects where a residence is located at or is closely associated with and shares an energy metering device with a rural small business or agricultural operation, demonstration that 50 percent or greater of the energy to be generated by the RES will benefit the rural small business or agricultural operation.

The Agency will review and provide written, informal comments on the materials submitted. This correspondence is not an eligibility determination, commitment of guarantee funds or a representation as to the availability of guarantee funds. The Agency will determine applicant and project eligibility and approval of the loan guarantee request only after receipt of a complete application.

The review:

- Is solely advisory in nature and may change upon receipt of additional information;
- Does not obligate the Agency to approve a guarantee request; and,
- Is not considered a favorable or adverse decision by the Agency.

The informal assessment will address the types of guarantee funding the proposal is eligible for along with an informal eligibility assessment of the borrower, project and lender.

Application Content

Application for Loan Guarantee § 5001.303(a)

The Agency will accept applications for all four programs on a continuous basis.

You must submit complete applications in order to be considered for a loan guarantee. You are encouraged to submit a complete application in a single package; however, the Agency may accept the environmental information required by the Agency and initiate and complete its environmental reviews in advance of receiving a complete application. If an application is incomplete, the Agency will notify you in writing of the items necessary to address the incomplete application. Upon receipt of a complete application, the Agency will complete its evaluation.

Application for Loan Guarantee – Application Content § 5001.303(b)

The Agency has a new application form RD 5001-1, Application for Loan Guarantee, that will be used for all four programs in OneRD Guarantee. The form will be completed by you and signed by you and your borrower. The form includes a list of items that must be included as applicable with the application package and all lender and borrower certifications.

You must provide an analysis of the scope of the project in relation to the borrower's overall operations supported by documentation applicable to the project. The Agency reserves the right to request additional documentation to support the funding request. All complete applications must contain at a minimum, the information outlined here:

(1) Credit evaluation using credit documentation procedures and underwriting processes that are consistent with generally accepted prudent lending practices for commercial, public and project financing and also consistent with your own policies, procedures, and lending practices. The underwriting process must include a review of each loan for which a loan guarantee is being sought. Applications involving affiliated entities must include a global credit evaluation and if applicable a global historical and projected debt service coverage analysis.

Applications involving guarantor(s) must also include a global debt service coverage analysis of the guarantor(s) including the cash flow of the guarantor(s). In addition, a review must be conducted of all applicable contracts, management agreements, and leases to determine they will not adversely affect either the borrower's repayment ability or the value of the collateral securing the guaranteed loan. The evaluation must address

any financial or other credit weaknesses of the borrower and project and discuss risk mitigation requirements imposed.

(2) You must provide the necessary information to enable to the agency to conduct an environmental review. Your responsibility is to ensure the borrower secures all required Federal, State and local permits, has not taken any actions or incurred any obligations with respect to the project limiting the range of alternatives to be considered during the Agency's review or would harm the environment and has complied with any mitigation measures required by the Agency.

(3) Required financial statements including:

- (i) Current Agency-acceptable balance sheet and year-to-date income statements of the borrower, and any guarantor(s) dated within 90 days of submission of the complete application;
- (ii) Agency-acceptable historical balance sheet, income statements, and cash flow statements of the borrower, and any guarantor(s) for the lesser of the last three fiscal years or all years of operation; and
- (iii) Projected balance sheets, income statements, and cash flow statements or a financial model starting from the current financial statements through a minimum of two years of the project performing at full operational capacity or stable operations. Based on the type of project or at the discretion of the Agency, financial projections or models may be required from current financial statements up to the end of the term of the guaranteed loan. Financial projections must be supported by a list of assumptions showing the basis for the projections. Projected financial statements must include a pro forma balance sheet projected for guaranteed loan closing.
- (iv) The Agency may request additional financial statements, financial models, cash flow information, updated financial statements, and other related financial information to determine the financial feasibility of a project and evaluate the credit underwriting of borrower, its affiliates, and any guarantors.

(4) For all applications of \$600,000 or greater, a draft loan agreement for the guaranteed loan that addresses the following:

- (i) Repayment term and amortization provisions of the guaranteed loan;
- (ii) Description of real property collateral, list of other collateral and identification of the lender's lien priority in the collateral;
- (iii) A list of persons and entities guaranteeing payment of the guaranteed loan and their percentage of guarantee;
- (iv) Type and frequency of borrower and guarantor financial statements to be required for the duration of the guaranteed loan (guarantor statements must be updated at least annually);
- (v) Prohibition against borrower assuming liabilities or obligations of others;
- (vi) Limitations on borrower dividend payments and compensation of officers, owners and members of borrower;
- (vii) Limitations on the purchase and sale of equipment and other fixed assets;
- (viii) Restrictions concerning mergers, consolidations, or other circumstances including significant management changes and a limitation on selling the business, project, or guarantee loan collateral without the concurrence of the lender;
- (ix) Maximum debt-to-net worth ratio, when required by you;
- (x) Minimum debt service coverage ratio, when required by you;

- (xi) A reserved section for any requirements imposed by the Agency in its conditional commitment;
- (xii) A reserved section for any Agency environmental requirements; and
- (xiii) A provision for you and the Agency to have reasonable access to the project and its performance information during the term of the guaranteed loan including the periodic inspection of the project by your representative or the Agency.

(5) Identify whether or not the borrower has a known relationship or association with an Agency employee. If there is a known relationship, identify each Agency employee with whom the borrower has a known relationship.

(6) At the time of the loan application, you must submit your loan classification and credit risk rating classification scale. You need to provide both the classification of the application submitted and your classification scale.

The Agency may request additional financial statements, financial models, cash flow information, updated financial statements, and other related financial information to determine the financial feasibility of a project and evaluate the credit underwriting of the borrower, its affiliates, and any guarantors.

Application for Loan Guarantee – Provisional Content § 5001.303(c)

Provisional content may be required if an application submitted proves to be deficient in some manner and additional documentation is required. This may be the case if your credit evaluation does not adequately address repayment ability. In this situation, you are not able to satisfactorily address this credit factor, so the agency can request an independent feasibility study. Provisional content also includes those items that may only apply to a particular program or type of project. It is not expected that every application will have deficiencies or need more provisional content. These items will only be requested based on the type of project being financed or as needed to address application deficiencies.

The following supplemental information may be required:

(1) Appraisals when taking chattels or real estate as security. Bonds or perfected assignments of income taken as security would not require an appraisal.

(2) Current credit reports are required for the borrower, any payment guarantors and any person or entity owning greater than 20% interest in the borrower or that controls the borrower. Credit reports are not required for elected or appointed officials of public bodies, Indian Tribes or non-profit organizations, passive investors and corporations listed on a major stock exchange. If the guaranteed loan is \$200,000 or more the credit report will be submitted to the Agency. For loans under \$200,000, the credit report must be kept on file with your application.

(3) The Agency may require an independent feasibility analysis prepared by a qualified, independent third party:

(i) If the Agency is unable to determine a basis for successful repayment of the loan based on:

(a) Documentation and analysis provided by the lender;

(b) Borrower's business plan;

(c) Other project information; or

(d) If the proposed project will have significant impacts on existing operations.

(e) Specific requirements for Elements of an Acceptable Feasibility Study are as follows:

- (i) Executive Summary;
 - (ii) Cost Benefit Analysis;
 - (iii) Market Analysis of current and future market potential, competition, sales or service estimations including current and prospective buyers or users;
 - (iv) Technical analysis of any technology to be used and/or the analysis of the delivery of goods and services, including transportation, business location and the need for technology, materials and labor;
 - (v) Financial analysis of the operation to achieve sufficient income, credit and cashflow to financially sustain the project over the long term and meet all debt obligations;
 - (vi) Management analysis of the legal structure of the business or operation; ownership, board and management;
 - (vii) Recommendation and opinion; and
 - (viii) Statement of qualifications of the author of the feasibility study.
- (4) Intergovernmental Consultation comments
 - (5) Engineering Documentation
 - (6) Architectural Reports
 - (7) Energy Audits or Energy Assessments requirements:
 - (i) total project cost is greater than \$80,000, the energy assessment must be conducted by an energy auditor, an energy assessor, or an individual supervised by either an energy assessor or energy auditor. The final energy assessment must be validated and signed by the energy assessor, the energy auditor who conducted the energy assessment, or by the supervising energy assessor or energy auditor of the individual who conducted the assessment, as applicable;
 - (ii) total project cost is \$80,000 or less, the energy assessment may be conducted by a person that has at least 3 years of experience and completed at least five energy assessments or energy audits on similar type projects;
 - (iii) demonstrate project will use less energy on an annual basis than the original building and equipment; and
 - (iv) provide evidence the technology is commercially available.
 - (8) Energy Efficient Equipment and Systems Data exceeding the following standards:
 - (i) Energy efficiency building codes, if available;
 - (ii) Federal or state energy efficiency standards, if available;
 - (iii) Other energy efficiency standards determined appropriate by the Agency;
 - (iv) If no codes or standards exist for the energy efficient equipment or system to be purchased or installed, then such equipment or system must meet the same efficiency measurements as the most efficient available equipment or system on the market;
 - (v) the project must be commercially available; and
 - (vi) the project must have technical merit as certified by the vendor or installer.

(I) Unless the information is contained in the feasibility study or in the credit evaluation, a business plan should be submitted to show how the project will operate and remain viable. This requirement may be omitted when guaranteed loan funds are used exclusively for debt refinancing.
 - (9) Affirmative Fair Housing Marketing Plan if the application is for 5 or more residential units, including nursing homes and assisted-living center.
 - (10) Certificate of Need for health care facilities – if required by state or federal law.
 - (11) For Business and Industry (B&I)

- (i) Department of Labor form if the proposed guaranteed loan is in excess of \$1,000,000 and will increase direct employment by more than 50 employees. You must provide sufficient project and demographic information to the Agency for completion of a Department of Labor review;
 - (ii) Pro-forma balance sheet projected for loan closing;
 - (iii) For companies listed on a major stock exchange or subject to the Securities and Exchange Commission (SEC) regulations, a copy of their most recent SEC Form 10-K, "Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934".
- (12) For Community Facility (CF) and Water and Waste Disposal (WWD)
- (i) Certification regarding credit elsewhere
 - (ii) Certification of significant community support from local government(s)
 - (iii) Organizational Documents if not already provided with a preliminary review

Application for Loan Guarantee – Application Modification § 5001.303(d)

Modification of the application will be considered prior to issuing the Loan Note Guarantee (LNG). However, the date of the complete application will be changed to the date the Agency receives the modified application from you and will be processed accordingly. Examples of application modifications include, but are not limited to, significant changes to the project, borrower, equity, or collateral.

Program Specific Application Requirements

Specific Application Requirements for Community Facilities (CF) Program § 5001.304

For CF projects you will submit a financial feasibility report prepared by a qualified firm or individual acceptable to the Agency. There are two types of reports, a financial feasibility analysis or a financial feasibility study with examination opinion. Your credit evaluation may serve as the financial feasibility analysis provided it includes the items outlined below:

- (1) Explanation of existing facility's current capacities; rates of usage; activities; suitability for continued use; deficiencies in servicing; staff or physical conditions and any other pertinent information;
- (2) Description of proposed facility construction and renovation by component parts including capacity of each component part and physical limiting factors;
- (3) Explanation and documentation of the need for the facility including service area, population trends; similar facilities and services in the area, usage trends, community support, regulatory agency approval, economy in the service area and analysis of staff and consultants;
- (4) Explanation of all financial assumptions, underlying and expected demand, use and projections of financial data, such as: changes in usage, all income and expenses, rate structure, allowance for collectible accounts; depreciation life and method and description of long-term debts;
- (5) Prepare five years' projections of balance sheet for all funds, statement of income and expense, statement of cash flow (cash receipts and disbursements) and comparison data for facilities in similar industry or service (most recent year only); and
- (6) Provide a resume or statement of qualifications of the preparer of the financial feasibility analysis.

A financial feasibility analysis is used when the guaranteed loan is \$5 million or less, when the loan is secured by a General Obligation (GO) bond or other tax supported income sufficient to pay the debt service for the life of the loan, or for borrowers with audited financial statements, if the last three years indicate the ability to pay all existing and new debt service.

If the proposed loan does not meet the criteria for a financial feasibility analysis, then a financial feasibility study with examination opinion is required. The financial feasibility study with examination opinion is the examination of the prospective financial information provided by the borrower (management) culminating in an examination opinion on the reliability of the borrower's financial statements and management's underlying assumptions. The examination opinion provides a high level of assurance. The examination opinion will be prepared by a certified public accountant (CPA) with the necessary expertise to perform the study and backed by their professional liability insurance. The following are the items typically included in a financial feasibility study with examination opinion:

- (1) Signed and dated opinion letter;
- (2) Five years historic and five years forecasted financial statements;
- (3) Schedule of ratios pertinent to the industry;
- (4) Summary of significant financial forecast assumptions and accounting policies;
- (5) Summary of significant demand forecast assumptions;
- (6) Sensitivity analysis; and
- (7) Other information deemed appropriate by the preparer.

The goal of either financial feasibility report is to address the likelihood the project will provide sufficient revenues during the life of the loan for operating and maintenance expenses; reserve account requirements and debt service. The report is an important tool for the borrower's decision-making process especially when taking on significant debt. A well-prepared financial feasibility report will address economic, market, technical, financial and management feasibility; and the report preparer will address which outcomes are most feasible.

Specific Application Requirements for Water and Waste Disposal Program § 5001.305

In addition to the requirements for a complete application, including possible provisional content requirement described in this chapter, the following documents must be submitted when seeking a loan guarantee for a WWD project:

- a. Engineering documentation
 - (i) Designed utilizing accepted architectural and engineering practices; and
 - (ii) Approved by the applicable state, local and/or tribal regulatory agency.

The Agency does not provide technical oversight or recommendations on the technical feasibility of the project; however, assistance to clarify Agency requirements and regulations may be provided.

- b. Feasibility Considerations
 - (i) Proforma Typical Year Budget
- c. Credit analysis
 - (i) Large users or businesses relying upon significant revenues for operating and maintenance expenses, reserve account funding and/or debt service will have the economic viability assessed; and
 - (ii) Any interest rate adjustment that may be instituted under the terms of the promissory note or loan note guarantee
- d. American Iron and Steel (AIS)
 - (i) Guidance on AIS will be included in the conditional commitment.

Specific Application Requirements for Business and Industry (B&I) Program – loans greater than \$600,000 - § 5001.306(a)

Additional content required for B&I loans that are greater than \$600,000:

- (a) U.S. Department of Labor review if the proposed guaranteed loan is in excess of \$1,000,000 and will increase direct employment by more than 50 employees

- (b) Pro forma balance sheet projected for loan closing
- (c) Feasibility Study is required when:
 - (i) Loan is over \$1 million for a new business; or
 - (ii) Lender's analysis and borrower information do not adequately provide details to determine the technical and economic feasibility of the project; or
 - (iii) Project will significantly impact the operations or cash flow of an existing business
- (d) Technical report for Renewable Energy Systems (RES) and integrated processing equipment & systems in conformance with the following:
 - (1) A description of the proposed RES project, including its intended purpose;
 - (2) Vendor/installer certified projections on energy to be replaced and/or generated, including the quality and availability of the renewable resource to the project; if there is a residence closely associated with the RES project, the historical amount of energy used by the residence and the historical amount of energy used by the agricultural operation or rural small business, as applicable, to satisfactorily demonstrate 50 percent or more of proposed generation will benefit the agricultural operation or rural small business;
 - (3) Vendor/installer certification that the RES project uses commercially available technology;
 - (4) Certification that the vendor/installer is qualified to complete the project as intended;
 - (5) Certification that the project will perform over its useful life in a reliable and cost-effective manner; and
 - (6) The projected financial performance of the project. The description must address total project costs, revenues accrued from the sale or crediting of energy, quantity and value of energy offset, and revenue from byproducts. Include applicable investment and other production incentives and indicate if they are one time or reoccurring incentives. Provide an estimate of simple payback, including all calculations, documentation, and any assumptions.
- (e) For companies listed on a major stock exchange or subject to the Securities and Exchange Commission (SEC) regulations, a copy of their most recent SEC Form 10-K, "Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934".
- (f) Current financial statements of affiliates

Specific Application Requirements for Business and Industry (B&I) Program – loans \$600,000 or less - § 5001.306(b)

If the guaranteed loan amount is \$600,000 or less and the Agency determines that your analysis, borrower's business plan or other project or borrower information is sufficient to determine technical and market feasibility and economic viability of the project, you must collect and maintain in your file the items listed below, as applicable:

- (a) Narrative description of the project including history of the borrower and adequacy of cash flow and borrower equity
- (b) Financial statements, including current Agency-acceptable balance sheet and year-to-date income statements
- (c) Proposed security including collateral and any payment guarantees
- (d) Strengths and weaknesses of the guaranteed loan request and the lender's need for the loan guarantee to mitigate the specific risks

You may choose whether to submit the following items:

- (a) Narrative description of the management capabilities and corporate structure of the borrower

- (b) Environmental information for the project and any environmental reviews
 - (c) Agency-acceptable historical balance sheets and income statements of the borrower and its affiliates
 - (d) Financial statement of any personal, partnership or corporate guarantors
- If you choose to not submit these items, you must maintain them in your files.

Specific Application Requirements for Rural Energy for America Program (REAP) Projects § 5001.307)

In addition to the required application items for a loan guarantee described in this chapter, applications for a REAP loan guarantee must include:

- a. Borrower information:
 - i. Borrower eligibility certification
 - (i) For Renewable Energy System (RES) or Energy Efficiency Improvement (EEI), borrowers must meet the definition of:
 - (1) an agricultural producer meaning a person, including non-profits, directly engaged in the production of agricultural products through labor management and operations, including the cultivating, growing, and harvesting plants and crops (including farming); breeding, raising, feeding, or housing of livestock (including ranching); forestry products; hydroponics; nursery stock; or aquaculture, whereby 50 percent or greater of their gross income is derived from the operations. The percentage is calculated as the average of gross agricultural operations income of the concern divided by the gross non-farm income of the concern for the five most recent years. If the concern has been operation for less than 60 months but for at least 12 months, use average gross agricultural operations income and gross non-farm income for as long as the concern has been in operation; or
 - (2) a rural small business means a small business that is located in a rural area or that can demonstrate the proposed project for which assistance is being applied for is located in a rural area.
 - (ii) For Energy Efficiency Equipment (EEE), borrowers must meet the definition of:
 - (1) an agricultural producer meaning a person, including non-profits, directly engaged in the production of agricultural products through labor management and operations, including the cultivating, growing, and harvesting plants and crops (including farming); breeding, raising, feeding, or housing of livestock (including ranching); forestry products; hydroponics; nursery stock; or aquaculture, whereby 50 percent or greater of their gross income is derived from the operations. The percentage is calculated as the average of gross agricultural operations income of the concern divided by the gross non-farm income of the concern for the five most recent years. If the concern has been operation for less than 60 months but for at least 12 months, use average gross agricultural operations income and gross non-farm income for as long as the concern has been in operation.
 - (iii) Agricultural producers seeking funding for a RES or EEI project may apply as either a rural small business or as an agricultural producer, provided they meet the applicable eligibility requirements. Agricultural producers seeking funding for an EEE project must be eligible and apply as an Agricultural Producer
 - ii. All applicants must provide NAICS code applicable to their business concern; and

- iii. Race, ethnicity, sex, national origin data and veteran status are optional, but may be used for priority point scoring.
- b. Borrower descriptions:
 - i. Existing farm, ranch, or business operation, including how long the borrower has been in operation;
 - ii. Ownership and control meaning ownership of the project or ownership or control of the site for the project at the time of application and for the term of the guaranteed loan; and
 - iii. For each entity the borrower controls or entity it is controlled by
 - i. A list of the individual owners and their contact information
 - ii. A description of the relationship including percentage of ownership and control, management, passive investor ownership and any products exchanged
 - iii. Organizational charts when available
- c. Project information – Information on the project as a whole and its relations to the borrower’s operations:
 - i. Identification as Renewable Energy System (RES), Energy Efficiency Improvement (EEI) or Energy Efficiency Equipment (EEE) project, description and location of the project;
 - (2) Project’s effect on resource conservation, public health and the environment;
 - (3) Amount and source of other funds (written commitment at application to receive priority points):
 - i. Borrower funds – Document availability, such as bank statements
 - ii. Third party funds – Commitment letter signed by an authorized representative. The letter must be:
 - Specific to the project
 - Identify the dollar amount
 - If the other funding is a loan:
 - Provide applicable rates and terms
 - Commitment must be a firm commitment. Letter of intent, pre-qualification or contingent offers are not acceptable.
- d. Feasibility Study - an opinion or finding conducted by an independent qualified consultant(s) evaluating the economic, market, technical, financial and management capacity and capability of a proposed project or operation in terms of expectations for success.
 - i. RES projects only;
 - ii. When deemed necessary by lender or Agency;
 - iii. Feasibility study contents:
 - (a) Executive Summary;
 - (b) Cost Benefit Analysis;
 - (c) Market Analysis of current and future market potential, competition, sales or service estimations including current and prospective buyers or users;
 - (d) Technical analysis of any technology to be used and/or the analysis of the delivery of goods and services, including transportation, business location and the need for technology, materials and labor;

- (e) Financial analysis of the operation to achieve sufficient income, credit and cashflow to financially sustain the project over the long term and meet all debt obligations;
 - (f) Management analysis of the legal structure of the business or operation; ownership, board and management;
 - (g) Recommendation and opinion; and
 - (h) Statement of qualifications of the author of the feasibility study.
- e. All eligible projects must have technical merit and provide information noted below:
- i. the calculation of simple payback as outlined below:
 - (i) Energy efficiency improvement projects simple payback = $(\text{Total Project Costs}) \div (\text{Dollar value of energy saved})$.
 - (a) Energy saved will be determined by subtracting the projected energy use if the proposed EEI project had been in place for the original building and/or equipment for the same time period (12, 24, 36, 48 or 60 consecutive months) as the actual average total energy used in the original building and/or equipment, prior to the EEI project, in British thermal units and converting the result to a monetary value using the actual average price paid over the same time period used to calculate the actual energy used. Please note: Energy efficiency improvement projects simple payback does not allow EEI to monetize benefits other than the dollar amount of the energy savings the agricultural producer or rural small business realizes as a result of the improvement.
 - (b) Renewable energy systems projects simple payback = $(\text{total project costs}) \div (\text{dollar value of energy units replaced, credited, sold, or used and fair market value of byproducts as applicable in a typical year})$.
 - (c) Value of energy replaced will be calculated based on the borrower entity's historical energy consumption with actual average price paid in a 12, 24, 36, 48 or 60 consecutive month time period.
 - (d) Value of energy credited or sold will be calculated based on the amount of energy units to be sold at the proposed rate per unit, as documented in utility net metering or crediting policies and/or a purchase agreement.
 - (e) If proposed energy will be used in a new facility, value of energy used will be calculated based on the amount of energy units to be used at the documented price per unit of conventional fuel alternative.
 - (f) Value of byproducts produced by and used in the project or related enterprises should be documented at the fair market value to be received for the byproducts in a typical year.
 - (g) Renewable energy systems projects simple payback does not include any one-time benefits such as but not limited to construction and investment-related benefits, nor credits which do not provide annual income to the project, such as tax credits;
 - ii. RES projects calculate percent historical use compared to projected generation;
 - iii. RES projects with residence closely associated 50% or greater benefit operation;
 - iv. Demonstrate that project will operate or perform over useful life in reliable, safe and cost-effective manner;
 - v. The following technologies must provide a technical report:
 - i. Hydrogen
 - ii. Ocean energy
 - iii. Geothermal electric generation
 - iv. Anaerobic digesters and biogas

- v. Biomass
 - vi. Hybrid applications
 - vii. Renewable energy systems with storage components
 - viii. Energy efficiency improvements
- vi. Technical Report EII with total project costs of \$80,000 or less:
 - i. Description of the proposed project, including its intended purpose
 - ii. Vendor/Installer certification that the project uses commercially available technology
 - iii. Vendor/Installer certified projections on the quantity of energy to be saved
 - iv. Vendor/Installer certification that they are qualified to complete the project as intended
 - v. Vendor/Installer certification that the system will operate and perform over the project's useful life in a reliable and cost-effective manner
 - vi. Simple payback estimate including all calculations, documentation and any assumptions
 - vii. Technical Report RES with total project costs of \$80,000 or less:
 - i. A description of the proposed RES project including its intended purpose
 - ii. Vendor/Installer certified projections on energy to be replaced and/or generated, including the quality and availability of the renewable resource to the project
 - 1. Residence closely associated - demonstrate 50% or more of proposed generation will benefit business operation
 - iii. Vendor/Installer certification that the project uses commercially available technology
 - iv. Vendor/Installer certification that they are qualified to complete the project as intended
 - v. Vendor/Installer certification that system will operate and perform over useful life reliable, cost-effective manner
 - vi. Projected financial performance of the project.
 - total project costs
 - revenues accrued from the sale or crediting of energy and revenue from by-products
 - quantity and value of energy offset
 - applicable investment and production incentives, indicate if one-time or recurring
 - vii. An estimate of simple payback, including calculations, documentation and any assumptions must also be included.
 - viii. RES Technical Report with total project costs greater than \$80,000 and up to but not including \$200,000 must
 - i. Provide a description of the project, including its intended purpose and a summary of how the project will be constructed and installed;
 - ii. Describe how the system meets the definition of commercially available;
 - iii. Identify the project's location;
 - iv. Describe the project's size;
 - v. Describe the quality and availability of the renewable resource to the project;
 - vi. Identify the amount of renewable energy generated that will be generated once the proposed project is operating at its steady state (meaning there is adequate and consistent supply of the applicable renewable energy resource(s) for the project both on a short-term (current) and long-term basis and the renewable energy system and process(es) are operating at projected

- capacity, consistently yielding an adequate quantity and quality of renewable energy.);
- vii. If applicable, also identify the percentage of energy being replaced by the system;
 - viii. If the application is for a bioenergy project, provide documentation that any and all wood biomass feedstock from National Forest System land or public lands cannot be used as a higher value wood-based product;
 - ix. Describe the projected financial performance of the proposed project in terms of Total Project Costs, energy savings and revenues, including applicable investment and other production incentives accruing from government entities (Revenues to be considered shall accrue from the sale of energy, offset or savings in energy costs, byproducts and green tags);
 - x. Provide an estimate of simple payback (Total Project Costs ÷ Dollar value of energy saved), including all calculations, documentation and any assumptions;
 - xi. Describe how the design, engineering, testing, and monitoring are sufficient to demonstrate that the proposed project will meet its intended purpose, ensure public safety, and comply with applicable laws, regulations, agreements, permits, codes, and standards.
 - xii. Describe how all equipment required for the RES is available and able to be procured and delivered within the proposed project development schedule.
 - xiii. Present information regarding component warranties and the availability of spare parts.
 - xiv. Describe the key service providers, including the number of similar systems installed and/or manufactured, professional credentials, licenses, and relevant experience. When specific numbers are not available for similar systems, estimations will be acceptable.

RES Technical Report with total project costs \$200,000 or more, must:

- i. Describe the project team, their professional credentials, and relevant experience. The description shall support that the project team key service providers have the necessary professional credentials, licenses, certifications, and relevant experience to develop the proposed project.
- ii. Describe the necessary agreements and permits (including any for local zoning requirements) required for the project and the anticipated schedule for securing those agreements and permits. For example, Interconnection Agreements and Power Purchase Agreements are necessary for all Renewable Energy projects electrically interconnected to the utility grid.
- iii. Describe the quality and availability of the renewable resource and the amount of Renewable Energy generated through the deployment of the proposed system.
 - (1) *Wind*. Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the source of the wind data and the conditions of the wind monitoring when collected at the site or assumptions made when applying nearby wind data to the site.
 - (2) *Solar*. Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the source of the solar data and assumptions.
 - (3) *Bioenergy/Biomass Project*. Provide adequate and appropriate data to demonstrate the amount of renewable resource available.

Indicate the type, quantity, quality, and seasonality of the Renewable Biomass resource, including harvest and storage, where applicable. Where applicable, also indicate shipping or receiving method and required infrastructure for shipping. For proposed projects with an established resource, provide a summary of the resource. Document that any and all woody biomass feedstock from National Forest System land or public lands cannot be used as a higher value wood-based product.

(4) *Geothermal Electric Generation*. Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the quality of the geothermal resource, including temperature, flow, and sustainability and what conversion system is to be installed. Describe any special handling of cooled geothermal waters that may be necessary. Describe the process for determining the geothermal resource, including measurement setup for the collection of the geothermal resource data. For proposed projects with an established resource, provide a summary of the resource and the specifications of the measurement setup.

(5) *Geothermal Direct Generation*. Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the quality of the geothermal resource, including temperature, flow, and sustainability and what direct use system is to be installed. Describe any special handling of cooled geothermal waters that may be necessary. Describe the process for determining the geothermal resource, including measurement setup for the collection of the geothermal resource data. For proposed projects with an established resource, provide a summary of the resource and the specifications of the measurement setup.

(6) *Anaerobic Digester Project/Biogas*. Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the substrates used as digester inputs, including animal wastes or other Renewable Biomass in terms of type, quantity, seasonality, and frequency of collection. Describe any special handling of feedstock that may be necessary. Describe the process for determining the feedstock resource. Provide either tabular values or laboratory analysis of representative samples that include biodegradability studies to produce gas production estimates for the project on daily, monthly, and seasonal basis. If an anaerobic digester project, identify the type of operation (e.g., dairy, swine, layer, etc.), along with breed, herd population size and demographics, and the type of waste collection method and frequency information available. For the biogas produced, identify the type of digester (e.g., mixed, plug-flow, attached film, covered lagoon, etc.), if applicable, or the method of capture (landfill, sewage waste treatment, etc.) and treatment. Identify the system designer and determine the digester design assumptions such as the number and type of animals, the bedding type and estimated annual quantity used, the manure and wastewater volumes, and the treatment of digester effluent

(e.g., none, solids separation by screening, etc. with details including use or method of disposal).

(7) *Hydrogen Project*. Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the type, quantity, quality, and seasonality of the Renewable Biomass resource. For solar, wind, or geothermal sources of energy used to generate hydrogen, indicate the renewable resource where the hydrogen system is to be installed. Local resource maps may be used as an acceptable preliminary source of renewable resource data. For proposed projects with an established renewable resource, provide a summary of the resource.

(8) *Hydroelectric/Ocean Energy Projects*. Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the quality of the resource, including temperature (if applicable), flow, and sustainability of the resource, including a summary of the resource evaluation process and the specifications of the measurement setup and the date and duration of the evaluation process and proximity to the proposed site. If less than 1 year of data is used, a Qualified Consultant must provide a detailed analysis of the correlation between the site data and a nearby, long-term measurement site.

(9) *Renewable Energy Systems with Storage Components*. Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the type, quantity, quality, and seasonality of the Renewable Energy resource, where applicable. Indicate the storage system specifications and the integrity of the system in conjunction with the renewable energy system it is integrated with, including application, size, lifetime, response time, capital and maintenance costs associated with the operation as well as the distribution of the stored resource(s).

iv. Describe the intended purpose of the project and the design, engineering, testing, and monitoring needed for the proposed project. The description shall support that the system will be designed, engineered, tested, and monitored so as to meet its intended purpose, ensure public safety, and comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, identify that all major equipment is Commercially Available, including proprietary equipment, and justify how this unique equipment is needed to meet the requirements of the proposed design. In addition, information regarding component warranties and the availability of spare parts must be presented.

v. Describe the overall project development method, including the key project development activities and the proposed schedule, including proposed dates for each activity. The description shall identify each significant historical and projected activity, its beginning and end, and its relationship to the time needed to initiate and carry the activity through to successful project completion. The description shall address Applicant project development cash flow requirements. Details for equipment procurement and installation shall be addressed. Applications should include a concise development schedule with timelines for activities.

- vi. Describe the availability of the equipment required by the system. The description shall support that the required equipment is available and can be procured and delivered within the proposed project development schedule. Describe the plan for site development and system installation, including any special equipment requirements. In all cases, the system or improvement shall be installed in conformance with manufacturer's specifications and design requirements, and comply with applicable laws, regulations, agreements, permits, codes, and standards.
- vii. Describe the operations and maintenance requirements of the system, including major rebuilds and component replacements necessary for the system to operate as designed over its useful life. The warranty must cover and provide protection against both breakdown and a degradation of performance. The performance of the RES or EEI shall be monitored and recorded as appropriate to the specific technology.

Application Evaluation

Application Evaluation and Award Provisions § 5001.315(a)

You may be required to obtain additional assistance if the Agency determines the lender does not have the necessary expertise to evaluate the type and complexity of the financing such as

- a. asset-based financing
- b. cash flow financing;
- c. bond financing; or
- d. you have little or no experience with the borrower's industry.

Application Evaluation and Award Provisions – Evaluation and Eligibility Determinations § 5001.315(b)

The Agency will review each application and make a formal determination on:

1. Eligibility of:
 - a. Lender
 - b. Borrower
 - c. Project
 - d. Loan purpose
 - e. Proposed use of funds
2. Reasonable assurance of repayment
3. Sufficient collateral and equity as applicable
4. Loan's compliance with all applicable statutes and regulations
5. Environmental review completion

The timing of Agency review will be enhanced by a quality lender's analysis that includes all credit evaluation criteria as stated in § 5001.202.

Application Evaluation and Award Provisions – Priority Score § 5001.315(c)

The Agency will score applications and give priority to funding those with the highest priority. Scoring will be done based on the point system for the respective program. Lenders must provide information necessary for the Agency to complete priority scoring. Minimum priority scores *may* be established for each program in the Annual Federal Register publication. Applications not meeting the minimum score will compete with all other guaranteed loan

applications for the specific program on the first business day in September in which the application is ready for funding.

Application Evaluation and Award Provisions – Funding Selected Application § 5001.315(d)

Applications will be reviewed and funded in the order they are received. If the remaining funds are insufficient to fully fund the next highest scoring application(s):

1. The Agency will notify you and offer the remaining funds. If you do not accept, the Agency will process the next highest scoring application.
2. If two applications receive the same priority score and funds are insufficient to fund each application, the Agency will notify each lender and offer a pro-rated share of the remaining funds
3. If offered less than the full amount requested, you may opt to wait until the next funding cycle. Opting to wait does not give the applicant priority in subsequent funding cycles.
4. If a lower amount is accepted, you must
 - a. Certify that the purpose of the project can still be met with the lower funding amount, and
 - b. Document that the borrower has obtained the remaining funds needed to complete the project as originally proposed.

Application Evaluation and Award Provisions – Handling of Ranked Applications Not Funded § 5001.315(e)

The Agency will withdraw from consideration ranked applications that have not received funding as follows:

1. If an unfunded application has a priority score equal to or greater than any applicable minimum score, the Agency will retain the application for consideration in subsequent funding cycles. Unfunded applications will be withdraw after 12 months excluding the months funding was unavailable.
2. For applications that do not meet the minimum priority score, you will be notified in writing that sufficient funds are not available for your request and the application will no longer be processed. This is not an adverse decision by the Agency.

Application Evaluation and Award Provisions – Commencement of the Project § 5001.315(f)

The borrower assumes all risk if they purchase equipment or real estate and/or start construction before the conditional commitment is issued and prior to the lender and borrower's acceptance of the conditional commitment. This action could also affect the environmental review.

Application Evaluation and Award Provisions – Application Withdrawal § 5001.315(g)

During the period between the submission of an application and prior to issuance of the conditional commitment, you must notify the Agency, in writing, if the project is no longer viable or the borrower no longer is requesting financial assistance for the project. When you notify the Agency, the Agency will rescind the selection and withdraw the application.

Priority Points

Project Priority Point System and Reservation of Funds

Project priority point systems for each program can be found here:

1. Community Facilities - § 5001.316 [CF Priority Points and reservation of funds](#)
2. Water and Waste Disposal - § 5001.317 [WWD Priority Points](#)

3. Business and Industry - § 5001.318 - [B&I Priority Points](#)
4. Rural Energy for America Program - § 5001.319 [REAP Priority Points](#).

Chapter 6. Loan and Guarantee Provisions

Loan Provisions

The Loan Provisions include the requirements for interest rates, loan terms, lender fees, guarantee loan amounts, guarantee percent and participation or assignment of the guarantee loan. Unless specifically stated in the regulation, the loan provisions apply to all four programs in OneRD Guarantee.

Interest Rate Provisions § 5001.401

The interest rate is negotiated between you and the borrower and can be either fixed or variable or a combination of the two. The rate cannot be more than the rate you would charge customers for non-guaranteed loans under similar circumstances. You can charge a different rate on the guaranteed and unguaranteed portion of the loan.

Variable rates may be used; however, several factors apply:

- (1) It must be tied to a published base rate such as the Wall Street Journal Prime;
- (2) The base rate, plus any interest rate factor, must be clearly documented in the promissory note; for example, the Wall Street Journal Prime Rate + 1%;
- (3) The variable rate cannot adjust more often than quarterly; and
- (4) A provision must be in place to adjust payments to fully amortize the loan.

Choosing to apply multiple rates to the loan, requires providing the Agency with the overall effective rate. If the base rate of a variable rate loan is changed, or a fixed rate changed after issuance of the conditional commitment, but prior to issuance of the Loan Note Guarantee, Agency approval is required and will be documented in an amendment to the conditional commitment.

Term Length, Loan Schedule and Repayment § 5001.402

Loan term is established by you with concurrence by the Agency. The term must not exceed the lesser of:

- (1) the useful life of the project or asset being financed and used as collateral;
- (2) 40 years; or
- (3) state statute allowance.

The loan repayment schedule must have periodic payments with no less frequency than annual. Also, the guaranteed and unguaranteed portions of the loan must be amortized over the same term. Balloon payments are not allowed, but interest-only payments for up to 3 years will be considered.

For projects structured under New Market Tax Credits, the Agency may consider an interest-only term not to exceed seven years if you require:

- (1) A debt repayment reserve fund or sinking fund in an amount at least equal to the guaranteed loan's principal amortization that would have otherwise applied to the loan if equally amortized payments were collected during the seven-year term; and
- (2) Such reserve funds or sinking funds are applied to the guaranteed loan as an additional payment of principal at the end of such interest-only term.

It is the responsibility of the Agency to review and concur in the terms, loan schedule and repayment outlined in the promissory note. The loan maturity and repayment schedule should

be reasonable based on the borrower's ability to repay and the approved loan term must not exceed the useful operating life of the collateral or state statute.

Lender Fees § 5001.403

Fees can be charged if they are reasonable, routine and customary and are the same fees charged other customers without a guarantee. The fees can include prepayment penalties and late payment fees. However, in the event of a loss claim, the Agency loan note guarantee will not cover default charges, penalty interest, late payment fees and additional interest expense.

Guaranteed Loan Amounts § 5001.406 (a) – (d)

Maximum guaranteed loan amounts are established for all four programs. The maximum amounts listed below include the outstanding principal and interest balance of any existing guarantee loan for the respective program, plus the loan that is the subject of the application and will include both the guaranteed and unguaranteed portions of the guaranteed loan.

- a. Community Facility (CF) projects - \$100 Million
- b. Water and Waste Disposal (WWD) projects - \$50 Million
- c. Business and Industry (B&I) projects - \$25 Million
 - (i) \$40 Million maximum allowed for rural cooperatives that process value-added agriculture commodities.
 - (ii) Loans in excess of \$25 Million may only be approved at the discretion of the Secretary.
- d. Rural Energy for America Program (REAP) projects - \$25 Million
 - (i) Provided the loan does not exceed 75% of the eligible project costs.
 - (ii) Minimum loan amount - \$5,000.

Percentage of Loan Guarantee § 5001.407

The regulation establishes the maximum guarantee percentage at 90% for all programs. Every year the programs will establish their guarantee percent and collectively publish a Notice in the Federal Register to announce this information. The percentages for each program may vary but no program will ever exceed 90%. Each program will take current Federal credit policy into consideration when establishing guarantee percent. This is often referred to as determining the subsidy impact of the program. [Website link to current annual notice](#)

Participation or Assignment of Guaranteed Loan § 5001.408

You may obtain participation in the loan by selling an interest to one or more participating lenders or you may assign all or part of the guaranteed portion of the guaranteed loan on the secondary market. In both cases, you, our applicant, retain the note and collateral and are responsible for managing and servicing the loan.

In participation, a participation agreement is typically used. In an assignment, the Agency's Assignment Guarantee Agreement is used. For both options, you must hold a minimum of 7.5% of the loan and this amount must be from the unguaranteed portion. This percentage, 7.5%, is an increase from the previous programs' regulations. The 7.5% retention requirement can be reduced, with Agency approval, when necessary for you to comply with regulatory authority.

Participations are not tracked by the Agency and do not require any additional Agency due diligence, but assignments are. In both options, participation or assignment, you cannot participate or assign the guaranteed or non-guaranteed portion of the loan to the borrower, or members of the borrower's immediate family, the borrower's officers, directors, stockholders, other owners, a parent company, affiliate or subsidiary of the borrower.

For you to assign the note on the secondary market, the loan must be closed, fully disbursed and current. Should you use the multi-note method, you may assign each note separately on the secondary market as soon as the note is closed, fully disbursed and current.

You will maintain a servicing fee of 50 basis points from the holder on each note. When you apply loan payments or collateral proceeds, the payments will be prorated between the guaranteed and unguaranteed portions of the loan.

You, or the holder, may request the Agency issue a Certificate of Incumbency to verify the signature and title of the Agency official who signed the loan note guarantee, your agreement and assignment guarantee agreement. The holder can reassign the unpaid guaranteed portion of the loan, in full. This subsequent assignment requires notice to you and the Agency using any format but does not require the Agency to issue a new assignment guarantee agreement.

The original assignment guarantee agreement will be transferred to the new holder.

Even when the loan is assigned on the secondary market, you remain bound to all obligations under the Loan Note Guarantee, Lender's Agreement and the OneRD Guarantee Regulations. The holder maintains the right to require purchase from either you or the Agency, if the borrower is in monetary default or you fail to pay the holder. More details can be found at 5001.511 Repurchases from Holders in Chapter 7.

Guarantee Provisions

Topics include the Conditional Commitment, loan closing, issuance of the Loan Note Guarantee, guarantee fees, changes prior to loan closing, other federal, state and local requirements, and replacement of the loan note guarantee.

General § 5001.450

A loan note guarantee issued under the OneRD Guarantee regulation constitutes an obligation supported by the full faith and credit of the United States. It is incontestable except for fraud or misrepresentation.

Conditions of the guarantee are subject to the following items:

- (a) The guarantee must be evidenced by a Loan Note Guarantee;
- (b) The lender must treat the guaranteed and unguaranteed portion of the loan equally regarding how the loan is secured and payments applied; and
- (c) If the lender submits a loss claim, it cannot include interest-on-interest, default charges, penalty interest, or late fees.

Violations making the lender's loan note guarantee unenforceable are:

- (i) Violation of usury laws;
- (ii) Use of guaranteed loan funds for unauthorized loan purposes or to the extent that those funds are used for purposes other than those specifically approved by the Agency in its conditional commitment or amendment thereof;
 - (1) Ineligible or unauthorized loan purposes include:

- (a) Payment in excess of actual costs (e.g., profit, overhead, indirect costs, and wages to owners) incurred by the contractor or other service provider on a contract or agreement that has been entered into at less than an arm's length transaction or has a potential for a conflict of interest. In situations where there is common ownership or an otherwise closely-related company is being paid to do construction or installation work for a borrower, only documented costs associated with the construction or installation can be paid with guaranteed loan funds and cannot include any profit or wages to such related Person.
 - (b) Payment on any other Federal loan or debt.
 - (c) Payment of a Federal judgment, State or Federal tax lien, or other debt owed to the United States.
 - (d) Loan finder or broker fees.
 - (e) Refinancing debt that is owned by a loan packager or broker or their respective affiliates.
 - (f) For loans as specified under CF and WWD, costs normally provided by a business or industrial user (e.g., wastewater pretreatment).
 - (g) For loans as specified under CF and WWD, any portion of the cost of a project that does not serve a rural area.
 - (h) Rental for the use of equipment or machinery owned by the borrower.
 - (i) For purposes not directly related to operating and maintaining the project.
 - (j) Any EEI not identified in the applicable energy assessment or energy audit.
 - (k) Agricultural tillage equipment, used equipment, and vehicles are ineligible for loans as specified under REAP.
 - (l) Guaranteed loan funds cannot be used for the distribution or payment to a member of the immediate family of an owner, partner, stockholder, or member of the borrower except for a change in ownership of the business where the selling person does not retain an ownership interest and the Agency determines in writing the price paid to be reasonable based upon an independent appraisal. This prohibition does not apply to transfers of ownership for ESOPs or worker cooperatives, to cooperatives where the cooperative pays the member for product or services, or where member stock is transferred among members of the cooperative.
 - (m) For loans as specified under CF, initial operating expenses, short-term, working capital or operating loans; or annual recurring costs, including purchases or rentals that are generally considered to be operating and maintenance expenses.
- (iii) Failure to obtain, perfect, document, and or maintain the required collateral or security position regardless of the time at which the Agency acquires knowledge thereof; and
 - (iv) Negligent loan origination or negligent loan servicing as determined and documented by the Agency.

In general, the Agency's guarantee will pay losses sustained by the holder or you on the guaranteed portion owned of principal, accrued interest and secured advances. The specific amount of interest accruing that the Agency will guarantee is either 90 days from the most recent delinquency effective date or 90 days from the date of the interest termination letter.

Conditional Commitment § 5001.451

Upon approval of your guarantee loan request, the Agency will obligate the funds and issue a Conditional Commitment. The Conditional Commitment contains the conditions that must be met before the Agency will issue the Loan Note Guarantee. If you and the borrower accept the conditions, a signed Conditional Commitment must be returned to the Agency within 60 days.

Once the Conditional Commitment has been accepted, any changes must be requested in writing and approved by the Agency in an amendment to the Conditional Commitment. If you decide you no longer want the Loan Note Guarantee, you will notify the Agency in writing to cancel the commitment and the Agency will deobligate the funds.

The Conditional Commitment will be effective for one year or a sufficient time to complete the project. However, the expiration of the Conditional Commitment may be extended by written request to the Agency at least 30 days prior to the expiration. Extensions will only be considered if no major changes have been made to the loan conditions or requirements and there are no material adverse changes in the borrower or the borrower's financial condition. If the Conditional Commitment expires, the Agency will notify the lender in writing and de-obligate the funds.

Loan Closing and Conditions Precedent to Issuance of Loan Note Guarantee § 5001.452

Once the lender has met all the conditions of the conditional commitment; the loan is ready to be closed. The following outlines the items to be provided to the Agency immediately after loan closing, prior to issuance of the loan note guarantee:

- I. Guarantee fee (collected by EFT)
- II. Guarantee Loan Closing Report (processed in Agency reporting system)
- III. Copies of executed promissory note, security documents, loan agreement
- IV. Certification indicating:
 - A. All conditional commitment requirements have been met;
 - B. All financial criteria have been met;
 - C. No major changes made in applicant, project or your loan conditions and requirements;
 - D. No material adverse change in borrower or borrower's financial conditions;
 - E. Reasonable prospect the loan will be paid on time and in full;
 - F. Guaranteed loan is properly closed and all security instruments executed, obtained and properly perfected;
 - G. Property acquisition and/or development has or will be completed;
 - H. Project complies with Federal, State and local laws and regulatory rules;
 - I. Required insurance is in place;
 - J. Truth-in-lending and equal credit opportunity requirements have been met;
 - K. Borrower has marketable title to collateral;
 - L. Legal opinion regarding rights-of-way and easements, title opinion or title insurance;
 - M. Funds have or will be disbursed for conditional commitment purposes and amounts. A copy of the settlement statement detailing use of loan and matching/equity funds will be attached to your certification;
 - N. If applicable, working capital has been disbursed in full;
 - O. If required, personal and/or corporate guarantees have been obtained;
 - P. Lien priorities are consistent with the requirements of the conditional commitment;
 - Q. No lender ownership interest in borrower and no borrower ownership interest in lender greater than 5%;

- R. Borrower environmental compliance included in loan agreement;
- S. Lender compliance with Debt Collection Improvement Act;
- T. Lender's Agreement is executed and delivered, registration in Agency's reporting system is complete and the loan closing report electronically submitted;
- U. RES and EII projects are operating at steady state; and
- V. CF and WWD projects the loan would not be made absent Agency guarantee.

The certification statement will be placed on your letterhead. A sample certification will be attached to your conditional commitment

Additional items may be applicable and will be determined on a project-by-project basis. They include secondary market documents if you are selling the loan on the secondary market. Personal, partnership, and/or corporate guarantees, if required. The borrower's loan closing balance sheet in order to document that equity requirements have been met, if that applies to the project. For a public body, an opinion from bond counsel regarding the preparation, issuance and enforceability of the debt instrument. If any other documents are required, they will also be included with the lender's submission.

Issuance of the Loan Note Guarantee § 5001.453

The Agency will review closing documents submitted to ensure all conditions have been met and all required documents are provided to issue the loan note guarantee as quickly as possible.

Once the Agency completes its review and determines all conditions have been met and all documents have been provided, the Loan Note Guarantee will be issued. The original loan note guarantee will be provided to you. If you used the multi-note system, one loan note guarantee will be provided for the set of promissory notes. If you are assigning the loan on the secondary market, an Assignment of Guarantee Agreement will be executed. The Certificate of Incumbency will be issued to you to verify the signature (may be digital) and title of the Agency official who signed the loan note guarantee, lender's agreement and assignment guarantee agreement.

A partial cancellation request can be submitted in writing to the Agency. The request must include the reason, the effective date and portion to be canceled. If the Agency's loan note guarantee conditions are rejected, cannot be met or all or part of the funds are no longer needed, the Agency will cancel the obligation.

Guarantee Fee § 5001.454

All programs have a one-time guarantee fee paid by you prior to issuing the loan note guarantee. The guarantee fee may vary from program to program, but the fees for each program will be announced in the Agency's annual *Federal Register* notice.

- (1) Guarantee Fee
 - (A) One-time, non-refundable fee;
 - (B) Paid by the lender;
 - (C) Must be paid prior to the issuance of the loan note guarantee; and
 - (D) May be passed on to the borrower
- (2) Loan note guarantee issued prior to project completion

(A) 0.5% fee – in addition to guarantee fee; and

(B) May not be passed on to the borrower

If provided for in the Agency's annual Federal Register notice, reduced guaranteed fees may be charged provided the project meets any one of the following criteria:

- (1) Is located in a rural community that—
 - (i) Is a distressed community in accordance with the Economic Innovation Group distressed community index. The list can be found on the Agency's website at: <https://www.rd.usda.gov/onerdguarantee;>
 - (ii) Is experiencing long-term population decline according to the last three decennial censuses;
 - (iii) Is in a persistent poverty county. A persistent poverty county is any county that has had 20 percent or more of its population living in poverty over the past 30 years, as measured by the 1990 and 2000 decennial census and 2007-2011 American Community Survey 5-year average, or any territory or possession of the United States;
 - (iv) Is in a presidentially declared disaster area, declared within the 24 months preceding the date of the application, and is experiencing trauma as a result of natural disaster;
 - (v) Is located in a city, county, or state with an unemployment rate, as determined by the Department of Labor, 125 percent or greater of the current national rate; or
 - (vi) Is located within the boundaries of a federally recognized Indian tribe's reservation or within Tribal trust lands or within land owned by an Alaska Native Regional or Village Corporation as defined by the Alaska Native Claims Settlement Act.
- (2) Processes, distributes, aggregates, stores, and/or markets locally or regionally produced agricultural food products and promotes access to healthy foods;
- (3) Is locally owned and managed, and either
 - (i) Supports value-added agriculture and provides a market for locally or regionally produced agricultural food product; or
 - (ii) Produces a natural resource value-added product/manufactures a product from a natural resource.
- (4) Is part of a strategic economic development and community development plan on a multi-jurisdictional and multi-sectoral basis in accordance with Section 6401 of the Agricultural Improvement Act of 2018 (Pub. L. 115-334); or
- (5) Provides an additional market for existing local businesses by purchasing substantial amounts of products or services from, selling product to, or providing services to existing local and regional businesses.

Periodic Retention Fee § 5001.455

Each program now has the option to charge and collect a periodic retention fee. Like the guarantee percent and the one-time guarantee fee, the periodic retention fee will be set by each program and announced in an annual *Federal Register* Notice.

The fee is set at the time of obligation, documented in the conditional commitment, and remains in effect for the life of the loan note guarantee. The fee is calculated based on the outstanding principal balance as of a certain date – which is also published in the *Federal Register* notice.

The Agency, with 30 days written notice, can cancel the loan note guarantee if fees remain delinquent 60 days after the due date. Delinquent periodic retention fees will incur interest at the

promissory note rate. Those with unpaid retention fees are prohibited from assigning the guaranteed loan on the secondary market.

Other Fees § 5001.456

OneRD Guarantee provides an option for any of the programs to charge additional fees. Some examples include a prepayment fee, a refinancing fee or a fee for a certain type of project or business.

All programs have fees. The fees will be announced in an annual *Federal Register* notice and will apply to all guarantees obligated that fiscal year. The type of fee, amount and the schedule for assessing fees may vary from program to program. Fees are assessed based on each program's analysis of its portfolio risk and in consideration of current Federal credit policy.

Changes Prior to Loan Closing § 5001.457

Occasionally, the borrower may have a change in ownership or organization. If this happens prior to issuance of the loan note guarantee, the change will need to be approved by the Agency to ensure the borrower is still eligible for the guarantee program

There may also be circumstances where you wish to transfer the conditional commitment to a new lender. This can be done prior to issuance of the loan note guarantee with Agency approval provided:

- (1) The new lender is eligible to participate in the OneRD Guarantee program;
- (2) No change occurs in the borrower's ownership, control or legal structure and the project scope;
- (3) An amendment to the conditional commitment is issued to the new lender with Agency approval; and
- (4) The new lender accepts the amended conditional commitment.

Other Federal, State, and Local Requirements § 5001.458

Beginning on the date of issuance of the loan note guarantee you and your borrowers must:

- (1) Coordinate with all appropriate Federal, State, local and Tribal agencies that may have jurisdiction or involvement in each project; and
- (2) Comply with all current Federal, State, local, and Tribal laws and rules, as well as applicable regulatory commission rules, that affect the project, the borrower, or you.

Replacement of Loan Note Guarantee and Assignment Guarantee Agreement § 5001.459

The Agency can issue a replacement to you or holder, provided you the lender coordinates the submission of documents as follows:

A written statement of loss which includes:

- (i) Legal name and present address of either the lender or the holder who is requesting the replacement forms;
- (ii) Legal name and address of the lender of record;
- (iii) Capacity of person certifying;
- (iv) Full identification of the loan note guarantee or assignment guarantee agreement including the name of the borrower, the Agency's case number, date of the loan note guarantee or assignment guarantee agreement, face amount of the promissory note in which an interest was purchased, date of the promissory note, present balance of the guaranteed loan, percentage of guarantee, and, if an assignment guarantee agreement, the original named holder and the percentage of the guaranteed portion of the

guaranteed loan assigned to that holder. Any existing parts of the document to be replaced must be attached to the certificate;

(v) A full statement of circumstances of the loss, theft, destruction, defacement, or mutilation of the loan note guarantee or assignment guarantee agreement; and

(vi) For the holder, evidence demonstrating current ownership of the assignment guarantee agreement. If the present holder is not the same as the original holder, the lender must include a copy of the endorsement of each successive holder in the chain of transfer from the initial holder to present holder. If copies of the endorsement cannot be obtained, the lender must submit the best available records of transfer (e.g., order confirmation, canceled checks, etc.).

An indemnity bond, acceptable to the Agency, must accompany the request for replacement except when the holder is the United States, a Federal Reserve Bank, a Federal Government corporation, a State or territory, the District of Columbia or a federally recognized tribal entity. The indemnity bond must:

(1) Be issued by a qualified surety company holding a certificate of authority from the Secretary of the Treasury and listed in Treasury Department Circular 570, except when the outstanding principal balance and accrued Interest due the present holder, in accordance with §5001.450(c), is less than \$1 million as verified by the lender via a written letter of certification of balance due;

(2) Be issued and payable to the United States of America acting through the Agency;

(3) Be in an amount not less than the unpaid principal and interest; and

(4) Hold the Agency harmless against any claim or demand that might arise or against any damage, loss, costs, or expenses that might be sustained or incurred by reason of the loss or replacement of the instruments.

If the promissory note needs replaced, this will be the holder's responsibility. The promissory note must be replaced before the Agency will replace any instruments. In all cases, the replacement document cannot be altered or modified.

Chapter 7. Servicing Requirements

Routine Servicing, Non-Routine Servicing and Oversight and Monitoring

General § 5001.501 and Oversight and Monitoring § 5001.502

You are responsible for servicing the entire loan and taking all servicing actions that a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. By being prudent, you will be well-advised and cautious in managing the guaranteed loan.

1. Your servicing responsibilities include, but are not limited to,
 - (1) Periodic borrower visits;
 - (2) Distribution of guaranteed loan funds;
 - (3) Collecting payments on guaranteed loans;
 - (4) Ensuring compliance with the covenants and provisions in the loan agreement, security instruments, and other supplemental agreements relating to the guaranteed loan;
 - (5) Obtaining and analyzing financial statements;
 - (6) Ensuring payment of taxes and insurance premiums;
 - (7) Maintaining liens and lien priority on collateral;
 - (8) Keeping an inventory of all collateral items, and reconciling the inventory of all collateral sold during guaranteed loan servicing, including liquidation;
 - (9) Obtaining Agency approvals or concurrence as required; and
 - (10) Cooperating fully with all oversight and monitoring efforts of the Agency or its representatives including, but not necessarily limited to, those identified in paragraphs (a) through (c) below.
 - (a) You must submit to the Agency reports and notifications as required, but not necessarily limited to, the following:
 - (1) *Status reports*. No less than semi-annual status reports as of June 30 and December 31 each year (unless more frequent reports are needed as determined by the Agency to protect the financial interests of the government) regarding the condition of the lender's guaranteed loan portfolio (including borrower status and loan classification) and any material change in the general financial condition of any borrower since the last report was submitted. The lender must submit these reports within 30 calendar days after the reporting period, using the appropriate Agency online reporting system.
 - (2) *Default reports*. Monthly default reports for each guaranteed loan in monetary default using the appropriate Agency online reporting system are due on the 15th working day of each month.
 - (3) *Notifications*. You must notify the Agency by written notification within 15 calendar days of any:
 - (i) Loan agreement violation by any borrower, including when the borrower is 30 days past due or is otherwise in default of the covenants in the loan agreement;
 - (ii) Permanent or temporary reduction in the interest rate;
 - (iii) Downgrade in the lender's loan classification of any guaranteed loan; and
 - (iv) Protective advances.

(a) Protective advances must be reasonable with respect to the outstanding loan amount and the value of the collateral being preserved.

(b) You cannot make protective advances in lieu of additional loans.

(c) You must obtain written Agency approval for any protective advance that will cumulatively amount to more than \$200,000, or 10 percent of the aggregate outstanding balance of principal and interest, whichever is less, to the same borrower.

(d) Protective advances constitute an indebtedness of the borrower to you and must be secured by collateral to the same extent as the original guaranteed loan.

(e) Upon Agency approval, protective advances can be used to pay Federal tax liens or other Federal debt.

(f) A protective advance claim will be paid only at the time of the final payment as indicated in the report of loss. In the event of a final loss, protective advances may accrue interest at the promissory note rate from the date of such advance and will be guaranteed at the same percentage of loss as provided for in the loan note guarantee. The loan note guarantee will not cover interest on the protective advance accruing after the interest termination date.

(g) The maximum loss to be paid by the Agency will never exceed the original loan amount plus accrued interest times the percentage of guarantee regardless of any protective advances made.

(h) Holders do not have an interest in protective advances.

(4) *Collection activities report.* If a lender is liquidating the assets of a borrower, the lender must also evaluate and provide a report of collection activities regarding the collectability of personal and corporate guarantees.

(b) *Records—*

(1) *Lenders.* Upon request by the Agency, you must permit representatives of the Agency (or other authorized persons) to inspect and make copies of any of the records pertaining to each guaranteed loan issued. Such inspection and copying may be made during your regular office hours or at any other time you and the Agency agree upon.

(2) *Borrowers.* Except as provided by law, upon request by the Agency, the borrower must permit your representatives (or other authorized persons) to inspect and make copies of any of the records relating to the borrower's project. Such inspection and copying may be made during regular office hours of the borrower or at any other time agreed upon between the borrower and you.

- (3) *Agency and lender conference.* When requested by the Agency, you must consult with the Agency to ascertain how the guaranteed loan is being serviced and that the conditions and covenants of the loan agreement are being enforced.
 - (4) *Access to the project.* Until the loan note guarantee is terminated, the borrower must allow you, and therefore the Agency, access to the project and its performance information and permit periodic inspections of the project by your authorized representative or the Agency.
2. You must remain mortgagee and secured party of record, notwithstanding the fact that another party may hold a portion of the loan.
 3. You must ensure that the borrower has obtained and will maintain all necessary insurance coverage appropriate to the proposed project.
 4. If the Agency determines that you are not in compliance with your servicing responsibilities, the Agency reserves the right to take any action the Agency determines necessary to protect the Agency's interests with respect to the guaranteed loan. If the Agency exercises this right, you must cooperate with the Agency to rectify the situation.

Rural Energy for America Program (REAP) Project Completion Requirements § 5001.503

Once a REAP Renewable Energy System or Energy Efficiency Improvement project has been completed, you or borrower are required to submit the applicable project performance report as identified in paragraphs (a) and (b) below by January 31st each year.

(a) Renewable Energy Systems (RES). Commencing the first full calendar year following the year in which project construction was completed and continuing for three full years, the borrower must provide an outcome project performance certification noting that either the system has or has not performed at the steady state operating level as described in the technical report filed with the REAP guaranteed loan application, and whether projected jobs created or saved have occurred. If it has not performed as intended, a report detailing the circumstances affecting performance must be provided to the Agency along with the actual energy production of the system (in BTUs, kilowatt-hours, or similar energy equivalents) and the actual number of jobs created or saved as a direct result of the RES project for which guaranteed loan funds were used.

(b) Energy Efficiency Improvements (EEI). Commencing the first full calendar year following the year in which project construction was completed and continuing for two full years, the borrower must provide an outcome project performance certification noting that either the energy efficiency improvements have or have not been utilized at or above the projected operating levels as described in the technical report filed with the REAP guaranteed loan application, and whether projected jobs created or saved have occurred. If it has not performed as intended, a report detailing the circumstances affecting performance must be provided to the Agency along with the actual energy savings of the system and the actual number of jobs created or saved as a direct result of the EEI project for which guaranteed loan funds were used.

Financial Reports § 5001.504

You are responsible for the following as it relates to financial reports:

- a. The borrower's and guarantor's financial statement (due within 120 days of the end of the borrower's fiscal year) and your financial analysis within the required timeframe.

b. Annual financial statements must be prepared and submitted in accordance with accounting practices; including, but not limited to, Generally Accepted Accounting Principles (GAAP); acceptable to the Agency for all borrowers with a guaranteed loan balance in excess of \$600,000. You may determine the type and frequency of financial statements for borrowers with a total guaranteed loan balance below \$600,000 upon notification and justification to the Agency.

c. You must analyze the financial statements and provide the Agency with a written summary of your analysis and conclusions, including trends, strengths, weaknesses, extraordinary transactions, and other indications of the financial condition of the borrower. Spreadsheets of the new financial statements must also be included. The Agency will follow-up with you, in writing, with any concerns or if any deficiencies are identified in your financial analysis. You must address each concern or deficiency by the due date provided by the Agency.

The Agency may require an annual audited financial statement based on a project's circumstances. States, local government, Indian tribes, institution of higher education, and nonprofit organization borrowers who meet the Federal awards expended threshold established in 2 CFR part 200, Subpart F, "Audit Requirements," during their fiscal year must submit an audit conducted in accordance with 2 CFR part 200, Subpart F. When the borrower's audit is conducted in accordance with 2 CFR part 200, Subpart F, audits must be submitted no later than nine months after the end of the borrower's fiscal year or 30 days after the borrower's receipt of the auditor's report, whichever is earlier.

If you make reasonable documented attempts to obtain financial statements but are unable to obtain the borrower's (or guarantor's) cooperation, the failure to obtain financial statements does not impair the validity of the loan note guarantee. However, you are responsible for informing the Agency of the status of the financial statements when they have not been received timely.

For example, if the borrower has not submitted financial statements in one or two years, you should have a running record and paper trail of any letters or emails sent to the borrower in an attempt to obtain the financial statements. You should make more than one or two attempts to request financial statements from the borrower. In addition, you should document any meetings that take place with the borrower to request past due financial statements. The Agency may arrange a meeting with you and the borrower to receive a status report and determine steps to a resolution.

Collateral Inspection and Release § 5001.505

You are responsible for inspecting collateral as often as necessary and accounting for the collateral. You must maintain the lien positions specified in the Conditional Commitment. You must assure adequate insurance is maintained and monitor the due dates and payments of taxes and assessments.

The entire loan must be secured by the same collateral with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the guaranteed loan will neither be paid first nor given any preference or priority over the guaranteed portion. A parity or junior lien position in the guaranteed loan collateral may be considered on a case-by-case basis and must be approved by the Agency. The minimum security taken for the purchase of cooperative stock includes a lien on the stock acquired with loan funds, an assignment of any patronage refund and personal or corporate guarantees.

The lender must provide written justification for the release and obtain Agency approval before releasing any collateral. You are not required to obtain justification for the release of collateral when the loan is not in default or liquidation and the collateral being released is a working asset, such as accounts receivable, inventory, and work-in-progress, that are routinely depleted or sold and proceeds used for the normal course of business operations.

The sale or release of collateral must be based on an arm's length transaction, unless otherwise approved by the Agency in writing, and there must be adequate consideration at market value for such release.

Any release of collateral must not materially cause an adverse effect to the project's operation or financial condition and the remaining collateral must be sufficient to provide for adequate collateral coverage. If the Agency determines that the project may be adversely affected by a release of collateral, the Agency may, at its discretion, require an appraisal on the remaining collateral. Remember the file should contain documentation regarding collateral inspections and any release of collateral.

Exceptions to this requirement of prior approval of releasing collateral occur only when the collateral sale proceeds are used to pay down debt in order of lien priority, pay down the guaranteed loan principal or to acquire replacement collateral of similar value or operational use.

Loan Transfers and Assumptions § 5001.506

A transfer and assumption can be accomplished:

- a. In the event of default of the guaranteed loan. A transfer and assumption of the borrower's operation and guaranteed loan can be accomplished before or after the loan goes into liquidation; or
- b. When the present borrower is unable or unwilling to accomplish the objectives of the guaranteed loan, and the transfer will be in the best financial interest of the borrower and the Agency.

Transfers and assumptions are not permitted if the collateral has been purchased through foreclosure or the borrower has conveyed title to you or when the Agency has repurchased any guaranteed portion of the loan.

Moving forward with a transfer and assumption without Agency approval will be considered negligent servicing.

A transfer or assumption must be Approved in writing by the Agency to an Eligible Applicant(s) and must meet the following requirements:

- a. The transferee will assume a loan amount at least equal to the outstanding loan balance or the present market value of the collateral, whichever is less. If the transferor is to receive a payment for their equity, the total debt must be assumed. In addition, you are responsible for making sure the following conditions are met:
 - (i) Payment of a one-time, \$1,500 nonrefundable transfer fee at the time of transfer to the eligible borrower; and
 - (ii) You have concurred in plans for the disposition of funds if any. This includes debt service, operation and maintenance or other reserve account.

- (iii) The transfer and assumption must be completed in accordance with applicable law.
 - (iv) You must confirm that the conveyance instruments are filed.
- b. If the assumption is for less than the total indebtedness, the transfer and assumption must be an arm's length transaction and the transfer must be of all loan collateral.

The Agency will consider approving a transfer of a guaranteed loan to an ineligible borrower only if:

- (i) The sale price is greater than it would be if the transfer was to an eligible borrower;
- (ii) The transfer to an ineligible borrower is needed as a method for servicing a problem case; or
- (iii) When an eligible borrower is not available. All transfers to an ineligible borrower must meet the following requirements:
 - (A) Payment of a one-time nonrefundable transfer fee of 1 percent of the guaranteed loan balance; and
 - (B) The ineligible borrower agrees to pay the loan balance within the remaining term of the original guaranteed loan in periodic installments that will not result in a balloon payment at the loan's maturity;
 - (C) Interest rates are at the rate specified in the promissory note of the transferor or at rates customarily charged borrowers in similar circumstances in the ordinary course of business. The rates can be either fixed or variable, and are subject to Agency review and approval;
 - (D) The ineligible borrower must have the legal authority to enter into the contract and have the ability to repay the loan, as determined by the lender and the Agency. The ineligible borrower must submit a current balance sheet to the lender. The lender must obtain and analyze the credit history of the ineligible borrower.

The transferor, including any guarantor, can be released from liability only with prior Agency written approval when the transfer and assumption is for the full outstanding balance of the guaranteed loan. If the assumption is for less than the full amount of the loan and the Agency pays a loss, the transferor, including any guarantor, are specifically subject to the Debt Collection Improvement Act provisions unless other workout arrangements have been made.

A new loan agreement or an assumption agreement, acceptable to the Agency must be executed to establish the terms and conditions of the loan being assumed when a transfer or assumption is made to an eligible borrower continuing the project for eligible purposes, the loan terms may remain the same or may be changed whether the transfer is for the total indebtedness or less than the total indebtedness. The transfer and assumption must be made on your form of assumption agreement and include the Agency case number of the transferor and transferee. You are responsible for make sure the Agency receives a copy of the assumption agreement.

You are responsible for noting each transfer and assumption on all originals of the loan note guarantee.

Before the transfer and assumption is closed, you must credit any proceeds received from the sale of collateral to the transferor's guaranteed loan debt in order of lien priority. If the proposed transfer and assumption are for less than the full amount of the guaranteed loan, an appraisal is required on all the collateral being transferred and the amount of the assumption must not be less than this appraised value.

Prior to Agency approval, you must provide the Agency a preliminary written legal opinion that the guaranteed loan can be properly and legally transferred and assurance that the conveyance instruments will be appropriately filed, registered and recorded.

Upon execution of the transfer and assumption, you must provide the Agency with a final legal opinion that the assumption is completed, valid and enforceable and the assumption is consistent with the conditions outlined in the Agency's conditions of approval for the transfer and complies with all Agency regulations.

You must not issue any new promissory notes, release any mortgages and/or deeds of trust on the existing debt being transferred. However, an allonge may be attached to existing promissory notes as needed.

Lender Transfer § 5001.507

After the issuance of a loan note guarantee, you may sell or transfer the entire loan to a new lender with prior written approval of the Agency. The new lender must be an eligible, approved lender; must be able to service the loan as outlined in the original loan documents; must agree in writing to acquire title to the unguaranteed portion of the loan held by you and to assume all original loan requirements, including liabilities and servicing responsibilities and, upon agency approval, you must transfer to the new lender the:

- (1) Original promissory note and loan security documents;
- (2) Original loan note guarantee;
- (3) Original personal and corporate guarantee(s);
- (4) Loan payment history; and
 - (i) The new lender must agree to accept the current loan terms, including the interest rate, secondary market holder (if any), collateral, loan agreement terms, and guarantors. The new lender can modify the loan terms after acquisition only by submitting a written request to the Agency and receiving Agency approval.
 - (ii) The new lender must certify to the Agency that the loan transfer has been completed in accordance with applicable laws and all provisions of the original loan remain in full force and effect.

The Agency will not pay any loss or share in any costs (e.g., legal fees, appraisal fees and environmental assessments) for a voluntary transfer of lender. This includes situations where a lender is merged with or acquired by another lender and situations where the lender has failed and been taken over by a Federal regulatory agency such as the Federal Deposit Insurance Corporation (FDIC) and the loan is subsequently sold to another lender. However, in situations where the lender has failed and been taken over by a Federal regulator and the loan is liquidated rather than being sold to another lender, the Agency will pay losses and share in costs as if the Federal regulatory agency were an approved new lender.

In cases when there is a transfer to a new lender or when a lender has been merged with or acquired by another Lender, the Agency and the new lender must execute a new lender's agreement, unless the new lender already has a valid lender's agreement with the Agency. After Agency approval of a transfer of lender, all terms of the original loan note guarantee shall transfer to the benefit of the new lender.

Mergers § 5001.508

All borrower mergers or consolidations require approval by the Agency and you. The Agency may approve a merger when:

- (a) The resulting organization will be eligible for a guaranteed loan and assumes all the liabilities and acquires all the assets of the merged borrower;
- (b) The merger is in the best interest of the government and the merging organization;
- (c) The resulting organization can meet all required conditions as contained in specific loan agreements; and
- (d) All property can be legally transferred to the resulting organization.

Servicing § 5001.509 and Periodic Guarantee Retention Fees § 5001.455

The Agency will collect a periodic guarantee retention fee from you for as long as the loan note guarantee is outstanding. The fees will be published in an annual *Federal Register* notice.

Payment of the periodic guarantee retention fee is required to maintain the validity of the loan note guarantee. The fee rates may differ by program. The annual *Federal Register* notification will include the frequency of payment for the fees.

You may pass the servicing fees on to the borrower but may not delay payment of the fee to the Agency while collecting the payment from the borrower.

When required, a periodic guarantee retention fee is due for the entire payment period, even if the loan note guarantee is terminated or transferred before the next retention fee payment is due.

If the Guarantee retention fee payments has not been received within 60 days after the due date, it will be considered delinquent and, at the Agency's discretion, may result in cancellation of the loan note guarantee.

Holders' rights will continue in effect as specified in the loan note guarantee and assignment guarantee agreement, unless the holder took possession of an interest in the loan note guarantee knowing guarantee retention fees had not been paid. Until the loan note guarantee is canceled by the Agency, any delinquent periodic guarantee retention fee will bear interest at the promissory note rate.

You must transmit the annual periodic guarantee retention fee to the Agency. The guarantee retention fee is calculated by multiplying the full outstanding principal guaranteed loan balance as of a date(s) as published in the annual *Federal Register* notification, by the percentage of guarantee, by the fee rate as noted in the guaranteed loan conditional commitment. The effective guarantee retention fee will be noted in the guarantee loan conditional commitment. The fee will remain in effect for the life of the loan note guarantee.

Subordination of Lien Position § 5001.510

When you seek a subordination of your lien position in collateral, you must submit a written request to and receive approval from the Agency prior to subordination. You must include a financial analysis of the servicing action. The financial analysis must be fully supported by current financial statements, less than 90 calendar days old, of the borrower and guarantors. Although there may be cases in which the borrower is unwilling to provide financials, current financials is a requirement for approval of this request. The Agency will consider the following when reviewing the subordination request:

- a. The subordination must enhance the borrower's business, and the Agency's interest;
- b. After the subordination, the remaining collateral must be adequate to secure the guaranteed loan. Lien priorities remain for the portion of the loan collateral that was not subordinated; and

- c. The lien to which the guaranteed loan is subordinated must be for a fixed dollar limit and fixed or limited term after which the guaranteed loan lien priority will be restored.

Subordination to a revolving line of credit will not extend beyond the term of the line of credit and in no event exceeds more than three years.

Subordination to a tax-exempt obligation is strictly prohibited in compliance with OMB Circular A-129, "Policies for Federal Credit Programs and Non-Tax Receivables."

The Agency may require a current independent appraisal. If the original appraisal is more than one year old, but less than two years old, you may provide an appraisal with a new effective date of evaluation in lieu of a completely new appraisal.

Repurchases from Holders § 5001.511

A holder can make written demand on either you or the Agency to repurchase the unpaid guarantee portion of the loan when the borrower is in monetary default or when you have failed to pay the holder its pro-rata share of any payment made by the borrower within 30 days of your receipt from the borrower. When making written demand, the holder must concurrently send a copy of the demand letter to the Agency.

You are encouraged to repurchase the guarantee to facilitate the accounting of funds, resolve any loan problems and resolve the monetary default, where and when reasonable. You will benefit by being in a position to re-sell the guaranteed portion of the loan and then continue collection of servicing fees, if any, when the monetary default is cured. However, you must not repurchase from the holder for arbitrage or other purposes to further your own financial gain. Should a prior written demand not have been provided to you, the Agency will notify you and allow up to seven calendar days for you to exercise your option to repurchase.

Under a repurchase, the sale must be for an amount equal to the unpaid principal and accrued interest payments as required below:

(A) If a loan has been guaranteed by the Agency prior to October 1, 2020, the Agency will guarantee the lender and any holders accrued interest in accordance with the applicable regulations in effect for the respective program at the time the loan was guaranteed.

(B) For all guaranteed loans closed on or after October 1, 2020, the Agency will guarantee accrued interest as follows:

- a. If the lender owns all or a portion of the guaranteed portion of the guaranteed loan or makes a protective advance, the Agency, in its sole discretion, may cover interest on the guaranteed portion for the 90 days from the most recent delinquency effective date, and up to a total of 180 days, only if:
 - (i) The lender, and not the Agency, has repurchased all holder interests in the guaranteed loan;
 - (ii) The lender is actively engaged in a credit resolution with the borrower to bring the account current or fully liquidate the collateral under the terms of a liquidation plan approved by the Agency; and
 - (iii) Concurrence for inclusion of the extended period of interest to the lender is received from the Agency.
- b. If the guaranteed loan has one or more holders, the lender will issue an interest termination letter to each holder establishing the termination date for interest accrual. The loan note guarantee will not cover interest to any holder accruing after 90 days from the date of the interest termination letter. The

Agency at its sole discretion may notify each holder of the interest termination provisions if it is determined that lender correspondence to holders is inadequate.

Upon repurchase the holder will reassign the assignment agreement to the lender without recourse.

Interest termination date and issuance of a termination letter actions must align with the following:

(A) The Agency must ensure the interest termination letter is issued, whether by you or the Agency, 60 days from the date of the most recent delinquency effective date to ensure that not more than 90 days of interest is paid.

(B) When you have accelerated the loan and you hold all or a portion of the guaranteed loan, an estimated loss claim must be filed by you with the Agency within 60 calendar days from the date the loan was accelerated. Accrued interest paid will not exceed 90 calendar days and will be calculated from date when interest was last paid on the loan.

(C) When a guaranteed loan has been delinquent more than 60 calendar days and no holder comes forward or the account has been accelerated, subject to the expiration of any forbearance or workout agreement, you, or the Agency at its sole discretion, must issue a letter to the holder(s) establishing the interest termination date. The loan note guarantee will not cover interest to any holder accruing after 90 days from the date of the interest termination letter.

If you do not repurchase the unpaid guaranteed portion of a loan, the Agency will, within 30 calendar days after written demand to the Agency from the holder, purchase from the holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase or the interest termination date, whichever is sooner, less the lender's servicing fee. The guarantee will not cover the accrued interest to the holder on the loan.

Upon request by the Agency, the lender must promptly furnish (within 30 calendar days of such request) a current statement, certified by your authorized officer, of the unpaid principal and interest then owed by the borrower on the loan and the amount then owed to any holder, along with the information necessary for the Agency to determine the appropriate amount due the holder. Any discrepancy between the amount claimed by the holder and the information submitted by you must be resolved between you and the holder.

Should you decline repurchase, the Agency may at its option repurchase the guaranteed portion for loan servicing purposes. If the agency repurchases:

(A) The guarantee will not cover the accrued interest to the holder on the loan;

(B) The guaranteed portion of the loan cannot be re-assigned;

(C) The Agency assumes all rights that were previously held by the holder;

(D) The lender's servicing fee will stop on the date that interest was last paid by the borrower. No servicing fee will be charged to the Agency;

(E) Your obligations to the Agency arising from the lender's agreement, guaranteed loan or loan note guarantee are neither changed, altered or modified nor do you waive any of the Agency's rights against you; and

(F) If the Agency repurchases 100 percent of the guaranteed portion of a loan and becomes the holder, interest accrual on the loan will cease until the lender resumes remittance of the pro rata payments to the Agency.

Additional Expenditures and Loans § 5001.512

You shall not make additional expenditures on behalf of, or provide new loans to, the borrower without notification to the Agency even though such expenditures or loans will not be guaranteed.

You shall not approve additional expenditures or new loans where the expenditure or loan will violate, or cause a violation of, any of the loan covenants in the borrower's loan agreement. This will be considered negligent servicing if the lender proceeds with approving additional expenditures.

Interest Rate Changes § 5001.513

The interest rates, after adjustments, must comply with the requirements for interest rates on new loans. The interest rate can be fixed or variable, or a combination thereof, as long as it is a legal rate. Interest rates cannot be more than those rates you customarily charge for non-guaranteed loans in similar circumstances in the ordinary course of business. You are responsible for the legal documentation of interest rate changes by an endorsement or any other legally effective amendment to the promissory note; however, no new promissory notes can be issued. You must provide copies of all such documents to the Agency within 10 calendar days of the change. Conditions for interest rate changes are as follows:

- (A) The guaranteed loan interest rate will freeze at the earliest uncured default date and will remain unchanged until the cancellation of the loan note guarantee.
- (B) You, the borrower and holder (if any) may collectively initiate a permanent or temporary reduction of the guaranteed loan at any time upon written agreement by all parties. If applicable, the holder needs to agree before submitting and approving the request.
- (C) When the Agency is a holder, you must obtain Agency approval before implementing the reduction. You must provide a copy of the modification agreement to the Agency for approval. The Agency will approve the reduction only when it is demonstrated that the change is more viable than liquidation and that the government's financial interests are not adversely affected.
- (D) Unless a temporary interest rate reduction occurred, increases in fixed interest rates and increases in variable interest rate structure are prohibited.
- (E) Fixed rates can be changed to variable rates to reduce the borrower's rate only when the variable rate has a ceiling which is less than or equal to the original fixed rate.
- (F) Variable rates can be changed to fixed rate which is at or below the current variable rate.

Lender Failure § 5001.514

In the event you fail or cease to service a guaranteed loan, the Agency will make the successor lending entity aware of the statutory and regulatory requirements and will provide instruction to the successor lending entity on a case-by-case basis.

Any successor lender must take such action that a reasonable lender would take if it did not have a loan note guarantee to protect the lender and Agency's mutual interest. A successor entity approved by the Agency as a lender will be afforded the benefits of the loan note guarantee in the sharing of any loss and eligible expenses subject to the limits that are set forth in the regulations governing the loan guarantee.

If the successor lending entity is a non-regulated lender, the lending entity is prohibited from making changes to the lender's agreement and related documents on the guaranteed loan. The successor lending entity must promptly apply to become a lender if not already an eligible

lender. If the successor lending entity is not or fails to become a lender within 60 calendar days, the loan note guarantee will not be enforceable.

In the event no successor lending entity can be determined, the Agency reserves the right to enforce the provisions of the loan documents on behalf of the lender or to purchase the lender's interest in the loan.

Where the failed lending entity is a Federal Deposit Insurance Corporation (FDIC) regulated lender, the FDIC and the Agency will enter into an Inter-Agency Agreement regarding the FDIC's role as the successor lending entity, and all parties are to abide by this agreement or successor document(s). This agreement sets forth the duties and responsibilities of each Agency when a lender fails. When the FDIC is not the successor to a failed regulated lender, the regulatory agency serving as the successor lending entity and the Agency will abide by terms of the lender's agreement as executed by the originating lender.

The Agency reserves the right to request a meeting with the successor lending entity to further define the duties and responsibilities of each agency when a lender fails

Default by Borrower § 5001.515

When there is a default by a borrower, your primary responsibilities in default are to act prudently and expeditiously to work with the borrower to bring the account current or cure the default through restructuring if a realistic plan can be developed or to accelerate the account and conduct a liquidation in a manner that will minimize any potential loss.

Please remember the curative action must be concurred by the Agency and any holder before you can move forward with these actions. You should consider curative actions that provide a permanent cure without adversely affecting the risk to the Agency. However, you may consider temporary curative actions provided they strengthen the loan and are in the best financial interest of the lender and the Agency. Financial Statements should always be reviewed before any decision is made on a curative action.

Requests for the Agency's approval on curative actions should be supported by a recommendation from you on official letterhead, including a complete explanation of the request (discuss the worst-case scenario, i.e. what will happen if the proposed action is not taken) and supporting backup information or documentation.

Examples of supporting information or documents include prior related actions, current financial information of the borrower, co-borrower, and any guarantor (note any changes in financial conditions), your financial analysis and credit memorandum, documentation to support value of collateral, loan covenant violations, proposal to mitigate or correct violations, environmental concerns, and any findings from borrower visits.

Default notification and meetings:

(A) You must notify the Agency within 15 calendar days. This notification will be provided by submitting a monthly default report, Form RD 5001-8, Guaranteed Loan Borrower Default Status, for each guaranteed loan using the Agency's online electronic reporting system. The report is due by the 15th working day of each month until the loan is no longer in default

(1) If a monetary default exceeds 30 calendar days, you must meet with the borrower and, if necessary, the Agency within 45 calendar days of the date of the default to

discuss the situation. You must provide the Agency with a written summary of the meeting and any decisions and actions agreed upon within 10 calendar days of the meeting.

Deferment and Balloon Payments:

(A) The term of any deferment, rescheduling, re-amortization, or moratorium cannot exceed the lesser of the remaining useful life of the collateral or remaining term of the loan.

(B) If considering deferment or moratorium on the guaranteed loan, your non-guaranteed loan(s) and any stockholder or affiliate loans must also be under deferment or moratorium

(C) If considering balloon payments, they are permitted as a curative action provided there is a reasonable prospect for successful repayment of the guaranteed loan and the remaining life of the collateral supports the action.

Protective Advances § 5001.516

Protective advances are allowed only when they are necessary to preserve the value of the collateral. It is your responsibility to ensure that any protective advances will be secured by the collateral of the guaranteed loan.

Protective advance means an advance made by you for the purpose of preserving and protecting the collateral where the borrower has failed to, and will not or cannot, meet its obligations to protect or preserve collateral. Protective advances include, but are not limited to, advances for property taxes, rent, hazard and flood insurance premiums, emergency repairs and annual assessments that protect the collateral.

(A) The maximum loss to be paid by the Agency will never exceed the original loan amount plus accrued interest times the percentage of guarantee regardless of any protective advances made.

(B) A protective advance claim will be paid only at the time of the final report of loss payment. In the event of a final loss, protective advances will accrue interest at the promissory note rate (from the date of such advances) and will be guaranteed at the same percentage of guarantee as provided for in the Loan Note Guarantee.

(C) The loan note guarantee will not cover interest on the protective advance accruing after the interest termination date.

(D) Protective advances must constitute an indebtedness of the borrower to the lender and be secured by the security instruments.

(E) Agency written authorization is required when the cumulative total of protective advances exceeds \$200,000 or 10 percent of the aggregate outstanding balance of principal and interest, whichever is less.

Liquidation § 5001.517

A decision to liquidate must be made when you determine that the default cannot be cured, or it has been determined that it is in the best interest of the Agency and you to liquidate. When the decision to liquidate a loan is made, if any portion of the loan has been sold or assigned and has not already been repurchased, you must make provisions for repurchase. You have responsibility for servicing the loan and liquidating the business assets while making recommendations that the Agency then evaluates.

In the event of one or more incidents of default or third-party actions that the borrower cannot or will not cure or eliminate within a reasonable period of time, you, with Agency consent, must provide for liquidation.

The decision to liquidate or continue with the borrower must be made as soon as possible when one or more of the following exist:

- (A) A loan is 90 days behind on any scheduled payment and the lender and the borrower have not been able to cure the delinquency;
- (B) It is determined that delaying liquidation will jeopardize full recovery on the loan;
- (C) The borrower or you are uncooperative in resolving the problem; or
- (D) The Agency or you have reason to believe the borrower is not acting in good faith, and it would improve the position of the guarantee to liquidate immediately.

The liquidation plan should explain the current situation and your suggested remedies.

You are responsible for initiating actions immediately and as necessary to assure a prompt, orderly liquidation that will provide maximum recovery. Within 30 days after a decision to liquidate, you must submit a written, proposed plan of liquidation to the Agency for approval. The liquidation plan must be detailed and include, at a minimum, the following:

- (1) Such proof as the Agency requires to establish the lender's ownership of the guaranteed loan promissory note and related security instruments;
- (2) A copy of the payment ledger, if available, or other documentation that reflects the current outstanding loan balance, accrued interest to date, and the method of computing the accrued interest;
- (3) A full and complete list of all collateral and a listing of all liens held and status of such liens, plus any personal and corporate guarantees;
- (4) The recommended liquidation methods for making the maximum collection possible on the indebtedness and the justification for such methods, including recommended action for acquiring and disposing of all collateral and collecting from guarantors;
- (5) Necessary steps for preservation of the collateral including any anticipated protective advances. Preservation of the collateral includes such items as protection from physical damage, theft, or vandalism. There may also be expenses for utilities or continued maintenance to ensure preservation. As a reminder protective advances include, but are not limited to, advances for property taxes, rent, hazard and flood insurance premiums, emergency repairs and annual assessments that protect the collateral;
- (6) The market value and the potential liquidation value, or estimates thereof, of all the collateral securing the loan. You are responsible for making sure the Agency receives a copy of the appraisal or valuation with the liquidation plan or as soon as it is available. In some cases; with specialized machinery and equipment, for example; more than one appraisal may be necessary. You should make sure the appraisal is in compliance with regulations and ensure the appraisal contains a market and liquidation value.
 - (i) These values or estimates of the collateral must be obtained by the lender through an independent appraisal. If the outstanding balance of principal and interest is less than \$250,000, the lender may, instead of an appraisal, obtain these values or estimates by using their primary regulator's policies relating to appraisals and evaluations or, if the lender is not regulated, normal banking practices and generally accepted methods of determining value.

(ii) The procedure used to obtain these values or estimates of the collateral must include an evaluation of the impact of any release of hazardous substances, petroleum products, or other environmental hazards.

(iii) Any independent appraiser's fee, including the cost of the environmental site assessment if necessary, will be shared equally by the Agency and the lender;

(7) Proposed protective bid amounts on collateral to be sold at auction and a description to show how the amounts were determined.

(i) A protective bid can be made by the lender, with prior Agency written approval, at a foreclosure sale to protect the lender's and the Agency's interest.

(ii) The protective bid must not exceed the amount of the loan balance plus applicable foreclosure expenses and must be based on the liquidation value and estimated net recovery considering prior liens and outstanding taxes, expenses of foreclosure, and estimated expenses for holding and reselling the property. Foreclosure expenses include, but are not limited to, expenses for resale, interest accrual, length of time necessary for resale, maintenance, guard service, weatherization, and prior liens. Protective advances may include, but are not limited to, advances made for taxes, annual assessments, ground rent, hazard and flood insurance premiums affecting the collateral, and other expenses necessary to protect the collateral and may include advances necessary to maintain services or address unique situations with proper justification;

(8) Copies of the borrower's latest available financial statements with your written analysis as an attachment;

(9) Copies of each guarantor's latest available financial statements;

(10) An itemized list of estimated liquidation expenses expected to be incurred along with justification for each expense. An itemized list of estimated liquidation expenses may include attorney, auctioneer and other professional fees for services the lender will need to contract to maximize recovery on the loan. Cost could also include legal representation to protect our joint interest in bankruptcy or receivership.

The Agency must approve in advance and in writing, the lender's estimated liquidation expenses. You and the Agency will share liquidation expenses equally. To accomplish this, you must deduct 50 percent of the liquidation expenses from the collateral sale proceeds. The Agency may approve legal fees as liquidation expenses provided that the fees are reasonable, require the assistance of attorneys, and cover legal issues pertaining to the liquidation that could not be properly handled you, your employees or in-house counsel. Approved legal expenses are limited by the Agency to an amount not to exceed 3% of the current principal balance and will be shared by the lender and Agency equally. This includes those instances where the lender has incurred such expenses from a trustee conducting the liquidation of assets.

Legal fees in excess of 3% of the current principal balance shall be borne by you and are not recoverable from liquidation proceeds or any loss claim by you. You cannot claim the guarantee fee or the other Agency fees as authorized liquidation expenses. In-house expenses are not allowed to be

claimed. The guarantee will not cover liquidation expenses in excess of liquidation proceeds under any circumstances;

- (11) Estimated protective advance amounts with justification;
- (12) If a voluntary conveyance is considered, the proposed amount to be credited to the guaranteed debt;
- (13) Legal opinions, if needed by the lender's legal counsel; and
- (14) A schedule to periodically report to the Agency on the progress of liquidation, not to exceed every 60 days.

If a voluntary conveyance of the collateral is considered, you, with the Agency's concurrence, must determine the amount that will eventually be credited to the guaranteed debt. If this action is considered, you must be certain that the borrower can convey clear title.

Typically, you will rely on your counsel to initiate foreclosure proceedings and to protect your interest in other legal proceedings. The attorney, in preparation for any legal proceeding, will verify lien positions which will show the priority of liens and encumbrances against the property. This is often provided in a written legal opinion.

You may submit a partial liquidation plan, if actions are necessary, to immediately preserve and protect the collateral when approved by the Agency. A complete liquidation plan will be submitted after the partial liquidation plan is approved.

The Agency will approve or disapprove the liquidation plan within 30 calendar days of its receipt. In order to ensure prompt action, you may submit a liquidation plan with an estimate of collateral value and the Agency may approve the liquidation plan subject to the results of the final liquidation appraisal.

Once the Liquidation Plan has been approved by the Agency, proceed expeditiously with liquidation. Take all legal action necessary to liquidate the loan in accordance with the approved liquidation plan; and update or modify the liquidation plan when conditions warrant, including a change in value based on a liquidation appraisal.

If circumstances change after submission of the liquidation plan requiring a revision of liquidation costs, you must obtain the Agency's written approval prior to proceeding with the proposed changes if the revised liquidation costs exceed 10% of the amount proposed in the liquidation plan approved by the Agency.

You must account for funds during the period of liquidation and provide the Agency with reports on the progress of liquidation including disposition of collateral and resulting costs. If in the course of implementing the approved liquidation plan, you determine additional procedures are necessary for the successful completion of the liquidation or otherwise need to make any other changes to or deviations from the approved liquidation plan, you must identify in the report such procedures, changes, and deviations.

Regarding estimated loss claims and payments, if you are conducting the liquidation and own any or all the guaranteed portion of the loan, you must file an estimated loss claim once a decision has been made to liquidate if the liquidation will exceed 90 calendar days. The Agency will process the estimated loss claim and will make final loss payments.

Compromise settlements must be approved by you and the Agency. A compromise settlement normally will not take place until all the collateral has been sold and an identified deficiency

balance remains. At a minimum, the compromise settlement must be equivalent to the value and timeliness of that which would be received from attempting to collect on the guarantee. Any guarantor cannot be released from liability until the full amount of the compromise settlement has been received. In determining whether to approve a compromise settlement, the Agency will consider, among other things, whether the compromise is more financially advantageous than collecting on the guarantee.

The lender must take action to maximize recovery from all personal and corporate guarantees, including seeking deficiency judgments when there is a reasonable chance of future collection.

Bankruptcy § 5001.519

When the borrower is in default, you must submit the Guaranteed Loan Borrower Default Status Report using Form RD 5001-8, due monthly on the 15th working day until the default has been resolved or a final loss claim is paid by the Agency. The default status report will be used to inform the Agency of the bankruptcy filing, the plan confirmation date, when the plan is complete, and when the borrower is not in compliance with the plan.

You are responsible for protecting the guaranteed loan and the collateral securing it in bankruptcy and any related appellate proceedings. These responsibilities include, but are not limited to, the following:

- (A) Immediately seeking adequate protection of the collateral if it is subject to being used by the trustee in bankruptcy or the debtor in possession;
- (B) When appropriate, seeking involuntary conversion of a pending chapter 11 case to a liquidation proceeding or seeking dismissal of the proceedings;
- (C) Submitting a default status report within 15 calendar days after the date when the borrower defaults and every 30 calendar days thereafter until the default is resolved or a final loss claim is paid by the Agency;
- (D) Informing the Agency within 10 working days upon notification of the filing of a bankruptcy case and keeping the Agency adequately and regularly informed, in writing, of all aspects of the proceedings, at a minimum, on a bi-monthly basis;
- (E) Taking actions that result in greater recoveries and avoiding actions that are likely not to be cost-effective;
- (F) Monitoring confirmed bankruptcy plans to determine borrower compliance, and, if the borrower fails to comply, pursuing appropriate relief, including seeking a dismissal of the bankruptcy plan;
- (G) Requesting modifications of any proposed bankruptcy plan whenever it appears that the lender could obtain additional recoveries via plan modification;
- (H) Filing a proof of claim, when necessary, and all the necessary papers and pleadings concerning the case; and
- (I) Attending and, when necessary, participating in meetings of the creditors and all court proceedings.

In a Chapter 9 or Chapter 11 reorganization, you must obtain an independent appraisal of the collateral if the Agency has determined that an independent appraisal is necessary. With written Agency consent, you and the Agency will equally share the cost of any independent appraisal fee to protect the guaranteed loan in any bankruptcy proceedings.

If you are the holder, an estimated loss payment may be filed at the initiation of a Chapter 7 proceeding or after a Chapter 9 or Chapter 11 proceeding becomes a liquidation proceeding. Any loss payment on loans in bankruptcy must be approved by the Agency.

You must use the report of loss form to request an estimated loss payment and to revise any estimated loss payments during the bankruptcy plan. The estimated loss claim, as well as any revisions to this claim, must be accompanied by documentation to support the claim.

Upon completion of a bankruptcy plan, you must enter the data directly into the Agency's electronic system and provide the Agency with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. Where the actual loss sustained is different than the estimated loss paid, the difference will be handled as follows:

(A) If the actual loss is greater than any estimated loss payment, the Agency will pay the additional amount owed by the Agency to you.

(B) If the actual loss is less than the estimated loss payment, you must reimburse the Agency for the overpayment plus interest at the promissory note rate from the date of payment of the estimated loss.

(C) If the Agency conducted the liquidation, it will provide an accounting to you and will pay you in accordance with the loan note guarantee.

Only one estimated loss payment is allowed during the bankruptcy and any related appellate proceedings. The Agency will treat all subsequent claims of the lender during bankruptcy and any related appellate proceedings as revisions to the initial estimated loss.

At its option, the Agency may process a revised estimated loss payment in accordance with any court-approved changes in the bankruptcy plan.

Once the bankruptcy plan has been satisfactorily completed, the lender is responsible for submitting the documentation necessary for the Agency to review and adjust the estimated loss claim to reflect any actual discharge of principal and interest and to reimburse the lender for any court-ordered interest rate reduction under the terms of the bankruptcy plan.

The Agency will process final bankruptcy loss payments when the loan is fully liquidated. Please note, you must apply estimated loss payments first to the principal balance of the guaranteed portion of the debt and then to the interest of the guaranteed portion of the debt. In the event a court attempts to direct the payments to be applied in a different manner, you must immediately notify the Agency in writing.

If an estimated loss claim is paid during a bankruptcy and the borrower repays in full the remaining balance without an additional loss sustained by the lender, a final report of loss will be filed to terminate the loan.

Legal fees as a result of a bankruptcy are limited by the Agency to an amount not to exceed 3% of the current principal balance and are only recoverable from liquidation proceeds. Legal fees in excess of 3% of the current principal balance shall be borne by you and are not recoverable from liquidation proceeds or any loss claim by you.

If approved protective advances were incurred in connection with the initiation of liquidation action and were required to protect the collateral as result of delays in the case or failure of the borrower to maintain the security prior to the borrower having filed bankruptcy, the protective advances together with accrued interest are payable under the guarantee in the final loss claim. Proceeds received from partial sale of collateral during bankruptcy can be used by the lender to pay reasonable costs (e.g., freight, labor, and sales commissions) associated with the partial sale. Reasonable use of proceeds for this purpose must be documented with the final loss claim request

Litigation § 5001.520

If the Agency determines you are not adequately protecting your or the Agency's rights with respect to the loan, the Agency reserves the right to take any legal action the Agency determines necessary to protect your rights or the Agency's rights with respect to the loan. If the Agency exercises this right, you must cooperate with the Agency. Any cost to the Agency associated with such action will be assessed against you. Notwithstanding any other provisions, the Agency reserves the right to be represented by the U.S. Department of Justice in any litigation where the Agency is named as a party.

Loss Calculations and Payment § 5001.521

The Agency will approve estimated loss payments only after it has approved your liquidation plan. For a loan which has been approved by the Agency for a debt write-down (or debt restructure), the maximum amount of loss payment will not exceed the percent of guarantee multiplied by the difference between the outstanding principal and interest balance of the loan before the write-down and the outstanding balance of the loan after the write-down.

The amount of an estimated loss payment must be credited first as a deduction from the principal balance of the loan with any remaining balance to accrued interest. The estimated loss payment cannot be applied as a payment on the loan for purposes of reducing the unpaid balance owed by the borrower for status reporting or any debt collection actions against the borrower or any guarantors.

Unless the Agency anticipates a future recovery, the Agency will make a final settlement after the collateral is liquidated or after settlement and compromise of all parties has been completed. The Agency has the right to recover losses paid under the guarantee from any party that may be liable.

Once you receive a final loss payment from the Agency, the Agency will collect any outstanding debts owed to the government. You must determine the collectability of unsecured personal and corporate guarantees required. You must promptly collect or otherwise dispose of such guarantees prior to completion of the final loss report. However, if collection from the guarantors appears unlikely or will require a prolonged period of time, you must file the report of loss when all other collateral has been liquidated. Unsecured personal or corporate guarantees outstanding at the time of the submission of the final report of loss will be treated as a Future Recovery with the net proceeds to be shared on a pro rata basis by the lender and the Agency. You must use the Agency-approved report of loss form for all estimated and final loss claim requests. In calculating the estimated loss, you must use the estimated or current appraised liquidation value of the collateral.

Except for certain unsecured personal or corporate guarantees, you must submit a final report of loss to the Agency within 30 calendar days after liquidation of all collateral is completed. The Agency will not guarantee interest beyond the interest termination date or this 30-day period, other than for the period of time it takes the Agency to process the loss claim. You must apply the total amount of the loss payment remitted by the Agency to the guaranteed portion of the loan debt. At the time of final loss settlement, you must notify the Borrower that the loss payment has been applied. Such notification does not release the Borrower from liability. Once you receive a final loss payment from the Agency, the Agency will collect any outstanding debts owed to the government.

Negligent loan origination and negligent loan servicing will result in a reduction of loss claims payable under the guarantee, if any losses have occurred as the result of such negligence. The Agency will assess, against you, any cost to the Agency associated with actions taken by the Agency necessary to protect the Agency's interests with respect to the loan where you are not in compliance with origination and servicing responsibilities. The extent of the reduction, which could be a total reduction of the loss claims payable, will depend on the extent of the losses incurred as a result of the negligent loan origination or servicing.

Non-compliance with design requirements and/or engineering documentation will result in a reduction of loss claims payable. The Agency's review of the non-compliance could result in a total reduction of the loss claim payable. You must ensure that the project is designed utilizing accepted architectural and engineering practices and conforms to applicable Federal requirements including the seismic requirements of Executive Order 12699 (55 FR 835, January 5, 1990), State and local codes and requirements and facility plans or plans and specifications reviewed and approved by the applicable State regulatory agency. You must also ensure that the planned project will be completed within the available funds and, once completed, will be suitable for the borrower's needs.

Future Recovery § 5001.522

Once the Agency determines a debt is Federal debt and provides notice to you, that Federal debt is excluded from future recovery. You must cease all collection efforts against the borrower and any individual or corporate guarantors upon referral of the debts by the Agency for collection in accordance with 7 CFR part 3. You will comply with the requirements of the Debt Collection Improvement Act implemented under 7 CFR part 3.

The Agency will not share any collection of Federal debt made by the Federal Government from any liable party to the guaranteed loan with you. If funds are received, you will send USDA's share of the recovery to the applicable field/state office.

Unless notified otherwise by the Agency, after the final loss claim has been paid, you must attempt collection from any party still liable. Any net proceeds from that effort must be split pro rata between you and the Agency based on the percentage of guarantee (even if the loan note guarantee has been terminated). Any collection of Federal debt made by the United States from any liable party to the guaranteed loan will not be split with the lender.

Property Acquired by the Lender § 5001.523 (CF and WWD)

Should you acquire title to collateral and the final loss claim is not paid until final disposition, you must proceed as quickly as possible to develop a plan to fully protect the collateral from deterioration (weather, vandalism, etc.). Hazard insurance in an amount necessary to cover the market value of the collateral must be maintained.

You must obtain written approval Agency regarding the following:

- (A) A plan on the best method for the sale of the collateral. However, if an existing approved liquidation plan addresses the disposition of acquired property, no further review is required unless modification of the plan is needed.
- (B) Abandonment of collateral when conversion to cash is reasonably expected to result in a negative net recovery amount.

Termination of Loan Note Guarantee § 5001.524

A Loan Note Guarantee will terminate automatically under any of the following conditions:

- (A) Upon full payment of the guaranteed loan;
- (B) Upon full payment of any loss claims or compromised settlement except for future recovery provisions;
- (C) Upon written notice from the lender to the Agency to terminate the guarantee will terminate, which the effective the date the Agency receives the request provided that the lender holds all of the guaranteed portion; or
- (D) Failure of you or the borrower to adhere to the applicable provisions of regulations governing One RD or any of the participating programs or other good cause.