



November 14, 2014

Brenda Griffin
Rural Development, Business Programs
U.S. Department of Agriculture
1400 Independence Avenue SW., Stop 3224
Washington, DC 20250-3224

Submitted Via Federal eRulemaking Portal: <http://www.regulations.gov>.

RE: Comments on Docket Number RBS-14-BUSINESS-0031, Guaranteed Loanmaking and Servicing Regulations, 7 CFR Parts 4279 and 4287, (September 15, 2014).

On behalf of the National Sustainable Agriculture Coalition (NSAC),¹ I am submitting these comments on USDA's Proposed Rule for Guaranteed Loanmaking and Servicing Regulations, and specifically, on the proposed changes to the regulations for the Business and Industry (B&I) Guaranteed Loan Program.

NSAC represents 40 family farm, rural development, conservation and environmental organizations from around the U.S. that share a commitment to federal policy that promotes sustainable agriculture production systems, family-based farms and ranches, and healthy, vibrant rural communities.

The following recommendations were developed with input from NSAC member organizations who work directly with or represent the interests of farm and food businesses and/or who have worked with farm and food businesses that have benefited from loan guarantees through the B&I Program.

¹ Agriculture and Land Based Training Association, Alternative Energy Resources Organization, California Certified Organic Farmers, California FarmLink, C.A.S.A. del Llano (Communities Assuring a Sustainable Agriculture), Catholic Rural Life, Center for Rural Affairs, Clagett Farm/Chesapeake Bay Foundation, Community Alliance with Family Farmers, Dakota Rural Action, Delta Land and Community, Inc., Ecological Farming Association, Farmer-Veteran Coalition, Fay-Penn Economic Development Council, Flats Mentor Farm, Florida Organic Growers, Grassworks, Hmong National Development, Inc., Illinois Stewardship Alliance, Institute for Agriculture and Trade Policy, Iowa Natural Heritage Foundation, Izaak Walton League of America, Kansas Rural Center, Kerr Center for Sustainable Agriculture, Land Stewardship Project, Michael Fields Agricultural Institute, Michigan Integrated Farm and Food Systems, Michigan Organic Food and Farm Alliance, Midwest Organic and Sustainable Education Service, National Center for Appropriate Technology, National Sustainable Agriculture Coalition, Nebraska Sustainable Agriculture Society, Northeast Organic Dairy Producers Alliance, Northern Plains Sustainable Agriculture Society, Northwest Center for Alternatives to Pesticides, Ohio Ecological Food and Farm Association, Organic Farming Research Foundation, Rural Advancement Foundation International – USA, Union of Concerned Scientists Food and Environment Program, Virginia Association for Biological Farming, Wild Farm Alliance

NSAC COMMENTS ON PROPOSED RULE FOR THE BUSINESS AND INDUSTRY GUARANTEED LOAN PROGRAM

1) We strongly support the use of B&I loan guarantees to help finance non-rural, local and regional food enterprise projects that generate demonstrable economic benefits for surrounding rural communities. However, we recommend that such projects only be allowed if they assist rural businesses, and create and/or save jobs in the surrounding rural communities.

Producers who market products locally and regionally can greatly benefit from the market access offered from facilities located in nearby non-rural areas, which are more densely populated and include many different types of buyers, including restaurants, grocery stores, and distributors.

Section 4279.113(x) of the Proposed Rule clarifies that local and regional food enterprise “projects in non-rural areas may be included when the project provides an economic benefit to the surrounding rural communities.” The Proposed Rule does not define “economic benefit.” NSAC supports the eligibility of non-rural aggregation, distribution, processing, and storage projects that help farmers access urban and suburban markets. However, because the term “economic benefit” is broad and open to interpretation, we recommend that the Interim Final Rule require that non-rural projects *assist rural businesses, and create and/or save jobs* in the surrounding rural communities. Lenders and borrowers already submit these projections at the time of application, so there should be no added burden to implement such a requirement.

2) We recommend that the Tangible Balance Sheet Equity (TBSE) requirement for new businesses be reduced from 20 percent to 10 percent, and that a cash injection alternative be offered.

Section 4279.131(d) of the Proposed Rule requires borrowers that are new businesses to have a minimum of 20 percent TBSE (or a maximum debt to tangible net worth ratio of 4:1). This requirement presents a significant barrier for new local and regional food enterprise projects, which often lack tangible assets. Anecdotal evidence suggests that the TBSE requirement is part of the reason that only *one start up* local food enterprise applied for a loan guarantee in FY 2014. The requirement is particularly problematic for the non-rural projects, where land, equipment, and materials and other inputs tend to be more costly than in rural areas.

By comparison, the Small Business Administration’s (SBA) 7(a) loan guarantee program has no such TBSE requirement. Instead, SBA considers invested equity when evaluating applications, but leaves it to lenders and borrowers to work out the specific terms. According to SBA, “SBA does not have a set number or percentage which constitutes the amount of equity a start-up business must have which can then be leveraged with the loan. Each request for financial assistance is evaluated on its own.”

SBA policy explicitly allows a cash injection to be considered equity, including cash that is borrowed, so long as the applicant can demonstrate repayment of the borrowed cash from sources other than

the cash flow of the business. Many new SBA borrowers choose to provide an initial cash injection rather than tangible equity, which start-ups often do not have. To ease the burden of the TBSE requirement on new businesses, USDA should reduce the TBSE requirement from 20 percent to 10 percent for start-up businesses and allow these businesses to choose a cash injection alternative.

We understand that starting a new business is risky, and that with this new rule USDA seeks to minimize the risk of loan failure. However, part of the justification for government loan guarantees is that it helps businesses secure credit in situations where the private market will not do so. USDA Rural Development programs seek to overcome barriers in the private financial market for rural businesses; yet the 20 percent TBSE requirement does not make sense for new businesses and undermines this effort.

3) We recommend that USDA allow guarantees of up to 90 percent for local and regional food enterprise loans of \$10 million or less, if the conditions of either paragraph (b)(1) or (b)(2) of Section 4279.119 are met.

Section 4279.119 of the Proposed Rule allows for guarantees of up to 90 percent on loans of \$5 million or less if the conditions of either paragraph (b)(1) or (b)(2) of Section 4279.119 are met. The 90 percent guarantee allowance should be retained. However, because local and regional food businesses can often require loans greater than \$5 million, USDA should restore the maximum loan amount to \$10 million, in line with previous rules for the B&I program (61 FR 67633, Dec. 23, 1996, as amended at 69 FR 64831, Nov. 9, 2004).

One type of local food business that would be helped by the reinstatement of the \$10 million maximum loan amount for 90 percent guarantees is niche meat processing. Facilities for local meat processing can cost up to \$10 million to establish. Niche meat processing refers to small- and mid-scale processing of market-differentiated meat, such as locally raised, certified organic, grass-fed, or hormone-free products. Demand for locally or regionally produced niche meat and other food products continues to grow rapidly throughout the country; and the B&I program's local and regional food enterprise set-aside is well positioned to support production and to connect supply to demand. However, disallowing loans of over \$5 million to qualify for the 90 percent guarantee means that fewer lending institutions will invest in high-priority local and regional food enterprise projects.

4) We recommend that USDA conduct additional outreach to borrowers and lenders of small loans so that they are aware of the abbreviated application option for loans of \$600,000 and less in advance of developing a proposal.

Section 4279.161 of the Proposed Rule allows borrowers and lenders to submit an abbreviated form of the B&I loan guarantee application, if the loan is less than \$600,000. We thank USDA for continuing to offer the abbreviated application option, which makes the application process less cumbersome for smaller applicants.

In recent conversations with Community Development Financial Institutions (CDFIs) we have learned that, in some cases, borrowers and non-traditional lenders are unaware of the abbreviated application option. We are concerned that this is one reason that so few CDFIs have applied for B&I loan guarantees for local and regional food enterprise projects. We recommend that USDA work with state Rural Development offices and partners to do more outreach to borrowers and lenders of small loans, including non-traditional lenders. Doing so may increase the number of

applications for B&I loan guarantees for local and regional food enterprise projects.

5) We recommend that, to the extent possible, USDA work with lenders and borrowers to secure alternative grant funding for the development of feasibility studies, which the Proposed Rule requires for all new businesses. We further recommend that, for B&I projects that fit the local and regional food enterprise criteria, feasibility studies conducted with funding from other USDA programs, such as the Value-Added Producer Grants (VAPG), Rural Business Enterprise Grants (RBEG) and Rural Cooperative Development Grant (RCDG) programs be accepted as fulfilling the B&I program’s new feasibility study requirement, so long as they are up-to-date and account for recent market conditions.

Section 4279.150 of the Proposed Rule requires all start-up businesses to conduct a feasibility study prior to receiving financing. Applicants must include the feasibility study in the loan guarantee application. Under previous rules, there was no such requirement.

We are not opposed to feasibility studies; however, this new requirement may result in a reduction in the number of qualified applications from small borrowers. USDA should help small start-up businesses—particularly those that are seeking loans of \$600,000 or less—to secure grant funding to conduct feasibility studies for their B&I loan application packages.

We further recommend that, for local and regional food enterprise projects, USDA should accept feasibility studies conducted with funding from other USDA programs, such as the Value-Added Producer Grants (VAPG), Rural Business Enterprise Grants (RBEG) and Rural Cooperative Development Grant (RCDG) programs in place of a separate, new feasibility study for the purposes of the B&I loan guarantee application. Where possible, USDA should seek to reduce redundancy for start-up businesses that have received other USDA grants to conduct feasibility studies. Coordinating between USDA programs is likely to increase the number and quality of B&I applications for local and regional food enterprise projects.

6) We recommend that USDA treat CDFIs, as a class of lenders, as equivalent to other regulated lenders (4279.29(a)), given their regulated status with the Treasury Department.

Lenders active in the emergent local and regional food sector, including credit unions, CDFIs, and private foundations, are often mission-oriented. We are concerned that CDFIs, which are regulated by the Treasury Department, are nonetheless categorized by USDA as “non-regulated lenders” (4279.29(b)). The proposed rule thereby presents several challenges for CDFIs, including higher annual fees and the requirement that they renew their status as an eligible lender on a three year basis (4279.29(b)(3)(iv)). Most significantly, the minimum loan requirements—10 loans completed worth \$1 million each, over five years (section 4279.29(b)(1)(ii))—may preclude several of the most active CDFIs using the B & I program for local and regional food enterprises.

Accordingly, the number of loans required in section 4279.29(b)(1)(ii) should not be required as part of a renewal process. Information provided in section 4279(b)(2)(iii), including loss rates on loans in combination with the entity’s lending history should be more than sufficient to address USDA concerns about a “non-regulated” lender’s financial management. Other changes, such as increasing the past loan default rate from 3 percent to 6 percent (4279.29(b)(1)(ii)(a-b)), the loan loss reserve (4279.29(b)(1)(iv)), and credit examination (4279.29(b)(1)(v-vi)) are in accord with industry standards and are unlikely to affect the participation of CDFIs in the B & I program.

We strongly urge USDA to treat CDFIs, as a class of lenders, as equivalent to other regulated lenders (4279.29(a)), given their regulated status with the Treasury Department. If this is not possible, we urge, USDA to remove the three-year renewal requirement, retain a fee structure that is the same as other regulated lenders, and remove the minimum loan requirements for CDFIs.

Thank you for considering our comments.

Sincerely,

A handwritten signature in black ink that reads "Greg Fogel". The signature is written in a cursive, slightly slanted style.

Greg Fogel
Senior Policy Specialist
National Sustainable Agriculture Coalition