SUPPORTING STATEMENT
7 CFR 4287-B
"Servicing Business and Industry Guaranteed Loans"
0570-0016

A. <u>Justification</u>.

1. <u>Explain the circumstances that make the collection of information necessary.</u>

The Business and Industry (B&I) program was legislated in 1972 under section 310B of the Consolidated Farm and Rural Development Act, as amended (the Act). The purpose of the B&I program, as authorized by the Act, is to improve the economic and environmental climate in rural communities, including pollution abatement and control. This purpose is achieved through bolstering the existing private credit structure through guarantee of quality loans, which will provide lasting community benefits. It is not intended that the guaranteed authority will be used for marginal or substandard loans or to "bail out" lenders having such loans.

The B&I loan program is administered by the Rural Business-Cooperative Service (RBS) Administrator and at the State level by the Rural Development State Director servicing each State. The State Director is the focal point for the program and the local contact person for processing and servicing activities. 7 CFR part 4287, subpart B contains the regulations governing the servicing for the B&I loan program. The lender is responsible for servicing the entire loan and will remain mortgagee and secured party of record notwithstanding the fact that another party may hold a portion of the loan. 7 CFR part 4287, subpart B sets forth guidance to Rural Development personnel regarding the servicing of guaranteed loans. The collection of information is needed to monitor the guaranteed loan portfolio to ensure that the lenders are servicing the loans adequately.

2. <u>Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the Agency has made of the information received from the current collection.</u>

The various forms and narrative requirements contained with the B&I regulations, which are requested from the lender and the borrower, are, for the most part, no more than those that a prudent commercial lender would require in the private sector. The information requested is necessary and vital in order for the Agency to make prudent credit and financial decisions.

The Agency, through its respective Business Programs Divisions in Washington, D.C., and its 47 State Offices throughout the United States, will be the primary users of the information collected. Under the Freedom of Information Act, the general public can request most of the data provided by the borrower and lender to the Agency, except data that is confidential.

Specifically, the burden to be cleared with this docket is as follows:

REPORTING REQUIREMENTS – NO FORMS

Loan Classification: Within 90 days of receipt of the Loan Note Guarantee, the lender must notify the Agency of the loan's classification or rating under its regulatory standards. Should the classification be changed at a future time, the lender must notify the Agency immediately.

Agency and Lender Conference: The lender will meet with the Agency at the Agency's request to ascertain how the guaranteed loan is being serviced and ensure that conditions and covenants of the Loan Agreement and Conditional Commitment are being enforced. The Agency will meet with each lender at least annually. Because lenders typically have more than one guaranteed borrower, multiple borrowers are discussed at a single visit.

Quarterly Financial Reports: The lender must obtain the financial statements required by the Loan Agreement, and these statements must be forwarded to the Agency. It is common practice within the banking industry for the lender to require a borrower; regardless of whether there is a Loan Note Guarantee, to provide periodic financial statements. Normally, lenders require a newer borrower to provide financial statements quarterly, as well as an annual financial statement. Established borrowers submit only annual statements. The burden computation has been adjusted to reflect instances over and above the usual customary practice by the lender in which additional financial statements will be required by the Agency. Basically, it is the time spent completing the abbreviated financial analysis to Agency requirements, and submitting it to the Agency.

Annual Financial Reports: The lender is expected to fully analyze the annual financial statements for each borrower and provide the Agency with a written analysis and conclusions, including spreadsheets and ratio trend analyses that compare year-to-year historical financial information and also compare the borrower to industry standards for similar businesses. The lender's written analysis should include the borrower's strengths, weaknesses, extraordinary transactions, term loan agreement violations, and other indications of the financial condition of the borrower. Most lenders would complete the financial analysis, even if it were not guaranteed.

The lender must submit the annual financial statements to the Agency along with its spreadsheets and written analysis within 120 days of the end of the borrower fiscal year. This requirement is necessary for the lender and the Agency to service the loan and monitor the borrower's financial condition.

Borrower Visits: The Agency will meet with each borrower during the first year after the Loan Note Guarantee is issued, and every three years thereafter, and more often if the account is delinquent or a problem. The lender is encouraged to participate in the visit. During the visit, a review of the collateral and the borrower's operation is made.

<u>Interest Rate Adjustments</u>: The lender is responsible for the legal documentation of interest rate changes by an endorsement or any other legally effective amendment to the promissory note. The Agency must be notified in writing of all interest rate change. The Government's financial interest must not be adversely affected by any reduction in the interest rate.

When the change is simply a change in rate in a variable rate note, the Agency is typically advised by simple notation on Form RD 1980-41 or 1980-44. The burden associated with the forms is addressed separately in this package.

<u>Release of Collateral</u>: All releases must be based on a complete analysis of the proposal. The lender must submit written documentation to the Agency to justify releases of collateral that exceed 20 percent of the loan amount, prior to the release being made. This is to ensure that the loan will remain adequately secured. All releases of collateral with a value exceeding $100,000 must be supported by a current appraisal on the collateral released.

<u>Subordination of Lien Position</u>: A subordination of the lender's lien position must be requested in writing by the lender and concurred by the Agency in writing in advance of the subordination. The subordination must enhance the borrower's business, and the Agency's interest in and lien position on the collateral, after subordination, must be adequate to secure the loan.

<u>Alterations of Loan Instruments:</u> Alterations to any loan instrument must be approved in writing by the Agency. A request by the lender for approval to loan instrument changes must be supported by and explanation of the reason for the proposed changes, completed by the lender.

<u>Transfer and Assumption</u>: All transfers and assumptions must be approved in writing by the Agency and generally must be made to eligible applicants. In all cases, the lender must make a complete credit analysis, subject to Agency review and approval. In addition, the lender will provide to the Agency a written certification that the transfer and assumption is valid, enforceable, and complies with all Agency regulations. A request by the lender for approval of new loan terms must be supported by an explanation of the reasons for the proposed change in loan terms.

<u>Credit Reports</u>: An individual credit report must be provided for transferee proprietors, partners, officers, directors, and stockholders with 20 percent or more interest in the business. This information gives the loan officer a history of past credit payments on the transferee and aids the loan officer in making a determination as to the credit worthiness of the transferee.

<u>Appraisal Reports</u>: In a transfer and assumption, the transferor, including any guarantor, may be released from liability on the loan only with prior Agency approval and only when the value of the collateral being transferred is at least equal to the amount of the loan being assumed. A current appraisal is needed to make such a determination. Any releases of collateral with a value exceeding $100,000 must also be supported by a current appraisal on the collateral released.

Substitution of Lender: After the issuance of the Loan Note Guarantee, the lender shall neither sell nor transfer the entire loan to a new lender without the prior written approval of the Agency. The substitution of lender is requested in writing by the borrower and the proposed substitute lender if the original lender is still in existence. The new lender must agree in writing to acquire title to the non-guaranteed portion of the loan held by the original lender and assume all original loan requirements.

Default by Borrower: If a monetary default exceeds 60 days, the lender will arrange a meeting with the Agency and the borrower to resolve the problem.

Curative Actions: The primary curative actions include: payment deferment, reamortization, rescheduling, reorganization, and moratoriums.

Protective Advances: Protective advances are advances made by the lender to preserve and protect the collateral. They must constitute as indebtedness of the borrower to the lender and be secured by the security instruments. The lender needs the Agency's written authorization when cumulative protective advances exceed $5,000.

Liquidation Plan: If the lender concludes that liquidation is necessary, it must request the Agency's concurrence. Within 30 days after a decision to liquidate, the lender will submit to the Agency its proposed written detailed method of liquidation. Upon approval by the Agency of the liquidation plan, the lender will conduct the liquidation (as it would for any non-guaranteed loan). If significant changes to the plan become necessary, the lender must request Agency concurrence to alter the plan.

Acceleration: The lender (or the Agency, at its option, decides to take over servicing and liquidating of the account) will proceed to accelerate the indebtedness as expeditiously as possible when acceleration is necessary, including giving any notices and taking any other legal actions required. A copy of the acceleration notice or other acceleration documents will be sent to the Agency. The guaranteed loan will be considered in liquidation once the loan has been accelerated and a demand for payment has been made upon the borrower.

Accounting and Reports: When the lender conducts liquidation, it will account for all funds during the period of liquidation, and will provide the Agency with reports at least quarterly on the progress of liquidation including disposition of collateral, resulting costs, and additional procedures necessary for successful completion of the liquidation.

Termination of Guarantee: A guarantee will be terminated automatically upon the written notice from the lender to the Agency that the guarantee will terminate in 30 days after the date of notice, provided that the lender holds the entire guaranteed portion of the loan.

The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones.

REPORTING REQUIREMENTS – FORMS

Form RD 1980-41, "Guaranteed Loan Status Report."

The Agency requires the lender to complete this form twice per year, June and December. The lender has the primary records on a guaranteed loan. The Agency uses this information collected from the lenders to determine the status of the guaranteed loan and forecast losses. The information is also used in the completing the Agency financial statements.

Form RD 1980-44, "Guaranteed Loan Borrower Default Status."

The Agency requires the lender to complete this form on all delinquent loans every two months. The Agency uses this information to determine the lender's compliance with the Lender's Agreement in properly servicing delinquent accounts.

REPORTING REQUIREMENTS – FORMS APPROVED UNDER OTHER NUMBERS

Form RD 1980-43, "Lender's Guaranteed Loan Payment to USDA."

The Agency requires the lender to use of this form to send guaranteed loan payments to the Agency Finance Office on loans repurchased from the secondary market. For this regulation only, we estimate 100 respondents monthly completing this form taking approximately 30 minutes each for a total of 600 man hours.

Form RD 449-30, "Loan Note Guaranteed Report of Loss."

The Agency requires the lender to use of this form to process estimated and final reports of loss on guaranteed loans. For this regulation only, we estimate 100 respondents taking approximately 25 hours each to complete this form for a total of 2,500 man hours.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection.

The Agency has developed the capability to receive the biennial and bimonthly status reports electronically. Lenders can complete these forms through Guaranteed Loan System (GLS). They receive a certified, secure ID through the State office. However, only lenders with a high volume of guaranteed loans have elected to utilize them; currently, only those participating in the Department's housing and farm programs

Some lenders submit documents and correspondence by e-mail. However, the practice of submitting financial information and other sensitive documents or information by eMail is not condoned by the Agency because of the security concerns.

Virtually none of the information requirements are submitted electronically. The Agency is prioritizing various enhancements to its system to receive more information electronically. However, the projects with the highest priority are in loan origination, rather than servicing requirements reflected in this package.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes describes in Item 2 above.

All loan programs administered by the Agency have been reviewed, and there are no known programs that duplicate this information. The Agency has attempted to avoid duplication of its requirements and the burden by clarifying regulations and closely verifying the information submitted by the lender and its applicant. If similar information is found to be available from another Federal agency, every effort is made to utilize that information as is or in an appropriately modified form for this program.

5. If the collection of information impacts small businesses or other small entities (item 5 of OMB Form 83-1), describe any methods used to minimize burden.

The Agency will require the information only in those instances where a determination is made that the information is necessary and thus minimizing, to the extent possible, the cost to small businesses or other small entities. Every effort has been made to minimize burden to small businesses.

6. Describe the consequences to Federal program or policy activities if the collection is not conducted or conducted less frequently, as well as any technical or legal obstacles to reducing burden.

The information collected under this program is considered to be the minimum necessary to conform to the requirements of the existing program regulations that are established by law and to ensure that the intent of the statute is achieved. The information would be neither adequate nor effective if collected less frequently.

If the information is not collected the Agency would neither be able to make prudent credit decisions nor would the Agency be able to effectively monitor the lenders' servicing activities and thus minimize losses under the program.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

a. Requiring respondents to report information more than quarterly
Lenders must submit Form RD 1980-44 every two months for borrowers who are delinquent.

b. Requiring written responses in less than 30 days. There are no specific information collection requirements that require less than 30 days response from the lender.

However, the Agency cannot provide the lender with the program benefits until documentation is received to support the lender's request.

c. Requiring more than an original and two copies. There are no specific information collection requirements that require more than an original and two copies.

d. Requiring respondents to retain records for more than 3 years. There are no such requirements.

e. Not utilizing statistical sampling. There are no such requirements.

f. Requiring use of statistical sampling which has not been reviewed and approved by OMB. No such requirements exist.

g. Requiring a pledge of confidentiality. There are no such requirements.
g
h. Requiring submission of proprietary trade secrets. There are no such requirements.

8. If applicable, identify the date and page number of publication in the Federal Register of the Agency's notice soliciting comments on the information collection. Summarize public comments received and describe actions taken by the Agency in response to these comments. Describe efforts to consult with persons outside the Agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, reporting format (if any), and on data elements to be recorded, disclosed, and reported.

In accordance with the Paperwork Reduction Act of 1995, the agency published a Notice in the Federal Register on January 30, 2009 [74 FR 5634]. No comments were received.

During the Business Program Assessment Review, we interview lenders as a part of our review of the State Office operation regarding the lenders' knowledge and experience with the B&I program and request their analyses of the public burden associated with completing and processing a guaranteed B&I loan package and servicing the guaranteed loan. In addition, the Agency conducted a sampling of lenders and packagers knowledgeable and experienced in the B&I program and requested their analyses of the public burden associated with completing and processing a guaranteed B&I loan package and servicing the guaranteed loan. The Agency personally interviewed the following lenders and the Director of the U. S. Rural Development Council.

a. Bridgeview Capital Solutions
3353 Peachtree Road, North Tower, Suite 1040
Atlanta, Georgia 30326
(800) 386-3722

b. WesBanco Bank, Inc.
Stephen F. Decker

415 Market Street
Parkersburg, WV 26102
(304) 480-2501

c. Bob Coleman, Director
U.S. Rural Development Council
P.O. Box 546
La Canada, California 91012
818-541-6610

These lenders, we believe, provide a fair sampling of size and expertise necessary to make a judgment of the Agency program requirements. Each lender was requested to provide a weighted salary scale which is used to calculate the public cost in dollars

9. Explain any decision to provide any payment or gift to respondents, other than reenumeration of contractors or grantees.

There will be no payment or gift to respondents, including reenumeration of contractors or grantees.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or Agency policy.

No assurance of confidentiality is provided to the respondents. Requests for release of records and information are processed in accordance with the Privacy Act of 1974.

11. Provide additional justification for any question of a sensitive nature, such as sexual behavior or attitudes, religious beliefs, and other matters that are commonly considered private.

The information collected does not contain any questions of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information.

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated.**

From 2005 through 2008, the average funding for the B&I program was $1.1 billion. The portfolio has been increasing (on average) by about 350 loans each year, after adjusting for the loans that pay off or otherwise are no longer part of the portfolio. On average, each borrower has 1.071 loans. The burden estimates in this submission are based on the assumption that funding level for the B&I program will remain at approximately $1 billion in annual lending authority, resulting in an average portfolio over the next 3 years of 3,750 loans and 3,500 borrowers.

See the attached spreadsheet.

- **Provide estimates of annualized cost to respondents for the hour burdens for the collection of information, identifying and using appropriate wage rate categories.**

Lenders and packagers interviewed were asked to estimate the amount of time required to complete reports, letters, and other requirements and were requested to provide a weighted salary scale which is used to calculate the public cost in dollars. A final composite average from the lenders was used to determine the final costs. The overall average weighted rate and the cost of this regulation as a burden to the public were completed on the basis of $60 per hour. The $60 per hour was calculated by averaging data provided to the Agency from the survey of lenders and is representative of the current burden rate of $60 per hour. The hourly cost was then multiplied by the burden hours. Based on this computation, the projected total annualized cost to the public for 7 CFR part 4287, subpart B, which represents servicing for the B&I loan program, is $1,093,380.

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information, (do not include the cost of any hour burden shown in items 12 and 14). The cost estimates should be split into two components: (a) a total capital and start-up cost component annualized over its expected use of life; and (b) a total operation and maintenance and purchase of services component.

There are no costs other than those reported in question 12.

14. Provide estimates of annualized cost to the Federal Government.

The cost to the Federal Government to administer the activities of the B&I loan program is estimated to be $966,095 per year or $41.41 per hour, which includes the time to collect the information provided by the respondents; employee travel; and other administrative costs. A common servicing action would be for a GS-8 or GS-9 State Loan Technician to run a Guaranteed Loan System report for the Program Director (GS-13), which identifies the borrowers and the financial statement requirements. A letter is prepared by the State Loan Technician or Program Clerk (GS-5) for the Program Director's signature (GS-13) or State Director's signature (SES) requesting the lender to provide the financial statements and analysis to the Agency. The lender will provide this information, if available to the Agency. It will be reviewed by the State Program Loan Specialist (GS-12) and should any adverse trends be noted, a letter will be prepared by the State Program Clerk (GS-5) and signed by the Program Director (GS-13) or State Director (SES). The letters are signed on Rural Development standard letterhead. No other specific government form is required for this process.

15. Explain the reasons for any program changes or adjustments reported in items 13 or 14 of the OMB Form 83-1.

There have been no changes to the program regulations since the last report in 2006. There is an overall adjustment increase (+ 752) hours in burden on the public from 18,041 hours to 18,793 attributed to the increase in the number of loans in the portfolio.

16. For collection of information whose results will be published, outline plans for tabulation and publication.

This collection of information will not be published for statistical purposes.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

It is not cost effective for the Agency to display the expiration date on the forms due to the large number of field offices and the significant difference in the volume of forms used by these offices.

18. Explain each exception to the certification statement identified in item 19 of OMB 83-1.

There are no exceptions to the certification statement identified in item 19, “Certification for Paperwork Reduction Act Submissions,” of OMB Form 83-1.

19. How is this information collection related to the Service Center Initiative (SCI)? Will the information collection be part of the one stop-shopping concept?.

The collection effort is not primarily related to the Service Center Initiative. Each State has established its own delivery system for the B&I program, however, most State’s administer the guaranteed loan program from the State Office. This information is collected for the Business and Industry Guaranteed Loan Program.