

## REGULATORY IMPACT ANALYSIS

**AGENCY:** Rural Business Cooperative Service

**TITLE:** B&I CARES Act Guaranteed Loan Program (B&I CARES Act Program)

**ACTION:** Interim Final Rule

**CITATION:** 7 CFR Parts 4279

The following Regulatory Impact Analysis is provided to fulfill the requirements of Executive Order 12866 and OMB Circular A-4. This analysis consists of a statement of need for the changes to the Business and Industry (B&I) Guaranteed Loan Program, a description of the current status of the B&I Guaranteed Loan Program, a summary of the changes to the B&I Guaranteed Loan Program, and an analysis of the benefits and costs of the changes. The estimated impacts of this analysis are based on the provisions of the interim final rule and information currently available to the Rural Business Cooperative Service (RBCS).

While most of the changes could only be analyzed on a qualitative basis, an economic analysis was able to be quantified. The interim final rule is expected to provide additional benefits compared to the current rule by allowing the flexibility to obligate federal funds for guaranteed loans pursuant to the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) in response to the national COVID-19 Public Health Emergency.

### **A. Statement of Need**

On March 13, 2020, President Trump declared the ongoing Coronavirus Disease 2019

(COVID-19) pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, territories, and the District of Columbia. With the COVID–19 emergency, many businesses nationwide are experiencing economic hardship as a direct result of the Federal, State, and local public health measures that are being taken to minimize the public’s exposure to the virus.

In order to provide some financial relief to American families, on March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act or the Act) (Pub. L. 116–136) to provide emergency assistance and health care response for individuals, families, and businesses affected by the coronavirus pandemic.

Currently, with the COVID-19 emergency, there is a lack of access to much needed capital to support business operations and facilities of agricultural producers that are too large to qualify for SBA programs or USDA Farm Service Agency (FSA) guaranteed loan programs. This holds true particularly for businesses in rural areas. Shelter in place requirements and restrictions on businesses reducing operations to only essential services are having an adverse impact on rural businesses and their capacities to fund operating expenses.

The B&I Guaranteed Loan Program was authorized under Section 310B of the Consolidated Farm and Rural Development Act of 1972, as amended by subsequent Farm Bills. The loans are made by private lenders to rural businesses for the purpose of creating new businesses, expanding existing businesses, and for other purposes that create employment opportunities in rural America. The rate and term of the loan is negotiated between the business and the lender. Businesses in rural areas are eligible for this program. The Rural Business Cooperative Service (RBCS) received funding and authority through Division B, Title I of the CARES Act, to provide additional funds for use under the Business & Industry (B&I) Guaranteed Loan Program

to prevent, prepare for and respond to the effects of the COVID–19 pandemic. Accordingly, the RBCS is updating the B&I Guaranteed Loan Program (7 CFR Part 4279) to allow flexibility to obligate federal funds for guaranteed loans pursuant to the CARES Act in response to the national COVID-19 Public Health Emergency. Simultaneously, the Agency is announcing the Notice of Funding Availability for the CARES Act.

The Agency’s intent is for guaranteed loan funds to be used for working capital loan purposes to support business operations and facilities in rural areas including agricultural producers. This critical funding will allow rural businesses that are severely impacted due to the economic impacts of the national COVID-19 Public Health Emergency to have access to funding for operating expenses which will allow them to sustain operations. This interim final rule will supplement the current B&I Guaranteed Loan Program as implemented in 7 CFR Part 4279 – Guaranteed Loan Making and 7 CFR Part 4287 – Servicing, with the new B&I CARES Act Guaranteed Loan Program (B&I CARES Act Program). It is the goal of the Agency to publish this interim final rule as soon as possible. If funding availability is delayed, Rural Businesses that are severely impacted due to the economic impacts of the COVID-19 pandemic will not timely receive this critical funding that will allow them to obtain funding for operating expenses to stay open at this time.

## **B. Baseline**

The goal of the B&I Guaranteed Loan Program is to increase economic opportunity and improve the quality of life in rural America. To achieve this goal, the B&I Guaranteed Loan Program covers a wide range of projects and borrowers in rural America. The B&I Guaranteed Loan Program targets an extensive range of economic development projects. These projects may

include development of infrastructure; modernization of buildings and facilities; purchase of equipment and inventory; business acquisition; expansion or improvement; purchase of real estate, machinery and equipment; supplies; limited debt refinancing; and working capital.

The B&I Guaranteed Loan Program serves several types of borrowers such as: cooperative organizations; corporations, partnerships, or other legal entities organized and operated on a profit or nonprofit basis; Indian tribes on a Federal or State reservations or other Federally recognized tribal groups; public bodies; or individual borrowers that are engaged, or proposing to engage, in business.

The B&I Guaranteed Loan Program imposes limits on the amount of a B&I guaranteed loan or the cumulative amount of outstanding B&I guaranteed loans a borrower may have. With one exception, the maximum aggregate B&I guaranteed loan debt that can be incurred by a borrower at any given time is \$25 million. A maximum of 10 percent of B&I Guaranteed Loan Program funding is available to value-added cooperative organizations for B&I guaranteed loans above \$25 million to a maximum aggregate of \$40 million.

Under the current program, lenders are responsible for originating the loan, including conducting analyses of each project to ensure their feasibility and the ability of the borrower to repay the loan. Lenders then submit applications for loan guarantees to Rural Development (RD) State Offices for review and approval.

Upon issuance of the loan guarantee, the lender is responsible for servicing the loan according to the rules for the B&I Guaranteed Loan Program.

### **C. Rule Summary**

The current B&I Guaranteed Loan Program regulation is divided into three subparts:

- 7 CFR Part 4279 – Guaranteed Loan Making
  - o Subpart A – General
  - o Subpart B – Business and Industry Loans
- 7 CFR Part 4287 – Servicing
  - o Subpart B – Servicing Business and Industry Guaranteed Loans

The interim final rule adds a section to the existing regulations to address specific requirements for CARES Act authority as outlined in the chart below:

**§ 4279.190 Business and Industry National COVID-19 Public Health Emergency Loans**

<p><b>Subpart A – General</b> <b>§4279.1 Introduction</b></p>	<p>Includes the reference to the Agency’s authority to provide working capital loan purposes to support business operations and facilities in rural areas pursuant to the B&amp;I CARES Act Loans.</p>
<p><b>Subpart B- Business and Industry Loans</b> <b>§ 4279.101 Introduction</b></p>	<p>Includes reference to the inclusion of the regulations for the Business and Industry loans under the authority of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116-136).</p>
<p><b>§ 4279.190 Business and Industry National COVID-19 National Public Health Emergency Loans</b></p>	<p>(a) Introduction (b) Eligible borrowers (c) Eligible use of funds (d) Loan amount limits (e) Percentage of guarantee (f) Guarantee fee (g) Annual renewal fee (h) Loan terms (i) Credit quality (j) Collateral (k) Capital/equity (l) Appraisals (m) Filing preapplications and applications</p>
<p><b>Part 4287, Subpart B – Servicing Business and Industry Guaranteed Loans</b></p>	<p>While there are no statutory changes being made to this subpart, the servicing of loans funded by the B&amp;I CARES Act Loan Program will follow the requirements of the current B&amp;I Guaranteed Loan Program set forth under this subpart.</p>

The significant policy changes include:

- 90 percent guarantees to all B&I CARES Act funded loans;
- 2 percent guarantee fee;
- Increased loan authority for agricultural production when the applicant's loan request exceeds Farm Service Agency (FSA) guarantee loan authority or the applicant's request is otherwise ineligible for FSA loans;
- acceptance of appraisals completed within two years of the date of the application;
- no discounting of collateral for working capital loans; and
- extension of the maximum term for working capital loans to 10 years.

Changes to the B&I Guaranteed Loan Program regulations apply only to the loans funded under the CARES Act and do not apply to loans funded under the Appropriations Act of 2020 or any other appropriations other than the CARES Act.

#### **D. Collective Changes**

Changes to the B&I Guaranteed Loan Program regulations apply only to the loans funded under the CARES Act and do not apply to loans funded under the Appropriations Act of 2020 or any other appropriations other than the CARES Act. The changes included in the interim final rule are expected to provide benefits in a number of areas. The expected benefits are difficult to quantify and, therefore, are only discussed qualitatively.

The Agency considered the type of enhancements that participating lenders would need to be able to generate quality loans and approve and disburse loan funds in a timely and efficient manner in these critical times. The focus is on adjusting several requirements under the current B&I program which would enable lenders greater flexibility in structuring loans while taking

into consideration the borrowers' current financial condition and capacity, but also assuring that such adjustments can be made without compromising Agency underwriting standards.

For the B&I CARES Act guaranteed loans, the Agency made program adjustments to the following: (a) maximum percentage of guarantee; (b) equity evaluation; (c) appraisal evaluations; (d), collateral evaluation; and (e) maximum repayment terms for working capital loans.

As a result of these considerations and the funding purposes outlined in the CARES Act, the Agency decided to offer the following under the B&I CARES Act Program: (1) 90 percent guarantees to all B&I CARES Act funded loans, (2) 2 percent guarantee fee; (3) acceptance of appraisals completed within two years of the date of the application; (4) no discounting of collateral for working capital loans; and (5) extension of the maximum term for working capital loans to 10 years. To implement these changes, the Agency specifically:

1. Provides more flexibility to lenders by accepting appraisals completed within the last two years (rather than a current year appraisal), and updated appraisals (rather than completely new appraisals).

2. Increases the threshold of the loan amount which triggers when appraisals are required for loans in order to align with guidance by FDIC and other credit supervision agencies

3. Expand authority to include loans for agricultural production when the borrower's financial needs exceed FSA guarantee loan authority or is otherwise ineligible for FSA guaranteed loans.

4. Provides more flexibility to lenders to use borrowers' tax records in lieu of obtaining historical financial statements to document a borrower's financial history and loan repayment ability. Agricultural producers' financial records must meet the industry's standard accounting

practices.

5. Provides borrowers more flexibility in the form of alternatives to meet the B&I requirement of 10% investment in the business by the borrower. Businesses currently facing financial distress will need time to recover. Repayment requirements of additional debt may further distress and lengthen their financial recovery period. To ease a borrower's capital requirement, the B&I CARES Act program utilizes existing authorities for deferral of principal and interest payments in the first three years from loan origination and extends the maximum repayment term for working capital loans from 7 years to 10 years.

#### **E. Beneficiaries of the B&I CARES Act Provision**

Input and feedback to the Agency from businesses and business associations, bankers and bank associations, and other rural stakeholders highlight a growing concern that the erosion of working capital will require businesses to seek funding for working capital to sustain businesses during the COVID-19 emergency and to restart and ramp up business operations once the COVID-19 emergency is resolved. The National Rural Lenders Association, Rural Lenders Roundtable, ICBA Agriculture and Rural Lenders, and ABA Agriculture and Rural Banking committee reached out to the Agency to emphasize that many of the rural business borrowers will be unable to meet lenders' requirements for working capital loans without the support of a government guarantee. Rural businesses have limited options to access credit due to the limited number of banks serving rural communities. The B&I Guaranteed Loan program enables local lenders to serve rural businesses as evidenced by the fact that over 75 percent of the lenders in the B&I loan portfolio are local community banks financing local businesses.

In addition to agricultural lenders, agribusiness and agricultural producer stakeholders reached

out to the Agency to emphasize the adverse impacts of the COVID–19 emergency to agricultural producers and agribusinesses, the financial needs of agricultural producers and the lack of assistance available to agricultural producers that are too large to qualify for SBA programs or USDA Farm Service Agency (FSA) guaranteed loan programs. The B&I CARES Act program will also serve farmers, farm labor, and agribusiness. The eligibility requirements of the B&I Guaranteed Loan Program focus on the use of loan funds and not on the borrowers’ primary industry classification, such as agricultural production. Loan proceeds of B&I guaranteed loans cannot generally be used for costs related to agricultural production; however, the B&I CARES Act Program will expand authority to include loans to agricultural producers that exceed FSA guarantee loan authority. Agribusinesses (non-agricultural production businesses such as supply services, marketing, processing, and other services) are eligible and include agribusinesses owned by agricultural producers. Certain food processing and distribution businesses located in urban areas may be eligible if certain requirements are met including the processing of agricultural commodities whereby the food sold is grown locally or regionally.

#### **F. Number of Affected Parties and Projections**

The largest group of parties affected by the rule are lenders and borrowers. RD estimates that, at a given point in time, there are approximately 800 lenders and 2,400 borrowers active in the B&I Guaranteed Loan Program portfolio. The Agency estimates that approximately 500 applicants will request a B&I CARES Act Program Guaranteed Loan. This could be existing borrowers of the B&I Guaranteed Loan Program or newly qualified borrowers.

The Rural Development (RD) National Office will conduct periodic reviews on the B&I Loan portfolios in the various State offices. Where it is recognized that the minority participation is

lower than other groups, specific targeting measures will be added to effectively outreach to those groups.

Various aspects of the B&I Guaranteed Loan Program and the B&I CARES Act Loan Program will be monitored by existing and continuing procedures for the Agency to conduct field visits with both the Lenders participating in the program and the Borrowers receiving guaranteed loans within the program. The field visits are the necessary link in continuing to ensure fair and equitable outcomes in these guaranteed programs.

Since data is currently unavailable for the B&I CARES Act Loan Program, the table below identifies the B&I Guaranteed Loan Program activity from FY 2016 through FY 2019. Absent a comparative baseline for the number of eligible lenders residing in or servicing rural America with a population below 50,000, it is hard to determine the disproportionate or disparities in the program participation. However, it is clear that males (89.12%) and White-owned entities (85.58%) are the majority of participants in the B&I program, with Asian-owned entities (16.3%) following second. See attached Excel spreadsheet for additional data information.

**Business and Industry Guaranteed Loan (B&I) Program - Loan and Demographic Information on Lenders (FY17-FY19)**

<b>Fiscal Year</b>	<b>#Total Loans</b>	<b>#Females</b>	<b>#Males</b>	<b># Hispanic</b>	<b>#White</b>	<b>#Black</b>	<b>#Native American</b>	<b>#Asian</b>	<b>#of Hawaiian</b>
2016	40	5 (13%)	35 (88%)	1 (3%)	29 (73%)	1 (3%)	0 (0%)	9 (23%)	2 (5%)
2017	347	45 (13%)	293 (84%)	6 (2%)	286 (82%)	7 (2%)	8 (2%)	50 (14%)	3 (0.9%)
2018	324	39 (12%)	279 (86%)	4 (1%)	265 (82%)	4 (1%)	3 (0.9%)	55 (17%)	1 (0.3%)
2019	239	28 (12%)	206 (86%)	4 (2%)	192 (80%)	4 (2%)	2 (0.8%)	41 (17%)	4 (2%)
<b>Total</b>	<b>950</b>	<b>117</b>	<b>813</b>	<b>15</b>	<b>772</b>	<b>16</b>	<b>13</b>	<b>155</b>	<b>10</b>

**G. Benefits**

One primary benefit of the new B&I CARES Act Program is that it will provide critical

funding to rural businesses for operating expenses to allow them to stay open at this time. “Staying open” means people are employed, which adds stability to the economies of rural families and businesses, with a positive economic impact nationally. To ensure that businesses understand how to participate in the new program, the Agency will conduct B&I CARES Act program training for lenders and is developing application guides for lenders and borrowers.

## **H. Estimation of Costs**

In this section, the Agency presents the estimated costs associated with the interim final rule. The Agency estimates that there will be approximately 500 applications for the new B&I CARES Act Loan Program. The costs were determined using the existing costs reported on the B&I Guaranteed Loan Program

### Costs to applicants

Most of the applicants are relatively highly paid professionals, including financial specialists, financial analysts, and credit/loan officers. It is determined that the hourly wage class was \$48.29 per hour based upon the Bureau of Labor Statistics. The overall cost is estimated at \$23,800.

### Government Costs

The annual cost to the Federal Government to collect and evaluate this information is estimated to be about \$186,500 per fiscal year. Most of the review work is completed by GS-11 & 12 State Loan Specialists and GS-13 State Program Directors, with GS-7 & 8 Loan Technicians and clerks doing most of the computer data entry and typing. Accordingly, the average rate was determined to be \$27 per hour. The hours were computed by estimating the average time it takes to review documentation, approve requests, and maintain the accounting and tracking systems.

## **I. Policy Implications**

The changes described in this document generally have relatively minor policy implications beyond the benefits and costs described above.

## **J. Economic Analysis**

The B&I Guaranteed Loan program, authorized under Section 310B of the Consolidated Farm and Rural Development Act of 1972, as amended by subsequent Farm Bills, receives only appropriated funding each year; there is no mandatory funding associated with the program. The Agency estimates from Fiscal Years 2016 through 2021 a total appropriated funding level of \$326 million in budget authority. If Congress elects to appropriate a different amount of funding to this program than the Agency has estimated, then this value will change accordingly.

Using an interest rate of 3 percent results in an annualized budget authority of \$56.2 million and using an interest rate of 7 percent results in slightly higher annualized budget authority of \$58.7 million.

Under Division B, Title I of the CARES Act, RBCS received funding and authority to provide \$20,500,000 for use under the Business & Industry (B&I) Guaranteed Loan Program. The \$20.5 million funding, reduced by 3 percent for administration cost, leaves \$19.885 million in Budget Authority, which amounts to a program level of about \$950 million (\$951.4M). These funds will be made available with the publication of a Notice of Funding Availability (NOFA) which will be concurrently published in the *Federal Register* on the same day as the interim final rule. Applications will be accepted beginning on the publication date and must be received no later than September 15, 2021, or until funds are expended. Program funding expires September 30,

2021.

## **K. Summary**

The Rural Business Cooperative Service (RBCS) received funding and authority through Division B, Title I of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), to provide for additional funds for use under the Business & Industry (B&I) Guaranteed Loan Program to prevent, prepare for, and respond to the effects of the national COVID-19 Public Health Emergency. Accordingly, this interim final rule would update the B&I Guaranteed Loan Program (7 CFR Parts 4279 and 4287) and implement the new B&I CARES Act Loan Program to allow flexibility to obligate federal funds for guaranteed loans pursuant to the CARES Act. Simultaneously, the Agency is announcing the Notice of Funding Availability for the CARES Act.

This rulemaking will allow the Agency to make available guaranteed loan funds to be used for working capital loan purposes to support business operations and facilities in rural areas. If funding availability is delayed, Rural Businesses that are severely impacted due to the economic impacts of the COVID-19 pandemic will not timely receive this critical funding for operating expenses that will allow them to stay open at this time. Therefore, it is the goal of the Agency to publish this rule as soon as possible.