

**ANNOUNCEMENT OF
2011 NOTICE OF FUNDS AVAILABILITY (NOFA)
INVITING APPLICATIONS FOR
9003 BIOREFINERY ASSISTANCE GUARANTEED LOANS PROGRAM**

On March 11, 2011, the United States Department of Agriculture caused to be published in the Federal Register at 76 FR 13351 a Notice of Funds Availability (NOFA) Inviting Applications for the Biorefinery Assistance Program. Set forth below are explanations of certain provisions of the NOFA which we believe will be of interest to you:

Filing Deadline. Applications, consisting of an original and two copies, must be received in the USDA Rural Development National Office in Washington D.C. prior to 4:30 p.m. local time, on May 10, 2011, regardless of postmark. This is a strict deadline in the NOFA, with no exceptions for postal or other delivery delays, therefore it is recommended that personal delivery of applications be pre-arranged and that applicants be as pro-active as possible in completing and filing applications.

Funding Amount. The NOFA provides notice of approximately \$129 million in mandatory budget authority for the program in fiscal year 2011, with carry-over funding from fiscal year 2010, for a total budget authority of \$463 million under the NOFA. The Agency expects to award 4 to 5 loan guarantees under the NOFA. Successful applicants will be awarded loan guarantees on or about September 30, 2011. **For fiscal year 2011, there will be only one round of competition.**

Interim Rule. Applications submitted pursuant to the NOFA will be governed by the provisions of the Interim Rule and the NOFA. The NOFA and the Interim Rule are available and may be viewed at the USDA Rural Development Website at http://www.rurdev.usda.gov/BCP_Biorefinery.html.

Application Submittal. Reference is made to the application guide, “Instructions for Application for Loan Guarantee—Section 9003 BioRefinery Assistance Loan Guarantees” which is available and may be viewed at the above-referenced Website.

Evaluation of Applications and Carryforward. All applications will be evaluated on a competitive basis using the scoring criteria contained in the Interim Rule. Ranked applications that are completed, but not funded, will be carried forward to fiscal year 2012 to compete in the first competition in fiscal year 2012.

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Except as otherwise provided herein, the provisions of the Interim Rule for the Biorefinery Assistance Guaranteed Loans Program, as published on February 14, 2011 in the Federal Register at 76 FR 8404 will be applicable to this NOFA. Accordingly, explanations of certain provisions of the Interim Rule which we believe will be of interest to you are set forth below (reference made to the detailed provisions of the Interim Rule for a complete understanding of the provisions thereof):

(1) The minimum retention requirement for lenders is 7.5% of the total loan and can only be satisfied by the lender holding that amount of the unguaranteed portion of the loan. No authority is provided for the lender to receive cash collateral or other separate consideration for risk exposure for the minimum retention requirement. Interim Rule at Page 8464, § 4279.202(k), Minimum retention.

(2) The interest rate on the unguaranteed portion of the loan may not exceed the rate on the guaranteed portion of the loan by more than 500 basis points—not a weighted average spread, but an absolute spread. Interim Rule at Page 8466, § 4279.231(a), Interest rates.

(3) The repayment term for a loan will be a maximum period of 20 years or the useful life of the project, whichever is less. The length of the loan term shall be the same for both the guaranteed and unguaranteed portions of a loan. Interim Rule at Page 8466, § 4279.232(a), Terms of loan.

(4) The entire loan, consisting of the guaranteed and unguaranteed portions, must be secured by a first lien on all collateral necessary for the operation of the project, excepting for certain liens in favor of working capital lenders. Interim Rule at Page 8464), § 4279.202(i)(1), Conditions of guarantee.

(5) A working capital lender is able to receive a first lien on inventory and accounts receivable to the extent a Agency determines that working capital is necessary for the operation of the project, the Agency remains adequately secured and the subordination is in the best interests of the Government. Interim Rule at Page, 8464, § 4279.202(i)(1) Conditions of guarantee.

(6) Amounts eligible to be guaranteed:

(a) up to \$125,000,000, 80% of loan amount will be guaranteed;

(b) more than \$125,000,000 and less than \$150,000,000, 80% of the entire loan amount will be guaranteed;

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(c) more than \$150,000,000 but less than \$200,000,000, 70% of the entire loan amount will be guaranteed; and

(d) \$200,000,000 up to and including \$250,000,000, 60% on the entire loan amount will be guaranteed.

Additionally, with respect to loans described in paragraph (a) above, upon compliance with all of the conditions specified in clauses (i) through (iii) below, 90% of the entire loan amount will be guaranteed: (i) equity of 40 percent, excluding qualified intellectual property; (ii) feedstock and off-take contracts of at least 1 year in duration; and (iii) collateral coverage ratio, being total discounted collateral value divided by total loan request, exceeding 1.5 to 1. Interim Rule at Page 8466, § 4279.229, Guaranteed loan funding.

(7) The maximum principal amount of a guaranteed loan is limited to \$250,000,000 (being the total of the guaranteed and unguaranteed portions of the loan) to one borrower. If an eligible borrower receives other direct federal funding (*i.e.*, direct loans and grants) for a project, the amount of a loan that the Agency will guarantee will be reduced by the same amount of the other direct federal funding that the eligible borrower receive for the project. Interim Rule at Page 8466, § 4279.229(c), Guaranteed loan funding.

(8) The lender is prohibited from selling or participating any amount of the guaranteed or unguaranteed portion of the loan to the borrower or members of the borrower's immediate families, officers, directors, stockholders, other owners, or a parent, subsidiary or affiliate. Interim Rule at Page 8464, § 4279.202(j), Sale or assignment of guaranteed loan.

(9) Tax-exempt financing is not an eligible funding source for either the guaranteed or unguaranteed portions of a loan. Interim Rule at Page 8466, § 4279.229(f), Guaranteed loan funding.

(10) Apparently, the Agency will recognize subordinate financing as project equity for purposes of satisfying the 20 percent of eligible project costs equity requirements. Interim Rule at Page 8465, § 4279.228(f), Project eligibility.

(11) The Borrower must demonstrate that it will be able to provide equity in the project of not less than 20 percent of eligible project costs at the time the loan is closed. For existing biorefineries, the fair market value of project equity (including the guaranteed loan being applied for) in real property and equipment and the value of qualified intellectual property based on the audited financial statements in accordance with Generally Accepted Accounting Principles may be substituted in whole or in part to

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meet the equity requirement. However, the appraisal completed to establish the fair market value of the real property and equipment must not be more than 1 year old. The Agency may require the lender to provide a more recent appraisal in order to reflect current market conditions. The appraisal used to establish fair market value of the real property and equipment must conform to the requirements of § 4279.244. Otherwise, equity must be in the form of cash and cannot include other direct federal funding (*i.e.*, loans and grants). Interim Rule at Page 8467, § 4279.234(c), Credit evaluation.

(12) Federal funds (direct loans and grants) do not count as equity. Interim Rule at Page 8472, § 4279.265(d)(5), Guarantee application evaluation.

(13) The foreign ownership prohibition is deleted. Interim Rule at Page 8465, § 4279.227, Borrower eligibility.

(14) The requirement that a project be located in a rural area has been deleted and is now only a scoring factor. Interim Rule at Page 8465, § 4279.228(a), Project eligibility.

(15) A biobased product that has a recognized BTU content can be an advanced biofuel. Interim Rule at Page 8465, § 4279.228(d), Project eligibility.

(16) Surety, as the term is commonly used in the industry, will be required in cases when the guarantee will be issued prior to completion of construction unless the contractor will receive a lump sum payment at the end of work. Surety will be made a part of the contract if the borrower requests it or if the contractor requests partial payments for construction work. In such cases where no surety is provided and the project involves pre-commercial technology, technology that is first of its type in the U.S., or new designs without sufficient operating hours to prove their merit, a latent defects bond may be required by the Agency to cover the work. Interim Rule at Page 8468, § 4279.256(e), Surety, Construction planning and performing development.

(17) Collateral for a loan consists of the assets pledged by the borrower in support of the loan, including processing technology owned by the borrower and excluding assets acquired with other federal funds. Collateral must have a documented value sufficient to protect the interest of the lender and the Agency, and the discounted collateral value must be at least equal to the loan amount. Lenders will discount collateral consistent with sound loan-to-value policy. The Agency may consider the value of qualified intellectual property, as defined in § 4279.2, arrived at in accordance with GAAP standards. The value of the intellectual property may not exceed 30% of the total value of all collateral. Interim Rule at Page 8467, § 4279.234(b)(4), Credit evaluation. (It should be noted that the Agency has drawn a distinction between the value

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of qualified intellectual property for purposes of valuing “collateral” and for purposes of satisfying the borrower’s “equity” requirement for a project.)

(18) If there is an established market for qualified intellectual property, the value of the intellectual property will be valued according to the lender’s standard discounting practice for intellectual property for determining adequacy of collateral. If there is no established market for the qualified intellectual property, the value of the intellectual property would be valued not greater than 25% as determined by the Agency, for determining adequacy of collateral. Interim Rule at Page, 8467, § 4279.234(b)(4), Credit evaluation. (The comments to the Interim Rule state that for purposes of a borrower’s “20 percent equity requirement,” the Agency may consider qualified intellectual property in meeting the equity requirement only for existing biorefineries.)

We note that the NOFA allows refinancing as an eligible project cost for fiscal year 2011. This is an expansion of the definition of “eligible project cost.” (See, § 4279.229(e) Guaranteed loan funding, Interim Rule for the Biorefinery Assistance Guaranteed Loans Program, as published on February 14, 2011 in the Federal Register at 76 FR 8465). The NOFA refers to the Interim Rule to clarify the two conditions under which the Agency will consider refinancing: (i) permanent financing used to refinance interim construction financing of the proposed project only if the application for the guaranteed loan under this subpart was approved prior to closing the interim loan for the construction of the facility, and (ii) refinancing that is no more than 20 percent of the loan for which the Agency is guaranteeing and for which the purpose of the refinance is to enable the Agency to establish a first lien position with respect to pre-existing collateral subject to a pre-existing lien. (See, § 4279.228(g) Project eligibility, Interim Rule for the Biorefinery Assistance Guaranteed Loans Program, as published on February 14, 2011 in the Federal Register at 76 FR 8465).

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Please contact either John Kirkwood or Rodney Retzner to the extent you have questions concerning the NOFA:

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