

RD AN No. 4631 (4279-B)  
February 29, 2012

TO: State Directors, Rural Development  
ATTN: Business Programs Directors  
SUBJECT: Business and Industry Guaranteed Loan Program  
Debt Refinancing

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to provide guidance and clarification regarding the refinancing of debt under the Business and Industry (B&I) Guaranteed Loan Program. Guidance is also provided under RD Instruction 4279-B.

COMPARISON WITH PREVIOUS AN:

This AN replaces RD AN No. 4544 (4279-B) dated November 15, 2010, which expired on November 30, 2011.

IMPLEMENTATION RESPONSIBILITIES:

The purpose of this AN is to clarify the Agency policy concerning debt refinancing under the B&I program.

Please be reminded that RD Instruction 4279-B, section 4279.101(b), states in part: "... It is not intended that the guarantee authority will be used for marginal or substandard loans or for relief of lenders having such loans."

For purposes of the B&I program, refinancing debt refers to the replacement of an existing debt obligation with a new debt obligation bearing better terms. Refinancing may be undertaken to reduce interest rate or interest costs (by refinancing at a lower rate), to extend the repayment time, to pay off other debt(s), to reduce periodic payment obligations (sometimes by taking a longer-term loan), to gain an improved or required collateral position, or to reduce or alter risk (such as by refinancing from a variable-rate to a fixed-rate loan). Debt refinancing must be debt of the prospective B&I borrower and reflected on its balance sheet.

EXPIRATION DATE:  
February 28, 2013

FILING INSTRUCTIONS:  
Preceding RD Instruction 4279-B

RD Instruction 4279-B, section 4279.113(r), states that debt refinancing is an eligible purpose when it is determined that the project is viable and refinancing is necessary to improve cash flow and create new or save existing jobs.

#### Existing Lender Debt

RD Instruction 4279-B, section 4279.113(r), allows for the refinancing of existing lender debt subject to the following criteria:

1. At the time of application, the loan must have been current for at least the past 12 months; the current status cannot be achieved by the lender forgiving debt to make the loan current; if existing lender debt is less than 12 months old it may not be refinanced.
2. Lender must provide better rates or terms.
3. Subordinated owner debt is **not** eligible to be refinanced.
4. Unless the amount to be refinanced is owed directly to the Federal Government or is federally guaranteed, the existing lender debt refinancing must be a secondary part (less than 50 percent) of the overall loan. The following examples would be eligible: 51 percent working capital and 49 percent refinancing; or 51 percent expansion and 49 percent refinancing, etc.

RD Instruction 4279-B, section 4279.108(d)(4), allows an eligible cooperative organization to refinance an existing B&I loan (including debt held by an existing lender) provided that the following criteria are met:

1. The loan must be current and performing.
2. The existing loan is not and has not been in payment default (more than 30 days late) and the collateral of the loan has not been converted.
3. There is adequate security or full collateral for the new B&I loan.

Loan applications from a new borrower, who is requesting a B&I guaranteed loan from a lender to purchase business assets from one of the lender's current borrowers, are not considered existing lender debt.

In instances where many different lenders are owned by a holding company, it is possible to refinance debt of one of the banks with a loan from another, without the 50 percent ceiling on existing lender debt applying, as long as the lenders refinancing the debt have different Federal Deposit Insurance Corporation (FDIC) certificate numbers. Even if the two banks in the prior example have the same name, as long as the FDIC certificate numbers are different, it would not be considered as refinancing existing lender debt.

For example, if Bank A and Bank B are owned by the same bank-holding company. Bank A would like to refinance Bank B's loan. As long as the FDIC certificate numbers are different, this transaction would not be considered refinancing of existing lender debt and would be eligible and not subject to the existing lender debt ceiling. Both lenders must be eligible lenders, in accordance with RD Instruction 4279-A, section 4279.29(c) and must demonstrate experience making, securing and servicing commercial loans. Holding companies that own affiliated bank assets, with no record of commercial lending activity, are not considered eligible lenders and therefore, not eligible to participate in the program.

As another example, Bank C has an outstanding loan to a business and Bank D was the participant lender. Bank D now wants to refinance the loan Bank C made to the business and subsequently participate the loan back to Bank C. This is also eligible.

Additionally, if a business has a line of credit that they would like to convert to a conventional term loan, as it is outstanding debt; it should be considered debt refinancing and not the financing of working capital. The term for loans where a line of credit is paid off should be based on the property offered as collateral.

B&I guaranteed loans that are for refinancing do not have to have the same collateral as the original loan. However, the B&I loan must be fully secured. In order to avoid the appearance of circumvention of the regulation, debt being refinanced must have originally been for an eligible loan purpose.

If you have any questions, please contact the Business and Industry Division, Loan Processing Branch, at (202) 690-4103.

*(Signed by JUDITH A. CANALES)*

JUDITH A. CANALES  
Administrator  
Business and Cooperative Programs