

# **Appendix G**

## **Model Guaranty Loan Program** **Rules and Regulations**

## APPENDIX G

### Model Guaranty Loan Program

#### Rules and Regulations

Note: It is recommended that the following model of Rules and Regulations be used as a guide in developing a unified set of regulations within the PRC governing the various guaranty programs now established. It is important that all guaranty programs that will eventually come under any Central Re-Guaranty Program have the same set of Rules and Regulations starting with the lowest level of guaranty.

**§1. Eligibility Requirements:** To be eligible for a business loan, an SME applicant must:

- (a) Be an operating business or an enterprise that is being established;
- (b) Be organized for profit;
- (c) Be located in the Peoples Republic of China
- (d) Be an SME as defined as to size under the programs covered by these Regulations;
- (e) Be able to demonstrate a need for the desired credit.

**§2. Credit not available elsewhere:** The Agency provides business loan assistance only to applicants for whom the desired credit is not otherwise available on reasonable terms from other sources. Reasonable terms and conditions are those terms and conditions that are deemed reasonable by the Agency after taking into consideration the prevailing rates and terms in the community in or near where the applicant conducts business, for similar purposes and periods of time.

**§3. Funds not available from other sources, including personal resources of the principals:**

- (a) An applicant for a business loan must show that the desired funds are not available from the personal resources of any owner of 20 per cent or more of the equity of the applicant. The Agency will require the use of personal resources from any such owner as an injection to reduce the Agency funded portion of the total financing package when that owner's liquid assets exceed the amounts specified in paragraphs (a) (1) through (3) of this section. When total financing package:

- (1) Is \$ \_\_\_\_\_ or less, each 20 percent owner of the applicant must inject any personal liquid assets which are in excess of 2 times the total financing package or \$ \_\_\_\_\_, whichever is greater;

- (2) Is between \$ \_\_\_\_ and \$ \_\_\_\_, each 20 percent owner of the applicant must inject any personal liquid assets which are in excess of one and one-half times the total financing package or \$ \_\_\_\_, whichever is greater;
  - (3) Exceeds \$ \_\_\_\_, each 20 percent owner of the applicant must inject any personal liquid assets which are in excess of one times the total financing package or \$ \_\_\_\_, whichever is greater.
- (b) Any liquid assets in excess of the applicable amount set forth in paragraph (a) of this section must be used to reduce the Agency's portion of the total financing package. These funds must be injected prior to the disbursement of the proceeds of any Agency financing.
- (c) For purposes of this section, liquid assets means cash or cash equivalent, including savings accounts, Certificates of Deposits, stocks, bonds, or other similar assets. Equity in real estate holdings and other fixed assets are not to be considered liquid assets.

**§4. Special Consideration:** From time to time, the Agency will announce "Special Consideration" initiatives that will modify the manner in which applications are handled or the analysis performed for such applications. These "Special Consideration" initiatives will reflect the Agency's desire to deliver expedited service or other benefits to a segment of the population that meet certain aspects of Public Policy. These "special Consideration" initiatives might be established, but are not limited, to assist women owned businesses, minority owned, veterans or other segments of the population or industry.

**§5. Ineligible Businesses:** The following businesses are ineligible for loans under the programs governed by these Regulations:

- (a) Businesses located in a foreign country.
- (b) Businesses engaged in any illegal activity.
- (c) Businesses with an Associate who is incarcerated, on probation or parole, or has been indicted for a serious crime or moral turpitude.
- (d) Unless waived by the Agency for good cause, businesses that have previously defaulted on any loan with the Agency or governmental agency resulting in such agency or agencies sustaining a loss in any of its programs, and businesses owned or controlled by an applicant or any of its Associates which previously owned, operated, or controlled a business which defaulted on such a loan or loan guarantee or re-guaranty where such entities suffered a loss.

**§6. Eligible Uses of Loan Proceeds:** An SME must use an Agency business loan for sound business purposes. The uses of proceeds are prescribed in each loan's Authorization.

- (a) A Borrower may use loan proceeds from any Agency loan to:

- (1) Acquire land (by purchase or lease);
- (2) Improve a site, (grading, streets, parking lots, landscaping);
- (3) Purchase one or more existing buildings;
- (4) Convert, expand or renovate one or more existing buildings;
- (5) Construct one or more new buildings; and/or
- (6) Acquire (by purchase or lease) and install fixed assets.

(b) A borrower may also use a loan for:

- (1) Inventory
- (2) Supplies
- (3) Raw materials and
- (4) Working Capital

(c) A Borrower may use Agency loan proceeds for refinancing certain outstanding debts.

**§7. Restrictions on uses of loan proceeds:** The Agency will not authorize nor may a Borrower use loan proceeds for the following purposes, (including the replacement of funds used for any such purpose):

- (a) Payments, distributions or loans to Associates of the applicant, (except for ordinary compensation for services rendered);
- (b) A purpose that does not benefit the SME.
- (c) Any purpose not specifically authorized in the loan authorization.

**§8. Ethical requirements of lenders participating in program:** Lenders participating in the programs covered by these regulations must act ethically and exhibit good character. Ethical indiscretion of an Associate of a lender will be attributed to the participating lender. A participating lender must promptly notify the Agency if it obtains information concerning the unethical behavior of an Associate. The following are examples of such unethical behavior. A Participating Lender may not:

- (a) Self-deal;
- (b) Have a real or apparent conflict of interest with an SME with which it is dealing, (including any of its Associates or an Associate's Close Relatives) or the Agency;
- (c) Own an equity interest in a business that has received or is applying to receive Agency financing, (during the term of the loan or within 6 months prior to the loan application);
- (d) Be incarcerated, on parole, or on probation;
- (e) Knowingly misrepresent or make a false statement to the Agency;
- (f) Engage in conduct reflecting a lack of business integrity or honesty;
- (g) Be convicted of a serious crime or have an adverse judgment involving fraud, breach of trust, or other conduct that would cause the public to question the Participant's business integrity, taking into consideration such factors as

the magnitude, repetition, harm caused, and remoteness in time of the activity or activities in question;

- (h) Accept funding from any source that restricts, prioritizes, or conditions the types of SMEs that the Participant may assist under an Agency program or that imposes any conditions or requirements upon recipients of Agency assistance inconsistent with the Agency's loan programs or these regulations;
- (i) Fail to disclose to the Agency whether the loan will:
  - (1) Reduce the exposure of a Participant or an Associate of a Participant in a position to sustain a loss;
  - (2) Directly or indirectly finance the purchase of real estate, personal property or services from the Participant or an Associate of the Participant;
  - (3) Repay or refinance a debt due a Participant or an Associate of a Participant; or
  - (4) Require the SME or an associate to invest in the participant;
  - (5) Engage in any activity, which taints its objective judgment in evaluating the loan.

**§9. Lending Criteria:** The applicant SME must be creditworthy. Loans must be so sound as to reasonably assure repayment. The Agency will consider:

- (a) Character, reputation, and credit history of the applicant, its Associates, and guarantors;
- (b) Experience and depth of management;
- (c) Strength of the business;
- (d) Past earnings, projected cash flow, and future prospects;
- (e) Ability to repay the loan with earnings from the business;
- (f) Sufficient invested equity to operate on a sound financial basis;
- (g) Potential for long-germ success;
- (h) Nature and value of collateral, (although inadequate collateral will not be the sole reason for denial of a loan request), and
- (i) The effect any affiliates may have on the ultimate repayment ability of the applicant.

**§10. Loan limits to a borrower:** The aggregate amount of the Agency portions of all loans to a single borrower, including the borrower's affiliates, may not exceed a guarantee amount of \$ \_\_\_\_\_, except as otherwise authorized by Law for a specific loan program.

**§11. Loan Conditions:** The following requirements are normally required by the Agency for all business loans covered by these regulations:

- (a) Personal guarantees: Holders of at least 20 percent ownership interest generally must guarantee the loan. The Agency, in its sole discretion, may require other appropriate individuals to guarantee the loan as well, except the

Agency will not require personal guarantees from those owning less than 5% ownership.

- (b) Appraisals: The Agency may require professional appraisals of the applicant and principal's assets, a survey, or a feasibility study.
- (c) Hazard Insurance: The Agency requires hazard insurance on all collateral.

**§12. Compliance with other laws:** All agency loans are subject to all applicable laws at each level of government. The Agency may require evidence of compliance of certain laws when such compliance has a major impact on the future existence of the business.

**§13. Enforcement of rules upon future change:** Regulations and contractual provisions in effect at the time of a transaction govern an Agency loan financing transaction, notwithstanding subsequent rule or contract changes. The Agency may conduct an enforcement action regarding any violation of provisions of regulations or contracts applicable at the time, but no longer in effect or in use.

**§14. Application filing location:** The Agency, from time to time will publish the entities and locations where loan applications may be filed by eligible SMEs.

**§15. Contents of business loan applications:** For most business loans, the Agency requires that an application for a business loan contain, among other things, a description of the history and nature of the business, the history and experience of the management of the business, the amount and purpose of the loan, the collateral offered for the loan, current financial statements, historical financial statements for the last three years, and a business plan, when applicable. Personal histories and financial statements will be required from the principals of the applicant.

**§16. Application approval or denial:** Applicants will receive notice of approval or denial of their loan request. Notice of any denial will include the reasons for the decision. If a loan is approved, an Authorization will be issued.

**§17. Reconsideration after denial:** An applicant or recipient of a business loan may request reconsideration of a denied loan or loan modification request within 6 months of the denial. Requests for reconsideration are to be filed with the office that issued the denial of the original request. To prevail, the applicant must demonstrate that it has overcome all legitimate reasons for denial. Six months after a denial, a new application is required. If the reconsideration is denied, the decision is final and no further reconsiderations of the decision can be filed.

**§18. Use of computer forms:** Any applicant or lender may use computer generated Agency application forms, closing forms, and other forms designated by the Agency if the forms are exact reproductions of the Agency forms.

**§19. Disclosure of fees:** An applicant for a business loan must identify to the Agency the name of each Agent, (as defined in these regulations), that helped the applicant

obtain the loan, describing the services performed, and disclosing the amount of each fee paid or to be paid by the applicant to the Agent in conjunction with the performance of those services.

**§20. Refinancing unsecured or under-secured loans:** A borrower may not use Agency loan proceeds to pay any creditor in a position to sustain a loss causing a shift to the Agency of all or part of a potential loss from an existing debt.

**§21. Maximum percentage of a loan guaranty:** An Agency's guarantee percentage must not exceed the applicable percentage established from time to time in the Law governing the programs of the Agency, the Rules and Regulations of the Agency or any temporary limits placed on the maximum percentage allowed by the Agency.

**§22. Limits on loan maturities:** The term of a loan shall be:

- (a) The shortest appropriate term, depending upon the Borrower's ability to repay;
- (b) \_\_\_ years or less, unless it finances or refinances real estate or equipment with a useful life exceeding \_\_\_ years; and
- (c) A maximum of \_\_\_ years, including extensions. A portion of a loan used to acquire or improve real property may have a term of \_\_\_ years plus an additional period needed to complete the construction or improvements.)

**§23. Limits on Fixed Interest Rates:** A loan made under the provisions of these regulations may have a reasonable fixed interest rate as determined by the Agency. The Agency periodically publishes the maximum allowable rate to be charged for any loan under the programs covered by these regulations.

**§24. Limits on Variable Interest Rates:** A lender may use a variable rate of interest, upon the Agency's approval. The Agency's maximum allowable rates apply only to the initial rate on the date the Agency received the loan application. The Agency will approve the use of a variable interest rate under the following conditions:

- (a) Frequency: The first change may occur on the first calendar day of the month following initial disbursement, using the base rate, see paragraph (c) of this section), in effect on the first business day of the month. After that, changes may occur no more often than monthly.
- (b) Range of fluctuation: The amount of fluctuation shall be equal to the movement in the base rate. The difference between the initial rate and the ceiling rate may be no greater than the difference between the initial rate and the floor rate.
- (c) Base rate: The base rate shall be the rate in effect on the first business day of the month, as published by the Agency or the Agency's recognized published rate that will be used as the governing rate. This may be a "prime rate" as may be published from time to time.

- (d) Amortization: Initial amortization of principal and interest may be recomputed and reassessed as interest rates fluctuate, as directed by the Agency. With prior approval of the Agency, the Lender may use certain other amortization methods, except that the Agency does not allow balloon payments.

**§25. Authorized lender fees:**

- (a) Service and packaging fees: The lender may charge an applicant reasonable fees, (customary for similar lenders in the geographic area where the loan is being made), for packaging and other services. The lender must advise the applicant in writing that the applicant is not required to obtain or pay for unwanted services. The applicant is responsible for deciding whether fees are reasonable. The Agency may review these fees at any time. Lender must refund any such fee considered unreasonable by the Agency.
- (b) Extraordinary servicing: Subject to prior written Agency approval, if all or part of a loan will have extraordinary servicing needs, the lender may charge the applicant a service fee not to exceed \_\_\_ percent per year on the outstanding balance of the part requiring special servicing.
- (c) Out-of-pocket expenses: The lender may collect from the applicant necessary out-of-pocket expenses such as filing or recording fees.
- (d) Late payment fee: The lender may charge the borrower a late payment fee not to exceed \_\_\_ percent of the regular loan payment when a scheduled payment is made later than \_\_\_ days after the scheduled due date.
- (e) Prepayment fee: The lender **may/or may not** charge a fee for full or partial prepayment of a loan. **(Note: If prepayment fees are allowed the condition could be worded as: “A prepayment fee, not to exceed \_\_\_ percent of the amount being paid may be charged to the borrower when the amount of the prepayment exceeds \_\_\_ percent of the outstanding principle balance.)**

**§26. Loan Guaranty Agreements:** The Agency may enter into a Loan Guarantee Agreement with a lender to make guaranteed loans. Such an agreement does not obligate the Agency to participate in any specific proposed loan that a lender may submit. The existence of a Loan Guarantee Agreement does not limit the Agency’s rights to deny a specific loan or establish general policies.

**§27. Participating lenders requirements:** A lender must:

- (a) Have a continuing ability to evaluate, process, close disburse, service and liquidate SME loans.
- (b) Be open to the public for the making of such loans, (not be a financing subsidiary, engaged primarily in financing the operations of an affiliate).
- (c) Have continuing good character and reputation, and otherwise meet and maintain the ethical requirements set-forth in these regulations.

(d) Be supervised and examined by a State, Provincial or City regulatory authority to the satisfaction of the Agency.

**§28. Other Lender services:** Lenders, their Associates or the designees of either may provide services to and contract for goods with a borrower only after full disbursement of the loan to the SME. A lender, an Associate, or a designee providing such services must do so under a written contract with the SME, based on time and hourly charges, and must maintain time and billing records for examination by the Agency. Fees cannot exceed those charged by established professional consultants providing similar services.

**§29. Lender advertisements:** A lender may refer in its advertising to its participation with the Agency. The advertising may not:

- (a) State or imply that the lender, or any of its borrowers, has or will receive preferential treatment from the Agency.
- (b) Be false or misleading; or
- (c) Make use of the Agency's seal.

**§30. Agency access to lender files:** A lender must allow the Agency authorized representatives, during normal business hours, access to its files to review, inspect and copy all records and documents relating to Agency guarantee loans.

**§31. Suspension or revocation of eligibility to participate:** The Agency may suspend or revoke the eligibility of a lender to participate in the programs covered by these regulations, a breach of any agreement with the Agency, a change of circumstance resulting in the lender's inability to meet operational requirements, or a failure to engage in prudent lending practices. A suspension or revocation will not invalidate a guarantee previously provided by the Agency.

**§32. Servicing guaranteed loans:** The lender services guaranteed loans, holds the loan instruments and receives the borrower's payments of principal and interest.

**§33. Servicing after Agency honors its guarantee:** Generally after the Agency honors its guarantee, the lender must continue to hold the loan instruments and service and liquidate the loan. The lender must execute a written agreement showing the Agency's percentage of the loan, and must submit a liquidation plan to the Agency for each loan to be liquidated. If the Agency elects to service or liquidate the loan, the lender must assign the loan instruments to the Agency.

**§34. Servicing actions requiring Agency's prior written approval:** Except as otherwise provided in a Guarantee Agreement with the lender, the Agency must give its prior written consent before the lender takes any of the following actions:

- (a) Alters substantially the terms or conditions of any loan instrument, (for example, any increase in the principal amount or change in the interest rate, or action conferring a preference on the lender).
- (b) Releases collateral having a cumulative value in excess of \_\_\_ percent of the original loan amount.
- (c) Accelerates the maturity of the note.
- (d) Sues upon any Loan Instrument.
- (e) Compromises or waives any claim against any borrower, guarantor, obligor or standby creditor arising out of any loan instrument; or
- (f) Increases the amount of any prior lien held by the lender on the collateral securing the loan.

**§35. Honoring the Guaranty:**

- (a) The Agency, in its sole discretion, may purchase a guaranteed portion of a loan at any time. A lender may demand in writing that the Agency honor its guarantee if the borrower is in default on any installment for more 60 calendar days, (or less if the Agency agrees), and the default has not been cured. If a borrower cures a default before a lender requests purchase by the Agency, the lender's right to request purchase on that default lapses.
- (b) Purchase by the Agency of the guaranteed portion does not waive any of the Agency's rights to recover money paid on the guarantee, based upon the lender's negligence, misconduct, or violation of this part, including those actions listed in §36, the Loan Guarantee Agreement or the loan instruments.

**§36. Release of Agency's liability:**

- (a) The Agency is released from liability on a loan guarantee, (in whole or in part, within the Agency's exclusive discretion), if any of the events below occur:
  - (1) The lender has failed to comply materially with any of the provisions of these regulations, the Loan Guarantee Agreement, or the Loan Authorization.
  - (2) The lender has failed to make, close, service, or liquidate a loan in a prudent manner.
  - (3) The lender's improper action or inaction has placed the Agency at risk.
  - (4) The lender has failed to disclose a material fact to the Agency regarding a guaranteed loan in a timely manner.
  - (5) The lender has misrepresented a material fact to the Agency regarding a guaranteed loan.
  - (6) The Agency received a written request from the lender to terminate the guarantee.
  - (7) The lender has not paid the guarantee fee within the period required under the Agency's Rules and Regulations.

- (8) The lender has failed to request that the Agency purchase a guarantee within \_\_\_ days after maturity of the loan.
  - (9) The lender has failed to use required Agency forms or exact electronic copies, or
  - (10) The borrower has paid the loan in full.
- 
- (b) If the Agency determines, after purchasing its guaranteed portion of a loan, that any of the events set forth in paragraph (a) of this section occurred in connection with that loan, the Agency is entitled to recover any money paid on the guarantee plus interest from the lender responsible for those events.
  - (c) If the lender's loan documentation indicates that one or more of the events in paragraph (s) of this section may have occurred, the Agency may undertake such investigation as it deems necessary to determine whether to honor the guarantee until the completion of such investigation.
  - (d) Any information provided to the Agency prior to lender's request for the Agency to honor its guarantee shall not prejudice the Agency's right to deny liability for a guarantee if one or more of the events listed in paragraph (a) of this section occur.
  - (e) Unless the Agency provides written notice to the contrary, the lender remains responsible for all loan servicing and liquidation actions until SBA honors its guarantee in full.

**§37. Deferral of Payment:** The Agency may agree to defer payments on an SME loan for a stated period of time, and use such other methods, as it considers necessary and appropriate to help in the successful operation of the borrower.

**§38. Extension of Maturity:** The agency may agree to extend the maturity of a loan for up to \_\_\_ years beyond its original maturity if the extension will aid in the orderly repayment of the loan.

**§39. Liquidation of Loans:**

- (a) **Liquidation Policy:** The Agency or the lender may liquidate collateral securing a loan if the loan is in default or there is no reasonable prospect that the loan can be repaid within a reasonable period.
- (b) **Sale and conversion of loans:** Without the consent of the borrower, the Agency may:
  - (1) Dispose of collateral and assets acquired through foreclosure or conveyance. The Agency or the lender may sell real and personal property, (including contracts and claims), pledged to secure a loan that is in default in accordance with the provisions of the related security instrument.
  - (2) In disposing of collateral, generally the Agency will offer loan collateral and acquired assets for public sale through competitive bids

at auctions or sealed bid sales. The lender may use negotiated sales if consistent with its usual practice for similar non-Agency assets.

- (3) Normally, neither the Agency nor a lender will rent or lease acquired property or grant options to purchase. The Agency and the Lender will consider proposals for a lease if it appears a property cannot be sold advantageously and the lease may be terminated on reasonable notice upon receipt of a favorable purchase offer.
- (4) The Agency and the lender will share pro rata, (in accordance with their respective interests in a loan), all loan payments or recoveries, including proceeds from asset sales, all reasonable expenses, (including advances for the care, preservation, and maintenance of collateral securing the loan and the payment of senior lien holders), and any security interest or guarantee, (excluding the Agency's guarantee), which the lender or the Agency may hold or receive in connection with a loan.
- (5) Guarantors of financial assistance have no rights of contribution against the Agency on an Agency guaranteed loan. The Agency is not deemed to be a co-guarantor with any other guarantors.