more than a 5 percent ownership interest in the lender.

(R) The loan agreement includes all borrower compliance measures identified in the Agency's environmental review for avoiding or reducing adverse environmental impacts of the project's construction or operation.

(S) The lender will comply with the requirements of the Debt Collection Improvement Act.

(T) The lender has executed and delivered the lender's agreement, completed registration in the Agency's electronic reporting system, and electronically submitted the closing report for the guaranteed loan along with the appropriate guarantee fee.

(U) For all RES and EEI projects, the lender must provide certification that the project has been performing at a steady state operating level in accordance with the technical requirements, plans, and specifications. Any modification to the 30-day steady state operating level requirement will be based on the Agency's review of the technical report or vendor certification and will be incorporated into the conditional commitment.

(V) For CF and WWD projects, the lender must also certify that the lender would not make the loan without an Agency loan guarantee.

(c) For RES projects where applicable, the lender must provide to the Agency a copy of the executed power purchase agreement.

(d)(1) For all CF projects before the Agency will issue a loan note guarantee on a guaranteed loan to a borrower other than a public body, the articles of incorporation or other organizing documents of the borrower or the loan agreement must include a condition similar to the following:

(2) If the corporation dissolves or ceases to perform the community facility objectives and functions, the board of directors shall distribute all business property and assets to one or more nonprofit corporations or public bodies. This distribution must be approved by 75 percent of the users or members and must serve the public welfare of the community. The assets may not be distributed to any members, directors, stockholders, or others having a financial or managerial interest in the corporation. Nothing herein shall prohibit the corporation from paying its debts.

(e) For all B&I projects a borrower whose project involves locally or regionally produced agricultural food products and is not located in a rural area must include in an appropriate agreement with retail and institutional facilities to which the borrower sells locally or regionally produced agricultural food products a requirement to inform consumers of the retail or institutional facilities that the consumers are purchasing or consuming locally or regionally produced agricultural food products.

[85 FR 42518, July 14, 2020, as amended at 85 FR 62198, Oct. 2, 2020; 86 FR 70358, Dec. 10, 2021]

§ 5001.453 Issuance of the loan note guarantee.

The Agency, at its sole discretion, will determine if the conditions specified in the conditional commitment have been met and whether to issue the loan note guarantee.

(a) *Issuance.* When the Agency is satisfied that all of the conditions specified in the conditional commitment have been met and it receives all the required fees plus the executed lender's agreement from the lender, the Agency will issue the documents identified in paragraphs (a)(1) through (3) of this section, as appropriate.

(1) *Loan note guarantee.* The Agency will provide the lender the original loan note guarantee document which the lender must attach to the promissory note. If the lender elected to use the multi-note system, the Agency will issue one loan note guarantee for the set of promissory notes.

(2) *Assignment guarantee agreement.* If the lender assigns any guaranteed portion of a guaranteed loan to a holder, the lender, holder, and the Agency will execute an assignment guarantee agreement for each assignment.

(3) *Certificate of incumbency and signature.* The Agency will provide the holder an executed certificate of incumbency form to verify the signature and title of the Agency official who signed the assignment guarantee agreement.

(b) *Agency review of closing.* The Agency will review the closing documents submitted by the lender for completeness and if all conditions have been met and all documents have been provided, the Agency will issue the loan note guarantee. If the Agency determines that it cannot issue the loan note guarantee, the Agency will notify the lender, in writing, of the reasons and give the lender a reasonable period within which to satisfy the objections. If the lender satisfies the objections within the time allowed, the Agency will issue the loan note guarantee.

(c) *Cancellation of obligation.* A lender can submit a written request to the Agency for a partial cancellation. The lender must include in this request the reason for the partial cancellation, the effective date, and the portion to be canceled. If the Agency conditions for issuance of the loan note guarantee are rejected, cannot be met or funds are, in whole or in part, no longer needed, the Agency will cancel the obligation.

[85 FR 42518, July 14, 2020, as amended at 85 FR 62198, Oct. 2, 2020]

§ 5001.454 Guarantee fee.

The guarantee fee is a one-time, nonrefundable fee paid by the lender to the Agency at or before loan closing and is required to be paid before the Agency will issue the loan note guarantee. The lender may pass the guarantee fee on to the borrower.

(a) *Guarantee fee calculation.* The one-time guarantee fee is calculated by multiplying the total loan amount by the percentage of guarantee by the guarantee fee rate, which may vary by program.

(b) *Guarantee fee rates.* The guarantee fee rate is established by the Agency in an annual document published in the FEDERAL REGISTER. While the fee rate may vary annually, they will not exceed the limits in table 1:

TABLE 1 TO § 5001.454(b)—GUARANTEE FEE

	Maximum guarantee fee (percent)
Community Facilities	4
Water and Waste Disposal	3
Business and Industry	5
Rural Energy for America Program	3

(c) *Loan note guarantee prior to completion.* If the loan note guarantee is issued prior to completion of the project's construction under § 5001.205(e)(2), an additional guarantee fee of 0.50 percent will be added.

(d) *Reduced fee.* Subject to annual limits set by the Agency and published in an annual FEDERAL REGISTER document, the Agency may charge a reduced guarantee fee if requested by the lender when the borrower's project meets any one of the following criteria:

(1) Is located in a rural community that—

(i) Is a distressed community in accordance with the Economic Innovation Group distressed community index. The list can be found on the Agency's website at: *https://www.rd.usda.gov/onerdguarantee;*

(ii) Is experiencing long-term population decline according to the last three decennial censuses;

(iii) Is in a persistent poverty county. A persistent poverty county is any county that has had 20 percent or more of its population living in poverty over the past 30 years, as measured by the 1990 and 2000 decennial census and 2007–2011 American Community Survey 5-year average, or any territory or possession of the United States;

(iv) Is in a presidentially declared disaster area, declared within the 24 months preceding the date of the application, and is experiencing trauma as a result of natural disaster;

(v) Is located in a city, county, or state with an unemployment rate, as determined by the Department of Labor, 125 percent or greater of the current national rate; or

(vi) Is located within the boundaries of a federally recognized Indian tribe's reservation or within Tribal trust lands or within land owned by an Alaska Native Regional or Village Corporation as defined by the Alaska Native Claims Settlement Act.

(2) Processes, distributes, aggregates, stores, and/or markets locally or regionally produced agricultural food products and promotes access to healthy foods;

(3) Is locally owned and managed, and either

(i) Supports value-added agriculture and provides a market for locally or regionally produced agricultural food product; or