

CHAPTER 12  
GUARANTEED LOAN PROGRAM

**591—12.1(455G) General policies and loan terms.** The following general policy issues and terms shall apply to guaranteed loans:

**12.1(1) Amount of loan.** There is no maximum amount of a loan subject to the UST fund's guaranty. Eligibility criteria for loan qualification are found in 591—Chapter 10.

**12.1(2) Loan maturities.** Loan maturities shall be the shortest feasible term commensurate with the repayment ability of the borrower. However, the maturity date of the loan shall not exceed 20 years. The loan guaranty shall automatically terminate at loan maturity, unless the loan is in default or bankruptcy at that time, or on the date that the loan is paid in full, whichever occurs first.

**12.1(3) Variable rate or fixed rate loan.** Loans may have either a variable or fixed rate of interest which shall be mutually determined by the lender and borrower. Variable rate loans shall be adjusted according to the terms of the loan agreement and promissory note. However, variable rate loans shall not be adjusted upward more than 100 basis points per year or the maximum rate defined in subrule 12.1(4), whichever is lower.

**12.1(4) Interest rate structure.** The following interest rate structure represents the maximum allowable rate for all guaranteed loans:

a. 90% loan guaranty	Local prime + 100 basis points
b. 80% loan guaranty	Local prime + 125 basis points
c. 70% loan guaranty	Local prime + 150 basis points
d. 60% loan guaranty	Local prime + 175 basis points
e. 50% loan guaranty	Local prime + 200 basis points

Local prime is defined as the interest rate charged the lender's most creditworthy customers. In no instance shall the local prime interest rate exceed the national prime interest rate, as published in the Wall Street Journal on the date that the guaranteed loan is approved, by more than 100 basis points.

Lenders charging interest rates in excess of this structure on any loan may have the loan guaranty terminated.

**12.1(5) Application fee.** An application fee of \$150 shall be charged on all loan applications. This fee shall be paid to the UST fund upon application and is nonrefundable. The lender may not charge an application fee. Direct costs including, but not limited to, appraisal fees, credit reports and other third-party expenses incurred in processing the application may be charged to the applicant.

**12.1(6) Guaranty charges.** Guaranty charges are not permitted on loans guaranteed by the UST fund.

**12.1(7) Prepayment penalties.** Prepayment penalties are not permitted on loans guaranteed by the UST fund.

**12.1(8) Late penalty fees.** Additional penalty fees not to exceed 1.5 percent of the delinquent installment(s) may be charged monthly.

**12.1(9) Guaranteed loan approval.** All loans guaranteed by the UST fund shall be submitted to the UST fund administrator for approval. Guaranteed loans over \$75,000 must be approved by the UST board.

**12.1(10) Sale or participation of guaranteed loans.** Sale of loans guaranteed by the UST fund is not permitted.

**12.1(11) Collateral release.** The lender shall not release any collateral securing the loan without written permission from the UST fund administrator.

**12.1(12) Collateral subordination.** The lender shall not subordinate any collateral securing the loan without written permission from the UST fund administrator.

**12.1(13) *Determination of loan guaranty percentage.*** The percentage of loan guaranty shall be determined by the UST fund administrator. Factors involved in determining the guaranty percentage are:

- a. Financial condition.
- b. Historical and projected financial trends.
- c. Applicant's management ability.
- d. Collateral.
- e. Lender's exposure.
- f. Credit payment history.

**12.1(14) *Causes for termination of loan guaranty.*** The loan guaranty may be canceled at any time for the following causes:

- a. Failure to exercise due diligence in disbursing guaranteed loan proceeds per subrule 12.2(2).
- b. Charging interest rates in excess of the maximum allowable per subrule 12.1(4).
- c. Failure to notify the UST fund administrator in writing that a loan is in default per the loan default definition in 12.7(2) "b."
- d. Failure to perform with due diligence in complying with the loan closing requirements of rule 12.5(455G).
- e. Failure to perform with due diligence in complying with the loan servicing responsibilities of rule 12.6(455G).
- f. Fraud or misrepresentation by the lender regarding the policies, procedures, and forms of this program.

If the UST fund administrator has cause to terminate the loan guaranty, written notification shall be given to the lender outlining the cause of termination. The lender shall then have ten business days to respond to the termination notification. Should such response outline an acceptable resolution to the condition causing termination, the administrator shall notify the lender of the administrator's approval of the plan to resolve the condition. Should the response, in the view of the administrator, not adequately address the condition, the guaranty shall be terminated. If no written response is received in ten business days, the guaranty is terminated. If the lender finds that the termination is unwarranted, the lender may pursue any administrative remedy as outlined in Iowa Code chapter 17A.

**12.1(15) *Information needed to approve loan guaranty.*** The following information must be provided to the UST fund administrator in order to approve the loan guaranty:

- a. Completed and signed loan application.
- b. Signed refusal letters from two financial institutions and a participating lender. The refusal letters must state the reason(s) for the loan refusal.
- c. Current financial statements on the business and guarantors.
- d. Trend analysis of five years of historical financial information, including copies of the past five years' financial statements (if available) and tax returns.
- e. Cash flow projections for the next three years.
- f. Results of lien and title search.

**12.1(16) *Loan assumption.*** Loans guaranteed by the UST fund shall not be assumed without prior written approval of the UST fund administrator.

**12.1(17) *Loan approval timing.*** Within ten business days after a guaranteed loan application and supporting documents have been received by the UST fund administrator, the applicant will be notified if the application is complete as to the required information. Within ten business days after the guaranteed loan application is deemed complete, the UST fund administrator may approve or reject the application and notify the applicant of the decision. This applies to all applications of \$75,000 or less. Applications in excess of \$75,000 must be approved by the UST board which may result in the approval or rejection period exceeding ten business days.

**591—12.2(455G) Eligibility requirements.**

**12.2(1) Criteria.** Rescinded IAB 11/22/95, effective 12/27/95.

**12.2(2) Loan purposes.** Loan guarantees may be offered only for the following purposes:

- a. To reimburse all or a portion of the expenses incurred by the applicant for its share of corrective action.
- b. To pay for tank and monitoring equipment improvements necessary to satisfy federal and state standards to become insurable.
- c. Capital improvements made on a tank site.
- d. Purchase of a leaking underground storage tank site.

Determination that the lender has failed to exercise due diligence in disbursing the guaranteed loan proceeds may result in termination of the loan guaranty. Examples of satisfying the due diligence standards include, but are not limited to: (1) Loan proceeds issued jointly in the name of an owner or operator and the contractor or installer performing underground storage system upgrade services; (2) Loan proceeds issued jointly in the name of the owner or operator and the environmental consulting firm or underground leak response contractor performing corrective action activities.

**591—12.3(455G) Credit standards—guarantee approval.**

**12.3(1) Minimum credit standards.** The following is a list of minimum credit standards that must be met in order to qualify for a guaranteed loan:

- a. Cash flow. Based on historical financial information, projected cash flow must equal the cash requirements necessary to meet:
  - (1) Annual cash operating expenses.
  - (2) Fixed asset acquisition or replacements.
  - (3) Debt service requirements.
  - (4) Living expenses if sole proprietorship or partnership if one or more partners are dependent on income from the entity for their livelihood.

Additional information, such as justification of increase, shall be available for review if cash flow projections reflect increases in sales and cash flow in comparison to historical financial statements.

b. If other than a sole proprietorship, personal guarantees of majority stockholders and all partners are required. Current financial statements (not over 90 days old at the time of filing) on the guarantors shall be provided.

c. If the debt-to-equity ratio is in excess of 5:1 after including the new debt incurred with the guaranteed loan, the borrower must have collateral that secures, at a minimum, 65 percent of the principal guaranteed loan amount.

**12.3(2) Historical trend analysis.** Historical trend analysis is essential to determine the financial stability and management ability of the borrower. The past five years of historical financial statements (if available) and tax returns shall be obtained and analyzed. Downward trends shall be researched as to the reason for the trend and documented in the loan file. Downward trends in excess of two consecutive years may be interpreted as reflecting weakness in management's abilities.

**591—12.4(455G) Procedures required before loan funding.** The following procedures shall be performed and documented in the lender's loan file before funding of a guaranteed loan:

**12.4(1)** If the loan is for the owner's share of the cleanup cost or tank upgrade at a site which has environmental damage, a site assessment survey shall be obtained from the department of natural resources or the remediation consultant or contractor.

**12.4(2)** If the loan is for upgrading the tank site(s), a loan officer from the lender shall inspect the site and verify that the upgrade has been completed.

**12.4(3)** Hazard insurance covering real and personal property securing the guaranteed loan shall be obtained. The UST program shall be listed on the policy as “an additional named insured” and as loss payee. A certificate of insurance shall accompany the loan application.

**12.4(4)** All major assets and liabilities values per the financial statements included with the loan application shall be verified and documented in the loan file.

**12.4(5)** Lien search or title opinion verification to determine existing secured interests in the borrower’s property.

**12.4(6)** Pollution liability coverage meeting state and federal financial responsibility requirements shall be obtained for each site.

**591—12.5(455G) Loan closing requirements.**

**12.5(1)** Closing defined. “Closing” means the complete disbursement to the borrower, the execution, receipt, and review of documentation, and the obtaining of collateral instruments. Lender shall close and disburse each loan in accordance with the terms and conditions of the loan guaranty agreement and the notice of loan approval. The UST fund shall be entitled at any time, after written notice, to examine and obtain copies of all notes, security agreements, instruments of hypothecation, all other agreements and documents and the loan repayment records held by the lender which relate to loans made pursuant to this program.

**12.5(2)** A lender may use its own forms for closing with the exception of the loan agreement, the loan guaranty agreement and the personal guaranty.

**12.5(3)** The following documents must be completed by or at closing:

- a. The loan agreement.
- b. The security agreement—a financing statement must be filed.
- c. A resolution of the board of directors for corporations (or a certificate as to partners for partnerships) authorizing the borrowing.
- d. A promissory note.
- e. A mortgage or deed of trust.
- f. A loan guaranty agreement.
- g. A personal guaranty.
- h. A mechanic’s lien waiver.

**591—12.6(455G) Servicing responsibilities after loan funding.** The following is a listing of servicing responsibilities and procedures that the lender must comply with after the loan is funded in order to maintain the guaranty:

**12.6(1)** Monitor monthly loan payments.

**12.6(2)** Provide written notification to the UST fund administrator of all loans that are 60 days delinquent.

**12.6(3)** If the loan is in the default status, follow all procedures set out in rule 12.7(455G) of this loan policy.

**12.6(4)** Establish and maintain a basic loan file on each loan.

**12.6(5)** Establish procedures to ensure notification of UCC refiling dates, insurance expiration dates, financial statement due dates and similar events.

**12.6(6)** Obtain and review income tax returns of the borrowers and guarantors annually.

**12.6(7)** Obtain and review annual financial statements on all borrowers and guarantors. These statements must be available no later than 90 days after the borrower's fiscal year end. Copies of these statements are to be sent to the UST fund administrator upon receipt from the borrower/guarantor. Unusual items or trends on the financial statements or tax returns shall be analyzed and a determination made if the items should have an adverse financial impact on the borrower. Documentation shall be placed in the loan file to support conclusions.

**12.6(8)** Annual field visits shall be made to the borrower's place of business. A record of the visit shall be maintained in the loan file. A record of telephone contacts with the borrower or visits by the borrower to the lender's office shall be maintained in the loan file.

**591—12.7(455G) Loan default definition and procedures.**

**12.7(1)** Loan default means a loan guaranteed by the UST fund for which the loan payment(s) is delinquent 90 days or more.

**12.7(2)** Lenders that have UST fund guaranteed loans shall follow these specified procedures to ensure that the UST fund guaranty remains in effect:

*a.* Notify the UST fund administrator in writing when the loan payment(s) is delinquent 60 days.

*b.* Notify the UST fund administrator in writing when the loan payment(s) is delinquent 90 days.

At this time the loan shall be deemed to be in default and the Defaulted Loan Status Report must be completed and sent to the UST fund administrator.

*c.* After the loan is deemed to be in default, a period of 30 days will be given to "cure" the default. "Cure" is defined for purposes of this chapter as bringing all delinquent payments current. The lender is responsible for delivering the notice to cure to the borrower.

*d.* If the loan is still in default after the cure period, the lender shall submit within the next 10 business days in writing to the UST fund administrator an action plan on how the lender intends to handle the loan default. The action plan shall include procedures to either restructure the loan or move toward judgment and collection of the loan. The action plan shall be reviewed and approved by the UST fund administrator within 10 business days of receipt of the plan. Action plans not approved by the UST fund administrator shall be returned to the lender submitting the plan and a new action plan will be jointly developed by the lender and the UST fund administrator. If the lender and the UST fund administrator cannot develop and agree on a new action plan, the guaranty is terminated.

If in any case the lender feels such termination is unwarranted, the lender may pursue any administrative remedy as outlined in Iowa Code chapter 17A, or as approved by the UST board.

*e.* The lender shall follow the procedures outlined in the approved action plan and inform the UST fund administrator in writing by the end of each calendar quarter of the status of the defaulted loan until such time as the loan is no longer deemed in default. A loan will be deemed to no longer be in default at that point in time when the loan is restructured according to the approved action plan or terminated.

*f.* At such time as the loan has been reduced to judgment and a UST fund lien has been filed, or alternatively, when the borrower files for reorganization under Chapter 11, 12 or 13 of the Bankruptcy Code, the lender shall submit to the UST fund administrator an estimated report of loss. The UST fund administrator will pay the lender the estimated loss on the guaranteed portion of the loan from the UST fund. Estimated loss payments must first be applied to the principal portion of the debt and then to the interest. Interest will continue to accrue on the unpaid guaranteed principal until such date of final settlement provided the lender proceeds expeditiously with the approved action plan. The lender is responsible for protecting the guaranteed loan debt and all collateral securing the loan in judgment and bankruptcy proceedings.

*g.* The property shall be sold to satisfy the judgment or bankruptcy order as expeditiously as possible.

*h.* Upon complete performance of an approved action plan for collection of the loan, the lender shall complete a final report of loss. Within 30 days of receipt of the final report of loss form from the lender, the UST fund will pay to the lender any remaining balance of the loan guaranty and the third-party costs as outlined in 12.7(2)“*i.*”

*i.* Third-party costs incurred by the lender in collecting on guaranteed loans in default will be reimbursed to the lender on a percentage basis of the UST loan guaranty with a maximum cap of 10 percent of the principal loan guaranty. The reimbursement scale shall be as follows:

1. 90% guaranty 90% third-party cost reimbursement\*
2. 80% guaranty 80% third-party cost reimbursement\*
3. 70% guaranty 70% third-party cost reimbursement\*
4. 60% guaranty 60% third-party cost reimbursement\*
5. 50% guaranty 50% third-party cost reimbursement\*

\*Not to exceed 10% of the principal loan guaranty.

*j.* After a loan has been liquidated and a final loss has been paid by the UST fund, any future funds which may be recovered by the lender shall be prorated between the UST fund and the lender in proportion to the guaranty percentage per the loan guaranty agreement.

### **591—12.8(455G) Participating lender program.**

**12.8(1)** The “participating lender” program has been established to stimulate additional private capital for loans to qualifying borrowers under the UST fund guaranteed loan program. Participating lenders will receive assistance in the following areas relative to underground storage tanks that they currently own:

- a.* UST fund payment up to 100 percent of the site cleanup.
- b.* UST fund payment up to 100 percent of the third-party liability expenses.

**12.8(2)** The following outlines the criteria necessary to qualify as a participating lender:

- a.* The lender shall at the time of application to become a participating lender be owner of record of at least one underground storage tank site that requires a cleanup.
- b.* The lender agrees at no cost to the UST fund to assist the UST fund in marketing sites that the UST fund cleans up and takes possession of if the site is located in the lender’s trade territory as defined by the lender’s Community Reinvestment Act (CRA) statement.

**12.8(3)** The following options are available to participating lenders:

*a.* The UST fund will pay \$1 of the financial institution’s cleanup costs and third-party liability expenses in cleaning up a site for which the financial institution is owner of record for each \$4 in non-guaranteed loans made to owners/operators that qualify for the guaranteed loan program. Termination of the loan by the lender could only be made in the event of default by the borrower or other breach of the loan agreement by the borrower. Termination for any other reason by the lender would result in repayment of the funds advanced to the lender plus interest at a rate of 10 percent per annum from the date the funds were advanced to cover their cleanup and third-party liability costs.

*b.* The UST fund will pay \$1 of the financial institution’s cleanup costs and third-party liability expenses in cleaning up a site for which the financial institution is owner of record for each \$8 in guaranteed loans made to owners/operators that qualify for the guaranteed loan program.

**591—12.9(455G) Interest rate buydown program.**

**12.9(1)** The intent of the interest rate buydown program is to provide lenders with a tool to enable them to provide credit to owners/operators who could meet all eligibility and minimum credit standards in rule 12.3(455G) except for the positive cash flow requirement.

Lenders that participate in this program shall enter into an agreement with the UST fund to reduce the interest rate paid on a loan. In return, UST fund will make annual interest rate buydown payments to the lenders in an amount not more than 50 percent of the cost of reducing the interest rate on the loan. Payments made to a lender under this program will in no case exceed two percentage points. The maximum loan guarantee shall be 90 percent.

**12.9(2)** After the interest rate buydown, applicant must meet the positive cash flow requirement in 12.3(1)“a.”

**12.9(3)** The percentage of loan guaranty shall range from 50 percent to 90 percent and will be determined by the UST fund administrator.

**12.9(4)** A signed agreement between the lender and the UST fund shall be obtained setting forth the terms and conditions of the interest rate buydown.

**12.9(5)** The interest rate buydown term will coincide with the original maturity term of the loan.

**12.9(6)** The lender must demonstrate that a positive cash flow projection in accordance with the minimum credit standards is not possible without reducing the interest rate on the applicant’s loan.

**12.9(7)** The interest rate buydown agreement will be attached to the promissory note. The lender may charge only a fixed rate of interest during the term of the buydown agreement.

**12.9(8)** If the guaranteed loan is restructured under the default provisions of this policy, any modification of the interest rate buydown agreement must be approved by the UST fund administrator.

**12.9(9)** Claims and payments will be processed in accordance with the terms stated in the interest rate buydown agreement.

**12.9(10)** The interest rate buydown agreement cannot be canceled during the term of the loan except for fraud or misrepresentation, of which the lender has actual knowledge at the time the interest rate buydown agreement is executed, or of which the lender participates in or condones.

**591—12.10(455G) Guaranteed loan program—general rules.**

**12.10(1)** An application fee of \$150 will be charged on all guaranteed loan applications. This fee will cover a majority of the UST board’s cost of processing the loan.

**12.10(2)** Financial institutions will not be allowed to charge an application or guaranty fee. Appraisal fees, credit reports and other third-party expenses incurred in processing the application can be charged the applicant.

**12.10(3)** Calculation of the net worth requirement shall include all the assets and liabilities of the business entity and all equity of other assets of the owner(s) and shall be calculated using the “fair market value” of the tank site(s) and all equity of other net assets of the owners.

*a.* “Fair market value” is defined as the price at which an asset passes from a willing seller to a willing buyer through an arm’s length transaction. It is assumed that both the seller and the buyer are rational and have a reasonable knowledge of relevant facts.

*b.* When determining net worth, the fair market value of a site eligible for benefits pursuant to Iowa Code section 455G.9 shall include an adjustment for anticipated benefits pursuant to that section.

**12.10(4)** Additional leniency will be given in considering loan guarantees to all applicants who do not meet the minimum credit standards of the UST guaranteed loan program subject to additional priority standards and a second review of funding available. Applicants must have exhausted all local resources of financial assistance and must be able to demonstrate a good managerial and operational skills track record. These loan guarantees would have to be approved by the board.

**12.10(5)** Financial institutions are prohibited from selling UST fund guaranteed loans to other financial institutions.

**12.10(6)** Businesses entering into the petroleum business who meet the eligibility requirements of rule 12.2(455G) may make application for a loan guarantee.

These rules are intended to implement Iowa Code chapter 455G.

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