

PART 4287 - SERVICING

Subpart B - Servicing Business and Industry Guaranteed Loans

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PART 4287 - SERVICING

Subpart B - Servicing Business and Industry Guaranteed Loans

§ 4287.101 Introduction.

(a) This subpart supplements part 4279, subparts A and B, by providing additional requirements and instructions for servicing and liquidating all Business and Industry (B&I) Guaranteed Loans. This includes Drought and Disaster (D&D), Disaster Assistance for Rural Business Enterprises (DARBE), and Business and Industry Disaster (BID) loans.

(b) The lender will be responsible for servicing the entire loan and will remain mortgagee and secured party of record notwithstanding the fact that another party may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of a loan will neither be paid first nor given any preference or priority over the guaranteed portion of the loan.

(c) Copies of all forms, regulations, and Instructions referenced in this subpart are available in any Agency office. Whenever a form is designated in this subpart, that designation includes predecessor and successor forms, if applicable, as specified by the field or National Office. *Any portion of this Instruction appearing in italicized type is considered by the Agency to be administrative procedure and has not been published as part of the regulation in the Federal Register.*

§ 4287.102 Definitions.

The definitions and abbreviations contained in § 4279.2 of subpart A of part 4279 of this chapter apply to this subpart.

§ 4287.103 Exception authority.

Section 4279.15 of subpart A of part 4279 of this chapter applies to this subpart.

§§ 4287.104 - 4287.105 [Reserved]

§ 44287.106 Appeals.

Section 4279.16 of subpart A of part 4279 of this chapter applies to this subpart.

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Guaranteed Loan Servicing

§ 4287.107 Routine servicing.

The lender is responsible for servicing the entire loan and for taking all servicing actions that a prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The Loan Note Guarantee is unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, use of loan funds for unauthorized purposes, negligent servicing, or failure to obtain the required security interest regardless of the time at which the Agency acquires knowledge of the foregoing. This responsibility includes but is not limited to the collection of payments, obtaining compliance with the covenants and provisions in the Loan Agreement, obtaining and analyzing financial statements, checking on payment of taxes and insurance premiums, and maintaining liens on collateral. *The State Director has the primary responsibility for ensuring that the lender is servicing the loan in a prudent manner as required by the Lender's Agreement, the regulations governing the program, and loan documents. Loan servicing is intended to be preventive rather than curative. Prompt follow-up on delinquent accounts and early recognition of and pursuing a solution to potential problems are keys to resolving many problem accounts. The lender should be immediately notified in writing when the Agency suspects noncompliance with the legal instruments governing the loan. The Regional Inspector General for Investigations, U.S. Department of Agriculture (USDA), should be contacted when fraud is suspected. All servicing actions that are submitted to the National Office must be sent in the format set forth in appendix A of this subpart. The activities in this subpart are also applicable to guaranteed loans made under the Renewable Energy and Energy Efficiency Improvements Program. (Revised 10-03-05, SPECIAL PN.)*

(a) Lender reports and annual renewal fee. The lender must report the outstanding principal and interest balance on each guaranteed loan semiannually using a USDA-approved status report or other format. The lender will transmit the annual renewal fee to the Agency simultaneously with the December 31 semiannual status report in accordance with 7 CFR Part 4279, subpart B, §4279.107. (Revised 10-03-05, SPECIAL PN.)

(b) Loan classification. Within 90 days of receipt of the Loan Note Guarantee, the lender must notify the Agency of the loan's classification or rating under its regulatory standards. Should the classification be changed at a future time, the Agency must be notified immediately. *The Agency is required to classify all B&I loans within the B&I portfolio. The Agency will classify B&I loans within 30 days of receiving the lender's classification in accordance with the internal system in the Guaranteed Loan System (GLS). When the lender uses a different classification system, the Agency will convert the lender's classification to a corresponding GLS classification for data entry.*

(c) Agency and lender conference. At the Agency's request, the lender will meet with the Agency to ascertain how the guaranteed loan is being serviced and that the conditions and covenants of the Loan Agreement are being enforced. *The Agency will hold meetings with the lender at least annually. The Agency, at a minimum, will remind the lender of its*

§ 4287.107(c) (Con.)

servicing responsibilities under the Lender's Agreement during the field visit, review the lender's latest financial analysis, and check the loan classification. It is suggested that the application of loan payments also be reviewed.

- (1) Prepare for the visit by reviewing the previous field visit reports.*
- (2) Coordinate the visit with the lender.*
- (3) Before the visit, discuss with the lender the borrower's financial reporting and review the lender's analysis of the reports.*
- (4) Check the condition of the business premises and the collateral and observe how the borrower is maintaining and utilizing the equipment.*
- (5) Check for potential hazardous contamination.*
- (6) Determine the economic impact of the B&I program.*
- (7) Document the findings in written correspondence with the lender.*

(d) Financial reports. The lender must obtain and forward to the Agency the financial statements required by the Loan Agreement. The lender must submit annual financial statements to the Agency within 120 days of the end of the borrower's fiscal year. The lender must analyze the financial statements and provide the Agency with a written summary of the lender's analysis and conclusions, including trends, strengths, weaknesses, extraordinary transactions, and other indications of the financial condition of the borrower. Spreadsheets of the new financial statements must also be included. *The State Director should handle public body financial reporting requirements generally the same as for Community Programs. Office of Management and Budget (OMB) Circular A-128 requires an audit for the fiscal year in which the Loan Note Guarantee was issued. OMB Circular A-133 applies to nonprofits.*

(e) Additional expenditures. The lender will not make additional loans to the borrower without first obtaining the prior written approval of the Agency, even though such loans will not be guaranteed.

(f) Borrower visits. *Periodic borrower visits should be coordinated whenever possible with the lender. It is strongly encouraged that the lender accompany the Agency on all borrower visits. Borrower visits*

should be scheduled during the first year of operation after issuance of the Loan Note Guarantee. For all current borrowers, a field visit should be done at least once every 3 years. Problem accounts should be visited as frequently as the Agency deems necessary. Field visits should be documented on Form 4279-15, "Business and Industry Field Office Review," or a similar format.

(g) State Office reports. All problem loans that are in excess of the State's loan servicing authority, all delinquent loans, and any loans in bankruptcy will be reported on a quarterly basis to the National Office using Form 4279-16, "Quarterly Delinquent/Problem Loan Report (Business and Industry)."

§§ 4287.108 - 4287.111 [Reserved]

§ 4287.112 Interest rate adjustments.

(a) Reductions. The borrower, lender, and holder (if any) may collectively initiate a permanent or temporary reduction in the interest rate of the guaranteed loan at any time during the life of the loan upon written agreement among these parties. The Agency must be notified by the lender, in writing, within 10 calendar days of the change. If any of the guaranteed portion has been purchased by the Agency, then the Agency will affirm or reject interest rate change proposals in writing. The Agency will concur in such interest-rate changes only when it is demonstrated to the Agency that the change is a more viable alternative than initiating or proceeding with liquidation of the loan or continuing with the loan in its present state.

(1) Fixed rates can be changed to variable rates to reduce the borrower's interest rate only when the variable rate has a ceiling which is less than or equal to the original fixed rate.

(2) Variable rates can be changed to a fixed rate which is at or below the current variable rate.

(3) The interest rates, after adjustments, must comply with the requirements for interest rates on new loans as established by § 4279.125 of subpart B of part 4279.

(4) The lender is responsible for the legal documentation of interest-rate changes by an endorsement or any other legally effective amendment to the promissory note; however, no new notes may be issued. Copies of all legal documents must be provided to the Agency.

(5) *Factors which will be considered in making such determinations include whether:*

§ 4287.112(a) (5) (Con.)

(i) continuing with the loan would realistically promote or enhance rural development and employment in rural areas;

(ii) recovery is maximized and the monetary recovery would be increased by proceeding immediately to liquidation (if applicable) or allowing the borrower to continue at a reduced interest rate; and

(iii) an in-depth financial analysis by the lender reasonably indicates that the business would be successful at a lower interest rate and reasonably indicates that the borrower could make the reduced payment and pay off amounts in arrears, if any.

(6) The State Director will notify the Finance Office of any interest-rate change by using Form RD 1980-47, "Guaranteed Loan Borrower Adjustments," make corrections to RCFTS reflecting the change, and document the loan file to reflect the change. A system must be established to monitor the receipt from the lender of interest-rate changes and the effective date of change on all guaranteed loans where the Agency is the holder or where other circumstances might dictate a change in the interest rate at some point in the future.

(b) **Increases.** No increases in interest rates will be permitted except the normal fluctuations in approved variable interest rates unless a temporary interest-rate reduction occurred.

§ 4287.113 **Release of collateral.**

(a) All releases of collateral with a value exceeding \$100,000 must be supported by a current appraisal on the collateral released. The appraisal will be at the expense of the borrower and must meet the requirements of § 4279.144 of subpart B of part 4279 of this chapter. The remaining collateral must be sufficient to provide for repayment of the Agency's guaranteed loan. The Agency may, at its discretion, require an appraisal of the remaining collateral in cases where it is determined that the Agency may be adversely affected by the release of collateral. Sale of release of collateral must be based on an arm's-length transaction. There must be adequate consideration for release of collateral and such release may include, but is not limited to:

(1) Application of the net proceeds from the sale of collateral to the borrower's debts in order of lien priority (Application of sale

proceeds to the Agency guaranteed debt must be in inverse order of maturity);

(2) Use of the net proceeds from the sale of collateral to purchase other collateral of equal or greater value for which the lender will obtain for the benefit of the guaranteed loan a lien position equal or superior to the position previously held;

(3) Application of the net proceeds from the sale of collateral to the borrower's business operation in such a manner that a significant enhancement of the borrower's debt service ability will be clearly demonstrated. (The lender's written request must detail how the borrower's debt service ability will be enhanced); or

(4) Assurance that the release of collateral is essential for the success of the business, thereby furthering the goals of the B&I program. Such assurance must be supported by written documentation from the lender.

(b) Within the parameters of paragraph (a) of this section, lenders may, over the life of the loan, release collateral (other than personal and corporate guarantees) with a cumulative value of up to 20 percent of the original loan amount without Agency concurrence if the proceeds generated are used to reduce the guaranteed loan or to buy replacement collateral.

(c) Within the parameters of paragraph (a) of this section, release of collateral with a cumulative value in excess of 20 percent of the original loan or when the proceeds will not be used to reduce the guaranteed loan or to buy replacement collateral must be requested in writing by the lender and concurred in by the Agency in writing in advance of the release. A written evaluation will be completed by the lender to justify the release.

(d) Government officers are neither authorized to modify the terms of a contract by the supplemental or substitute agreement if such modifications are prejudicial to the interest of the United States nor are they authorized to give away the property or claim of the Government.

§§ 4287.114 - 4287.122 [Reserved]

§ 4287.123 Subordination of lien position.

A subordination of the lender's lien position must be requested in writing by the lender and concurred in by the Agency in writing in advance of the subordination. The subordination must enhance the borrower's business,

§ 4287.123 (Con.)

and the Agency's interest. After the subordination, collateral must be adequate to secure the loan. The lien to which the guaranteed loan is subordinated must be for a fixed dollar limit and fixed or limited term, after which the guaranteed loan lien priority will be restored. Subordination to a revolving line of credit will not exceed 1 year. There must be adequate consideration for the subordination. *A subordination is considered a servicing action requiring the appropriate environmental review by the Agency in accordance with subpart G of part 1940.*

§ 4287.124 Alterations of loan instruments.

The lender shall neither alter nor approve any alterations of any loan instrument without the prior written approval of the Agency. *The State Director will consult with the Regional Attorney and, if necessary, the National Office for additional guidance.*

§§ 4287.125 - 4287.133 [Reserved]

§ 4287.134 Transfer and assumption.

(a) Documentation of request. All transfers and assumptions must be approved in writing by the Agency and must be to eligible applicants in accordance with subpart B of part 4279 of this chapter. An individual credit report must be provided for transferee proprietors, partners, officers, directors, and stockholders with 20 percent or more interest in the business, along with such other documentation as the Agency may request to determine eligibility. *Although a transfer and assumption is normally considered loan servicing, it should be processed in the same manner as a new loan.*

(b) Terms. Loan terms must not be changed unless the change is approved in writing by the Agency with the concurrence of any holder and the transferor (including guarantors) if they have not been or will not be released from liability. Any new loan terms must be within the terms authorized by § 4279.126 of subpart B of part 4279 of this chapter. The lender's request for approval of new loan terms will be supported by an explanation of the reasons for the proposed change in loan terms. *(The maximum terms authorized by § 4279.126 of subpart B of part 4279 may be considered when new terms are being offered.)*

(c) Release of liability. The transferor, including any guarantor, may be released from liability only with prior Agency written concurrence and only when the value of the collateral being transferred is at least equal to the amount of the loan being assumed and is supported by a current appraisal and a current financial statement. The Agency will

not pay for the appraisal. If the transfer is for less than the debt, the lender must demonstrate to the Agency that the transferor and guarantors have no reasonable debt-paying ability considering their assets and income in the foreseeable future.

(d) Proceeds. Any proceeds received from the sale of collateral before a transfer and assumption will be credited to the transferor's guaranteed loan debt in inverse order of maturity before the transfer and assumption are closed.

(e) Additional loans. Loans to provide additional funds in connection with a transfer and assumption must be considered as a new loan application under subpart B of part 4279 of this chapter.

(f) Credit quality. The lender must make a complete credit analysis which is subject to Agency review and approval.

(g) Documents. Prior to Agency approval, the lender must advise the Agency, in writing, that the transaction can be properly and legally transferred, and the conveyance instruments will be filed, registered, or recorded as appropriate.

(1) The assumption will be done on the lender's form of assumption agreement and will contain the Agency case number of the transferor and transferee. The lender will provide the Agency with a copy of the transfer and assumption agreement. The lender must ensure that all transfers and assumptions are noted on all original Loan Note Guarantees.

(2) A new Loan Agreement, consistent in principle with the original Loan Agreement, should be executed to establish the terms and conditions of the loan being assumed. An assumption agreement can be used to establish the loan covenants.

(3) The lender will provide to the Agency a written certification that the transfer and assumption is valid, enforceable, and complies with all Agency regulations.

(h) Loss resulting from transfer. If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor (including personal guarantors) is released from liability, the lender, if it holds the guaranteed portion, may file an estimated report of loss to recover its pro rata share of the actual loss. If a holder owns any of the guaranteed portion, such portion must be repurchased by the lender or the Agency in accordance with § 4279.78(c) of subpart A of part 4279.

§ 4287.134(h) (Con.)

In completing the report of loss, the amount of the debt assumed will be entered as net collateral (recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption will be included in the calculations.

(i) Related party. If the transferor and transferee are affiliated or related parties, any transfer and assumption must be for the full amount of the debt.

(j) Payment requests. Requests for a loan guarantee to provide equity for a transfer and assumption must be considered as a new loan under subpart B of part 4279.

(k) Cash downpayment. When the transferee will be making a cash downpayment as part of the transfer and assumption:

(1) The lender must have an appropriate appraiser, acceptable to both the transferee and transferor and currently authorized to perform appraisals, determine the value of the collateral securing the loan. The appraisal fee and any other costs will not be paid by the Agency.

(2) The market value of the collateral, plus any additional property the transferee proposes to offer as collateral, must be adequate to secure the balance of the guaranteed loans.

(3) Cash downpayments may be paid directly to the transferor provided:

(i) The lender recommends that the cash be released, and the Agency concurs prior to the transaction being completed. The lender may wish to require that an amount be retained for a defined period of time as a reserve against future defaults. Interest on such account may be paid periodically to the transferor or transferee as agreed;

(ii) The lender determines that the transferee has the repayment ability to meet the obligations of the assumed guaranteed loan as well as any other indebtedness;

(iii) Any payments by the transferee to the transferor will not suspend the transferee's obligations to continue to meet the guaranteed loan payments as they come due under the terms of the assumption; and

(iv) The transferor agrees not to take any action against the transferee in connection with the assumption without prior written approval of the lender and the Agency.

(1) Transfer and assumption options.

- (1) *Transfer the total indebtedness on the same terms.*
- (2) *Transfer the total indebtedness on different terms.*
- (3) *Transfer for less than all of the debt on the same terms.*
- (4) *Transfer for less than all of the debt on different terms.*

(m) Bankruptcy. *The bankruptcy court does not have any jurisdiction to require a lender to accept another debtor or to transfer a loan to another entity. In such a case, contact your Regional Attorney immediately.*

(n) Approval. *The Agency will handle a transfer and assumption as a new loan, and the transfer and assumption must be approved by the State Director within the position's loan approval authority. If there will be a loss or if the guaranteed loan balance is in excess of the State Director's loan approval authority, the request must be submitted to the National Office for review and concurrence. The Regional Attorney will review all legal instruments used in the transfer and assumption prior to the transaction being consummated. A copy of the assumption agreement must be placed in the case file. The Finance Office must be notified and the following information should be transmitted to the Finance Office:*

- (1) *Form RD 1980-7, "Notification of Transfer and Assumption of a Guaranteed Loan;"*
- (2) *Form RD 1980-50, "Add, Delete, or Change Guaranteed Loan Borrower Information;" and*
- (3) *Form RD 1980-51, "Add, Change or Delete Guaranteed Loan Record," for the transferee.*

(o) Environmental. *Transfers and assumptions are considered servicing actions requiring the appropriate environmental review by the Agency in accordance with subpart G of part 1940.*

§ 4287.135 Substitution of lender.

After the issuance of a Loan Note Guarantee, the lender shall not sell or transfer the entire loan without the prior written approval of the Agency. The Agency will not pay any loss or share in any costs (i.e., appraisal fees, environmental studies, or other costs associated with servicing or liquidating the loan) with a new lender unless a relationship is established through a substitution of lender in accordance with paragraph (a) of this section. This includes cases where the lender has failed and been taken over by a regulatory agency such as the Federal Deposit Insurance Corporation (FDIC) and the loan is subsequently sold to another lender.

(a) The Agency may approve the substitution of a new lender if:

(1) the proposed substitute lender:

(i) is an eligible lender in accordance with § 4279.29 of subpart A of part 4279;

(ii) is able to service the loan in accordance with the original loan documents; and

(iii) agrees in writing to acquire title to the unguaranteed portion of the loan held by the original lender and assumes all original loan requirements, including liabilities and servicing responsibilities.

(2) the substitution of the lender is requested in writing by the borrower, the proposed substitute lender, and the original lender if still in existence.

(b) Where the lender has failed and been taken over by FDIC and the guaranteed loan is liquidated by FDIC rather than being sold to another lender, the Agency will pay losses and share in costs as if FDIC were an approved substitute lender.

(c) *The Regional Attorney should be requested to review the proposed substitution documents to ascertain that the documents will comply with all legal requirements. State Directors may approve a substitution of lender for loans where the outstanding loan balance is within the State's delegated servicing authority.*

(d) *RCFTS should be updated to reflect the change, and the Finance Office should be notified using Form RD 1980-42, "Notice of Substitution of Lender."*

§ 4287.136 Lender failure.

For financial institutions that have failed, the following procedure should be followed:

(a) Uninsured lender. When an uninsured lender with an Agency guaranteed loan fails, the Agency must notify both the National Office and the Regional Attorney, in writing, at once. The Agency will likely be dealing with a bankruptcy situation where the receiver will control any B&I Guaranteed Loan and sell it as part of the liquidation process. These are lengthy, complicated affairs and the Agency needs to keep track of the B&I Guaranteed Loan and monitor the bankruptcy progress. The Agency should make any successor to the failed institution aware that the lender or insuring agency cannot arbitrarily change the Lender's Agreement and related documents on the guaranteed loan.

(b) Insured lender. When an insured lender fails, its assets, including its loans, are normally taken over by the insuring agency such as the FDIC. The B&I Guaranteed Loan will usually be acquired by either the insuring agency or a private institution.

(1) Initial action. As soon as the Agency becomes aware that a lender has failed, the Agency should contact the FDIC office (if there is one) or the State agency servicing the lender's area at once. The Agency should brief the FDIC or State agency on the requirements contained in the Lender's Agreement as well as any other Agency regulations that apply. The Regional Attorney should be contacted for legal advice, including determining the time period established by applicable law in which a proof of claim can be filed.

(2) Recovery by the Agency. When the Agency has repurchased the guaranteed portion of the loan, the lender has failed, and the Agency suspects that the guarantee is unenforceable due to negligent servicing, unauthorized use of loan funds, fraud, or misrepresentation by the lender.

(i) Involve the National Office and Regional Attorney as soon as it is suspected that the Loan Note Guarantee may be unenforceable.

(ii) Determine and document the exact amount of loss paid by the Agency as a result of negligent servicing.

§ 4287.136(b) (2) (Con.)

(iii) *Locate the name and address of the insurance company covering the failed institution and its officers for errors and omissions. The Agency loan officer should contact the Regional Attorney to structure a demand letter for payment of the loss associated with the negligence.*

(iv) *If the financial institution has been taken over by a Federal or State regulatory agency, the Agency should request ettlement of the loss from the assets of the failed institution by filing a timely proof of claim.*

(v) *If the failed institution's operations and the Agency guaranteed loan were sold to another institution, with the concurrence of the Regional Attorney and the National Office, a timely appropriate demand for payment should be made from the new entity. A detailed analysis substantiated with any supporting documents should accompany the demand for payment within the time constraints established by law.*

(vi) *Should the demand on the successor financial institution be denied, the Agency should obtain the documented reasons in writing. The Regional Attorney should be consulted to prepare the rebuttal and request for reconsideration of payment.*

§§ 4287.137 - 4287.144 [Reserved]

§ 4287.145 Default by borrower.

(a) **The lender must notify the Agency when a borrower is 30 days past due on a payment or is otherwise in default of the Loan Agreement. Form RD 1980-44, "Guaranteed Loan Borrower Default Status," will be used and the lender will continue to submit this form bimonthly until such time as the loan is no longer in default. If a monetary default exceeds 60 days, the lender will arrange a meeting with the Agency and the borrower to resolve the problem.**

(b) **In considering options, the prospects for providing a permanent cure without adversely affecting the risk to the Agency and the lender is the paramount objective.**

(1) **Curative actions include but are not limited to:**

(i) **deferment of principal (subject to rights of any holder);**

(ii) **an additional unguaranteed temporary loan by the lender to bring the account current;**

(iii) reamortization of or rescheduling the payments on the loan (subject to rights of any holder);

(iv) transfer and assumption of the loan in accordance with § 4287.134 of this subpart;

(v) reorganization;

(vi) liquidation;

(vii) subsequent loan guarantees; and

(viii) changes in interest rates with the Agency's, the lender's, and the holder's approval, provided that the interest rate is adjusted proportionately between the guaranteed and unguaranteed portion of the loan and the type of rate remains the same.

(2) In the event a deferment, rescheduling, reamortization, or moratorium is accomplished, it will be limited to the remaining life of the collateral or remaining limits as contained in § 4279.126 of subpart B of part 4279 of this chapter whichever is less.

(c) Any fully justified rescheduled, deferred, or reamortized loan which meets the revised performance agreed to by the lender and the Agency will no longer be classified as delinquent but should be considered a problem loan for a reasonable period of time and watched closely. The Agency will notify the Finance Office, in writing, of any changes in payment terms (interest-rate adjustment and reamortizations) as well as the effective dates of such changes.

§§ 4286.146 - 4287.155 [Reserved]

§ 4287.156 Protective advances.

Protective advances are advances made by the lender for the purpose of preserving and protecting the collateral where the debtor has failed to, will not, or cannot meet its obligations. Sound judgment must be exercised in determining that the protective advance preserves collateral and recovery is actually enhanced by making the advance. Protective advances will not be made in lieu of additional loans.

(a) The maximum loss to be paid by the Agency will never exceed the original principal plus accrued interest regardless of any protective advances made.

§ 4287.156 (Con.)

(b) Protective advances and interest thereon at the note rate will be guaranteed at the same percentage of loss as provided in the Loan Note Guarantee.

(c) Protective advances must constitute an indebtedness of the borrower to the lender and be secured by the security instruments. Agency written authorization is required when cumulative protective advances exceed \$5,000.

§ 4287.157 Liquidation.

In the event of one or more incidents of default or third party actions that the borrower cannot or will not cure or eliminate within a reasonable period of time, liquidation may be considered. If the lender concludes that liquidation is necessary, it must request the Agency's concurrence. The lender will liquidate the loan unless the Agency, at its option, carries out liquidation. When the decision to liquidate is made, if the loan has not already been repurchased, provisions will be made for repurchase in accordance with § 4279.78 of subpart A of part 4279.

(a) Decision to liquidate. A decision to liquidate shall be made when it is determined that the default cannot be cured through actions contained in § 4287.145 of this subpart or it has been determined that it is in the best interest of the Agency and the lender to liquidate. The decision to liquidate or continue with the borrower must be made as soon as possible when any of the following exist:

- (1) A loan has been delinquent 90 days and the lender and borrower have not been able to cure the delinquency through one of the actions contained in § 4287.145 of this subpart.
- (2) It has been determined that delaying liquidation will jeopardize full recovery on the loan.
- (3) The borrower or lender has been uncooperative in resolving the problem and the Agency or the lender has reason to believe the borrower is not acting in good faith, and it would enhance the position of the guarantee to liquidate immediately.

(b) Liquidation by the Agency. The Agency may require the lender to assign the security instruments to the Agency if the Agency, at its option, decides to liquidate the loan. When the Agency liquidates, reasonable liquidation expenses will be assessed against the proceeds

derived from the sale of the collateral. Form RD 1980-45, "Notice of Liquidation Responsibility," will be forwarded to the Finance Office when the Agency liquidates the loan. *The State Director has no authority to exercise the option to liquidate by the Agency without National Office concurrence.*

(c) Submission of liquidation plan. The lender will, within 30 days after a decision to liquidate, submit to the Agency in writing its proposed detailed method of liquidation. Upon approval by the Agency of the liquidation plan, the lender will commence liquidation.

(d) Lender's liquidation plan. The liquidation plan must include, but is not limited to, the following:

- (1) Such proof as the Agency requires to establish the lender's ownership of the guaranteed loan promissory note and related security instruments and a copy of the payment ledger if available which reflects the current loan balance and accrued interest to date and the method of computing the interest.
- (2) A full and complete list of all collateral including any personal and corporate guarantees.
- (3) The recommended liquidation methods for making the maximum collection possible on the indebtedness and the justification for such methods, including recommended action:
 - (i) for acquiring and disposing of all collateral; and
 - (ii) to collect from guarantors.
- (4) Necessary steps for preservation of the collateral.
- (5) Copies of the borrower's latest available financial statements.
- (6) Copies of the guarantor's latest available financial statements.
- (7) An itemized list of estimated liquidation expenses expected to be incurred along with justification for each expense.
- (8) A schedule to periodically report to the Agency on the progress of liquidation.
- (9) Estimated protective advance amounts with justification.

§ 4287.157(d) (Con.)

(10) Proposed protective bid amounts on collateral to be sold at auction and a breakdown to show how the amounts were determined.

(11) If a voluntary conveyance is considered, the proposed amount to be credited to the guaranteed debt.

(12) Legal opinions, if needed.

(13) If the outstanding balance of principal and accrued interest is less than \$200,000, the lender will obtain an estimate of fair market and potential liquidation value of the collateral. If the outstanding balance of principal and accrued interest is \$200,000 or more, the lender will obtain an independent appraisal report meeting the requirements of § 4279.144 of subpart B of part 4279 on all collateral securing the loan which will reflect the fair market value and potential liquidation value. In order to formulate a liquidation plan which maximizes recovery, collateral must be evaluated for the release of hazardous substances, petroleum products, or other environmental hazards which may adversely impact the market value of the collateral. The appraisal shall consider this aspect. The independent appraiser's fee, including the cost of the environmental site assessment, will be shared equally by the Agency and the lender.

(e) Approval of liquidation plan. The Agency will inform the lender in writing whether it concurs in the lender's liquidation plan *within 30 days after receipt of the liquidation plan from the lender. If the Agency needs additional time to respond to the liquidation plan, it will advise the lender of a definite time for such response. Should the Agency and the lender not agree on the liquidation plan, negotiations will take place between the Agency and the lender to resolve the disagreement. When the liquidation plan is approved by the Agency, the lender will proceed expeditiously with liquidation. The liquidation plan will be approved within the State Director's delegated loan servicing authority. In the event the loan balance is in excess of the State Director's delegated authority, the liquidation plan must be forwarded to the National Office in the appropriate format identified in appendix A of this Instruction with supporting documentation for review and concurrence. The liquidation plan may be modified when conditions warrant. All modifications must be approved in writing by the Agency prior to implementation.*

(1) A transfer and assumption of the borrower's operation can be accomplished before or after the loan goes into liquidation. However, if the collateral has been purchased through foreclosure or the borrower has conveyed title to the lender, no transfer and assumption is permitted.

(2) A protective bid may be made by the lender, with prior Agency written approval, at a foreclosure sale to protect the lender's and the Agency's interest. The protective bid will not exceed the amount of the loan, including expenses of foreclosure, and should be based on the liquidation value considering estimated expenses for holding and reselling the property. These expenses include, but are not limited to, expenses for resale, interest accrual, length of time necessary for resale, maintenance, guard service, weatherization, and prior liens. *If the liquidation value is not more than the sale expenses plus any liens superior to the lien of the guaranteed loan, normally, a protective bid should not be made.*

(f) Acceleration. The lender, or the Agency if it liquidates, will proceed to accelerate the indebtedness as expeditiously as possible when acceleration is necessary including giving any notices and taking any other legal actions required. A copy of the acceleration notice or other acceleration document will be sent to the Agency (or lender if the Agency liquidates). The guaranteed loan will be considered in liquidation once the loan has been accelerated and a demand for payment has been made upon the borrower.

(g) Filing an estimated loss claim. When the lender is conducting the liquidation and owns any or all of the guaranteed portion of the loan, the lender will file an estimated loss claim once a decision has been made to liquidate if the liquidation will exceed 90 days. The estimated loss payment will be based on the liquidation value of the collateral. For the purpose of reporting and loss claim computation, the lender will discontinue interest accrual on the defaulted loan in accordance with Agency procedures, and the loss claim will be promptly processed in accordance with applicable Agency regulations *as set forth in § 4279.78(b)(6) of subpart A of part 4279 of this chapter.*

(h) Accounting and reports. When the lender conducts liquidation, it will account for funds during the period of liquidation and will provide the Agency with reports at least quarterly on the progress of liquidation including disposition of collateral, resulting costs, and additional procedures necessary for successful completion of the liquidation.

§ 4287.157 (Con.)

(i) Transmitting payments and proceeds to the Agency. When the Agency is the holder of a portion of the guaranteed loan, the lender will transmit to the Agency its pro rata share of any payments received from the borrower, liquidation, or other proceeds using Form RD 1980-43, "Lender's Guaranteed Loan Payment to Rural Development."

(j) Abandonment of collateral. There may be instances when the cost of liquidation would exceed the potential recovery value of the collection. The lender, with proper documentation and concurrence of the Agency, may abandon the collateral in lieu of liquidation. A proposed abandonment will be considered a servicing action requiring the appropriate environmental review by the Agency in accordance with subpart G of part 1940 of this title. Examples where abandonment may be considered include, but are not limited to:

- (1) The cost of liquidation is increased or the value of the collateral is decreased by environmental issues;
- (2) The collateral is functionally or economically obsolete;
- (3) There are superior liens held by other parties in excess of the value of the collateral;
- (4) The collateral has deteriorated; or
- (5) The collateral is specialized and there is little or no demand for it.

(k) Disposition of personal or corporate guarantees. The lender should take action to maximize recovery from all collateral, including personal and corporate guarantees. The lender will seek a deficiency judgment when there is a reasonable chance of future collection of the judgment. The lender must make a decision whether or not to seek a deficiency judgment when:

- (1) a borrower voluntarily liquidates the collateral, but the sale fails to pay the guaranteed indebtedness;
- (2) the collateral is voluntarily conveyed to the lender, but the borrower and personal and corporate guarantors are not released from liability; or
- (3) a liquidation plan is being developed for forced liquidation.

(1) Compromise settlement. A compromise settlement may be considered at any time.

(1) The lender and the Agency must receive complete financial information on all parties obligated for the loan and must be satisfied that the statements reflect the true and correct financial position of the debtor including all assets. Adequate consideration must be received before a release from liability is issued. Adequate consideration includes money, additional security, or other benefit to the goals and objectives of the Agency.

(2) Before a personal guarantor can be released from liability, the following factors must be considered.

(i) Cash, either lump sum or over a period of time, or other consideration offered by the guarantor;

(ii) Age and health of the guarantor;

(iii) Potential income of the guarantor;

(iv) Inheritance prospects of the guarantor;

(v) Availability of the guarantor's assets.

(vi) Possibility that the guarantor's assets have been concealed or improperly transferred; and

(vii) Effect of other guarantors on the loan. (*Consent of other guarantors may be needed.*)

(3) Once the Agency and the lender agree on a reasonable amount that is fair and adequate, the lender can proceed to effect the settlement compromise. *Releases should not be executed until all payments or other considerations have been received by the lender and the Agency. Such cases involving fraud, negligent servicing, or misrepresentation must be reviewed by the Regional Attorney and have the concurrence of the National Office.*

(4) A compromise will only be accepted if it is in the best interest of the Agency.

§ 4287.157 (Con.)

(m) Bankruptcy.

(1) *If a trustee is appointed by the bankruptcy court to sell the collateral, the trustee rather than the lender is responsible for the liquidation. Normally, no liquidation expenses will be incurred by the lender.*

(2) *Pursuit of personal and corporate guarantors who are not the borrower and not in bankruptcy is a matter outside of the jurisdiction of the court. Reasonable expenses incurred in pursuit of such guarantors would be allowable provided there was sufficient collateral sold or collections made on the loan to cover such expenses.*

§ 4287.158 Determination of loss and payment.

In all liquidation cases, final settlement will be made with the lender after the collateral is liquidated, unless otherwise designated as a future recovery or after settlement and compromise of all parties has been completed. The Agency will have the right to recover losses paid under the guarantee from any party which may be liable. State Directors are authorized to approve estimated and final reports of loss within the position's delegated loan servicing authority. Approval of estimated and final reports of loss that exceed the State Director's delegated loan servicing authority must be forwarded to the National Office for review and concurrence in the format set forth in appendix A of this Instruction.

(a) Report of loss form. Form RD 449-30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final loss determinations. Estimated loss payments may only be approved by the Agency after the Agency has approved a liquidation plan.

(b) Estimated loss. In accordance with the requirements of § 4287.157(g) of this subpart, an estimated loss claim based on liquidation appraisal value will be prepared and submitted by the lender.

(1) The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by the Agency will be applied by the lender on the guaranteed portion of the loan debt. Such application does not release the borrower from liability.

(2) An estimated loss will be applied first to reduce the principal balance on the guaranteed loan and the balance, if any, to accrued interest. Interest accrual on the defaulted loan will be discontinued.

(3) A protective advance claim will be paid only at the time of the final report of loss payment except in certain transfer and assumption situations as specified in § 4287.134 of this subpart.

(c) Final loss. Within 30 days after liquidation of all collateral, except for certain unsecured personal or corporate guarantees as provided for in this section, is completed, a final report of loss must be prepared and submitted by the lender to the Agency. The Agency will not guarantee interest beyond this 30-day period other than for the period of time it takes the Agency to process the loss claim. Before approval by the Agency of any final loss report, the lender must account for all funds during the period of liquidation, disposition of the collateral, all costs incurred, and any other information necessary for the successful completion of liquidation. Upon receipt of the final accounting and report of loss, the Agency may audit all applicable documentation to determine the final loss. The lender will make its records available and otherwise assist the Agency in making any investigation. The documentation accompanying the report of loss must support the amounts shown on Form RD 449-30.

(1) A determination must be made regarding the collectibility of unsecured personal and corporate guarantees. If reasonably possible, such guarantees should be promptly collected or otherwise disposed of in accordance with § 4287.157(k) of this subpart prior to completion of the final loss report. However, in the event that collection from the guarantors appears unlikely or will require a prolonged period of time, the report of loss will be filed when all other collateral has been liquidated, and unsecured personal or corporate guarantees will be treated as a future recovery with the net proceeds to be shared on a pro rata basis by the lender and the Agency. *The State Office will establish a follow-up system to ensure that the lender is making reasonable collection efforts and distributing any collections properly.*

(2) The lender must document that all of the collateral has been accounted for and properly liquidated and that liquidation proceeds have been properly accounted for and applied correctly to the loan.

(3) The lender will show a breakdown of any protective advance amount as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper and that payment was actually made.

§ 4287.158(c) (Con.)

(4) The lender will show a breakdown of liquidation expenses as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper and that payment was actually made. *The Agency should review all liquidation expenses to determine if the expenses were proper, reasonable, and in accordance with the approval given by the Agency. Liquidation expenses are recoverable only from collateral proceeds. Attorney fees may be approved as liquidation expenses provided the fees are reasonable and cover legal issues pertaining to the liquidation that could not be properly handled by the lender and its in-house counsel.*

(5) Accrued interest will be supported by documentation as to how the amount was accrued. If the interest rate was a variable rate, the lender will include documentation of changes in both the selected base rate and the loan rate.

(6) Loss payments will be paid by the Agency within 60 days after the review of the final loss report and accounting of the collateral.

(7) *Should there be a circumstance where the lender cannot or will not sign a final report of loss, the State Director may complete the final report of loss and submit it to the Finance Office without the lender's signature. Before this action can be taken, all collateral must be disposed of or accounted for; there must be no evidence of fraud, misrepresentation, or negligent servicing by the lender; and all efforts to obtain the cooperation of the lender must have been exhausted and documented.*

(8) *Appendix B of this subpart will be completed on each final report of loss and a copy placed in the loan file.*

(d) **Loss limit.** The amount payable by the Agency to the lender cannot exceed the limits set forth in the Loan Note Guarantee.

(e) **Rent.** Any net rental or other income that has been received by the lender from the collateral will be applied on the guaranteed loan debt.

(f) **Liquidation costs.** Liquidation costs will be deducted from the proceeds of the disposition of primary collateral. If changed circumstances after submission of the liquidation plan require a substantial revision of liquidation costs, the lender will procure the Agency's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the lender will be allowed. In-house expenses include, but are not limited to, employee's salaries, staff lawyers, travel, and overhead.

(g) Payment. When the Agency finds the final report of loss to be proper in all respects, it will approve Form RD 449-30 and proceed as follows:

- (1) If the loss is greater than any estimated loss payment, the Agency will pay the additional amount owed by the Agency to the lender.
- (2) If the loss is less than the estimated loss payment, the lender will reimburse the Agency for the overpayment plus interest at the note rate from the date of payment.
- (3) If the Agency has conducted the liquidation, it will pay the lender in accordance with the Loan Note Guarantee.

§ 4287.159 Debt Collection Improvement Act. (Added 12-01-06, PN 404.)

When the Agency has paid a final report of loss and there has not been a satisfactory debt settlement with the borrower or guarantors, the following procedures should be followed:

(a) On January 22, 2004, the Agency published a Federal Register Notice regarding the Debt Collection Improvement Act (DCIA) of 1996 in order to make debtors aware that the DCIA provisions are applicable to the Business and Industry (B&I) guaranteed loan program. Section 1951.133 of RD Instruction 1951-C, defines the establishment of Federal debt for the B&I program and states that "Any amounts paid by RBS on account of liabilities of a Business and Industry (B&I) program guaranteed loan borrower will constitute a Federal debt owing to RBS by the B&I guaranteed loan borrower." All B&I guaranteed loans closed on or after January 22, 2004, are subject to the DCIA provisions. It is the field office's responsibility to determine whether a guaranteed loan qualifies for referral under DCIA. In such case, RBS will use all remedies available to it under DCIA to collect the debt from the borrower or guarantors, including referring the debt to the U.S. Treasury for collection via the Cross-Servicing and the Treasury Offset Program (TOP). The date of the Agency's final loss claim payment will establish the date that the debt is due to RBS.

(b) The borrower as well as any personal and corporate guarantors will be subject to the DCIA provisions. When warranted by an Agency assessment of potential financial risk, Agency approved guarantees may also be required of parent, subsidiaries, or affiliated companies (owning less than a 20 percent interest in the borrower). Guarantors will unconditionally guarantee all amounts owing under the promissory note by execution of Form RD 4279-14, "Unconditional Guarantee," and will remain in effect until the note is paid in full. Borrowers

§ 4287.159 (b)(Con.)

or guarantors that are in administrative appeal, accounts that have been discharged in bankruptcy or are current under a court order plan, or the debtor has been released by a creditor agency from any obligation cannot be referred to DCIA. If the guarantor has fulfilled an Agency settlement agreement, then there is no debt to refer to DCIA.

(c) The lender will prepare a final loss claim on Form RD 449-30, and submit it to the field office. After approval by the field office, the claim will be forwarded to the Office of the Deputy Chief Financial Officer for payment. As part of the claim package, the borrower and guarantors will be identified as subject to the DCIA provisions. The field office will assure that all data in the Guaranteed Loan System (GLS) is accurate. When the Office of the Deputy Chief Financial Officer pays the final loss and updates the GLS, a DCIA Account Receivable will be established for the borrower and any guarantors determined subject to the DCIA. At this time, the lender should cease collection efforts with the exception of any anticipated future recoveries of the debt and the Agency should notify the lender in writing to cease all collection efforts. The DCIA receivable account and all subsequent servicing activities can be viewed by the field office in the GLS.

(d) Appendix C will be sent to the borrower and each guarantor subject to the DCIA provisions notifying the debtors that the guaranteed loan balance is a Federal debt and it will be referred to the U.S. Treasury to collect the debt in accordance with statutory requirements and authorities, including Cross-Servicing and TOP.

(e) In order to avoid referral of the debt to the U.S. Treasury, the borrower and guarantors must agree to a repayment plan acceptable to RBS, or repay the debt in full. A repayment plan will typically be paid over a 3-year period and must be supported by financial statements and independent verifications. Any borrower or guarantor repayment plan should be sent to the Office of the Deputy Chief Financial Officer for update to the DCIA Account Receivable.

(f) Collections received in the field office from the borrower or guarantors will be sent to the Wholesale Lockbox by submitting Form RD 451-2, "Schedule of Remittances," as Miscellaneous Collection Code 35. A copy of the Form RD 451-2 should be sent to the Office of the Deputy Chief Financial Officer. These collections as well as any receipts from Cross-Servicing and TOP will be updated to the DCIA Account Receivable by the Office of the Deputy Chief Financial Officer

(g) The borrower and guarantors may request a review of the debt. There are several factors that the field office must consider when the borrower or

guarantors are unable to pay the debt in full and a settlement or compromise offer must be considered. Factors include collection costs that do not justify enforced collection, the debt is not collectible within a reasonable period of time, or there are significant doubts about whether the debt is owed. Additional factors when considering a compromise or settlement include age and health, present and potential income, inheritance prospects, possibility of hidden assets or fraudulent transfers, and assets or income available through enforced collection. The field must verify any inability to pay the debt in a lump sum based on credit reports, financial statements or other available financial information. The field office will notify the Office of the Deputy Chief Financial Officer of any write-down or write-off of the DCIA Account Receivable balance.

§§ 4287.160 - 4287.168 [Reserved]

§ 4287.169 Future recovery.

After a loan has been liquidated and a final loss has been paid by the Agency, any future funds which may be recovered by the lender will be pro rated between the Agency and the lender based on the original percentage of guarantee.

§ 4287.170 Bankruptcy.

The lender is responsible for protecting the guaranteed loan and all collateral securing the loan in bankruptcy proceedings.

(a) Lender's responsibilities. It is the lender's responsibility to protect the guaranteed loan debt and all of the collateral securing it in bankruptcy proceedings. These responsibilities include, but are not limited to the following:

- (1) The lender will file a proof of claim where necessary and all the necessary papers and pleadings concerning the case.
- (2) The lender will attend and, where necessary, participate in meetings of the creditors and all court proceedings.
- (3) When permitted by the Bankruptcy Code, the lender will request modification of any plan of reorganization whenever it appears that additional recoveries are likely.
- (4) The Agency will be kept adequately and regularly informed in writing of all aspects of the proceedings.

§ 4287.170(a) (Con.)

(5) In a Chapter 11 reorganization, if an independent appraisal of collateral is necessary in the Agency's opinion, the Agency and the lender will share such appraisal fee equally.

(b) Reports of loss during bankruptcy. When the loan is involved in reorganization proceedings, payment of loss claims may be made as provided in this section. For a liquidation proceeding, only paragraphs (b) (3) and (5) of this section are applicable.

(1) Estimated loss payments.

(i) If a borrower has filed for protection under Chapter 11 of the United States Code for a reorganization (but not Chapter 13) and all or a portion of the debt has been discharged, the lender will request an estimated loss payment of the guaranteed portion of the accrued interest and principal discharged by the court. Only one estimated loss payment is allowed during the reorganization. All subsequent claims of the lender during reorganization will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by the Agency, at its option, in accordance with any court-approved changes in the reorganization plan. Once the reorganization plan has been completed, the lender is responsible for submitting the documentation necessary for the Agency to review and adjust the estimated loss claim to reflect any actual discharge of principal and interest and to reimburse the lender for any court-ordered interest-rate reduction under the terms of the reorganization plan.

(ii) The lender will use Form RD 449-30 to request an estimated loss payment and to revise any estimated loss payments during the course of the reorganization plan. The estimated loss claim, as well as any revisions to this claim, will be accompanied by documentation to support the claim.

(iii) Upon completion of a reorganization plan, the lender will complete a Form RD 1980-44 and forward this form to the Finance Office.

(2) Interest loss payments.

(i) Interest losses sustained during the period of the reorganization plan will be processed in accordance with paragraph (b) (1) of this section.

(ii) Interest losses sustained after the reorganization plan is completed will be processed annually when the lender sustains a loss as a result of a permanent interest rate reduction which extends beyond the period of the reorganization plan.

(iii) If an estimated loss claim is paid during the operation of the Chapter 11 reorganization plan and the borrower repays in full the remaining balance without an additional loss sustained by the lender, a final report of loss is not necessary. *The Finance Office will close out the estimated loss or final loss at the time of notification of payment in full.*

(iv) *A report of loss will be completed to compensate the lender for any excess in interest rate specified in the Loan Note Guarantee and the rate of interest specified in the plan.*

(3) Final loss payments. Final loss payments will be processed when the loan is liquidated.

(4) Payment application. The lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event a bankruptcy court attempts to direct the payments to be applied in a different manner, the lender will immediately notify the Agency servicing office. *The Agency will immediately obtain advice from the Office of the General Counsel (OGC) on what action to take.*

(5) Overpayments. Upon completion of the reorganization plan, the lender will provide the Agency with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained as a result of the reorganization is less than the estimated loss, the lender will reimburse the Agency for the overpayment plus interest at the note rate from the date of payment of the estimated loss. If the actual loss is greater than the estimated loss payment, the lender will submit a revised estimated loss in order to obtain payment of the additional amount owed by the Agency to the lender. *State Directors should carefully determine the amount of estimated loss payments to avoid litigation that may become necessary to recover overpayments from the lender.*

§ 4287.170(b) (Con.)

(6) Protective advances. If approved protective advances were made prior to the borrower having filed bankruptcy, these protective advances and accrued interest will be considered in the loss calculations.

(c) Legal expenses during bankruptcy proceedings.

(1) When a bankruptcy proceeding results in a liquidation of the borrower by a trustee, legal expenses will be handled as directed by the court.

(2) Chapter 11 generally pertains to a reorganization of a business contemplating an ongoing business rather than a termination and dissolution of the business where legal protection is afforded to the business as defined under Chapter 11 of the Bankruptcy Code. Consequently, expenses incurred by the lender in a Chapter 11 reorganization can never be liquidation expenses unless the proceeding becomes a Chapter 11 liquidation. If the proceeding should become a liquidating 11, reasonable and customary liquidation expenses may be deducted from proceeds of collateral as provided in the Lender's Agreement. Chapter 7 pertains to a liquidation of the borrower's assets. If, and when, liquidation of the borrower's assets under Chapter 7 is conducted by the bankruptcy trustee, then the lender cannot claim expenses.

(d) Agency monitoring. State Directors are responsible for seeing that the Agency is fully informed by the lender on all bankruptcy cases and monitoring the lender's files to ensure timely action on bankruptcy cases. The Agency may approve the repurchase of the unpaid guaranteed portion of the loan from the holders to reduce interest accrual during Chapter 7 proceedings or after a Chapter 11 proceeding becomes a liquidation proceeding. State Directors must approve in advance and in writing the lender's estimated liquidation expenses on loans in liquidation bankruptcy.

§§ 4287.171 - 4287.179 [Reserved]

§ 4287.180 Termination of guarantee.

A guarantee under this part will terminate automatically:

- (a) upon full payment of the guaranteed loan;
- (b) upon full payment of any loss obligation; or

(c) upon written notice from the lender to the Agency that the guarantee will terminate 30 days after the date of notice, provided that the lender holds all of the guaranteed portion and the Loan Note Guarantee is returned to the Agency to be canceled. *The Agency will notify the Finance Office that the Loan Note Guarantee has been terminated or the loan has been paid in full.*

§§ 4287.181 - 4287.199 [Reserved]

§ 4287.200 OMB control number.

The information collection requirements contained in this regulation have been approved by OMB and have been assigned OMB control number 0575-0168. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 8 hours per response, with an average of 4 hours per response, including time for reviewing the collection of information. Send comments regarding this burden, estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Department of Agriculture, Clearance Officer, OIRM, Stop 7630, Washington, D.C. 20250. You are not required to respond to this collection of information unless it displays a currently valid OMB control number.

Attachments: Appendices A and B.

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MODIFICATION OR ADMINISTRATIVE ACTION

BORROWER INFORMATION:

Name and Address of Borrower: _____

Number of Employees and Annual Payroll: _____

History of Account: _____

LOAN INFORMATION:

Name and Address of Lender: (If different from lender holding guarantee, has the lender been substituted as outlined in § 4287.135 of this subpart?)

Date Loan Note Guarantee was issued: _____

Original Amount of the Loan: _____

Interest Rate and Terms: _____

Unpaid Balance:

Principal: \$ _____ Interest: \$ _____

Status: () Current () Delinquent () Liquidation
() Chapter 7 () Chapter 11 () Other (Specify) _____

Use of Loan Funds: _____

Market and liquidation value of collateral:

Collateral	Appraisal Date	Lien Position	Market Value	Liquidation Value
_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	\$ _____	\$ _____

Who owns the guaranteed portion? ___lender ___Agency ___holder

Has an estimated loss been paid? _____ Amount paid and date: _____

FINANCIAL INFORMATION:

Credit quality review ratios and comments:

Current Ratio: _____ Industry Average: _____

Comments: _____

Equity: _____ Industry Average: _____

Comments: _____

Debt to Worth: _____ Industry Average: _____

Comments: _____

Working Capital: _____ Industry Average: _____

Comments: _____

Describe any loan covenant violations: _____

Is the cash flow adequate to satisfy current portion of long term debt? _____

Financial condition of personal guarantors:

Dates of latest financial statements: _____

Net worth: \$ _____ Outside net worth: \$ _____

Comments on collectibility: _____

SERVICING REQUEST:

Nature of request: _____

State Office analysis of request: _____

Lender recommendation: _____

Comments on regional attorney's review (Attach copy of opinions): _____

Environmental review: Type: _____ *Adequacy:* _____
Comments: _____

State Director and Program Chief recommendations: _____

NOTE: For all modifications or administrative actions, the following information must be considered:

1. Start with number 1 when the first modification is approved and enter this number in the upper right hand corner of the Letter of Concurrence and related "Modification or Administrative Action" sheet.
2. Next to the modified wording on the work copy of the Conditional Commitment for Guarantee and the Term Loan Agreement or any form which has been modified, pencil in a short cross reference to the modification and identify the number given it.
3. File the copies of the "Modification or Administrative Action" sheet and related Letters of Concurrence numerically in the docket directly on top of the affected original documents of conditions.
4. The order of recordingkeeping should include any requests which were declined by the National Office.

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BUSINESS AND INDUSTRY GUARANTEED LOAN
FINAL LOSS SETTLEMENT CHECKLIST

I. General Information:

Date _____ State _____

Name of Borrower _____

Case Number _____

Type of Project _____

Type Organization _____

Servicing Office _____

Original Loan Amount _____

Date of Loan _____

Loan Number _____

Repayment Period _____

Interest Rate _____

Fixed _____

* Variable _____

Daily Accrual 360 or 365 days _____

Percent of Guarantee _____

Subsequent Loan Amount _____

Date of Subsequent Loan _____

Repayment Period _____

Interest Rate _____

Fixed _____

* Variable _____

Daily Accrual 360 or 365 days _____

Percent of Guarantee _____

Type of Security:

GO Bond _____

Revenue Bond _____

Real Estate _____

Machinery and Equipment _____

Accounts Receivable _____

Inventory _____

Furniture and Fixtures _____

Personal Guarantee _____

Other _____

Name of Lender _____

Percent of Loan Held by Lender _____

III. Loan Balance at Liquidation

Date Liquidation Plan Submitted _____
Date of Liquidation Plan _____
Effective Date of Liquidation _____
Principal Balance at Liquidation _____
Interest Balance at Liquidation _____
Total Balance at Liquidation _____
Daily Interest Accrual _____

IV. LIQUIDATION COSTS:

Phase I Assessment Cost _____
Phase II Assessment Cost _____
Legal Fees _____
Sheriff's Cost _____
Taxes Due and Paid _____
Auction Cost _____
Broker Cost _____
Other fees (identify below): _____

Total Liquidation Expenses _____

Appraisal Fees _____
Date Appraisal Fees Paid _____
Protective Advances _____
Dates Protective Advances Paid _____ (1) _____
_____ (2) _____

V. USE OF LIQUIDATION PROCEEDS:

Net Proceeds Applied to Guaranteed Loan _____
Proceeds Applied to Liquidation Expenses _____
Other Applications (identify) _____

VI. SOURCE OF LIQUIDATION PROCEEDS:

Sale Proceeds Received _____
Land-Building _____
Machinery and Equipment _____
Furniture and Fixtures _____
Inventory _____
Other (identify) _____
Collection on Personal Guarantee _____

VII. Summary (circle the proper answer)

NOTE: All questions answered with "NO" must be explained and fully documented to support the reason for the "NO" answer.

1. (YES - NO - NA) Did the borrower comply with all applicable laws and provisions of the Loan Agreement?
2. (YES - NO - NA) Were copies of the borrower's financial statements submitted to the Agency as required by the Lender's Agreement?
3. (YES - NO - NA) Did the lender submit and follow a plan of liquidation?
4. (YES - NO - NA) Did the Agency approve, in writing, the lender's plan of liquidation and any subsequent revision?
5. (YES - NO - NA) Is documentation for justification and authorization of all liquidation expenses and protective advances attached?
6. (YES - NO - NA) Was a determination made that the lender did not charge for "in house" fees in connection with the liquidation?
7. (YES - NO - NA) Did the Agency approve protective advances in writing?

8. (YES - NO - NA) *Were all liquidation appraisal fees shared equally between the lender and the Agency?*
9. (YES - NO - NA) *Did the lender obtain the proper security and lien position at loan closing?*
10. (YES - NO - NA) *Did the lender maintain proper liens and security instruments on security?*
11. (YES - NO - NA) *Was adequate insurance coverage as required by the Conditional Commitment maintained at all times?*
12. (YES - NO - NA) *Was all collateral disposed of and accounted for?*
13. (YES - NO - NA) *Has a list of all unaccounted for security been provided and has the value been taken into account for the final loss settlement amount?*
14. (YES - NO - NA) *Have all proceeds been accounted for from the sale of collateral?*
15. (YES - NO - NA) *Have all liquidation costs been deducted from the sale proceeds?*
16. (YES - NO - NA) *If the lender had other loans with the borrower, did the lender apply proceeds to the appropriate loans?*
17. (YES - NO - NA) *Have lender payment records been reviewed to determine that payments were applied correctly and interest was properly accrued and posted to the borrower's account?*
18. (YES - NO - NA) *Has a determination been made whether to pursue the personal guarantee, if one was taken, and is a deficiency judgment warranted?*
19. (YES - NO - NA) *Have all personal guarantees been accounted for and are the lender's actions documented?*
20. (YES - NO - NA) *Have required signatures been obtained on Form RD 449-30, "Loan Note Guarantee Report of Loss"?*

21. (YES - NO - NA) *Has the settlement date been agreed to by the lender and the Agency and is it entered on Form RD 449-30?*
22. (YES - NO - NA) *Has the proper report code been entered on Form RD 449-30?*
23. (YES - NO - NA) *Have interest computations been verified?*
24. (YES - NO - NA) *Is there additional interest to be paid to the check date?*
25. (YES - NO - NA) *If payment is to be wired to the lender, has the lender's routing information been provided?*
26. (YES - NO - NA) *Has the Office of Inspector General and the Office of the General Counsel approved payment where applicable?*
27. (YES - NO - NA) *Was the loan properly closed in accordance with the Conditional Commitment?*
28. (YES - NO - NA) *Were loan funds used for authorized purposes?*
29. (YES - NO - NA) *If loan funds were not used for authorized purposes, has the unauthorized use of funds been taken into consideration?*
30. (YES - NO - NA) *If a future recovery possibility exists, has the Agency set up a monitoring system to followup with the lender?*
31. (YES - NO - NA) *Have overpayments of estimated loss requests been taken into consideration?*
32. (YES - NO - NA) *If the Agency has a receivable, has the lender remitted to the Agency its pro rata share of funds?*
33. (YES - NO - NA) *Has pro rata application of funds been made to the guaranteed or unguaranteed loan?*

DATE _____

AGENCY APPROVAL OFFICIAL _____

60-Day Due Process Notice

Name:
Address:

RE: Amount of Debt Owed to Rural Development
Date loss incurred by Rural Development:
Account/case number:
Tax ID:
Loan number:
Lender:

As a guarantor on your debt with the above lender, the Rural Business-Cooperative Service (RBS) of USDA Rural Development has paid a loss claim to cover your defaulted debt. As a result, Rural Development now has the right to collect your defaulted debt for the amount of loss paid to the lender. The public was notified in a Federal Register notice dated January 22, 2004, entitled "Debt Collection Improvement Act-Treasury Offset and Cross Servicing" that any amounts paid by Rural Development on the liabilities of a guaranteed loan borrower will constitute a Federal debt and that Rural Development may use any remedies available to it to collect. If you do not pay your debt or take other action described below within **60** days from the date of this letter, Rural Development will submit your debt to the U.S. Department of the Treasury (U.S. Treasury) for collection via the Cross-Servicing or Treasury Offset Program (TOP). We will continue to add any applicable principal, interest, penalties, and fees to your unpaid debt.

Once your debt is submitted to the U.S. Treasury for Cross-Servicing, they will service and collect the debt in accordance with applicable statutory requirements and authorities. Treasury may take adverse actions to enforce recovery of a delinquent debt including, but not limited to:

- referring the debt to a private collection agency;
- referring the debt to the Department of Justice or agency counsel for litigation;
- reporting the debt to a credit bureau;
- garnishing your wages; or
- reporting of the debt to the Internal Revenue Service (IRS) as potential taxable income.

Once your debt is submitted to the U.S. Treasury for Cross-Servicing, it will also be included in TOP. TOP reduces or withholds any eligible Federal payments by the amount of your debt. This process, known as "offset," is authorized by 31 U.S.C. Chapter 37. U.S. Treasury is not required to send you notice before your payment is offset. Most Federal payments, including certain loans and income tax refunds, are eligible for offset.

Rural Development may choose to submit your debt directly to TOP only, in which case eligible Federal payments may still be offset, but U.S. Treasury will not be directly servicing your debt.

Before we submit your debt to the U.S. Treasury, we are required to tell you that you may (1) inspect and copy our records related to your debt; (2) repay your debt; (3) be entitled to a review if we determine that a review is required; and (4) submit a request for a written repayment agreement to the Rural Business Program Director at the address listed at the end of this letter.

INSPECT AND COPY RECORDS RELATED TO YOUR DEBT: To discuss arrangements for inspecting and copying your records, you must contact the Rural Business Program Director in writing at the address listed at the end of this notice. This does not stop the process of referring your debt to the U.S. Treasury.

TO AVOID TOP AND U.S. TREASURY CROSS-SERVICING, you must do one of the following within **60** days from the date of this letter:

- **REQUEST A REVIEW IF YOU BELIEVE THE DEBT IS NOT OWED:** If you believe that all or part of the debt is not due or legally enforceable, you must file a written request for review no later than **60** days from the date of this letter. Your request must include evidence to support your position and should be sent in writing to the address listed at the end of this letter. We will inform you of our decision about your debt. The timely filing of a request for review will suspend the offset process until a determination is made.
- **AGREE TO A REPAYMENT PLAN:** If you are unable to pay your debt in full, you must contact the Rural Business Program Director in writing at the address listed at the end of this letter no later than **60** days from the date of this letter, agree to a repayment plan acceptable to us, and make payments required in the repayment plan.
- **REPAY YOUR DEBT:** To repay your debt, send a check or money order, payable to Rural Development, for the full amount of your debt, to the Rural Business Program Director at the address listed at the end of this letter. Please include your account number on your payment. The payment must be received within **60** days from the date of this letter.

BANKRUPTCY: If you are currently in bankruptcy, then you are not subject to offset while the automatic stay is in effect. Please notify the Rural Business Program Director in writing at the address listed at the end of this letter, and include a copy of the bankruptcy filing. If you have an attorney, please provide your attorney's name, address, and phone number, as well. If we do not know of your status in bankruptcy, we may inadvertently take collection action which could be avoided.

IF YOU FILE A JOINT INCOME TAX RETURN: If you file a joint income tax return, you should contact the IRS before filing your return regarding the steps to take to protect the share of the income tax refund which may be payable to your spouse, if your spouse is not a delinquent debtor.

FALSE STATEMENTS: If you make or knowingly provide any false statements, representations, or evidence, you may be liable for civil penalties under the False Claims Act (31 U.S.C. Sections 3729-3731), or criminal penalties under 18 U.S.C. Sections 286, 287, 1001, 1002, or other applicable statutes. If you are a Federal employee and you make or knowingly provide any false statements, representations, or evidence, you also may be subject to disciplinary actions appropriate under 5 U.S.C. Chapter 75 and 5 C.F.R. Part 752.

IF YOU ARE A FEDERAL EMPLOYEE: Your current net disposable pay is subject to offset if you do not pay your debt or take other action described above. Under TOP, the U.S. Treasury will deduct up to 15 percent of your disposable net pay beginning in the pay period that your debt is submitted to TOP. This will be approximately 60 days from the date of this letter, and continuing every pay period until your debt, including any principal, interest, penalties, and other costs, is paid in full.

You are entitled to the same options as described previously in this letter, except that your review, if timely requested, would be conducted by a hearing official upon USDA's determination of the debt or percentage of disposable pay to be deducted each pay period. If you wish to petition for a waiver or review to dispute the existence or amount of the debt, or the amount of the payroll deduction, you must file a written request for a review no later than 60 days from the date of this letter. The timely filing of a request for review will suspend the offset process until a determination is made. You must send evidence to support your position to the Rural Business Program Director at the address listed at the end of this letter. A final decision on the review (if one is requested) will be issued no later than 60 days after filing a request for review (unless extended by the review official), in accordance with 7 CFR 3.55.

RD Instruction 4287-B
Appendix C
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OVERPAYMENTS: Unless prohibited by law or contract, we will promptly refund any amounts paid by you or deducted from your payment for your debt which are later waived or found not owed to the United States.

If you have any questions regarding this letter or your rights, you should contact the Rural Business Program Director in writing at the following address:

USDA RURAL DEVELOPMENT
RURAL BUSINESS-COOPERATIVE SERVICE
1400 INDEPENDENCE AVENUE, SW
WASHINGTON, DC

CC: RURAL BUSINESS PROGRAM DIRECTOR

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