



United States Department of Agriculture

# Business & Industry Guaranteed Loan Program

## **B&I Servicing Training**

### **RD Instruction**

4279-A (General)

4287-B (Servicing)

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# RD Instruction 4287-B

**The new servicing regulation does not give lenders the option to be serviced under the new vs the old regulation. The new servicing regulation will apply to all new loans closed on or after August 2, 2016.**



# RD Instruction 4287-B

- What are some of the major changes in servicing?**

Section	Major Changes
4287.107	Lender may contract loan servicing activities.
4287.107(b)	Loan Classification – now required at loan closing.
4287.113(c)	Appraisal threshold increased from \$100,000 to \$250,000 for collateral being released.
4287.133	Guarantees may be required from those owning 20% or more of the borrower.
4287.134(h)(1)	No new promissory note may be issued for a transfer and assumption.
4287.145(a)	Changed default status report to monthly instead of bimonthly.
4287.145(b)(2)	Allows balloon payments as a workout/restructuring method.
4287.145(b)(3)	Default/penalty interest, interest on interest, and late fees are not covered by the guarantee.
4287.145(c)	Codifies the Agency’s policy not to write down the debt of a business and leave the borrower in business.
4287.157(c)(13)	Appraisal threshold increased from \$200,000 to \$250,000 for liquidations.
4287.145(e) and 4287.157(f)	Termination of interest accrual to the lender at 90 days from the most recent delinquency effective date and to any holder the greater of: 90 days from the date of the most recent delinquency effective date as reported by the lender or 30 days from the date of the interest termination letter.
4287.170(b)(3)(ii)	No longer compensating the lender for interest rate differences in bankruptcy reorganizations.
4287.170(c)(2)	Reduced attorney/legal fees that the lender can claim in liquidation and bankruptcy from full reimbursement to 50 percent of total costs in a Chapter 7 or Liquidating 11.

4287.107

Routine Servicing



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# Routine Servicing - 4287.107

- ✓ The lender is responsible for servicing the entire loan and taking all servicing actions that a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed
- ✓ The lender may contract for services but is ultimately responsible for underwriting, loan origination, loan servicing, and compliance with all Agency regulations
- ✓ Form RD 4279-4, “Lender’s Agreement,” is the contractual agreement between the lender and the Agency that sets forth the lender’s loan servicing responsibilities



# Routine Servicing - 4287.107

- ✓ The lender's loan servicing responsibilities include, but are not limited to:
  - ✓ Periodic borrower visits
  - ✓ The collection of payments
  - ✓ Obtaining compliance with the covenants and provisions in the loan agreement
  - ✓ Obtaining and analyzing financial statements
  - ✓ Ensuring payment of taxes and insurance premiums
  - ✓ Maintaining liens on collateral
  - ✓ Keeping an inventory accounting of all collateral items
  - ✓ Reconciling the inventory of all collateral sold during loan servicing, including liquidation



# Lender Reports/Annual Renewal Fee-4287.107(a)



The lender must report the outstanding principal and interest balance and the current loan classification on each guaranteed loan semiannually (at June 30 and December 31), using either the USDA Lender Interactive Network Connection (LINC) system or Form RD 1980-41, “Guaranteed Loan Status Report.”

The lender must transmit the annual renewal fee to the agency calculated based on the December 31 semiannual status report.



# Loan Classification - 4287.107(b)

- ✓ The lender must provide the loan classification or rating under its regulatory standards as of loan closing, using either the LINC system or Form 1980-19, "Guaranteed Loan Closing Report."
- ✓ When the lender changes the loan classification in the future, the lender must notify the Agency within 30 days, in writing, of any change in the loan classification

# Agency and Lender Conference - 4287.107(c)

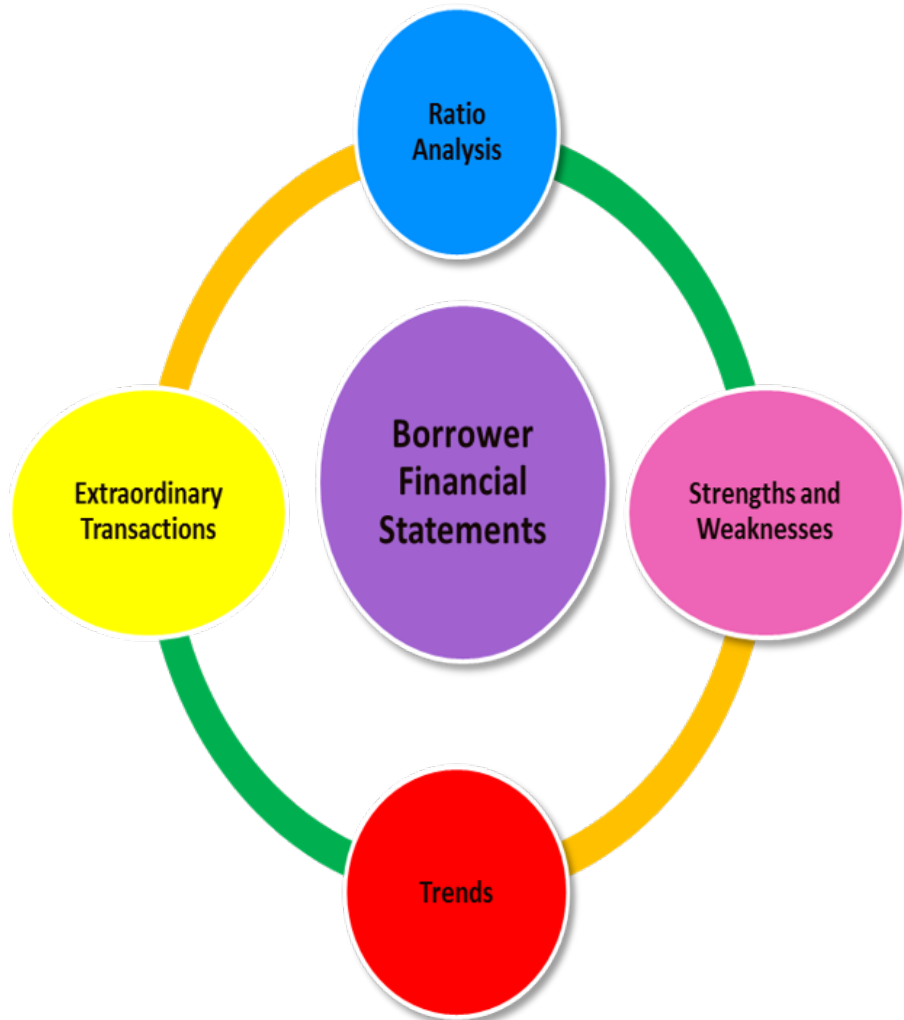
- ✓ At the Agency's request, the lender must consult with the Agency to ascertain how the guaranteed loan is being serviced and that the conditions and covenants of the loan agreement are being enforced.
  - ✓ The Agency will hold conferences with the lender at least annually
  - ✓ Conferences may be a face-to-face visit or held via teleconference
- ✓ The Agency will remind the lender of its servicing responsibilities under the Lender's Agreement, review the lender's latest financial analysis, check the loan classification, and review application of loan payments.



# Borrower Financial Reports - 4287.107(d)

- ✓ The lender must obtain, analyze, and forward to the Agency the borrower's and any guarantor's annual financial statements required by the loan agreement within 120 days of the end of the borrower's fiscal year
- ✓ The lender must analyze these financial statements and provide the Agency with a written summary of the lender's analysis, ratio analysis, and conclusions

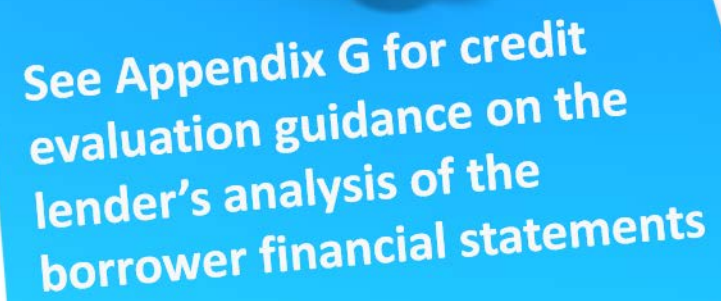
# Borrower Financial Reports – 4287.107 (d)



- ✓ At a minimum, this written summary of the lender's analysis must include:
  - ✓ trends, strengths, weaknesses, extraordinary transactions, violations of loan covenants and covenant waivers proposed by the lender, any routine servicing actions performed, and other indications of the financial condition of the borrower. **Spreads of the financial statements must also be included.**

# Borrower Financial Reports - 4287.107(d)

If the lender makes a reasonable attempt to obtain financial statements but is unable to obtain the borrower's cooperation, the failure to obtain financial statements will not impair the validity of the Loan Note Guarantee (LNG)



See Appendix G for credit evaluation guidance on the lender's analysis of the borrower financial statements

# Protection of Agency Interests - 4287.107(e)

- ✓ If the Agency determines the lender is not in compliance with its servicing responsibilities, the Agency reserves the right to take any action the Agency determines necessary to protect the Agency's interests with respect to the loan
- ✓ If the Agency exercises this right, the lender must cooperate with the Agency to rectify the situation. In determining any loss, the Agency will assess against the lender any cost to the Agency associated with such action.



# Borrower Visits – 4287.107(g)

It is the lender's responsibility to conduct borrower visits, and the Agency may accompany the lender on these visits.

The importance of borrower visits, spreading and analyzing financial statements, and monitoring the borrower activities cannot be overstated.



# Appendix F

## USDA LINC System



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## USDA LINC/Application Authorization – Appendix F

- ✓ USDA Rural Development has incorporated the Loan Status Reports, Default Status Reports, and Loan Closings to an electronic system
- ✓ Allows the lender to submit monthly default and semiannual status reports electronically
- ✓ Forms are submitted in real-time, saving mailing time, the possibility of lost documents, and paper generation

# USDA LINC/Application Authorization – Appendix F

- ✓ The lender user will be able to submit information in LINC and GLS any time during normal operating hours (Monday - Saturday from 6am to 7pm Central Standard Time and Sunday from 8am to 4pm CST).
- ✓ If errors occur in the submission of information from the lender user, field office personnel must be contacted immediately to determine the error and possibly have the user resubmit information to GLS through LINC.



The Agency will not be responsible for any damages incurred by the lender as a result of missing or delayed submissions of information when the problem is not with or caused by the Agency.

# USDA LINC/Application Authorization – Appendix F

- ✓ The following terms are used in the LINC and Application Authorization Security Management System:
- ✓ Application Authorization Security Management (AASM) System  
The system defining user roles for lender employees and providing a means for the Systems Administrator to assign those roles and respective access levels
- ✓ Branch Administrator Employee of the lender who has authorization only for a specific branch or multiple branches of the lender's ID and is responsible for adding Branch Representatives or Branch Viewers to the AASM system and ensures that all employees adhere to the requirements of electronic data submission. These employees also have access to the LINC system to input electronic data.



# USDA LINC/Application Authorization – Appendix F

- ✓ Branch Representative Employee of the lender who has authorization only for a specific branch or multiple branches of the lender's ID in the LINC system
- ✓ Branch Viewer Employee of the lender who has view-only capacity for a specific branch or multiple branches of the lender's ID in the LINC system

**Appendix F contains additional LINC guidance**



4287.112

Interest Rate Changes



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# Interest Rate Changes - 4287.112

- ✓ 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 lender must obtain prior Agency concurrence and provide a copy of the modification agreement to the Agency.
- ✓ If any of the guaranteed portion has been purchased by the Agency, the Agency (as a holder) will affirm or reject interest rate change proposals in writing.



# Interest Rate Changes - 4287.112

- No increases in interest rates will be permitted, except the normal fluctuations in approved variable interest rates, unless a temporary interest rate reduction occurred
- The interest rate, after adjustments, must comply with the interest rate requirements set forth in § 4279.125
- 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 shall be issued. **The lender must provide copies of all legal documents to the Agency.**

4287.113

Release of Collateral



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# Release of Collateral – 4287.113(a) & (b)

- ✓ Within the parameters of 4287.113(c), lenders may, over the life of the loan, release collateral (other than personal and corporate guarantees) with a cumulative value of up to 20% of the original loan amount without Agency concurrence if the proceeds generated are used to reduce the guaranteed loan or to buy replacement collateral.
- ✓ Working assets, such as accounts receivable, inventory, and work-in-progress that are routinely depleted or sold and proceeds used for the normal course of business operations may be used in and released for routine business purposes without prior concurrence of the Agency as long as the loan has not been accelerated



If a release of collateral does not meet the requirements of 4287.113(a), the lender must complete a written evaluation to justify the release and obtain written Agency concurrence in advance of the release

# Release of Collateral – 4287.113(c)

- ✓ Collateral must remain sufficient to provide for adequate collateral coverage
- ✓ The lender must support all releases of collateral with a value exceeding \$250,000 with a current appraisal on the collateral being released
  - ✓ Appraisal must meet the requirements of 4279.144
  - ✓ Cost of the appraisal will not be paid by the Agency
- ✓ The Agency may require an appraisal of the remaining collateral in cases where it has been determined that the Agency may be adversely affected by the release of collateral

# Release of Collateral – 4287.113(c)

- ✓ The sale or release of collateral must be based on an arm's length transaction, and there must be adequate consideration for the release of collateral. Such consideration may include, but is not limited to:
  - ✓ Application of the net proceeds from the sale of collateral to the borrower's debts in order of their lien priority against the sold collateral
  - ✓ 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 as security for the benefit of the guaranteed loan with a lien position equal or superior to the position previously held
  - ✓ Application of the net proceeds from the sale of collateral to the borrower's business operation in such a manner that a significant service ability will be improved
- ✓ Assurance that the release of collateral is essential for the success of the business, thereby furthering the goals of the program

# 4287.124

## Alteration of Loan Instruments

The lender must neither alter nor approve any alterations or modifications of any loan instrument without the prior written approval of the Agency.



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4287.133

## Sale of Corporate Stock



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# Sale of Corporate Stock – 4287.133

- ✓ Any sale or transfer of corporate stock must be approved by the Agency in writing and must be to an eligible individual or entity
- ✓ In the event a portion of the borrower's stock is sold or transferred, the Agency may require personal or corporate guarantees from those then owning a 20% or more interest in the borrower.



4279.72

## Conditions of Guarantee



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## Guarantee Payment to Holder - 4279.72(a)(1)

- 100% of any loss on the guaranteed portion and interest due less any outstanding servicing fee
- The guarantee will not cover interest accruing after the greater of:
  - 90 days from the date of the most recent delinquency effective date as reported by the lender or
  - 30 days from the date of the interest termination letter



## Guarantee Payment to Holder - 4279.72(a)(1)

- For loans closed on or after August 2, 2016, the lender or the Agency will issue an interest termination letter to the holder(s) establishing the termination date for interest accrual.



# Guarantee Payment to Lender - 4279.72(a)(2)

- **The lesser of:**

- 1) Any loss sustained on the guaranteed portion, including principal and interest evidenced by the notes or assumption agreements and secured advances for protection and preservation of collateral made with the Agency's authorization or
- 2) The guaranteed principal advanced to or assumed by the borrower and any interest due thereon

## Guarantee Payment to Lender - 4279.72(a)(2)

- For loans closed on or after August 2, 2016, the guarantee will not cover note interest to the lender accruing after 90 days from the most recent delinquency effective date.

4287.145

Default by Borrower



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# Default by Borrower – 4287.145

- ✓ **The lender's primary responsibilities in default are to:**
  - ✓ **Act prudently and expeditiously**
  - ✓ **Work with the borrower to bring the account current or cure the default through restructuring if a realistic plan can be developed, or**
  - ✓ **Accelerate the account and conduct a liquidation in a manner that will minimize any potential loss**



**The lender may initiate liquidation subject to submission and approval of a complete liquidation plan.**

# Default by Borrower – 4287.145(a)

- ✓ The lender must notify the Agency when:
  - a borrower is more than 30 days past due on a payment and **the delinquency cannot be cured within 30 days**, or
  - a borrower is otherwise in default of covenants in the loan agreement

by promptly submitting Form RD 1980-44, "Guaranteed Loan Borrower Default Status," or processing the Default Status report in LINC.

- ✓ The lender must update the loan's status each month using either Form RD 1980-44 or the LINC Default Status report until such time as the loan is no longer in default

# Default by Borrower – 4287.145(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.

## **Curative actions include, but are not limited to:**

- ✓ Deferment of principal and/or interest payments
- ✓ An additional unguaranteed temporary loan by the lender to bring the account current
- ✓ Reamortization of or rescheduling payments
- ✓ Transfer and assumption of the loan
- ✓ Reorganization
- ✓ Liquidation, and
- ✓ Changes in interest rates
  - Requires approval of the Agency, lender, and any holder(s),
  - Any interest payments must be adjusted proportionately between the guaranteed and unguaranteed portions of the loan

# Default by Borrower – 4287.145(b)

- ✓ The term of any deferment, rescheduling, reamortization, or moratorium will be limited to the lesser of the remaining useful life of the collateral or remaining limits as set forth in 4279.126 (excluding paragraph (c))
- ✓ During a period of deferment or moratorium on the guaranteed loan, the lender's unguaranteed loan(s) and any stockholder loans must also be under deferment or moratorium
- ✓ Balloon payments are permitted as a loan servicing option as long as there is a reasonable prospect for success and the remaining life of the collateral supports the action



In the event of a loss or a repurchase, the lender cannot claim default or penalty interest, late payment fees, or interest on interest. If the restructuring includes the capitalization of interest, interest accrued on the capitalized interest will not be covered by the guarantee. Consequently, it is not eligible for repurchase from the holder and cannot be included in the loss claim.



# Default by Borrower – 4287.145(c)

Debt write-downs for an existing borrower, where the same principals retain control of and decision making authority for the business, are prohibited, except as directed or ordered under the Bankruptcy Code.



# Default by Borrower – 4287.145(d)




For loans closed on or after August 2, 2016, the guarantee will not cover note interest to the lender accruing after 90 days from the most recent delinquency effective date



Most recent delinquency effective date is as reported in item number 8 on Form RD 1980-44, "Guaranteed Loan Borrower Default Status"

# Default by Borrower – 4287.145(e)

- 
- For loans closed on or after August 2, 2016, the lender or the Agency will issue an interest termination letter to the holder(s) establishing the termination date for interest accrual. **The guarantee will not cover interest to any holder accruing after the greater of:**
- 90 days from the date of the most recent delinquency effective date as reported by the lender, or
  - 30 days from the date of the interest termination letter

The Agency must ensure the interest termination letter is issued, whether by the lender or the Agency, 60 days from the date of the most recent delinquency effective date to ensure that not more than 90 days of interest is paid

4279.78

Repurchases



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# Repurchase from Holder - 4279.78(a)

- **Repurchase by lender:**
  - Lender has the option to repurchase the unpaid guaranteed portion within 30 days of holder's written demand when the borrower is in default not less than 60 days OR when lender has failed to remit to the holder its pro rata share of payment.
  - Lender repurchase must be for an amount equal to the unpaid guaranteed portion of principal and accrued interest less the lender's servicing fee.
  - Holder must concurrently send copy of demand letter to the Agency.

# Repurchase from Holder - 4279.78(a)

- For loans closed on or after August 2, 2016, the lender or the Agency will issue an interest termination letter to the holder(s) establishing the termination date for interest accrual if the default is not cured
- The guarantee will not cover interest to any holder accruing after the greater of:
  - 90 days from the date of the most recent delinquency effective date as reported by the lender or
  - 30 days from the date of the interest termination letter

# Repurchase from Holder - 4279.78(a)

- **Repurchase by lender (cont'd):**

- If repurchase is necessary to service the loan, the holder must sell the guaranteed portion to the lender for an amount equal to the unpaid principal and interest less any lender servicing fee

- Lender cannot repurchase for arbitrage or other purposes to further its own financial gain
- Requires prior written Agency approval
- Lender must discontinue interest accrual if Federal or State regulators place the loan in non-accrual status if the default is not cured within 90 days

# Repurchase from Holder - 4279.78(b)

- **Repurchase by Agency:**

- If the lender does not repurchase, the Agency will purchase the unpaid principal balance of the guaranteed portion and accrued interest, less the lender's servicing fee, within 30 days after written demand

- For loans closed on or after August 2, 2016, the guarantee will not cover interest to any holder accruing after the greater of: 90 days from the date of the most recent delinquency effective date as reported by the lender or 30 days from the date of the interest termination letter



# Repurchase from Holder - 4279.78(b)

- **Repurchase by Agency (cont'd):**
  - Lender's servicing fee stops on the date that interest was last paid by the borrower
  - Lender must apply payments and collateral proceeds to the guaranteed and unguaranteed portions of the loan on a pro rata basis
  - When the Agency repurchases 100% of guaranteed portion, interest accrual and collection of annual renewal fee stops

# Repurchase from Holder - 4279.78(b)

- **Repurchase by Agency (cont'd):**

- When the lender has accelerated the account and holds all or a portion of the guaranteed loan, an estimated loss claim must be filed within 60 days.
- Accrued interest is calculated from the date interest was last paid on the loan with a cutoff date being no more than 90 days from the most recent delinquency effective date as reported by the lender.

# Repurchase from Holder - 4279.78(b)

- **Repurchase by Agency (cont'd):**
  - Holder's demand must include a copy of the written demand made upon the lender and the amount due
  - Holder must include either the original of the LNG properly endorsed to the Agency or the original of the Assignment Guarantee Agreement (AGA) properly assigned to the Agency without recourse

# Repurchase from Holder - 4279.78(b)

- **Repurchase by Agency (cont'd):**
  - Upon request, the lender must furnish a certified statement of the unpaid principal and interest owed by the borrower, the amount owed to any holder, and information necessary to determine the appropriate amount due the holder
  - Discrepancies between the amount claimed by the holder and information submitted by lender must be resolved between the lender and the holder before payment will be approved

# Repurchase from Holder - 4279.78(b)

- **Repurchase by Agency (cont'd):**
  - Agency repurchase does not change the lender's obligations to the Agency or waive the Agency's rights against lender.
  - When the Agency purchases the guaranteed portion, the loan cannot be sold with recourse

# Repurchase from Holder - 4279.78(c)

- When the Agency holds the guaranteed portion, termination of interest accrual will be for accounting purposes only when it is likely there will be a loss on the loan and the lender has placed the loan in a non-accrual status.
  - Covers situations including, but not limited to, bankruptcy, cramdowns, and liquidations.

# Appendix C

## Sale of Promissory Note



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# Sale of the Promissory Note – Appendix C

## *Sale of the Promissory Note without Recourse*

- ✓ One method of liquidation is the sale of the promissory note. The sale of the promissory note as a method of liquidation should not be considered on guaranteed loans that are current.
- ✓ When the lender is considering the sale of the promissory note as a method of liquidation, including loans in bankruptcy, the lender must document that this method would yield the highest and best recovery in their detailed Liquidation Plan.
- ✓ The lender must offer the entire loan for sale, both the guaranteed and unguaranteed portions of the loan. All sales must be on a non-recourse basis, and the Loan Note Guarantee will not transfer.





# Sale of the Promissory Note – Appendix C

## **Sale of the Promissory Note without Recourse**

- ✓ Due diligence must be performed that includes an evaluation of all potential companies that perform this service to ascertain their expertise in this area. The companies should be reputable, with a track record in executing these types of transactions, and aware of the associated risks involved.
- ✓ The Purchase and Sales Agreement must be reviewed in advance by the Regional OGC. When the sale is consummated, the lender will promptly remit to the Agency its pro-rata share, and the lender will promptly file a final report of loss claim in accordance with regulations.
- ✓ The lender, with Agency approval, can also establish a minimum bid and reserve the right to pull the loan from the bid process if the reserve bid is not met. This option can be used concurrently with other liquidation methods.

# Sale of the Promissory Note

There are three loan sale advisors that the Agency is aware of. They should be passed on to the lender without recommendation and at the lender's own due diligence.



Mission Capital - <http://www.missioncap.com/>

First Financial Network (FFN) - <https://www.ffncorp.com/>

The Debt Exchange (DebtX) - <https://new.debtX.com/Corp/>



4287.158(b)

Estimated Loss



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# 4287.157(f)

## Filing an estimated loss claim

- ✓ When the lender owns any of the guaranteed portion, the lender must file an estimated loss claim once a decision has been made to liquidate if the liquidation is expected to 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 guarantee will not cover note interest to the lender accruing after 90 days from the most recent delinquency effective date for loans closed on or after August 2, 2016.

# Determination of Loss and Payment - 4287.158(b)

## Estimated loss

The estimated loss payment will be based on the liquidation value of the collateral

- The estimate will be prepared and submitted by the lender on Form RD 449-30 using the basic formula as provided on the report, except that the liquidation appraisal value will be used in lieu of the amount received from the sale of collateral
- Interest accrual eligible for payment under the guarantee on the defaulted loan will be discontinued when the estimated loss is paid is paid.
- A protective advance claim will be paid only at the time of the final report of loss payment

4287.170

Bankruptcy



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# Bankruptcy – 4287.170(a)

## **Lender's responsibilities**

It is the lender's responsibility to protect the guaranteed loan and all of the collateral securing it in bankruptcy proceedings, including taking actions that result in greater recoveries and not taking actions that would not likely be cost-effective.



# Bankruptcy – 4287.170(a)

## **Lender's responsibilities**

These responsibilities include, but are not limited to:

- ✓ Monitoring confirmed bankruptcy plans to determine borrower compliance, and, if the borrower fails to comply, seeking a dismissal of the bankruptcy plan
- ✓ Filing a proof of claim, where necessary, and all the necessary papers and pleadings concerning the case
- ✓ Attending and, where necessary, participating in meetings of the creditors and all court proceedings



# Bankruptcy – 4287.170(a)

## Lender's responsibilities

These responsibilities include, but are not limited to:

- ✓ Requesting modifications of any bankruptcy plan whenever it appears that additional recoveries are likely
- ✓ Keeping the Agency adequately and regularly informed in writing of all aspects of the proceedings
- ✓ With written Agency consent, the lender and Agency will equally share the cost of any independent appraisal fee to protect the guaranteed loan in any bankruptcy proceedings



# Bankruptcy – 4287.170(a)

## Lender's responsibilities

These responsibilities include, but are not limited to:

- ✓ The lender must submit a default status report when the borrower defaults and every 30 days until the default is resolved or a final loss claim is paid by the Agency
- ✓ The default status report will be used to inform the Agency of the bankruptcy filing, the plan confirmation date, when the plan is complete, and when the borrower is not in compliance with the plan



# Bankruptcy – 4287.170(b)

## Reports of loss during bankruptcy

- ✓ In bankruptcy proceedings, payment of loss claims will be made as provided for in 4287.170(b)
- ✓ Attorney/legal fees and protective advances as a result of a bankruptcy are only recoverable from liquidation proceeds



# Bankruptcy – 4287.170(b)(1)

## Estimated Loss Payments

- ✓ If a borrower has filed for bankruptcy and all or a portion of the debt has been discharged, the lender must 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 bankruptcy
  - All subsequent claims of the lender during bankruptcy 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 bankruptcy plan

# Bankruptcy – 4287.170(b)(1)

## Estimated Loss Payments

- ✓ Once the bankruptcy 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 bankruptcy plan
- ✓ The lender must use Form RD 449-30, “Guaranteed Loan Report of Loss,” to request an estimated loss payment and to revise any estimated loss payments during the course of the bankruptcy plan
- ✓ The estimated loss claim, as well as any revisions to this claim, must be accompanied by documentation to support the claim

# Bankruptcy – 4287.170(b)(1)

## Estimated Loss Payments

- ✓ **Upon completion of a bankruptcy plan, the lender must:**
  - ✓ Complete Form RD 1980-44, “Guaranteed Loan Borrower Default Status,” and forward it to the Agency
  - ✓ Provide the Agency with documentation necessary to determine whether the estimated loss paid equals the actual loss sustained
  - ✓ If the actual loss sustained is less than the estimated loss, the lender must reimburse the Agency for the overpayment plus interest at the note rate from the date of estimated loss payment
  - ✓ If the actual loss is greater than the estimated loss payment, the lender must submit a revised estimated loss claim in order to obtain payment of the additional amount owed to the lender

# Bankruptcy – 4287.170(b)(2)

## Bankruptcy loss payments

- ✓ The lender must request a bankruptcy loss payment of the guaranteed portion of the accrued interest and principal discharged by the court for all bankruptcies when all or a portion of the debt has been discharged.

Unless a court approves a subsequent change to the bankruptcy plan that is adverse to the lender, only one bankruptcy loss payment is allowed during the bankruptcy.

- ✓ Once the court has discharged all or part of the guaranteed loan and any appeal period has run, the lender must submit the documentation necessary for the Agency to review and adjust the bankruptcy loss claim to reflect any actual discharge of principal and interest.

# Bankruptcy – 4287.170(b)(2)

## Bankruptcy loss payments

- ✓ The lender must use Form RD 449-30, “Loan Note Guarantee Report of Loss,” to request a bankruptcy loss payment and to revise any bankruptcy loss payments during the course of the bankruptcy.
  - The lender must include with the bankruptcy loss claim documentation to support the claim and any revisions to the claim.
- ✓ Upon completion of a bankruptcy plan, restructure, or liquidation, the lender must either complete Form RD 1980-44, "Guaranteed Loan Borrower Default Status," and forward it to the Agency or enter the data directly into LINC.

If an estimated loss claim is paid during a bankruptcy 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.



# Bankruptcy – 4287.170(b)(3)

## **Interest rate losses as a result of bankruptcy reorganization**

For guaranteed loans closed prior to August 2, 2016:

- ✓ Interest losses sustained during the period of the bankruptcy plan will be processed in accordance with 4287.170(b)(1).
- ✓ Interest losses sustained after the bankruptcy plan is confirmed will be processed annually when the lender sustains a loss as a result of a permanent interest rate reduction that extends beyond the period of the bankruptcy plan/

# Bankruptcy – 4287.170(b)(3)

## Interest rate losses as a result of bankruptcy reorganization

- ✓ If a bankruptcy loss claim is paid during the operation of the bankruptcy 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.
- ✓ For guaranteed loans closed on or after August 2, 2016, the Agency will NOT compensate the lender for any difference in the interest rate specified in the Loan Note Guarantee and the rate of interest specified in the bankruptcy plan.

# Bankruptcy – 4287.170(b)(4) & (b)(5)

## Final bankruptcy loss payments

The Agency will process final bankruptcy loss payments when the loan is fully liquidated

## Application of loss claim payments

- ✓ 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 court attempts to direct the payments to be applied in a different manner, the lender must immediately notify the Agency in writing.

# Bankruptcy – 4287.170(b)(3)

## Protective advances

If approved protective advances were incurred in connection with initiation of liquidation action and were required to provide repairs, insurance, etc., to protect the collateral as a result of delays in the case of failure of the borrower to maintain the security prior to the borrower having filed bankruptcy, the protective advances together with accrued interest, are payable under the guarantee in the final loss claim.



# Bankruptcy – 4287.170(c)

## Expenses during bankruptcy proceedings

- ✓ Under no circumstances will the guarantee cover liquidation expenses in excess of liquidation proceeds
- ✓ Expenses, such as reasonable attorney/legal fees and the cost of appraisals incurred by the lender as a direct result of the borrower's bankruptcy filing, are considered liquidation expenses.
- ✓ Liquidation expenses must be reasonable, customary, and provide a demonstrated economic benefit to the lender and the Agency
  - ✓ Lender's in-house expenses, which are those expenses that would normally be incurred for administration of the loan, including in-house lawyers, are not covered by the guarantee.
- ✓ Liquidation expenses must be deducted from collateral sale proceeds. The lender and Agency will share liquidation expenses equally. To accomplish this, the lender will deduct 50 percent of the liquidation expenses from the collateral sale proceeds.

# Bankruptcy – 4287.170(c)

## Expenses during bankruptcy proceedings

- ✓ When a bankruptcy proceeding results in a liquidation of the borrower by a bankruptcy trustee, expenses will be handled as directed by the court, and the lender cannot claim liquidation expenses for the sale of the assets.
- ✓ If the property is abandoned by the bankruptcy trustee and any relief from the stay has been obtained, the lender will conduct the liquidation in accordance with 4287.157.

# Bankruptcy – 4287.170(c)

## Expenses during bankruptcy proceedings

- ✓ If the property is abandoned by the bankruptcy trustee and any relief from the stay has been obtained, the lender will conduct the liquidation in accordance with 4287.157
- ✓ Proceeds received from the partial sale of collateral during bankruptcy may be used by the lender to pay reasonable costs associated with the partial sale, such as freight, labor, and sales commissions. Reasonable use of proceeds for this purpose must be documented with the final loss claim.
- ✓ Reasonable and customary liquidation expenses in bankruptcy may be deducted from liquidation proceeds of collateral.



Expenses incurred by the lender in a Chapter 11 bankruptcy can never be liquidation expenses unless the proceeding becomes a Chapter 11 liquidation

# Bankruptcy – 4287.170(d)

## Personal/corporate guarantors

- ✓ 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.





# Bankruptcy – 4287.170(e)

## Agency monitoring

- ✓ 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.

4287.180

## Termination of Guarantee



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# Termination of Guarantee - 4287.180

**The Loan Note Guarantee will terminate under any of the following conditions:**

- ✓ Upon full payment of the guaranteed loan
- ✓ Upon full payment of any loss obligation
- ✓ Upon written notice from the lender that the guarantee will terminate 30 days after the date of notice, provided that the lender holds all of the guaranteed portion and the LNG is returned to the Agency to be canceled



# Thank you!

Business and Industry Division, Loan Servicing Branch

1400 Independence Avenue, S.W.

STOP 3224, Rm. 6853-S

Washington, D.C. 20250

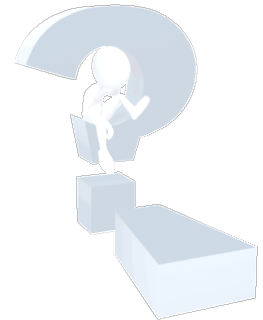
202-690-4103 – phone

202-720-6003 – fax

**David Lewis, Chief**

**Loan Servicing Branch, Business & Industry Division**

**202-690-0797, [david.lewis@wdc.usda.gov](mailto:david.lewis@wdc.usda.gov)**



**Nichelle Daniels, Loan Specialist**

**Northeast Region**

**202-720-0786, [nichelle.daniels@wdc.usda.gov](mailto:nichelle.daniels@wdc.usda.gov)**

**Anthony Ashby , Loan Specialist**

**Western Region**

**202-720-0661, [Anthony.Ashby@wdc.usda.gov](mailto:Anthony.Ashby@wdc.usda.gov)**

**Felicia Bailey-Blue, Loan Specialist**

**Midwest Region**

**202-690-9903, [felicia.baileyblue@wdc.usda.gov](mailto:felicia.baileyblue@wdc.usda.gov)**

**Andrea Patterson, Loan Specialist**

**Southern Region**

**202-205-2460, [andrea.patterson@wdc.usda.gov](mailto:andrea.patterson@wdc.usda.gov)**