United States Department of Agriculture

Rural Development

Office of the Administrator

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September 2, 2020

TO: State Directors
Rural Development

ATTN: National Office and Business Program Directors

FROM: Rebeckah Freeman Adcock /s/ ***Rebeckah Freeman Adcock***
Administrator
Rural Business-Cooperative Service

SUBJECT: Business and Industry Guaranteed Loan Program
Guidance for Servicing Guaranteed Loans with a Payment Deferral Period due to the COVID-19 Pandemic

PURPOSE:

The purpose of this Unnumbered Letter is to provide guidance to field staff on working with lenders and secondary market holders as they work with Business and Industry (B&I) and Rural Energy for America Program (REAP) borrowers at the end of the deferred payment period due to the COVID-19 pandemic.

BACKGROUND:

On March 31, 2020, Rural Development (RD) issued a Notice in the Federal Register with detailed guidance for guaranteed lenders to assist their borrowers that were experiencing temporary cash flow issues due to the COVID-19 pandemic (Deferment Notice). Lenders are allowed, without Agency approval through September 30, 2020, to defer loan payments for borrowers for a period no longer than 180 days from the date the original payment is due. This guidance applied to all borrowers that had a current repayment status as of January 31, 2020.

IMPLEMENTATION RESPONSIBILITIES:

The Agency's goal is to partner with its guaranteed lenders to assist as many borrowers as possible to emerge from the adverse impacts of the COVID-19 pandemic in a position to continue operating successful businesses that serve rural America. To accomplish this, it is the Agency's responsibility to make sure lenders understand the regulatory authorities they operate under as guaranteed lenders and inform the lenders as to the servicing tools that are currently available.

EXPIRATION DATE:
June 30, 2021

FILING INSTRUCTIONS:
Community/Business Programs

At the end of the payment deferral period, there are several servicing options available to the borrower to move forward. All options depend on the borrower's financial position as they near the end of the loan payment deferral period. RD servicing offices are encouraged to maintain contact with lenders throughout the payment deferral period so both the Agency and lender are best prepared to assist the borrower as it emerges from the payment deferral period. It is highly recommended that the lender and the borrower have a proposed plan of action formulated at least 30 days prior to the end of the deferral period. The Agency will consider all servicing proposals from lenders to return the borrower to current status for the deferred principal and interest. All servicing actions must be in accordance with RD Instruction 4287-B unless otherwise instructed and as outlined in the Deferment Notice. Once the borrower, lender, and Agency agree to a reamortization or other workout agreement, the borrower's status code in GLS should be updated to '402', In Operation.

Please be advised that the March 31, 2020 Federal Register Notice provided that notification of a deferral would meet the standard for concurrence through September 30, 2020. If the lender and borrower have agreed actions beyond this approved period, including the method for repayment, those agreements must be in compliance with 7 CFR Part 4287. If there are any questions about this, please contact the National Office.

The following are several examples of servicing options:

- Reamortization or Rescheduling
- Balloon Payments
- Extension of Deferment
- Business and Industry (B&I) Coronavirus Aid, Relief, and Economic Security (CARES) Act Working Capital Loan for deferred principal and interest.

Reamortization and Rescheduling

A reamortization or a rescheduling of loan payments is the most preferred servicing option. It is important that lenders understand that in accordance with 7 CFR 4287.145(b)(3), if restructuring includes the capitalization of interest, interest accrued on the capitalized interest will not be covered by the guarantee.

What if the original loan was for less than the maximum repayment period?
In accordance with 7 CFR 4287.145(b)(2), the term of the deferment is limited to the lesser of the remaining useful life of the collateral or remaining limits as outlined in 7 CFR, 4279.126 (excluding paragraph (c)). In other words, the terms of the promissory note may be extended if the collateral securing the loan allows for an extension. Since the Loan Note Guarantee is associated with a specific promissory note, the lender shall not issue a new promissory note, but instead modify the original note by extending it by the length of the deferral period. Payments should resume as they were prior to the re-amortization.

What if the original loan terms were for the maximum repayment period allowable and the collateral securing the loan will not support additional term consideration?

Fixed Rate Loans

For fixed rate loans, there are three (3) ways to bring the deferred interest current when the loan term cannot be extended:

1. Pay the deferred interest in equal installments over the remaining term of the loan. Payments are calculated in two steps. First, calculate repayment of accrued deferred interest by dividing the amount of accrued deferred interest by the number of payments remaining over term of the loan. Second, calculate P&I payments by amortizing the unpaid principal balance over the remaining term of the loan. The new payment amount is the sum of the payment to accrued deferred interest plus the reamortized P&I payment. Borrowers will probably prefer this method as it allows them to spread the deferred interest payments over the remaining loan term and minimizes the increase in loan payments.

2. Create a new amortization schedule for the remaining life of the loan with a payment amount that will pay off the deferred interest before paying down any principal. Lenders and secondary market holders will probably prefer this method as it allows them to recover the deferred interest immediately.

3. Capitalize the interest and create a new amortization schedule for the remaining life of the loan. Agency staff should remind Lenders that pursuant to 7 CFR 4287.145(b)(3), if interest is capitalized, interest accrued on the capitalized interest will not be covered by the guarantee and is not eligible for repurchase from the holder.

Variable Rate Loans

In addition to the options for fixed rate loans lenders also have the option to increase or decrease borrower payments on variable rate loans where the term cannot be extended to ensure the balance is paid by the stated maturity date. In this case, payments will increase after the deferral period. The lender and Agency must verify the borrower's cash flow supports the increased payments. Once payments resume, they should be applied to the accrued interest until all outstanding interest is brought current. Once accrued interest is brought current, payments can again be applied to principal and interest.

Balloon Payments

Are balloon payments allowable?

If the borrower has previously maximized the length of the loan repayment period to the maximum repayment period allowable based on the type of the collateral that is securing the loan and is unable to make new higher payments if the loan is reamortized, the lender may reschedule repayment of the deferred payments to the end of the loan. The borrower should resume making principal and interest payments in an amount not less than the payment amount under the terms of the original loan agreement. This will result in a balloon payment at the end of the loan term in amount of the unpaid principal during the deferment period plus the unpaid principal following the deferment period while deferred interest is brought current.

Extension of Deferment

If a borrower's revenues are cyclical or seasonal in nature and the end of the deferment period will come during the business' lower revenue cycle, it may be most prudent to simply defer payments for an additional period. Interest-only payments and partial deferral or reduced payment should be considered. It is the lender's responsibility to determine whether the business can be viable after an extension of the original deferment period. Any extension of the deferment period will require the concurrence of the secondary market holder and the Agency. Lenders must receive Agency concurrence on all deferment requests after September 30, 2020.

Business and Industry CARES Act Working Capital Loan

In accordance with 7 CFR 4279.190, borrowers may be able to access working capital loans through the B&I CARES Act Loan Program. B&I CARES Act loans are guaranteed loans that can be used for working capital including for payment of principal and interest payments on existing B&I Guaranteed Loans currently in deferment due to COVID-19 The maximum allowable repayment term of loans for working capital purposes is 10 years. Loan repayment may defer principal payments or principal and interest payments for a period up to 12 months from loan closing and may extend deferral of principal payments up to a total of three years with a maximum repayment term of 10 years from the date of loan closing. Once the past due accrued principal and interest is brought current through the B&I CARES loan, payments on the existing B&I loan should resume.

Each borrower's situation will be different, and no two servicing cases are the same. Thus, it is prudent that the Agency works with the lenders and secondary market holders to evaluate each loan and business individually and determine the best path forward using the servicing tools provided. The Agency should strive to maximize the prospect of success of each rural business while minimizing the risk of loss to the government.

If you have any questions, please contact David Lewis, Chief, Program Processing Division Servicing Branch at 202-690-0797 or at david.lewis@usda.gov.