

PART 4279 - GUARANTEED LOANMAKING

Subpart A - General

TABLE OF CONTENTS

<u>Sec.</u>		<u>Page</u>
4279.1	Introduction.	1
4279.2	Definitions and abbreviations.	1
	(a) Definitions.	1
	(b) Abbreviations.	10
	(c) Accounting terms.	11
4279.3	- 4279.14 [Reserved]	11
4279.15	Exception authority.	11
4279.16	Appeals.	11
4279.17	- 4279.28 [Reserved]	12
4279.29	Eligible lenders.	12
	(a) Regulated lenders.	12
	(b) Non-regulated lenders.	13
	(c) Revocation of eligible lender status.	16
	(d) Debarment of lender.	18
4279.30	Lenders' functions and responsibilities.	18
	(a) General.	18
	(b) Credit evaluation.	20
	(c) Environmental responsibilities.	20
4279.31	- 4279.43 [Reserved]	21
4279.44	Access to records.	21
4279.45	- 4279.58 [Reserved]	21
4279.59	Environmental requirements.	21
4279.60	Civil rights impact analysis.	22
4279.61	Equal Credit Opportunity Act.	22
4279.62	- 4279.70 [Reserved]	22
4279.71	Public bodies and nonprofit corporations.	22
4279.72	Conditions of guarantee.	22
	(a) Full faith and credit.	23
	(b) Rights and liabilities.	24
	(c) Payments.	24

<u>Sec.</u>		<u>Page</u>
4279.73	- 4279.74 [Reserved]	24
4279.75	Sale or assignment of guaranteed loan.	24A
	(a) Single note system.	25
	(b) Multi-note system.	26
4279.76	[Reserved]	26
4279.77	Minimum retention.	26
4279.78	Repurchase from holder.	27
	(a) Repurchase by lender.	27
	(b) Agency repurchase.	28
	(c) Termination of interest accrual.	30
4279.79	- 4279.83 [Reserved]	30
4279.84	Replacement of document.	31
4279.85	- 4279.99 [Reserved]	33
4279.100	OMB control number.	33

Attachment: Appendix A - Repurchase from Holder Checklist

PART 4279 - GUARANTEED LOANMAKING

Subpart A - General

§ 4279.1 Introduction.

(a) *This subpart contains general regulations for making and servicing Business and Industry (B&I) loans guaranteed by the Agency and applies to lenders, holders, borrowers, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans. This subpart is supplemented by subpart B of this part, which contains loan processing regulations, and subpart B of part 4287 of this chapter, which contains loan servicing regulations. This subpart also contains regulations for Business and Industry loans under the authority of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116-136) to provide B&I loan guarantees in response to the national COVID-19 Public Health Emergency pandemic (COVID-19 pandemic) for working capital loan purposes to support business operations and facilities in rural areas (B&I CARES Act Program Loans). Some of the requirements of this subpart are waived or altered for B&I CARES Act Program Loans. The waivers and alterations are provided in §§ 4279.190 of this subpart. (Revised 06-04-20, SPECIAL PN.)*

(b) The lender is responsible for ascertaining that all requirements for making, securing, servicing, and collecting the loan are complied with.

(c) Whether specifically stated or not, whenever Agency approval is required, it must be in writing. Copies of all forms and regulations referenced in this subpart may be obtained from any Agency office and from the USDA Rural Development Web site at <http://www.rd.usda.gov/publications>. Whenever a form is designated in this subpart, it is initially capitalized and its reference includes predecessor and successor forms, if applicable. 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.

§ 4279.2 Definitions and abbreviations.

(a) Definitions. The following definitions apply to this subpart:

Administrator. The Administrator of Rural Business-Cooperative Service within the Rural Development mission area of the U.S. Department of Agriculture.

Affiliate. An entity that is related to another entity by owning shares or having an interest in the entity, by common ownership, or by any means of control.

Agency. The Rural Business-Cooperative Service or successor Agency assigned by the Secretary of Agriculture to administer the B&I Guaranteed Loan Program. References to the National or State Office should be read as prefaced by "Agency" or "Rural Development" as applicable.

Agricultural production. The breeding, raising, feeding, or housing of livestock for fiber or food for human consumption and the cultivation, growing, or harvesting of crops. *Examples of agricultural production include farming, feedlots, and dairies. Agricultural production is only eligible when in accordance with § 4279.113(q).*

Annual renewal fee. The annual renewal fee is a fee that is paid once a year by the lender and is required to maintain the enforceability of the Loan Note Guarantee.

Appraisal surplus. The difference between the fair market value of an asset and its depreciated book value when the fair market value is higher. *Bargain purchase gains are a form of appraisal surplus.*

Arm's-length transaction. A transaction between ready, willing, and able disinterested parties that are not affiliated with or related to each other and have no security, monetary, or stockholder interest in each other.

Assignment Guarantee Agreement. Form RD 4279-6, "Assignment Guarantee Agreement," is the signed agreement among the Agency, the lender, and the holder containing the terms and conditions of an assignment of a guaranteed portion of a loan, using the single note system.

Bankruptcy Code. The provisions of title 11 of the United States Code or any successor statute.

Biofuel. A fuel derived from Renewable Biomass.

§ 4279.2 (Con.)

Bond. A form of debt security in which the authorized issuer (borrower) owes the bond holder (lender) a debt and is obligated to repay the principal and interest (coupon) at a later date(s) (maturity). An explanation of the type of bond and other bond stipulations must be attached to the bond issuance.

Borrower. The person that borrows, or seeks to borrow, money from the lender, including any party liable for the loan except for guarantors.

Certificate of Incumbency and Signature. Form RD 4279-7, "Certificate of Incumbency and Signature," is used to validate authenticity of Agency representatives' signatures on Forms RD 4279-4, 4279-5, and 4279-6.

Collateral. The asset(s) pledged by the borrower to secure the loan.

Commercially available. A system that has a proven operating history for at least 1 year specific to the proposed application. Such a system is based on established design and installation procedures and practices. Professional service providers, trades, large construction equipment providers, and labor are familiar with installation procedures and practices. Proprietary and the balance of system equipment and spare parts are readily available, and service is readily available to properly maintain and operate the system. An established warranty exists for major parts and labor. If the system is currently commercially available only outside of the United States, authoritative evidence of the foreign operating history, performance, and reliability is required in order to address the proven operating history.

Conditional Commitment. Form RD 4279-3, "Conditional Commitment," is the Agency's notice to the lender that the loan guarantee it has requested is approved subject to the completion of all conditions and requirements set forth by the Agency and outlined in the attachment to the Conditional Commitment.

Conflict of interest. A situation in which a person has competing personal, professional, or financial interests that prevents the person from acting impartially.

Cooperative organization. An entity that is legally chartered as a cooperative or an entity that is not legally chartered as a cooperative but is owned and operated for the benefit of its members, with returns of residual earnings paid to such members on the basis of patronage.

Debt Collection Improvement Act. The Debt Collection Improvement Act of 1996, 31 U.S.C. 3701 et seq, requires that any monies that are payable or may become payable from the United States under contracts and other written agreements to any person not an agency or subdivision of a State or local government may be subject to certain collection options, such as administrative offset, for a delinquent debt the person owes to the United States. *The DCIA applies to all loans closed on or after January 22, 2004, and all personal and corporate guarantors who sign(ed) Form RD 4279-14, "Unconditional Guarantee," on or after December 20, 2006.*

Default. The condition that exists when a borrower is not in compliance with the promissory note, the loan agreement, or other documents relating to the loan. Default could be a monetary or non-monetary default.

Deficiency balance. *The balance remaining on a loan after all collateral has been liquidated.*

Deficiency judgment. **A monetary judgment rendered by a court of competent jurisdiction after foreclosure and liquidation of all collateral securing the loan.**

Delinquency/Delinquent loan. **A loan for which a scheduled loan payment is more than 30 days past due and cannot be cured within 30 days.**

Deputy Chief Financial Officer. *The Agency officer responsible for maintaining the Agency financial accounting records at the Finance Office located in St. Louis, Missouri.*

Energy projects. **Commercially available projects that generate energy or power or projects that produce biofuel. Projects that have energy outputs that are a by-product of operations or that the Agency otherwise determines is not an energy project are not subject to the increased equity requirement for energy projects required by § 4279.131(d)(1). An example of a project that would not be considered an energy project is a tire recycler that produces power as a by-product of the recycling process.**

Existing business. **A business that has been in operation for at least 1 full year. Mergers or changes in the business name or legal type of entity of a business that has been in operation for at least 1 full year are considered to be existing businesses as long as there is not a significant change in operations. Newly-formed entities that are buying existing businesses will be considered an existing business as long as the business being bought remains in operation and there is no significant change in operations.**

Existing lender debt. **A debt owed by a borrower to the same lender that is applying for or has received the Agency guarantee.**

Fair market value. **The price that could reasonably be expected for an asset in an arm's-length transaction between a willing buyer and a willing seller under ordinary economic and business conditions.**

Future recovery. **Funds collected by the lender after a final loss claim is processed. This applies only to those loans not subject to the DCIA.**

Guaranteed Loan System (GLS). *Official accounting system of record for USDA Rural Development guaranteed loans.*

§ 4279.2 (Con.)

High impact business development investment. A business that scores at least 25 points under § 4279.166(b)(4) and is one of the criteria for reduced guarantee fee eligibility.

High-priority project. A project that scores more than 50 percent of the priority points available under § 4279.166(b)(1) through (5) and is one of the eligibility criteria for an increased percentage of guarantee or a loan over \$10 million.

Holder. A person, other than the lender, who owns all or part of the guaranteed portion of the loan with no servicing responsibilities. When the single note option is used and the lender assigns a part of the guaranteed note to an assignee, the assignee becomes a holder only when the Agency receives notice and the transaction is completed through the use of the Assignment Guarantee Agreement (Form RD 4279-6).

Immediate family. Individuals who live in the same household or who are closely related by blood, marriage, or adoption, such as a spouse, domestic partner, parent, child, sibling, aunt, uncle, grandparent, grandchild, niece, nephew, or cousin.

In-house expenses. Expenses associated with activities that are routinely the responsibility of a lender's internal staff or its agents. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel, and overhead.

Interest. A fee paid by a borrower to the lender as a form of compensation for the use of money. When money is borrowed, interest is paid as a fee over a certain period of time (typically months or years) to the lender as a percentage of the principal amount owed. The term interest does not include default or penalty interest or late payment fees or charges.

Interim financing. A temporary or short-term loan made with the clear intent when the loan is made that it will be repaid through another loan that provides permanent financing. Interim financing is frequently used to pay construction and other costs associated with a planned project, with permanent financing to be obtained after project completion.

Lender. The eligible lender approved by the Agency to make, service, and collect the Agency guaranteed loan that is subject to this subpart. Agency approval of the lender will be evidenced by an outstanding Form RD 4279-4, "Lender's Agreement," between the Agency and the lender.

Lender's Agreement. Form RD 4279-4, "Lender's Agreement," or predecessor form, between the Agency and the lender setting forth the lender's loan responsibilities.

Liquidation expenses. Costs directly associated with the liquidation of collateral, including preparing collateral for sale (e.g., repairs and transport) and conducting the sale (e.g., advertising, public notices, auctioneer expenses, and foreclosure fees). Liquidation expenses do not include in-house expenses. Legal/attorney fees are considered liquidation expenses provided that the fees are reasonable, as determined by the Agency, and cover legal issues pertaining to the liquidation that could not be properly handled by the lender and its in-house counsel.

Loan agreement. The agreement between the borrower and lender containing the terms and conditions of the loan and the responsibilities of the borrower and lender.

Loan classification. The process by which loans are examined and categorized by degree of potential loss in the event of default.

Loan Note Guarantee. Form RD 4279-5, "Loan Note Guarantee," issued and executed by the Agency, containing the terms and conditions of the guarantee.

Loan packager. A person, other than the applicant borrower or lender, that prepares a loan application package.

Loan service provider. A person, other than the lender of record, that provides loan servicing activities to the lender.

Loan-to-discounted value. The ratio of the dollar amount of a loan to the discounted dollar value of the collateral pledged as security for the loan.

Loan-to-value. The ratio of the dollar amount of a loan to the dollar value of the collateral pledged as security for the loan.

Local government. A county, municipality, town, township, village, or other unit of general government, including tribal governments, below the State level.

§ 4279.2 (Con.)

Material adverse change. Any change in circumstance associated with a guaranteed loan, including the borrower's financial condition or collateral, that, individually or in the aggregate, has jeopardized, or could be reasonably expected to jeopardize, loan performance.

Natural resource value-added product. Any naturally occurring resource, including agricultural resources, that is processed to add value or to generate renewable energy from a natural resource. For example, wind being used by wind mills for energy generation, grapes that are processed into wine or jam, or straw that is processed into particle board. The term does not include conversion of feed to livestock.

Negligent loan origination. The failure of a lender to perform those services that a reasonably prudent lender would perform in originating its own portfolio of loans that are not guaranteed. The term includes the concepts of failure to act, not acting in a timely manner, or acting in a manner contrary to the manner in which a reasonably prudent lender would act.

Negligent loan servicing. The failure of a lender to perform those services that a reasonably prudent lender would perform in servicing (including liquidation of) its own portfolio of loans that are not guaranteed. The term includes the concepts of failure to act, not acting in a timely manner, or acting in a manner contrary to the manner in which a reasonably prudent lender would act.

New business. A startup or otherwise new business that has been in operation for less than 1 full year. New businesses include newly-formed entities leasing space or building ground-up facilities, even if the owners of the new or startup business own affiliated businesses doing the same kind of business.

Parity. A lien position whereby two or more lenders share a security interest of equal priority in collateral. In the event of default, each lender will be affected on an equal basis.

Participation. Sale of an interest in a loan by the lead lender to one or more participating lenders wherein the lead lender retains the note, collateral securing the note, and all responsibility for managing and servicing the loan. Participants are dependent upon the lead lender for protection of their interests in the loan. The relationship is typically formalized by a participation agreement. The participants and the borrower have no rights or obligations to one another.

Person. An individual or entity.

Poverty. A community or area (including a county, city, or equivalent such as parish, borough, municipio, or census designated place) where at least 20 percent of the population have income below the poverty line. *This information may be found on the Census website at the following address: <http://www.census.gov/hhes/www/poverty/>*

Pro rata. On a proportional basis.

Promissory note. Evidence of debt with stipulated repayment terms. "Note" or "promissory note" shall also be construed to include "Bond" or other evidence of debt, where appropriate.

Protective advances. Advances made by the lender for the purpose of preserving and protecting the collateral where the debtor has failed to, and will not or cannot, meet its obligations to protect or preserve collateral. Protective advances include, but are not limited to, advances affecting the collateral made for property taxes, rent, hazard and flood insurance premiums, and annual assessments. Legal/attorney fees are not a protective advance.

Public body. A municipality, county, or other political subdivision of a State; a special purpose district; an Indian tribe on a Federal or State reservation or other federally-recognized Indian tribe; or an organization controlled by any of the above.

Renewable biomass.

(1) Materials, pre-commercial thinnings, or invasive species from National Forest System land or public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)) that:

(i) Are by-products of preventive treatments that are removed to reduce hazardous fuels; to reduce or contain disease or insect infestation; or to restore ecosystem health;

(ii) Would not otherwise be used for higher-value products;
and

§ 4279.2 (Con.)

(iii) Are harvested in accordance with applicable law and land management plans and the requirements for old-growth maintenance, restoration, and management direction of paragraphs (2), (3), and (4) of subsection (e) of section 102 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512) and large-tree retention of subsection (f) of that section; or

(2) Any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian Tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including:

(i) Renewable plant material, including feed grains; other agricultural commodities; other plants and trees; and algae; and

(ii) Waste material, including crop residue; other vegetative waste material (including wood waste and wood residues); animal waste and by-products (including fats, oils, greases, and manure); and food and yard waste.

Report of loss. Form RD 449-30, "Guaranteed Loan Report of Loss," used by lenders when reporting a financial loss under an Agency guarantee.

Rural Development. The mission area of USDA that is comprised of the Rural Business-Cooperative Service, the Rural Housing Service, and the Rural Utilities Service and is under the policy direction and operational oversight of the Under Secretary for Rural Development.

Spreadsheet. A table containing data from a series of financial statements of a business over a period of time. A financial statement analysis normally contains spreadsheets for balance sheet and income statement items and includes a cash flow analysis and commonly used ratios. The spreadsheets enable a reviewer to easily scan the data, spot trends, and make comparisons.

State. Any of the 50 States of the United States, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Subordination. An agreement among the lender, borrower, and Agency whereby lien priorities on certain assets pledged to secure payment of the guaranteed loan will be reduced to a position junior to, or on parity with, the lien position of another loan.

Tangible balance sheet equity. Tangible equity divided by tangible assets. Formula: $((\text{Assets} - \text{intangible assets}) - \text{liabilities}) / (\text{Assets} - \text{intangible assets})$ or $(\text{Equity} - \text{intangible assets}) / (\text{Assets} - \text{intangible assets})$.

Transfer and assumption. The conveyance by a borrower to an assuming borrower of the assets, collateral, and liabilities of the loan in return for the assuming borrower's binding promise to pay the outstanding debt.

USDA Lender Interactive Network Connection (LINC). The portal Web site currently at <https://usdalinc.sc.egov.usda.gov/> used by lenders to update loan data in the Agency's Guaranteed Loan System. Current LINC capabilities include loan closing and status reporting.

Veteran. For the purposes of assigning priority points, a veteran is a person who is a veteran of any war, as defined in title 38 U.S.C. 101(12).

Working capital. Current assets available to support a business' operations and growth. Working capital is calculated as current assets less current liabilities.

(b) **Abbreviations.** The following abbreviations apply to this subpart:

B&I - Business and Industry
CFR - Code of Federal Regulations
DCFO - Deputy Chief Financial Officer
DCIA - Debt Collection Improvement Act
FDIC - Federal Deposit Insurance Corporation
FSA - Farm Service Agency
GAAP - Generally Accepted Accounting Principles of the United States
GLS - Guaranteed Loan System
LINC - USDA Lender Interactive Network Connection
NAD - National Appeals Division
OMB - Office of Management and Budget
REAP - Rural Energy for America Program
U.S. - United States of America
USDA - U.S. Department of Agriculture

§ 4279.2 (Con.)

(c) Accounting terms. Accounting terms not otherwise defined in this part shall have the definition ascribed to them under GAAP.

§§ 4279.3 - 4279.14 [Reserved]

§ 4279.15 Exception authority.

The Administrator may, on a case-by-case basis, grant an exception to any requirement or provision of this subpart provided that such an exception is in the best financial interests of the Federal government. Exercise of this authority cannot be in conflict with applicable law. *Requests for exceptions must be in writing by the State Director and supported with documentation to explain the adverse effect on the Federal government's financial interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted. All requests for exceptions being considered by the Administrator will be reviewed by the National Office Executive Loan (NOEL) Committee to determine consistency with applicable regulations and to document the recommendations of the B&I staff and NOEL Committee. Reasons for granting the exception will be clearly documented, and an Informational Memorandum outlining the need for the exception, recommendations of the State Director, B&I staff, and the NOEL Committee, and reasons for granting the exception will be provided to OGC and the Under Secretary. The Administrator will fully and clearly address any concerns raised by the State Director, NOEL Committee, OGC, or the Under Secretary prior to issuing the exception.*

§ 4279.16 Appeals.

Applicants, borrowers, lenders, and holders have appeal or review rights for Agency decisions made under this subpart, subpart B of this part, or subpart B of part 4287 of this chapter. Programmatic decisions based on clear and objective statutory or regulatory requirements are not appealable; however, such decisions are reviewable for appealability by the National Appeals Division (NAD). The borrower, lender, and holder can appeal any Agency decision that directly and adversely impacts them. For an adverse decision that impacts the borrower, the lender and borrower must jointly execute a written request for appeal for an alleged adverse decision made by the Agency. An adverse decision that only impacts the lender may be appealed by the lender only. An adverse decision that only impacts the holder may be appealed by the holder only. A decision by a lender adverse to the interest of the borrower is not a decision by the Agency, whether or not concurred in by the Agency. Appeals will be conducted by USDA NAD and will be handled in accordance with 7 CFR part 11. *The National Office Program Processing Division must be notified in advance of appeal hearings and results of any appeal hearings.* (Revised 04-30-20 PN 536.)

§§ 4279.17 - 4279.28 [Reserved]

§ 4279.29 Eligible lenders.

An eligible lender must be domiciled in a State as defined in § 4279.2 or in the District of Columbia and must not be debarred or suspended by the Federal government. If the lender is under a cease and desist order, or similar constraint, from a Federal or State agency, the lender must inform the Agency. The Agency will evaluate the lender's eligibility on a case-by-case basis, given the risk of loss posed by the cease and desist order. *State Offices must report problems with a lender's eligibility based on a cease and desist order or other lending restrictions implemented by its regulator to the National Office Program Processing Division.* The Agency will only approve loan guarantees for lenders with adequate capital to fund and cover potential liquidation expenses for guaranteed loans it proposes to make and adequate experience and expertise to make, secure, service, and collect B&I loans. The lender must provide documentation as to its capital and experience in commercial lending. *State Offices should review this documentation to determine that the lender has adequate capital and experience. State Offices should also assess lender capabilities by evaluating lender philosophy, credit policies and procedures, organizational structure, and financial condition before allowing a lender to participate in the program.* The lender and the Agency will execute a Lender's Agreement (Form RD 4279-4, "Lender's Agreement") for each lender approved to participate in the program. If a valid Lender's Agreement already exists, it is not necessary to execute a new Lender's Agreement with each loan guarantee; however, a new Lender's Agreement must be executed with any existing lenders making new loans on or after August 2, 2016. *Original Lender's Agreements should be maintained in an operational file in a fire-resistant cabinet. Each individual case file should contain a copy of the applicable Lender's Agreement.* The Agency may revoke a lender's eligible status at any time for cause, including those examples cited in § 4279.29(c). (Revised 04-30-20 PN 536.)

(a) Regulated lenders. A regulated lender is any Federal or State chartered bank or other financial institution, Farm Credit Bank, other Farm Credit System institution with direct lending authority, Bank for Cooperatives, Savings and Loan Association, Savings Bank, or mortgage company that is part of a bank-holding company. These entities must be subject to credit examination and supervision by either an agency of the United States or a State. Eligible lenders may also include the National Rural Utilities Cooperative Finance Corporation and credit unions provided that they are subject to credit examination and supervision by either the National Credit Union Administration or a State agency. (Revised 10-05-16, PN 489.)

§ 4279.29(b) (1) (Con.)

(b) Non-regulated lenders. The Agency may consider an applicant lender that does not meet the criteria of paragraph (a) of this section for eligibility to become a guaranteed lender for a 3-year period provided that the Agency determines that the applicant lender has the legal authority to operate a lending program and sufficient lending expertise and financial strength to operate a successful lending program. When the applicant lender is a multi-tiered entity, it will be considered in its entirety. Insurance companies (formerly included as traditional lenders) and non-regulated lenders (formerly known as other lenders) previously approved as guaranteed lenders prior to August 2, 2016, must reapply to become an approved non-regulated lender in order to originate new guaranteed loans. However, both insurance companies and non-regulated lenders that have executed a Lender's Agreement (*Form RD 4279-4, "Lender's Agreement,"*) must continue to service the guaranteed loans in their portfolios in accordance with that agreement.

(1) In order to become an eligible lender, non-regulated lenders must:

(i) Have been making commercial loans for at least 5 years;

(ii) Have a record of successfully making at least 10 commercial loans annually totaling at least \$1 million for each of the last 5 years, with lender's delinquent commercial loan portfolio over this period not exceeding (a) 6 percent of all commercial loans made and (b) 3 percent in commercial loan losses (based on the original principal loan amount);

(iii) Have and maintain tangible balance sheet equity of at least 10 percent of tangible assets and sufficient funds available to disburse the guaranteed loans it proposes to approve within the first 6 months of being approved as a guaranteed lender;

(iv) Have and maintain a line of credit issued by a regulated lender that is acceptable to the Agency;

(v) Agree to establish and maintain an Agency approved loss reserve equal to 3 percent of each B&I loan closed and agree to increase the loss reserve for anticipated losses as required by the Agency;

(vi) Have adequate policies and procedures to ensure that internal credit controls provide adequate loanmaking and servicing guidance; and

(vii) Have undergone a credit examination at its own expense from a recognized independent reviewer acceptable to the Agency. The applicant lender should consult with the Agency prior to receiving an examination to ensure the examiner will be acceptable. *Examinations completed by qualified, competent consultants that regulate and supervise credit institutions are acceptable to the Agency. Examinations will normally include a review of the lender's asset quality, capital adequacy, earnings, liquidity, sensitivity to market risk, management practices, financial conditions, and compliance with applicable laws and regulations.* (Revised 03-19-18, PN 510).

(2) A non-regulated lender that wishes consideration to become a guaranteed lender must submit a request in writing to the Agency. *The State Office where the lender's proposed guaranteed lending and servicing activity will take place will review and forward the request, with the State Director's recommendation, to the National Office Program Processing Division for consideration. If eligibility is requested for multiple States, the State Office where the lender is headquartered will take the lead in coordinating submission of the request to the National Office. A State Office receiving a multi-State request should notify each affected State of such a request and provide information for review and comment prior to making a recommendation and submission to the National Office. If eligibility is being requested for expansion into other States, comments and recommendations from those State Offices, as well as any States previously approved, should be submitted to the National Office. The Agency (National Office) will make such investigation as it deems necessary and will notify the prospective lender, through the State Director, whether the lender's request for eligibility is approved or rejected. If rejected, the Agency will notify the prospective lender, in writing, of the reasons for the rejection. The lender must include in its written request the following:* (Revised 04-30-20, PN 536.)

(i) An audited financial statement not more than 1 year old that evidences the lender has the required tangible balance sheet equity and the resources to successfully meet its responsibilities;

§ 4279.29(b) (2) (Con.)

(ii) A copy of any license, charter, or other evidence of authority to engage in the proposed loanmaking and servicing activities. If licensing by the State is not required, an attorney's opinion stating that licensing is not required and that the entity has the legal authority to engage in the proposed loanmaking and servicing activities must be submitted;

(iii) Information on lending experience, including length of time in the lending business; range and volume of lending and servicing activity, including a list of the industries for which it has provided financing; status of its loan portfolio, including a list of loans in the portfolio with each loan's current loan classification code and delinquency and loss rates as outlined in § 4279.29(b) (1) (ii); experience of management and loan officers; sources of funds for the proposed loans; office location and proposed lending area; an estimate of the number and size of guaranteed loan applications the lender will develop; and proposed rates and fees, including loan origination, loan preparation, and servicing fees;

(iv) A copy of the examination required under paragraph (b) (1) (vii) of this section; and

(v) Documentation as to how the lender will fulfill the requirements of § 4279.30.

(3) Non-regulated lenders must submit audited financial statements to the Agency annually for monitoring purposes. *The State Office will review the lender's audited financial statements, including its line of credit information, and document trends in the lender's financial strength. Concerns should be brought to the attention of the National Office Program Processing Division.* (Revised 04-30-20, PN 536.)

(4) Renewal of eligible lender status to continue making B&I loans is not automatic. Eligible lender status will lapse 3 years from the date of Agency approval and execution of the Lender's Agreement (Form RD 4279-4, "Lender's Agreement,") unless the lender obtains a renewal. A lender whose eligible status has lapsed must continue to service any outstanding loans guaranteed under this part but may not submit requests for new loan guarantees. Lenders whose eligibility has lapsed may file a subsequent request under this subsection. Lenders requesting renewal must complete and execute a new Lender's

Agreement, along with a written update of the eligibility criteria required by this section for approval. Lenders requesting renewal must resubmit the information required by paragraph (b) (2) of this section and must address how the lender is complying with each of the required criteria described in paragraph (b) (1) of this section. The written update of the eligibility criteria must also include any change in the persons designated to process and service Agency guaranteed loans or change in the operating methods used in the processing and servicing of loans since the original or last renewal date of eligible lender status. The lender must provide this information to the Agency at least 60 days prior to the expiration of the existing agreement to be assured of a timely renewal. Upon receipt of a lender's renewal request, the State Director should, within 15 days, request from the lender any additional information needed to process a renewal request. A review of the lender's performance will be completed to determine whether the lender has continually met the eligibility criteria described in paragraph (b) of this section. The State Director will also consider the lender's activity in the program and its delinquency/default rate when making a determination regarding renewal. Any action by the lender since it was designated an eligible lender that could be cause for revoking its status, in accordance with paragraph (c) of this section, will be considered cause for denying the renewal of eligible status. The State Director should notify the lender in writing within 30 days of receipt of a request for renewal that the request is approved, reasons for denial, or any conditions the lender must meet for approval. Lenders must be advised of their appeal rights in accordance with Departmental appeal regulations. National Office concurrence is not required to renew eligible lender status for a non-regulated lender but is required to deny renewal of an eligible lender's status. The National Office must be advised when no request for renewed status is received and eligible lender status expires. The National Office will notify any other affected States of a change in a lender's eligible lender status.

(c) Revocation of eligible lender status. The Agency may revoke a lender's status at any time for cause. National Office concurrence is required to revoke a lender's eligible status. The State Director will provide a recommendation to the National Office Program Processing Division for consideration. After Review, the National Office will provide a written reply to the State Director. The revocation may apply to all branches of the lender, specific branches, or personnel, as appropriate. (**Cause for revoking eligible status includes:** (Revised 04-30-20, PN 536.)

§ 4279.29(c) (Con.)

- (1) Failure to maintain status as an eligible lender as set forth in § 4279.29 of this subpart;
- (2) Knowingly submitting false information when requesting a guarantee or basing a guarantee request on information known to be false or which the lender should have known to be false;
- (3) Making a guaranteed loan with deficiencies that may cause losses not to be covered by the Loan Note Guarantee, such as negligent loan origination;
- (4) Conviction of the lender or its officers for criminal acts in connection with any loan transaction whether or not the loan was guaranteed by the Agency;
- (5) Violation of usury laws in connection with any loan transaction whether or not the loan was guaranteed by the Agency;
- (6) Failure to obtain and maintain the required security for any loan guaranteed by the Agency;
- (7) Using loan funds guaranteed by the Agency for purposes other than those specifically approved by the Agency in the Conditional Commitment or amendment thereof in accordance with § 4279.173(b);
- (8) Violation of any term of the Lender's Agreement;
- (9) Failure to correct any Agency-cited deficiency in loan documents in a timely manner;
- (10) Failure to submit reports required by the Agency in a timely manner;
- (11) Failure to process Agency guaranteed loans as would a reasonably prudent lender;
- (12) Failure to provide for adequate construction planning and monitoring in connection with any loan to ensure that the project will be completed with the available funds and, once completed, will be suitable for the borrower's needs;

- (13) Repetitive recommendations for servicing actions or guaranteed loans with marginal or substandard credit quality or that do not comply with Agency requirements;
- (14) Negligent loan origination;
- (15) Negligent loan servicing;
- (16) Failure to conduct any approved liquidation of a loan guaranteed by the Agency or its predecessors in a timely and effective manner and in accordance with the approved liquidation plan; or
- (17) Violation of applicable nondiscrimination law, including, but not limited to, statutes, regulations, USDA Departmental Regulations, the USDA Non-Discrimination Statement, and the Equal Credit Opportunity Act. USDA's Non-Discrimination Statement is located at the following Web site:
[http://www.usda.gov/wps/portal/usda/usdahome?navtype=FT&navid=NON DISCRIMINATION](http://www.usda.gov/wps/portal/usda/usdahome?navtype=FT&navid=NON_DISCRIMINATION).

(d) Debarment of lender. The Agency may debar a lender in addition to the revocation of the lender's status.

§ 4279.30 Lenders' functions and responsibilities.

(a) General.

(1) Lenders have the primary responsibility for the successful delivery of the guaranteed loan program. Any action or inaction on the part of the Agency does not relieve the lender of its responsibilities to originate and service the loan guaranteed under this subpart, subpart B of this part, and subpart B of part 4287 of this chapter. Lenders may contract for services but are ultimately responsible for underwriting, loan origination, loan servicing, and compliance with all Agency regulations. No person may act as, or work for, both a loan packager and loan service provider on the same guaranteed loan. *In your initial contact with lenders, make sure that they are well aware of their responsibilities and the fact that the Agency will enforce the requirements of the Lender's Agreement and the regulations. This would also be the perfect time to discuss*

§ 4279.30(a)(1) (Con.)

the benefits and requirements of establishing access to the LINC system (outlined in Appendix F of subpart B of part 4287) that allows them to electronically monitor, track, and update the status of their guaranteed loans. There can be an actual or apparent conflict of interest if the same person is the loan packager and the loan service provider on the same guaranteed loan; however, this is not meant to prohibit the same person from being contracted for both services when payment for these two distinct services is made only by the lender. All lenders obtaining or requesting a loan guarantee are responsible for: (Revised 04-30-20, PN 536.)

- (i) Processing applications for guaranteed loans;
- (ii) Developing and maintaining adequately documented loan files, which must be maintained for at least 3 years after any final loss has been paid;
- (iii) Recommending only loan proposals that are eligible and financially feasible;
- (iv) Properly closing the loan and obtaining valid evidence of debt and collateral in accordance with sound lending practices prior to disbursing loan proceeds;
- (v) Keeping an inventory accounting of all collateral items and reconciling the inventory of all collateral sold during loan servicing, including liquidation;
- (vi) Monitoring construction and operation;
- (vii) Distributing loan funds;
- (viii) Servicing guaranteed loans in a prudent manner, including liquidation if necessary;
- (ix) Reporting all conflicts of interest, or appearances thereof, to the Agency;
- (x) Following Agency regulations and agreements; and
- (xi) Obtaining Agency approvals or concurrence as required.

(2) This subpart, subpart B of this part, and subpart B of part 4287 of this chapter contain the regulations for this program, including the lenders' responsibilities. If a lender fails to comply with these requirements, the Agency may reduce any loss payment in accordance with the applicable regulations.

(b) Credit evaluation. *This is a key function of all lenders during the loan processing phase.* The lender must analyze all credit factors associated with each proposed loan and apply its professional judgment to determine that the credit factors, considered in combination, ensure loan repayment. The lender must have an adequate underwriting process to ensure that loans are reviewed by persons other than the originating officer, and there must be good credit documentation procedures. The Agency will only issue guarantees for loans that are sound and have reasonable assurance of repayment. The Agency will not issue guarantees for marginal or substandard loans.

(c) Environmental responsibilities. Lenders are responsible for becoming familiar with Federal environmental requirements; considering, in consultation with the prospective borrower, the potential environmental impacts of their proposals at the earliest planning stages; and developing proposals that minimize the potential to adversely impact the environment.

(1) Lenders must assist the borrower in providing details of the project's impact on the environment and historic properties in accordance with 7 CFR part 1970, "Environmental Policies and Procedures," (or successor regulation), when applicable; assist in the collection of additional data when the Agency needs such data to complete its environmental review of the proposal; and assist in the resolution of environmental problems.

(2) Lenders must ensure the borrower has:

(i) Provided the necessary environmental information to enable the Agency to undertake its environmental review process in accordance with 7 CFR part 1970, "Environmental Policies and Procedures," or successor regulation, including the provision of all required Federal, State, and local permits;

§ 4279.30(c) (2) (Con.)

(ii) Complied with any mitigation measures required by the Agency; and

(iii) Not taken any actions or incurred any obligations with respect to the proposed project that will either limit the range of alternatives to be considered during the Agency's environmental review process or that will have an adverse effect on the environment.

§ 4279.30(c) (Con.)

(3) Lenders must alert the Agency to any environmental issues related to a proposed project or items that may require extensive environmental review.

(4) *Technical advice and information on environmental requirements, including copies of the State's Natural Resource Management Guide, are available from the State Environmental Coordinator.*

§§ 4279.31 - 4279.43 [Reserved]

§ 4279.44 Access to records.

The lender must permit representatives of the Agency (or other agencies of the United States) to inspect and make copies of any records of the lender pertaining to Agency guaranteed loans during regular office hours of the lender or at any other time upon agreement between the lender and the Agency. In addition, the lender must cooperate fully with Agency oversight and monitoring of all lenders involved in any manner with any guarantee to ensure compliance with this subpart, subpart B of this part, and subpart B of part 4287 of this chapter. Such oversight and monitoring will include, but is not limited to, reviewing lender records and meeting with lenders in accordance with subpart B of part 4287 of this chapter.

§§ 4279.45 - 4279.58 [Reserved]

§ 4279.59 Environmental requirements.

The Agency is responsible for ensuring that the requirements of the National Environmental Policy Act of 1969 (under 40 CFR part 1500) and related compliance actions, such as Section 106 of the National Historic Preservation Act (under 36 CFR part 800) and Section 7 of the Endangered Species Act, are met and will complete the appropriate level of environmental review in accordance with 7 CFR part 1970, "Environmental Policies and Procedures," or successor regulation. Because development of the loan application occurs simultaneously with development of the environmental review, applicants, including lenders and borrowers, must not take any actions or incur any obligations that would either limit the range of alternatives to be considered in the environmental review or that would have an adverse effect on the environment. Satisfactory completion of the environmental review process must occur prior to execution of Form RD 1940-3, "Request for Obligation of Funds - Guaranteed Loans" and issuance of the Conditional Commitment to the lender. *Technical advice and guidance is offered through the State Environmental Coordinator and should be obtained as necessary to ensure compliance with mentioned regulations.*

§ 4279.60 Civil rights impact analysis.

Issuance of a Conditional Commitment is conditioned on the Agency being able to satisfactorily complete a civil rights impact analysis. *This is evidenced by completion of Form RD 2006-38, "Civil Rights Impact Analysis Certification." Technical advice and guidance is offered through the National Office Civil Rights Staff and should be obtained as necessary to ensure compliance with regulations.*

§ 4279.61 Equal Credit Opportunity Act.

In accordance with the Equal Credit Opportunity Act (15 USC 1691 et seq.), with respect to any aspect of a credit transaction, neither the lender nor the Agency will discriminate against any applicant on the basis of race, color, religion, national origin, sex, marital status, or age (providing the applicant has the capacity to contract), or because all or part of the applicant's income derives from a public assistance program, or because the applicant has, in good faith, exercised any right under the Consumer Protection Act. The lender must comply with the requirements of the Equal Credit Opportunity Act as contained in the Federal Reserve Board's Regulation implementing that Act (see 12 CFR part 202) prior to loan closing.

§§ 4279.62 - 4279.70 [Reserved]

§ 4279.71 Public bodies and nonprofit corporations.

Audits will be required of any public body, nonprofit corporation or Indian Tribe that receives a guaranteed loan that meets the thresholds established by 2 CFR part 200, subpart F. Any audit provided by a public body, nonprofit corporation, or Indian Tribe required by this paragraph will be considered adequate to meet the audit requirements of the B&I program for that year.

§ 4279.72 Conditions of guarantee.

A loan guarantee under this part will be evidenced by a Loan Note Guarantee issued by the Agency. The provisions of this part and part 4287 of this chapter will apply to all outstanding guarantees. In the event of a conflict between the guarantee documents and these regulations as they exist at the time the documents are executed, these regulations will control.

§ 4279.72 (Con.)

(a) **Full faith and credit.** A guarantee under this part constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which a lender or holder has actual knowledge at the time it becomes such lender or holder or which a lender or holder participates in or condones. The guarantee will be unenforceable by the lender to the extent that any loss is occasioned by a provision for interest on interest or default or penalty interest. In addition, the guarantee will be unenforceable by the lender to the extent any loss is occasioned by the violation of usury laws, use of loan proceeds for unauthorized purposes, negligent loan origination, negligent loan servicing, or failure to obtain or maintain the required security regardless of the time at which the Agency acquires knowledge thereof. Any losses occasioned will be unenforceable by the lender to the extent that loan funds were used for purposes other than those specifically approved by the Agency in its Conditional Commitment or amendment thereof in accordance with § 4279.173(b). The Agency may for cause terminate or reduce the Loan Note Guarantee at any time. The Agency will guarantee payment as follows: (Revised 03-19-18, PN 510.)

(1) To any holder, 100 percent of any loss sustained by the holder on the guaranteed portion of the loan it owns and on interest due on such portion less any outstanding servicing fee. For those 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. The lender should issue the interest termination letter to the holder(s) and provide the Agency with a copy. In the event the lender cannot or will not issue the letter, the Agency will issue the letter to the holder(s) and provide the lender with a copy (see Appendix H of RD Instruction 4287-B for a sample letter). The Agency should confirm current holder contact information with the lender and ensure that information in GLS is accurate.* (Revised 06-12-17, SPECIAL PN.)

(2) To the lender, subject to the provisions of this part and subpart B of part 4287 of this chapter, the lesser of:

(i) Any loss sustained by the lender on the guaranteed portion, including principal and interest (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) evidenced by the notes or assumption agreements and secured advances for protection and preservation of collateral made with the Agency's authorization; or

(ii) The guaranteed principal advanced to or assumed by the borrower and any interest due thereon. 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.

(b) Rights and liabilities. When a guaranteed portion of a loan is sold to a holder, the holder will succeed to all rights of the lender under the Loan Note Guarantee to the extent of the portion purchased. The full, legal interest in the note must remain with the lender, and the lender will remain bound to all obligations under the Loan Note Guarantee, Lender's Agreement, and Agency program regulations. A guarantee and right to require purchase will be directly enforceable by a holder notwithstanding any fraud or misrepresentation by the lender or any unenforceability of the guarantee by the lender, except for fraud or misrepresentation of which the holder had actual knowledge at the time it became the holder or in which the holder participates in or condones. The lender will reimburse the Agency for any payments the Agency makes to a holder on the lender's guaranteed loan that, under the Loan Note Guarantee, would not have been paid to the lender had the lender retained the entire interest in the guaranteed loan and not conveyed an interest to a holder.

(c) Payments. A lender will receive all payments of principal and interest on account of the entire loan and must promptly remit to the holder its pro rata share thereof, determined according to its respective interest in the loan, less only the lender's servicing fee.

§§ 4279.73 - 4279.74 [Reserved]

§ 4279.75 Sale or assignment of guaranteed loan.

The lender may sell all or part of the guaranteed portion of the loan on the secondary market or retain the entire loan. The lender must fully disburse and properly close a loan prior to sale of the note(s) on the secondary market. The lender cannot sell or participate any amount of the guaranteed or unguaranteed portion of the loan to the borrower or its parent, subsidiary, or affiliate or to officers, directors, stockholders, other owners, or members of their immediate families. The lender cannot share any premium received from the sale of a guaranteed loan in the secondary market with a loan packager or other loan service provider. If the lender desires

to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default. Lenders may use either the single note or multi-note system as outlined in paragraphs (a) and (b) of this section. The lender may also obtain participation in the loan under its normal operating procedures; however, the lender must retain title to the notes if any of them are unguaranteed and retain the lender's interest in the collateral.

(a) Single note system. The entire loan is evidenced by one note, and one Loan Note Guarantee is issued. The lender must retain title to the note, retain the lender's interest in the collateral, and retain the servicing responsibilities for the guaranteed loan. When the loan is evidenced by one note, the lender may not at a later date cause any additional notes to be issued. The lender may assign all or part of the guaranteed portion of the loan to one or more holders by using *Form RD 4279-6, "Assignment Guarantee Agreement."* The lender must complete and execute the Assignment Guarantee Agreement and return it to the Agency for execution prior to holder execution. *The Agency should ensure it receives a copy of Form RD 4279-6 after holder execution. In order to validate authenticity, holders are encouraged to consult with the Agency Rural Development State Office where the loan was originated.* Additionally, a Certificate of Incumbency and Signature (*Form 4279-7*) may be requested. The holder, with written notice to the lender and the Agency, may reassign the unpaid guaranteed portion of the loan, in full, sold under the Assignment Guarantee Agreement. Holders may only reassign the entire guaranteed portion they have received and cannot subdivide or further split the guaranteed portion of a loan or retain an interest strip. Upon notification and completion of the Assignment Guarantee Agreement, the assignee shall succeed to all rights and obligations of the holder thereunder. Subsequent assignments require notice to the lender and Agency using any format, including that used by the Securities Industry and Financial Markets Association (formerly known as the Bond Market Association), together with the transfer of the original Assignment Guarantee Agreement. The Agency will neither execute a new Assignment Guarantee Agreement to effect a subsequent reassignment nor reissue a duplicate Assignment Guarantee Agreement unless the original was lost, stolen, destroyed, mutilated, or defaced in accordance with § 4279.84. The Assignment Guarantee Agreement clearly states the percentage and corresponding amount of the guaranteed portion it represents and the lender's servicing fee. A servicing fee may be charged by the lender to a holder and is calculated as a percentage per annum of the unpaid balance of the guaranteed portion of the loan assigned by the Assignment Guarantee Agreement. The Agency is not and

will not be a party to any contract between the lender and another party where the lender sells its servicing fee. The Agency will not acknowledge, approve, nor have any liability to any of the parties of this contract. *The Securities Industry and Financial Markets Association (formerly known as the Bond Market Association) developed recommended settlement procedures to effect the subsequent assignment (sale) of the guaranteed portion of a loan from a holder to another holder. These documents, entitled, "Transfer Documents for USDA Government Guaranteed Loans Sold Through the Assignment Method," are acceptable to the Agency. Upon completion of the reassignment, the holder or its agent will send an original, executed copy of the transfer documents to the Agency for its records, and GLS should be updated accordingly. Do not reissue Form RD 4279-6 to effect a subsequent reassignment. If documents other than those developed by the Securities Industry and Financial Markets Association are presented or the documents appear to be improperly prepared, obtain the advice of the National Office Program Processing Division. (Revised 04-30-20, PN 536.)*

(b) Multi-note system. Under this option, the lender may provide one note for the unguaranteed portion of the loan and no more than 10 notes for the guaranteed portion. All promissory notes must reflect the same payment terms. The lender must retain its interest in the collateral and servicing responsibilities for the guaranteed loan. When the lender selects this option, the holder will receive one of the borrower's executed notes and a Loan Note Guarantee. The Agency will issue a Loan Note Guarantee for each note, including the unguaranteed note, to be attached to each note. An Assignment Guarantee Agreement will not be used when the multi-note option is utilized.

§ 4279.76 [Reserved]

§ 4279.77 Minimum retention.

The lender is required to hold in its own portfolio a minimum of 5 percent of the original total loan amount. The amount required to be maintained must be of the unguaranteed portion of the loan and cannot be participated to another. The lender may enter into no agreement that reduces its exposure below the minimum 5 percent it is required to retain in its portfolio. The lender may sell the remaining amount of the unguaranteed portion of the loan only through participation.

§ 4279.78 Repurchase from holder.

(a) **Repurchase by lender.** A lender has the option to repurchase the unpaid guaranteed portion of the loan from a holder within 30 days of written demand by the holder when the borrower is in default not less than 60 days on principal or interest due on the loan; or when the lender has failed to remit to the holder its pro rata share of any payment made by the borrower within 30 days of the lender's receipt thereof. The repurchase by the lender must be for an amount equal to the unpaid guaranteed portion of principal and accrued interest less the lender's servicing fee. The holder must concurrently send a copy of the demand letter to the Agency. The lender must accept an assignment without recourse from the holder upon repurchase. For those 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. *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. The lender should issue the interest termination letter to the holder(s) and provide the Agency with a copy. In the event the lender cannot or will not issue the letter, the Agency will issue the letter to the holder(s) and provide the lender with a copy (see Appendix H of RD Instruction 4287-B for a sample letter). The Agency should confirm current holder contact information with the lender and ensure that information in GLS is accurate.* If, in the opinion of the lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the holder must sell the guaranteed portion of the loan to the lender for an amount equal to the unpaid principal and interest on such portion less the lender's servicing fee. The lender must not repurchase from the holder for arbitrage or other purposes to further its own financial gain. Any repurchase must only be made after the lender obtains the Agency's written approval. If the lender does not repurchase the guaranteed portion from the holder, the Agency may, at its option, purchase such guaranteed portion for servicing purposes. The lender is encouraged to repurchase the loan to facilitate the accounting of funds, resolve any loan problems, and prevent default, where and when reasonable. The benefit to the lender is that it may resell the guaranteed portion of the loan in order to continue

collection of its servicing fee if the default is cured. When the lender repurchases the guaranteed portion from the secondary market for servicing purposes, the 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. The lender will notify the holder and the Agency of its decision. *T The Agency should meet with and encourage the lender to repurchase the loan because the lender may have an opportunity to sell the loan at a later date, whereas if the Agency has to repurchase it, the loan can no longer be sold and there is an adverse effect on the subsidy rate, which reduces supportable loan level.* (Revised 04-30-20, PN 536.)

(b) Agency repurchase. (See Appendix A for a repurchase checklist.)

(1) The lender's servicing fee will stop on the date that interest was last paid by the borrower when the Agency purchases the guaranteed portion of the loan from a holder. The lender cannot charge such servicing fee to the Agency and must apply all loan payments and collateral proceeds received to the guaranteed and unguaranteed portions of the loan on a pro rata basis.

(2) If the Agency repurchases 100 percent of the guaranteed portion of the loan and becomes the holder, interest accrual on the loan will cease, and the Agency will not continue collection of the annual renewal fee from the lender.

(3) If the lender does not repurchase the unpaid guaranteed portion of the loan as provided in paragraph (a) of this section, the Agency will purchase from the holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase, less the lender's servicing fee, within 30 days after written demand to the Agency from the holder. For those 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. Once the holder makes demand upon the Agency, the request cannot be rescinded. *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. The lender should issue the interest termination letter to*

the holder(s) and provide the Agency with a copy. In the event the lender cannot or will not issue the letter, the Agency will issue the letter to the holder(s) and provide the lender with a copy (see Appendix H of RD Instruction 4287-B for a sample letter). The Agency should confirm current holder contact information with the lender and ensure that information in GLS is accurate. (Revised 06-12-17, SPECIAL PN.)

(4) When the guaranteed loan has been delinquent more than 60 days and no holder comes forward, the Agency may issue a letter to the holder(s) establishing the cutoff date for interest accrual. Accrued interest to be paid the holder will be calculated from the date interest was last paid on the loan with a cutoff date being no more than 90 days from the date of the most recent delinquency effective date as reported by the lender.

§ 4279.78(b) (Con.)

(5) When the lender has accelerated the account and holds all or a portion of the guaranteed loan, an estimated loss claim (loan in the liquidation process) must be filed by the lender with the Agency within 60 days. Accrued interest paid to the lender will be 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. *GLS must be checked to ensure that the cutoff date is accurately reflected in the system.*

(6) The holder's demand to the Agency must include a copy of the written demand made upon the lender. The holder must also include evidence of its right to require payment from the Agency. Such evidence must consist of either the original of the Loan Note Guarantee *(for guaranteed loans using the multi-note system)* properly endorsed to the Agency or the original of the Assignment Guarantee Agreement *(for guaranteed loans using the single-note system)* properly assigned to the Agency without recourse, including all rights, title, and interest in the loan. When the single-note system is utilized and the initial holder has sold its interest, the current holder must present the original Assignment Guarantee Agreement and an original of each Agency-approved reassignment document in the chain of ownership, with the latest reassignment being assigned to the Agency without recourse, including all rights, title, and interest in the guarantee. *See § 4279.75(a) for a description of acceptable transfer documents.* The holder must include in its demand the amount due, including unpaid principal, unpaid interest to date of demand, and interest subsequently accruing from date of demand to proposed payment date. The Agency will be subrogated to all rights of the holder.

(7) Upon request by the Agency, the lender must promptly furnish a current statement certified by an appropriate authorized officer of the lender of the unpaid principal and interest then owed by the borrower on the loan and the amount then owed to any holder, along with the information necessary for the Agency to determine the appropriate amount due the holder. Any discrepancy between the amount claimed by the holder and the information submitted by the lender must be resolved between the lender and the holder before payment will be approved. Such conflict will suspend the running of the 30-day payment requirement.

(8) Purchase by the Agency neither changes, alters, nor modifies any of the lender's obligations to the Agency arising from the loan or guarantee nor does it waive any of the Agency's rights against the lender. The Agency will have the right to set-off against the lender all rights inuring to the Agency as the holder of the instrument against the Agency's obligation to the lender under the program.

(9) *When the Agency purchases the guaranteed portion, the loan cannot be sold with recourse. The purchased loans may be sold on a nonrecourse basis only, i.e., without a Loan Note Guarantee attached and without recourse. For additional guidance, State Offices should contact the National Office Program Processing Division. (Revised 04-30-20, PN 536.)*

(10) *Upon receipt of the appropriate information, the Agency will review the demand and, after verification, will transmit the request to the DCFO for issuance of the appropriate payment. Upon issuance, the DCFO will notify the office servicing the borrower and remit the payment to the holder.*

(11) *GLS should be updated to reflect a default status code indicating the borrower's account is delinquent, if applicable.*

(c) Termination of interest accrual. *Termination of interest accrual, when the guaranteed portion is held by the Agency, 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. This will cover situations including, but not limited to, bankruptcy, cramdowns (court ordered settlement of debt), and liquidations. The office of the DCFO will manually calculate the accrued interest in the event a full or partial recovery becomes possible.*

§§ 4279.79 - 4279.83 [Reserved]

§ 4279.84 Replacement of document.

(a) The Agency may issue a replacement Loan Note Guarantee or Assignment Guarantee Agreement that was lost, stolen, destroyed, mutilated, or defaced to the lender or holder upon receipt of an acceptable certificate of loss and an indemnity bond. *The Agency will consult with the Regional OGC to ensure that all documents are of legal sufficiency before the reissuance of a Loan Note Guarantee or Assignment Guarantee Agreement, unless the Regional OGC has directed otherwise.*

(b) When a Loan Note Guarantee or Assignment Guarantee Agreement is lost, stolen, destroyed, mutilated, or defaced while in the custody of the lender or holder, the lender must coordinate the activities of the party who seeks the replacement documents and submit the required documents to the Agency for processing. The requirements for replacement are as follows:

(1) A certificate of loss, notarized and containing a jurat, which includes:

(i) Name and address of owner;

(ii) Name and address of the lender of record;

(iii) Capacity of person certifying;

(iv) Full identification of the Loan Note Guarantee or Assignment Guarantee Agreement, including the name of the borrower, the Agency's case number, date of the Loan Note Guarantee or Assignment Guarantee Agreement, face amount of the evidence of debt purchased, date of evidence of debt, present balance of the loan, percentage of guarantee, and, if an Assignment Guarantee Agreement, the original named holder and the percentage of the guaranteed portion of the loan assigned to that holder. Any existing parts of the document to be replaced must be attached to the certificate;

(v) A full statement of circumstances of the loss, theft, destruction, defacement, or mutilation of the Loan Note Guarantee or Assignment Guarantee Agreement; and

§ 4279.84(b) (1) (Con.)

(vi) For the holder, evidence demonstrating current ownership of the Loan Note Guarantee and promissory note or the Assignment Guarantee Agreement. If the present holder is not the same as the original holder, a copy of the endorsement of each successive holder in the chain of transfer from the initial holder to present holder must be included. If copies of the endorsement cannot be obtained, best available records of transfer must be submitted to the Agency (e.g., order confirmation, canceled checks, etc.).

(2) An indemnity bond acceptable to the Agency must accompany the request for replacement except when the holder is the United States, a Federal Reserve Bank, a Federal corporation, a State or territory, or the District of Columbia. The bond must be with surety except when the outstanding principal balance and accrued interest due the present holder is less than \$1 million, verified by the lender in writing in a letter of certification of balance due. The surety must be a qualified surety company holding a certificate of authority from the Secretary of the Treasury and listed in Treasury Department Circular 570. *The indemnity bond must be kept in a locked, fire-resistant cabinet for safekeeping.*

(3) All indemnity bonds must be issued and payable to the United States of America acting through the Agency. The bond must be in an amount not less than the unpaid principal and interest. The bond must hold the Agency harmless against any claim or demand that might arise or against any damage, loss, costs, or expenses that might be sustained or incurred by reasons of the loss or replacement of the instruments.

(4) The Agency will not attempt to obtain, or participate in the obtaining of, replacement notes from the borrower. The holder is responsible for bearing the costs of note replacement if the borrower agrees to issue a replacement instrument. Should such note be replaced, the terms of the note cannot be changed. If the evidence of debt has been lost, stolen, destroyed, mutilated, or defaced, such evidence of debt must be replaced before the Agency will replace any instruments.

(5) *State Directors will review all documents when presented by the lender to ensure all requirements are met and will contact the Regional OGC for assistance to ensure all documents are legally sufficient before new guarantee instruments are issued.*

§ 4279.84(b) (Con.)

(6) *If the decision is to reissue the Loan Note Guarantee or Assignment Guarantee Agreement, the following procedure will be followed:*

(i) *If the multi-note system was used, a new Loan Note Guarantee will be prepared using the original face amounts and amounts guaranteed (not the outstanding loan balance). At the top of the form indicate that "This Loan Note Guarantee is issued to replace the original dated _____, which was lost, stolen, destroyed, defaced or mutilated." Only execute an original for the holder. Copies may be conformed for the lender and the Agency file.*

(ii) *If the single note system was used, a new Assignment Guarantee Agreement will be prepared using the original amount except the current principal amount of the loan outstanding should be inserted on the face of the document. At the top of the form indicate that "This Assignment Guarantee Agreement is issued to replace the original dated _____, which was lost, stolen, destroyed, defaced, or mutilated." Only execute an original for the holder. Copies may be conformed for the lender and the Agency.*

(iii) *The lender must execute the replacement forms prior to the Agency's execution of the same.*

§§ 4279.85 - 4279.99 [Reserved]

§ 4279.100 OMB control number.

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements contained in this subpart have been submitted to the Office of Management and Budget (OMB) under OMB Control Number 0570-0069 for OMB approval.

oOo

Repurchase from Holder Checklist

**Original Loan
Amount: \$**

Borrower:

GLS Assigned ID #:	Tax ID #:
---------------------------	------------------

Borrower:

Name:	
Address:	
Contact Name:	Email:
Phone #:	Fax #:

Lender:

Name:	
Address:	
Contact Name:	Email:
Phone #:	Fax #:

Holder:

Name:	
Address:	
Contact Name:	Email:
Phone #:	Fax #:

Item	Form # or Reference	Responsible Party	Received/ Completed
Holder requests repurchase from lender <ul style="list-style-type: none"> - Borrower is in default not less than 60 days on the loan, or lender has failed to remit payment to holder - Holder must concurrently provide a copy of the demand letter to the Agency - If the lender purchases the guarantee from the holder, no Agency action is required 	4279.78 (a)	Holder	
Lender does not repurchase the guaranteed portion	4279.78 (b) (1)	Lender	

<p>Holder supplies written demand for repurchase to Agency (Agency will repurchase within 30 days) Holder's request includes:</p> <ul style="list-style-type: none"> - Copy of written demand to lender; - Original LNG properly endorsed to Agency, or - Assignment Guarantee Agreement properly assigned to Agency; - Principal due - Interest due to demand date - Interest accruing subsequent to demand - Account ledger statement 	<p>4279.78 (b) (1) & (2)</p>	<p>Holder</p>	
<p>Agency notifies lender of holder's demand</p>	<p>4279.78 (b) (3)</p>	<p>Agency</p>	
<p>Lender provides Agency with:</p> <ul style="list-style-type: none"> - Principal due - Interest due to demand date - Interest accruing subsequent to demand - Account ledger statement 	<p>4279.78 (b) (3)</p>	<p>Lender</p>	
<p>Discrepancies must be resolved between Lender and Holder before Agency will repurchase</p> <ul style="list-style-type: none"> - Suspends 30 day payment requirement 	<p>4279.78 (b) (3)</p>	<p>Holder and Lender</p>	
<p>Holder issues transfer document subrogating all rights to Agency</p>	<p>4279.78 (b) (2)</p>	<p>Holder</p>	
<p>Send to DCFO:</p> <ul style="list-style-type: none"> - Form RD 1980-37 (signed - electronic signature acceptable) - Copy of the promissory note (pages that show rate, rate change & basis) - Account ledger from either the holder or the lender - Form RD 4279-6 - Copy of the holder's demand letter to the lender and Agency - Payment instructions - ACH (Routing & Account numbers) - Additional documents as requested. 		<p>Agency</p>	