

Position 5

Form 4279-4
(Rev. 4-97)

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL BUSINESS-COOPERATIVE SERVICE (RBS)

FORM APPROVED
OMB No.0570-0017

**LENDER'S AGREEMENT
BUSINESS AND INDUSTRY GUARANTEED
LOAN PROGRAM**

Participating Lender:	Tax Identification Number:
Business Address:	Telephone Number:

Complete the appropriate box indicating lender status in business and industry program.

- Regular Lender Program
- Certified Lender Program

I. General Provisions

A. Purpose.

The participating lender ("Lender") is designated as a Lender for the purpose of processing and requesting Loan Note Guarantees authorized under 7 C.F.R. part 4279, and servicing those loans as authorized herein and under 7 C.F.R. part 4287. The Lender enters into this agreement as a condition for obtaining the guarantees.

The United States of America, acting through the United States Department of Agriculture ("USDA"), agrees to enter into Loan Note Guarantees with the Lender issued pursuant to the regulations for Business and Industry Loans, and to participate in a percentage of any loss on any such loans not to exceed the amount established in the Loan Note Guarantee. The terms of any Loan Note Guarantee are controlling.

B. Full Faith and Credit.

The guarantee is supported by the full faith and credit of the United States and is incontestable except under the circumstances of fraud or misrepresentation of which the Lender has actual knowledge at the execution of the guarantee or of which the Lender participates in or condones.

The Loan Note Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which USDA acquires knowledge of the foregoing. Any losses will be unenforceable by the Lender to the extent that loan funds are used for purposes other than those specifically approved by USDA in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent Lender would act up to the time of loan maturity or until a final loss is paid.

II. Loan Origination

A. The Lender agrees loan funds will be used for the purposes authorized in 7 C.F.R. part 4279 in accordance with the terms of Form 4279-3, "Conditional Commitment for Guarantee".

B. The Lender certifies that none of its officers or directors, stockholders, or other owners (except stockholders in a Farm Credit Bank or other Farm Credit System ("FCS") Institution with direct lending authority that have normal stock or share requirements for participation) has a substantial financial interest in the Borrower. The Lender certifies that neither the Borrower nor its officers or directors, stockholders or other owners has a substantial financial interest in the Lender. If the Borrower is a member of the board of directors or an officer of a Farm Credit Bank or other FCS Institution with direct lending authority, the Lender certifies that an FCS institution on the next highest level will independently process the loan request and will act as the Lender's agent in servicing the account.

C. The Lender will certify to USDA, prior to issuance of the Loan Note Guarantee for each loan, that there has been neither any material adverse change in the borrower's financial condition, nor any other material adverse change in the borrower, for any reason, during the period of time from the Agency's issuance of the Conditional Commitment for Guarantee to issuance of the Loan Note Guarantee regardless of the cause or causes of the change and whether the change or causes of the change were within the Lender's or Borrower's control. The Lender's certification must address all adverse changes of the Borrower, any parent, affiliate, or subsidiary of the Borrower, and guarantors.

D. Lender certifies that a loan agreement or loan instruments concurred in by USDA has been or will be signed with the Borrower.

E. Lender will submit the required guarantee fee with Form FmHA 1980-19, "Guaranteed Loan Closing Report" at the time Form 4279-5, "Loan Note Guarantee" is issued.

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0170. The time required to complete this information is estimated to average 1-1/2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This form is the signed agreement between USDA and the lender setting forth the lender's loan responsibilities. This form will be executed to designate participating lenders for the purpose of processing and requesting Loan Note Guarantees authorized under RBS Instructions 4279-A and B and servicing those loans under RBS Instruction 4287-B. This form will be used for lenders participating in the Certified Lender program and the regular program. The form is executed on a lender by lender basis rather than a loan by loan basis.

(see reverse)

PROCEDURE FOR PREPARATION : Instructions 4279-A and 4279-B.

PREPARED BY : RBS.

NUMBER OF COPIES : Original and two copies.

SIGNATURE REQUIRED : Original - Lender, State Director or designee.

DISTRIBUTION OF COPIES : Original to State Office Lender file. Copy to case file. Copy to Lender.

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III. Lender's Sale or Assignment of Guaranteed Loan

- A. The Lender may retain all of the guaranteed loan. The Lender is not permitted to sell or participate in any amount of the guaranteed or unguaranteed portions of the loans to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. 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 as set forth in the terms of the notes. The Lender may proceed under the following options:
1. **Assignment.** Assign all or part of the guaranteed portion of the loan to one or more holders by using Form 4279-6, "Assignment Guarantee Agreement". Holders, upon written notice to Lender and USDA, may reassign the unpaid guaranteed portion of the sold thereunder. Upon notification and completion of the assignment through the use of Form 4279-6, "Assignment Guarantee Agreement," the assignee shall succeed to all rights and obligations of the Holders thereunder. If this option is selected, the Lender may not a later date cause to be issued any additional notes.
 2. **Multi-Note System.** When this option is selected by the Lender, upon disposition the Holder will receive one of the Borrower's executed notes and Form 4279-5, "Loan Note Guarantee," attached to the Borrower's note. However, all rights under the security instruments (including personal and corporate guarantees) will remain with the Lender and in all cases insure to its and the Government's benefit notwithstanding any contrary provisions of law.
 - a. **At Loan Closing:** Provide for no more than 10 notes, unless the Borrower and USDA agree otherwise, for the guaranteed portion and one note for the unguaranteed portion. When this option is selected, USDA will provide the Lender with a Form 4275-5, for each of the notes.
 - b. **After Loan Closing:**
 - (1) Upon written approval by USDA, the Lender may cause to be issued a series of new notes, not to exceed the total provided in 2.a. above, as replacement for previously issued guaranteed notes provided:
 - (a) The Borrower agrees and executes the new notes.
 - (b) The interest rate does not exceed the interest rate in effect when the loan was closed.
 - (c) The maturity of the loan is not changed.
 - (d) USDA will not bear or guarantee any expenses that may be incurred in reference to such reissue of notes.
 - (e) There is adequate collateral securing the notes.
 - (f) No intervening liens have arisen or have been perfected and the secured lien priority remains the same.
 - (g) All holders agree USDA will issue the appropriate Loan Note Guarantees to be attached to each of the notes then extant in exchange for the original Loan Note Guarantee which will be cancelled by USDA.
 3. **Participations.**
 - a. The Lender may obtain participation in its loan under its normal operating procedures. Participation means a sale of an interest by the Lender in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.
 - b. The Lender is required to hold in its own portfolio or retain a minimum of 5% of the total guaranteed loan amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another. The Lender may sell the remaining amount of the unguaranteed portion of the loan, only through participation. However, the Lender will always retain the responsibility for loan servicing and liquidation.
- B. When a guaranteed portion of a loan is sold by the Lender to a Holder, the Holder shall thereupon succeed to all rights of Lender under the Loan Note Guarantee to the extent of the portion of the loan purchased. Lender will remain bound to all the obligations under the Loan Note Guarantee, and this agreement, and the USDA program regulations found in 7 C.F.R. part 4279 and to future USDA program regulations not inconsistent with the express provisions hereof.
- C. The Holder upon written notice to the Lender may resell the unpaid guaranteed portion of the loan sold under section III A.

IV. Servicing

- A. The Lender will service the entire loan and will remain mortgagee and secured party of record, notwithstanding the fact that another may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. Lender may charge Holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan.
- B. It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; and that periodic inspections during construction are made.
- C. **Lender's servicing responsibilities include, but are not limited to:**
1. Obtaining compliance with the covenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements and notifying in writing USDA and the Borrower of any violations. None of the aforesaid instruments will be altered without USDA's prior written concurrence. The Lender must service the loan in a reasonable and prudent manner.
 2. Receiving all payments on principal and interest on the loan as they fall due and promptly remitting and accounting to any Holder of its *pro rata* share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. The loan may be reamortized, renewed or rescinded only with agreement of the Lender and Holder of the guaranteed portion of the loan and only with USDA's written concurrence.
 3. Inspecting the collateral as often as necessary to properly service the loan.

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4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.
5. Assuring that: taxes, assessment or ground rents against or affecting collateral are paid; the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation, insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based; proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature and at least equal value for which the lender will obtain a lien position equal or superior to the position previously held and obtain the written approval of USDA when the cumulative value is in excess of 20 percent of the original loan; the Borrower complies with all laws and ordinances applicable to the loan, the collateral and operation of the business.
6. Assuring that if personal or corporate guarantees are part of the collateral, current financial statements from such loan guarantors will be obtained and copies provided to USDA at such time and frequency as required by the loan agreement or Conditional Commitment for Guarantee. In the case of guarantees secured by collateral, assuring the security is properly maintained.
7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by USDA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by USDA.
8. Assuring that the Borrower obtains marketable title to the collateral.
9. Assuring that any party liable is not released from liability for all or any part of the loan, except in accordance with USDA regulations.
10. Providing Finance Office with loan status reports semiannually as of June 30 and December 31 on Form FmHA 1980-41, "Guaranteed Loan Status Report."
11. Obtaining from the Borrower periodic financial statements as required in the loan agreement with the borrower. At a minimum, annual financial statements must be forwarded by the lender, with a credit analysis, to the USDA servicing office within 120 days of Borrowers fiscal year end.
12. Ensuring that the borrower complies with the measures identified in the Government's environmental impact analysis for this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation. The Lender will monitor the use of loan funds to assure they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, see 7 C.F.R. part 1940.

V. Default

A. The Lender will notify USDA when a Borrower is thirty (30) days past due on a payment or if the Borrower is otherwise in default. The Lender will notify USDA of the status of a Borrower's default on Form FmHA 1980-44 "Guaranteed Loan Borrower Default Status." Actions taken by the Lender with written concurrence of USDA will include but are not limited to the following or any combination thereof:

1. Deferment of principal payments (subject to rights of any Holder).
2. An additional temporary loan by the Lender to bring the account current.
3. Reamortization of or rescheduling the payments on the loan (subject to rights of any Holder).
4. Transfer and assumption of the loan in accordance with the applicable subpart of 7 C.F.R. part 4287.
5. Reorganization.
6. Liquidation.
7. Subsequent loan guarantees.

B. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder within 30 days of written demand by the Holder when: (a) the Borrower is in default not less than 60 days in payment of principal or interest due on the loan or (b) the Lender has failed to remit to the Holder its pro rata share of any payment made by the Borrower within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of the principal and accrued interest less the Lender's servicing fee.

The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder will concurrently send a copy of demand to USDA. The Lender will accept an assignment without recourse from the Holder upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder and USDA of its decision.

C. If Lender does not repurchase as provided by paragraph B, USDA will purchase from Holder the unpaid principal balance of the guaranteed portion herein together with accrued interest to date of repurchase, less Lender's servicing fee, within 30 days after written demand upon USDA from the Holder. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loan accruing after 90 days from the date of original demand letter of the Holder to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender.

The Holder or its duly authorized agent will also include evidence of its right to require payment from USDA. Such evidence will consist of either the originals of the Loan Note Guarantee and note properly endorsed to USDA or the original of the Assignment Guarantee Agreement properly assigned to USDA without recourse including all rights, title, and interest in the loan. USDA will be subrogated to all rights of Holder. The Holder will 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. Unless otherwise agreed to by USDA, such proposed payment will not be later than 30 days from the date of the demand.

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The USDA office serving the Borrower will promptly notify the Lender of the Holder's demand for payment. The Lender will promptly provide the USDA office servicing the Borrower with the information necessary for USDA's determination of 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 before payment will be approved. USDA will notify both parties who must resolve the conflict before payment by USDA will be approved. Such a conflict will suspend running of the 30 day payment requirement. Upon receipt of the appropriate information, the USDA office servicing the Borrower will review the demand for verification.

- D. Lender consents to the purchase by USDA and agrees to furnish on request by USDA 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 due the Holder. Lender agrees that any purchase by USDA does not change, alter or modify any of the Lender's obligations to USDA arising from said loan or guarantee, nor does such purchase waive any of the USDA's rights against Lender, and USDA will have the right to set-off against Lender all rights inuring to USDA from the Holder against USDA's obligation to Lender under the Loan Note Guarantee, to the extent USDA holds a portion of the loan.
- E. Servicing fees assessed by the Lender to a Holder are collectible only from payment installments received by the Lender from the Borrower. When USDA repurchases from a Holder, USDA will pay the Holder only the amounts due the Holder. USDA will not reimburse the Lender for servicing fees assessed to a Holder and not collected from payments received from the Borrower. No servicing fee shall be charged USDA and no such fee is collectible from USDA.
- F. Lender may also repurchase the guaranteed portion of the loan for servicing consistent with the Loan Note Guarantee.

VI. Liquidation

If the Lender concludes pursuant to USDA regulations that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time liquidation may be considered. If the Lender concludes that liquidation is necessary, it must request USDA's concurrence. When USDA concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

- 1. The Lender will liquidate the loan unless USDA, at its option, decides to carry out liquidation.
- 2. When the decision to liquidate is made, the Lender may proceed to purchase from the Holder the guaranteed portion of the loan. The Holder will be paid according to the provisions in the Loan Note Guarantee or the Assignment Guarantee Agreement.
- 3. If the Lender does not purchase the guaranteed portion of the loan, USDA will be notified immediately in writing. USDA will then purchase the guaranteed portion of the loan from the Holder. If USDA holds any of the guaranteed portion, USDA will be paid first its pro rata share of the proceeds from liquidation of the collateral.
- A. Lender's proposed method of liquidation. Within 30 days after the decision to liquidate, the Lender will advise USDA in writing of its proposed detailed method of liquidation ("liquidation plan") and will provide USDA with:
 - 1. Such proof as USDA requires to establish the Lender's ownership of the guaranteed loan promissory notes and related security instruments.
 - 2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, and advice as to whether or not each item is serving as collateral for the guaranteed loan.
 - 3. A proposed method of making the maximum collection possible on the indebtedness.
 - 4. If the outstanding principal loan balance including accrued interest is less than \$200,000, the Lender will obtain an estimate of the market and potential liquidated value of the collateral. On loan balances in excess of \$200,000, the Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. All real property appraisals with Agency guaranteed loanmaking and servicing transactions will meet the requirements set forth by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") and appropriate guidelines set forth in Standards 1 and 2 of the Uniform Standards of Professional Appraisal Practices ("USPAP"). Chattels will be evaluated in accordance with normal banking practices and generally accepted methods of determining value. The appraisal report is for the purpose of permitting the Lender and USDA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by USDA and the Lender.
- B. USDA will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such notification from the Lender. If USDA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should USDA and the Lender not agree on the Lender's liquidation plan, negotiations will take place between USDA and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should USDA determine that USDA will conduct the liquidation, the parties will proceed as follows:
 - 1. The Lender will transfer to USDA all rights and interest necessary to allow USDA to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by USDA.
 - 2. USDA will attempt to obtain the maximum amount of proceeds from liquidation.
 - 3. Options available to USDA include any one or combination of the usual commercial methods of liquidation.
- C. Acceleration. The Lender or USDA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the acceleration notice or other acceleration document will be sent to USDA or the Lender, as the case may be.
- D. Liquidation: Accounting and Reports. When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide USDA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs and additional procedures necessary for successful completion of liquidation. The Lender will transmit to the Agency the *pro rata* share, of any payments received from the Borrower, and of liquidation or other proceeds, etc. when USDA is the holder of a portion of the guaranteed loan using Form 1980-43, "Lender's Guaranteed Loan Payment to FmHA." When USDA liquidates, the Lender will be provided with similar reports on request.

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- E. **Determination of Loss and Payment.** In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. USDA will have the right to recover losses paid under the guarantee from any party liable.
1. Form FmHA 449-30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final loss determinations. Estimated loss payments may be approved by USDA after the Lender has submitted a liquidation plan approved by USDA. Payments will be made in accordance with applicable USDA regulations.
 2. When the Lender is conducting the liquidation, and owns any of the guaranteed portion of the loan, it may request a tentative loss estimate by submitting to USDA an estimate of loss that will occur in connection with liquidation of the loan. USDA will agree to pay an estimated loss settlement to the Lender provided the Lender applies such amount due to the outstanding principal balance owed on the guaranteed debt. Such estimate will be prepared and submitted by the Lender on Form FmHA 449-30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral. The Lender will discontinue interest accrual on the defaulted loan and the loss claim will be promptly processed in accordance with the applicable USDA regulations. After the Report of Loss estimate has been approved by USDA, and within 30 days thereafter, USDA will institute procedures to cause the issuance of payment of the estimated amount due the Lender. After liquidation has been completed, a final loss report will be submitted on Form FmHA 449-30 by the Lender to USDA.
 3. Within 30 days after liquidation of the collateral is completed, a final report of loss on Form FmHA 449-30 must be prepared and submitted by the Lender to USDA. USDA will not guarantee interest beyond this 30-day period other than for the period of time it takes USDA to process the loss claim. Before approval by USDA of any final loss report, the Lender must account for all funds during the period of liquidation, disposition of collateral, all costs incurred and any other information necessary for the successful completion of liquidation. Upon receipt of the final accounting and report of loss, USDA may audit the account and will determine the final loss. The Lender will make its records available to and otherwise assist USDA in making any audit. The documentation accompanying the report of loss must support the figures shown on Form FmHA 449-30.
 4. When the Lender has conducted liquidation and after the final report of loss has been tentatively approved:
 - a. If the loss is greater than the estimated loss payment, USDA will cause a Treasury check to be issued in payment of the additional amount owed by USDA to be issued to the Lender.
 - b. If the loss is less than the estimated loss, the Lender will reimburse USDA for the overpayment plus interest at the note rate from date of payment.
 5. If USDA has conducted liquidation, it will provide an accounting and report of loss to the Lender and will pay the Lender in accordance with the Loan Note Guarantee.
 6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by USDA when the final report of loss is approved.
- F. **Maximum amount of interest loss payment.** Notwithstanding any other provisions of this agreement, the amount payable by USDA to the Lender cannot exceed the limits set forth in the Loan Note Guarantee. If USDA conducts the liquidation, any loss occasioned by accruing interest will be covered to the extent of the guarantee to the date USDA accepts this responsibility. Loss occasioned by accruing interest will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by USDA.
- G. **Application of USDA loss payment.** The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by USDA will be applied by the Lender on the guaranteed portion of the loan debt. However, such application does not release the Borrower from liability. At time of final loss settlement the Lender will notify the Borrower that the loss payment has been so applied. In all cases a final Form FmHA 449-30 prepared and submitted by the Lender must be processed by USDA.
- H. **Income from collateral.** Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.
- I. **Liquidation costs.** Certain reasonable liquidation costs will be allowed during the liquidation process. A schedule of the liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with USDA written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will obtain USDA's written concurrence prior to proceeding with the proposed changes.
- J. **Foreclosure.** The Lender is responsible for determining who the necessary parties are to any foreclosure action or who should be named on a deed of conveyance taken in lieu of foreclosure. When the conveyance is received and the property is liquidated, the net proceeds will be applied to the guaranteed loan debt. If USDA has repurchased the guaranteed portion of the loan from the Holder, the Lender must obtain USDA's concurrence to any foreclosure action to be taken by the Lender; however, USDA will not be considered to be a necessary party to the action or otherwise required to join in.
- K. **Payment.** Such loss will be paid by USDA within 60 days after the review of the accounting of the collateral.
- L. **Protective Advances.** Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instruments. USDA's written authorization is required for all protective advances in excess of \$5,000. Protective advances include but are not limited to advances made for property taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.
- M. **Future Recovery.** After a loan has been liquidated and a final loss has been paid by USDA, any future funds which may be recovered by the Lender, will be prorated between USDA and the Lender. USDA will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amounts in proportion to the percentage of the unguaranteed portion of the loan.

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- N. **Transfer and Assumption Cases.** Refer to 7 C.F.R. part 4287. If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantees) is released from personal liability, the Lender, if it holds the unguaranteed portion, may file an estimated report of loss on Form FmHA 449-30, "Loan Note Guarantee Report of Loss," to recover its *pro rata* share of the actual loss at that time. In completing Form FmHA 449-30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the transferee, will be entered on Form FmHA 449-30, line 13 and 14.

VII. Bankruptcy

- A. The Lender is responsible for protecting the guaranteed loan and all collateral securing the loan in bankruptcy proceedings. When a bankruptcy proceeding results in ultimate liquidation of the borrower, legal expenses incurred by the lender during the bankruptcy proceedings will be considered eligible liquidation costs. When a bankruptcy results in a reorganization of the borrower, including a reorganization that results in a write down of the debt, legal expenses during the bankruptcy will be shared equally by USDA and the lender. When the loan is involved in reorganization bankruptcy proceedings, payment of loss claims may be made as provided in this section. For a liquidation proceeding only paragraphs 3 and 5 of this section are applicable.

B. Loss Payments.

1. Estimated Loss Payments.

- a. If a borrower has filed for reorganization and protection under Title 11 of the United States Code and the debt has been reduced, the Lender will request a tentative estimated loss payment of accrued interest and principal written off under the order of the court. This request can only be made after the bankruptcy plan is confirmed. Only one estimated loss payment is allowed during the bankruptcy process. All subsequent claims during reorganization will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by USDA, at its option, in accordance with any court approved changes in the reorganization plan. At the time the performance under the confirmed reorganization plan has been completed, the Lender is responsible for providing USDA with the documentation necessary to review and adjust the estimated loss claim to (a) reflect the actual principal and interest reduction on any part of the guaranteed debt determined to be unsecured and (b) to reimburse the Lender for any court ordered interest rate reduction during the term of the reorganization.
- b. The Lender will use Form FmHA 449-30, "Loan Note Guarantee Report of Loss," to request an estimated loss payment and to review estimated loss payments during the course of the reorganization plan. The estimated loss claim as well as any revisions to this claim will be accompanied by applicable legal documentation to support the claim.
- c. Upon completion of the reorganization plan, the Lender will complete Form FmHA 1980-44, "Guaranteed Loan Borrower Default Status," and forward this form to the Finance Office to indicate that the bankruptcy has been dismissed.

2. Interest Loss Payments.

- a. Interest loss payments sustained during the period of the reorganization plan will be processed in accordance with section VII B1.
- b. Interest loss payments sustained after the reorganization plan is confirmed will be processed annually when the Lender sustains a loss as a result of a permanent interest rate reduction.
- c. Form FmHA 449-30 will be completed to compensate the Lender for the difference in interest rates specified on the Loan Note Guarantee and the rate of interest ordered by and in accordance with final order of a court of competent jurisdiction.

3. Final Loss Payments.

Payments will be processed when the loan is liquidated.

4. **Payment Application.** The Lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event the court attempts to direct the payments to be applied in a different manner, the Lender will immediately notify the USDA servicing office.

5. **Overpayments.** Upon completion of the reorganization plan, the Lender will provide USDA with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained, as a result of the reorganization, is greater than the estimated loss payment, the Lender will submit a revised estimated loss in order to obtain payment of the addition amount owed by USDA to the Lender. If the actual loss payment is less than the estimated loss, the Lender will reimburse USDA for the overpayment plus interest at the note rate from the date of the payment of the estimated loss.

6. **Protective Advances.** If approved protective advances were made prior to the borrower having filed bankruptcy as a result of prior liquidation action, these protective advances and accrued interest will be entered on Form FmHA 449-30.

VIII. Duration and Modification

1. **Duration of Agreement.** This Lender's Agreement applies to all Business and Industry ("B&I") guaranteed loans made by the Lender from the date of this agreement until terminated or superceded by another Lender's Agreement.
2. **Modification of Agreement.** This Agreement may only be modified only in writing.
3. **Other Requirements.** This agreement is subject to all requirements of the applicable subpart of 7 C.F.R. parts 4279 and 4287 in effect on the date of this agreement.
4. All forms required by this agreement may be obtained from any Rural Development State or local office.

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IX. Endorsement

Lender: Complete this block of Section IX.

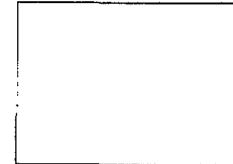
LENDER _____
(Name)

By: _____
(Signature)

(Name Typed or Printed)

Title: _____

Date: _____



Attest: _____

This block of Section IX will be completed by USDA.

UNITED STATES OF AMERICA
Department of Agriculture

By: _____
(Signature)

Title: _____

(Name Typed or Printed)

Date: _____