

RD AN No. 3973 (4279-A)
April 26, 2004

SUBJECT: Business and Industry Guaranteed Loan Program
Reassigning Guaranteed Loans Under the Single Note Option

TO: State Directors, Rural Development

ATTN: Business Programs Directors

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to provide guidance concerning acceptable methods for reassigning holders' interests in guaranteed loans when the Single Note Option is used.

COMPARISON WITH PREVIOUS AN:

This AN replaces RD AN No. 3843, that expired dated March 31, 2003, and provides additional direction.

IMPLEMENTATION RESPONSIBILITIES:

After further review of this subject, it has been determined that there is no conflict between the requirements of governing regulations and the established practice in the secondary market. It has been determined that a new Assignment Guarantee Agreement does not have to be executed to effect a reassignment.

RD Instruction 4279-A, section 4279.75(a), states that the assignment must be accomplished through the use of Form 4279-6, "Assignment Guarantee Agreement." The regulations provide little other guidance for reassignments. The Bond Market Association (BMA) developed recommended settlement procedures to effect the

EXPIRATION DATE:
April 30, 2005

FILING INSTRUCTIONS:
Preceding RD Instruction 4279-A

subsequent assignment (sale) of the guaranteed portion of a loan from a holder to another holder. These procedures are entitled “Transfer Document for USDA Government-Guaranteed Loans Sold Through the Assignment Method” (Transfer Document). We have attached a copy to this AN for your reference.

These settlement procedures call for new original Transfer Documents to be used each time the Assignment Guarantee Agreement is sold and the original executed Assignment Guarantee Agreement is passed from holder to holder. Therefore, the reassignment is completed through the use of the Assignment Guarantee Agreement, and the established practice in the secondary market conforms to the regulations. Do not reissue Form 4279-6, “Assignment Guarantee Agreement,” to effect a reassignment.

These settlement procedures direct the holder or its agent to send you an original copy of the Transfer Document each time a reassignment is completed. This is consistent with the Agency definition of holder found in RD Instruction 4279-A, section 4279.2, which states that the assignee becomes a holder only when the Agency receives notice of the reassignment. When you receive notice, you should update the Guaranteed Loan System accordingly.

When a holder makes demand on the Agency to repurchase, RD Instruction 4279-A, section 4279.78(b)(2), directs the holder to present the original Assignment Guarantee Agreement to the Agency. You must receive the original executed document. Attached to that form should also be an original of each transfer document in the chain of ownership, the latest of which assigns the Assignment Guarantee Agreement to the Agency.

Because regulations do not require the use of any particular transfer documents, we cannot require the holder to use the BMA documents. In the unlikely event that a holder uses other documents, the documentation must provide you with sufficient information to determine that the holder is the rightful owner of the Assignment Guarantee Agreement. If documents other than the BMA documents are used, please ensure that they contain the same information as the BMA document. The BMA settlement procedures went into effect February 1, 2001, so you may see previous versions. If it appears that a sale was not completed properly or you are not comfortable with a transaction, obtain the advice of the National Office.

Neither the regulations nor these settlement procedures allow for a holder to subdivide the Assignment Guarantee Agreement or to retain an interest strip. When a lender receives a loan payment, RD Instruction 4279-A, section 4279.72(c), directs the lender to remit to the holder its pro rata share less only the lender’s servicing fee. The Agency has no contractual liability to repurchase from anyone who cannot present the original Assignment Guarantee Agreement (for single note loans). If you become aware that a holder has split an assignment or retained an interest strip, advise all the parties involved to reverse or modify the transaction. If this is not possible, request assistance from the National Office.

If you have any questions, please contact the, Business and Industry Division,
(202) 690-4103.

(Signed by John Rosso)

JOHN ROSSO
Administrator
Rural Business-Cooperative Service

Attachment

- b. For factored SBA pool certificates, unless the parties otherwise agree, “regular way” settlement effected via DTCC shall be T+3 unless otherwise specified.
- c. For trades with a settlement date prior to the record date, but with delivery and payment occurring between the record date and payable date, delivery must be accompanied by a due bill. Due bill procedures are generally set forth in Chapter 10 of the *Uniform Practices*.

G. Delivery Requirements for United States Department of Agriculture (USDA) Government-Guaranteed Loan Programs

1. General Delivery Requirements

- (a) These guidelines are effective with trades executed as of February 1, 2001.
- (b) All loans must be properly closed and fully disbursed prior to the secondary market settlement date.
- (c) Whiteouts, markouts and cross-throughs are not permitted except where necessary to bring agency forms into compliance with Year 2000 date requirements.¹

2. Delivery Requirements for Guaranteed Loans Sold Through the Assignment Method.

- a. Documentation to be included in all transaction packages:
 - i. Assignment of Guarantee

Agency	Form Name	Form #
Farm Service Agency	Assignment of Guarantee	FSA-1980-36
Rural Business-Cooperative Service	Assignment Guarantee Agreement	RBS-4279-6
Rural Utility Service	Assignment Guarantee Agreement	RD-449-36
Rural Housing Service: Community Facility	Assignment Guarantee Agreement	RD-449-36

- (1) This form must be the current agency-issued document;
- (2) All signatures must be original signatures. No copies or facsimile signatures are acceptable;
- (3) No whiteouts, markouts, cross-throughs or any other method of correction may be used; and
- (4) The original signatures of the lender and the holder must be affixed to the signature page and the corporate seal affixed, if available.

¹ Prior to the effective date of this guideline, the use of whiteouts, markouts and cross-throughs were acceptable except in paragraphs relating to amounts, servicing or loan identification number. Forms containing modifications, that were acceptable prior to the current effective date continue to be eligible for good delivery.

ii. The Note

The Note, as defined in the applicable agency regulations, must be a copy. Any modifications to the original promissory note must accompany the Note. In addition, agency approval is required for any change that is dated subsequent to the date of the loan note guarantee.

iii. Loan Guarantee

Agency	Form Name	Form #
Farm Service Agency	Loan Guarantee	FSA-1980-27
Rural Business-Cooperative Service	Loan Note Guarantee	RBS-4279-5
Rural Utility Service	Loan Note Guarantee	RD-449-34
Rural Housing Service: Community Facility	Loan Note Guarantee	RD-449-34

The Loan Guarantee/Loan Note Guarantee must be an executed and signed copy.

iv. Certificate of Incumbency and Signature

The Certificate of Incumbency and Signature is no longer required for good delivery. This guideline applies to new-issue loans, as well as to outstanding loans which previously required a Certificate of Incumbency and Signature in order to be traded in the secondary market.

v. Transfer Document

A transfer document (see Exhibit A) assigning the loan to the purchaser must be executed for all subsequent sales into the secondary market. The transfer document must state at a minimum the following:

- (1) The effective date of transfer;
- (2) A certification of the balance of the guaranteed portion, which must be produced upon request of the purchaser;
- (3) The date from which accrued interest begins;
- (4) A recitation of the prepayment penalty as listed in the note; and
- (5) Disclosure as to the percentage of prepayment penalty being passed on to the holder of record.

No whiteouts, markouts, cross-throughs or any other method of correction may be used. In addition, all signatures must be original signatures. No copies or facsimile signatures are acceptable.

3. Delivery Requirements for Guaranteed Loans Sold Through the Use of the Multi-Note Option.

- a. Documentation to be included in all transaction packages:

i. Loan Note Guarantee

Agency	Form Name	Form #
Rural Business-Cooperative Service	Loan Note Guarantee	RBS-4279-5
Rural Utility Service	Loan Note Guarantee	RD-449-34
Rural Housing Service: Community Facility	Loan Note Guarantee	RD-449-34

- (1) These forms must be the current agency-issued document;
- (2) All signatures must be original signatures. No copies or facsimile signatures are acceptable; and
- (3) No whiteouts, markouts, cross-throughs or any other method of correction may be used.

ii. The Note

- (1) This form must be the original;
- (2) All signatures must be the original signatures. No copies or facsimile signatures are acceptable; and
- (3) No whiteouts, markouts, cross-throughs or any other method of correction may be used.

iii. The Assignment and Servicing Agreement

- (1) This lender prepared form must be the original;
- (2) All signatures must be the original signatures. No copies or facsimile signatures are acceptable;
- (3) Must define the pass through of any lender prepayment penalty;
- (4) No whiteouts, markouts, cross-throughs or any other method of correction may be used;
- (5) This document must be of a form approved by The Bond Market Association. (see Exhibit B.)

iv. Certificate of Incumbency and Signature

The Certificate of Incumbency and Signature is no longer required for good delivery. This guideline applies to new-issue loans, as well as to outstanding loans which previously required a Certificate of Incumbency and Signature in order to be traded in the secondary market.

v. Transfer Document

A properly executed Transfer Document (see Exhibit C) approved by The Bond Market Association assigning the loan to the purchaser. The Assignment Agreement must state the following:

- (1) Effective date of transfer;
- (2) A certification of the balance of the guaranteed portion, which must be produced upon request of the purchaser;
- (3) The date from which accrued interest begins;
- (4) A recitation of the prepayment penalty as listed on the note; and
- (5) Disclosure as to the percentage of prepayment penalty being passed on to the Holder of Record.

No whiteouts, markouts, cross-throughs or any other method of correction may be used. In addition, all signatures must be original signatures. No copies or facsimile signatures are acceptable.

H. Deliveries in Physical Form

1. Delivery

- a. In addition to the delivery requirements listed below, physical deliveries of structured products are also subject to the physical delivery requirements listed in Chapter 11, "Delivery, Receipt and Reclamation."
- b. Physical deliveries of ABS, CMOs and Strips of less than \$1,000,000 are subject to minimum certificate denominations as stated in the offering documentation. Deliveries of \$1,000,000 or greater should be done in million-dollar increments, unless otherwise agreed to by both parties.
- c. Physical ABS, CMOs or Mortgage Strips that are new issues should be delivered to the initial Buyer on the date of issue within one hour after closing, but not later than 5:00 p.m. E.T. If delivery is after 3:00 p.m., a telephone call should be placed to the initial buyer stating the anticipated time of delivery.
- d. Physical residual securities require representation letters signed by the Purchaser. These letters are required to ensure that the Purchaser is fully aware of the risks and tax consequences of these securities.

2. Payment for ABS, CMOs and Strips Delivered in Physical Form

- a. ABS, CMOs and Mortgage Strips that are delivered in physical form must be paid for in Fed funds (cash available on the same day).

I. Restricted Securities Settlement Procedures

Restricted Securities are securities that are limited under the federal securities laws in terms of the time and manner in which they may be resold. In order to preserve their status as "exempt transactions" under the federal securities laws, transfers of Restricted Securities typically require written representations by either the Purchaser, the Seller or both, to document that the Purchaser is qualified or eligible to purchase the securities. A legal opinion may also be required in order to effect a proper transfer. The parties to a Restricted Securities transaction should consult, as

Exhibit 9-A (Sample)
Transfer Document for USDA Government-Guaranteed Loans
Sold Through the Assignment Method

Assignee Name: _____
Address: _____

USDA Loan Name: _____
USDA Loan Number: _____
Accrued Interest Begins: _____
Net Interest Rate: _____

For value received, _____ hereby assigns to ASSIGNEE without recourse all of its right, title and interest in and to the Guaranteed portion of the above-referenced UNITED STATES DEPARTMENT OF AGRICULTURE (USDA) Loan.

This assignment, or sale, is made under and subject to the terms and conditions of the Assignment of Guarantee and Loan Guarantee as indicated below:

Table with 2 columns: Assignment of Guarantee/Assignment Guarantee Agreement and Loan Guarantee/Loan Note Guarantee. Rows include FSA-1980-36, RBS-4279-6, RD-449-36 and their corresponding loan guarantee codes.

Enclosed are the following supporting loan documents:

- [1] A copy of the Borrower's Note
[2] A copy of the Loan Guarantee
[3] The original Assignment of Guarantee

On _____, the effective date of the reassignment of this loan to ASSIGNEE, the balance of the Guaranteed Portion of this loan was \$ _____.

_____ agrees that it shall have no further right to retain payments on the Guaranteed Portion of this loan and agrees to forward to ASSIGNEE any such payments received by it subsequent to date hereof. The effective date of transfer and assignment of the guaranteed portion described above is hereby declared to be the date hereof.

Subsequent to the transfer, the ASSIGNEE shall provide an original executed Transfer Document to the originating Lender and to the appropriate office of the USDA. One (1) original executed Transfer Document must be retained with the original loan documentation package.

Should it become necessary for you to communicate with the USDA, please send all correspondence to the following address: _____

The Servicing Lender, at the following address, will provide servicing of the loan:

As provided in the Assignment of Guarantee, a servicing fee in the amount therein set forth will be retained by the originating Lender.

As provided in the note, a prepayment penalty, defined as: _____ will be collectable by the Lender.

In the event of collection and retention of that prepayment penalty by the Lender, a distribution will be passed on to the Holder of Record as follows: _____
_____.

Upon receipt of the executed Transfer Document by the Lender, remittance of principal and interest will be forwarded directly to you.

If we can be of further service, please do not hesitate to call us.

Sincerely,

By: _____
Title: _____

_____ (Holder-Assignee) hereby acknowledges that it has read the enclosed documentation, and fully accepts and assumes each right, obligation and commitment of the Holder of the guaranteed portion of the above-described loan under said documents. The ASSIGNEE further acknowledges that the guarantee of USDA relates to the unpaid principal balance and interest owed by the borrower, and that any premium paid by the ASSIGNEE is not covered by USDA's guarantee and is subject to loss in the event of prepayment or default.

Holder: _____ Tax I.D. No.: _____
By: _____ Title: _____

Exhibit 9-B (Sample)
Assignment and Servicing Agreement
USDA Government Guaranteed Loans Sold Through the Multi-Note Option

USDA Loan Identification Number

_____ of _____ Lender
has made a loan to _____ in the
principal amount of \$ _____ as evidenced by a note dated _____.
The United States of America, acting through the U.S. Department of Agriculture (USDA), entered into a
Loan Note Guarantee (Form # _____) with the Lender applicable to such loan on _____.
_____ of _____ (Holder)
desires to purchase from Lender 100 percent of the note as documented by the attached original Borrower's
note and the original Loan Note Guarantee.

Now, therefore, the parties agree:

- 1) The principal amount of the loan now outstanding is \$ _____.
Lender hereby assigns to the Holder 100 percent of the note in accordance with all the terms and
conditions hereinafter set forth. The Lender and the USDA certify to the Holder that the Lender
has paid and the USDA has received the guarantee fee in exchange for the issuance of the Loan
Note Guarantee.
2) Loan Servicing. The Lender will be responsible for servicing the entire loan and will remain mort-
gagor and secured party of record. The entire loan will be secured by the same security with equal
lien priority for the guaranteed and unguaranteed portions of the loan.
The Lender will receive all payments on account of principal and interest on the entire loan
and shall promptly remit to the Holder its pro rata share thereof, determined according to their
respective interests in the loan, less only the Lender's servicing fee.
3) Servicing Fee. Holder agrees that the Lender will retain a servicing fee of _____
percent per annum of the unpaid balance of the guaranteed loan assigned hereunder.
4) Prepayment Penalty. Lender agrees to pass through a prepayment penalty defined as follows:

5) Purchase by Holder. The Holder will hereby succeed to all rights of the Lender under the Loan
Note Guarantee to the extent of the assigned portion of the loan. The Lender, however, will
remain bound by all obligations under the Loan Note Guarantee and the program regulations
found in 7 C.F.R. parts 4279 and 4287 now in effect and future USDA program regulations not
in conflict with the provisions hereof.
6) Full Faith and Credit. The Loan Note Guarantee constitutes an obligation supported by the full
faith and credit of the United States government and is incontestable except for fraud or misrepre-

sentation of which the Holder has actual knowledge at the time of assignment, or which it participates in or condones.

- 7) **Rights and Liabilities.** The guarantee and the right to require purchase will be directly enforceable by the Holder notwithstanding any fraud or misrepresentation.
- 8) **Repurchase by the Lender (Defaults).** 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 on 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 or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of 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 loan 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.
- 9) **Purchase by USDA.** If Lender does not repurchase as provided by paragraph 7, USDA will purchase from Holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase, less Lender's servicing fee, within 30 days after written demand to USDA from the Holder. 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 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 the original Loan Note Guarantee properly endorsed to USDA, 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 demand.

USDA will promptly notify the Lender of its receipt of the Holder's demand for payment. The Lender will promptly provide USDA with the information necessary for USDA's determination of the appropriate amount due the Holder. Any discrepancy between the amount claimed by 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 will be approved. Such a conflict will suspend the running of the 30-day payment requirement. Upon receipt of the appropriate information, USDA will review the demand and remit the appropriate check to the Holder.

- 10) **Lender's Obligations.** 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 Borrower on the loan and the amount then owed to any 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 it waive any of USDA's

right against Lender, and that USDA shall have the right to set-off against Lender all rights inuring to USDA as the Holder of this instrument against USDA obligation to Lender under the Loan Note Guarantee.

11) **Repurchase by Lender for Servicing.** If, in the opinion of the Lender, repurchase of the assigned portion of the loan is necessary to adequately service the loan, the Holder will sell the assigned portion of the loan to the Lender for an amount equal to the unpaid principal and interest on such portion less 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 of the Lender or USDA to the Holder requesting the Holder to tender their guaranteed portion.

- a) The Lender will not repurchase from the Holder for arbitrage purposes or other purposes to further its own financial gain.
- b) Any repurchase will only be made after the Lender obtains USDA’s written approval.
- c) If the Lender does not repurchase the portion from the Holder, USDA at its option may purchase such guaranteed portions for servicing purposes.

12) **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.

13) **Reassignment.** Holder, upon written notice to Lender and USDA, may reassign the unpaid guaranteed portion of the loan sold hereunder. Upon such notification, the assignee will succeed to all rights and obligations of the Holder hereunder.

14) **Notices.** All notices and actions will be initiated through the USDA _____ (state) with mailing address at the date of this assignment: _____

Dated this _____ day of _____, _____.

Lender: _____ Address: _____

Attest: _____ By: _____

_____ (SEAL) Title: _____

Holder: _____ Address: _____

Attest: _____ By: _____

_____ (SEAL) Title: _____

Exhibit 9-C (Sample)
Transfer Document for USDA Government-Guaranteed Loans
Sold Through the Multi-Note Option

Assignee Name: _____
Address: _____

USDA Loan Name: _____
USDA Loan Number: _____
Accrued Interest Begins: _____
Net Interest Rate: _____

For value received, _____ hereby assigns to ASSIGNEE without
recourse all of its right, title and interest in and to the Guaranteed portion of the above-referenced
UNITED STATES DEPARTMENT OF AGRICULTURE (USDA) Loan.

This assignment, or sale, is made under and subject to the terms and conditions of the enclosed
Assignment and Servicing Agreement and Loan Guarantee:

RBS-4279-5 _____
RD-449-34 _____

Enclosed are the following supporting loan documents:

- [1] The Borrower's Original Note
[2] The Original Loan Guarantee
[3] The Original Assignment and Servicing Agreement

On _____, the effective date of the reassignment of this loan to ASSIGNEE,
the balance of the Guaranteed Portion of this loan was \$ _____.

_____ agrees that it shall have no further right to retain payments on the
Guaranteed Portion of this loan and agrees to forward to ASSIGNEE any such payments received by it sub-
sequent to date hereof. The effective date of transfer and assignment of the Guaranteed Portion described
above is hereby declared to be the date hereof.

Subsequent to the transfer, the ASSIGNEE shall provide an original executed Transfer Document to the
originating Lender and to the appropriate office of the USDA. One (1) original executed Transfer
Document must be retained with the original loan documentation package.

Should it become necessary for you to communicate with the USDA, please send all correspondence to the
following address: _____

The Servicing Lender, at the following address, will provide servicing of the Loan:

As provided in the Assignment and Servicing Agreement, a servicing fee in the amount therein set forth will be retained by the originating Lender.

As provided in the note, a prepayment penalty, defined as: _____ will be collectable by the Lender.

In the event of collection and retention of that prepayment penalty by the Lender, a distribution will be passed on to the Holder of Record as follows: _____
_____.

Upon receipt of the executed Transfer Document by the Lender, remittance of principal and interest will be forwarded directly to you.

If we can be of further service, please do not hesitate to call us.

Sincerely,

By: _____
Title: _____

_____ (Holder-Assignee) hereby acknowledges that it has read the enclosed documentation, and fully accepts and assumes each right, obligation and commitment of the Holder of the guaranteed portion of the above-described loan under said documents. The ASSIGNEE further acknowledges that the guarantee of USDA relates to the unpaid principal balance and interest owed by the borrower, and that any premium paid by the ASSIGNEE is not covered by USDA's guarantee and is subject to loss in the event of prepayment or default.

Holder: _____ Tax I.D. No.: _____
By: _____ Title: _____