

TO: State Directors, Rural Development

ATTN: Business Programs Directors

SUBJECT: Business and Industry Guaranteed Loan Program
Liquidation of Guaranteed Loans/Sale of the Promissory Note without Recourse
on Business and Industry Loans

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to provide guidance to State Offices concerning the lender's liquidation of defaulted guaranteed loans through the sale of the promissory note without recourse to third-party private investors. This AN will cover loans repurchased by the Agency from the secondary market, loans held by the lender, or a combination of loans held by the lender and the Agency.

COMPARISON WITH PREVIOUS AN:

This AN replaces AN 4291 which expires on June 30, 2008.

IMPLEMENTATION RESPONSIBILITIES:

This office has received several requests from State Offices requesting guidance on selling Business and Industry loans to a third party as a method of liquidation.

Advantages of a promissory note sale include, but are not limited to, a reduction of liquidation costs and access to a larger pool of potential investors. In addition, due diligence must be accomplished to include an evaluation of all potential companies that perform this service to ascertain their expertise in this area. The companies should be reputable and have a track record in accomplishing these types of transactions.

EXPIRATION DATE:
February 28, 2009

FILING INSTRUCTIONS:
Preceding RD Instruction 4287-B

RD Instruction 4287-B, section 4287.157, Liquidation, states: "In the event of one or more incidents of default 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 the Agency's concurrence." The sale of the promissory note as a method of liquidation should not be considered on guaranteed loans that are current. The loan can be either in technical default of a term loan agreement covenant, in monetary default or both when the lender and Agency decide to liquidate. When the lender is considering the sale of the promissory note as a method of liquidation, including loans in bankruptcy, **all** provisions of RD Instruction 4287-B, section 4287.157(d), must be met to include obtaining a current appraisal that reflects both current and liquidation values. The appraisals must be in accordance with RD Instruction 4279-B, section 4279.144. The lender should outline all proposed methods of liquidation, i.e., listing collateral with a real estate agent, auctioneer, sealed bid, as well as the costs associated with each method. In all cases, it is the lender's responsibility to conclude that liquidation is necessary and obtain Agency concurrence of this decision. Before commencing with liquidation, the lender should evaluate all methods of liquidation to determine which method would generate the best and highest recovery.

The lender, with Agency approval, can also establish a minimal bid and reserve the right to pull the loan from the bid process if the reserve bid is not met. The lender should also include a net recovery value for each liquidation option so that the Agency can properly compare and evaluate the options. This option can be used concurrently with another method. The lender must document that this method would yield the highest and best recovery as a means of liquidation in a detailed Liquidation Plan. The lender must offer the entire loan, both the guaranteed and unguaranteed portion of the loan. All sales must be on a non-recourse basis and the Loan Note Guarantee **will not** transfer.

The Purchase and Sales Agreement must be reviewed in advance by the Regional Attorney. When the sale is consummated, the lender will promptly remit to the Agency its pro-rata share and the lender will promptly file a final report of loss claim in accordance with regulations.

The potential purchasers should be accredited investors that can perform due diligence regarding risks associated with this type of transaction.

You are authorized to approve all transactions within your delegated loan servicing authority. Any transaction that is in excess of your delegated loan servicing authority must be submitted to this office as set forth in RD Instruction 4287-B, Appendix A, Modification or Administrative Action form. This document is required and is a part of the Agency's published instructions. Rural Business and Cooperative Programs published a final rule regarding implementing the Debt Collection Improvement Act (DCIA) in the Federal Register on November 20, 2006, and was effective on December 20, 2006. Under provision of DCIA, the Agency is required to refer debt owed to the Government to the Department of the Treasury for collection. The U.S. Department of Agriculture will use all remedies available under DCIA to collect the debt from the borrower, guarantor, and any other liable third party.

When the Agency implemented the provisions of DCIA, several Agency forms were modified and Form RD 4279-14, "Unconditional Guarantee" was created. Therefore, any Business and Industry guaranteed loan closed after December 20, 2006, is governed by these requirements.

The sale of the promissory note does not relieve the borrower, guarantor or any other liable third party that results in a loss to the Government. The Agency will reserve its rights to collect from the guarantor and any other liable third party.

If we can be of further assistance, please contact David Lewis, Chief, Business and Industry Division, Servicing Branch, (202) 690-0797.

(Signed by Ben Anderson)

BEN ANDERSON
Administrator
Business and Cooperative Programs