

§ 4279.77

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.

§ 4279.77 Minimum retention.

The lender is required to hold in its own portfolio a minimum of 5 percent of the 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 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 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 will 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 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. 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 of funds, resolve the problem, and prevent default, where and when reasonable. The lender will notify the holder and the Agency of its decision.

(b) *Agency purchase.* (1) 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. (This is in addition to

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the copy of the written demand on the lender.) The guarantee will not cover the note interest to the holder on the guaranteed loan accruing after 90 days from the date of the original demand letter of the holder to the lender requesting the repurchase.

(2) 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 will consist of either the original of the Loan Note Guarantee properly endorsed to the Agency or the original of the Assignment Guarantee Agreement properly assigned to the Agency without recourse including all rights, title, and interest in the loan. 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.

(3) The Agency will notify the lender of its receipt of the holder's demand for payment. The lender must promptly provide the Agency with the information necessary for the Agency to determine the appropriate amount due the holder. Upon request by the Agency, the lender will 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. 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.

(4) 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 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 guarantee.