

RD AN 4391 (1951-C, 4279-B, and 4287-B)
August 29, 2008

TO: State Directors, Rural Development
ATTN: Business and Cooperative Programs Directors
SUBJECT: Business and Industry Guaranteed Loan Program
Debt Collection Improvement Act

PURPOSE/INTENDED OUTCOME:

This Administrative Notice (AN) is being issued to provide guidance on frequently asked questions on the above-captioned subject.

COMPARISON WITH PREVIOUS AN:

This AN replaces RD AN 4301, dated August 6, 2007, which expires on August 31, 2008, and RD AN 4311, dated October 24, 2007, which expires on October 31, 2008.

IMPLEMENTATION RESPONSIBILITIES:

Form RD 4279-1, Application for Loan Guarantee, section (3) of the General Borrower Certifications, outlines the actions that the Federal Government could take in the event a borrower became delinquent on its indebtedness.

Business and Cooperative Programs has published two separate regulations concerning the Debt Collection Improvement Act (DCIA). On January 22, 2004, the Agency published a final rule (7 CFR part 1951, subpart C) in the Federal Register regarding the DCIA of 1996, in order to make debtors aware that the DCIA provisions are applicable to the Business and Industry Guaranteed Loan Program. Section 1951.133 of RD Instruction 1951-C, defines the establishment of Federal debt for the Business and Industry program and states that: "Any amounts paid by RBS on account of liabilities of a business and industry (B&I) program guaranteed loan borrower will constitute a Federal debt owing to RBS by the B&I guaranteed loan borrower."

EXPIRATION DATE:
September 30, 2009

FILING INSTRUCTIONS:
Preceding RD Instructions 1951-C, 4279 -B, and 4287-B

All borrowers of Business and Industry guaranteed loans which closed on or after January 22, 2004, are subject to these provisions. The date of the Agency's final loss claim payment will establish the date for determining the referral deadline to the U. S. Department of the Treasury (Treasury) under DCIA. The Agency will refer all *borrowers* (emphasis added) under DCIA to Treasury for collection.

The second regulation was published as a final rule (7 CFR part 4287, subpart B) regarding implementing DCIA published in the Federal Register on November 20, 2006. This regulation was effective on December 20, 2006. This regulation addressed the concern that guarantors/key members might successfully assert a defense that they did not know they were guaranteeing a Business and Industry loan. When the Agency implemented this regulation, several Agency forms were modified and a new form was created, Form RD 4279-14, "Unconditional Guarantee." All personal/corporate guarantors/key members who sign Form RD 4279-14, acknowledge that delinquent guaranteed loan debt is subject to DCIA. Therefore, any Business and Industry guaranteed loan closed on or after December 20, 2006, where the guarantor/key member signed Form RD 4279-14, or a guarantee form approved by the National Office, is governed by these requirements. When a borrower or guarantor/key member has filed bankruptcy, you should confirm with your Regional OGC that the borrower or guarantor is still liable for the debt before sending it for collection to the U.S. Department of Treasury.

The lender will prepare a final loss claim on Form RD 449-30, "Guaranteed Loan Report of Loss," and submit it to the State Office. After approval by the State Office, the claim will be forwarded to the Finance Office for payment. The State Office will ensure that all key member information located in the borrower file in the Guaranteed Loan System (GLS) is accurate. When the Finance Office pays the final loss and updates it to GLS, a DCIA Accounts Receivable will be established for the borrower and any guarantors/key members subject to the DCIA. A 60-day "Due Process Letter" is submitted at the same time to the borrower and guarantor/key member identifying their options of setting up a repayment plan or making a payment in full. If the State/Field Office does not receive notification within this due process period, the debt will be referred to the U.S. Treasury for collection, via Cross Servicing, and the Agency will use all remedies available under DCIA to collect the debt from the borrower or guarantors/key members. The State/Field Office should notify the lender in writing to cease further collection efforts against the borrower after the debt has been referred to the Treasury for Collection. The DCIA receivable account and all subsequent servicing activities can be viewed by the State Office via the loan files in GLS.

In order for the borrower or guarantor/key member to avoid referral of the debt to Treasury, they must agree to a repayment plan acceptable to the Agency or repay the debt in full. A repayment plan will generally not to exceed 3 years, and must be supported by financial statements and independent verifications. The approved payment plan should be coordinated with the State/Field Office representatives and submitted to the Office of the Deputy Chief Financial Officer, Mail Code FC-350, for the purpose of ensuring the debt is posted in the GLS system

as a repayment plan. If the borrower or guarantor/key member defaults on the repayment plan, they will be referred to the U.S. Department of Treasury.

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

(Signed by Ben Anderson)

BEN ANDERSON
Administrator
Business and Cooperative Program