



**Rural Business-
Cooperative Service**

RD AN No. 4751 (1980-E, 4280-B, and 4287-B)
March 6, 2014

Office of the
Administrator

U.S. Department of
Agriculture
1400 Independence
Avenue, SW
Stop 3201
Washington, DC
20250

SUBJECT: Business and Industry Guaranteed and Direct Loans, Section 9003
Bio-refinery Assistance Loan and Section 9007 Rural Energy for
America Program Ensuring Lenders are Servicing Loans in
Accordance with Agency Regulations

Voice: 202.690.4730
Fax: 202.690.4737

TO: State Directors, Rural Development

ATTENTION: Business Programs Directors

PURPOSE/INTENDED OUTCOME:

To remind State Offices of the procedures that require the Agency to monitor lender servicing.

COMPARISON WITH PREVIOUS AN:

There is no previous Administrative Notice (AN).

IMPLEMENTATION RESPONSIBILITIES:

In accordance with the administrative language contained in RD Instruction 4279-B, section 4279.165(e), RD Instruction 4287-B, 7 CFR part 4287 subpart D, the State Director has the primary Agency responsibility for ensuring that the lender is servicing the loan in a prudent manner as required by the Lender's Agreement and the regulations governing the program and that the lender and borrower are abiding by the terms of the loan documents. Loan servicing is intended to be preventive rather than curative. Prompt follow-up on delinquent accounts and early recognition of and pursuing a solution to potential problems are keys to resolving many problem accounts. The lender should be immediately notified in writing when the Agency suspects noncompliance with the legal instruments governing the loan. In the event the State Office becomes aware of willful lender noncompliance with any provision of the Loan Agreement, Lender's Agreement, Loan Note Guarantee, or other similar document, the lender is to be notified in writing of the consequences of negligent servicing as it relates to the enforceability of the Loan Note Guarantee,

EXPIRATION DATE:
March 31, 2015

FILING INSTRUCTIONS:
Preceding RD Instructions 1980-E,
4280-B, and 4287-B

with a copy of the letter to be included in the case file. The Regional Office of the Inspector General should be contacted when fraud or misrepresentation is suspected. All servicing actions that are submitted to the National Office must be sent in the format set forth in Appendix A of RD Instruction 4287-B.

The Agency should monitor the lender's actions in an attempt to ensure full loan repayment and address and mitigate any potential loss, through review of the lender's actions. The Agency should document all lender interactions as they relate to loan servicing including but not limited to:

- (a) Lender reports and annual renewal fee. The lender must report the outstanding principal and interest balance on each guaranteed loan semiannually (at June 30 and December 31) using either the USDA Lender Interactive Network Connection (LINC) system or Form RD 1980-41, "Guaranteed Loan Status Report." The lender must transmit the annual renewal fee to the Agency in accordance with § 4279.107(b) of subpart B of part 4279 calculated based on the December 31 semiannual status report.
- (b) Loan classification. The lender must provide the loan classification or rating under its regulatory standards as of loan closing on Form RD 1980-19, "Guaranteed Loan Closing Report." When the lender changes the loan classification in the future, the lender must notify the Agency immediately of any change in the loan classification. The Agency interprets 'immediately' as no later than 30 days and expects the notice to be in writing.
- (c) Agency and lender conference. At the Agency's request, the lender must meet with the Agency to ascertain how the guaranteed loan is being serviced and that the conditions and covenants of the Loan Agreement are being enforced.
- (d) Borrower financial reports. The lender must obtain, analyze, and forward to the Agency the borrower's annual financial statements required by the Loan Agreement within 120 days of the end of the borrower's fiscal year (180 days for Section 9003). The lender must analyze these financial statements and provide the Agency with a written summary of the lender's analysis (including ratio analysis) and conclusions, which, at a minimum, must include trends, strengths, weaknesses, extraordinary transactions, violations of loan covenants and covenant waivers proposed by the lender, and other indications of the financial condition of the borrower. Spreadsheets of the financial statements must also be included. Following the Agency's review of the lender's financial analysis, the Agency should provide a written report of any concerns to the lender. Any concerns based upon the Agency's review must be addressed by the lender. If the lender makes a reasonable attempt to obtain financial statements but is unable to obtain the borrower's cooperation, the failure to obtain financial statements will not be considered negligent servicing. For the Section 9003 program, § 4287.307(c) applies which requires the lender to submit quarterly financial statements within 45 days of the end of each quarter and that annual financial statements required under § 4279.107(d) be audited financial statements.

(e) Additional loans. The lender must obtain prior Agency approval to make additional loans. The Agency has decided to give blanket pre-approval to lenders approving future unguaranteed loans to the borrower that will not result in a senior lien against any collateral for the guaranteed loan, provided that the guaranteed loan is current and making the future loan will not cause a default of any provision of the guaranteed loan. Otherwise, the lender must obtain prior Agency concurrence. Under the Section 9003 program, the lender may make additional expenditures or new loans to a borrower with an outstanding guaranteed loan, only with prior written Agency approval. The Agency will only approve additional expenditures or new loans where the expenditure or loan will not violate one or more of the loan covenants of the borrower's loan agreement. In all instances, the lender must notify the Agency when they make any additional expenditures or new loans to an existing borrower with an Agency guaranteed loan.

(f) Protection of Agency interests. Under the 9003 program, if the Agency determines that the lender is not in compliance with its servicing responsibilities, the Agency reserves the right to take any action the Agency determines necessary to protect the Agency's interests with respect to the loan. If the Agency exercises this right, the lender must cooperate with the Agency to rectify the situation. In determining any loss, the Agency will assess against the lender any cost to the Agency associated with such action.

(g) Guaranteed Loan System (GLS). State Offices should place increased emphasis on maintaining the GLS in a current status for all guaranteed loans, which includes reporting all nondelinquent problem loans into GLS. The State Office should institute a verification mechanism to ensure that the information entered into GLS is accurate and up to date. It is important that the Agency properly monitor guaranteed lenders and the guaranteed loan portfolio to minimize potential losses to the Government.

(h) Borrower visits. Borrower visits are scheduled during the first year of operation after issuance of the Loan Note Guarantee. For all current borrowers, a field visit should be done at least once every 3 years. All problem and delinquent borrowers should be visited as frequently as the Agency deems necessary. It is the lender's responsibility to conduct borrower visits, and the Agency may accompany the lender on these visits. All field visits must be documented on Form RD 4279-15, "Visit Review Report."

If a monetary default exceeds 60 days, the lender will arrange a meeting with the Agency and the borrower to resolve the problem. Prompt follow-up on delinquent accounts and early recognition of and pursuing a solution to potential problems are keys to resolving many problem accounts. The lender should be immediately notified in writing when the Agency suspects noncompliance with the legal instruments governing the loan. The Regional Inspector General for Investigations U.S. Department of Agriculture (USDA), should be contacted when fraud is suspected.

All Section 9007 Rural Energy for America Program guaranteed loans are to be serviced in accordance with RD Instruction 4280-B, section 4280.152.

All Bio-refinery Assistance Program guaranteed loans are to be serviced in accordance with 7 CFR part 4287, subpart D, section 4287.307. For the Section 9003 program, all provisions of §4287.145 apply except that: (1) instead of complying with §4287.145(b)(2), in the event of a deferment, reschedule, reamortization, or moratorium is accomplished, it will be limited to the remaining life of the collateral or remaining limits as contained in §4279.232(a) of part 4279 of this chapter; and (2) if a loan goes into default, the lender must provide the notification required under §4287.145(a) to the Agency within 15 calendar days of when a borrower is 30 days past due on a payment or is otherwise in default of the Loan Agreement.

The Agency will conduct a series of webinars to emphasize the Agency's servicing requirements. Attendance at these webinars is mandatory in order to maintain your delegated loan authority. These webinars will be archived for future reference.

If you have any questions, please contact the B&I Division, Servicing Branch at (202) 690-4103.

(Signed by LILLIAN E. SALERNO)

LILLIAN E. SALERNO
Administrator
Rural Business-Cooperative Service

Attachments

Date

Sent via Email and 1st Class Mail

Lender

Address

City, State Zip

RE: Business and Industry Guaranteed and Direct Loans, Section 9003 Bio-refinery
Assistance Loan and Section 9007 Rural Energy for America Program
Borrower – loan amount
Possible Negligent Servicing

Dear <lender contact>:

The purpose of this letter is to advise <lender> that USDA Rural Development is concerned with <action> in connection with the <borrower> loan. This <action> may be considered negligent servicing.

Please advise this office of any actions taken to cure this concern.

This letter also serves to remind <lender> that to the extent that the Loan Note Guarantee will be unenforceable by <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.

If you have any questions, please feel free to contact this office.

Thank you for your interest in the business programs of Rural Development.

Sincerely,

Business & Cooperative Programs Director

CC: Regional Coordinator
Director of Servicing, Washington, DC

Enclosures: Lender's Agreement
Loan Note Guarantee

Date

Sent via Email and 1st Class Mail

Lender

Address

City, State Zip

RE: Business and Industry Guaranteed and Direct Loans, Section 9003 Bio-refinery
Assistance Loan and Section 9007 Rural Energy for America Program
Borrower – loan amount
Determination of Negligent Servicing

Dear :

The purpose of this letter is to advise <lender> that Rural Development has made a determination of negligent servicing in connection with the <borrower> loan. Please refer to Section IV of the enclosed *Lender's Agreement* executed by you on <date> with regards to specific routine servicing requirements.

<Explain negligent servicing actions>.

<Explain how the lender could possibly cure the determination of negligent servicing>.

One of the above options must be completed and received by close of business, <due date>, in order to protect the enforceability of your loan note guarantee.

The decision described in this letter will terminate or reduce the collectability of your Loan Note Guarantee. If you believe this decision or the facts used in this case are in error, you may pursue any or all of the following three options.

Option 1 – Request an Informal Administrative Review

If you have questions concerning this decision or the facts used making it and desire further explanation, you may write this office to request an informal review. There is no cost for an informal review. This written request must be received no later than 15 calendar days from the date when you received this adverse decision letter. You must present any new information, evidence, and possible alternatives along with your request. You may also have a representative or legal counsel participate in the process at your cost. The informal review may be conducted by telephone or in person at the discretion of the Agency. Please include a daytime phone number in your request to arrange for the review. You may skip this step in the informal process and select one of the following two options. If you do, you will automatically waive your right to an informal review.

Option 2 – Request Mediation

You have the right to request mediation. The purpose of mediation is to resolve disputes through the use of a neutral mediator. A mediator will listen to all parties involved in the dispute and work with all parties to achieve a mutually agreeable resolution. If you need information on the mediation process to assist you in deciding whether to utilize this Option 2 for dealing with this adverse decision, contact the State Rural Development **Alternative Dispute Resolution** Coordinator for business programs listed below.

Mediation Contact:

Rural Development's policy is to pay 50 percent of the reasonable cost for mediation. If you qualify for poverty status for the particular Rural Development program, then the State Director will agree to pay for 75 percent of the mediation and you will have to pay the remaining 25 percent.

If you elect to seek mediation, your written request for this service must be sent to the Rural Development State Director listed below and must be postmarked no later than 30 days from the date of the attached letter. Once you request mediation, it stops the running of the 30-day period in which you may request an appeal hearing (described in Option 3), but does not waive your right to an appeal.

Once you have requested mediation, the Rural Development State Director will advise you of the estimated cost of mediation, the amount the Agency will contribute, and the process and procedures for this service. In States with a USDA-sponsored mediation program, you will generally be referred to such service. In States without a USDA-sponsored mediation program, you will be either directed to a mediation service, or you will be provided with the names of three mediators from which you will need to select one. Also, you may suggest a mediator subject to the Agency's approval. Once you have selected the mediator, you will be advised directly by the mediation source if they can mediate your case. Once the case has been referred to the mediator, you have 45 days to complete the mediation, unless the participants agree to an extension. If mediation does not result in resolution of these issues, you have the right to continue with a request for an appeal hearing as set forth in Option 3.

When mediation is concluded, you will be notified of the result and your right to request an appeal hearing, if applicable. If you request mediation prior to filing for an appeal, the number of days you will have to request an appeal will be 30 days from the adverse decision minus the number of days you took to request mediation. Mediation does not take the place of, or limit your rights to, an appeal to the National Appeals Division (NAD); however, a NAD appeal hearing would take place only after mediation. You may skip mediation and request an appeal

hearing. However, in doing so, you will automatically waive your rights to an informal meeting. Once the appeal hearing begins, you also waive your right to mediation.

Option 3 – Request an Appeal Hearing

You may request an appeal hearing by NAD rather than an informal review or mediation. There is no cost for an appeal hearing. Your request for an appeal must be made no later than 30 days from the date you received the attached letter. You must write the Assistant Director, NAD, for your region at the following address.

Appeal Contact:

Your request must state the reasons why you believe the decision is wrong, be personally signed by you, and must include a copy of this letter. A copy of your request must also be sent to Rural Development State Director at:

You, or your representative or counsel, may contact this office anytime during regular office hours to examine or copy the Agency's record relative to this adverse decision. Photocopies will be provided to you. Your representative or counsel must have your written authorization to represent you and review your file. The NAD Hearing Officer will contact you regarding a time and place for the hearing.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants based on race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The agency that administers compliance with this law concerning this creditor is the Federal Trade Commission. If a person believes he or she was denied assistance in violation of this law, they should contact the Federal Trade Commission, Washington D.C. 20580.

The Fair Housing Act prohibits discrimination in real estate related transactions, or in the terms or conditions of such a transaction, race, color, religion, sex, disability, familial status, or national origin. The Federal agency that is responsible for enforcing this law is the U.S. Department of Housing and Urban Development. If a person believes that they have been discriminated against in violation of this law, they should contact the U.S. Department of Housing and Urban Development, Washington, D.C. 20410 or call (800) 669-9777.

If you have any questions, please give me a call.

Sincerely,

Business & Cooperative Programs Director

CC: Regional Coordinator
Director of Servicing, Washington, DC

Enclosures: Lender's Agreement
Loan Note Guarantee

Date

Lender's Address
City, State Zip

Subject: Business and Industry Guaranteed and Direct Loans, Section 9003 Bio-refinery Assistance Loan and Section 9007 Rural Energy for America Program
Borrower – loan amount
Decision to Liquidate

Dear xxxxxxxxxxxx:

We have reviewed your <date> correspondence requesting Agency concurrence with the decision to liquidate. As the Agency understands the situation, <borrower> was \$<amount> behind schedule as of <date>. <Servicing requests made by the borrower through its lender to cure delinquent account>. Consequently, <lender> has requested Agency concurrence with the decision to liquidate the loan.

In accordance with 7 C.F.R. § 4287.157, the Agency concurs with the <lender>'s decision to liquidate.

Please submit a liquidation plan within 30 days that meets the requirements of 7 CFR §4287.157(d). Details as to what should be included in the plan are enclosed with this letter. Please submit the Liquidation Plan as one complete package. We recognize that the appraisals and environmental survey (discussed below) will take additional time to acquire. Your office will need to engage an appraisal service immediately to update the collateral values and recovery estimates.

Your office should continue submitting Form RD 1980-44, "Guaranteed Loan Borrower Default Status," on a bi-monthly basis until such time as the loan is no longer in default

We will review your proposed plan and provide feedback as soon as possible. Please contact <Agency contact>, at <email address> or <phone> if you have any questions.

Thank you for your interest in the business programs of Rural Development.

Sincerely,

Business-Cooperative Program Director

Enclosure: Liquidation Plan Outline

RD Instruction 4287-B
§ 4287.157(b) (Con.)

derived from the sale of the collateral. Form RD 1980-45, "Notice of Liquidation Responsibility," will be forwarded to the Finance Office when the Agency liquidates the loan. *The State Director has no authority to exercise the option to liquidate by the Agency without National Office concurrence.*

(c) Submission of liquidation plan. The lender will, within 30 days after a decision to liquidate, submit to the Agency in writing its proposed detailed method of liquidation. Upon approval by the Agency of the liquidation plan, the lender will commence liquidation.

(d) Lender's liquidation plan. The liquidation plan must include, but is not limited to, the following:

(1) Such proof as the Agency requires to establish the lender's ownership of the guaranteed loan promissory note and related security instruments and a copy of the payment ledger if available which reflects the current loan balance and accrued interest to date and the method of computing the interest.

(2) A full and complete list of all collateral including any personal and corporate guarantees.

(3) The recommended liquidation methods for making the maximum collection possible on the indebtedness and the justification for such methods, including recommended action:

(i) for acquiring and disposing of all collateral; and

(ii) to collect from guarantors.

(4) Necessary steps for preservation of the collateral.

(5) Copies of the borrower's latest available financial statements.

(6) Copies of the guarantor's latest available financial statements.

(7) An itemized list of estimated liquidation expenses expected to be incurred along with justification for each expense.

(8) A schedule to periodically report to the Agency on the progress of liquidation.

(9) Estimated protective advance amounts with justification.

(10) Proposed protective bid amounts on collateral to be sold at auction and a breakdown to show how the amounts were determined.

(11) If a voluntary conveyance is considered, the proposed amount to be credited to the guaranteed debt.

(12) Legal opinions, if needed.

(13) If the outstanding balance of principal and accrued interest is less than \$200,000, the lender will obtain an estimate of fair market and potential liquidation value of the collateral. If the outstanding balance of principal and accrued interest is \$200,000 or more, the lender will obtain an independent appraisal report meeting the requirements of § 4279.144 of subpart B of part 4279 on all collateral securing the loan which will reflect the fair market value and potential liquidation value. In order to formulate a liquidation plan which maximizes recovery, collateral must be evaluated for the release of hazardous substances, petroleum products, or other environmental hazards which may adversely impact the market value of the collateral. The appraisal shall consider this aspect. The independent appraiser's fee, including the cost of the environmental site assessment, will be shared equally by the Agency and the lender.

(e) Approval of liquidation plan. The Agency will inform the lender in writing whether it concurs in the lender's liquidation plan *within 30 days after receipt of the liquidation plan from the lender. If the Agency needs additional time to respond to the liquidation plan, it will advise the lender of a definite time for such response.* Should the Agency and the lender not agree on the liquidation plan, negotiations will take place between the Agency and the lender to resolve the disagreement. When the liquidation plan is approved by the Agency, the lender will proceed expeditiously with liquidation. The liquidation plan will be approved within the State Director's delegated loan servicing authority. In the event the loan balance is in excess of the State Director's delegated authority, the liquidation plan must be forwarded to the National Office in the appropriate format identified in appendix A of this Instruction with supporting documentation for review and concurrence. The liquidation plan may be modified when conditions warrant. All modifications must be approved in writing by the Agency prior to implementation.

Date

Lender
Address
City, State Zip

Subject: Business and Industry Guaranteed and Direct Loans, Section 9003 Bio-refinery
Assistance Loan and Section 9007 Rural Energy for America Program
Borrower – loan amount
Approval of Liquidation Plan

Dear xxxxxxxxxxx:

This is in response with your proposed liquation plan for <borrower>. The Agency has reviewed the proposed plan in accordance with RD Instruction 4287-B, section 4287.157(d), and we concur with your office's recommendation for concurrence subject to the following conditions being met:

As the lender of record, your office should implement the approved liquidation plan expeditiously. Your office will be responsible for accelerating the loan with a copy of the letter to the Agency. The loan is considered in liquidation from the date of the acceleration and demand for payment. Any modifications to the plan must be approved by the Agency in writing.

Please contact <Agency contact>, at <email address> or <phone> if you have any questions.

Sincerely,

Business-Cooperative Program Director