

RD AN No. 4459 (4287-B)
July 9, 2009

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 replaces RD AN No. 4334 (4287-B) dated February 25, 2008, which expired on February 28, 2009.

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. Lenders often point to certain advantages of a promissory note sale such as a reduction of liquidation costs and access to a larger pool of potential investors. Agency liquidation regulations at RD Instruction 4287-B, section 4287.157, provide in relevant part as follows: "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."

EXPIRATION DATE:
July 31, 2010

FILING INSTRUCTIONS:
Preceding RD Instruction 4287-B

If a lender proposes selling the loan to a third party as their liquidation plan, then the lender must document that this method would yield the highest and best liquidation recovery in a detailed liquidation plan. Further, when the lender proposes in its liquidation plan to sell the loan through a specific broker, the lender must conduct its own due diligence, to include an evaluation of all potential brokers that perform this service, to ascertain their expertise for this type of sale. The lender must establish that the selected broker is likely to produce the best price for the loan, is reputable, and has an established track record of selling similar loans. Assuming these facts are established, then a sale can be approved subject to the following:

1. **All** provisions of RD Instruction 4287-B, section 4287.157(d), are 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.
2. The lender offers the entire loan, both the guaranteed and unguaranteed portion of the loan, for sale.
3. All sales are on a non-recourse basis (i.e. the Government will not continue to be liable on the guarantee) and the Loan Note Guarantee **will terminate**.
4. The borrower(s) and any guarantors who have signed Form RD 4279-14, "Unconditional Guarantee," are not released from liability without prior written Government approval.

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.

Subject to these requirements, 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.

Note that the Rural Business and Cooperative Programs published a final rule regarding implementing the Debt Collection Improvement Act in the Federal Register on November 20, 2006, which was effective on December 20, 2006. When the Agency implemented these changes, 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. It is important to note that the sale of the promissory note does not relieve the borrower, guarantor, or any other liable third party from their liability for any loss claim paid by the Government.

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

(Signed by JUDITH A. CANALES)

JUDITH A. CANALES
Administrator
Business and Cooperative Programs