

**UNITED STATES DEPARTMENT OF AGRICULTURE  
RURAL DEVELOPMENT**

**LENDER'S AGREEMENT**

FORM  
APPROVED OMB  
No. 0570-0017  
OMB No. 0570-0050  
OMB No. 0570-0055

*Capitalized terms will have the meaning defined in the applicable program regulations.*

Participating Lender:	Tax Identification Number:
Business Address:	Telephone Number:

Date Through Which Non-regulated Lender May Originate New Guaranteed Loans (3 years from date of execution):

**I. General Provisions**

A. Purpose.

The approved Lender (Lender) is designated as a Lender for the purpose of processing and servicing guaranteed loans authorized under the Business and Industry (B&I) Guaranteed Loan Program and the Rural Energy for America Program (REAP) (collectively "Program Regulations"). The Lender enters into this Agreement as a condition for obtaining the guarantees.

The United States of America, acting through the United States Department of Agriculture (USDA), agrees to enter into Loan Note Guarantees with the Lender pursuant to the applicable regulations for the B&I and REAP programs and to participate in a percentage of any loss on any such loans not to exceed the amount established in the Loan Note Guarantee. The terms of any Loan Note Guarantee are controlling.

B. Full Faith and Credit.

The guarantee is supported by the full faith and credit of the United States and is incontestable except under the circumstances of fraud or misrepresentation of which the Lender has actual knowledge at the execution of the guarantee or of which the Lender participates in or condones.

The Loan Note Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by a provision for interest on interest or default or penalty interest, violation of usury laws, use of loan proceeds for unauthorized purposes, negligent loan origination, negligent loan servicing, or failure to obtain or maintain the required security regardless of the time at which USDA acquires knowledge of the foregoing. Any losses will be unenforceable by the Lender to the extent that loan funds were used for purposes other than those specifically approved by USDA in its Conditional Commitment or approved amendment thereof. Negligent loan origination/negligent loan servicing is the failure to perform those services which a reasonably prudent Lender would perform in processing/servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent Lender would act up to the time of loan maturity or until a final loss is paid.

**II. Loan Origination**

A. The Lender agrees loan funds will be used for the purposes authorized in Program Regulations and any applicable Conditional Commitment.

B. The Lender certifies that neither the Lender nor any of the Lender's officers has an ownership interest in the borrower or is an officer or director of the borrower, and neither the borrower nor its officers, directors, stockholders, or other owners have more than a 5 percent ownership interest in the Lender.

*According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control numbers for this information collection are 0570-0017, 0570-0050, and 0570-0055. The time required to complete this information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.*

- C. The Lender will certify to USDA, prior to issuance of the Loan Note Guarantee for each loan, that there has been neither any material adverse change in the Borrower's financial condition, nor any other material adverse change in the Borrower, for any reason, during the period of time from the USDA's issuance of the Conditional Commitment to issuance of the Loan Note Guarantee regardless of the cause or causes of the change and whether or not the change or causes of the change were within the Lender's or Borrower's control. The Lender's certification must address all adverse changes of the Borrower, any parent, affiliate, or subsidiary of the Borrower, and guarantors.
- D. Lender certifies that a loan agreement or loan instruments concurred in by USDA has been or will be signed with the Borrower.
- E. Lender will submit the required guarantee fee with Form RD 1980-19, "Guaranteed Loan Closing Report," at the time Form RD 4279-5, "Loan Note Guarantee," is requested.

### III. Lender's Sale or Assignment of Guaranteed Loan

- A. The Lender may sell all or part of the guaranteed portion of the loan or retain the entire loan. The lender must fully disburse and properly close a loan prior to sale of the note(s) on the secondary market. The Lender is not permitted to sell or participate any amount of the guaranteed or unguaranteed portions of the loans to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary, or affiliate. If the Lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default as set forth in the terms of the notes. The Lender cannot share any premium received from the sale of the guaranteed loan with a packager or other loan service provider. The Lender may proceed under the following options:
  - 1. Assignment. Assign all or part of the guaranteed portion of the loan to one or more Holders by using Form 4279-6, "Assignment Guarantee Agreement." Holders, upon written notice to Lender and USDA, may reassign the unpaid guaranteed portion of the loan, in full, sold thereunder. Upon notification and completion of the assignment through the use of Form 4279-6, "Assignment Guarantee Agreement," the assignee shall succeed to all rights and obligations of the Holders thereunder. If this option is selected, the Lender may not at a later date cause to be issued any additional notes.
  - 2. Multi-Note System. When this option is selected by the Lender, upon disposition the Holder will receive one of the Borrower's executed notes and Form RD 4279-5, attached to the Borrower's note. However, all rights under the security instruments (including personal and corporate guarantees) will remain with the Lender and in all cases inure to its and the Government's benefit notwithstanding any contrary provisions of law. The Lender may provide for no more than 10 notes for the guaranteed portion and one note for the unguaranteed portion. When this option is selected, USDA will provide the Lender with a Form RD 4279-5 for each of the notes.
  - 3. Participations.
    - i. The Lender may obtain participation in the loan under its normal operating procedures. Participation means a sale of an interest in the loan by the Lender wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.
    - ii. The Lender is required to hold in its own portfolio the minimum retention required by Program Regulations. The amount required to be retained 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. However, the Lender will always retain the responsibility for loan servicing and liquidation.
- B. When a guaranteed portion of a loan is sold by the Lender to a Holder, the Holder shall thereupon succeed to all rights of Lender under the Loan Note Guarantee to the extent of the portion of the loan purchased. Lender will remain bound to all the obligations under the Loan Note Guarantee, this Agreement, and the applicable USDA Program Regulations.
- C. The Holder upon written notice to the Lender may resell the unpaid guaranteed portion of the loan sold under section III (A).

### IV. Servicing

- A. The Lender will service the entire loan and will remain mortgagee and secured party of record, notwithstanding the fact that another may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. Lender may charge Holder a servicing fee. The unguaranteed portion of a loan will neither be paid first nor given any preference or priority over the guaranteed portion of the loan.

- B. It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses, or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; and that periodic inspections during construction are made.
- C. Neither the Lender nor any of the Lender's officers may have an ownership interest in the borrower at any time during the guarantee, and neither the Borrower nor its officers, directors, stockholders, or other owners may have more than a 5 percent ownership interest in the Lender at any time during the guarantee.
- D. Lender's servicing responsibilities include, but are not limited to:
1. Obtaining compliance with the covenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements and notifying USDA and the Borrower of any violations in writing. None of the aforesaid instruments will be altered without USDA's prior written concurrence. The Lender must service the loan in a reasonable and prudent manner.
  2. Receiving all payments of principal and interest on the loan as they fall due and promptly remitting and accounting to any Holder of its pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. The loan may be reamortized, renewed, or rescheduled only with agreement of the Lender and Holder of the guaranteed portion of the loan and only with USDA's written concurrence.
  3. Inspecting the collateral as often as necessary to properly service the loan.
  4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.
  5. Assuring that: taxes, assessments, or ground rents against or affecting collateral are paid; the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation; insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based; proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture, or fixtures, may be used in accordance with Program Regulations; and the Borrower complies with all laws and ordinances applicable to the loan, the collateral and operation of the business.
  6. Assuring that if personal or corporate guarantees are part of the collateral, current financial statements from such loan guarantors will be obtained and copies provided to USDA at such time and frequency as required by the loan agreement or Conditional Commitment. In the case of guarantees secured by collateral, assuring the security is properly maintained.
  7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by USDA and properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by USDA.
  8. Assuring that the Borrower obtains marketable title to the collateral.
  9. Assuring that any party liable is not released from liability for all or any part of the loan, except in accordance with applicable Program Regulations.
  10. Providing the USDA with loan status reports semiannually as of 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 annual renewal fee should be paid using [www.pay.gov](http://www.pay.gov).
  11. Obtaining from the Borrower periodic financial statements as required in the loan agreement with the Borrower. At a minimum, annual financial statements must be forwarded by the Lender, with a credit analysis, to USDA within 120 days of Borrower's fiscal yearend.
  12. Ensuring that the Borrower complies with the measures identified in the USDA's environmental impact analysis for the facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation. The Lender will monitor the use of loan funds to assure they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity.
  13. Complying with applicable nondiscrimination law, including, but not limited to, statutes, regulations, USDA Departmental Regulations, the USDA Non-Discrimination Statement, and the Equal Credit Opportunity Act.

## V. Default

- A. The Lender will notify USDA when a Borrower is 30 days past due on a payment and the delinquency cannot be cured within 30 days or if the Borrower is otherwise in default. The Lender will notify USDA of the status of a Borrower's default on Form RD 1980-44 "Guaranteed Loan Borrower Default Status," or processing the Default Status report in LINC in accordance with Program Regulations. Actions taken by the Lender with written concurrence of USDA, will include, but are not limited to the following or any combination thereof:
1. Deferment of principal and/or interest payments (subject to rights of any Holder).
  2. An additional temporary loan by the Lender to bring the account current.
  3. Reamortization of or rescheduling the payments on the loan (subject to rights of any Holder).
  4. Transfer and assumption of the loan in accordance with the applicable subpart of 7 CFR part 4287.
  5. Reorganization.
  6. Liquidation.
  7. Changes in interest rates with the Agency's, the Lender's, and any Holder's approval.
- B. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder within 30 days of written demand by the Holder when: (a) the Borrower is in default not less than 60 days in payment of principal or interest due on the loan or (b) the Lender has failed to remit to the Holder its pro rata share of any payment made by the Borrower within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of the principal and accrued interest less the Lender's servicing fee.

For loans closed before [EFFECTIVE DATE OF FINAL RULE], the Loan Note Guarantee will not cover the note interest to the Holder on guaranteed loans accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder will concurrently send a copy of demand to USDA. The Lender will accept an assignment without recourse from the Holder upon repurchase. For loans closed on or after [EFFECTIVE DATE OF FINAL RULE], the Lender or the Agency will issue an interest termination letter to the Holder(s) establishing the termination date for interest accrual if the default is not cured. The guarantee will not cover interest to any Holder accruing after the greater of: (1) 90 days from the date of the most recent delinquency effective date as reported by the lender or (2) 30 days from the date of the interest termination letter. In the event of a loss or a repurchase, the Lender cannot claim default or penalty interest, late payment fees, or interest on interest. If restructuring includes capitalized interest, interest accrued on the capitalized interest will not be covered by the guarantee. Consequently, it is not eligible for repurchase from the Holder and cannot be included in the loss claim. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve any problems, and to permit the Borrower to cure any default, where reasonable. The Lender will notify the Holder and USDA of its decision.

- C. If Lender does not repurchase as provided by paragraph B, USDA will purchase from Holder the unpaid principal balance of the guaranteed portion herein together with accrued interest to date of repurchase, less Lender's servicing fee, within 30 days after written demand upon USDA from the Holder. For loans closed before [EFFECTIVE DATE OF FINAL RULE], the Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loan accruing after 90 days from the date of original demand letter of the Holder to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender. For loans closed on or after [EFFECTIVE DATE OF FINAL RULE], the Lender or the Agency will issue an interest termination letter to the Holder(s) establishing the termination date for interest accrual if the default is not cured. The guarantee will not cover interest to any Holder accruing after the greater of: (1) 90 days from the date of the most recent delinquency effective date as reported by the lender or (2) 30 days from the date of the interest termination letter. In the event of a loss or a repurchase, the Lender cannot claim default or penalty interest, late payment fees, or interest on interest. If restructuring includes capitalized interest, interest accrued on the capitalized interest will not be covered by the guarantee. Consequently, it is not eligible for repurchase from the Holder and cannot be included in the loss claim.

The Holder or its duly authorized agent will also include evidence of its right to require payment from USDA. Such evidence will consist of either the originals of the Loan Note Guarantee and note properly endorsed to USDA or the original of the Assignment Guarantee Agreement properly assigned to USDA without recourse including all rights, title, and interest in the loan. USDA will be subrogated to all rights of Holder. The Holder will 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. Unless otherwise agreed to by USDA, such proposed payment will not be later than 30 days from the date of the demand.

The USDA will promptly notify the Lender of the Holder's demand for payment. The Lender will promptly provide the USDA with the information necessary for USDA's determination of the appropriate amount due the Holder. Any discrepancy between the amount claimed by the Holder and the information submitted by the Lender must be resolved before payment will be approved. USDA will notify both parties who must resolve the conflict before payment by USDA will be approved. Such a conflict will suspend running of the 30-day payment requirement. Upon receipt of the appropriate information, the USDA will review the demand for verification.

- D. Lender consents to the purchase by USDA, in accordance with Program Regulations, and agrees to furnish on request by USDA 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 due the Holder. Lender agrees that any purchase by USDA does not change, alter, or modify any of the Lender's obligations to USDA arising from said loan or guarantee, nor does such purchase waive any of the USDA's rights against Lender, and USDA will have the right to set-off against Lender all rights inuring to USDA from the Holder against USDA's obligation to Lender under the Loan Note Guarantee, to the extent USDA holds a portion of the loan.
- E. Servicing fees assessed by the Lender to a Holder are collectible only from payment installments received by the Lender from the Borrower. When USDA repurchases from a Holder, USDA will pay the Holder only the amounts due the Holder. USDA will not reimburse the Lender for servicing fees assessed to a Holder and not collected from payments received from the Borrower. No servicing fee shall be charged USDA and no such fee is collectible from USDA.
- F. Lender may also repurchase the guaranteed portion of the loan for servicing consistent with the Loan Note Guarantee and Program Regulations.

## VI. Liquidation

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, the Lender, with Agency consent, must liquidate the loan. When USDA concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled in accordance with Program Regulations.

1. The Lender will liquidate the loan.
  2. When the decision to liquidate is made, the Lender may proceed to purchase from the Holder the guaranteed portion of the loan. The Holder will be paid according to the provisions in the Loan Note Guarantee or the Assignment Guarantee Agreement.
  3. If the Lender does not purchase the guaranteed portion of the loan, USDA will be notified immediately in writing. USDA will then purchase the guaranteed portion of the loan from the Holder. If USDA holds any of the guaranteed portion, USDA will be paid its pro rata share of the proceeds from liquidation of the collateral.
- A. Lender's proposed method of liquidation. Within 30 days after the decision to liquidate, the Lender will advise USDA in writing of its proposed detailed method of liquidation (liquidation plan) and will provide USDA with:
1. Such proof as USDA requires establishing the Lender's ownership of the guaranteed loan promissory notes and related security instruments.
  2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, and advice as to whether or not each item is serving as collateral for the guaranteed loan.
  3. A proposed method of making the maximum collection possible on the indebtedness.
  4. An estimate of fair market and potential liquidation value of the collateral. If the value of the collateral is \$250,000 or more, the Lender must obtain an independent appraisal report meeting the requirements of 7 CFR 4279.144 for the collateral securing the loan, which reflects the fair market value and potential liquidation value. For collateral values under this threshold, Lenders must follow their primary regulator's policies relating to appraisals and evaluations or, if the Lender is not regulated, normal banking practices and generally accepted methods of determining value. The independent appraiser's fee, including the cost of the environmental site assessment, will be shared equally by the Agency and the Lender.
- B. USDA will inform the Lender in writing whether it concurs in the Lender's liquidation plan. Should USDA and the Lender not agree on the Lender's liquidation plan, negotiations will take place between USDA and the Lender to resolve the disagreement.
- C. Acceleration. The Lender will proceed to accelerate the indebtedness as expeditiously as possible when acceleration is necessary, including giving any notices and taking any other legal actions required. The Lender will provide a copy of the acceleration notice or other acceleration document to the Agency.

- D. Liquidation: Accounting and Reports. When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide USDA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs, and additional procedures necessary for successful completion of liquidation. The Lender will transmit to the Agency its pro rata share of any payments received from the Borrower, and of liquidation or other proceeds, etc., when USDA is the Holder of a portion of the guaranteed loan, using Form RD 1980-43, "Lender's Guaranteed Loan Payment to USDA."
- E. Determination of Loss and Payment. In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated or after settlement and compromise of all parties has been completed. USDA will have the right to recover losses paid under the guarantee from any party liable.
1. Form RD 449-30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final loss determinations. Estimated loss payments may be approved by USDA after the Lender has submitted a liquidation plan approved by USDA. Payments will be made in accordance with applicable USDA regulations.
  2. When the lender is conducting the liquidation and owns any or all of the guaranteed portion of the loan, the lender must file an estimated loss claim once a decision has been made to liquidate if the liquidation will exceed 90 days. The estimated loss payment will be based on the liquidation value of the collateral. Such estimate will be prepared and submitted by the lender on Form RD 449-30 using the basic formula as provided on the report, except that the liquidation appraisal value will be used in lieu of the amount received from the sale of collateral. Interest accrual eligible for payment under the guarantee on the defaulted loan will be discontinued when the estimated loss is paid. A protective advance claim will be paid only at the time of the final report of loss payment.
  3. Within 30 days after liquidation of all collateral is completed (except for certain unsecured personal or corporate guarantees), the Lender must prepare a final report of loss and submit it to USDA. If the Lender holds all or a portion of the guaranteed loan, USDA will not guarantee interest to the Lender accruing after 90 days from the most recent delinquency effective date. USDA will not guarantee interest to any Holder accruing after the greater of: (1) 90 days from the date of the most recent delinquency effective date as reported by the Lender or (2) 30 days from the date of the interest termination letter. Before approval by USDA of any final loss report, the Lender must account for all funds during the period of liquidation, disposition of collateral, all costs incurred, and any other information necessary for the successful completion of liquidation. Upon receipt of the final accounting and report of loss, USDA may audit all applicable documentation to determine the final loss. The Lender will make its records available to and otherwise assist USDA in making any investigation. The documentation accompanying the report of loss must support the figures shown on Form RD 449-30.
  4. When the Lender has conducted liquidation and after the final report of loss has been tentatively approved:
    - i. If the loss is greater than the estimated loss payment, USDA will cause a Treasury check to be issued in payment of the additional amount owed by USDA to be issued to the Lender.
    - ii. If the loss is less than the estimated loss, the Lender will reimburse USDA for the overpayment plus interest at the note rate from date of payment.
  5. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above and such payment will be made by USDA when the final report of loss is approved.
- F. Maximum amount of interest loss payment. Notwithstanding any other provisions of this Agreement, the amount payable by USDA to the Lender cannot exceed the limits set forth in the Loan Note Guarantee. Loss occasioned by accruing interest will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by USDA.
- G. Application of USDA loss payment. The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by USDA will be applied by the Lender on the guaranteed portion of the loan debt. However, such application does not release the Borrower from liability. At time of final loss settlement, the Lender will notify the Borrower that the loss payment has been so applied. In all cases a final Form RD 449-30 prepared and submitted by the Lender must be processed by USDA.
- H. Income from collateral. Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.
- I. Liquidation costs. Certain reasonable liquidation costs will be allowed during the liquidation process. A schedule of the liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of

collateral unless the costs have been previously determined by the Lender (with USDA written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will obtain USDA's written concurrence prior to proceeding with the proposed changes.

- J. Foreclosure. The Lender is responsible for determining who the necessary parties are to any foreclosure action or who should be named on a deed of conveyance taken in lieu of foreclosure. When the conveyance is received and the property is liquidated, the net proceeds will be applied to the guaranteed loan debt. If USDA has repurchased the guaranteed portion of the loan from the Holder, the Lender must obtain USDA's concurrence to any foreclosure action to be taken by the Lender; however, USDA will not be considered to be a necessary party to the action or otherwise required to join in.
- K. Payment. Such loss will be paid by USDA within 60 days after the review of the accounting of the collateral.
- L. Protective Advances. Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instruments. USDA's written authorization is required for all protective advances in excess of \$200,000 or 10 percent of the aggregate outstanding balance of principal and interest, whichever is less. Protective advances include, but are not limited to, advances made for property taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney/legal fees are not a protective advance.
- M. Future Recovery. After a loan has been liquidated and a final loss has been paid by USDA, any future funds that may be recovered by the Lender will be prorated between USDA and the Lender. USDA will be paid such amount recovered in proportion to the percentage it guaranteed for the loan, and the Lender will retain such amounts in proportion to the percentage of the unguaranteed portion of the loan. Any collection of Federal debt made by the United States from any liable party to the guaranteed loan will not be split with the Lender.
- N. Debt Collection Improvement Act. Pursuant to the Debt Collection Improvement Act of 1996 (DCIA), USDA is required to refer debt owed to the Government to the Department of the Treasury for collection. USDA will use all remedies available under DCIA to collect the debt from the Borrower, guarantors, and any other liable third party and, any proceeds received from such efforts will not be shared with the Lender. USDA will notify the Lender when this referral occurs, at which time the Lender will cease collection efforts.
- O. Transfer and Assumption Cases. Refer to 7 CFR part 4287. If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantees) is released from personal liability, the Lender, if it holds the unguaranteed portion, may file an estimated report of loss on Form RD 449-30 to recover its pro rata share of the actual loss at that time. In completing Form RD 449-30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the Transferee, will be entered on Form RD 449-30, lines 13 and 14. The Lender must not issue any new promissory notes. The assumption must be completed in accordance with applicable law and must contain the Agency case number of the transferor and transferee.

## VII. Bankruptcy

- A. The Lender is responsible for protecting the guaranteed loan and all collateral securing the loan in bankruptcy proceedings. When a bankruptcy proceeding results in ultimate liquidation of the Borrower, legal expenses incurred by the Lender during the bankruptcy proceedings will be considered eligible liquidation costs. When the loan is involved in reorganization bankruptcy proceedings, payment of loss claims may be made as provided in this section. For a liquidation proceeding only paragraphs 3 and 5 of this section are applicable.
- B. Loss Payments.
  - 1. Estimated Loss Payments.
    - i. If a Borrower has filed for reorganization and protection under Title 11 of the United States Code and the debt has been reduced, the Lender will request a tentative estimated loss payment of accrued interest and principal written off under the order of the court. This request can only be made after the bankruptcy plan is confirmed. Only one estimated loss payment is allowed during the bankruptcy process. All subsequent claims during reorganization will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by USDA, at its option, in accordance with any court approved changes in the reorganization plan. At the time the performance under the confirmed reorganization plan

has been completed, the Lender is responsible for providing USDA with the documentation necessary to review and adjust the estimated loss claim to: (a) reflect the actual principal and interest reduction on any part of the guaranteed debt determined to be unsecured and (b) to reimburse the Lender for any court ordered interest rate reduction during the term of the reorganization.

- ii. The Lender will use Form RD 449-30 to request an estimated loss payment and to review estimated loss payments during the course of the reorganization plan. The estimated loss claim as well as any revisions to this claim will be accompanied by applicable legal documentation to support the claim.
  - iii. Upon completion of the reorganization plan, the Lender will complete Form RD 1980-44, and forward this form to the Finance Office to indicate that the bankruptcy has been dismissed.
2. Interest Loss Payments.
- i. For guaranteed loans approved prior to [EFFECTIVE DATE OF FINAL RULE], interest losses sustained during the period of the bankruptcy plan will be processed in accordance with 7 CFR 4287.170(b)(1). Interest losses sustained after the bankruptcy plan is confirmed will be processed annually when the Lender sustains a loss as a result of a permanent interest rate reduction that extends beyond the period of the bankruptcy plan. Form RD 449-30 will be completed to compensate the Lender for the difference in interest rates specified on the Loan Note Guarantee and the rate of interest ordered by and in accordance with final order of a court of competent jurisdiction.
  - ii. For guaranteed loans approved on or after [EFFECTIVE DATE OF FINAL RULE], USDA will not compensate the Lender for any difference in the interest rate specified in the Loan Note Guarantee and the rate of interest specified in the bankruptcy plan.
3. Final Loss Payments. Payments will be processed when the loan is liquidated.
4. Payment Application. The Lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event the court attempts to direct the payments to be applied in a different manner, the Lender will immediately notify the USDA servicing office.
5. Overpayments. Upon completion of the reorganization plan, the Lender will provide USDA with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained, as a result of the reorganization, is greater than the estimated loss payment, the Lender will submit a revised estimated loss in order to obtain payment of the additional amount owed by USDA to the Lender. If the actual loss payment is less than the estimated loss, the Lender will reimburse USDA for the overpayment plus interest at the note rate from the date of the payment of the estimated loss.
6. Protective Advances. If approved protective advances were incurred in connection with the initiation of liquidation action and were required to provide repairs, insurance, etc., to protect the collateral as a result of delays in the case of failure of the Borrower to maintain the security prior to the Borrower having filed bankruptcy, the protective advances together with accrued interest, are payable under the guarantee is the final loss claim and will be entered on Form RD 449-30. Expenses, such as reasonable attorney/legal fees and the cost of appraisals incurred by the Lender as a direct result of the borrower's bankruptcy filing, are considered liquidation expenses. Liquidation expenses must be deducted from collateral sale proceeds. The Lender and USDA will share liquidation expenses equally. To accomplish this, the Lender will deduct 50 percent of the liquidation expenses from the collateral sale proceeds.

## VIII. Duration and Modification

- A. Duration of Agreement. This Lender's Agreement applies to all B&I and REAP loans made by the Lender from the date of this Lender's Agreement until terminated or superseded by another Lender's Agreement.
- B. Modification of Agreement. This Agreement may only be modified only in writing.
- C. Other Requirements. This Agreement is subject to all requirements of applicable Program Regulations including 7 CFR part 4279, subparts A, B and C; 7 CFR part 4287 subparts B and D; and 7 CFR part 4280, subpart B, in effect on the date of this Agreement.

D. All forms required by this Agreement may be obtained from any Rural Development State or local office.

**IX. Endorsement**

\_\_\_\_\_  
*Lender: Complete this block of Section IX*  
\_\_\_\_\_

LENDER \_\_\_\_\_  
(Name)

By: \_\_\_\_\_  
(Signature)



\_\_\_\_\_  
(Name Typed or Printed)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

\_\_\_\_\_  
*This block of Section IX will be completed by USDA.*  
\_\_\_\_\_

UNITED STATES OF AMERICA  
Department of Agriculture

By: \_\_\_\_\_  
(Signature)

Title: \_\_\_\_\_

\_\_\_\_\_  
(Name Typed or Printed)

Date: \_\_\_\_\_