

**§ 1779.89 Mergers.**

(a) *General.* The Agency may approve mergers or consolidations (herein referred to as “mergers”) when the resulting organization will be eligible for an Agency guaranteed loan and assumes all the liabilities and acquires all the assets of the merged borrower. Mergers may be approved when:

(1) The merger is in the best interest of the Government and the merging borrower;

(2) The resulting borrower can meet all required conditions as contained in specific loan note agreements; and

(3) All property can be legally transferred to the resulting borrower.

(b) *Distinguishing mergers from transfers and assumptions.* Mergers occur when one entity combines with another entity in such a way that the first entity ceases to exist as a separate entity while the other continues. In a consolidation, two or more entities combine to form a new, consolidated entity with the original entity ceasing to exist. Such transactions must be distinguished from transfers and assumptions in which a transferor will not necessarily go out of existence, and the transferee will not always take all the transferor’s assets nor assume all the transferor’s liabilities.

**§ 1779.90 Disposition of acquired property.**

(a) *General.* When the lender acquires title to the collateral and the final loss claim is not paid until final disposition, the lender must proceed as quickly as possible to develop a plan to fully protect the collateral, and the lender must dispose of the collateral without delay.

(b) *Re-title collateral.* Any collateral accepted by the lender must not be titled in the Agency’s name in whole or in part. The Agency’s position is that of a guarantor relating to losses, not a lender.

(c) *Collateral preservation.* After acquiring the collateral, the lender must protect the collateral from deterioration (weather, vandalism, etc.). Hazard insurance in an amount necessary to cover the fair market value of the collateral must be maintained.

(d) *Collateral sale.* (1) The lender will prepare and submit to the Agency a

plan on the best method of sale, keeping in mind any prospective purchasers. The Agency must approve the plan in writing. If an existing approved liquidation plan addresses the disposition of acquired property, no further review is required unless modification of the plan is needed.

(2) Anytime there is a case when the conversion of collateral to cash can reasonably be expected to result in a negative net recovery amount, abandonment of the collateral should be considered. The Agency must approve abandonment in writing.

**§§ 1779.91-1779.93 [Reserved]****§ 1779.94 Determination and payment of loss.**

In all liquidation cases, final settlement will be made with the lender after the collateral is liquidated. The Agency will have the right to recover losses paid under the guarantee from any liable party.

(a) *General.* If the lender takes title to collateral, any loss will be based on the collateral value at the time the lender obtains title.

(b) *Loss calculations.* The Report of Loss form (available in any Agency office) will be used for calculations of all estimated and final loss determinations. Estimated loss payments may only be approved after the lender has submitted a liquidation plan approved by the Agency.

(c) *Estimated loss payments.* When the lender is conducting the liquidation and owns any of the guaranteed portion of the loan, it may request an estimated loss payment by submitting an estimate of loss that will occur in connection with liquidation of the loan. An estimated loss payment may be approved after the Agency has approved the liquidation plan.

(1) The lender will prepare and submit a Report of Loss using the appraised value in lieu of amount received from sale of collateral.

(2) The estimated loss payment shall be calculated as of the date of such payment. The total amount of the loss payment remitted by the Agency will be applied by the lender on the guaranteed portion of the loan debt. Such application does not release the borrower