Subpart D—Servicing Biorefinery Assistance Guaranteed Loans

§ 4287.101 Introduction.

(a) This subpart supplements part 4279, subparts A and B, by providing additional requirements and instructions for servicing and liquidating all Business and Industry (B&I) Guaranteed Loans. This includes Drought and Disaster (D&D), Disaster Assistance for Rural Business Enterprises (DARBE), and Business and Industry Disaster (BID) loans.

(b) The lender will be responsible for servicing the entire loan and will remain mortgagee and secured party of record notwithstanding the fact that another party 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. The unguaranteed portion of a loan will neither be paid first nor given any preference or priority over the guaranteed portion of the loan.

(c) Copies of all forms, regulations, and instructions referenced in this subpart are available in any Agency office. Whenever a form is designated in this subpart, that designation includes predecessor and successor forms, if applicable, as specified by the field or National Office.

§ 4287.102 Definitions.

The definitions and abbreviations contained in § 4279.2 of subpart A of part 4279 of this chapter apply to this subpart.

§ 4287.103 Exception authority.

Section 4279.15 of subpart A of part 4279 of this chapter applies to this subpart.

§§ 4287.104–4287.105 [Reserved]

§ 4287.106 Appeals.

Section 4279.16 of subpart A of part 4279 of this chapter applies to this subpart.

§ 4287.107 Routine servicing.

The lender is responsible for servicing the entire loan and for taking all servicing actions that a prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The Loan Note Guarantee is unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, use of loan funds for unauthorized purposes, negligent servicing, or failure to obtain the required security interest regardless of the time at which the Agency acquires knowledge of the foregoing. This responsibility includes but is not limited to the collection of payments, obtaining compliance with the covenants and provisions in the Loan Agreement, obtaining and analyzing financial statements, checking on payment of taxes and insurance premiums, and maintaining liens on collateral.

(a) Lender reports and annual renewal fee. The lender must report the outstanding principal and interest balance on each guaranteed loan semiannually using a USDA-approved status report or other approved format. The lender will transmit the annual renewal fee to the Agency simultaneously with the December 31 semiannual status report in accordance with 7 CFR part 4279, subpart B, § 4279.107.

(b) Loan classification. Within 90 days of receipt of the Loan Note Guarantee, the lender must notify the Agency of the loan’s classification or rating under its regulatory standards. Should the classification be changed at a future time, the Agency must be notified immediately.

(c) Agency and lender conference. At the Agency’s request, the lender will
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 en-
forced.

(d) Financial reports. The lender must
obtain and forward to the Agency the
financial statements required by the
Loan Agreement. The lender must sub-
mit annual financial statements to the
Agency within 120 days of the end of
the borrower’s fiscal year. The lender
must analyze the financial statements
and provide the Agency with a written
summary of the lender’s analysis and
conclusions, including trends,
strengths, weaknesses, extraordinary
transactions, and other indications of
the financial condition of the borrower.
Spreadsheets of the new financial
statements must be included.

(e) Additional expenditures. The lender
will not make additional loans to the
borrower without first obtaining the
prior written approval of the Agency,
even though such loans will not be
guaranteed.

§ 4287.113 Release of collateral.

(a) All releases of collateral with a
value exceeding $100,000 must be sup-
ported by a current appraisal on the
collateral released. The appraisal will
be at the expense of the borrower and
must meet the requirements of
§ 4279.144 of subpart B of part 4279 of
this chapter. The remaining collateral
must be sufficient to provide for repay-
ment of the Agency’s guaranteed loan.
The Agency may, at its discretion, re-
quire an appraisal of the remaining col-
lateral in cases where it is determined
that the Agency may be adversely af-
fected by the release of collateral. Sale
or release of collateral must be based
on an arm’s-length transaction.

(b) Within the parameters of para-
graph (a) of this section, lenders may,
over the life of the loan, release collat-
eral (other than personal and corporate
guarantees) with a cumulative value of
up to 20 percent of the original loan
amount without Agency concurrence if
the proceeds generated are used to re-
duce the guaranteed loan or to buy re-
placement collateral.

(c) Within the parameters of para-
graph (a) of this section, release of col-
lateral with a cumulative value in ex-
cess of 20 percent of the original loan
or when the proceeds will not be used
to reduce the guaranteed loan or to
buy replacement collateral must be re-
quested in writing by the lender and
concurred in by the Agency in writing

Variable rates can be changed to a
fixed rate which is at or below the cur-
rent variable rate.

(3) The interest rates, after adjust-
ments, must comply with the require-
ments for interest rates on new loans
as established by § 4279.125 of subpart B
of part 4279 of this chapter.

(4) The lender is responsible for the
legal documentation of interest-rate
changes by an endorsement or any
other legally effective amendment to
the promissory note; however, no new
notes may be issued. Copies of all legal
documents must be provided to the
Agency.

(b) Increases. No increases in interest
rates will be permitted except the nor-
mal fluctuations in approved variable
interest rates unless a temporary in-
terest-rate reduction had occurred.