associated with servicing or liquidi-
ating the loan) with a new lender un-
less a relationship is established
through a substitution of lender in ac-
cordance with paragraph (a) of this
section. This includes cases where the
lender has failed and been taken over
by a regulatory agency such as the
Federal Deposit Insurance Corporation
(FDIC) and the loan is subsequently
sold to another lender.

(a) The Agency may approve the sub-
stitution of a new lender if:
(i) The proposed substitute lender:
(ii) Is an eligible lender in accordance
with 4279.29 of subpart A of part 4279 of
this chapter;
(iii) Is able to service the loan in ac-
cordance with the original loan docu-
ments; and
(iv) Agrees in writing to acquire title
to the unguaranteed portion of the
loan held by the original lender and as-
sumes all original loan requirements,
including liabilities and servicing re-
sponsibilities.

(b) Where the lender has failed and
been taken over by FDIC and the guar-
anteed loan is liquidated by FDIC rath-
her than being sold to another lender,
the Agency will pay losses and share in
costs as if FDIC were an approved sub-
stitute lender.

§§ 4287.146–4287.155 [Reserved]

§ 4287.145 Default by borrower.
(a) The lender must notify the Agen-
cy when a borrower is 30 days past due
on a payment or is otherwise in default
of the Loan Agreement, Form FmHA
1980–44. “Guaranteed Loan Borrower
Default Status,” will be used and the
lender will continue to submit this
form bimonthly until such time as the
loan is no longer in default. If a mone-
tary default exceeds 60 days, the lender
will arrange a meeting with the Agen-
cy and the borrower to resolve the
problem.
(b) In considering options, the pros-
pects for providing a permanent cure
without adversely affecting the risk to
the Agency and the lender is the para-
mount objective.

(1) Curative actions include but are
not limited to:
(i) Deferment of principal (subject to
rights of any holder);
(ii) An additional unguaranteed loan
by the lender to bring the account cur-
rent;
(iii) Reamortization of or resched-
uling the payments on the loan (sub-
ject to rights of any holder);
(iv) Transfer and assumption of the
loan in accordance with §4287.134 of
this subpart;
(v) Reorganization;
(vi) Liquidation;
(vii) Subsequent loan guarantees; and
(viii) Changes in interest rates with
the Agency’s, the lender’s, and holder’s
approval, provided that the interest
rate is adjusted proportionately be-
tween the guaranteed and
unguaranteed portion of the loan and
the type of rate remains the same.
(2) In the event a deferment, resched-
uling, reamortization, or moratorium
is accomplished, it will be limited to
the remaining life of the collateral or
remaining limits as contained in
§4279.126 of subpart B of part 4279 of
this chapter, whichever is less.

§§ 4287.146–4287.155 [Reserved]
§ 4287.157 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, liquidation may be considered. If the lender concludes that liquidation is necessary, it must request the Agency’s concurrence. The lender will liquidate the loan unless the Agency, at its option, carries out liquidation. When the decision to liquidate is made, if the loan has not already been repurchased, provisions will be made for re-purchase in accordance with § 4279.78 of subpart A of part 4279 of this chapter.

(a) Decision to liquidate. A decision to liquidate shall be made when it is determined that the default cannot be cured through actions contained in § 4287.145 of this subpart or it has been determined that it is in the best interest of the Agency and the lender to liquidate. The decision to liquidate or continue with the borrower must be made as soon as possible when any of the following exist:

(1) A loan has been delinquent 90 days and the lender and borrower have not been able to cure the delinquency through one of the actions contained in § 4287.145 of this subpart.

(2) It has been determined that delaying liquidation will jeopardize full recovery on the loan.

(3) The borrower or lender has been uncooperative in resolving the problem and the Agency or the lender has reason to believe the borrower is not acting in good faith, and it would enhance the position of the guarantee to liquidate immediately.

(b) Liquidation by the Agency. The Agency may require the lender to assign the security instruments to the Agency if the Agency, at its option, decides to liquidate the loan. When the Agency liquidates, reasonable liquidation expenses will be assessed against the proceeds derived from the sale of the collateral. Form FmHA 1980–45, “Notice of Liquidation Responsibility,” will be forwarded to the Finance Office when the Agency liquidates the loan.

(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