

RBS, RHS, and RUS, USDA**§ 5001.511**

(d) In cases when there is a transfer to a new lender or when a lender has been merged with or acquired by another Lender, the Agency and the new lender must execute a new lender's agreement, unless the new lender already has a valid lender's agreement with the Agency.

(e) After Agency approval of a transfer of lender, all terms of the original loan note guarantee shall transfer to the benefit of the new lender.

§ 5001.508 Mergers.

Agency approval. All borrower mergers or consolidations (herein referred to as "mergers") require approval by the Agency and the lender. The Agency may approve a merger when—

(a) The resulting organization will be eligible for a guaranteed loan and assumes all the liabilities and acquires all the assets of the merged borrower;

(b) The merger is in the best interest of the government and the merging organization;

(c) The resulting organization can meet all required conditions as contained in specific loan agreements; and

(d) All property can be legally transferred to the resulting organization.

§ 5001.509 Servicing fees.

The lender may pass the servicing fees on to the borrower but may not delay payment of the fee to the Agency while collecting the payment from the borrower.

(a) *Guarantee retention fees.* Where the lender is required to pay a periodic guarantee retention fee (see § 5001.455), the fee is due for the entire payment period even if the loan note guarantee is terminated or transferred before the next retention fee payment is due.

(b) *Borrower transfer fee.* The Agency will charge the following fees:

(1) A one-time, \$1,500 nonrefundable transfer fee at the time of transfer to an eligible borrower.

(2) Payment of a one-time nonrefundable transfer fee of 1 percent of the guaranteed loan balance to ineligible borrowers.

§ 5001.510 Subordination of lien position.

(a) *Request for subordination.* A lender seeking a subordination of its lien posi-

tion in collateral must submit a written request to the Agency. The lender must include in the request a financial analysis of the servicing action. The financial analysis must be fully supported by current financial statements, less than 90 calendar days old, of the borrower and guarantors. The lender must receive written Agency approval prior to the subordination.

(b) *Agency approval.* Agency approval of the subordination request requires that:

(1) The subordination of the lender's lien position enhances the borrower's business and is in the best financial interest of the Agency;

(2) The lien to which the guaranteed loan is subordinated is for a fixed dollar amount or fixed credit limit and for a fixed term, after which the guaranteed loan lien priority will be restored;

(3) Remaining collateral is sufficient to provide for adequate collateral coverage of the guaranteed loan. The Agency may require a current independent appraisal in accordance with § 5001.203 of this part. However, if the original appraisal is more than one year old, but less than two years old, the lender may provide an appraisal with a new effective date of evaluation in lieu of a completely new appraisal;

(4) Lien priorities remain for the portion of the loan collateral that was not subordinated;

(5) The subordination of collateral to a line of credit does not extend beyond the term of the line of credit and in no event exceeds more than three years.

(6) Subordination to a tax-exempt obligation is strictly prohibited in compliance with OMB Circular A-129, "Policies for Federal Credit Programs and Non-Tax Receivables."

§ 5001.511 Repurchases from holders.

(a) *General.* A holder can make written demand on either the lender or the Agency to repurchase the unpaid guarantee portion of the loan when the borrower is in monetary default or when the lender has failed to pay the holder its pro-rata share of any payment made by the borrower within 30 days of the lender's receipt thereof from the borrower. When making written demand

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on the lender, the holder must concurrently send a copy of the demand letter to the Agency.

(1) The lender is encouraged to repurchase the guarantee, upon written demand of a holder, to facilitate the accounting of funds, resolve any loan problem, and resolve the monetary default, where and when reasonable. The benefit to the lender is that it may reassign the guaranteed portion of the loan and then continue collection of its servicing fee, if any, when the monetary default is cured.

(2) When a lender receives a written demand for repurchase from a holder, the lender must notify any other holder and the Agency within 30 calendar days of receipt of the written demand. The lender must inform all parties if the lender will repurchase the unpaid guaranteed portion of the loan from the requesting holder.

(3) Upon repurchase the holder will re-assign the assignment guarantee agreement to the lender without recourse.

(b) *Repurchase by lender for loan servicing purposes.* If the lender, borrower, and holder are unable to agree to restructuring of loan repayment, interest rate, or loan terms to resolve any loan problem or resolve any default, and repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the holder must reassign the guaranteed portion of the loan to the lender. The reassignment must be for an amount not less than the holder's unpaid principal and accrued interest, in accordance with § 5001.450(c) of this part, on such portion less the lender's servicing fee.

(1) Upon repurchase the holder will re-assign the assignment guarantee agreement to the lender without recourse.

(2) The lender must not repurchase from the holder for arbitrage or other purposes to further its own financial gain.

(3) Any repurchase from a holder may only be made after the lender obtains the Agency's written approval.

(c) *Agency repurchase.* If the lender does not repurchase the guaranteed portion from the holder, the Agency may, at its option, purchase such guaranteed portion of the loan for loan

servicing purposes. A holder can submit a written demand to the Agency for repurchase only if the lender declines to repurchase. If a prior written demand was not made upon the lender, the Agency will notify the lender and allow up to seven calendar days for the lender to exercise their option to repurchase as provided in this section.

(1) *Lender does not repurchase.* If the lender does not repurchase the unpaid guaranteed portion of a loan as provided in paragraph (a) of this section, the Agency will, within 30 calendar days after written demand to the Agency from the holder, purchase from the holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase or the interest termination date, whichever is sooner, less the lender's servicing fee. The guarantee will pay accrued interest to the holder on the loan as determined under § 5001.450(c) of this part.

(2) *Written demand content.* The holder must include in its written demand to the Agency:

(i) A copy of the written demand made upon the lender;

(ii) A copy of the lender's denial to repurchase the unpaid guaranteed portion of the guaranteed loan;

(iii) Evidence of the right to require payment from the Agency as provided by the holder or duly authorized agent. Such evidence must consist of the original assignment guarantee agreement properly assigned to the Agency without recourse including all rights, title, and interest in the loan;

(iv) The amount due including unpaid principal, unpaid interest to date of demand, and interest subsequently accruing from date of demand to proposed payment date; and

(v) When the initial holder has assigned its interest, the original assignment guarantee agreement and an original of each Agency-approved reassignment document in the chain of ownership, with the latest reassignment being assigned to the Agency without recourse, including all rights, title, and interest in the guarantee.

(3) *Payment.* Unless otherwise agreed upon, payment will not be later than 30 calendar days from the date of demand.

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(i) Upon request by the Agency, the lender must promptly furnish (within 30 calendar days of such request) 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 then owed to any holder, along with the information necessary for the Agency to determine the appropriate amount due the holder.

(ii) Any discrepancy between the amount claimed by the holder and the information submitted by the lender must be resolved between the lender and the holder before payment will be approved. The Agency will notify both parties and such conflict will suspend the running of the 30-calendar-day payment requirement.

(iii) If a repurchase of a guaranteed loan includes the capitalization of interest, interest accrued on the capitalized interest will not be paid to the holder.

(4) *Subrogation.* When the Agency purchases a loan from a holder it assumes all rights that were previously held by the holder.

(5) *Servicing fee.* When the Agency purchases the guaranteed portion of the loan from a holder, the lender's servicing fee will stop on the date that interest was last paid by the borrower. The lender can neither charge a servicing fee to the Agency nor collect such fee from the Agency.

(6) *Accrued interest.* If the Agency repurchases 100 percent of the guaranteed portion of a loan and becomes the holder, interest accrual on the loan will cease until the lender resumes remittance of the pro rata payments to the Agency.

(7) *Establishing interest termination date.* When a guaranteed loan has been delinquent more than 60 calendar days and no holder comes forward or when the lender has accelerated the account, and subject to the expiration of any forbearance or workout agreement, the lender, or the Agency at its sole discretion, must issue a letter to the holder(s) establishing the interest termination date in accordance with § 5001.450(c)(2).

(8) *Obligations and rights.* Purchase by the Agency neither changes, alters, or modifies any of the lender's obligations

to the Agency arising from the lender's agreement, guaranteed loan or loan note guarantee, nor does it waive any of the Agency's rights against the lender. The Agency will have the right to set-off against the lender all rights inuring to the Agency as the holder of the instrument against the Agency's obligation to the lender under the loan note guarantee.

(9) *Accelerated loan.* When the lender has accelerated the loan and the lender holds all or a portion of the guaranteed loan, an estimated loss claim must be filed by the Lender with the Agency within 60 calendar days from the date the loan was accelerated. Accrued interest paid to the lender in accordance with § 5001.450(c)(1).

(10) *Interest termination during bankruptcy.* When a borrower files a Chapter 7 liquidation plan, the lender shall immediately notify the Agency and submit a liquidation plan. The Agency will establish an interest termination date based on the date interest was last paid to the lender. When a borrower files either a Chapter 9 or Chapter 11 bankruptcy restructuring plan, the Agency and lender shall meet to discuss the bankruptcy procedure, the ability of the borrower to meet their restructuring plan, the lender's treatment of accruing interest, and potentially establish an interest termination date for the guaranteed loan. If the restructuring bankruptcy Chapter 9 or Chapter 11 is converted to a liquidation bankruptcy Chapter 7 by court order, the interest termination date will be the date of such conversion.

[85 FR 62198, Oct. 2, 2020]

§ 5001.512 Additional expenditures and loans.

The lender shall not make additional expenditures on behalf of, or provide new loans to, the borrower without notification to the Agency even though such expenditures or loans will not be guaranteed. The lender shall not approve additional expenditures or new loans where the expenditure or loan will violate, or cause a violation of, any of the loan covenants in the borrower's loan agreement.