

§§ 4287.108–4287.111 [Reserved]

§ 4287.112 Interest rate changes.

(a) The borrower, lender, and holder (if any) may collectively initiate a permanent or temporary reduction in the interest rate of the guaranteed loan at any time during the life of the loan upon written agreement among these parties. The lender must obtain prior Agency concurrence and provide a copy of the modification agreement to the Agency. If any of the guaranteed portion has been purchased by the Agency, the Agency (as a holder) will affirm or reject interest rate change proposals in writing.

(b) No increases in interest rates will be permitted, except the normal fluctuations in approved variable interest rates, unless a temporary interest rate reduction occurred or to change from a variable rate to a fixed rate. Variable rates can be changed to a fixed rate at the request of the borrower, lender, agreement of the holder, if any, and with the Agency's prior written concurrence. After the rate change, the rate must meet the requirements of 7 CFR 4279.125.

(c) The interest rate, after adjustments, must comply with the interest rate requirements set forth in § 4279.125 of this chapter.

(d) 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 shall be issued. The lender must provide copies of all legal documents to the Agency.

[81 FR 36020, June 3, 2016, as amended at 87 FR 58021, Sept. 23, 2022]

§ 4287.113 Release of collateral.

(a) Within the parameters of paragraph (c) of this section, lenders may, over the life of the loan, release collateral (other than personal and corporate guarantees) without Agency concurrence if the proceeds generated are used to pay down debt in order of lien priority, reduce the guaranteed loan or to acquire replacement collateral. Working assets, such as accounts receivable, inventory, and work-in-progress that are routinely depleted or sold and proceeds used for the normal

course of business operations may be used in and released for routine business purposes without prior concurrence of the Agency as long as the loan is not in monetary default or liquidation.

(b) If a release of collateral does not meet the requirements of paragraph (a) of this section, the lender must complete a written evaluation to justify the release and obtain written Agency concurrence in advance of the release.

(c) Collateral must remain sufficient to provide for adequate collateral coverage for the outstanding guaranteed loan(s). For a release of collateral request when the Borrower is not in monetary default or liquidation, the lender must support all releases of chattel collateral with a value exceeding \$250,000 and real estate collateral with a value exceeding \$500,000 with a current appraisal on the collateral being released and otherwise meets the requirements of § 4279.144 of this chapter. All other release of collateral requests must meet the appraisal requirements of § 4279.144 of this chapter. The cost of this appraisal will not be paid for by the Agency. The Agency may, at its discretion, require an appraisal of the remaining collateral in cases where it has been determined that the Agency may be adversely affected by the release of collateral. The sale or release of the collateral must be based on an arm's length transaction, and there must be adequate consideration for the release of collateral. Such consideration may include, but is not limited to:

(1) Application of the net proceeds from the sale of collateral to the borrower's debts in order of their lien priority against the sold collateral;

(2) Use of the net proceeds from the sale of collateral to purchase other collateral of equal or greater value for which the lender will obtain as security for the benefit of the guaranteed loan with a lien position equal or superior to the position previously held;

(3) Application of the net proceeds from the sale of collateral to the borrower's business operation in such a manner that a significant improvement to the borrower's debt service ability will be clearly demonstrated. The lender's written request must detail how

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the borrower's debt service ability will be improved; or

(4) Assurance that the release of collateral is essential for the success of the business, thereby furthering the goals of the program. Such assurance must be supported by written documentation from the lender acceptable to the Agency.

[81 FR 36020, June 3, 2016, as amended at 87 FR 58021, Sept. 23, 2022]

### **§§ 4287.114–4287.122 [Reserved]**

#### **§ 4287.123 Subordination of lien position.**

A subordination of the lender's lien position must be requested in writing by the lender and concurred with in writing by the Agency in advance of the subordination. The lender's subordination proposal must include a financial analysis of the servicing action and be fully supported by current financial statements of the borrower and guarantors that are less than 90 days old.

(a) The subordination of lien position must enhance the borrower's business and not adversely affect the potential for collection of the B&I loan through repayment or liquidation.

(b) The lien to which the guaranteed loan is subordinated is for a fixed dollar limit and for a fixed term after which the guaranteed loan lien priority will be restored.

(c) Collateral must remain sufficient to provide for adequate collateral coverage. The Agency may require a current independent appraisal in accordance with § 4279.144 of this chapter.

(d) Lien priorities must remain for the portion of the collateral that was not subordinated.

(e) A subordination to a line of credit cannot exceed 1 year. The term of the line of credit cannot be extended.

#### **§ 4287.124 Alterations of loan instruments.**

The lender must neither alter nor approve any alterations or modifications of any loan instrument without the prior written approval of the Agency.

### **§§ 4287.125–4287.132 [Reserved]**

#### **§ 4287.133 Sale of corporate stock.**

Any sale or transfer of corporate stock must be approved by the Agency in writing and must be to an eligible individual or entity in accordance with § 4279.108(a) and 4279.108(b) of this chapter. In the event a portion of the borrower's stock is sold or transferred, the Agency may require personal or corporate guarantees from those then owning a 20 percent or more interest in the borrower in accordance with § 4279.132 of this chapter.

#### **§ 4287.134 Transfer and assumption.**

The lender may request a transfer and assumption of a guaranteed loan in situations where the total indebtedness, or less than the total indebtedness, is transferred to another eligible borrower on the same or different terms. A transfer and assumption of the borrower's operation can be accomplished before or after the loan goes into liquidation. However, if the collateral has been purchased through foreclosure or the borrower has conveyed title to the lender, no transfer and assumption is permitted. Additionally, no transfer and assumption is permitted when the Agency has repurchased 100 percent of the guaranteed portion of the loan.

(a) *Documentation of request.* All transfers and assumptions must be approved in writing by the Agency and must be to an eligible borrower. The lender must provide credit reports for each individual or entity owning 20 percent or more interest in the transferee, along with such other documentation as the Agency may request to determine eligibility. In accordance with § 4279.132 of this chapter, the Agency will require personal and/or corporate guarantee(s) from all owners that have a 20 percent or more ownership interest in the transferee. When warranted by an Agency assessment of potential financial risk, the Agency may also require guarantees of parent, subsidiaries, or affiliated companies (owning less than a 20 percent interest in the borrower) and may require security for any guarantee. The new borrower must sign Form RD 4279-1, "Application for Loan Guarantee," and any