Servicing

Biorefinery Assistance Program

(Section 9003)

Agency Contacts

- Lenders work with State and National Office contacts
- Servicing approval authority resides with National Office

Annual Fee

- The annual renewal fee (a specified percentage) is required to maintain the enforceability of the guarantee as to the lender.
- The rate of the fee is established at obligation and is determined annually and published in a Federal Register Notice.
- The rate in effect at the time the loan is obligated will remain in effect for the life of the loan.

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Annual Fee (con't)

- Annual renewal fees are due on JAN 31.
  - Payments not received by APR 1 are considered delinquent and, at the Agency's discretion, may result in cancellation of the guarantee to the lender
- For loans where the Loan Note Guarantee is issued between OCT 1 and DEC 31
  - Payment of the first annual renewal fee will be due JAN 31 of the second year following the date the Loan Note Guarantee was issued

Lender Interactive Network Connection (LINC) Procedures

- Lender must:
  - Select an employee to be their Security Administrator in order to access LINC,
  - Must complete the Agreement for Electronic Transactions to designate the Security Administrator, and
  - Send the signed agreement to their local Rural Development field office.

LINC Procedures (con't)

- The following web site can be used to create an e-Authentication ID with Level 2 access: www.eauth.egov.usda.gov

LINC Procedures (con't)

- The Security Administrator will receive an e-mail validating they are authorized as a Security Administrator for the lender.
- The Security Administrator can:
  - process loan closings,
  - status reports, and
  - delegates access to the system for all other lender employees (representatives and viewers).

LINC Procedures (con't)

- Any individual that wishes to use LINC:
  - Must personally present a valid government photo identification for Level 2 access to a USDA employee, who has been trained as a Local Registration Authority (LRA).
  - The LRA must personally verify the lender employee's identity and validate their account using a valid ID.

LINC Procedures (con't)

- LINC website: https://usdalinc.sc.egov.usda.gov)
- After accessing the LINC site, click the RBS LINC HOME (access is based on authorization given for various programs).

LINC Procedures (con't)

- The Security Administrator must add each individual to the Application Authorization System Management (AASM) before they will have access to input the status reports and loan closings.
- Any individual responsible for completing the electronic transactions on LINC must be e-Authenticated at Level 2 access and ID proofed by an LRA.

LINC Procedures (con't)

- For access and activation of the account problems or forgotten passwords.
  - Call Rural Development Help Desk (800) 457-3642.
  - At the prompt select option #2 (issues with applications)
  - At the next prompt, select option #2 (Rural Development).

Routine Lender Servicing Responsibilities

- 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 loans that are not guaranteed

Routine Servicing Actions

Include, but are not limited to:

- Collecting and properly posting loan payments
  - Remitting pro-rata share to any holders
- Maintaining compliance with the loan covenants
- Borrower visits/inspections
- Maintaining liens on collateral
  - Regularly inspect and account for all collateral
- Ensuring taxes and insurance premiums are paid
- Reporting the outstanding principal and interest balance on each guaranteed loan semiannually via Lender Interactive Network Connection (LINC) System

Routine Servicing Actions (con’t)

- Keeping the Agency informed of the loan’s classification or rating under regulatory standards
- Periodic and Quarterly reporting
- Obtaining annual borrower/guarantor financial statements as required by the loan agreement and forward to the Agency within 180 days of the borrower’s fiscal year end, along with analysis of financials

Routine Servicing Actions (con’t)

- Agreeing to meet with the Agency at least annually to discuss the loan
- Agreeing to accompany the Agency on periodic borrower visits

Non-Routine Servicing Actions

Non-Routine Actions Require prior written Agency Concurrence

<u>Examples:</u>

- Collateral releases
- Releases of personal and corporate guarantees, the following must be considered:
  - Cash, either lump sum or over a reasonable period of time, offered by the guarantor
  - Age and health of the guarantor
  - Potential income
  - Inheritance prospects
  - Availability of the guarantor’s assets
  - The guarantor’s assets have been concealed or improperly transferred, and
  - Effect of the other guarantors on the loan

Non-Routine Servicing Actions (con't)

- Loan covenant waivers
- Reamortizations/Rescheduling
- Interest rate changes, the Lender, Agency and Holder must agree
- Accelerations/Liquidations
- Subordinations
- Transfers and Assumptions, Agency will not pay for appraisals
- Any changes to the loan documents

Request for Servicing Action

Lender requests for Agency concurrence of non routine servicing actions should include (at a minimum):

- Nature of request
- Reasonable details and supporting documentation including borrower’s financial statements and lender’s analysis
- Lender recommendation (critical)
- The Agency may request other documentation as needed

Borrower Default

- Lender will notify Agency when *loan* is delinquent (30 days past due)
- If a monetary default exceeds 60 days, the lender will arrange a meeting with the Agency and borrower in an effort to reach a permanent cure without adversely affecting the risk to the lender and the Agency

Borrower Default (con't)

- Lender will report loans in default to the Agency bimonthly using RD Form 1980-44, "Guaranteed Loan Borrower Default Status" until the default is cured.
  - This form has been automated for the lenders to access it electronically and update it bi-monthly through the LINC
- If the loan is brought current, the lender must update the default status report in the LINC system to indicate the loan is now current

Workout Agreement

- Lenders will work with businesses that are experiencing difficulties to correct problems before a loan defaults
- If a loan defaults, the lender will attempt to develop a plan for curing the delinquency, when economically feasible, reasonable, and present to the Agency for concurrence

Curative Actions

- Principal deferment (subject to the rights of any holder)
- Additional unguaranteed temporary loan
- Reamortization or rescheduling (subject to the rights of any holder
- Transfer and assumption

Curative Actions (con't)

- Reorganization
- Reduce interest rates
- Liquidation

NOTE: In the event a deferment, rescheduling, reamortization, or moratorium is accomplished, it will be limited to the remaining life of the collateral or remaining terms of the loan, whichever is less

Full Faith and Credit

- The guarantee is backed by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation
- The guarantee is unenforceable (by the lender) to the extent any loss is occasioned by any of the following, and any loss payment will be adjusted accordingly:
  - violation of usury laws
  - negligent servicing
  - failure to obtain the required security interest
  - to the extent that loan funds are used for purposes other than those approved by the Agency

Repurchase

- If loan is in default at least 60 days, holder(s) can demand repurchase
  - ➢ No more than ninety days of interest will be paid the Holder from the Holder's date of Demand to the Lender
- Lender may agree to repurchase or decline, if lender declines, the Agency will repurchase the loan less lender servicing fee
- If repurchased by the Agency, the loan CANNOT be resold
  - ➢ If the borrower is in default, the lender cannot sell any remaining guaranteed portion to the secondary market

Liquidation

- If a plan to cure the delinquency in a reasonable period of time cannot be developed, liquidation may be considered
- If the lender concludes that liquidation is necessary, lender will request written concurrence of the Agency prior to acceleration
- Liquidation must be in the best interest of Agency and lender
- Within 30 days after a decision to liquidate, the lender will submit a liquidation plan to the Agency
- Lender carries out the liquidation of the loan
  - ➢ Agency has option to carry out liquidation (but this is rare)

Elements of a Liquidation Plan

- Proof of lender’s ownership of note
- Complete list of collateral
- Recommended liquidation methods
- Necessary steps for collateral preservation
- Borrower’s latest financial statements
- Guarantor’(s) latest financial statements
- Itemized list of liquidation expenses, justified
- Schedule of reporting to Agency

Elements of Liquidation Plan (con’t)

- Estimated protective advances, justified
- Proposed protective bid amounts on collateral
- Legal opinions as needed
- If outstanding balance (P/I) is less than $200,000, an estimate of fair market and potential liquidation value is required
- If outstanding balance (P/I) is $200,000 or more, an independent appraisal is required

Liquidation Plan

- The Agency will inform the lender in writing whether it concurs in the plan or if additional information is needed
  - Within 30 days of receipt
  - If additional time is necessary, Agency will advise of definite time
- Should the lender and Agency not agree, negotiations will take place to resolve the disagreement

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Liquidation Plan

- Once approved by the Agency, the lender will implement plan expeditiously
- Any modifications to the plan must be approved by the Agency in writing
- Upon Agency approval of liquidation plan, the lender will accelerate the loan with a copy to the Agency
- The loan is considered in liquidation from the date of the acceleration and demand for payment

Liquidation Expenses

- Expenses are incurred by the lender during the liquidation process
- Examples:
  - Legal Fees
  - Marketing expenses
- Lender is reimbursed only from liquidation proceeds

Appraisals

- Appraisals must reflect the fair market value & potential liquidation value, including environmental site assessment within value
- R/E appraisals must meet USPAP and FIRREA
- Appraisals are considered out of date after 12 months
- The cost will be shared equally between the Agency and the lender
- Lender will request reimbursement from the Agency by letter with copy of appraisal attached along with proof of payment of appraisal invoice

Environmental

- The lender will arrange for an environmental site assessment
- The cost will be shared equally between the Agency and the lender
- Lender will request reimbursement from the Agency by letter with copy of assessment attached along with proof of payment of invoice for assessment completed

Abandonment of Collateral

- May be considered if the estimated cost of liquidation exceeds potential recovery value
- Liquidation expenses are netted from collateral proceeds. When there are no collateral proceeds, the lender is not reimbursed for liquidation expenses
- If the principal on the loan has not been reduced, no protective advances can be paid

Bankruptcy

- Lender is responsible for protecting the collateral securing the guaranteed loan
- Lender must keep Agency advised of all bankruptcy proceedings
- Loss claims may be made during and after reorganization proceedings:
  - If any portion of the loan is discharged, the lender will request an estimated loss payment
  - Upon completion of the reorganization plan, the lender will submit documentation necessary for the Agency to review and adjust the estimated loss claim
  - When there is a permanent interest rate reduction, interest rate loss payments will be processed annually

Bankruptcy (con’t)

- When a bankruptcy proceeding results in a liquidation of the borrower by a trustee, legal expenses will be handled as directed by the court
- Expenses incurred by the lender in a Chapter 11 reorganization can never be liquidation expenses unless the proceeding becomes a Chapter 11 liquidation
- The lender cannot claim expenses when a chapter 7 is conducted by the bankruptcy trustee

Protective Advances

- Protective advances are advances made by the lender to preserve and protect the collateral when the borrower will not. Examples include but not limited to:
    - property taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral
- Advances earn interest at note rate and are covered by the guarantee
- Advance must be authorized by the loan documents and security instruments
- Agency prior written authorization is required when cumulative protective advances exceed $100,000

Protective Advances (con't)

- Maximum loss paid will never exceed the original principal, plus accrued interest regardless of protective advances – can be an issue when collateral is abandoned
- Protective Advances must constitute an indebtedness of the Borrower to the Lender, not debt incurred by the lender during the liquidation process.
- Legal fees are not considered protective advances

Methods of Recovery

- Voluntary sale by the borrower
- Sale of the promissory note without liquidating collateral
- Foreclosure by the lender

Personal and Corporate Guarantees

- Lender is expected to seek maximum recovery
- Lender will seek deficiency judgment when a reasonable chance for future collection is evident
- The lender must cease collection efforts once final report of loss is processed
- The borrower/guarantor is subject to DCIA

Report of Loss

- Estimated Report of Loss - when lender owns any portion of the guaranteed loan:
  - Once decision is made to liquidate, lender will file an estimated loss claim (interest accrual under the guarantee will cease)
- Final Report of Loss
  - Must be filed within 30 days of completion of liquidation

The End