

**§ 4287.336**

the new Lender, who must agree to its current loan terms, including the Interest rate, secondary market Holder (if any), Collateral, Loan Agreement terms, and guarantors. The new Lender must also obtain the original Loan Note Guarantee, original personal and corporate guarantee(s), and the loan payment history from the transferor Lender. If the new Lender wishes to modify the loan terms after acquisition, the new Lender must submit a request to the Agency.

(a) The Agency may approve the substitution of a new Lender if:

(1) The proposed substitute Lender:

(i) Is an eligible Lender in accordance with § 4279.208 of this chapter;

(ii) Is able to service the loan in accordance with the original loan documents; and

(iii) Agrees to acquire title to the unguaranteed portion of the loan held by the original Lender and assumes all original loan requirements, including liabilities and servicing responsibilities; and

(2) The substitution of the Lender is requested in writing by the Borrower, the proposed substitute Lender, and the original Lender if still in existence.

(b) The Agency will not pay any loss or share in any costs (*e.g.*, appraisal fees and environmental assessments) with a new Lender unless a relationship is established through a substitution of Lender in accordance with paragraph (a) of this section. This includes situations where a Lender is acquired by another Lender and situations 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.

(c) In cases when there is a substitution of 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 a valid Lender's Agreement already exists with the new Lender.

**§ 4287.336 Lender failure.**

(a) The acquiring Lender must comply with 7 CFR parts 4279, subpart C and 4287, subpart D and must take such action that a reasonable Lender would

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take if it did not have a Loan Note Guarantee to protect the Lender and Agency's mutual interest. The Lender cannot arbitrarily change the Lender's Agreement and related documents on the guaranteed loan, and the Agency will make the successor to the failed institution aware of the statutory and regulatory requirements.

(b) In the event of a Default and the guaranteed loan is liquidated by the FDIC rather than being sold to another Lender, the Agency will pay losses and share in costs as if the FDIC were an approved new Lender.

**§§ 4287.337-4287.344 [Reserved]**

**§ 4287.345 Default by Borrower.**

The Lender's primary responsibilities in Default are to act reasonably and expeditiously, to work with the Borrower to bring the account current or cure the Default through restructuring if a realistic plan can be developed, or to accelerate the account and conduct a liquidation in a manner that will minimize any potential loss. The Lender may initiate liquidation in accordance with § 4287.357.

(a) The Lender must notify the Agency in writing when a Borrower is more than 30 days past due on a payment and the Delinquency cannot be cured within 30 days or when a Borrower is otherwise in Default of covenants in the Loan Agreement by submitting Form RD 1980-44, "Guaranteed Loan Borrower Default Status," or processing the Default Status report in LINC. The Lender must provide this notification to the Agency within 15 calendar days of when a Borrower is 30 days past due on a payment or is otherwise in Default of the Loan Agreement. The Lender must update the loan's status each month using either Form RD 1980-44 or the LINC Default Status report until such time as the loan is no longer in Default. If a monetary Default exceeds 60 days, the Lender must meet with the Agency and, if practical, the Borrower to discuss the situation.

(b) In considering options, the prospects for providing a permanent cure without adversely affecting the risk to the Agency and the Lender are the paramount objective.