

§ 4279.76

Guarantee Agreement will not be used when the multi-note option is utilized.

§ 4279.76 [Reserved]

§ 4279.77 Minimum retention.

The lender is required to hold in its own portfolio a minimum of 5 percent of the original total loan amount. The amount required to be maintained must be of the unguaranteed portion of the loan and cannot be participated to another. The lender may enter into no agreement that reduces its exposure below the minimum 5 percent it is required to retain in its portfolio. The lender may sell the remaining amount of the unguaranteed portion of the loan only through participation.

§ 4279.78 Repurchase from holder.

(a) *Repurchase by lender.* A lender has the option to repurchase the unpaid guaranteed portion of the loan from a holder within 30 days of written demand by the holder when the borrower is in default not less than 60 days on principal or interest due on the loan; or when the lender has failed to remit to the holder its pro rata share of any payment made by the borrower within 30 days of the lender's receipt thereof. The repurchase by the lender must be for an amount equal to the unpaid guaranteed portion of principal and accrued interest less the lender's servicing fee. The holder must concurrently send a copy of the demand letter to the Agency. The lender must accept an assignment without recourse from the holder upon repurchase. For those loans closed on or after August 2, 2016, the lender or the Agency will issue an interest termination letter to the holder(s) establishing the termination date for interest accrual if the default is not cured. The guarantee will not cover interest to any holder accruing after the greater of: 90 days from the date of the most recent delinquency effective date as reported by the lender or 30 days from the date of the interest termination letter. If, in the opinion of the lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the holder must sell the guaranteed portion of the loan to the lender for an amount equal to the unpaid principal and interest on

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such portion less the lender's servicing fee. The lender must not repurchase from the holder for arbitrage or other purposes to further its own financial gain. Any repurchase must only be made after the lender obtains the Agency's written approval. If the lender does not repurchase the guaranteed portion from the holder, the Agency may, at its option, purchase such guaranteed portion for servicing purposes. The lender is encouraged to repurchase the loan to facilitate the accounting of funds, resolve any loan problems, and prevent default, where and when reasonable. The benefit to the lender is that it may resell the guaranteed portion of the loan in order to continue collection of its servicing fee if the default is cured. When the lender repurchases the guaranteed portion from the secondary market for servicing purposes, the lender must discontinue interest accrual if Federal or State regulators place the loan in non-accrual status if the default is not cured within 90 days. The lender will notify the holder and the Agency of its decision.

(b) *Agency repurchase.* (1) The lender's servicing fee will stop on the date that interest was last paid by the borrower when the Agency purchases the guaranteed portion of the loan from a holder. The lender cannot charge such servicing fee to the Agency and must apply all loan payments and collateral proceeds received to the guaranteed and unguaranteed portions of the loan on a pro rata basis.

(2) If the Agency repurchases 100 percent of the guaranteed portion of the loan and becomes the holder, interest accrual on the loan will cease, and the Agency will not continue collection of the annual renewal fee from the lender.

(3) If the lender does not repurchase the unpaid guaranteed portion of the loan as provided in paragraph (a) of this section, the Agency will purchase from the holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase, less the lender's servicing fee, within 30 days after written demand to the Agency from the holder. For those loans closed on or after August 2, 2016, the lender or the Agency will issue an interest termination letter to the holder(s) establishing the

termination date for interest accrual. The guarantee will not cover interest to any holder accruing after the greater of: 90 days from the date of the most recent delinquency effective date as reported by the lender or 30 days from the date of the interest termination letter. Once the holder makes demand upon the Agency, the request cannot be rescinded.

(4) When the guaranteed loan has been delinquent more than 60 days and no holder comes forward, the Agency may issue a letter to the holder(s) establishing the cutoff date for interest accrual. Accrued interest to be paid the holder will be calculated from the date interest was last paid on the loan with a cutoff date being no more than 90 days from the date of the most recent delinquency effective date as reported by the lender.

(5) When the lender has accelerated the account and holds all or a portion of the guaranteed loan, an estimated loss claim (loan in the liquidation process) must be filed by the lender with the Agency within 60 days. Accrued interest paid to the lender will be calculated from the date interest was last paid on the loan with a cutoff date being no more than 90 days from the most recent delinquency effective date as reported by the lender.

(6) The holder's demand to the Agency must include a copy of the written demand made upon the lender. The holder must also include evidence of its right to require payment from the Agency. Such evidence must consist of either the original of the Loan Note Guarantee properly endorsed to the Agency or the original of the Assignment Guarantee Agreement properly assigned to the Agency without recourse, including all rights, title, and interest in the loan. When the single-note system is utilized and the initial holder has sold its interest, the current holder must present 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. The holder must include in its demand the amount due, including unpaid prin-

cipal, unpaid interest to date of demand, and interest subsequently accruing from date of demand to proposed payment date. The Agency will be subrogated to all rights of the holder.

(7) Upon request by the Agency, the lender must promptly furnish 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. 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. Such conflict will suspend the running of the 30-day payment requirement.

(8) Purchase by the Agency neither changes, alters, nor modifies any of the lender's obligations to the Agency arising from the loan or 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 program.

§§ 4279.79–4279.83 [Reserved]

§ 4279.84 Replacement of document.

(a) The Agency may issue a replacement Loan Note Guarantee or Assignment Guarantee Agreement that was lost, stolen, destroyed, mutilated, or defaced to the lender or holder upon receipt of an acceptable certificate of loss and an indemnity bond.

(b) When a Loan Note Guarantee or Assignment Guarantee Agreement is lost, stolen, destroyed, mutilated, or defaced while in the custody of the lender or holder, the lender must coordinate the activities of the party who seeks the replacement documents and submit the required documents to the Agency for processing. The requirements for replacement are as follows:

(1) A certificate of loss, notarized and containing a jurat, which includes:

- (i) Name and address of owner;
- (ii) Name and address of the lender of record;