

§ 762.144 Repurchase of guaranteed portion from a secondary market holder.

(a) *Request for repurchase.* The holder may request the lender to repurchase the unpaid guaranteed portion of the loan when:

(1) The borrower has not made a payment of principal and interest due on the loan for at least 60 days; or

(2) The lender has failed to remit to the holder its pro-rata share of any payment made by the borrower within 30 days of receipt of a payment.

(b) *Repurchase by the lender.* (1) When a lender is requested to repurchase a loan from the holder, the lender must consider the request according to the servicing actions that are necessary on the loan. In order to facilitate servicing and simplified accounting of loan transactions, lenders are encouraged to repurchase the loan upon the holder's request.

(2) The repurchase by the lender will be for an amount equal to the portion of the loan held by the holder plus accrued interest.

(3) The guarantee will not cover separate servicing fees that the lender accrues after the repurchase.

(c) *Repurchase by the Agency.* (1) If the lender does not repurchase the loan, the holder must inform the Agency in writing that demand was made on the lender and the lender refused. Following the lender's refusal, the holder may continue as holder of the guaranteed portion of the loan or request that the Agency purchase the guaranteed portion. Within 30 days after written demand to the Agency from the holder with required attachments, the Agency will forward to the holder payment of the unpaid principal balance, with accrued interest to the date of repurchase. If the holder does not desire repurchase or purchase of a defaulted loan, the lender must forward the holder its pro-rata share of payments, liquidation proceeds and Agency loss payments.

(2) With its demand on the Agency, the holder must include:

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

(ii) Originals of the guarantee and note properly endorsed to the Agency,

or the original of the assignment of guarantee.

(iii) A copy of any written response to the demand of the holder by the lender.

(iv) An account to which the Agency can forward the purchase amount via electronic funds transfer.

(3) The amount due the holder from the Agency includes unpaid principal, unpaid interest to the date of demand, and interest which has accrued from the date of demand to the proposed payment date.

(i) Upon request by the Agency, the lender must furnish upon Agency request a current statement, certified by a bank officer, of the unpaid principal and interest owed by the borrower and the amount due the holder.

(ii) Any discrepancy between the amount claimed by the holder and the information submitted by the lender must be resolved by the lender and the holder before payment will be approved by the Agency. The Agency will not participate in resolution of any such discrepancy. When there is a discrepancy, the 30 day Agency payment requirement to the holder will be suspended until the discrepancy is resolved.

(iii) In the case of a request for Agency purchase, the Agency will only pay interest that accrues for up to 90 days from the date of the demand letter to the lender requesting the repurchase. However, if the holder requested repurchase from the Agency within 60 days of the request to the lender and for any reason not attributable to the holder and the lender, the Agency cannot make payment within 30 days of the holder's demand to the Agency, the holder will be entitled to interest to the date of payment.

(4) At the time of purchase by the Agency, the original assignment of guarantee will be assigned by the holder to the Agency without recourse, including all rights, title, and interest in the loan.

(5) Purchase by the Agency does not change, alter, or modify any of the lender's obligations to the Agency specified in the lender's agreement or guarantee; nor does the purchase waive any of the Agency's rights against the lender.

Farm Service Agency, USDA

§ 762.145

(6) The Agency succeeds to all rights of the holder under the Guarantee including the right of set-off against the lender.

(7) Within 180 days of the Agency's purchase, the lender will reimburse the Agency the amount of repurchase, with accrued interest, through one of the following ways:

(i) By liquidating the loan security and paying the Agency its pro-rata share of liquidation proceeds; or

(ii) Paying the Agency the full amount the Agency paid to the holder plus any accrued interest.

(8) The lender will be liable for the purchase amount and any expenses incurred by the Agency to maintain the loan in its portfolio or liquidate the security. While the Agency holds the guaranteed portion of the loan, the lender will transmit to the Agency any payment received from the borrower, including the pro-rata share of liquidation or other proceeds.

(9) If the borrower files for reorganization under the provisions of the bankruptcy code or pays the account current while the purchase by the Government is being processed, the Agency may hold the loan as long it determines this action to be in the Agency's interest. If the lender is not proceeding expeditiously to collect the loan or reimbursement is not waived under this paragraph, the Agency will demand payment by the lender and collect the purchase amount through administrative offset of any claims due the lender.

(10) The Agency may sell a purchased guaranteed loan on a non-recourse basis if it determines that selling the portion of the loan that it holds is in the Government's best interest. A non-recourse purchase from the Agency requires a written request to the Agency from the party that wishes to purchase it, and written concurrence from the lender;

(d) *Repurchase for servicing.* (1) If, due to loan default or imminent loan restructuring, the lender determines that repurchase is necessary to adequately service the loan, the lender may repurchase the guaranteed portion of the loan from the holder, with the written approval of the Agency.

(2) The lender will not repurchase from the holder for arbitrage purposes.

With its request for Agency concurrence, the lender will notify the Agency of its plans to resell the guaranteed portion following servicing.

(3) The holder will sell the guaranteed portion of the loan to the lender for an amount agreed to between the lender and holder.

[64 FR 7378, Feb. 12, 1999, as amended at 69 FR 44579, July 27, 2004]

§ 762.145 Restructuring guaranteed loans.

(a) *General.* (1) To restructure guaranteed loans standard eligible lenders must:

(i) Obtain prior written approval of the Agency for all restructuring actions; and,

(ii) Provide the items in paragraph (b) and (e) of this section to the Agency for approval.

(2) If the standard eligible lender's proposal for servicing is not agreed to by the Agency, the Agency approval official will notify the lender in writing within 14 days of the lender's request.

(3) To restructure guaranteed loans CLP lenders must:

(i) Obtain prior written approval of the Agency only for debt write down under this section.

(ii) Submit all calculations required in paragraph (e) of this section for debt writedown.

(iii) For restructuring other than write down, provide FSA with a certification that each requirement of this section has been met, a narrative outlining the circumstances surrounding the need for restructuring, and copies of any applicable calculations.

(4) PLP lenders will restructure loans in accordance with their lender's agreement.

(5) All lenders will submit copies of any restructured notes or lines of credit to the Agency.

(b) *Requirements.* For any restructuring action, the following conditions apply:

(1) The borrower meets the eligibility criteria of § 762.120, except the provisions regarding prior debt forgiveness and delinquency on a federal debt do not apply.

(2) The borrower's ability to make the amended payment is documented by the following: