

RD AN No. 4695 (4280-B, 4287-B)  
November 30, 2012

TO: State Directors, Rural Development

ATTN: Business Programs Directors

SUBJECT: Business and Industry Guaranteed Loan, Biorefinery Assistance,  
Section 9007 Rural Energy for America Programs, and Section 9006 Renewable  
Energy Systems and Energy Efficiency Improvement Guaranteed Loan Programs  
Transfer and Assumption

**PURPOSE/INTENDED OUTCOME:**

The purpose of this Administrative Notice (AN) is to provide guidance to State Offices on transfers and assumptions of Business and Industry (B&I), Biorefinery Assistance Program (BAP), Rural Energy for America Program (REAP) and Renewable Energy Systems and Energy Efficiency Improvement (Section 9006) guaranteed loans.

**COMPARISON WITH PREVIOUS AN:**

This replaces RD AN No. 4605, dated October 25, 2011, which expires on October 31, 2012.

**IMPLEMENTATION RESPONSIBILITIES:**

B&I transfers and assumptions must be in compliance with 7 CFR § 4287.134. While a transfer and assumption is a loan servicing action, it is subject to an Agency review of its credit quality, and must be in compliance with published eligibility requirements set forth in 7 CFR § 4279.108. This normally requires submitting a new application, business plans with pro forma balance sheets, 2 years projected balance sheets, and income statement, in addition to the lender's financial analysis of the new business, and current guarantor financial statements. In addition, you must ensure that the transfer and assumption to a new entity does not exceed the maximum terms that the Agency can extend as set forth in 7 CFR § 4279.126(a). For example, as it relates to machinery and equipment, the maximum term for which the Agency can extend a guarantee is 15 years or the useful life of the machinery and equipment, whichever is less.

EXPIRATION DATE:  
December 31, 2013

FILING INSTRUCTIONS:  
Preceding RD Instructions 4280-B and 4287-B

All transfers and assumptions must be approved in writing by the Agency. A transfer and assumption to another eligible borrower can be for the total indebtedness at the same rates and terms or, under certain circumstances, different rates and terms (see 7 CFR § 4287.134(b)). A transfer can also occur for less than the total indebtedness at the same rates and terms or different rates and terms.

In any case, the transferor, including any guarantor(s), may be released from liability by the lender with the Agency's prior written concurrence only when the value of the collateral being transferred is at least equal to the amount of the loan being assumed and is supported by a current appraisal and a current financial statement. After the transfer and assumption, the loan needs to be as well secured as before taking into consideration all credit factors including equity position, net worth of guarantors, etc. The new guarantor(s) should have the same or greater net worth as the guarantor(s) being released. In accordance with 7 CFR § 4279.149, the lender must obtain new personal and/or corporate guarantee(s) from all owners that have a 20 percent or more interest in the transferee.

All Section 9006 and REAP guaranteed loans will be serviced in accordance with 7 CFR § 4287.134, except as specified in 7 CFR § 4280.152(f).

All BAP guaranteed loans will be serviced in accordance with 7 CFR § 4287.134, except as specified in 7 CFR § 4287.307(h).

For further guidance for all program mentioned above, please see the attachment to this AN. If you have any questions on the information provided, please contact Felicia Blue, Loan Specialist, Business and Industry Division, (202) 690-9903.

*(Signed by Lillian E, Salerno)*

Lillian E, Salerno  
Acting Administrator  
Rural Business-Cooperative Service

Attachment

<p align="center"><b>B&amp;I</b> <b>7 CFR 4287.134</b></p>	<p align="center"><b>BAP</b> <b>7 CFR 4287.307</b></p>	<p align="center"><b>REAP and Section 9006</b> <b>7 CFR 4280.152</b></p>
<p>No preamble</p>	<p>(h) Transfers and assumptions. Transfers and assumptions shall comply with § 4287.134, except as specified in paragraphs (h)(1) through (h)(3) of this section, and with paragraphs (h)(4) and (h)(5) of this section.</p>	<p>(f) Loan transfer and assumption. All loan transfers and assumptions must comply with § 4287.134(c), (d), (f), (g), and (i) through (k) of this chapter in addition to the following:</p>
<p>(a) Documentation of request. All transfers and assumptions must be approved in writing by the Agency and must be to eligible applicants in accordance with subpart B of part 4279 of this chapter. An individual credit report must be provided for transferee proprietors, partners, officers, directors, and stockholders with 20 percent or more interest in the business, along with such other documentation as the Agency may request to determine eligibility.</p>	<p>(1) In complying with § 4287.134(a), eligible applicants shall be determined in accordance with subpart C of part 4279 of this chapter instead of subpart B of part 4279.</p>	<p>(1) Documentation of request. All transfers and assumptions must be approved in writing by the Agency and must be to eligible applicants in accordance with § 4280.122. An individual credit report must be provided for transferee proprietors, partners, offices, directors, and stockholders with 20 percent or more interest in the business, along with such other documentation as the Agency may request to determine eligibility.</p>
<p>(b) Terms. Loan terms must not be changed unless the change is approved in writing by the Agency with the concurrence of any holder and the transferor (including guarantors) if they have not been or will not be released from liability. Any new loan terms must be within the terms authorized by 4279.126 of subpart B of part 4279 of this chapter. The lender's request for approval of new loan terms will be supported by an explanation of the reasons for the proposed change in loan terms.</p>	<p>(2) Any new loan terms under § 4287.134(b) must be within the terms authorized by § 4279.232 of subpart C of part 4279 of this chapter instead of § 4279.126 of subpart B of part 4279.</p>	<p>(2) Terms. Loan terms must not be changed unless the change is approved in writing by the Agency with the concurrence of any holder and the transferor (including guarantors), if they have not been or will not be released from liability. Any new loan terms must be within the terms authorized by § 4280.126. The lender's request for approval of new loan terms will be supported by an explanation of the reasons for the proposed change in loan terms.</p>
<p>(c) Release of liability. The</p>	<p>No Change from 4287.134</p>	<p>No Change from 4287.134</p>

<p>transferor, including any guarantor, may be released from liability only with prior Agency written concurrence and only when the value of the collateral being transferred is at least equal to the amount of the loan being assumed and is supported by a current appraisal and a current financial statement. The Agency will not pay for the appraisal. If the transfer is for less than the debt, the lender must demonstrate to the Agency that the transferor and guarantors have no reasonable debt-paying ability considering their assets and income in the foreseeable future.</p>		
<p>(d) Proceeds. Any proceeds received from the sale of collateral before a transfer and assumption will be credited to the transferor's guaranteed loan debt in inverse order of maturity before the transfer and assumption are closed.</p>	<p>No Change from 4287.134</p>	<p>No Change from 4287.134</p>
<p>(e) Additional loans. Loans to provide additional funds in connection with a transfer and assumption must be considered as a new loan application under subpart B of part 4279 of this chapter.</p>	<p>(3) Additional loans under § 4287.134(e) will be considered as a new loan application under sub-part C of part 4279 of this chapter instead of subpart B of part 4279.</p>	<p>(3) Additional loans. Loans to provide additional funds in connection with a transfer and assumption must be considered as a new loan application under § 4280.128.</p>
<p>(f) Credit quality. The lender must make a complete credit analysis which is subject to Agency review and approval.</p>	<p>No Change from 4287.134</p>	<p>No Change from 4287.134</p>
<p>(g) Documents. Prior to Agency approval, the lender must advise the Agency, in writing, that the transaction can be properly and legally transferred, and the</p>	<p>No Change from 4287.134</p>	<p>No Change from 4287.134</p>

<p>conveyance instruments will be filed, registered, or recorded as appropriate.</p> <p>(1) The assumption will be done on the lender's form of assumption agreement and will contain the Agency case number of the transferor and transferee. The lender will provide the Agency with a copy of the transfer and assumption agreement. The lender must ensure that all transfers and assumptions are noted on all original Loan Note Guarantees.</p> <p>(2) A new Loan Agreement, consistent in principle with the original Loan Agreement, should be executed to establish the terms and conditions of the loan being assumed. An assumption agreement can be used to establish the loan covenants.</p> <p>(3) The lender will provide to the Agency a written certification that the transfer and assumption is valid, enforceable, and complies with all Agency regulations.</p>		
<p>(h) Loss resulting from transfer. If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor (including personal guarantors) is released from liability, the lender, if it holds the guaranteed portion, may file an estimated report of loss to recover its pro rata share of</p>	<p>No Change from 4287.134</p>	<p>(4) Loss resulting from transfer. If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor (including personal guarantors) is released from liability, the lender, if it holds the guaranteed portion, may file Form RD 449-30, "Loan Note Guarantee Report of</p>

<p>the actual loss. If a holder owns any of the guaranteed portion, such portion must be repurchased by the lender or the Agency in accordance with 4279.78(c) of subpart A of part 4279 of this chapter. In completing the report of loss, the amount of the debt assumed will be entered as net collateral (recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption will be included in the calculations.</p>		<p>Loss,” to recover its pro rata share of the actual loss. If a holder owns any of the guaranteed portion, such portion must be repurchased by the lender or the Agency in accordance with § 4279.78(c) of this chapter. In completing the report of loss, the amount of the debt assumed will be entered as net collateral (recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption will be included in the calculations.</p>
<p>(i) Related party. If the transferor and transferee are affiliated or related parties, any transfer and assumption must be for the full amount of the debt.</p>	<p>No Change from 4287.134</p>	<p>No Change from 4287.134</p>
<p>(j) Payment requests. Requests for a loan guarantee to provide equity for a transfer and assumption must be considered as a new loan under subpart B of part 4279 of this chapter.</p>	<p>No Change from 4287.134</p>	<p>No Change from 4287.134</p>
<p>(k) Cash downpayment. When the transferee will be making a cash downpayment as part of the transfer and assumption:  (1) The lender must have an appropriate appraiser, acceptable to both the transferee and transferor and currently authorized to perform appraisals, determine the value of the collateral securing the loan. The appraisal fee and any other costs will not be paid by the Agency.</p>	<p>No Change from 4287.134</p>	<p>No Change from 4287.134</p>

<p>(2) The market value of the collateral, plus any additional property the transferee proposes to offer as collateral, must be adequate to secure the balance of the guaranteed loans.</p> <p>(3) Cash downpayments may be paid directly to the transferor provided:</p> <p>(i) The lender recommends that the cash be released, and the Agency concurs prior to the transaction being completed. The lender may wish to require that an amount be retained for a defined period of time as a reserve against future defaults. Interest on such account may be paid periodically to the transferor or transferee as agreed;</p> <p>(ii) The lender determines that the transferee has the repayment ability to meet the obligations of the assumed guaranteed loan as well as any other indebtedness;</p> <p>(iii) Any payments by the transferee to the transferor will not suspend the transferee's obligations to continue to meet the guaranteed loan payments as they come due under the terms of the assumption; and</p> <p>(iv) The transferor agrees not to take any action against the transferee in connection with the assumption without prior written approval of the lender and the Agency.</p>		
<p>No Counterpart 4287.134 provision</p>	<p>(4) The Agency may charge the lender a nonrefundable transfer fee at the time of a transfer application. The Agency will set the amount of</p>	<p>No Counterpart 4280.152 provision</p>

	the transfer fee in an annual notice of funds availability published in the Federal Register.	
No Counterpart 4287.134 provision	(5) Assumption shall be deemed to occur in the event of a change in the control of the borrower. For purposes of the loan, change of control means the merger of the borrower, sale of all or substantially all of the assets of the borrower, or the sale of more than 25 percent of the stock or other equity interest of either the borrower or its corporate parent.	No Counterpart 4280.152
No Counterpart 4287.134 provision	(6) The Agency will not approve any change in terms that results in an increase in the cost of the loan guarantee, unless the Agency can secure any additional budget authority that would be required and the change otherwise conforms with applicable regulations.	No Counterpart 4280.152