

RD AN No. 4668 (1951-C, 4279-B, 4280-B,
and 4287-B)
June 30, 2012

TO: State Directors, Rural Development

ATTN: Business and Cooperative Programs Directors

SUBJECT: Business and Industry Guaranteed Loan, Biorefinery Assistance, and
Rural Energy for America Programs
Debt Collection Improvement Act

PURPOSE/INTENDED OUTCOME:

This Administrative Notice (AN) is being issued to provide guidance on frequently asked questions on the above-captioned subject concerning the Debt Collection Improvement Act (DCIA). This AN is applicable for Business and Industry (B&I) guaranteed loans, the Biorefinery Assistance Program (BAP), and Rural Energy for America Program (REAP) guaranteed loans.

COMPARISON WITH PREVIOUS AN:

This AN replaces RD AN No. 4570 (1951-C, 4279-B, 4280-B, and 4287-B), dated April 19, 2011, which expired on April 30, 2012.

IMPLEMENTATION RESPONSIBILITIES:

Form RD 4279-1, "Application for Loan Guarantee," section (3) of the General Borrower Certifications, outlines the actions that the Federal Government could take in the event a borrower became delinquent on its Federal indebtedness.

B&I GUARANTEED LOAN PROGRAM:

Business and Cooperative Programs has published two separate regulations concerning the DCIA. On January 22, 2004, the Agency published a final rule (7 CFR part 1951, subpart C) in the Federal Register regarding the DCIA of 1996, in order to make debtors aware that the DCIA provisions are applicable to the B&I Guaranteed Loan Program.

EXPIRATION DATE:
July 31, 2013

FILING INSTRUCTIONS:
Preceding RD Instructions 1951-C,
4279-B, 4280-B, and 4287-B

RD Instruction 1951-C, section 1951.133, defines the establishment of Federal debt for the B&I program and states that: “Any amounts paid by RBS on account of liabilities of a Business and Industry (B&I) program guaranteed loan borrower will constitute a Federal debt owing to RBS by the B&I guaranteed loan borrower.”

All borrowers of B&I guaranteed loans which closed on or after January 22, 2004, are subject to these provisions. The date of the Agency’s final loss claim payment will establish the date for determining the referral deadline to the U.S. Department of the Treasury (Treasury) under the DCIA. The Agency will refer all *borrowers* under the DCIA to Treasury for collection.

The second regulation was published as a final rule (7 CFR part 4287, subpart B) regarding implementing the DCIA published in the Federal Register on November 20, 2006. This regulation was effective on December 20, 2006. This regulation addressed the concern that guarantors (resident in the Guaranteed Loan System (GLS) as guarantors, key members and co-borrowers) might successfully assert a defense that they did not know they were guaranteeing a B&I loan. When the Agency implemented this regulation, several Agency forms were modified and a new form was created, Form RD 4279-14, “Unconditional Guarantee.” All personal or corporate guarantors who sign Form RD 4279-14, acknowledge that delinquent guaranteed loan debt is subject to the DCIA. Therefore, any B&I guaranteed loan closed on or after December 20, 2006, where the guarantor signed Form RD 4279-14, or a guarantee form approved by the National Office is governed by these requirements and must be sent to the Treasury for offset within the 180 day time period.

B&I, BAP, AND REAP GUARANTEED LOAN PROGRAMS:

When a borrower or guarantor has a pending bankruptcy as a result of the final loss they will not be referred for the DCIA collection action unless the Agency has obtained a relief from stay. However, if a State Office can substantiate for any reason why a borrower and/or guarantor who has not filed bankruptcy should not be referred for the DCIA collection, the State Office should confirm with their regional Office of the General Counsel (OGC) (unless other guidance has been provided by OGC) and request concurrence from the National Office for the Account Receivable to be written-off by the Deputy Chief Financial Officer (DCFO), St. Louis.

The lender will prepare a final loss claim on Form RD 449-30, “Guaranteed Loan Report of Loss,” and submit it to the State Office. After approval by the State Office, the claim will be forwarded to the DCFO, St. Louis for payment. The State Office will ensure that all guarantor information located in the BP Fund Request View (application) in GLS is accurate. When the DCFO, St. Louis pays the final loss and updates it to GLS, a DCIA Accounts Receivable will be established for the borrower and/or any guarantors subject to the DCIA. A 60-day “Due Process Letter” is system generated by the DCFO, St. Louis on or around the 15th of the month to the borrower and/or guarantor identifying their options of setting up a repayment plan or making a payment in full. If the State/Field Office does not receive a response to the due process notification within this due process period, the debt will be referred to the Treasury for

collection. Treasury will use all remedies available under the DCIA to collect the debt from the borrower and/or guarantors. The State/Field Office should notify the lender in writing to cease further collection efforts against the borrower and/or guarantors after the debt has been referred to the Treasury for collection. The DCIA accounts receivable and all subsequent servicing activities can be viewed by the State Office via the loans (View Debt Offset) in GLS.

In order for the borrower and/or guarantor to avoid referral of the debt to Treasury, they must agree to a repayment plan acceptable to the Agency or repay the debt in full. A repayment plan generally does not exceed 3 years, and must be supported by a current financial statement and independent verification. Adequate consideration must be received before a release from liability is issued. Adequate consideration includes money or additional security. For personal guarantors, RD Instruction 4287-B, section 4287.157(1)(2), Compromise Settlement, provides guidance on adequate consideration factors to consider when evaluating settlement offers. Please document the case file on any compromise settlements approved within your delegated authority. The State Offices may approve a debt settlement within its delegated loan servicing authority as long as the settlement does not exceed 3 years. However, the National Office approval is required for any repayment plan that exceeds 3 years or when the negotiation amount is less than 50 percent of the debt. The State Office does not have the authority to unilaterally release a borrower and/or guarantor from potential DCIA liability. The National Office must approve the release of all borrowers and/or guarantors from liability. The approved payment plan should be coordinated with the State/Field Office representatives and submitted to the Office of the Deputy Chief Financial Officer, Mail Code FC-350, for the purpose of ensuring the debt is posted in the GLS system as a repayment plan. If the borrower and/or guarantor defaults on the repayment plan, they will be referred to the Treasury. The borrower and/or guarantor should not be released from liability until the settlement amount is paid in full.

If you have additional questions, please contact the B&I Division, Servicing Branch, (202) 690-4103.

(Signed by John C. Padalino)

John C. Padalino
Acting Administrator
Rural Business-Cooperative Service