



**LENDER'S AGREEMENT  
BUSINESS AND INDUSTRY GUARANTEED  
LOAN PROGRAM**

Participating Lender:	Tax Identification Number:
Business Address:	Telephone Number:

Complete the appropriate box indicating lender status in business and industry program.

- Regular Lender Program
- Certified Lender Program

**I. General Provisions**

A. Purpose.

The participating lender ("Lender") is designated as a Lender for the purpose of processing and requesting Loan Note Guarantees authorized under 7 C.F.R. part 4279, and servicing those loans as authorized herein and under 7 C.F.R. part 4287. The Lender enters into this agreement as a condition for obtaining the guarantees.

The United States of America, acting through the United States Department of Agriculture ("USDA"), agrees to enter into Loan Note Guarantees with the Lender issued pursuant to the regulations for Business and Industry Loans, and to participate in a percentage of any loss on any such loans not to exceed the amount established in the Loan Note Guarantee. The terms of any Loan Note Guarantee are controlling.

B. Full Faith and Credit.

The guarantee is supported by the full faith and credit of the United States and is incontestable except under the circumstances of fraud or misrepresentation of which the Lender has actual knowledge at the execution of the guarantee or of which the Lender participates in or condones. The Loan Note Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which USDA acquires knowledge of the foregoing. Any losses will be unenforceable by the Lender to the extent that loan funds are used for purposes other than those specifically approved by USDA in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent Lender would act up to the time of loan maturity or until a final loss is paid.

**II. Loan Origination**

- A. The Lender agrees loan funds will be used for the purposes authorized in 7 C.F.R. part 4279 in accordance with the terms of Form 4279-3, "Conditional Commitment for Guarantee".
- B. The Lender certifies that none of its officers or directors, stockholders, or other owners (except stockholders in a Farm Credit Bank or other Farm Credit System ("FCS") Institution with direct lending authority that have normal stock or share requirements for participation) has a substantial financial interest in the Borrower. The Lender certifies that neither the Borrower nor its officers or directors, stockholders or other owners has a substantial financial interest in the Lender. If the Borrower is a member of the board of directors or an officer of a Farm Credit Bank or other FCS Institution with direct lending authority, the Lender certifies that an FCS institution on the next highest level will independently process the loan request and will act as the Lender's agent in servicing the account.
- C. The Lender will certify to USDA, prior to issuance of the Loan Note Guarantee for each loan, that there has been neither any material adverse change in the borrower's financial condition, nor any other material adverse change in the borrower, for any reason, during the period of time from the Agency's issuance of the Conditional Commitment for Guarantee to issuance of the Loan Note Guarantee regardless of the case or causes of the change and whether the change or causes of the change were within the Lender's or Borrower's control. The Lender's certification must address all adverse changes of the Borrower, any parent, affiliate, or subsidiary of the Borrower, and guarantors.
- D. Lender certifies that a loan agreement or loan instruments concurred in by USDA has been or will be signed with the Borrower.
- E. Lender will submit the required guarantee fee with Form FmHA 1980-19, "Guaranteed Loan Closing Report" at the time Form 4279-5, "Loan Note Guarantee" is issued.

*According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0570-0017. The time required to complete this information is estimated to average 3 hours per responsee, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.*

### III. Lender's Sale or Assignment of Guaranteed Loan

- A. The Lender may retain all of the guaranteed loan. The Lender is not permitted to sell or participate in any amount of the guaranteed or unguaranteed portions of the loans to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default as set forth in the terms of the notes. The Lender may proceed under the following options:
1. Assignment. Assign all or part of the guaranteed portion of the loan to one or more holders by using Form 4279-6, "Assignment Guarantee Agreement". Holders, upon written notice to Lender and USDA, may reassign the unpaid guaranteed portion of the sold thereunder. Upon notification and completion of the assignment through the use of Form 4279-6, "Assignment Guarantee Agreement," the assignee shall succeed to all rights and obligations of the Holders thereunder. If this option is selected, the Lender may not a later date cause to be issued any additional notes.
  2. Multi-Note System. When this option is selected by the Lender, upon disposition the Holder will receive one of the Borrower's executed notes and Form 4279-5, "Loan Note Guarantee," attached to the Borrower's note. However, all rights under the security instruments (including personal and corporate guarantees) will remain with the Lender and in all cases insure to its and the Government's benefit notwithstanding any contrary provisions of law.
    - a. At Loan Closing: Provide for no more than 10 notes, unless the Borrower and USDA agree otherwise, for the guaranteed portion and one note for the unguaranteed portion. When this option is selected, USDA will provide the Lender with a Form 4275-5, for each of the notes.
    - b. After Loan Closing:
      - (1) Upon written approval by USDA, the Lender may cause to be issued a series of new notes, not to exceed the total provided in 2.a. above, as replacement for previously issued guaranteed notes provided:
        - (a) The Borrower agrees and executes the new notes.
        - (b) The interest rate does not exceed the interest rate in effect when the loan was closed.
        - (c) The maturity of the loan is not changed.
        - (d) USDA will not bear or guarantee any expenses that may be incurred in reference to such reissue of notes.
        - (e) There is adequate collateral securing the notes.
        - (f) No intervening liens have arisen or have been perfected and the secured lien priority remains the same.
        - (g) All holders agree USDA will issue the appropriate Loan Note Guarantees to be attached to each of the notes then extant in exchange for the original Loan Note Guarantee which will be cancelled by USDA.
  3. Participations.
    - a. The Lender may obtain participation in its loan under its normal operating procedures. Participation means a sale of an interest by the Lender in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.
    - b. The Lender is required to hold in its own portfolio or retain a minimum of 5% of the total guaranteed loan amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another. The Lender may sell the remaining amount of the unguaranteed portion of the loan, only through participation. However, the Lender will always retain the responsibility for loan servicing and liquidation.
- B. When a guaranteed portion of a loan is sold by the Lender to a Holder, the Holder shall thereupon succeed to all rights of Lender under the Loan Note Guarantee to the extent of the portion of the loan purchased. Lender will remain bound to all the obligations under the Loan Note Guarantee, and this agreement, and the USDA program regulations found in 7 C.F.R. part 4279 and to future USDA program regulations not inconsistent with the express provisions hereof.
- C. The Holder upon written notice to the Lender may resell the unpaid guaranteed portion of the loan sold under section III A.

### IV. Servicing

- A. The Lender will service the entire loan and will remain mortgagee and secured party of record, notwithstanding the fact that another may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. Lender may charge Holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan.
- B. It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; and that periodic inspections during construction are made.
- C. Lender's servicing responsibilities include, but are not limited to:
1. Obtaining compliance with the covenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements and notifying in writing USDA and the Borrower of any violations. None of the aforesaid instruments will be altered without USDA's prior written concurrence. The Lender must service the loan in a reasonable and prudent manner.
  2. Receiving all payments on principal and interest on the loan as they fall due and promptly remitting and accounting to any Holder of its *pro rata* share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. The loan may be reamortized, renewed or rescheduled only with agreement of the Lender and Holder of the guaranteed portion of the loan and only with USDA's written concurrence.
  3. Inspecting the collateral as often as necessary to properly service the loan.