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DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Housing Service

Rural Utilities Service

7 CFR Parts 1779, 3575, 4279, 4287, and 5001

[Docket No. RUS-19-Agency-0030]

RIN 0572-AC43

OneRD Guaranteed Loan Regulation; Correction

AGENCIES: Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service, Department of Agriculture (USDA).

ACTION: Final rule; technical correction.

SUMMARY: On July 14, 2020, Rural Development’s Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service referred to as “the Agency” or “Agency” promulgated the OneRD Guaranteed Loan regulation. Following final implementation of this final rule, the Agency found that corrections due to error, omissions, or need for clarity were necessary. This technical correction makes amendments to address these necessary changes.

DATES: Effective October 1, 2020.

FOR FURTHER INFORMATION CONTACT: For questions on this document contact Thomas P. Dickson, Regulatory Division Team 2, Rural Development Innovation Center, U.S. Department of Agriculture, 1400 Independence Ave., SW, Stop 1522, Washington, DC, 20250; telephone, 202-690-4492; email, thomas.dickson@usda.gov.

SUPPLEMENTARY INFORMATION:

I. Need for Corrections

The Agency published a final rule on July 14, 2020, (85 FR 42494 - 42580) for the purpose of implementing a unified guaranteed loan platform for enhanced delivery of four of its existing guaranteed loan programs: Community Facilities (CF) administered by the Rural Housing Service; Water and Waste Disposal (WWD) administered by the Rural Utilities Service; and, Business and Industry (B&I) and Rural Energy for America Program (REAP) administered by the Rural Business-Cooperative Service. The Agency discovered that errors and omissions were made during the drafting process that impact the successful implementation of this regulation. The following items will be addressed in this technical correction:

The removal of Supplementary Information language referring to a reduced guarantee in the Agency's response to a question regarding issuance of the loan note guarantee prior to the completion of construction. The Agency determined that the reduction is not necessary due to implementation of other risk mitigation measures.

Modifying language at § 5001.2 (e) to clarify intent.

Division B, Title I of the CARES Act supplemented existing authority in 7 CFR part 4279 for the Business and Industry program and was implemented after development of the OneRD final rule, but prior to the effective date of the OneRD rule. In order to continue to

administer loans authorized under the CARES Act, 7 CFR part 4279 and Subpart B of Part 4287 are still needed. Therefore, it is necessary to remove Supplementary Information language and delete the amendment to remove and reserve 7 CFR part 4279 and Subpart B of 7 CFR part 4287. These parts continue to be necessary to originate Business & Industry CARES Act Program loans, and service Business and Industry Cares Act Program loans and B&I loans guaranteed by the Agency prior to October 1, 2020. Amendments have been added to revise 7 CFR 4279.1, 4279.101, and 4287.101 accordingly.

Modification of the definition of non-regulated lending entity at § 5001.3, to remove language that does not apply nor further the meaning of the definition.

Addition of language at § 5001.102(d) to clarify that long-term financing to pay off a lender's interim construction loan after project completion will not be treated as debt refinancing in this section.

Addition of language at end of § 5001.102(d)(3) to clarify that (4) is included with § 5001.102(d)(1) to (3).

Correction of language at § 5001.115(n) and an addition of a new paragraph (s) that was inadvertently missed.

Removal of § 5001.118(b)(3) as this information was duplicative.

Modification to the list of regulated lending entities at § 5001.130(b) to include other lending entities not specified, but that meet the eligibility requirements. This language was inadvertently left out of the regulation during drafting.

Addition of paragraph § 5001.121(a)(4) to include refinancing as an eligible use of CF loan funds. The paragraph was inadvertently left out during the drafting of the regulation

Addition of paragraph § 5001.121(c)(12) to include refinancing as an eligible use of WWD loan funds. The paragraph was inadvertently left out during the drafting of the regulation

Addition of paragraph § 5001.121(c)(12) to include refinancing as an eligible use of B&I loan funds. The paragraph was inadvertently left out during the drafting of the regulation.

Removal of the last sentence in § 5001.202(b)(4)(ii). This sentence was inadvertently left in during the drafting of the regulation.

Removal of language at § 5001.205(e) referencing closure of a lender's construction loan as the reference should be to the guaranteed loan.

Additional items were added to the list of provisional content for a complete application at § 5001.303(c). These items are included in the program specific areas but were not included in this section.

Modifying language at § 5001.408 clarifying how a lender may obtain participation in the loan or assign all or part of the guaranteed portion of the guaranteed loan on the secondary market and that that any assignment by the lender of the guaranteed portion of the loan must be accomplished in accordance with the conditions in the lender's agreement and the assignment of the guaranteed or non-guaranteed portion of the loan applies to all individuals, not just the borrower as well as making changes to terminology.

Modifying language at § 5001.450(b)(1) to remove duplicative language.

Modifying language at § 5001.452(b) to improve readability

Adding language at § 5001.453 to advise holders the Agency will provide a certificate of incumbency to verify the signature and title of the Agency official who signs the assignment guarantee agreement.

Removing § 5001.459(c) as it is no longer applicable.

Modifying language at § 5001.511 to improve readability.

Removing § 5001.515(c) as it is no longer applicable.

Removal of § 5001.524(d) which allowed the Agency to terminate the loan note guarantee for good cause. The Agency determined that this paragraph was duplicative of other language in the regulation.

The Agency, while drafting the regulation, inadvertently used sale and assign interchangeably when the correct term is assign. The Agency is taking the opportunity to correct this. Various spelling and grammar items were also corrected.

II. Corrections

In FR Doc. 2020-13991, appearing on page 42494 in the *Federal Register* of Tuesday, July 14, 2020, the following corrections are made:

1. On page 42511, in the first column, under *Subpart F – Servicing Provisions* in the third paragraph under Loan Note Guarantee Construction titled *Agency’s Response*: the last sentence is corrected to read “As this poses more risk to the Agency, it will be mitigated with additional lender documentation and enhanced lender oversight along with an additional lender fee.”

Chapter XLII—[Corrected]

PART 4279—GUARANTEED LOANMAKING

Subpart A—General

2. On page 42517, in the third column, in part 4279, remove “Subpart A—[Removed and Reserved]”, revise instruction 4, and add amendatory text to read as follows:.

4. Amend §4279.1 by revising paragraph (a) to read as follows:

§4279.1 Introduction.

(a) As of October 1, 2020, this subpart is specifically applicable to and only contains regulations for Business and Industry loans under the authority of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116-136) to provide B&I guarantees for loans

needed as a result of the Coronavirus Disease 2019 (COVID-19) pandemic for working capital loan purposes to support business operations and facilities in rural areas (B&I CARES Act Program Loans). Some of the requirements of this subpart are waived or altered for B&I CARES Act Program Loans. The waivers and alterations are provided in §4279.190 of this subpart. Other than B&I CARES Act Program Loans, this subpart is no longer used for making Business and Industry (B&I) loans guaranteed by the Agency. Subpart B of part 4287 of this chapter is retained for servicing B&I CARES Act Program Loans and B&I loans guaranteed by the Agency prior to October 1, 2020. Requirements for B&I loans guaranteed by the Agency after October 1, 2020 (other than B&I CARES Act Loans) may be found at 7 CFR part 5001.

* * * * *

Subpart B – Business and Industry Loans

3. On page 42518, in the first column, in part 4279, remove “Subpart B—[Removed and Reserved]”, revise instruction 5, and add amendatory text to read as follows: .

5. Amend §4279.101 by revising paragraph (a) to read as follows:

§4279.101 Introduction.

(a) *Content.* As of October 1, 2020, this subpart is specifically applicable to and only contains loan processing regulations for Business and Industry loans under the authority of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116-136) to provide B&I guarantees for loans needed as a result of the Coronavirus Disease 2019 (COVID-19) pandemic for working capital loan purposes to support business operations and facilities in rural areas (B&I CARES Act Program Loans). Some of the requirements of this subpart are waived or altered for B&I CARES Act Program Loans. The waivers and alterations are provided in §4279.190 of this subpart. This subpart is supplemented by subpart A of this part, which contains

general guaranteed loan regulations, and subpart B of part 4287 of this chapter, which contains loan servicing regulations. Other than the B&I CARES Act Program Loans, this subpart is no longer used for loan processing requirements for Business and Industry (B&I) loans guaranteed by the Agency. Requirements for regular B&I loans (other than the B&I CARES Act Program Loans) may be found at 7 CFR part 5001.

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PART 4287—SERVICING

Subpart B – Servicing Business and Industry Guaranteed Loans

4. On page 42518, in the first column, in part 4287, remove “Subpart B—[Removed and Reserved]”, revise instruction 7, and add amendatory text to read as follows:

7. Amend §4287.101 by revising paragraph (a) to read as follows:

§4287.101 Introduction.

(a) As of October 1, 2020, this subpart is specifically applicable to and only contains regulations for servicing Business and Industry (B&I) Loans guaranteed by the Agency prior to October 1, 2020 and Business and Industry loans under the authority of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116-136) to provide B&I guarantees for loans needed as a result of the Coronavirus Disease 2019 (COVID-19) pandemic for working capital loan purposes to support business operations and facilities in rural areas (B&I CARES Act Program Loans). Other than B&I CARES Act Program Loans and B&I loans guaranteed by the Agency prior to October 1, 2020, this subpart is no longer used for servicing B&I loans guaranteed by the Agency. Requirements for B&I loans guaranteed by the Agency after October 1, 2020 (other than B&I CARES Act Loans) may be found at 7 CFR part 5001.

5. On page 42518, in the first column, in part 4287, remove Instruction 7

* * * * *

6. On page 42518, in the third column in the table of contents under “Subpart F-Servicing Provisions,” “5001.118 [Reserved]” is corrected to read “5001.518 [Reserved]”.

7. On page 42519, in the second column, in § 5001.2, the second sentence of paragraph (e) is revised to read as follows:

§ 5001.2 Structure.

* * * * *

(e) * * * Loan provisions cover interest rates, term length, loan schedule, repayment, lender fees, loan amounts, percentage of guarantee, and assignment of a guaranteed loan. * * *

* * * * *

8. On page 42523, in the second column, in § 5001.3, the definition of “Non-regulated lending entity” is revised to read as follows:

§5001.3 Definitions.

* * * * *

Non-regulated lending entity means a lending entity that is not subject to supervision and examination by an agency of the United States or a State.

* * * * *

9. On page 43527, in the third column, and continuing on page 42528, in the first column, in § 5001.102, revise paragraph (d) introductory sentence and the last sentence of paragraph (d)(3) to read as follows:

§ 5001.102 Project eligibility – general.

* * * * *

(d) *Debt refinancing.* The Agency can guarantee loans for debt refinancing, as

described in paragraphs (d)(1) through (5) of this section. Longer-term financing to pay off a lender's interim construction loan after project completion will not be treated as debt refinancing.

An eligible debt refinancing project is:

* * * * *

(3)* * * Such guaranteed debt shall not be included in the amount of applicant lender debt when calculating the maximum percentage of the total use of funds in the new guaranteed loan as stated in paragraph (d)(2) of this section; and,

* * * * *

§ 5001.105 Corrected

10. On page 42530 in the second column in § 5001.105 paragraph (b)(21) is revised to read as follows:

§ 5001.105 Eligible B&I projects and requirements.

* * * * *

(b) * * *

(21) Development and construction of RES, including modification of existing systems that are commercially available and that are not otherwise eligible under REAP, or if funding is not available in the REAP program.

* * * * *

11. On page 42533 in the third column in § 5001.115, revise paragraph (n) and add paragraph (s) to read as follows:

§ 5001.115 Ineligible projects – general.

* * * * *

(n) Owner-occupied housing.

* * * * *

(s) Self-storage facilities.

§ 5001.118 [Corrected]

12. On page 42534 in the second column in § 5001.118, remove paragraph (b)(3).

13. On page 42535 in the first and second columns in § 5001.121 add paragraphs (a)(4), (b)(11), and (c)(12) to read as follows:

§ 5001.121 Eligible uses of loan funds.

* * * * *

(a) * * *

(4) Refinancing in accordance with § 5001.102(d).

(b) * * *

(11) Refinancing in accordance with § 5001.102(d),

(c) * * *

(12) Refinancing in accordance with § 5001.102(d).

* * * * *

13. On page 42538 in the first column in § 5001.130, revise paragraph (b) introductory text and add paragraph (b)(10) to read as follows:

§ 5001.130 Lender Eligibility Requirements.

* * * * *

(b) *Regulated lending entities*. Regulated lending entities identified in paragraphs (b)(1) through (10) of this section are eligible to receive a loan guarantee under this part without documentation to the Agency provided they are subject to supervision and credit examination by the applicable agency of the United States or a state, or were created specifically by state statute

and operate under the direct supervision of a state government authority.

* * * * *

(10) Other lending entities not specified in paragraphs (b)(1) through (9) of this section that meet the requirements as specified in this paragraph (b).

* * * * *

§ 5001.202 [Corrected]

14. On page 42543 in the third column and continuing onto page 42544 in the first column in § 5001.202, remove the last sentence in paragraph (b)(4)(ii).

§ 5001.205 [Corrected]

15. On page 42545 in the third column in § 5001.205, remove the second sentence in paragraph (e)(2) introductory text.

16. On page 42548 in the second column in § 5001.303, revise paragraph (c)(16) and add paragraphs (c)(17) and (18) to read as follows:

§ 5001.303 Applications for loan guarantee.

* * * * *

(c) * * *

(16) Certification regarding credit elsewhere in accordance with § 5001.126(b)(3) and (c)(2).

(17) Certification of significant community support in accordance with § 5001.126(b)(4) and (c)(3).

(18) Copies of organizational documents if not already provided with a preliminary eligibility review in accordance with § 5001.302.

17. On pages 42562 and continuing onto page 42563 in § 5001.408, revise paragraph (a),

the first sentence of paragraph (a)(2), paragraphs (a)(4) and (5), and (c), and the first sentences of paragraphs (d)(3) and (e) introductory text to read as follows:

§ 5001.408 Participation or assignment of guaranteed loan.

(a) *General.* The lender may obtain participation in the loan or assign all or part of the guaranteed portion of the guaranteed loan on the secondary market subject to the conditions specified in paragraphs (a)(1) through (5) of this section or retain the entire guaranteed loan.

* * * * *

(2) * * * Any assignment by the lender of the guaranteed portion of the loan must be accomplished in accordance with the conditions in the lender's agreement and the provisions of this section. The holders and the borrower have no rights or obligations to one another. * * *

* * * * *

(4) *Prohibition.* The lender must not assign or participate any amount of the guaranteed or non-guaranteed portion of the loan to the borrower, borrower's officers, directors, stockholders, other owners, or to members of their immediate families, or to a parent company, an affiliate, or a subsidiary of the borrower.

(5) *Secondary market.* The lender must properly close their loan and fully disburse loan funds of a promissory note for the purposes intended prior to assignment of the guaranteed portion of the promissory note(s) on the secondary market. The lender can assign all or part of the guaranteed portion of the loan only if the loan is not in default.

(c) *Distribution of proceeds.* The lender must apply all loan payments and collateral proceeds received, after payment of liquidation expenses, to the guaranteed and unguaranteed portions of the loan on a pro rata basis.

(d) * * *

(3) A holder, upon written notice to the lender and the Agency, may reassign the unpaid guaranteed portion of the loan, in full, assigned under the assignment guarantee agreement. * * *

* * * * *

(e) *Rights and liabilities.* When a guaranteed portion of a loan is assigned to a holder using an assignment guarantee agreement, the holder succeeds to all rights of the lender under the loan note guarantee to the extent of the portion purchased. * * *

* * * * *

18. On page 42563 in the second column in § 5001.450, revise paragraph (b)(1) to read as follows:

§ 5001.450 General.

* * * * *

(b) * * *

(1) The entire loan must be secured by the same collateral with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the guaranteed loan will neither be paid first nor given any preference or priority over the guaranteed portion. A parity or junior lien position in the guaranteed loan collateral may be considered on a case-by-case basis and must be approved by the Agency.

* * * * *

19. On page 42564 in the third column in § 5001.452, revise paragraph (b) introductory text to read as follows:

§ 5001.452 Loan closing and conditions precedent to issuance of loan note guarantee.

* * * * *

(b) Simultaneously with or immediately after the guaranteed loan closing, the lender must provide to the Agency the guarantee fee, any secondary market assignment documents, and the following forms and documents:

* * * * *

20. On page 42566 in the first column in § 5001.453 revise paragraphs (a)(1) and (3) to read as follows:

§ 5001.453 Issuance of the loan note guarantee.

* * * * *

(a) * * *

(1) *Loan note guarantee.* The Agency will provide the lender the original loan note guarantee document which the lender must attach to the promissory note. If the lender elected to use the multi-note system, the Agency will issue one loan note guarantee for the set of promissory notes.

* * * * *

(3) *Certificate of incumbency and signature.* The Agency will provide the holder an executed certificate of incumbency form to verify the signature and title of the Agency official who signed the assignment guarantee agreement.

* * * * *

§ 5001.459 [Corrected]

21. On page 42567 in the third column in § 5001.459, in the introductory text, correct “through (c)” to read “and (b)” and on page 42568 in the first column, remove paragraph (c).

22. On pages 42572 in the second column and continuing onto page 42573, § 5001.511 is revised to read as follows:

§ 5001.511 Repurchases from holders.

(a) *General.* A holder can make written demand on either the lender or the Agency to repurchase the unpaid guarantee portion of the loan when the borrower is in monetary default or when the lender has failed to pay the holder its pro-rata share of any payment made by the borrower within 30 days of the lender's receipt thereof from the borrower. When making written demand on the lender, the holder must concurrently send a copy of the demand letter to the Agency.

(1) The lender is encouraged to repurchase the guarantee, upon written demand of a holder, to facilitate the accounting of funds, resolve any loan problem, and resolve the monetary default, where and when reasonable. The benefit to the lender is that it may re-assign the guaranteed portion of the loan and then continue collection of its servicing fee, if any, when the monetary default is cured.

(2) When a lender receives a written demand for repurchase from a holder, the lender must notify any other holder and the Agency within 30 calendar days of receipt of the written demand. The lender must inform all parties if the lender will repurchase the unpaid guaranteed portion of the loan from the requesting holder.

(3) Upon repurchase the holder will re-assign the assignment guarantee agreement to the lender without recourse.

(b) *Repurchase by lender for loan servicing purposes.* If the lender, borrower, and holder are unable to agree to restructuring of loan repayment, interest rate, or loan terms to resolve any

loan problem or resolve any default, and repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the holder must reassign the guaranteed portion of the loan to the lender. The reassignment must be for an amount not less than the holder's unpaid principal and accrued Interest, in accordance with § 5001.450(c) of this part, on such portion less the lender's servicing fee.

(1) Upon repurchase the holder will re-assign the assignment guarantee agreement to the lender without recourse.

(2) The lender must not repurchase from the holder for arbitrage or other purposes to further its own financial gain.

(3) Any repurchase from a holder may only be made after the lender obtains the Agency's written approval.

(c) *Agency repurchase.* If the lender does not repurchase the guaranteed portion from the holder, the Agency may, at its option, purchase such guaranteed portion of the loan for loan servicing purposes . A holder can submit a written demand to the Agency for repurchase only if the lender declines to repurchase. If a prior written demand was not made upon the lender, the Agency will notify the lender and allow up to seven calendar days for the lender to exercise their option to repurchase as provided in this section.

(1) *Lender does not repurchase.* If the lender does not repurchase the unpaid guaranteed portion of a loan as provided in paragraph (a) of this section, the Agency will, within 30 calendar days after written demand to the Agency from the holder, purchase from the holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase or

the interest termination date, whichever is sooner, less the lender's servicing fee. The guarantee will pay accrued interest to the holder on the loan as determined under § 5001.450(c) of this part.

(2) *Written demand content.* The holder must include in its written demand to the Agency:

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

(ii) A copy of the lender's denial to repurchase the unpaid guaranteed portion of the guaranteed loan;

(iii) Evidence of the right to require payment from the Agency as provided by the holder or duly authorized agent. Such evidence must consist of the original assignment guarantee agreement properly assigned to the Agency without recourse including all rights, title, and interest in the loan;

(iv) The amount due including unpaid principal, unpaid interest to date of demand, and interest subsequently accruing from date of demand to proposed payment date; and

(v) When the initial holder has assigned its interest, 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.

(3) *Payment.* Unless otherwise agreed upon, payment will not be later than 30 calendar days from the date of demand.

(i) Upon request by the Agency, the lender must promptly furnish (within 30 calendar days of such request) 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.

(ii) 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. The Agency will notify both parties and such conflict will suspend the running of the 30-calendar-day payment requirement.

(iii) If a repurchase of a guaranteed loan includes the capitalization of interest, interest accrued on the capitalized interest will not be paid to the holder.

(4) *Subrogation*. When the Agency purchases a loan from a holder it assumes all rights that were previously held by the holder.

(5) *Servicing fee*. When the Agency purchases the guaranteed portion of the loan from a holder, the lender's servicing fee will stop on the date that interest was last paid by the borrower. The lender can neither charge a servicing fee to the Agency nor collect such fee from the Agency.

(6) *Accrued interest*. If the Agency repurchases 100 percent of the guaranteed portion of a loan and becomes the holder, interest accrual on the loan will cease until the lender resumes remittance of the pro rata payments to the Agency.

(7) *Establishing interest termination date*. When a guaranteed loan has been delinquent more than 60 calendar days and no holder comes forward or when the lender has accelerated the account, and subject to the expiration of any forbearance or workout agreement, the lender, or

the Agency at its sole discretion, must issue a letter to the holder(s) establishing the interest termination date in accordance with § 5001.450(c)(2).

(8) *Obligations and rights.* Purchase by the Agency neither changes, alters, or modifies any of the lender's obligations to the Agency arising from the lender's agreement, guaranteed loan or loan note 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 loan note guarantee.

(9) *Accelerated loan.* When the lender has accelerated the loan and the lender holds all or a portion of the guaranteed loan, an estimated loss claim must be filed by the Lender with the Agency within 60 calendar days from the date the loan was accelerated. Accrued interest paid to the lender in accordance with § 5001.450(c)(1).

(10) *Interest termination during bankruptcy.* When a borrower files a Chapter 7 liquidation plan, the lender shall immediately notify the Agency and submit a liquidation plan. The Agency will establish an interest termination date based on the date Interest was last paid to the lender. When a borrower files either a Chapter 9 or Chapter 11 bankruptcy restructuring plan, the Agency and lender shall meet to discuss the bankruptcy procedure, the ability of the borrower to meet their restructuring plan, the lender's treatment of accruing interest, and potentially establish an interest termination date for the guaranteed loan. If the restructuring bankruptcy Chapter 9 or Chapter 11 is converted to a liquidation bankruptcy Chapter 7 by court order, the interest termination date will be the date of such conversion.

§ 5001.515 [Corrected]

23. On page 42574 in the third column in § 5001.515, remove paragraph (c).

§ 5001.524 [Corrected]

24. On page 42580 in the third column in § 5001.524, remove paragraph (d).

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