

**§ 1738.305 Obligations of guaranteed lender.**

Once a loan guarantee has been approved, the guaranteed lender will be responsible for:

- (a) Servicing the loan;
- (b) Determining that all prerequisites to each advance of loan funds by the lender under the terms of the contract of guarantee, all financing documents, and all related security documents have been fulfilled;
- (c) Obtaining approval from the Agency to advance funds prior to each advance;
- (d) Billing and collecting loan payments from the borrower;
- (e) Notifying the Administrator promptly of any default in the payment of principal and interest on the loan and submit a report no later than 30 days thereafter, setting forth the reasons for the default, how long it expects the borrower will be in default, and what corrective actions the borrower states that it is taking to achieve a current debt service position; and
- (f) Notifying the Administrator of any known violations or defaults by the borrower under the lending agreement, contract of guarantee, or related security instruments or conditions of which the lender is aware which might lead to nonpayment, violation, or other default.

**§ 1738.306 Agency rights and remedies.**

- (a) The guarantee must provide that upon notice to the lender, the Agency may assume loan servicing responsibilities for the loan or the guaranteed loan amount or the respective guaranteed loan portion amount or the respective guaranteed-amount equivalent, as the case may be, or require the lender to assign such responsibilities to a different entity, if the lender fails to perform its loan servicing responsibilities under the loan guarantee agreement, or if the lender becomes insolvent, makes an admission in writing of its inability to pay its debts generally as they become due, or becomes the subject of proceedings commenced under the Bankruptcy Reform Act of 1978 (11 U.S.C. 101 *et seq.*) or any similar applicable Federal or State law, or is no longer in good standing with its li-

censing authority, or ceases to meet the eligibility requirements of this subpart. Such negligent servicing is defined as the failure to perform those services which a reasonable prudent lender would perform in servicing its own portfolio of loans that are not guaranteed and includes not only a failure to act but also not acting in a timely manner.

- (b) The guarantee shall cease to be effective with respect to any guaranteed loan amount or any guaranteed loan portion amount or any guaranteed-amount equivalent to the extent that:

- (1) The guaranteed loan amount or the respective guaranteed loan portion amount or the respective guaranteed amount equivalent, as the case may be, is separated at any time from the unguaranteed loan amount or the respective unguaranteed loan portion amount or the respective unguaranteed-amount equivalent, as the case may be, in any way, directly or through the issuance of any guaranteed-amount equity derivative or any guaranteed-amount debt derivative; or

- (2) Any holder of the guaranteed loan note or any guaranteed loan portion note or any derivative, as the case may be, having a claim to payments on the guaranteed loan receives more than its pro-rata percentage of any payment due to such holder from payments made under the guarantee at any time during the term of the guaranteed loan.

**§ 1738.307 Additional policies.**

The Agency shall provide additional loan guarantee policies, consistent with OMB Circular A-129, in order to achieve its mission of promoting broadband in rural areas, which shall be published annually in the FEDERAL REGISTER.

**§ 1738.308 Full faith and credit of the United States.**

Loan guarantees made under this part are supported by the full faith and credit of the United States and are incontestable except for fraud or misrepresentation of which the holder had actual knowledge at the time it became a holder.