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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 762

RIN: 0560–AG65

Guaranteed Farm Ownership and Operating Loan Requirements

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Farm Service Agency (FSA) is amending its regulations governing loans made under the guaranteed farm loan program to specifically allow lenders to use the loans as security for loans to the lenders, remove certain documentation and designation requirements for lenders, and modify security restrictions as to refinancing and junior liens.

DATES: This rule is effective September 26, 2005.

FOR FURTHER INFORMATION CONTACT: Galen VanVleet, Senior Loan Officer, Farm Service Agency; telephone: (202) 720–3889; Facsimile: (202) 720–6797; E-mail: *Galen.VanVleet@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

FSA published a proposed rule on May 4, 2004, (69 FR 24537–24539) to amend its regulations governing loans made under the guaranteed farm loan program. The comment period ended July 6, 2004.

Summary of Public Comments

In response to the proposed rule, 125 respondents from 25 States and the District of Columbia commented. The following is a summary of the comments and the changes made in the final rule in response to the comments.

Certified Lender Program

FSA proposed to remove the requirement that lenders applying for Certified Lender Program (CLP) status submit copies of forms to be used for farm loan processing and servicing, such as financial statements, cash-flow plans, and budgets. One respondent noted that the existing requirement was of little burden and recommended that no change be made. However, 75 respondents endorsed the change; based on this response, the Agency adopts its proposed rule on CLP as final.

Preferred Lender Program

FSA proposed to remove the requirement that Preferred Lender Program (PLP) lenders designate a person or persons, approved by the Agency, to process and service PLP loans. Under the proposed rule PLP lenders would designate the responsible party by name, title, or position. All respondents supported this change, therefore, the Agency adopts its proposed rule on PLP as final.

Interest Rates and Fees

The existing rule at § 762.124(e)(1) provides that the lender may charge fees provided they are no greater than those charged to unguaranteed customers for similar transactions. FSA proposed that the lender not charge, or cause to be charged, any processing, servicing, or packaging fees that are not charged to nonguaranteed customers for similar transactions. Only three respondents supported the change, while 100 respondents opposed it because they interpreted that the change would disallow ''packager'' fees and they believed fewer guaranteed loans would be made as a result. Because of the overwhelming opposition, the proposal was not adopted nor the existing regulation changed.

Security Requirements

The existing rule at § 762.126(e) establishes restrictions on acceptable lien positions for security on guaranteed loans. The Agency proposed removing a restriction requiring that, when a loan is made for refinancing purposes, the guaranteed loan must hold a security position no lower than that on the refinanced loan. One respondent expressed concern that removal of the restriction would greatly increase the Government's risk of loss without any direct benefit to the loan applicant. That respondent suggested that in any case where the guaranteed loan debt is greater than or equal to 75 percent of the proposed security, the security position must be the same or better lien position than on the refinanced loan. Another respondent recommended that removal of the restriction be limited to situations where real estate loans are made to refinance operating carry-over debt. Another respondent recommended that the lender must hold a security position in the same or better collateral than on the refinanced loan. The other 74 respondents who commented on this section supported the change because it will help reduce confusion about proper lien positions and give lenders additional flexibility. The Agency does not agree that the removal of this restriction will greatly increase the risk of loss since the lenders are still responsible for ensuring that proper and adequate security is obtained to fully secure the loan, protect the interest of the lender and the Agency and assure repayment of the loan. Accordingly, the proposal is adopted as final.

Another restriction under the same section limits junior lien positions to situations where equity position is strong. Because this restriction has been confusing due to varying interpretations of ''strong,'' the Agency proposed clarifying the equity requirement by limiting junior liens to situations where the amount of debt is less than or equal to 75 percent of the value of the security. One respondent, who strongly supported the revision, recommended that the Agency clarify that this change applies to all lender types, including PLP. The Agency agrees with the point of this comment, but made no specific change to the regulation because all of § 762.126 already applies to all lender types.

Five respondents opposed the establishment of the 75-percent criterion. One respondent expressed concern that the requirement was too restrictive and recommended that no specific requirement be required for real estate, and a less restrictive requirement of 20 percent equity (80 percent debt-to-value of security) be established for chattels. Similarly, another respondent stated that the proposed requirement would be excessive when dealing with real estate security. A third respondent pointed out that the 75-percent loan-to-

value limit is more restrictive than supervisory limits established by Federal banking regulatory agencies. The fourth respondent opposed the change because it would be, in their view, detrimental to borrowers. The respondent stated that they, as a lender, would not take a second lien behind a large guaranteed loan. The final opposing respondent expressed concern that the establishment of a 75 percent requirement overemphasizes collateral while capacity and capital evaluation should be the deciding factors. The Agency agrees that the 75 percent requirement may be too restrictive and has increased the maximum loan to value limit to 85 percent accordingly.

Restructuring Guaranteed Loans

The existing regulation at § 762.145 (b)(6)(i) contains an incorrect citation to the loan limits, which the proposed rule corrected. No respondent commented on this provision and the proposed correction is adopted as final.

Sale, Assignment, and Participation

A new section, § 762.159, was proposed to address the use of guaranteed loans as security for lender funding. Many lenders routinely borrow money from Federal Home Loan Banks or Federal Reserve Banks to meet funding or liquidity needs. They are usually required to pledge loan assets, which may include guaranteed loans, as security for the loans. The existing regulation's restrictions on assignments have led to confusion as to how or whether a lender can pledge guaranteed loans. The proposed rule explicitly allowed the pledging to Federal Home Loan Banks or Federal Reserve Banks. The Agency received 93 comments concerning this proposal. While all respondents supported the goal of clarifying that guaranteed loans can be pledged as security for collateral, they also expressed some concerns. The respondents recommended that the proposed language saying that the guarantee would be unenforceable until a new eligible lender is substituted be removed. They correctly pointed out that other parts of the regulation provide protection to the Agency due to negligent servicing. The lender will remain responsible for properly servicing the account until an eligible lender is substituted, and deductions otherwise will be made according to § 762.149 as appropriate. The Agency agrees and has deleted the last two sentences in the final rule as unnecessary.

Respondents also recommended that the Agency provide users with any information about how to make the pledge; specifically, the respondents recommended that there be a proposed format to follow. The Agency determined that it is not appropriate to dictate a format or advise the lenders how to make a pledge because the Agency will not be a direct party to the pledging activity. Therefore, no change has been made in response to these comments.

Two respondents recommended that additional language be added to provide that a Federal Home Loan Bank or Federal Reserve Bank, as pledgee, be deemed a ''holder.'' These respondents correctly pointed out that, under the regulations, a holder may enforce the guarantee even if it is contestable, or unenforceable by the lender. There are other rights that holders have, in particular, the right to require purchase, however, that cannot accrue to a pledgee. Therefore, the Agency did not add language to deem the pledgee a holder.

One respondent pointed out that Farm Credit System institutions are required to, and routinely do, pledge all their loan assets, including those with Federal guarantees, to their funding bank. For clarity and consistency, in the final rule Farm Credit System Banks were added to the institutions that may pledge guaranteed loans, as well as other funding sources determined acceptable by the Agency.

Section § 762.160 deals with the sale, assignment, and participation of guarantees. The proposed rule clarified confusing portions and removed unnecessarily restrictive provisions. As used in the existing section and as defined in § 762.102, ''sale of guarantee'' and ''assignment of guarantee'' are synonymous. To reduce confusion, reference to ''sale of guarantee'' is removed. The one respondent who commented on the proposed changes to § 762.160 supported the changes; therefore, the Agency adopts this portion of the proposed rule as final.

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

FSA certifies that this rule will not have a significant economic effect on a substantial number of small entities and therefore is not required to perform a Regulatory Flexibility Analysis as required by the Regulatory Flexibility Act, Public Law 96–534, as amended (5 U.S.C. 601). An insignificant number of guaranteed loan borrowers and no lenders are small entities. This rule does not impact the small entities to a greater extent than large entities.

Environmental Impact Statement

FSA has determined that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et. seq.*), neither an Environmental Impact Statement nor an environmental assessment is required.

Executive Order 12988

This rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. All State and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to this rule. It will not affect agreements entered into prior to the effective date of the rule. The administrative appeal provisions published at 7 CFR parts 11 and 780 must be exhausted before bringing any action for judicial review.

Executive Order 12372

For reasons set forth in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) the programs and activities within this rule are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with state and local officials.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4), requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost-benefit assessment, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for state, local, or tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates, as defined by title II of the UMRA, for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

The amendments to 7 CFR part 762 contained in this final rule require no

revisions to the information collection requirements that were previously approved by OMB under control number 0560–0155.

Federal Assistance Programs

These changes affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance:

10.406—Farm Operating Loans
10.407—Farm Ownership Loans

List of Subjects in 7 CFR Part 762

Agriculture, Loan programs—Agriculture.

■ Accordingly, 7 CFR chapter VII is amended as follows:

PART 762—GUARANTEED FARM LOANS

■ 1. The authority citation for part 762 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989.

§ 762.102 [Amended]

■ 2. In § 762.102 remove the definitions of ''Financially viable operation'', ''Participation'' and ''Sale of guaranteed portion.''

■ 3. Amend § 762.106 by removing paragraph (b)(8) and revising paragraph (c)(8) to read as follows:

§ 762.106 Preferred and certified lender programs.

* * * * *

(c) * * *

(8) Designate a person or persons, either by name, title, or position within the organization, to process and service PLP loans for the Agency.

* * * * *

■ 4. In § 762.126, remove paragraph (e)(1), redesignate paragraphs (e)(2), (e)(3), and (e)(4) as (e)(1), (e)(2), and (e)(3), respectively, and revise newly designated (e)(2) to read as follows:

§ 762.126 Security requirements.

(e) * * *

(2) Junior lien positions are acceptable only if the total amount of debt with liens on the security, including the debt in junior lien position, is less than or equal to 85 percent of the value of the security. Junior liens on crops or livestock products will not be relied upon for security unless the lender is involved in multiple guaranteed loans to the same borrower and also has the first lien on the collateral.

* * * * *

■ 5. Revise § 762.145 (b)(6)(i) to read as follows:

§ 762.145 Restructuring guaranteed loans.

* * * * *

(b) * * *

(6) * * *

(i) As a result of the capitalization of interest, a rescheduled promissory note may increase the amount of principal the borrower is required to pay. However, in no case will such principal amount exceed the statutory loan limits contained in § 761.8 of this chapter.

* * * * *

■ 6. Add § 762.159 to read as follows:

§ 762.159 Pledging of guarantee.

A lender may pledge all or part of the guaranteed or unguaranteed portion of the loan as security to a Federal Home Loan Bank, a Federal Reserve Bank, a Farm Credit System Bank, or any other funding source determined acceptable by the Agency.

■ 7. Revise § 762.160 to read as follows:

§ 762.160 Assignment of guarantee.

(a) The following general requirements apply to assigning guaranteed loans:

(1) Subject to Agency concurrence, the lender may assign all or part of the guaranteed portion of the loan to one or more holders at or after loan closing, if the loan is not in default. However, a line of credit cannot be assigned. The lender must always retain the unguaranteed portion in their portfolio, regardless of how the loan is funded.

(2) The Agency may refuse to execute the Assignment of Guarantee and prohibit the assignment in case of the following:

(i) The Agency purchased and is holder of a loan that was assigned by the lender that is requesting the assignment.

(ii) The lender has not complied with the reimbursement requirements of § 762.144(c)(7), except when the 180 day reimbursement or liquidation requirement has been waived by the Agency.

(3) The lender will provide the Agency with copies of all appropriate forms used in the assignment.

(4) The guaranteed portion of the loan may not be assigned by the lender until the loan has been fully disbursed to the borrower.

(5) The lender is not permitted to assign any amount of the guaranteed or unguaranteed portion of the loan to the loan applicant or borrower, or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary, or affiliate.

(6) Upon the lender's assignment of the guaranteed portion of the loan, the lender will remain bound to all obligations indicated in the Guarantee, Lender's Agreement, the Agency program regulations, and to future program regulations not inconsistent with the provisions of the Lenders Agreement. The lender retains all rights under the security instruments for the protection of the lender and the United States.

(b) The following will occur upon the lender's assignment of the guaranteed portion of the loan:

(1) The holder will succeed to all rights of the Guarantee pertaining to the portion of the loan assigned.

(2) The lender will send the holder the borrower's executed note attached to the Guarantee.

(3) The holder, upon written notice to the lender and the Agency, may assign the unpaid guaranteed portion of the loan. The holder must assign the guaranteed portion back to the original lender if requested for servicing or liquidation of the account.

(4) The Guarantee or Assignment of Guarantee in the holder's possession does not cover:

(i) Interest accruing 90 days after the holder has demanded repurchase by the lender, except as provided in the Assignment of Guarantee and § 762.144(c)(3)(iii).

(ii) Interest accruing 90 days after the lender or the Agency has requested the holder to surrender evidence of debt repurchase, if the holder has not previously demanded repurchase.

(c) Negotiations concerning premiums, fees, and additional payments for loans are to take place between the holder and the lender. The Agency will participate in such negotiations only as a provider of information.

Signed in Washington, DC, on September 1, 2005.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 05–19126 Filed 9–23–05; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV05–916–3 FR]

Nectarines and Peaches Grown in California; Increased Assessment Rates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rates established for the Nectarine Administrative Committee