Rules and Regulations

Federal Register
Vol. 73, No. 112
Tuesday, June 10, 2008

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 762

RIN 0560–AH55

Guaranteed Loans; Number of Days of Interest Paid on Loss Claims

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Farm Service Agency (FSA) is clarifying and simplifying its regulations governing the number of days interest will be paid on loss claims. The liquidation provisions currently provide a timeframe for the interest payment based upon ''the date of the decision to liquidate,'' which is often difficult to determine. This final rule will eliminate ''the date of the decision to liquidate'' as the beginning timeframe for the interest payment on loss claims. In addition, FSA is clarifying the guaranteed lender's responsibility for future recoveries.

DATES: *Effective Date:* July 10, 2008.

FOR FURTHER INFORMATION CONTACT: Marilyn Z. Meese, Senior Loan Officer, Farm Service Agency; telephone: (202) 690–4002; Facsimile: (202) 690–1196; e-mail: *Marilyn.Meese@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

This final rule clarifies and simplifies the number of days' interest that may be paid on loss claims for the FSA guaranteed farm loan program. FSA guaranteed loans provide conventional agricultural lenders with up to a 95 percent guarantee of the principal loan amount and accrued interest. When a borrower cannot fully repay the guaranteed loan, the lender submits a loss claim request to FSA for payment of the guaranteed percentage of the unpaid debt, if any, after liquidation of the collateral.

As explained in the proposed rule, published on March 27, 2007 (72 FR 14244–14246), there was confusion for both lenders and FSA personnel on how to compute the number of days' interest that may be paid on loss claims. In order to both clarify and simplify this issue the final rule changes the regulations in 7 CFR 762.149(d) to allow a maximum of 210 days of accrued interest from the payment due date.

All lenders within 150 days of the payment due date must prepare a liquidation plan under 7 CFR 762.149(b). The reference to 150 days will replace the current language, ''within 30 days of the decision to liquidate.''

Lenders also must file estimated and final loss claims on all accounts in a timely manner. If the lender expects no loss, a zero dollar estimated loss claim is to be filed. The estimated loss claim need not be filed if the account has already been completely liquidated within the 150 days. In that case, the lender would file only the final loss claim. A final loss claim also needs to be completed for any loan to close out the loan on FSA's financial records as to any remaining liability to the lender.

If the loss claim processing exceeds 40 days as a result of FSA's failure to take action on the claim FSA will pay additional interest to the lender after the 40 days.

FSA is providing clarification that the payment of a loss claim to the lender does not automatically relieve the borrower from any liability for the debt owed the lender or the lender of responsibility for any future recoveries. After payment of a loss claim by FSA, the lender will continue to have the responsibility to collect the entire loan balance.

In 7 CFR 762.148(d), FSA is removing the provision that the date the borrower files for Chapter 7 bankruptcy is the date of the decision to liquidate for purposes of calculating liquidation time frames.

If the loan account has been past due prior to the Chapter 7 bankruptcy filing those days will count towards the liquidation timeframes.

Finally, the Agency is amending 7 CFR 762.149(i)(1) by stating that as long as a loan is accruing interest, the sale proceeds from the liquidation of assets will be applied to principal first.

Summary of Public Comments

The 60-day comment period for the proposed rule ended on May 29, 2007. Only one comment was received. The commenter agreed with the proposed rule in three areas and disagreed in four. The commenter agreed that: the number of days of interest paid should not exceed 210 days from the payment due date, the new rule would clarify and simplify the issue, and the current language ''within 30 days of the decision to liquidate'' should be replaced with a reference to 150 days from the payment due date.

The commenter disagreed that a lender should submit an estimated loss claim when no loss is anticipated stating that even though this would help FSA to better monitor the liquidation process it is of no benefit to the lender. It would cause additional time and effort by the lender when they would be terminating the guarantee in the near future. The commenter also stated that the lender has little incentive to submit a zero estimated loss claim report. The commenter indicated that under the current regulation the lender is not required to file an estimated loss claim if no loss is expected and interest stops accruing 90 days after the decision to liquidate. The commenter stated that every time a lender has a loan on which no loss is expected filing a zero dollar estimated loss claim is a waste of time. The current regulation requires the filing of an estimated loss claim if liquidation is expected to take more than 90 days with a specific exception only for loans that will be liquidated in 90 days or less. The regulation also states that ''interest accrual will cease 90 days after the decision to liquidate or an estimated loss of zero will be submitted.'' It was anticipated that zero estimated loss claims would be filed so FSA could more easily project current loss information. However, that is not happening, and it is hoped that this change will increase awareness and compliance. Additionally, FSA is currently testing an automated loss claim system, which should simplify the process of filing loss claims. We expect that this automated system will

be made available to lenders in fiscal year 2009. The time required to file a zero dollar estimated loss claim would be minimal as lenders will only need to show that the estimated recovery is greater than the loan balance. Additionally, FSA's ability to accurately project losses directly benefits the taxpayers and the long-term viability of the guaranteed loan program. Thereby, it indirectly benefits all lenders participating in the program. No changes were made in the final rule as a result of this comment.

The commenter had the same objections about filing a final zero dollar loss claim for any loan where an estimated loss claim has been filed. This is not a new requirement, but rather existing policy. Once an estimated loss claim has been processed the only way to close out the account is filing a final loss claim. Therefore, no changes were made in the final rule as a result of this comment.

The commenter also objected to the requirement that sale proceeds from the liquidation of assets be applied to principal first as long as the loan is accruing interest. The commenter recognized that this policy would reduce the amount of any loss claim, but felt that the amount would be small. Additionally, the commenter indicated that the requirement would ''be inconsistent with normal practices.'' The commenter stated that the lender may incur expenses in pursuing collections and the additional interest earned by applying sale proceeds first to interest may be ''minimal'' but ''it still is of some benefit to the lender.'' Finally the commenter stated that the argument that since the funds were advanced for the collateral liquidated it was consistent to use the proceeds from the liquidation of those assets to reduce the principal was ''not relative on many levels.'' No further explanation was provided as to how it was not relative on many levels. The practice of requiring guaranteed lenders to apply the proceeds from the liquidation of collateral principal first is not unique to FSA. Additionally, the requirement only applies while interest is still accruing. It may be a small benefit to FSA, but then FSA bears 90 percent of the risk. No changes were made in the final rule as a result of this comment.

Lastly, the commenter disagreed that interest should be paid up to 90 days after the time period the lender is unable to dispose of acquired property due to state imposed redemption rights, if an estimated loss claim was paid by FSA. The commenter stated that the intention was good, but lenders are handicapped due to redemption rights. The commenter provided calculations based on the number of days involved and suggested that interest should be paid longer. However, the only change that FSA made in this paragraph was in the paragraph number, and did not propose changes to the existing practice. The 90 days time period is adequate in most cases and reasonably limits the cost to the Government. Therefore, no changes were made in the final rule as a result of this comment.

Executive Order 12866

The Office of Management and Budget (OMB) designated this final rule as not significant under Executive Order 12866 and, therefore, this final rule did not require review by OMB.

Regulatory Flexibility Act

The Agency certifies that this rule will not have a significant economic effect on a substantial number of small entities. This rule does require actions on the part of the subject program's borrowers or lenders based on their size. Borrowers may be individuals or entities. No distinction is made between small and large entities. The Agency will bear most of the burden under the revised regulations. The Agency anticipates that the final rule will require submission of no significant additional information, further justifying the conclusion that a Regulatory Flexibility Analysis is not required. The Agency, therefore, concludes that it is not required to perform a Regulatory Flexibility Analysis as required by the Regulatory Flexibility Act, Public Law 96–535, as amended (5 U.S.C. 601).

Environmental Evaluation

FSA has determined that this final rule would not constitute a major Federal action that would significantly affect the quality of the human environment. Therefore, in accordance with 7 CFR Part 799, Environmental Quality and Related Environmental Concerns—Compliance with the National Environmental Policy Act, implementing the regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508, no environmental assessment or environmental impact statement will be prepared.

Executive Order 12988

This rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with that Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except that lender servicing under this rule will apply to loans guaranteed prior to the effective date of the rule to the extent permitted by existing contracts; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before requesting judicial review.

Executive Order 12372

For reasons contained in the Notice related 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

This rule contains no Federal mandates, as defined by title II of Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Paperwork Reduction Act

The amendments to 7 CFR part 762 contained in this rule require no revisions to the information collection requirements that were previously approved by OMB under control number 0560–0155.

E-Government Act Compliance

FSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Federal Assistance Programs

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

10.406—Farm Operating Loans
10.407—Farm Ownership Loans

List of Subject in 7 CFR Part 762

Agriculture, Banks, Credit, Loan Programs—agriculture.

■ Accordingly, 7 CFR 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.

§ 762.148 [Amended]

■ 2. Amend § 762.148(d)(1) by removing the second sentence.

■ 3. Amend § 762.149 by revising paragraphs (b)(1) introductory text, (b)(1)(v), (d) introductory text, (d)(2), (i)(1), and (i)(5) to read as set forth below.

§ 762.149 Liquidation.

* * * * *

(b) * * *

(1) Within 150 days after the payment due date, all lenders will prepare a liquidation plan. Standard eligible and CLP lenders will submit a written liquidation plan to the Agency which includes:

* * * * *

(v) An estimated loss claim must be filed no later than 150 days past the payment due date unless the account has been completely liquidated and then a final loss claim must be filed.

* * * * *

(d) *Estimated loss claims.* An estimated loss claim must be submitted by all lenders no later than 150 days after the payment due date unless the account has been completely liquidated and then a final loss claim must be filed. The estimated loss will be based on the following:

* * * * *

(2) The lender will discontinue interest accrual on the defaulted loan at the time the estimated loss claim is paid by the Agency. The Agency will not pay interest beyond 210 days from the payment due date. If the lender estimates that there will be no loss after considering the costs of liquidation, an estimated loss of zero will be submitted and interest accrual will cease upon the approval of the estimated loss and never later than 210 days from the payment due date. The following exceptions apply:

(i) In the case of a Chapter 7 bankruptcy, in cases where the lender filed an estimated loss claim, the Agency will pay the lender interest that accrues during and up to 45 days after the discharge on the portion of the chattel only secured debt that was estimated to be secured, but upon final liquidation was found to be unsecured, and up to 90 days after the date of discharge on the portion of real estate secured debt that was estimated to be secured, but was found to be unsecured upon final disposition.

(ii) The Agency will pay the lender interest that accrues during and up to 90 days after the time period the lender is unable to dispose of acquired property due to state imposed redemption rights on any unsecured portion of the loan during the redemption period, if an estimated loss claim was paid by the Agency during the liquidation action.

* * * * *

(i) *Final loss claims.* (1) Lenders must submit a final loss claim when the security has been liquidated and all proceeds have been received and applied to the account. All proceeds must be applied to principal first and then toward accrued interest if the interest is still accruing. The application of the loss claim payment to the account does not automatically release the borrower of liability for any portion of the borrower's debt to the lender. The lender will continue to be responsible for collecting the full amount of the debt and sharing these future recoveries with the Agency in accordance with paragraph (j) of this section.

* * * * *

(5) The Agency will notify the lender of any discrepancies in the final loss claim or, approve or reject the claim within 40 days. Failure to do so will result in additional interest being paid to the lender for the number of days over 40 taken to process the claim.

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Signed at Washington, DC, on May 5, 2008.

Thomas B. Hofeller,

Acting Administrator, Farm Service Agency.

[FR Doc. E8–12981 Filed 6–9–08; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF ENERGY

10 CFR Part 1017

RIN 1992–AA35

Identification and Protection of Unclassified Controlled Nuclear Information

AGENCY: Office of Health, Safety and Security, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is today publishing a final rule to amend regulations that prohibit the unauthorized dissemination of certain unclassified but sensitive information identified as Unclassified Controlled Nuclear Information (UCNI). DOE is amending these regulations to clarify the types of information that may be identified as UCNI; to prevent overly-broad application of UCNI controls; and to streamline the UCNI program by simplifying the process for identifying information as UCNI.

DATES: *Effective Date:* This final rule is effective December 8, 2008.

FOR FURTHER INFORMATION CONTACT: Nicholas G. Prospero, Office of Classification, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290, (301) 903–9967; Jo Ann Williams, Office of the General Counsel, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–6899.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*), DOE is charged with the operation of programs for research, development, testing, and production of nuclear weapons; for nuclear material production for defense activities; and for certain defense-related nuclear reactors. In 1981, Congress and DOE became increasingly concerned about the possibility of terrorist or other criminal acts directed against a Government nuclear defense activity. This concern was based, in part, on the increased incidence of acts of terrorist-inspired violence, the increased sophistication of these acts, and the increased availability of the technological resources, including information in the public domain, necessary to commit these acts.

In response to this threat, Congress, in 1982, amended the Atomic Energy Act of 1954 (hereafter ''the Act'') by adding section 148 (''Prohibition Against the Dissemination of Certain Unclassified Information''), which directed DOE to adopt regulations to safeguard certain types of unclassified but sensitive information from unauthorized dissemination in the interest of protecting both the health and safety of