

Proposed Rules

Federal Register

Vol. 72, No. 58

Tuesday, March 27, 2007

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

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: Proposed rule.

SUMMARY: This action proposes to clarify and simplify the number of days' interest that may be paid on loss claims. The liquidation provisions currently provides a timeframe for the interest payment based upon "the date of the decision to liquidate" which is often difficult to determine. In addition, the Agency is clarifying the application for payment after liquidation and the guaranteed lender's responsibility for future recoveries.

DATES: Comments concerning this proposed rule must be submitted by May 29, 2007 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments should reference the volume, date and page number of this issue of the **Federal Register**. Comments may be submitted by any of the following methods:

E-mail: Send comments to Marilyn.Meese@wdc.usda.gov.

Fax: Submit comments by facsimile transmission to (202) 690-1196.

Mail: Submit comments to Branch Chief, Guaranteed Loan Servicing and Inventory Property Branch, Loan Servicing and Property Management Division, FSA, USDA, 1400 Independence Avenue, STOP 0523, Washington, DC 20250-0523.

Hand Delivery or Courier: USDA FSA DAFLP LSPMD Suite 500, 1250 Maryland Avenue, SW., Washington, DC 20024.

Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the

online instructions for submitting comments.

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.

SUPPLEMENTARY INFORMATION:

Discussion of the Proposed Rule

This rule proposes changes to 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. The lender is responsible for servicing a borrower's account for the life of the loan. When a borrower cannot fully repay the guaranteed loan, the lender submits a loss claim request to the Agency for payment of the guaranteed percentage of the unpaid debt, if any, after liquidation of the collateral. There has been confusion for both lenders and FSA personnel on how to compute the number of days' interest that may be paid on loss claims. The number of days should not exceed 210 days from the payment due date. As originally envisioned and stated in paragraph 355 of FSA Handbook 2-FLP, Guaranteed Loan Making and Servicing, the lender was to reach a decision to either restructure the loan or liquidate it within 120 days after the payment due date. It is common for bank regulators to require lenders to place a loan on a non-accrual basis if it is 90 days in default. A decision regarding the credit is typically made during this time period. The loan defaults at 30 days past due and 90 additional days equals 120 days. FSA then pays interest an additional 90 days from this decision to liquidate. As a result FSA can pay the lender interest for up to 210 days from the payment due date. If liquidation is estimated to take more than 90 days, the lender is to submit an estimated loss claim. Whether or not an estimated loss claim is filed, however, interest will only be paid for another 90 days, for a maximum of 210 days. The proposed changes incorporate these timeframes into the regulation. As a result, determinations of the maximum interest payable will be made consistently.

In order to both clarify and simplify this issue the proposed rule will allow for a maximum of 210 days of accrued interest from the payment due date as a

general rule. The proposed rule places renewed emphasis on the expected actions of the lenders and FSA personnel. All lenders within 150 days of the payment due date must prepare a liquidation plan under proposed § 762.149(b). Preferred (PLP) lenders currently prepare the plan under their FSA-approved Credit Management Systems, but need not submit them. The reference to 150 days will replace the current language, "within 30 days of the decision to liquidate," for consistency with other changes being proposed in this rule. Lenders also must file estimated and final loss claims on all accounts in a timely manner.

The new rule will require a zero dollar estimated loss claim to be filed if the lender expects no loss. This will effectively establish in the Agency's financial records that a loss is not expected but the account is in liquidation. This change would allow better monitoring and record-keeping by FSA. 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. This will close out the loan on the Agency's financial records as to any remaining liability to the lender. In some cases it is possible that the final loss claim could be for zero dollars. In addition, if the loss claim processing exceeds 40 days as a result of the Agency's failure to take action on the claim the Agency will pay additional interest to the lender after the 40 days. This change is intended as an incentive to Agency personnel to promptly process claims and avoid extra cost to the lender.

The Agency 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 the Agency, the lender will continue to have the responsibility to collect the entire loan balance. The lender will pursue aggressive collection of the debt after payment of the final loss claim unless the Agency has approved of a lender's request for release of liability of the borrower pursuant to 7 CFR part 762. FSA also will continue to seek reimbursement for its payment from the

borrower under § 762.149(m), but the borrower will never pay more than its outstanding debt. In § 762.148(d), the Agency is proposing to remove 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. These cases will follow the same maximum interest policy as other cases. 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 § 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. This practice reduces the interest accrual on the defaulted loan, resulting in a smaller loss payment. Since principal was advanced for the collateral it is consistent practice to first reduce the principal when the collateral is sold.

Executive Order 12866

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

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. 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 proposed regulations. The Agency anticipates that the proposed rule will require submission of no 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

The environmental impacts of this proposed rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR Parts 1500-1508), and the FSA regulations for compliance with NEPA, 7 CFR parts 799, and 1940, subpart G. FSA completed an environmental evaluation and concluded that the rule requires no further environmental review. No

extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

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 the 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 approved by OMB under control number 0560-0155.

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 part 762 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. In § 762.149, revise paragraphs (b)(1) introductory text, (b)(1)(v), (d) introductory text, (d)(2), (i)(1) and (i)(5), to read as follows:

§ 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 which 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 which 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 shall 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.

* * * * *

Signed at Washington, DC, on March 9, 2007.

Teresa C. Lasseter,

Administrator, Farm Service Agency.

[FR Doc. E7-5511 Filed 3-26-07; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 584

[OTS-2007-0007]

RIN 1550-AC10

Permissible Activities of Savings and Loan Holding Companies

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to revise its regulations, at 12 CFR 584.2 and 584.2-2, to expand the permissible activities of savings and loan holding companies (SLHCs) to the full extent permitted under the Home Owners' Loan Act (HOLA). In addition, OTS proposes to amend 12 CFR 584.4 to conform the regulation to the statute that it is intended to implement by replacing the absolute prohibition on certain SLHC transactions that is currently in the regulation with a prior approval requirement. The proposed regulation sets forth standards that OTS will use to evaluate applications submitted pursuant to the application requirement.

DATES: Comments must be received by April 26, 2007.

ADDRESSES: You may submit comments, identified by OTS-2007-0007, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>, select "Office of Thrift Supervision" from the agency drop-down menu, then click submit. Select Docket ID "OTS-2007-0007" to submit or view public comments and to view supporting and related materials for this interim rule. The "User Tips" link at the top of the page provides information on using [Regulations.gov](http://www.regulations.gov), including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

- *Mail:* Regulation Comments, Chief Counsel's Office, Office Of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: OTS-2007-0007.

- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, OTS-2007-0007.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be entered into the docket and posted on [Regulations.gov](http://www.regulations.gov) without change, including any personal information provided. Comments, including attachments and other supporting materials received are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Viewing Comments Electronically: Go to <http://www.regulations.gov>, select

"Office of Thrift Supervision" from the agency drop-down menu, then click "Submit." Select Docket ID "OTS-2007-0007" to view public comments for this notice of proposed rulemaking.

View Comments On-Site: You may inspect comments in the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906-5922, send an e-mail to public.info@ots.treas.gov, or send a facsimile transmission to (202) 906-6518. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

FOR FURTHER INFORMATION CONTACT: Donald W. Dwyer, Director, Applications, Examination and Supervision-Operations, (202) 906-6414; or Kevin A. Corcoran, (202) 906-6962, Deputy Chief Counsel for Business Transactions, Office of Chief Counsel; Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Holding Company Activities

A. Background

Under section 10(c)(9) of the HOLA,¹ SLHCs² generally are permitted to engage only in activities that are permissible for financial holding companies under section 4(k) of the Bank Holding Company Act,³ or activities that are listed in section 10(c)(2) of the HOLA.⁴ The activities listed in section 10(c)(2) of the HOLA include certain specific activities.⁵ In

¹ 12 U.S.C. 1467a(c)(9).

² An SLHC generally is any company that directly or indirectly controls a savings association, or that controls any other company that is a savings and loan holding company. See 12 CFR 583.20 and 12 U.S.C. 1467a(a)(1)(D).

³ 12 U.S.C. 1843(k).

⁴ 12 U.S.C. 1467a(c)(2). SLHCs that were SLHCs on May 4, 1999, and meet certain other requirements, are excepted from the activities limitations of section 10(c)(9) of the HOLA. See 12 U.S.C. 1467a(c)(9)(C). The following discussion of activities limitations applies only to SLHCs that are not excepted from the activities limitations of section 10(c)(9).

⁵ These activities include furnishing or performing management services for a savings association subsidiary of such company (section 10(c)(2)(A)); conducting an insurance agency or escrow business (section 10(c)(2)(B)); holding, managing, or liquidating assets owned or acquired from a savings association subsidiary of such company (section 10(c)(2)(C)); holding or managing properties used or occupied by a savings association subsidiary of such company (section 10(c)(2)(D)); acting as trustee under a deed of trust (section 10(c)(2)(E)); and purchasing, holding or disposing of stock acquired in a qualified stock