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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 762

RIN 0560–AG46

Revision of the Interest Assistance Program

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Farm Service Agency (FSA) is amending its regulations governing how FSA guaranteed farm loan borrowers may obtain a subsidized interest rate on their guaranteed farm loan. This program is known as the interest assistance (IA) program. Changes include deletion of annual review requirements, limitations on maximum subsidy payments and period of assistance, and streamlining of claim submission. The changes are intended to reduce paperwork burden on program participants and agency employees, make IA available to more farmers, reduce the costs of the program, and enhance the fiscal integrity of the program.

EFFECTIVE DATE: June 8, 2007.

FOR FURTHER INFORMATION CONTACT: Tracy L. Jones, Senior Loan Officer, Farm Service Agency; *telephone:* (202) 720–3889; *Facsimile:* (202) 720–6797; *e-mail: Tracy.Jones@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:

Summary of Public Comments

FSA published a proposed rule on June 22, 2005, (69 FR 36055–36060) to amend its regulations governing loans made under the guaranteed farm loan program, IA program. The initial comment period deadline of August 22, 2005, was extended to September 6, 2005, due to a change in the e-mail address of the information contact. Comments were received from 144 respondents from 18 states and the District of Columbia. Many of the respondents provided multiple comments.

Six respondents supported the proposed rule in its entirety, stating that the entire proposed rule was well written and easy to understand, or commenting that the proposed rule looks good and will save a lot of time.

Three respondents did not approve of the IA program at all; however, they did not give specific reasons as to why they opposed the IA program.

Two respondents asked that the Agency keep the program the same because they really needed to keep receiving the money. Another indicated that the assistance received makes the difference between making a profit or not. While the Agency understands the importance of the assistance, there were no specific recommendations provided to support their general comments.

One respondent generally asked how the changes would affect those serving in Iraq. No specific changes were made to address this issue. Borrowers called to active duty will continue to be handled in accordance with existing procedures.

One respondent indicated under the discussion of the proposed rule, the Agency gave a negative connotation of borrowers receiving IA by stating those recipients were ''underdeveloped''. The Agency in no way intended to portray farmers in a negative connotation, so this terminology has not been used in the final rule.

While these comments received in opposition to the proposed changes were reviewed, they did not provide specific recommendations, so no changes were made in the final rule to address them.

Following is a review of specific comments and the changes made in the final rule in response to the comments.

Loans Eligible for Interest Assistance

The Agency proposed to delete references to providing IA on Farm Ownership (FO) loans and existing guaranteed Operating Loans (OL) in conjunction with a rescheduling action because Congress has not appropriated IA funds for these purposes since 1992. Seven comments supported this change. One respondent indicated that FO's would be too costly for the program. However, 35 comments received were opposed to the change citing that it would be a mistake to eliminate regulations governing the use of IA for FO's and/or existing OL's. In the event that funds were appropriated to fund IA for these other types of loans, implementation would be delayed while FSA implemented regulations again to govern these aspects of the program. The respondents stated that they recognize the desire to streamline the Code of Federal Regulations, but believe it does no harm to leave regulations in place for currently unfunded applications of IA. The Agency carefully considered the comments and determined that because funding has not been provided since fiscal year 1992 and such funding would be prohibitively expensive, the proposed change is warranted. Therefore, the final rule implements the proposal to limit IA to new guaranteed OL's only.

One respondent stated the Agency should eliminate the requirement to consider IA after loan default. The Agency agrees with this comment, however, this requirement is required by 7 U.S.C. 1999 and can only be changed by Congress.

One respondent recommended that the Agency prohibit the use of a loan with IA to refinance debt owed by the applicant to another lender. The Agency agrees that this change would prevent lenders from using IA to unfairly market their loans to their competitor's customers and would extend limited program funds. However, this is a localized problem and would be a significant program change that would make a large number of applicants ineligible. Thus, the agency decided not to include this change in the final rule.

One respondent requested additional guidance on the definition of nonessential assets. The Agency feels that the definition and discussion in the rule are sufficiently clear. No changes are made in the final rule; however, additional guidance will be provided in the FSA field office handbook for the Guaranteed Loan Program. Also, as was suggested by one respondent, direction will be added to this handbook for FSA employees on when it is appropriate to encourage lenders to use the FO program rather than IA to fund an applicant's needs.

Debt-to-Asset Ratio

As stated in the proposed rule, current regulations provide for IA based simply on cash flow. Agency reviews have revealed that some borrowers who receive IA have a significant net worth, with adequate financial strength that would allow them to restructure their liabilities to meet their credit needs without receiving IA. To address this concern the Agency proposed to limit IA to applicants who possess a debt-to-asset ratio in excess of 50 percent prior to receiving the new loan. There were 18 comments that supported this change. These comments pointed out that this would limit subsidy to the more highly stressed borrowers and reduce the number of large loans that have used a large portion of the funding allocation.

Conversely, 73 comments received did not support this change. Seven respondents disagreed with this proposal in general but did not give specific reasons for their concern. Another had strong objection to the change, although the respondent went on to comment that most of the loans on IA have a 50 percent or higher debt-to-asset ratio. Nine respondents were concerned that the ratio would limit eligibility and may screen out needy operations. Three respondents suggested that a 50 percent debt-to-asset ratio was too liberal, and suggested that a ratio between 35 to 40 percent would be more appropriate. Three other respondents indicated that 50 percent was too low and suggested the agency adopt a 65 percent ratio. Six respondents were concerned that this proposed change would only cause problems, would not simplify the program, and could lead to burdensome documentation and applicants' manipulation of balance sheets.

The Agency's proposed limit for new IA applicants to possess a debt to asset ratio in excess of 50 percent prior to the new loan is reasonable. The 50 percent level was proposed after the Agency performed an analysis of the financial characteristics of borrowers in the guaranteed loan program to determine the correlation between debt to asset ratio, loan performance, and the need for interest subsidy. The Agency found that one-third of the borrowers in the current guaranteed portfolio have a debt to asset ratio of 50 percent or greater while approximately one-fourth of the guaranteed operating loans receive IA. Additionally, a 50 percent debt to asset ratio is the most common capital standard used by those lenders who have achieved the Agency's preferred lender status. The Agency acknowledges that some applicants will become ineligible, but believes that applicants below the 50 percent threshold have the financial strength to restructure their debt and cash flow without an interest subsidy. Guidance will be provided in the Agency's handbook on how to address fraud or misrepresentation of asset values.

Forty-six respondents recommended that the Agency use a measure of repayment ability rather than one of solvency. Thirteen respondents indicated that it would be difficult to impossible to lend money solely based on this change; a true depiction of the need for IA should be based instead on a producer's cash flow. Three respondents indicated that this proposal was unfair, because it does not take into account each individual operation, unfairly penalized those who have owned real estate for some time, or unfairly impacted agricultural operators in their areas who need IA initially to have adequate repayment capacity.

The Agency acknowledges that an applicant with a strong net worth does not necessarily have strong cash flow and vice versa. This rule maintains the current IA capacity provision which requires that an applicant be unable to repay the debt at the note rate of interest without a subsidy. However, this control by itself has been inadequate. The Agency's long standing policy is that IA is intended for farmers with inadequate financial resources. Producers with a strong net worth have assets with which to restructure their debt and improve their cash flow. Therefore, this rule provides that applicants with such resources cannot receive an interest subsidy.

One respondent suggested the Agency calculate the applicant's debt to asset ratio as it would be after the loan is closed. The Agency seriously considered this recommendation. However, it was determined that this limitation would be subject to manipulation in that an applicant could possibly purchase assets or acquire debt in order to achieve a debt/asset ratio that would qualify them for the subsidy. The Agency, therefore, is not adopting this suggestion.

One respondent suggested using an applicant's current ratio, not debt to asset ratio. The Agency chose to not adopt this recommendation because of the volatility of this ratio throughout the operating year.

Of the comments opposed to the change, five indicated that the proposal would unjustly impact beginning farmers and ranchers because they typically have smaller operations with less debt. For example, a beginning farmer or rancher may have a pickup truck with very few other assets and almost no debt, and could very easily have greater than 50 percent equity and, therefore, be ineligible for IA subsidy. This was not the Agency's intent. Beginning farmers are specifically targeted by FSA for increased assistance because of their inability to access private credit programs. In addition, this program could provide such applicants with the assistance needed to get them through the difficult early years as they accumulate farm assets and become financially viable. By specifically targeting funds to beginning farmers in the statute, Congress has clearly signaled its intent that the Agency should endeavor to address the specific needs of this group. Therefore, the rule has been modified to exclude beginning farmers and ranchers from this debt to asset restriction. The 50 percent equity limitation will be applied to applicants not defined as beginning farmers. This will target the limited amount of IA funds to those most in need of the assistance.

Maximum Assistance Period

Existing regulations limit IA for each borrower to a maximum of 10 years from the date of the first IA agreement signed by the loan applicant, including entity members, or the outstanding term of the loan, whichever is less. The proposed rule would limit each borrower to a total of 5 consecutive years of IA eligibility. Seventy-nine comments received were opposed to this change. These comments stated that this change would be detrimental to some borrowers and suggested that the current 10-year limitation is the minimum time needed to give farmers and ranchers adequate opportunity to establish their operations considering the realities of weather. One respondent indicated that he believed the Agency had ''sold out'', and the Agency should extend and not shorten the program. Three respondents suggested a 7-year maximum assistance period. There were 25 comments that supported the change and stated that 5 years was an adequate period of time for a farm to achieve, or return to, profitability.

Two respondents stated that the maximum assistance period should be for the life of the borrower, not consecutive years. To adopt this suggestion, the need for subsidy would need to be determined each year and the Agency could not eliminate the annual needs test. Of the changes in this rule, elimination of the annual needs test will result in the most significant reduction in burden on the public. The advantage to a borrower receiving 5 years of subsidy in intermittent 1-year periods, rather than in one 5-year block, would be minimal when compared to the increased administrative burden to all parties involved with adopting such a proposal. Some producers will receive less total subsidy due to the reduced term. Nonetheless, budget constraints force the Agency to make difficult decisions regarding the best use of Government resources. The IA program is intended to provide temporary relief, and the Agency has determined that 5 years is an adequate maximum subsidy period within which an applicant's operation should become sufficiently profitable to eliminate the need for an interest subsidy.

One respondent supported the reduction to 5 years only if the annual renewal process is eliminated as proposed. The Agency agrees.

The Agency is making an additional change in the final rule with regard to the maximum IA period for beginning farmers and ranchers. It was determined that 5 years may be too short a period of time for beginning farmers and ranchers to accumulate assets and reduce debt load to a level necessary for the operation to be viable without IA. The final rule permits beginning farmers to receive a second 5-year period of IA eligibility if their cash flow requires the subsidy, and they are still beginning farmers at the end of the first 5-year period. Non-beginning farmers are still limited to one 5-year period of eligibility as provided in the proposed rule.

Some respondents expressed concern that this rule would reduce the term on existing IA agreements. That is incorrect. Existing agreements will remain in effect as written. In addition, the rule provides existing borrowers time to prepare for the reduced period of eligibility to ease the transition to this new maximum period.

Maximum Interest Assistance Payment

The proposed rule did not restrict the maximum guaranteed loan that could be received, but did limit the maximum amount of debt on which an applicant may receive IA to $400,000. With the percentage rate of IA subsidy established at 4 percent, this change would limit the amount of subsidy that may be paid to a maximum of $16,000 annually ($400,000 × .04). Twenty-four comments supported this change, stating that this would permit FSA to assist a larger number of young, beginning, and small producers and reduce abuse in the program. There were 76 comments opposed to the change. The opposing comments stated that this change was too restrictive, arbitrary, limits legitimate borrowers from accessing the program, and was inappropriate considering that the costs required for farming have increased.

Another four respondents suggested the subsidized debt limit be indexed to inflation and adjusted annually accordingly. The Agency concedes that indexing the maximum amount of debt on which an applicant may receive IA would be minimally advantageous to farmers. However, changing the maximum amount annually would increase the cost of the program each year, would be administratively complex, and would make planning difficult because the amount would be changing each year. Therefore, the final rule does not link the maximum subsidy amount to inflation.

Thirty-two respondents stated that this change would limit a benefit that Congress intended to be available across the board. However, the Agency feels that Congress intended that IA be provided to those who need it most. If Congress had intended that borrowers of all sizes receive the maximum benefit it seems the level of IA funds appropriated annually would have kept pace with demand. However, this is not the case. In recent fiscal years, IA funds have been depleted early in the fiscal year. The numbers of large loans receiving IA are a main cause for this rapid depletion of funds and the result is a decrease in the number of borrowers assisted with IA. Appropriations to the program have not increased while the sizes of guaranteed loans, including those with IA, have increased. Therefore, the Agency believes the respondent's rationale is misplaced, and reducing the maximum amount of subsidy payable to each producer does not violate Congressional intent for the program.

A number of respondents implied that the Agency was proposing to decrease the maximum guaranteed loan to $400,000. This is not correct; a borrower with IA may still incur the maximum allowable guaranteed loan debt; however, subsidy payments will be limited to $16,000 per year. As clarified in the final rule, this maximum guaranteed loan level with interest assistance is a lifetime limit.

In summary, the Agency, as proposed, will limit subsidy payments to $16,000 per year, for a term of 5 years. The IA program is the most expensive of the Agency's guaranteed farm loan programs. These limits will help control costs, allow limited funds to reach more borrowers, and target those funds to applicants with the most need. These changes will not prevent borrowers from accessing the program; the Agency still expects all available funds to be utilized each year.

Guarantee Fees

The proposed rule proposed to eliminate the waiver of a guarantee fee for IA loans. Seventy-five comments were opposed to this change. These respondents stated that a fee is counter-productive and adds stress to farmers already in financial trouble. Four respondents expressed an additional concern about how the fee would affect beginning farmers and ranchers.

Since the IA proposed rule was published on June 22, 2005, the Agency published another rule proposing to increase the fees charged for guaranteed loans (71 FR 27978, May 15, 2006). To comply with anticipated budget requirements and maintain new loan activity at the proposed level, the Agency must increase fees.

The Agency has decided to leave this issue open and will finalize it with the proposed rule (71 FR 27978) regarding fees. All comments on this issue will be carefully considered at that time. No change of the guarantee fee for IA loans is being made in this rule.

Reduced Application Requirements

The existing regulation requires lenders to submit a repayment schedule for the guaranteed loan and a projected monthly cash flow budget on lines of credit. The Agency proposed to delete these requirements as the forms are not necessary to make the evaluation, and impose significant burdens on program participants. Sixty-seven comments supported this change to make the program more attractive to lenders due to the reduced paperwork burden. Twelve respondents opposed the change, indicating that the monthly budgets are important financial analysis documents and the requirement for lines of credit should not be removed. The Agency acknowledges that monthly cash flow budgets can be useful tools and certainly may be used when needed, at the lender's discretion. However, they are not always necessary and should not be required by the Agency. The final rule adopts the proposed rule as written with regard to the application requirements.

Removal of Annual Review Requirements

Current regulations require a lender to submit to FSA—once a year, each year, for each IA borrower, for the term of the IA agreement—a form requesting the previous year's interest subsidy payment and a ''needs test''. This needs test must document that the borrower needs IA in the next production cycle, usually a year, in order to achieve a feasible business plan. The proposed rule proposed to reduce the submission requirements for annual claims for IA payment. In the proposal, IA would simply be authorized for 5 years for the borrower from the date of the first IA agreement. The lender would only be required to submit an Agency IA payment form and the average daily principal balance for the claim period, with supporting documentation.

Comments were received from 58 respondents supporting this change. These comments stated that this streamlined claim process should make the program much more attractive to all participants. There were 11 comments opposed to the change stating that although the existing submission requirements may be burdensome, they were necessary to determine if IA was actually needed. One respondent stated that this would remove a ''supervision tool''.

As discussed in the preamble to the proposed rule, the annual review requirements have not been a meaningful control for the program. Approximately 93 percent of the borrowers operating under an IA agreement receive a subsidy payment each year, regardless of the amount and scope of documentation that has been required. Clearly, the significant administrative burden has not been cost effective and is not warranted. In addition, this burden has resulted in an unbalanced program as it discourages many lenders from participating at all, effectively making the program unavailable to producers in certain parts of the country. The Agency feels that the few producers who may receive a subsidy payment at a time when they may not need it is far outweighed by the improved delivery and more equitable distribution of the program throughout the country that will result from these reduced annual review requirements. The Agency will continue to honor existing Interest Assistance agreements that require an annual needs test.

Two respondents suggested that the producer be required to keep loan agreements, such as accounting for collateral and supplying requested financial information, to receive annual subsidy payments. The Agency believes that it is the lender's responsibility to enforce its loan agreements. FSA will make subsidy payments upon the lender's request in accordance with the Interest Assistance Agreement and FSA regulations. No changes have been made in relation to these comments.

Fees Charged by Lenders for IA Claims Submissions

Agency reviews of guaranteed lenders indicate that some lenders charge fees to the borrower for the preparation of documentation and claims for payment of IA that are submitted to FSA. The Agency proposed to prohibit these fees. There were 36 comments opposed to this change, stating that the Agency should not be in the business of regulating fees charged by lenders, and that banks should be allowed to recover their preparation costs. Respondents opposed to the change also stated that it was contradictory to prohibit a fee when the Agency will be increasing its guarantee fee. Twenty-three respondents supported this change, stating that borrowers are in financially stressed circumstances, additional fees are counter-productive, and lenders did not charge a fee anyway. The Agency has carefully considered the comments and has adopted as final the prohibition on fees as proposed. Most of the requirements for IA claims are eliminated in this rule, greatly reducing lender administrative costs. Since IA claims are now very easy to submit charging fees for IA claims is not appropriate.

First and Final Claims

Existing regulations require final IA claims to be submitted concurrently with the submission of any estimated loss claims. The Agency proposed that, upon liquidation of a loan, the lender complete the Request for Interest Assistance and submit it to the Agency concurrently with any estimated or final loss claims. Approximately 15 comments supported this change; however, some comments indicated that it should be more clearly stated. Based on these comments, the Agency has clarified this section regarding final IA claims being submitted with the estimated loss claim or final loss claim if an estimated loss claim was not previously provided, and added that the IA accrual date cannot exceed the last date of interest accrual for a loss claim.

Servicing

The proposed rule proposed to clarify numerous servicing actions concerning IA including: transfers, assumptions, writedown, interest reduction due to court order in bankruptcy reorganization, and loan restructuring. There were 15 comments received supporting these changes.

One respondent objected to allowing the rescheduling of loans subject to IA, but not allowing the IA agreement term to be extended beyond 5 years from the date of the first IA agreement. This comment stated that such IA loans are in need of maximum assistance and these interest assistance agreements should be extended to 10 years. Extending the term due to restructuring would be difficult to control, as even performing loans might be restructured in an effort to assure that every borrower has IA available for an additional time period. This would defeat the purpose of limiting the term to 5 years per borrower. For consistency purposes, all borrowers will be treated the same, and the Agency did not adopt this comment.

Another respondent requested that entities be allowed to assume a loan with IA. The Agency agrees and will allow this to occur if the entity is eligible and one of the entity members was liable for the debt when the original agreement was signed. Since the entity is eligible for a loan with IA, this is a reasonable way to accommodate the situation, and save loan funds. Otherwise, the entity would have to make an application for a new loan, requiring expenditure of more loan funds and more subsidized funding, all to achieve the same result, a loan with IA.

Two respondents suggested that the Agency was not clear on how it would handle restructuring of a guaranteed loan above the authorized IA amount. One of the respondents thought that the amount restructured above the IA portion of the loan would not be guaranteed. In response, the Agency has clarified and expanded on § 762.150(k) to more specifically state that lenders are able to capitalize interest when restructuring up to the original loan amount under the remaining terms and still have interest assistance available for the full amount of the original loan. This clarification mirrors the existing practice and has no impact on funding because IA funds have already been set aside at loan origination. When restructuring, if terms are increased or interest is capitalized to the extent that additional funds are needed, Agency approval is subject to funding availability. Interest assistance is not available on that portion of the loan as interest assistance is limited to the original loan amount.

A final technical correction is being made to remove the requirement for an IA claim to be submitted through the effective date of rescheduling. Claims are required to be submitted annually on the date identified on the interest assistance agreement and in the event of rescheduling; only an annual claim is needed. The claim submission is already addressed in this rule and more details on administrative processing will be elaborated on in the Agency Handbook.

Miscellaneous Changes

The proposed rule proposed to update, clarify, and remove references to forms and internal administrative processes to be completed for IA loans. There were 5 comments that supported these changes. The Agency adopts the proposed rule on these miscellaneous changes as written. In addition, the Agency is removing the definitions for ''Interest Assistance Review'' and ''Interest Assistance Anniversary Date'' as unnecessary. It is also revising the definition of ''Average Farm Customer'' to ''Average Agricultural Loan Customer.''

Average Customer Rate

The proposed rule provided in § 762.150(b)(6) that the lender may charge a fixed or variable interest rate, but not in excess of what the lender charges its average farm customer. One respondent stated that FSA should not dictate rates and a guaranteed customer should not be compared with a non-guaranteed customer because of increased risk. Another indicated that they had not used the program; however, higher risk borrowers should pay a higher rate like the rest of the borrowing community. The Agency does not agree. This limitation has been in place many years under § 762.124 and the proposed rule did not propose a change in this area. The guarantee from FSA compensates the lender for most of its risk of loss. Lenders ordinarily charge higher risk customers a higher interest rate to compensate for the higher probability of loss associated with such loans. The guarantee eliminates most of that risk, so the lender cannot justify charging a ''risk premium'' as a part of the interest rate on guaranteed loans. The lender, when it comes to alleviating the higher risk from a loan to a borrower that they may not normally extend credit, may charge that customer a higher rate of interest, or obtain an FSA guarantee, not both.

Thirty-one respondents objected to FSA using the term ''average farm customers'' to describe the maximum interest rate that could be charged. These respondents stated that there is no single, clear definition of this term. Respondents also recommended that the Agency clarify the limitation on the maximum interest rate that can be charged under § 762.124(a)(3). They pointed out that this provision discusses ''average agricultural loan customer'' while the term ''average farm customers'' is defined in § 762.102(a). FSA and guaranteed lenders historically have considered these terms synonymous; however for clarity, the Agency is amending the definition in § 762.102(a) and reference in § 762.124(a)(2) to ''average agricultural loan customer'', instead of ''average farm customers.'' The definition also is being clarified to refer to the conventional farm borrower who is required to pledge their crops, livestock, other chattel, ''and/or'' real estate security for the loan. As has always been the case, depending on the type of loan, available security and market conditions, different types of security may be required from conventional farm borrowers and not all types of security listed will be required of all borrowers. No substantive policy changes are made at this time.

Exception Authority

The proposed rule failed to provide exception authority as provided in the current § 762.150(k). The Agency is reinserting the exception authority rule. Based upon past experience and the need in the final for flexibility in implementing the new requirements in this rule, exception authority is needed to address unusual situations that may arise. If a case is not adverse to the Government or contrary to statute, and is in the Government's best financial interest, the Agency may use this exception authority to waive a regulatory provision involving interest assistance.

Executive Order 12866

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

Regulatory Flexibility Act

The Agency certifies that this rule will not have significant economic effect on a substantial number of small entities, because it does not require any specific actions on the part of the borrower or the lenders. The Agency made this certification in the proposed rule, and no comments were received in this area. The Agency, 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).

Environmental Evaluation

The environmental impacts of this final rule have been considered consistent 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 part 1940 subpart G. FSA concluded that the rule does not require preparation of an environmental assessment or environmental impact statement.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 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; it will not affect IA agreements entered into prior to the effective date of the rule to the extent that it is inconsistent with the terms of those agreements; 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 the 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 are currently approved by OMB under control number 0560–0155. A proposed rule containing an estimate of the information collection burden of this rule was published on June 22, 2005 (70 FR 36055–36060). No comments regarding the burden estimates were received.

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; Banks, banking; Credit.

■ For the reasons stated in the preamble, the Farm Service Agency is amending 7 CFR Chapter VII as set forth below:

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.

■ 2. Amend § 762.102(b) by removing the definitions of the terms ''average farm customers'', ''interest assistance anniversary date'' and ''interest assistance review'' and adding the following definition in alphabetical order:

§ 762.102 Abbreviations and definitions.

* * * * *

(b) * * *

Average agricultural loan customer. The conventional farm borrower who is required to pledge crops, livestock, other chattels and/or real estate security for the loan. This does not include the high-risk farmer with limited security and management ability that is generally charged a higher interest rate by conventional agricultural lenders. Also, this does not include the low-risk farm customer who obtains financing on a secured or unsecured basis, who has as collateral items such as savings accounts, time deposits, certificates of deposit, stocks and bonds, and life insurance to pledge for the loan.

* * * * *

§ 762.124 [Amended]

■ 3. Amend § 762.124(a)(2) to replace the phrase ''average farm customers'' with ''average agricultural loan customer'' in the second sentence.

■ 4. Amend § 762.145 by revising paragraph (b)(2)(i) and the first sentence of paragraph (b)(8) to read as follows:

§ 762.145 Restructuring guaranteed loans.

* * * * *

(b) * * *

(2) * * *

(i) A feasible plan as defined in § 762.102(b).

* * * * *

(8) Any holder agrees to any changes in the original loan terms. * * *

* * * * *

■ 5. Revise § 762.150 to read as follows:

§ 762.150 Interest assistance program.

(a) *Requests for interest assistance.* In addition to the loan application items required by § 762.110, to apply for interest assistance the lender's cash flow budget for the guaranteed loan applicant must reflect the need for interest assistance and the ability to cash flow with the subsidy. Interest assistance is available only on new guaranteed Operating Loans (OL).

(b) *Eligibility requirements.* The lender must document that the following conditions have been met for the loan applicant to be eligible for interest assistance:

(1) A feasible plan cannot be achieved without interest assistance, but can be achieved with interest assistance.

(2) If significant changes in the borrower's cash flow budget are anticipated after the initial 12 months, then the typical cash flow budget must demonstrate that the borrower will still have a feasible plan following the anticipated changes, with or without interest assistance.

(3) The typical cash flow budget must demonstrate that the borrower will have a feasible plan throughout the term of the loan.

(4) The borrower, including members of an entity borrower, does not own any significant assets that do not contribute directly to essential family living or farm operations. The lender must determine the market value of any such non-essential assets and prepare a cash flow budget and interest assistance calculations based on the assumption that these assets will be sold and the market value proceeds used for debt reduction. If a feasible plan can then be achieved, the borrower is not eligible for interest assistance.

(5) A borrower may only receive interest assistance if their total debts (including personal debts) prior to the new loan exceed 50 percent of their total assets (including personal assets). An entity's debt to asset ratio will be based upon a financial statement that consolidates business and personal debts and assets of the entity and its members. Beginning farmers and ranchers, as defined in § 762.102, are excluded from this requirement.

(c) *Maximum assistance.* The maximum total guaranteed OL debt on which a borrower can receive interest assistance is $400,000, regardless of the number of guaranteed loans outstanding. This is a lifetime limit.

(d) *Maximum time for which interest assistance is available.* (1) A borrower may only receive interest assistance for one 5-year period. The term of the interest assistance agreement executed under this section shall not exceed 5 consecutive years from the date of the initial agreement signed by the loan applicant, including any entity members, or the outstanding term of the loan, whichever is less. This is a lifetime limit.

(2) Beginning farmers and ranchers, as defined in § 762.102, however, may be considered for two 5-year periods. The applicant must meet the definition of a beginning farmer or rancher and meet the other eligibility requirements outlined in paragraph (b) of this section at the onset of each 5-year period. A needs test will be completed in the fifth year of IA eligibility for beginning farmers, to determine continued eligibility for a second 5-year period.

(3) Notwithstanding the limitation of paragraph (d)(1) of this section, a new interest assistance agreement may be approved for eligible borrowers to provide interest assistance through June 8, 2009, provided the total period does not exceed 10 years from the effective date of the original interest assistance agreement.

(e) *Multiple loans.* In the case of a borrower with multiple guaranteed loans with one lender, interest assistance can be applied to each loan, only to one loan or any distribution the lender selects, as necessary to achieve a feasible plan, subject to paragraph (c) of this section.

(f) *Terms.* The typical term of scheduled loan repayment will not be reduced solely for the purpose of maximizing eligibility for interest assistance. A loan must be scheduled over the maximum term typically used by lenders for similar type loans within the limits in § 762.124. An OL for the purpose of providing annual operating and family living expenses will be scheduled for repayment when the income is scheduled to be received from the sale of the crops, livestock, and/or livestock products which will serve as security for the loan. An OL for purposes other than annual operating and family living expenses (i.e. purchase of equipment or livestock, or refinancing existing debt) will be scheduled over 7 years from the effective date of the proposed interest assistance agreement, or the life of the security, whichever is less.

(g) *Rate of interest.* The lender may charge a fixed or variable interest rate, but not in excess of what the lender charges its average agricultural loan customer.

(h) *Agreement.* The lender and borrower must execute an interest assistance agreement as prescribed by the Agency.

(i) *Interest assistance claims and payments.* To receive an interest assistance payment, the lender must prepare and submit a claim on the appropriate Agency form. The following conditions apply:

(1) Interest assistance payments will be four (4) percent of the average daily principal loan balance prorated over the number of days the loan has been outstanding during the payment period. For loans with a note rate less than four (4) percent, interest assistance payments will be the weighted average interest rate multiplied by the average daily principal balance.

(2) The lender may select at the time of loan closing the date that they wish to receive an interest assistance payment. That date will be included in the interest assistance agreement.

(i) The initial and final claims submitted under an agreement may be for a period less than 12 months. All other claims will be submitted for a 12-month period, unless there is a lender substitution during the 12-month period in accordance with this section.

(ii) In the event of liquidation, the final interest assistance claim will be submitted with the estimated loss claim or the final loss claim if an estimated loss claim was not submitted. Interest will not be paid beyond the interest accrual cutoff dates established in the loss claims according to § 762.149(d)(2).

(3) A claim should be filed within 60 days of its due date. Claims not filed within 1 year from the due date will not be paid, and the amount due the lender will be permanently forfeited.

(4) All claims will be supported by detailed calculations of average daily principal balance during the claim period.

(5) Requests for continuation of interest assistance for agreements dated prior to June 8, 2007 will be supported by the lender's analysis of the applicant's farming operation and need for continued interest assistance as set out in their Interest Assistance Agreements. The following information will be submitted to the Agency:

(i) A summary of the operation's actual financial performance in the previous year, including a detailed income and expense statement.

(ii) A narrative description of the causes of any major differences between the previous year's projections and actual performance, including a detailed income and expense statement.

(iii) A current balance sheet.

(iv) A cash-flow budget for the period being planned. A monthly cash-flow budget is required for all lines of credit and operating loans made for annual operating purposes. All other loans may include either an annual or monthly cash-flow budget.

(v) A copy of the interest assistance needs analysis portion of the application form which has been completed based on the planned period's cash-flow budget.

(6) Interest Assistance Agreements dated June 8, 2007 or later do not require a request for continuation of interest assistance. The lender will only be required to submit an Agency IA payment form and the average daily principal balance for the claim period, with supporting documentation.

(7) Lenders may not charge or cause a borrower with an interest assistance agreement to be charged a fee for preparation and submission of the items required for an annual interest assistance claim.

(j) *Transfer, consolidation, and writedown.* Loans covered by interest assistance agreements cannot be consolidated. Such loans can be transferred only when the transferee was liable for the debt on the effective date of the interest assistance agreement. Loans covered by interest assistance can be transferred to an entity if the entity is eligible in accordance with § 762.120 and § 762.150(b) and at least one entity member was liable for the debt on the effective date of the interest assistance agreement. Interest assistance will be discontinued as of the date of any writedown on a loan covered by an interest assistance agreement.

(k) *Rescheduling and deferral.* When a borrower defaults on a loan with interest assistance or the loan otherwise requires rescheduling or deferral, the interest assistance agreement will remain in effect for that loan at its existing terms. The lender may reschedule the loan in accordance with § 762.145. For Interest Assistance Agreements dated June 8, 2007 or later increases in the restructured loan amount above the amount originally obligated do not require additional funding; however, interest assistance is not available on that portion of the loan as interest assistance is limited to the original loan amount.

(l) *Bankruptcy.* In cases where the interest on a loan covered by an interest assistance agreement is reduced by court order in a reorganization plan under the bankruptcy code, interest assistance will be terminated effective on the date of the court order. Guaranteed loans which have had their interest reduced by bankruptcy court order are not eligible for interest assistance.

(m) *Termination of interest assistance payments.* Interest assistance payments will cease upon termination of the loan guarantee, upon reaching the expiration date contained in the agreement, or upon cancellation by the Agency under the terms of the interest assistance agreement. In addition, for loan guarantees sold into the secondary market, Agency purchase of the guaranteed portion of a loan will terminate the interest assistance.

(n) *Excessive interest assistance.* Upon written notice to the lender, borrower, and any holder, the Agency may amend or cancel the interest assistance agreement and collect from the lender any amount of interest assistance granted which resulted from incomplete or inaccurate information, an error in computation, or any other reason which resulted in payment that the lender was not entitled to receive.

(o) *Condition for Cancellation.* The Interest Assistance Agreement is incontestable except for fraud or misrepresentation, of which the lender or borrower have actual knowledge at the time the interest assistance agreement is executed, or which the lender or borrower participates in or condones.

(p) *Substitution.* If there is a substitution of lender, the original lender will prepare and submit to the Agency a claim for its final interest assistance payment calculated through the effective date of the substitution. This final claim will be submitted for processing at the time of the substitution.

(1) Interest assistance will continue automatically with the new lender.

(2) The new lender must follow paragraph (i) of this section to receive their initial and subsequent interest assistance payments.

(q) *Exception Authority.* The Deputy Administrator for Farm Loan Programs has the authority to grant an exception to any requirement involving interest assistance if it is in the best interest of the Government and is not inconsistent with other applicable law.

Signed in Washington, DC, on March 15, 2007.

Teresa C. Lasseter,

Administrator, Farm Service Agency.

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