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**Via Electronic Mail and Facsimile
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Director, Loan Making Division
Farm Loan Programs
Farm Service Agency
United States Department of Agriculture
1400 Independence Avenue, S.W.
STOP 0522
Washington, DC 20250-0522

Dear Director:

Re: Comments on Proposed Rule for Guaranteed Loans—Revision of Interest Assistance Program, 70 Fed. Reg. 36055 (June 22, 2005) (comment period extended by 70 Fed. Reg. 46779)

Farmers' Legal Action Group, Inc. (FLAG) submits these comments on behalf of the National Family Farm Coalition (NFFC) concerning the proposed rule entitled "Guaranteed Loans—Revision of Interest Assistance Program," published at 70 Fed. Reg. 36055-36060 (June 22, 2005).

NFFC represents 30 grassroots farm and rural advocacy organizations serving more than 30 states. The coalition was formed in 1986 to coordinate the efforts of a growing network of grassroots organizations concerned with maintaining a family farm system of food production. NFFC's work includes education, outreach, and advocacy for stable rural communities, safe food, and the preservation of natural resources through family farming. NFFC has long been interested in USDA's implementation of farm credit, disaster assistance, and conservation programs.

FLAG is a nonprofit public interest law center dedicated to the preservation of family farms. For almost two decades, FLAG has provided legal services to thousands of small and mid-sized family farmers throughout the nation in administrative proceedings, public education initiatives, class action lawsuits, and legislative technical assistance involving agricultural credit and farm program issues and the administrative review processes for these programs.

Purpose of the Guaranteed Loan Program and Interest Assistance

The Farm Service Agency's guaranteed loan program is intended to ensure that credit is available to family farmers and ranchers who are unable to obtain commercial credit at reasonable rates and terms, while imposing a reduced administrative and fiscal burden on the government compared to the direct loan program. In particular, the Interest Assistance Program is intended to provide extra assistance to farmers who, although otherwise eligible, could not cash flow a guaranteed loan at the lender's regular agricultural interest rate.

NFFC supports FSA's effort to better target the Interest Assistance Program to those farmers and ranchers who genuinely need the assistance in order to obtain credit for their operations. NFFC also supports FSA's intent to enable more farmers and ranchers to benefit from the limited Interest Assistance funds. In addition to the eligibility provisions addressed in this proposed rule, NFFC expects that FSA will work to further this goal by making a concerted effort to promote the guaranteed loan program and Interest Assistance Program among lenders in underserved areas, particularly lenders with high numbers of borrowers who would be considered "socially disadvantaged applicants," and helping those lenders to understand and participate in the programs.

FSA Should Not Amend Regulatory Language to Constrain IA Availability

NFFC strongly opposes FSA's proposal to add language to 7 C.F.R. § 762.150 that would specifically limit Interest Assistance availability to new guaranteed Operating (OL) loans. NFFC similarly opposes the proposal to remove language in 7 C.F.R. § 762.145 contemplating the availability of Interest Assistance in loan restructuring (language that remains in the governing statute at 7 U.S.C. § 1999(g)). Although Congress has not made appropriations for Interest Assistance on Farm Ownership (FO) loans or restructured loans for some time, the implementation of the guaranteed loan program is inherently limited by funding availability. It is therefore unnecessary to change regulations to reflect appropriations practices, particularly when the existing language is neither unwieldy nor confusing. Beyond being unnecessary, such a change would be contrary to the interests of both borrowers and the government.

The decision of whether and how to fund Interest Assistance rests with Congress alone; and Congress can act swiftly. Regulatory changes, however, can take months, if not years, to implement, and changes to rules for programs like Interest Assistance are rarely considered a priority. If Congress in the future appropriates funds for Interest Assistance on FO loans or restructured loans, it is in the interest of both borrowers and the government for that to be acted upon immediately. There is no sense in making unneeded changes to a rule that would have to be changed *back* to fully implement a standing program.

Whether intended as support for financially struggling farmers who are increasingly being squeezed out of the direct loan programs, or as a form of relief for farmers rebuilding their operations in the wake of disaster like Hurricane Katrina, expanded Interest Assistance funding should not be denied or delayed to those Congress would benefit, simply because FSA wants to tidy up its regulations. Regulatory changes that would prevent the agency from immediately acting upon expanded Interest Assistance funding are not justified by a desire to "align the regulations with current practices." FSA must retain the regulatory language that would allow implementation of Interest Assistance on guaranteed real estate loans and restructured guaranteed loans as soon as funding becomes available.

New Debt-to-Asset Eligibility Requirement Should Be Strengthened

NFFC supports the proposal to add debt-to-asset ratio as an eligibility factor for Interest Assistance. NFFC agrees with FSA's comments accompanying the proposed rule that reliance solely on cash flow, as under the current rule, allows borrowers with significant net worth to inappropriately benefit from the program. However, NFFC contends that a 50 percent debt-to-asset ratio is too low a benchmark to adequately target Interest Assistance benefits to the borrowers who truly need it. Advocates currently assisting farmers to obtain guaranteed and non-guaranteed commercial credit report that borrowers with debt-to-asset ratios well above 50 percent are considered attractive customers by agricultural lenders. NFFC therefore urges that the agency adopt a 65 percent debt-to-asset ratio as the minimum threshold for Interest Assistance eligibility.

Of course, the borrower's cash flow appropriately remains an important consideration for Interest Assistance eligibility, and for guaranteed loan eligibility overall. NFFC emphasizes the importance of ensuring that cash flow plans demonstrate that the borrower cannot develop a positive cash flow without Interest Assistance.

IA Eligibility Should Be Tied to Continued Financial Need Rather Than Arbitrary Timelines

NFFC strongly opposes FSA's proposal to shorten the arbitrary time period for Interest Assistance eligibility from ten years to five while continuing the automatic and absolute nature of eligibility within that period. In a misguided effort at simplification, FSA has crafted program rules that are both over- and under-inclusive. By providing that Interest Assistance eligibility continues year-after-year automatically for a five-year period, the proposal abdicates any responsibility for ensuring that Interest Assistance benefits are actually needed beyond the first year of the loan. Apparently recognizing the potential wastefulness of this policy, the agency proposes to "reduce [the] cost per borrower" by further shortening the

arbitrary time period that any one borrower may receive Interest Assistance, with no consideration for a borrower's actual financial need.

What this proposal entirely and inexplicably ignores is that financial need is not a one-size-fits-all circumstance. Put simply, for some borrowers a five-year period of guaranteed interest rate subsidy is too long; for others, it is too short. It is absurd for the agency to believe that an in-or-out eligibility policy could satisfy the program's purpose of providing reduced interest rate assistance to farmers and ranchers who would otherwise be unable to obtain sufficient credit. Just as FSA's current least-effort approach to Interest Assistance has no doubt allowed some borrowers to benefit from the program long after their financial circumstances make it necessary, the arbitrary time limit already in place has certainly forced out some borrowers who, through no fault of their own, still have a genuine need for assistance. FSA's comments accompanying the proposed rule to the effect that a five-year period is "adequate" for any farm operation to reach a level of profitability that makes Interest Assistance superfluous demonstrate a callous disregard for the economic realities faced by beginning farmers, farmers hit by natural disaster (sometimes successively), farmers recovering from crop and/or livestock disease, and any number of circumstances that prevent financial recovery from being a neatly timed event.

NFFC fully supports the goal of avoiding significant outlays of Interest Assistance funding for borrowers who have outgrown their need for the program. Certainly FSA should be making every effort to ensure that Interest Assistance funds are going to those who really need them. However an arbitrary time limit is wholly inappropriate for that purpose. Instead, FSA should base continuing eligibility for Interest Assistance on a borrower's actual continuing need for the program. And this can be done with minimal burdens on lenders and FSA.

Every year, each lender is already preparing its own balance sheet and cash flow documentation for their guaranteed loans. For continued Interest Assistance eligibility, FSA should require that the actual annual year-end documentation used by the lender show that the borrower has a debt-to-asset ratio greater than a set threshold and that Interest Assistance is needed to develop a positive cash flow. Again, this should be based on the documentation drawn up by the lender for its own uses and agreed to (signed) by the borrower, with no adjustments by FSA. This will impose the minimum burden on both lenders and FSA staff and will ensure that the lender itself is relying on its assertions regarding the borrower's financial status. Although the debt-to-asset ratio threshold for initial Interest Assistance eligibility should be 65 percent, NFFC believes that the debt-to-asset ratio threshold for *continuing* Interest Assistance eligibility should be 50 percent, to allow borrowers some cushion before being phased out of the program.

Annual Review of Balance Sheet and Cash Flow Must Be Retained

In conjunction with NFFC's contention that FSA should eliminate the arbitrary time limits on Interest Assistance eligibility and instead base continued eligibility on a borrower's actual financial need for the program, NFFC contends that FSA must continue to require and review annual balance sheet and cash flow documentation. Although NFFC supports FSA's effort to eliminate administrative burdens on lenders that are "excessively burdensome," there is no justification for FSA's proposal to abdicate all responsibility for ensuring that borrowers continue to need the Interest Assistance benefit. As discussed above, the burden on lenders and FSA staff can be minimized by emphasizing that the review is to be based on the lender's own documentation and calculations, with no adjustments by FSA. For the borrower to continue with Interest Assistance, the lender's documentation must simply show that the borrower has a debt-to-asset ratio of greater than 50 percent and that the borrower would not have a positive cash flow without the interest subsidy.

In addition to identifying lenders' valid concerns about overly burdensome and confusing documentation requirements under the current rule, the comments accompanying the proposed rule seem to try to justify the proposed elimination of any annual review requirements on the fact that the agency's practice has been to offer essentially automatic renewal under the current rule. Concerned about possible abuse or waste under such a practice, the agency seems to think that the best approach is to continue this automatic renewal but simply shorten the period in which assistance is available. As discussed above, this approach's arbitrarily capped benefits are likely to match up with no borrower's actual needs – many will receive too much, and many too little. As much as the agency resists it, the only rational way to manage the program is for eligibility to be tied to a borrower's actual need for the benefit. As proposed by NFFC, this can be based on documents that the lender already prepares for its own purposes and need not involve an intrusive analysis by FSA into the borrower's and lenders' financial and operational plans. Any other approach simply abdicates FSA's duties under the program.

Cap on Loan Amount Eligible for IA Is a Significant Program Improvement

NFFC strongly supports the proposal to limit the loan amount on which a borrower can receive Interest Assistance. This proposal, perhaps more than any other change considered by FSA, can help ensure that Interest Assistance funds are available to the borrowers who need them most. As FSA noted in the comments accompanying the proposed changes, far too often allocated Interest Assistance funds are depleted by a few large loans.

NFFC requests confirmation of its understanding that the proposed \$400,000 limit would apply to all guaranteed loans made to a borrower, including annual operating and chattel loans. NFFC also wants to confirm that the proposed \$400,000 limit is an all-or-nothing limit; that is, the division between Interest Assistance and non-Interest Assistance loan amounts will only be triggered at the \$400,000 level. Loans that total in aggregate no more than \$400,000 will receive Interest Assistance on the full amount.

Continue Waiver of Guarantee Fee on IA Portion of Loans

NFFC opposes the proposal to eliminate the waiver of guarantee fees on loans with Interest Assistance. Although supportive of the reasoning that would retain the waiver on loans used mainly to refinance FSA direct loans and loans made to beginning farmers and ranchers in the downpayment loan program, NFFC contends that *all* borrowers who receive Interest Assistance are by definition in financially straitened circumstances and should not be burdened by a guarantee fee that may make or break their ability to cash flow the loan. FSA itself acknowledges in the comments accompanying the proposed rule that Interest Assistance borrowers are "economically impacted" borrowers, and additional charges by lenders are "not appropriate." Similarly, the guarantee fee should continue to be waived.

In light of the proposal to impose a \$400,000 cap on the amount of any loan (or group of loans) that can receive Interest Assistance, NFFC suggests that FSA retain the waiver on loans with Interest Assistance and clarify that for loans over the \$400,000 limit, the amount not actually covered by Interest Assistance will be subject to a guarantee fee. This should address some of the abuse concerns that FSA alluded to in the comments accompanying the proposed rule. Without more a more specific discussion of the types of abuse that FSA is concerned about, NFFC does not believe that FSA has given a reasonable justification for removing the waiver for borrowers who are sufficiently financially distressed to qualify for Interest Assistance.

Streamlined Documentation for IA Application a Positive Change

NFFC supports the proposal to reduce the documentation that must be submitted with the initial Interest Assistance application and to focus on the needs analysis demonstrating the borrower's need for the Interest Assistance benefit. As discussed earlier, NFFC also urges further efforts by FSA to expand the guaranteed loan program, with emphasis on the Interest Assistance Program, among lenders in underserved areas, particularly lenders with high number of borrowers who would be considered "socially disadvantaged applicants."

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Lenders Prohibited From Charging Borrowers a Fee for IA Claims

NFFC strongly supports the proposal to prohibit lenders from charging borrowers a fee for the annual submission of claims for the Interest Assistance benefit. As FSA notes in the comments accompanying the proposed rule, Interest Assistance borrowers are by definition in financially stressed circumstances and additional fees are counterproductive.

Thank you for your consideration of these comments.

Sincerely,

FARMERS' LEGAL ACTION GROUP, INC.

s/ Karen R. Krub

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