



FARMERS' LEGAL
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INCORPORATED

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Via Facsimile (202-690-1196) and Electronic Mail

Branch Chief
Guaranteed Loan Servicing and Inventory Property Branch
Loan Servicing and Property Management Division
Farm Service Agency
United States Department of Agriculture
1400 Independence Avenue
STOP 0523
Washington, DC 20250-0523

Dear Branch Chief:

Re: Comments on Proposed Rule for Farm Service Agency Guaranteed Loans,
70 Fed. Reg. 47,730 (August 15, 2005)

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—Retaining PLP Status and Payment of Interest Accrued During Bankruptcy and Redemption Rights Periods," published at 70 Fed. Reg. 47,730-47,733 (August 15, 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 and the administrative review procedures available to participants in those 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 class action lawsuits, administrative proceedings, public education initiatives, and legislative technical assistance involving agricultural credit and farm program issues and the administrative review processes for these programs.

The Farm Service Agency 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 FSA direct loan program. Agency efforts to make the program more workable for and attractive to lenders are appropriate so long as the risks and rewards are fairly apportioned among the lender, borrower, and government.

The August 15 proposed rule includes language revealing a grave misconception within FSA about the nature of the relationship among the parties to a guaranteed loan—the borrower, the lender, and the Agency as guarantor. Again, the purpose of the program is to increase eligible farmers' and ranchers' access to credit at a reduced cost to the government relative to the direct loan program. While lenders are a necessary partner in achieving this purpose, they are in no sense the intended beneficiaries of the program. The program is for the benefit of the *borrowers*. NFFC therefore strongly objects to the final sentence of the rule summary, which refers to lenders as FSA's "customers" in the program. Of course the program rules must treat lenders fairly and reasonably, but they must also recognize the fundamental purpose of the program.

There has been an increasing marginalization of borrowers in the guaranteed loan program in recent years, which is reflected in the "lenders are our customers" message in the proposed rule. Borrowers have come to be viewed and treated as a necessary evil rather than the persons for whom the program was created. Congress was concerned with ensuring access to credit for eligible farmers and ranchers, not simply ensuring business demand for agricultural lenders.

Recognition of this fundamental purpose of the guaranteed loan program necessarily requires that FSA exercise meaningful program oversight, not only looking to avoid losses to the government but also protecting borrowers against overreaching by lenders. Borrower and lender interests are not always opposed, but there are obviously several areas of divergence. A balance is clearly needed, since both lenders and borrowers are necessary for the program. However necessary the lenders are, though, they are not the intended beneficiaries. There is simply no justification for the balance not to tip in favor of the borrower when a judgment call is required. Moreover, the Agency's interest in lender activities cannot be solely limited to those lender actions resulting in an inflated loss claim to the government. When lenders unreasonably shift costs to borrowers or reject viable restructuring opportunities, the result is *reduced* program participation, *higher* default and liquidation rates, and *more expensive* credit for family farmers and ranchers—all of which are directly contrary to the purpose of the program.

The August 15 proposed rule typifies how the Agency has come to focus on the minutia of "customer service" for lenders while ignoring similar issues affecting borrowers. The prefatory remarks to the proposed rule state that, in the six-year period that the PLP classification has been used, "an average of less than one lender a year" has had its PLP status revoked due to excessive loss ratio. Nonetheless, based on the experience of what

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can be no more than *five* lenders, the Agency has taken the initiative to propose a rule change that would allow a one-year grace period before PLP status would be removed due to excessive loss ratio. Proposed § 762.106(g)(2)(ii)(A) provides examples of events which would be considered beyond the control of the lender and could therefore excuse exceeding the maximum loss ratio. These examples are: "a freeze with only local impact, economic downturn in a local area, drop in local land values, industries moving into or out of an area, loss of access to a market, and biological or chemical damage." 70 Fed. Reg. 47,732. There is nothing objectionable for borrowers about this proposal, but it reveals the lengths the Agency will go to on behalf of a handful of lenders while placing no obligation on lenders to provide similar leeway for borrowers. All of the exculpatory examples in the proposed § 762.106(g)(2)(ii)(A) are events that would increase losses for lenders because they would threaten borrowers' viability. But where, borrowers reasonably ask, is the parallel language directing lenders to allow borrowers a grace period after a local freeze or economic downturn, a drop in local land values, a change in area industries, loss of market access, or biological or chemical damage?

NFFC has repeatedly urged FSA, as part of the on-going effort to improve the guaranteed loan program, to consider more consistent and definite requirements for guaranteed loan servicing that ensure lenders have an incentive to make full use of their tools to avoid liquidation and losses, whether to borrowers or the government. These changes could affect hundreds of borrowers every year and would further the fundamental purpose of the program, yet there has been no suggestion of consideration on the Agency's part. Instead, we see a proposed change that the Agency acknowledges would affect "an average of less than one lender a year."

Thank you for your consideration of these comments.

Sincerely,

FARMERS' LEGAL ACTION GROUP, INC.

s/ Karen R. Krub

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