

FLAG



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Via Electronic Mail (Sent to: Galen.VanVleet@wdc.usda.gov)

Galen VanVleet
Loan Making Division
USDA/FSA
1400 Independence Avenue, SW., Stop 0522
Washington, DC 20250-0522

Dear Mr. VanVleet:

Re: Comments on Proposed Rule for Farm Service Agency Guaranteed Loan Fees, 71 Fed. Reg. 27,978 (May 15, 2006)

Farmers' Legal Action Group, Inc. (FLAG) submits these comments on behalf of the National Family Farm Coalition (NFFC) concerning the proposed rule published at 71 Fed. Reg. 27,978-27,980 (May 15, 2006).

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 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 Rule Would Impose Considerable Barriers to Guaranteed Loan Eligibility Not Intended by Congress and Is Contrary to the Public Policy Underlying the Guaranteed Loan Program

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 direct loan program.

The proposed rule would immediately increase the guarantee fee charged by the Agency from 1% to 1.5%, would add a new annual “continuation” fee of .75% on guaranteed lines of credit – to be charged on the ceiling amount, and would allow the Agency to adopt further increases in guarantee fees without public comment.

In the accompanying prefatory remarks, the Agency states that the intent of the proposal is to reduce the cost to the government of the guaranteed loan program. The prefatory remarks also state the Agency’s conclusion that the proposal “may make a few individuals ineligible for FSA guaranteed loans...[h]owever, the number of applicants who will be severely impacted due to increased fees is expected to be minimal.” The Agency provides no support for this conclusion beyond its stated “expectation” that there will be enough borrowers “willing to pay higher fees.”

Not only do the Agency’s statements regarding the impact of the proposal lack any kind of analytical support, the Agency has conflated the question of whether there will be demand for the program even with higher fees with the question of whether the higher fees will exclude a significant number of the program’s intended beneficiaries. At a time of rising interest rates and escalating input costs, it is not credible for the Agency to conclude that the increased fees will not have a significant impact on individual applicants and borrowers. And the impact will fall on those most in need of the benefit provided by the loan guarantee, those whose financial circumstances are most distressed. By proposing to divert more farmer dollars toward loan administrative costs and leave guaranteed loan borrowers with fewer funds to carry on their operations, the Agency is undermining the purpose of the guaranteed loan program.

The Agency’s conclusion that there will be enough demand on the limited guaranteed loan funds even with the higher fees merely reflects that agricultural lenders will continue to encourage their regular borrowers to take advantage of the guarantee program. It completely ignores the impact of the higher fees on those borrowers who are transitioning out of the direct loan program and those who have never been able to obtain commercial credit. The Agency cannot reasonably propose such a sweeping change without determining and publishing accurate calculations of how the change will impact the program’s intended beneficiaries.

The proposal to remove the fee level from the rule itself and allow the Agency to adjust loan fees without public comment and on short notice further indicates the Agency’s intent to eventually ask borrowers to bear the full administrative cost of the program. However, the public policy behind the guaranteed loan program never included an expectation, nor even consideration, by Congress that the program would operate at no cost to the government. Reducing the cost to the government is not and has never been the primary focus of the guaranteed loan program. The purpose is to make credit

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available to family farmers and ranchers who are not eligible for the direct loan program but who nonetheless are unable to obtain commercial credit at reasonable rates and terms. As required by 31 U.S.C. § 9701(b)(2)(C), the Agency must take into account the social welfare purpose of the guaranteed loan program when determining the level of fees. Therefore this is a matter of substantive policy-making that must remain subject to the public notice-and-comment procedure.

Thank you for your consideration of these comments.

Sincerely,

FARMERS' LEGAL ACTION GROUP, INC.

s/ Karen R. Krub

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