

# Proposed Rules

Federal Register

Vol. 75, No. 96

Wednesday, May 19, 2010

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

### Rural Housing Service

#### 7 CFR Part 1980

RIN 0575-AC83

#### Single Family Housing Guaranteed Loan Program

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed rule.

**SUMMARY:** The Rural Housing Service proposes two changes to its Single Family Housing Guaranteed Loan Program (SFHGLP) regulation. This action is taken to achieve savings for the taxpayer, simplify regulations, and promote efficiency in managing the SFHGLP. The proposed changes are in accordance with the recommendations of the Inspector General in its Audit (Number 04601-0017-CH) of April 2009.

Under the SFHGLP regulation as it stands today, lenders may set an interest rate for a loan under the SFHGLP that either does not exceed the Lender's published rate for VA first mortgage loans with no discount points or does not exceed the current Federal National Mortgage Association (Fannie Mae) posted yield for 90-day delivery (Actual/Actual), plus six-tenths of 1 percent for 30-year fixed rate conventional loans, rounded up to the nearest one-quarter of 1 percent. The first proposed rule change would eliminate the lender's published VA rate for first mortgage loans with no discount points as an option for a maximum interest rate on loans. The effect of this action would be to create a more uniform, simpler standard for interest rates under the SFHGLP, whereby lenders would always use the current Fannie Mae rate as the rate ceiling. The Fannie Mae rate is the most widely utilized interest rate guidance by approved lenders. It is also the most accessible to lenders and the Agency when documenting loan files to ensure affordable interest rates are extended to Guaranteed Loan Program borrowers.

The second proposed change relates to the rights of the Secretary when the Secretary has to pay a claim under the guarantee for the loan, but the original lender did not originate the loan in accordance with the program requirements. The proposed rule change would allow the Secretary in certain circumstances to seek indemnification from the originator of the loan for the Secretary's loss. This change promises to save taxpayer money and incentivize due care on the part of lenders by allowing the Government to recoup the funds it pays out in the event of a claim under the guarantee where the original lender did not comply with SFHGLP requirements.

**DATES:** Written or e-mail comments on the proposed rule must be received on or before July 19, 2010.

**ADDRESSES:** You may submit comments on this proposed rule by any one of the following methods:

- *E-Mail:* [comments@wdc.usda.gov](mailto:comments@wdc.usda.gov). Include "RIN No. 0575-AC83" in the subject line of the message.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments electronically.
- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250-0742.
- *Hand Delivery/Courier:* Submit written comments via Federal Express mail, or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street, SW., 7th Floor address listed above.

**FOR FURTHER INFORMATION CONTACT:** Joaquin Tremols, Acting Director, Single Family Housing Guaranteed Loan Division, USDA Rural Development, Room 2241, STOP 0784, 1400 Independence Ave., SW., Washington, DC 20250, Telephone: (202) 720-1465, E-mail: [joaquin.tremols@wdc.usda.gov](mailto:joaquin.tremols@wdc.usda.gov).

**SUPPLEMENTARY INFORMATION:**

## Classification

This proposed rule has been determined to be non-significant by the Office of Management and Budget (OMB) under Executive Order 12866.

## Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Except where specified, all State and local laws and regulations that are in direct conflict with this rule will be preempted. Federal funds carry Federal requirements. No person is required to apply for funding under this program, but if they do apply and are selected for funding, they must comply with the requirements applicable to the Federal program funds. This rule is not retroactive. It will not affect agreements entered into prior to the effective date of the rule. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 must be exhausted.

## Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effect of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million, or more, in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) 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 the UMRA.

## Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940,

subpart G, "Environmental Program." It is the determination of the Agency that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, neither an Environmental Assessment nor an Environmental Impact Statement is required.

#### **Federalism—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 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.

#### **Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the undersigned has determined and certified by signature of this document that this rule change will not have a significant impact on a substantial number of small entities. This rule does not impose any significant new requirements on Agency applicants and borrowers, and the regulatory changes affect only Agency determination of program benefits for guarantees of loans made to individuals.

#### **Intergovernmental Consultation**

This program/activity is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. (See the Notice related to 7 CFR part 3015, subpart V, at 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985).

#### **Programs Affected**

This program is listed in the Catalog of Federal Domestic Assistance under Number 10.410, Very Low to Moderate Income Housing Loans (Section 502 Rural Housing Loans).

#### **Paperwork Reduction Act**

The information collection and record keeping requirements contained in this regulation have been approved by OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The assigned OMB control number is 0575-AC83.

#### **E-Government Act Compliance**

The Rural Housing Service is committed to complying with the E-

Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

#### **Background**

In the spring of 2009, the Inspector General completed an audit of the controls over lending activities in the SFHGLP. The audit was initiated because of an investigation by the Inspector General into a lender who submitted false documents to the Agency to obtain loan guarantees. Additionally, the Inspector General was concerned that some lenders were setting interest rates on guaranteed loans that were excessive and not in compliance with Agency guidelines. The audit evaluated the systems and processes to ensure that lenders (1) submit accurate and legitimate borrower eligibility data and (2) set interest rates on loans within Agency guidelines. The audit report made a number of recommendations for what the SFHGLP can do to streamline operations, prevent fraud, and improve efficiency in its mission. In response to the audit, the two rules presented here are being proposed.

#### **OMB Control Number**

The report and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575-AC83.

#### **List of Subjects in 7 CFR Part 1980**

Home improvement, Loan Programs—Housing and community development, Mortgage insurance, Mortgages, Rural areas.

For the reason stated in the preamble, Chapter XVIII, Title 7 of the Code of Federal Regulations is proposed to be amended as follows:

#### **PART 1980—RURAL HOUSING LOANS**

1. The authority citation for part 1980 continues to read as follows:

**Authority:** 5 U.S.C. 301 and 7 U.S.C. 1989. Subpart E also issued under 7 U.S.C. 1932(a).

#### **Subpart D—Rural Housing Loans**

2. Section 1980.308 is revised to read as follows:

##### **§ 1980.308 Full faith and credit.**

(a) *Loan note guarantee.* The loan note guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of

which the Lender has actual knowledge at the time it becomes such Lender or which the Lender participates in or condones. Misrepresentation includes negligent misrepresentation. A note which provides for the payment of interest on interest shall not be guaranteed. Any guarantee or assignment of a guarantee attached to or relating to a note which provides for the payment of interest on interest is void. Notwithstanding the prohibition of interest on interest, interest may be capitalized in connection with reamortization over the remaining term with written concurrence of RHS. The loan note guarantee will be unenforceable to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which RHS acquires knowledge of the foregoing. Negligent servicing is defined as servicing that is inconsistent with this subpart and includes the failure to perform those services which a reasonably prudent lender would perform in servicing its own loan portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act, but also not acting in a timely manner or acting contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those authorized in this subpart. When the lender conducts liquidation in an expeditious manner, in accordance with the provisions of § 1980.374 of this subpart, the loan note guarantee shall cover interest until the claim is paid within the limit of the guarantee.

(b) *Indemnification.* If RHS determines that a Lender did not originate a loan in accordance with the requirements in this subpart, and RHS pays a claim under the loan guarantee, RHS may revoke the Lender's eligibility status in accordance with § 1980.309 (h) of this subpart and may also require the Lender:

(1) To indemnify RHS for the loss, if the payment under the guarantee was made within 24 months of loan closing; or

(2) To indemnify RHS for the loss regardless of how long ago the loan closed, if RHS determines that fraud or misrepresentation was involved in connection with the origination of the loan.

3. Section 1980.320 is revised to read as follows:

**§ 1980.320 Interest rate.**

The interest rate must not exceed the established, applicable usury rate. Loans guaranteed under this subpart must bear a fixed interest rate over the life of the loan. The rate shall be agreed upon by the borrower and the Lender and must not be more than the current Fannie Mae rate as defined in § 1980.302(a) of this subpart. The Lender must document the rate and the date it was determined.

4. Section 1980.353 (c)(4) is revised to read as follows:

**§ 1980.353 Filing and processing applications.**

(c) \* \* \*

(4) Anticipated loan rates and terms, the date and amount of the Fannie Mae rate used to determine the interest rate, and the Lender's certification that the proposed rate is in compliance with § 1980.320 of this subpart.

\* \* \* \* \*

Dated: April 30, 2010.

**Tammye Treviño,**

*Administrator, Rural Housing Service.*

[FR Doc. 2010-11383 Filed 5-18-10; 8:45 am]

**BILLING CODE 3410-XV-P**

**FARM CREDIT ADMINISTRATION****12 CFR Part 652****RIN 3052-AC56****Federal Agricultural Mortgage Corporation Funding and Fiscal Affairs; Farmer Mac Investments and Liquidity**

**AGENCY:** Farm Credit Administration.

**ACTION:** Advance notice of proposed rulemaking (ANPRM).

**SUMMARY:** The Farm Credit Administration (FCA, Agency, us, or we) is considering amending our regulations governing the Federal Agricultural Mortgage Corporation (Farmer Mac or the Corporation) non-program investments and liquidity requirements. The objective of these regulations is to ensure that Farmer Mac holds an appropriate level of high-quality, liquid investments to maintain a sufficient liquidity reserve, invest surplus funds, and manage interest rate risk.

**DATES:** You may send us comments by July 6, 2010.

**ADDRESSES:** We offer a variety of methods for you to submit comments on this advanced notice of proposed rulemaking. For accuracy and efficiency reasons, commenters are encouraged to submit comments by e-mail or through

the Agency's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *E-mail:* Send us an e-mail at [reg-comm@fca.gov](mailto:reg-comm@fca.gov).
- *FCA Web site:* <http://www.fca.gov>. Select "Public Commenters," then "Public Comments," and follow the directions for "Submitting a Comment."
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Joseph T. Connor, Associate Director for Policy and Analysis, Office of Secondary Market Oversight, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

You may review copies of all comments we receive at our office in McLean, Virginia, or on our Web site at <http://www.fca.gov>. Once you are in the Web site, select "Public Commenters," then "Public Comments," and follow the directions for "Reading Submitted Public Comments." We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

**FOR FURTHER INFORMATION CONTACT:**

Joseph T. Connor, Associate Director for Policy and Analysis, Office of Secondary Market Oversight, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4280, TTY (703) 883-4056; or

Jennifer A. Cohn, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TTY (703) 883-4020.

**SUPPLEMENTARY INFORMATION:****I. Objective**

The objective of this ANPRM is to solicit public comments on revisions and updates to Farmer Mac's non-program investment and liquidity management regulations in light of investment and liquidity risk issues that arose during the recent financial crisis. With the benefit of information gained through this ANPRM and our internal analysis, we will consider changes to the regulations to enhance their fundamental objective: to ensure the

safety and soundness and continuity of Farmer Mac operations.

**II. Background**

Congress established Farmer Mac in 1988 as part of its effort to resolve the agricultural crisis of the 1980s. Congress expected that establishing a secondary market for agricultural and rural housing mortgages would increase the availability of competitively priced mortgage credit to America's farmers, ranchers, and rural homeowners.

In addition to serving its investor-stakeholders, Farmer Mac, like all Government-sponsored enterprises (GSEs), has a public policy purpose embedded in its corporate mission that arises from having been created by an act of Congress. The public policy component of its mission explicitly includes its service to customer-stakeholders (farmers, ranchers, rural homeowners, and rural utility cooperatives, all through their lenders).<sup>1</sup> The public policy component also includes protection of taxpayer-stakeholders. The latter arises from Farmer Mac's ability to issue debt to the Department of the Treasury to cover guarantee losses under certain circumstances.<sup>2</sup> These two public policy components of Farmer Mac's mission are, in some respects, counterbalancing, as we now explain.

A fundamental premise of finance is the natural positive relationship between risk and expected return. This means that when Farmer Mac increases its expected return, it also increases its risk of loss; the opposite is true when risk decreases. More return, in general, will better position Farmer Mac to reduce the rates it charges customers (a benefit to those stakeholders) and increase its earnings (a benefit to investor-stakeholders). However, the risk Farmer Mac assumes to earn a greater return increases the risk to others, including ultimately taxpayers, and thus adds an offsetting cost to these earnings benefits.

In general, a guiding principle for FCA in establishing regulations is to maintain an appropriate balance between these costs and benefits, *i.e.*, attempting to maximize Farmer Mac's ability to serve its customers and provide an appropriate return for investors while ensuring that it engages in safe and sound operations, thereby providing a high degree of certainty that Farmer Mac will continue to be able to make its products available to serve

<sup>1</sup> See title VIII of the Farm Credit Act of 1971, as amended (VCA), 12 U.S.C. 2279aa-2279cc *et seq.*

<sup>2</sup> See section 8.13 of the Act.