

CHAPTER 1653

RURAL FINANCE AUTHORITY

RESTRUCTURE PROGRAM II

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1653.0010 APPLICABILITY AND PURPOSE.

Subpart 1. **Applicability.** Parts 1653.0010 to 1653.0110 establish the criteria and procedures to be used by the Rural Finance Authority in the administration of the restructure participation program authorized by Minnesota Statutes, section 41B.04.

Subp. 2. **Purpose.** The purpose of the Rural Finance Authority restructure participation program and for the issuance of bonds to finance or provide security for the program is to preserve and develop the state's agricultural resources. This is accomplished by extending credit on real estate security through the purchase of participation interests in first priority mortgage farm real estate loans.

Statutory Authority: *MS s 41B.07*

History: *18 SR 502*

1653.0020 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to parts 1653.0010 to 1653.0110 and the master participation agreement.

Subp. 2. **Agricultural purposes.** "Agricultural purposes" means the cultivation or use of land or land improvements, and personal property for the production of agricultural crops, vegetables, fruit or other horticultural crops, forest products, bees and apiary products, livestock, dairy animals, dairy products, poultry or poultry products, fur-bearing animals, aquaculture, hydroponics, exotic species of plants or animals, or other agriculturally related products. Agricultural purposes also includes the use of wetlands, pasture, forest land, wildlife, and homestead and other real property associated with the agricultural use of land. Agricultural purposes also includes the practices and facilities needed to conserve soil and water, protect human and animal health, have a safe and efficient operation, and meet local, state, and federal laws and regulations relating to the operation of a farm.

Subp. 3. **Amortized loan.** "Amortized loan" means a loan which will be fully paid, including all principal and interest, in a specific period of time.

Subp. 4. **Annual expenses.** "Annual expenses" means the total of all expenses incurred during the year plus an estimate of family living expenses.

Subp. 5. **Annual gross income.** "Annual gross income" means the total of all earned income for the calendar year whether agriculture or off-farm.

Subp. 6. **Applicant.** "Applicant" means a potential borrower who submits an application to the RFA through an eligible lender.

Subp. 7. **Application.** "Application" means the application for the restructure loan participation in the form prescribed and provided by the RFA.

Subp. 8. **Appraised value.** "Appraised value" means the dollar value placed on the farm being offered for collateral for a first mortgage loan.

Subp. 9. **Assets.** "Assets" means property, real or personal, tangible or intangible, and all contract rights of value, including cash crops or feed on hand, livestock held for sale, breeding stock, marketable bonds and securities, securities not readily marketable, accounts receivable, notes receivable, cash invested in growing crops, cash value of life insurance, machinery and equipment, cars and trucks, farm and other real estate including life estates and personal residence, and the value of a beneficial interest in trusts.

Subp. 10. **Borrower.** "Borrower" means the person or persons liable on a first mortgage participation made under this program. "Borrower" includes a domestic family farm corporation as defined in Minnesota Statutes, section 500.24.

Subp. 11. **Debt-to-asset ratio.** "Debt-to-asset ratio" means the total outstanding liabilities of an applicant divided by the total outstanding assets of the applicant expressed as a percentage.

Subp. 12. **Liabilities.** "Liabilities" means the debts or other obligations for which an applicant is responsible, including accounts payable, notes or other indebtedness owed to any source, taxes, rent, amount owed on real estate contracts or mortgages, judgments, and accrued interest payable.

Subp. 13. **Net worth.** "Net worth" means the total value of an applicant's assets and the assets of the applicant's spouse and dependents, less the liabilities of the same parties.

Subp. 14. **Note and loan agreement.** "Note and loan agreement" means the form prescribed by the RFA that is signed by a borrower evidencing the terms of the first mortgage loan and the borrower's obligation to repay the loan.

Subp. 15. **Participation agreement.** "Participation agreement" means the document entered into between the RFA and an approved lender that establishes the relationship between the parties and the terms and conditions of first mortgage loans to be offered to the RFA for participation under RFA restructure program II.

Subp. 16. **Restructure loan.** "Restructure loan" means a first mortgage loan made by an eligible lender to an eligible borrower, offered to the RFA for participation, and in which the RFA has purchased a participation.

Subp. 17. **RFA.** "RFA" means the Rural Finance Authority established by Minnesota Statutes, sections 41B.01 to 41B.23.

Subp. 18. **RFA participation.** "RFA participation" means the RFA's undivided interest in the principal of a first mortgage loan, all rights and interests in the loan documents, all payments arising under the loan, the first security real estate mortgage securing the loan, and any other collateral pledged to secure the loan.

Subp. 19. **RFA restructure program II.** "RFA restructure program II" means the RFA program redefined on or after July 1, 1993, for the purchase of a participation interest in first mortgage real estate loans made to eligible borrowers so that the borrowers may reorganize their agricultural debt.

Statutory Authority: *MS s 41B.07*

History: *18 SR 502*

1653.0030 BORROWER ELIGIBILITY.

Subpart 1. **Criteria.** To be eligible for assistance under RFA restructure program II, an applicant must meet the criteria in subparts 2 and 3.

Subp. 2. **General requirements.** Each applicant must:

A. be a resident of Minnesota as evidenced by the applicant's income tax returns, or by other acceptable evidence in the case of new residents;

B. certify that the applicant or one of the applicants will be the principal operator of the farm, will make farming his or her principal occupation, and that the debt being reorganized is of an agricultural nature;

C. not be a current or previous participant in an RFA program;

D. have a net worth not to exceed program guidelines;

E. have sufficient education, training, or experience to succeed in the type of farming to be undertaken;

F. have a financial need for the loan and the ability to repay the first mortgage loan;

G. agree to work with the local soil and water conservation service office in the county where the land is located; and

H. certify that the applicant is eligible for the program.

Subp. 3. **Restructure farmer requirements.** Each applicant must:

A. have received at least 50 percent of average annual gross income from farming for the past three years;

- B. have a debt-to-asset ratio greater than 50 percent;
- C. have projected annual expenses less than 96 percent of projected annual income; and
- D. demonstrate difficulty in paying his or her debt without reorganization.

Statutory Authority: *MS s 41B.07*

History: *18 SR 502*

1653.0040 COLLATERAL REQUIREMENTS.

The RFA may participate up to 90 percent of the total appraised value of the farm when crop land values make up 85 percent or more of the appraised value. If contributory values of the crop land are less than 85 percent of the total appraised value, then the RFA is restricted to participation at a maximum of 80 percent of the total appraised value.

The RFA may participate at percentages less than those in this part.

Statutory Authority: *MS s 41B.07*

History: *18 SR 502*

1653.0050 APPRAISAL.

The appraisal must be completed by a person with knowledge of agricultural appraising that is approved by both the lender and the RFA. An appraisal must be completed in a manner which is approved by the appraisal industry and must contain comparable sales information. The appraisal must also contain an income approach.

Statutory Authority: *MS s 41B.07*

History: *18 SR 502*

1653.0060 LENDER ELIGIBILITY.

Subpart 1. **Statutory eligibility.** Any bank, credit union, or savings association chartered by the state or federal government, a subdivision of the farm credit system (Agri Bank), the Federal Deposit Insurance Corporation, or any insurance company, fund, or other financial institution doing business as an agricultural lender within the state may apply to the RFA for certification as an approved lender.

Subp. 2. **Approval.** Upon a lender's demonstration of its ability to originate and service agricultural real estate loans, the RFA shall designate the lender as an approved lender for purposes of RFA programs.

Subp. 3. **Participation agreement.** Before offering first mortgage loans to the RFA for participation, each approved lender must enter into an RFA master participation agreement. The agreement must specify the relationship between the parties and the terms and conditions of first mortgage loans to be made by the lender under the restructure participation program offered to the RFA for participation.

Statutory Authority: *MS s 41B.07*

History: *18 SR 502; L 1995 c 202 art 1 s 25*

1653.0070 APPLICATION PROCESS AND OFFER OF PARTICIPATION.

Subpart 1. **Request for a first mortgage loan.** A lender and an applicant must jointly complete and sign an application and prepare all supporting documents identified in the application.

Subp. 2. **Lender determination.** The lender shall complete the initial review of the applicant's proposal. The lender shall determine the creditworthiness of the applicant and the value of the collateral to be used to secure the loan. If the lender agrees to make a first mortgage loan to the applicant, the lender and the applicant shall jointly prepare the application and the required loan documents.

Subp. 3. **Offer.** The lender, as the originator of the first mortgage loan, shall present an approved application and loan documents to the RFA. Presentation of the documents constitutes an offer to sell a participation interest in the loan.

Statutory Authority: *MS s 41B.07*

History: *18 SR 502*

1653.0080 RFA REVIEW, NOTICE, APPEAL.

Subpart 1. **RFA review.** Within a reasonable time after receipt of a lender's offer, usually ten working days, the RFA shall accept or reject the lender's offer to participate in the loan. If the documentation is not sufficient to make a determination, the RFA may request additional information as needed.

Subp. 2. **RFA acceptance.** The RFA shall accept all offers to participate in a loan under the RFA restructure program II, unless the RFA determines that:

- A. the applicant is not eligible based on program requirements;
- B. the applicant does not demonstrate an ability to repay the first mortgage loan;
- C. collateral offered as security for the first mortgage real estate loan is insufficient to protect the state's interests; or
- D. the RFA does not have sufficient funds available to purchase a participation in the loan.

Subp. 3. **RFA notice.** The RFA shall promptly notify the lender in writing whether or not the offer is accepted. If the offer is not accepted the notice must state the reasons.

Subp. 4. **Administrative appeal.** If an offer is rejected, either the lender or the applicant may petition for reconsideration by the RFA. The petition must be in writing and must be sent within 30 working days of the date of the RFA notice. The petition must state the grounds for the appeal, and may include additional relevant information. Within 15 working days of receiving the petition, the RFA program director shall send a written response to the petitioner upholding or reversing the original decision and giving the reasons for the decision.

Subp. 5. **Formal appeal.** After administrative appeal, a petitioner may appeal the program director's decision directly to the RFA board, by written notice to the director within 15 days of receiving the director's reconsideration decision. The decision of the board is final.

Statutory Authority: *MS s 41B.07*

History: *18 SR 502*

1653.0090 LOAN CLOSING, PURCHASE OF PARTICIPATION, AND LOAN MANAGEMENT.

Subpart 1. **Closing.** Upon receiving notification of RFA acceptance, the lender shall close the first mortgage loan. The lender must record and may cross-reference all documents relating to the loan including the RFA note and loan agreement. The lender must notify the RFA that the loan is closed and recorded by certifying and submitting the original RFA application and a copy of the note and loan agreement. Copies of recorded documents may be sent later.

Subp. 2. **Payment.** Within ten business days of receipt of written notice under subpart 1 that the first mortgage loan is closed and recorded, the RFA shall pay the lender for the RFA's participation interest in the loan.

Subp. 3. **Participation certificate.** Within five working days after the receipt of finally collected funds, the lender shall complete and return a participation certificate as prescribed by the RFA witnessing the RFA's undivided pro rata interest in the first mortgage loan.

Subp. 4. **Loan management.** The lender shall manage the first mortgage loan, including the RFA participation interest, with the degree of care and diligence usually maintained by agricultural real estate lenders. The lender shall have custody and control of all loan documents except the original application which must be retained by the RFA. The lender shall manage, administer, and enforce the loan documents in its own name and also on behalf of itself and the RFA, including, without limitation, the right to accelerate first mortgage loans on default and to foreclose or otherwise enforce remedies against the borrower.

Subp. 5. **Lender notification.** The lender shall promptly notify the RFA of occurrences that substantially affect the security, collection, or enforcement of any first mortgage loan. The lender shall also notify the seller of any defaults that remain unresolved over 45 days.

Subp. 6. **Prior written consent.** The lender shall obtain the prior written consent of the borrower and the RFA before:

- A. making or consenting to a release, substitution, or exchange of collateral that reduces the aggregate value of the collateral;

B. waiving a claim against the borrower or a guarantor, surety, or obligor in connection with the indebtedness; or

C. modifying or waiving a term of the notes or related instruments evidencing or securing the first mortgage loan.

Statutory Authority: *MS s 41B.07*

History: *18 SR 502*

1653.0100 PARTICIPATION REPURCHASE.

An originating lender is under no obligation to repurchase any RFA participation interest in a restructure first mortgage loan covered by parts 1653.0010 to 1653.0110 except as provided in this part.

A lender may, at its option and upon written approval by the RFA, repurchase an RFA participation interest at any time.

A lender must repurchase the RFA participation interest whenever the first mortgage loan is paid in full or refinanced.

A lender must repurchase the RFA participation interest if the lender has made misrepresentations or is aware that the applicant has made them; or fails to perform its obligations under the participation agreement; and has received written notice from the RFA, and has not corrected the representation or performance under the notice.

Any repurchase shall be for the principal balance of the RFA participation plus accrued interest and any penalties or costs incurred by the RFA to secure repurchase.

Statutory Authority: *MS s 41B.07*

History: *18 SR 502*

1653.0110 REVIEW OF LOAN AND COLLATERAL.

Subpart 1. **Inspection.** At any time during the term of a restructure first mortgage loan, the RFA or the state legislative auditor may inspect the books, records, documents, and accounting practices of the lender relative to the loan to determine compliance with the terms and conditions of the loan and the participation agreement. Inspections must be during the lender's normal business hours. The lender shall allow the RFA to copy any documents relating to the first mortgage loan and the RFA participation.

Subp. 2. **Collateral.** The lender and the RFA may physically inspect the collateral securing the first mortgage loan upon notice to the borrower. Inspections must be conducted at a reasonable time.

Statutory Authority: *MS s 41B.07*

History: *18 SR 502*