

1 Department of Agriculture

2

3 Adopted Permanent Rules Relating to RFA Seller-Sponsored Loans

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5 Rules as Adopted

6 SELLER-SPONSORED LOAN PARTICIPATION PROGRAM

7 1651.0011 APPLICABILITY AND PURPOSE.

8 Subpart 1. **Applicability.** Parts 1651.0011 to 1651.0101  
9 establish the criteria and procedures to be used by the RFA in  
10 administering the seller-sponsored loan participation program  
11 authorized by Minnesota Statutes, chapter 41B.

12 Subp. 2. **Purpose.** The purpose of the RFA seller-sponsored  
13 loan participation program and for the issuance of bonds to  
14 finance or provide security for the program is to preserve and  
15 develop the state's agricultural resources. This is  
16 accomplished by extending credit on real estate security through  
17 the purchase of participation interests in first priority  
18 mortgage farm real estate loans. Loans to persons entering or  
19 reentering farming and meeting the eligibility criteria in this  
20 chapter are eligible for participation. Under this program, the  
21 eligible seller of a farm must partially finance the sale of the  
22 farm through a loan to an eligible borrower. An eligible lender  
23 and the state, acting through the RFA, shall jointly provide the  
24 remainder of the financing needed by the borrower.

25 1651.0021 DEFINITIONS.

26 Subpart 1. **Scope.** The definitions in this part apply to  
27 parts 1651.0011 to 1651.0101.

28 Subp. 2. **Agricultural purposes or farming.** "Agricultural  
29 purposes" or "farming" means the cultivation or use of land or  
30 land improvements and personal property for the production of  
31 agricultural crops, vegetables, fruit, or other horticultural  
32 crops, forest products, bees and apiary products, livestock,  
33 dairy animals, dairy products, poultry or poultry products,  
34 fur-bearing animals, aquaculture, hydroponics, exotic species of  
35 plants or animals, or other agriculturally related products.

1 "Agricultural purposes" and "farming" include:

2           A. the use of wetlands, pasture, forest land,  
3 wildlife, and homestead and other real property associated with  
4 the agricultural use of land; and

5           B. the practices and facilities needed to conserve  
6 soil and water, protect human and animal health, have a safe and  
7 efficient operation, and meet local, state, and federal laws and  
8 regulations relating to the operation of a farm.

9           Subp. 3. **Applicant.** "Applicant" means a potential  
10 borrower who submits an application to the RFA through an  
11 eligible lender.

12           Subp. 4. **Application.** "Application" means the application  
13 for the seller-sponsored loan participation in the form provided  
14 by the RFA.

15           Subp. 5. **Assets.** "Assets" mean property, real or  
16 personal, tangible or intangible, and all contract rights of  
17 value that constitute assets, including cash crops or feed on  
18 hand, livestock held for sale, breeding stock, marketable bonds  
19 and securities, securities not readily marketable, accounts  
20 receivable, notes receivable, cash invested in growing crops,  
21 cash value of life insurance, machinery and equipment, cars and  
22 trucks, farm and other real estate including life estates and  
23 personal residence, and the value of a beneficial interest in  
24 trusts.

25           Subp. 6. **Borrower.** "Borrower" means the person or persons  
26 liable on a first mortgage loan made under this program. A  
27 borrower may also be a domestic family farm corporation as  
28 defined in Minnesota Statutes, section 500.24.

29           Subp. 7. **Collateral.** "Collateral" means all assets  
30 pledged as security for a borrower's obligation under a first  
31 mortgage loan made under this program. It includes all  
32 instruments, personal and real property, guaranties, money,  
33 letters of credit, and assignments and pledges of money or  
34 property for or on which the lender has a security interest or  
35 lien.

36           Subp. 8. **Executive Director.** "Executive director" means

1 the executive director of the RFA or any other officer  
2 authorized to act on behalf of the RFA board or its executive  
3 director.

4 Subp. 9. First mortgage loan. "First mortgage loan" means  
5 a loan secured by a first priority real estate mortgage on a  
6 farm, made by an eligible lender to an eligible borrower for the  
7 purchase of the farm, that is offered to the RFA for  
8 participation under the seller-sponsored program, and in which  
9 the RFA purchases a participation.

10 Subp. 10. Liabilities. "Liabilities" means the debts or  
11 other obligations for which an applicant is responsible,  
12 including: accounts payable, notes or other indebtedness,  
13 taxes, rent, amounts owed on real estate contracts or mortgages,  
14 judgments, and accrued interest payable.

15 Subp. 11. Net worth. "Net worth" means the total value of  
16 an applicant's assets and the assets of the applicant's spouse  
17 and dependents, less the liabilities of the same parties.

18 Subp. 12. Note and loan agreement. "Note and loan  
19 agreement" means the form provided by the RFA that is signed by  
20 a borrower evidencing the terms of the first mortgage loan and  
21 the borrower's obligation to repay the loan.

22 Subp. 13. Participation agreement. "Participation  
23 agreement" means the document entered into between the RFA and  
24 an approved lender that establishes the relationship between the  
25 parties and the terms and conditions of first mortgage loans to  
26 be offered to the RFA for participation under the  
27 seller-sponsored loan participation program.

28 Subp. 14. RFA. "RFA" means the Rural Finance Authority  
29 established by Minnesota Statutes, section 41B.025.

30 Subp. 15. RFA participation. "RFA participation" means  
31 the RFA's undivided interest in the principal of a first  
32 mortgage loan, all payments arising under the loan, the first  
33 security real estate mortgage securing the loan, any other  
34 collateral pledged to secure the loan, and the first mortgage  
35 loan documents.

36 Subp. 16. RFA seller-sponsored loan participation program;

1 seller-sponsored program; or seller-assisted loan participation  
2 program. "RFA seller-sponsored loan participation program,"  
3 "seller-sponsored program," or "seller-assisted loan  
4 participation program" means the RFA program for the purchase of  
5 participation interests in first security mortgage real estate  
6 loans made under parts 1651.0011 to 1651.0101.

7 Subp. 17. Seller. "Seller" means the person or persons  
8 selling a farm under the seller-sponsored program.

9 Subp. 18. Seller-sponsor's loan commitment form or  
10 seller-assisted loan commitment form. "Seller-sponsor's loan  
11 commitment form" or "seller-assisted loan commitment form" means  
12 the form provided by the RFA that is signed by a seller  
13 evidencing the seller's understanding of the seller-sponsored  
14 program, its rules, and the seller's commitment to make a loan  
15 to an applicant and to subordinate the seller's loan to the  
16 first mortgage loan made by an eligible lender.

17 1651.0031 SELLER ELIGIBILITY.

18 To qualify as an eligible seller under the program, a  
19 seller must meet the following criteria:

20 A. a seller must be a natural person, a partnership,  
21 or a family farm corporation as defined in Minnesota Statutes,  
22 section 500.24, selling a farm located within Minnesota;

23 B. the seller must not be a current or former  
24 participant in the family farm security program under Minnesota  
25 Statutes, chapter 41;

26 C. the seller must complete a seller-assisted loan  
27 commitment form certifying that the seller will partially  
28 finance the purchase of the farm property by making a loan to  
29 the borrower;

30 D. the seller's loan to the borrower must be for the  
31 additional required financing necessary to complete the  
32 transaction after the down payment, if any;

33 E. the seller's financing made to the borrower must  
34 be subordinated to the first mortgage loan of the lender in  
35 which the RFA is a participant; and

1 F. the seller must disclose all of the terms and  
2 conditions of the seller-assisted sale in a written purchase  
3 agreement to be given to the lender at the time of application.

4 1651.0041 BORROWER ELIGIBILITY.

5 Subpart 1. Criteria. To be eligible for assistance under  
6 the seller-sponsored program, all applicants must meet the  
7 criteria in subpart 2. Applicants must also meet the  
8 requirements of either subpart 3 or 4.

9 Subp. 2. General eligibility criteria. Each applicant  
10 must:

11 A. be a resident of Minnesota;

12 B. certify that the applicant or one of the  
13 applicants will be the principal operator of the farm and will  
14 make farming their principal occupation, and that the farm being  
15 purchased will be used for agricultural purposes only;

16 C. not be a current or previous participant in the  
17 family farm security program under Minnesota Statutes, chapter  
18 41;

19 D. certify that the applicant is eligible for the  
20 program;

21 E. submit the correct fees as established in  
22 Minnesota Statutes, section 41B.03, subdivision 6; and

23 F. not be a current or previous participant in the  
24 RFA Restructure II Program.

25 Subp. 3. Beginning farmer criteria. In addition to the  
26 requirements of subpart 2, a beginning farmer applicant must:

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

29 B. have a financial need for the loan and the ability  
30 to repay the first mortgage loan;

31 C. agree to enroll and continue in a farm business  
32 management program approved by the commissioner of agriculture  
33 in accordance with Minnesota Statutes, section 41B.03,  
34 subdivision 3, paragraph (a), clause (7), for the first five  
35 years of the loan, if an approved program is available within 45

1 miles from the borrower's residence;

2 D. ~~agree-to-file-a~~ visit the soil and water  
3 ~~conservation plan-approved-by~~ district office or the soil  
4 natural resources conservation service in the county where the  
5 land is located to inquire about the soil and water conservation  
6 needs for the identified farm property; and

7 E. have a total net worth not to exceed the amount  
8 established pursuant to Minnesota Statutes, section 41B.03,  
9 subdivision 3, the current amount of which is available from the  
10 RFA office.

11 Subp. 4. **Reentry farmer criteria.** In addition to the  
12 requirements of subpart 2, a reentry farmer applicant must:

13 A. fulfill the criteria in subpart 3, items A to D;

14 B. have a total net worth not to exceed the amount  
15 established pursuant to Minnesota Statutes, section 41B.03,  
16 subdivision 3, excluding the value of the applicant's  
17 residential structure;

18 C. have previously owned and operated a farm; and

19 D. not currently own any real estate that is used for  
20 an agricultural purpose other than a homestead as defined by  
21 Minnesota Statutes, chapter 510.

22 1651.0051 LENDER ELIGIBILITY.

23 Subpart 1. **Statutory eligibility.** A bank, credit union,  
24 or savings association chartered by the state or federal  
25 government, a subdivision of the Farm Credit System (Agri Bank),  
26 the Federal Deposit Insurance Corporation, or an insurance  
27 company, fund, or other financial institution doing business as  
28 an agricultural lender within the state may apply to the RFA for  
29 certification as an approved lender.

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

34 Subp. 3. **Participation agreement.** Before offering first  
35 mortgage loans to the RFA for participation, each approved

1 lender must enter into an RFA participation agreement. The  
2 agreement must specify the contractual relationship between the  
3 parties and the terms and conditions of first mortgage loans to  
4 be made by the lender under the seller-sponsored program and  
5 offered to the RFA for participation.

6 1651.0061 APPLICATION PROCESS AND OFFER OF PARTICIPATION.

7 Subpart 1. Request for a first mortgage loan. A  
8 sponsoring seller and an applicant must jointly present an  
9 initial proposal to an approved lender. The proposal must  
10 include a signed and dated purchase agreement and a completed  
11 seller-sponsor's loan commitment form evidencing the seller's  
12 intent to make a loan to the applicant and agreeing to  
13 subordinate their financing as required under the program.

14 Subp. 2. Lender determination. The lender shall review  
15 the proposal and determine the creditworthiness of the applicant  
16 and the value of the collateral to be used to secure the loan.  
17 If the lender agrees to make a first mortgage loan to the  
18 applicant, the lender and the applicant shall jointly prepare an  
19 application and the required loan documents described in the  
20 application and master participation agreement.

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

25 1651.0071 RFA REVIEW, NOTICE, AND APPEAL.

26 Subpart 1. RFA review. The RFA shall accept or reject a  
27 lender's offer to participate in the loan within 30 business  
28 days after receipt of the lender's offer. If the documentation  
29 is not sufficient to make a determination, the RFA may request  
30 additional information to establish creditworthiness and  
31 eligibility of the applicant.

32 Subp. 2. RFA acceptance. The RFA shall accept an offer if:

- 33 A. the seller is eligible;  
34 B. the applicant is eligible;  
35 C. the applicant demonstrates an ability to repay the

1 first mortgage loan and other obligations based on the financial  
2 information submitted under part 1651.0061, subpart 2;

3 D. the sale price of the property is not  
4 substantially in excess of its fair market value; and

5 E. the RFA has sufficient funds available to purchase  
6 a participation in the loan.

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

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

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

24 1651.0081 LOAN CLOSING, PURCHASE OF PARTICIPATION, AND LOAN  
25 MANAGEMENT.

26 Subpart 1. Closing. Upon receiving notification of RFA  
27 acceptance, the lender shall close the first mortgage loan. At  
28 the time of closing, the sponsoring seller must present all  
29 legal documents relating to the sale, including the seller's  
30 proposed financing for the seller's loan to the applicant. The  
31 lender must record and cross-reference all documents relating to  
32 the loan, including the RFA note and loan agreement. The lender  
33 is not responsible for preparation of the seller's financing,  
34 but must record the seller's financing to ensure that it is  
35 recorded in a secondary security position. The lender must



1 notify the RFA that the loan is closed and recorded by  
2 certifying and submitting the original RFA application and  
3 copies of the recorded documents and final title opinion to the  
4 RFA.

5 Subp. 2. Payment. Within ten business days of receipt of  
6 written notice under subpart 1 that the first mortgage loan is  
7 closed and recorded, the RFA shall initiate payment to the  
8 lender for the RFA's participation interest in the loan.

9 Subp. 3. Participation certificate. Within five working  
10 days after receipt of finally collected funds, the lender shall  
11 complete and return a participation certificate as provided by  
12 the RFA witnessing the RFA's undivided pro rata interest in the  
13 seller-sponsored first mortgage loan.

14 Subp. 4. Loan management. The lender shall manage the  
15 first mortgage loan, including the RFA participation interest,  
16 with the degree of care and diligence usually maintained by  
17 agricultural real estate lenders. The lender shall have custody  
18 and control of all loan documents except the original  
19 application which must be retained by the RFA.

20 The lender shall manage, administer, and enforce the loan  
21 documents in its own name and also on behalf of itself and the  
22 RFA, including, without limitation, the right to accelerate a  
23 seller-sponsored first mortgage loan on default and to foreclose  
24 or otherwise enforce remedies against the borrower.

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

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

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

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

1 indebtedness; or

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

5 Subp. 7. **Limitations on responsibility.** Neither the  
6 lender nor the RFA is in any way responsible for the  
7 administration of the seller-sponsor's loan, or the protection  
8 of any of the seller's legal rights.

9 1651.0091 PARTICIPATION REPURCHASE.

10 A. An originating lender is under no obligation to  
11 repurchase any RFA participation interest in a seller-sponsored  
12 first mortgage loan except as provided in this part.

13 B. A lender may, at its option and upon written  
14 approval by the RFA, repurchase a RFA participation interest at  
15 any time.

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

19 D. A lender must repurchase the RFA participation  
20 interest if the lender has made misrepresentations or fails to  
21 perform its obligations under the participation agreement, has  
22 received written notice from the RFA, and has not corrected the  
23 representation or performance under the notice.

24 E. Any repurchase must be for the principal balance  
25 of the RFA participation plus accrued interest and any penalties  
26 or costs incurred by the RFA to secure repurchase.

27 1651.0101 REVIEW OF LOAN AND COLLATERAL.

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

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

5 REPEALER. Minnesota Rules, parts 1651.0010; 1651.0020;  
6 1651.0030; 1651.0040; 1651.0050; 1651.0060; 1651.0070;  
7 1651.0080; 1651.0090; and 1651.0100, are repealed.