

1 Department of Agriculture

2

3 Adopted Permanent Rules Relating to RFA Restructure

4 Participation Program

5

6 Rules as Adopted

7

CHAPTER 1653

8

RURAL FINANCE AUTHORITY

9

RESTRUCTURE II PROGRAM

10 1653.0011 APPLICABILITY AND PURPOSE.

11 Subpart 1. **Applicability.** Parts 1653.0011 to 1653.0111
12 establish the criteria and procedures to be used by the RFA in
13 administering the restructure participation program authorized
14 by Minnesota Statutes, section 41B.04.

15 Subp. 2. **Purpose.** The purpose of the RFA restructure II
16 program and the issuance of bonds to finance or provide security
17 for the program is to preserve and develop the state's
18 agricultural resources. This is accomplished by extending
19 credit on real estate security through the purchase of
20 participation interests in first priority mortgage farm real
21 estate loans.

22 1653.0021 DEFINITIONS.

23 Subpart 1. **Scope.** The definitions in this part apply to
24 parts 1653.0011 to 1653.0111 and the master participation
25 agreement.

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

1 with the agricultural use of land. "Agricultural purposes" also
2 includes the practices and facilities needed to conserve soil
3 and water, protect human and animal health, have a safe and
4 efficient operation, and meet local, state, and federal laws,
5 rules, and regulations relating to the operation of a farm.

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

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

12 Subp. 5. **Annual gross income.** "Annual gross income" means
13 the total of all income earned on or off the farm for the
14 calendar year.

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

18 Subp. 7. **Application.** "Application" means the application
19 for the restructure loan participation in the form provided by
20 the RFA.

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

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

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

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

5 Subp. 12. Liabilities. "Liabilities" means debts or other
6 obligations for which an applicant is responsible, including
7 accounts payable, notes or other indebtedness owed, taxes, rent,
8 amount owed on real estate contracts or mortgages, judgments,
9 and accrued interest payable.

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

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

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

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

27 Subp. 17. RFA. "RFA" means the Rural Finance Authority
28 established by Minnesota Statutes, section 41B.025.

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

35 Subp. 19. RFA restructure II program. "RFA restructure II
36 program" means the RFA program redefined on or after July 1,

1 1993, for the purchase of a participation interest in first
2 mortgage real estate loans made to eligible borrowers so that
3 the borrowers may reorganize their agricultural debt.

4 1653.0031 BORROWER ELIGIBILITY.

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

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

9 A. be a resident of Minnesota;

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

14 C. not be a current or previous participant in an RFA
15 farm debt reorganization program;

16 D. have a net worth of \$400,000 or less;

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

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

21 G. agree to visit the local soil and water
22 conservation service office in the county where the land is
23 located to inquire about the soil and water conservation needs
24 for the identified farm property; and

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

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

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

31 B. have a debt-to-asset ratio greater than 50
32 percent;

33 C. have projected annual expenses that do not exceed
34 95 percent of projected annual income; and

35 D. demonstrate difficulty in paying the applicant's

1 debt without reorganization.

2 1653.0041 COLLATERAL REQUIREMENTS.

3 The RFA may participate only in loans that do not exceed 80
4 percent of the appraised value of the real estate offered for
5 collateral. Additional collateral may be required based on the
6 depreciability and saleability of the collateral and
7 creditworthiness of the applicant.

8 1653.0051 APPRAISAL.

9 The appraisal to determine appraised value must be
10 completed by a person with knowledge of agricultural appraising
11 that is approved by both the lender and the RFA. An appraisal
12 must be completed in a manner approved by the appraisal industry
13 and must contain comparable sales information. If comparable
14 sales information is not available, either the cost approach or
15 the income approach must be used.

16 1653.0061 LENDER ELIGIBILITY.

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

24 Subp. 2. **Approval.** If a lender demonstrates its ability
25 to originate and service agricultural real estate loans, the RFA
26 shall designate the lender as an approved lender for purposes of
27 RFA programs.

28 Subp. 3. **Participation agreement.** Before offering first
29 mortgage loans to the RFA for participation, each approved
30 lender must enter into an RFA master participation agreement
31 specifying the relationship between the parties and the terms
32 and conditions of first mortgage loans to be made by the lender
33 under the restructure participation program and offered to the
34 RFA for participation.

1 1653.0071 APPLICATION PROCESS AND OFFER OF PARTICIPATION.

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

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

13 Subp. 3. Offer. The lender, as the originator of the
14 first mortgage loan, shall present a completed application and
15 loan documents to the RFA. Presentation of the documents
16 constitutes an offer to sell a participation interest in the
17 loan.

18 1653.0081 RFA REVIEW, NOTICE, APPEAL.

19 Subpart 1. RFA review. Within 30 days after receipt of a
20 lender's offer the RFA shall accept or reject the lender's offer
21 to participate in the loan. If the documentation is not
22 sufficient to make a determination, the RFA may request
23 additional information to establish the creditworthiness and
24 eligibility of an applicant.

25 Subp. 2. RFA acceptance. The RFA shall accept
26 applications if:

27 A. the applicant meets all eligibility criteria;

28 B. the applicant demonstrates an ability to repay the
29 first mortgage loan and other obligations;

30 C. collateral offered as security for the first
31 mortgage real estate loan is sufficient to protect the state's
32 interests; and

33 D. the RFA has sufficient funds available to purchase
34 a participation in the loan.

35 Subp. 3. RFA notice. The RFA shall notify the lender in

1 writing whether or not an offer is accepted. If the offer is
2 not accepted, the notice must state the reasons.

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

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

17 1653.0091 LOAN CLOSING, PURCHASE OF PARTICIPATION, AND LOAN
18 MANAGEMENT.

19 Subpart 1. **Closing.** Upon receiving notification of RFA
20 acceptance, the lender shall close the first mortgage loan. The
21 lender must record security documents and may cross-reference
22 all documents relating to the loan including the RFA note and
23 loan agreement. The lender must notify the RFA that the loan is
24 closed and recorded by certifying and submitting the original
25 RFA application, and submit a copy of the note and loan
26 agreement, copies of recorded documents, and the final title
27 opinion.

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

32 Subp. 3. **Participation certificate.** Within five business
33 days after the receipt of finally collected funds, the lender
34 shall complete and return a participation certificate as
35 provided by the RFA witnessing the RFA's undivided pro rata

1 interest in the first mortgage loan.

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

13 Subp. 5. Lender notification. The lender shall promptly
14 notify the RFA of occurrences that substantially affect the
15 security, collection, or enforcement of any first mortgage loan.

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

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

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

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

27 1653.0101 PARTICIPATION REPURCHASE.

28 An originating lender is under no obligation to repurchase
29 an RFA participation interest in a restructure first mortgage
30 loan covered by parts 1653.0011 to 1653.0111 except as provided
31 in this part.

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

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

1 A lender must repurchase the RFA participation interest if
2 the lender:

3 A. has made misrepresentations or is aware that the
4 applicant has made them or fails to perform its obligations
5 under the participation agreement;

6 B. has received written notice from the RFA; and

7 C. has not corrected the representation or
8 performance under the notice.

9 A repurchase under this part must be for the principal
10 balance of the RFA participation plus accrued interest and any
11 penalties or costs incurred by the RFA to secure repurchase.

12 1653.0111 REVIEW OF LOAN AND COLLATERAL.

13 Subpart 1. Inspection. At any time during the term of a
14 restructure first mortgage loan, the RFA or the state
15 legislative auditor may inspect the books, records, documents,
16 and accounting practices of the lender relative to the loan to
17 determine compliance with the terms and conditions of the loan
18 and the participation agreement. An inspection must be during
19 the lender's normal business hours. The lender must allow the
20 RFA to copy any documents relating to the first mortgage loan
21 and the RFA participation.

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

26 REPEALER. Minnesota Rules, parts 1653.0010; 1653.0020;
27 1653.0030; 1653.0040; 1653.0050; 1653.0060; 1653.0070;
28 1653.0080; 1653.0090; 1653.0100; and 1653.0110, are repealed.