

businesses. Typically, a lender will arrange forward pricing commitments with investors, in which the investor agrees to purchase the loan at a specified price if the lender delivers within a specific time. In this way, the lender knows its yield and can price accordingly. The borrower receives the fixed rate financing at competitive rates, which enables it to budget its interest costs more accurately. This provides the borrower with a reasonably stable payment while protecting the lender from interest rate risk.

The Agency is proposing to implement by regulation the authority to solicit for an independent party to act as a Fiscal and Transfer Agent (FTA) to provide central registration and act as the paying/transfer agent and administrative agent for secondary market transactions. The FTA will not be eligible to buy and sell loans. The FTA will handle the mechanical aspects of secondary market operations. When this regulation becomes final, the Agency will enter into a contract with an independent party to act as the FTA. When that contract is in place, a **Federal Register** Notice will be issued to the public announcing the selection date of the FTA as well as an Implementation Date for processing secondary market sales under this regulation.

The FTA will be responsible to serve as a central registry of owners of guaranteed loans (Holders); receive, examine, and safe keep documents received in connection with the sale; deliver to each registered holder the Certificate which evidences ownership interest; receive remittances from lenders, with respect to Guaranteed Interests; make appropriate payments to the Registered Holder together with a Statement of Account; provide the Agency with a statement of the outstanding balances of Guaranteed Loans sold on the secondary market as they appear from the FTA's books and records; and furnish the Agency with timely and current reports on program activity as directed by the Agency and which may be changed from time to time as the Agency may require. In addition, the FTA will be responsible to check key information on the settlement documents against Agency and lender records, to insure that they are accurate, and resolve any discrepancies before settlement. It is the FTA's responsibility to check to ensure that the loan has not been previously sold by the lender and/or repurchased prior to settlement. If the loan was repurchased due to default, the FTA will be responsible to obtain appropriate documentation from the lender and notify the Agency if the loan has been previously sold. If a loan was

repurchased and subsequently sold, the FTA is responsible to examine the payment history for the required 12 monthly payments since default and repurchase.

For initial sales, the FTA is responsible to monitor the first four payments of all loans sold to determine that the borrower makes payments pursuant to repayment agreements. For newly sold loans, the FTA is responsible for balance and interest paid-to-date accuracy. If the first payment is submitted incorrectly, the FTA will contact the lender and review the proper procedure for submission of payment information. The FTA will supply explanatory materials to lenders to assist with the preparation of payment information. The FTA will check all loan payments received to determine if the lender's principal balance and paid-to-date information agree with FTA records.

In order to insure that the Agency's financial interest is protected, the FTA will maintain computerized, on-line default and prepayment files. The FTA will generate a monthly Late Payment Report for each respective servicing office which lists loans 60 days or more in default. The FTA will generate additional loan status reports from time to time as directed by the Agency. The FTA will provide to each servicing office, in a format approved by the Agency, a report of initial sales approved during the previous month. The FTA is responsible for sending bills to lenders to collect fees as are authorized by regulation and sending written instructions to the lender on the correct application of loan payments if necessary. The FTA is responsible to provide technical assistance to the Agency and maintain an inventory of regulations, forms, and program guides.

The FTA is responsible to operate and maintain an in-house system consisting of all hardware, software, and procedures that will be used during the term of the agreement by the FTA to service the Secondary Market Program. As part of this program, the FTA will agree to provide the Agency with financial information as specified in contract on loan sales and is responsible for the accuracy of these records. The FTA will cooperate in the transfer of the FTA functions from it to a successor FTA upon termination or expiration of this contract, including all databases pertinent to Loan Sales. The FTA is responsible to provide timely answers to inquiries from investors, broker-dealers, and lenders concerning sales.

The FTA is responsible to prepare, authenticate, and deliver Certificates to Registered Holders or their

representatives. The FTA will receive from purchasers notifications of pending sales of Guaranteed Interests and monitor the progress of such sales. The FTA will establish and maintain a trust account on behalf of the Agency. The purpose of this account is to provide funds for the timely payment of principal and interest for securities issued under the program.

The FTA will be required to carry a fidelity bond or similar insurance in an amount commensurate with the level of funds in possession of the FTA. The bond shall be in place or evidence of a legally-binding binder in place for this coverage shall be provided by the FTA prior to contract award, preferably the required information will be provided with the proposal.

The FTA will be responsible to provide sufficient staff to act as a liaison between program participants for the purpose of handling any requests relating to secondary market sales. The FTA will be responsible to insure that the customer service function operates properly by developing, operating, and staffing an on-line customer service inquiry system that will enable customer service representatives to log each incoming telephone call and letter and track its status. Specific information as required by the agency and actions taken as a result of the inquiry must be retained for the duration of the contract and is subject to review by the Agency.

Upon awarding of the contract, the FTA is responsible for development of a Secondary Market Program Guide. The guide should describe the market for loans sold on an individual basis and the role of the FTA. The remainder of the guide may be devoted to special topics and reference materials.

The contract with the FTA will be effective on the date signed and expire 1 year after that date. The Agency shall retain the right to extend the contract for up to 4 additional years.

Due to the declining level of resources available, the Agency has determined that the most efficient way to address the record keeping problems and implement secondary market policy decisions is to require the use of the FTA. The FTA will serve as a centralized, computerized record keeping facility for the Agency. The Agency will have electronic access to information regarding the owner of the guaranteed portion, terms of the sale, accounting of the payment flow, etc.

The Small Business Administration (SBA) has utilized the FTA program since the mid-1980s and found that use of the program has resulted in several advantages: (1) Greater stability in the secondary market, (2) increased