

permit balloon payments, but retaining the not fully secured position (or no security as long as the lender's security position is not diminished) of the current rule would increase FSA's exposure on loss claims and would be inconsistent with Government policy as expressed in Office of Management and Budget Circular A-129, November 29, 2000, Appendix A, II 3 (OMB Circular A-129). OMB Circular A-129 requires that agencies control the risk and cost of their credit programs and follow sound financial practices which include requiring lenders to have a substantial stake in full repayment in accordance with the loan. See 65 FR 71215. Therefore, FSA proposes to require loans restructured with balloon payments to be fully secured when the balloon payment becomes due.

The sixth proposed change would clarify § 762.149(d) and (i), to provide that packager fees and outside consultant fees for servicing guaranteed loans are not covered by the guarantee, and will not be paid in either the estimated or final loss claim.

Lenders should note that §§ 762.105 and 762.106 contain eligibility requirements for lenders participating in the guaranteed loan program, as well as a description of the classifications of lenders, and specific requirements for lenders in each classification. Under these sections, all lenders are required to have experience in making and servicing agricultural loans and have the capability to make and service the loan for which a guarantee is requested. A lender participating in the guaranteed loan program, therefore, should have adequately trained loan officers and analysts on staff to make and service guaranteed loans and should not usually have to rely on outside or contracted individuals to service their loans. Therefore, FSA will not pay any packager or servicing fees for guaranteed loans. At times, a lender may find it necessary to hire outside help to service its loan portfolio, or may find it financially advantageous to have someone from outside the lender analyze the loan portfolio; however the cost of these services will not be passed on to the Government in the event of a loss. It was never the intent of the Agency to cover such fees, and if the Agency were to cover such fees it would be tantamount to paying the lender's labor costs. The Lender's Agreement specifies that liquidation costs do not include the lender's in-house expenses.

The seventh proposed change would clarify § 762.149(h)(3) to specify that if a lender bids at a foreclosure sale, their bid will be either the net recovery value plus the prior lien amount, or the

unpaid balance of the loan plus the prior lien amount, whichever is less. Under current regulations the lender has the authority to determine the amount it will bid at the foreclosure sale, starting at the amount which is the lesser between the net recovery value or the unpaid loan balance. Because the lender eventually could bid more than the net recovery value of the property, other potential bidders are discouraged from bidding, thus increasing the probability that the lender will take title to the property. If a lender is then unable to sell the security for at least the net recovery value, plus the expenses of holding and selling the property, under current regulations the lender's loss claim increases accordingly. After this excess bid amount is applied to the borrower's account, the loss claim amount is negotiated, which discourages the lender from taking responsibility for the excess bid.

The proposed rule, which limits the bid amount to the lesser of the net recovery value plus the prior lien or the unpaid loan balance plus the prior lien, will result in decreasing the Government's losses. Decreasing the bid amount will encourage potential bidders to bid on the property, thus increasing the likelihood of reducing the lender's loss claim. In situations where the lender bids an amount more than the lesser of the net recovery plus the prior lien, or the unpaid balance of the debt plus the prior lien, this action may be considered negligent servicing. To the extent that negligent servicing reduces the recovery on the loan, the resulting loss claim will be reduced. The Agency believes that the proposed rule will give lenders the incentive to maximize recovery, thus decreasing Government losses.

List of Subjects in 7 CFR Part 762

Agriculture, Loan programs—
agriculture, Reporting and
recordkeeping requirements.

Accordingly, 7 CFR part 762 is proposed to be amended as follows:

PART 762—GUARANTEED FARM LOANS

1. The authority citation for part 762 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

2. Amend § 762.140 by revising paragraph (d) to read as follows:

§ 762.140 General servicing responsibilities.

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(d) *Loan installments.* In the normal course of business, loan installments may be paid according to lien priority,

payment due date, and where applicable, in accordance with an approved cash flow projection. When it becomes evident that a borrower will be unable to make all installments, guaranteed loan installments will be paid before unguaranteed loans held by the same lender.

3. Amend § 762.142 by designating paragraph (c)(3)(ii) as (c)(3)(iii) and adding a new paragraph (c)(3)(ii) to read as follows:

§ 762.142 Servicing related to collateral.

* * * * *

(c) * * *

(3) * * *

(ii) The lender may, with written Agency approval, subordinate its interest in basic security in cases where the subordination is required to allow another lender to refinance an existing prior lien, no additional debt is being incurred, and the lender's security position will not be adversely affected by the subordination.

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4. Amend § 762.144 by revising paragraph (c)(3)(iii) to read as follows:

§ 762.144 Repurchase of guaranteed portion from a secondary market holder.

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(c) * * *

(3) * * *

(iii) In the case of a request for Agency purchase, the government will only pay interest that accrues for up to 90 days from the date of the demand letter to the lender requesting the repurchase. However, if the holder requested repurchase from the Agency within 60 days of the request to the lender and for any reason not attributable to the holder and the lender, the Agency cannot make payment within 30 days of the holder's demand to the Agency, the holder will be entitled to interest to the date of payment.

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5. Amend § 762.145 by revising paragraphs (b)(4) and (b)(7) to read as follows:

§ 762.145 Restructuring guaranteed loans.

* * * * *

(b) * * *

(4) Loans secured by real estate and/or equipment can be restructured using a balloon payment, equal installments, or unequal installments. Under no circumstances may livestock or crops alone be used as security for a loan to be rescheduled using a balloon payment. If a balloon payment is used, the projected value of security must indicate that the loan will be fully secured when the balloon payment becomes due. The projected value will