

(Agreement) as the buyer cannot have caused the Agency a loss by receiving debt forgiveness on more than three occasions on or prior to April 4, 1996, or on any occasion after April 4, 1996, on all or a portion of any direct or guaranteed loan made under the authority of the CONACT as amended, by debt write-down or write-off; compromise, adjustment, reduction, or charge-off under the provisions of section 331 of the CONACT; discharge in bankruptcy; or through payment of a guaranteed loss claim.

(4) When the guarantee is issued, the buyer and anyone who will execute the Agreement as the buyer must not be delinquent on any Federal debt, other than a debt under the Internal Revenue Code of 1986, nor be a Federal judgment debtor on a non-tax debt.

(5) The buyer must be a citizen of the United States, United States non-citizen national, or a qualified alien under applicable Federal immigration laws. If the buyer is an entity, the majority of the entity must be owned by members meeting the citizenship test.

(6) The buyer and anyone who will execute the Agreement as the buyer must possess the legal capacity to enter into a legally binding agreement.

(7) The buyer, in past or present dealings with the Agency, must not have provided the Agency with false or misleading documents or statements.

(8) The buyer and anyone who will execute the Agreement as the buyer must not have been convicted of planting, cultivating, growing, producing, harvesting, or storing a controlled substance under Federal or State law within the last five crop years. "Controlled substance" is defined at 21 CFR 1308. Buyers must certify on the application that the buyer has not been convicted of such a crime within the relevant period.

(9) The buyer and anyone who will execute the Agreement as the buyer must have an acceptable credit history demonstrated by satisfactory debt repayment. A history of failures to repay past debts as they came due (including debts to the Internal Revenue Service) when the ability to repay was within their control will demonstrate an unacceptable credit history. Unacceptable credit history will not include isolated instances of late payments (which do not represent a pattern and were clearly beyond their control) or the lack of a credit history.

(10) The buyer must be unable to obtain sufficient credit elsewhere without a guarantee to finance actual needs at reasonable rates and terms.

(b) For entity buyers, the following additional eligibility criteria apply:

(1) The collective ownership interest of all entity members may exceed the family farm definition limits only if all of the entity members are related by blood or marriage, all of the entity members are or will be operators of the farm, and the majority interest holders meet the above requirements relating to citizenship, false or misleading information, credit history, and operation and ownership of the farm or ranch.

(2) Each entity member's ownership interest may not exceed the family farm definition.

(3) The entity must be controlled by farmers or ranchers engaged primarily and directly in farming or ranching in the United States after the guarantee is issued; and

(4) The entity members can not be entities themselves.

(5) The entity must be authorized to own and operate a farm in the State(s) in which the farm is located.

(6) If the entity members holding a majority interest are related by blood or marriage, at least one member of the entity also must operate the family farm and at least one member of the entity must own the family farm.

(7) If the entity members holding a majority interest are not related by blood or marriage, the entity members holding a majority interest must operate the family farm and entity members holding a majority interest or the entity must own the family farm.

V. Financial Feasibility

(a) The proposed operation described on Form FSA-431-2 or similar plan acceptable to FSA must project a feasible plan. The projected income and expenses of the buyer and operation used to determine a feasible plan must be based on the buyer's proven record of production and financial management. For those farmers without a proven history, a combination of any actual history and any other reliable source of information which is agreeable to the buyer and the Agency will be used. The cash flow budget analyzed to determine a feasible plan must represent the projected cash flow of the operating cycle for the farm or ranch operation.

(b) The buyer must use the best sources of information available for estimating production when developing cash flow budgets. Deviations from historical performance may be acceptable, if the deviations are the direct result of specific changes in the operation, are reasonable, adequately justified, and acceptable to the Agency. For existing farmers, actual production for the past three years will be utilized. For those farmers without a proven

history, a combination of any actual history and any other reliable source of information that is agreeable to the buyer and the Agency will be used. When the production of a growing commodity can be estimated, it must be considered when projecting yields.

(c) When the buyer's production history has been so severely affected by a declared disaster that an accurate projection cannot be made, the following applies:

(1) County average yields are used for the disaster year if the buyer's disaster year yields are less than the county average yields. If county average yields are not available, State average yields are used. Adjustments can be made, provided there is factual evidence to demonstrate that the yield used in the farm plan is the most probable to be realized.

(2) To calculate a historical yield, the crop year with the lowest actual or county average yield may be excluded, provided the buyer's yields were affected by disasters at least two of the previous five consecutive years.

(d) Buyers must use price forecasts that are reasonable, defensible, and historically supportable. Sources must be documented by the buyer and be acceptable to the Agency. When a feasible plan depends on income from other sources in addition to income from owned land, the income must be dependable and likely to continue throughout the term of the guarantee.

VI. Eligible Purpose

The guarantee may only be used for financing the purchase of a farm or ranch on a land contract basis. The farm or ranch land to be purchased must be located in a pilot State. Guarantees will only be provided on new contracts. Existing contracts are not eligible for a guarantee under the pilot program.

VII. Maximum Purchase Price

(a) The purchase price of the farm or ranch to be acquired cannot exceed the lesser of:

- (1) \$500,000 and
- (2) its current market value as determined by Agency appraisal or estimate.

(b) The buyer must provide a cash downpayment of at least five percent of the purchase price of the farm or ranch being acquired on land contract.

VIII. Maximum Payment and Term of Guarantee

The guarantee will be in effect for 10 years commencing with its stated effective date. The guarantee will cover two amortized annual installments, or an amount up to the total monetary