Rules and Regulations

Federal Register
Vol. 76, No. 104
Tuesday, May 31, 2011

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1980

RIN 0575–AC83

Single Family Housing Guaranteed Loan Program

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements two changes in the regulations for the Rural Housing Service (RHS) Section 502 Single Family Housing Guaranteed Loan Program (SFHGLP) by eliminating the lender's published Department of Veterans Affairs (VA) rate for first mortgage loans with no discount points as an option for a maximum interest rate on loans and by allowing the Secretary to seek indemnification from the originating lender if a loss is paid under certain circumstances. This action is taken to achieve savings for the taxpayer, simplify regulations, and promote efficiency in managing the SFHGLP.

DATES: *Effective Date:* August 1, 2011.

FOR FURTHER INFORMATION CONTACT: Joaquin Tremols, Acting Director, Single Family Housing Guaranteed Loan Division, USDA Rural Development, Room 2241, STOP 0784, 1400 Independence Ave., SW., Washington, DC 20250, Telephone: (202) 720–1465, E-mail: *joaquin.tremols@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been determined to be non-significant by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Except where specified, all State and local laws and regulations that are in direct conflict with this rule will be preempted. Federal funds carry Federal requirements. No person is required to apply for funding under this program, but if they do apply and are selected for funding, they must comply with the requirements applicable to the Federal program funds. This rule is not retroactive. It will not affect agreements entered into prior to the effective date of the rule. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 must be exhausted.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effect of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million, or more, in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' It is the determination of the Agency that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.,* neither an Environmental Assessment nor an Environmental Impact Statement is required.

Federalism—Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the undersigned has determined and certified by signature of this document that this rule change will not have a significant impact on a substantial number of small entities. This rule does not impose any significant new requirements on Agency applicants and borrowers, and the regulatory changes affect only Agency determination of program benefits for guarantees of loans made to individuals. Changes impacting lenders will impact all approved lenders doing business under this program. There is no distinction made between small and large lenders.

Intergovernmental Consultation

This program/activity is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. (See the Notice related to 7 CFR part 3015, subpart V, at 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985.)

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under Number 10.410, Very Low to Moderate Income Housing Loans (Section 502 Rural Housing Loans).

Paperwork Reduction Act

The information collection and record keeping requirements contained in this regulation have been approved by OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The assigned OMB control number is 0575–0078.

E-Government Act Compliance

The Rural Housing Service is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Non-Discrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice) or (202) 720–6382 (TDD). USDA is an equal opportunity provider, employer, and lender.

Background

In the spring of 2009, the Inspector General completed an audit of the controls over lending activities in the SFHGLP. The audit evaluated the systems and processes to ensure that lenders (1) submit accurate and legitimate borrower eligibility data and (2) set interest rates on loans within Agency guidelines. The audit report made a number of recommendations for what the SFHGLP can do to streamline operations, prevent fraud, and improve efficiency in its mission. As a result of the audit a proposed rule was published in the **Federal Register** on May 19, 2010 (75 FR 27949).

Under the existing SFHGLP regulation, lenders may set an interest rate for a loan that does not exceed the higher of the Lender's published rate for VA first mortgage loans with no discount points or the current Federal National Mortgage Association (Fannie Mae) rate as defined in 7 CFR 1980.302(a), currently defined as the current Fannie Mae posted yield for 90-day delivery (Actual/Actual), plus six-tenths of 1 percent for 30-year fixed rate conventional loans, rounded up to the nearest one-quarter of 1 percent. The first change made by this final rule eliminates the lender's published VA rate for first mortgage loans with no discount points as an option for a maximum interest rate on loans. The effect of this action is to create a more uniform, simpler standard for interest rates under the SFHGLP, whereby lenders will always use the current Fannie Mae rate as the rate ceiling. The Fannie Mae rate is the interest rate guidance most widely utilized by approved lenders. It is also the most accessible to lenders and the Agency when documenting loan files to ensure affordable interest rates are extended to SFHGLP borrowers.

The second change made by this final rule relates to the rights of the Secretary when the Secretary has to pay a claim under the guarantee for the loan and the original lender did not originate the loan in accordance with the program requirements. This change allows the Secretary in certain circumstances to seek indemnification from the originating lender for the Secretary's loss. This change promises to save taxpayer money and incentivize due care on the part of lenders by allowing the Government to recoup the funds it pays out in the event of a claim under the guarantee where the original lender did not comply with SFHGLP requirements.

Discussion of Public Comments Received on the May 19, 2010 Proposed Rule

The Agency received comments from three different sources in response to the Proposed Rule. These comments came from advocacy groups and a community bank.

One commenter submitted a comment on the Single Family Housing Direct Loan Program and expressed general concern about the affordability of housing for low-income families. The Agency acknowledges this comment and notes that the changes being adopted will affect only the Guaranteed Loan Program.

One commenter agreed with the Agency that the Fannie Mae published rate is used by a much broader base of investors than the VA index and stated that the rule change creating a uniform standard will cause only minimal disruptions in business while lenders implement the new policy. This commenter requested that the final rule provide at least a 60-day implementation period to allow lenders to make necessary system changes. The Agency notes that the effective date of the final rule is 60 days from the date of publication in the **Federal Register**.

The commenter also recommended that the Agency revise the rule to require that the Ginnie Mae index be used if the Fannie Mae index is not available. The commenter made this recommendation because the commenter is concerned about future changes to government sponsored enterprises (GSEs). The Agency is aware of the vulnerabilities surrounding the GSEs and the potential for future changes; however, the Agency believes it would be premature to name a backup index at this time. Additionally, Ginnie Mae does not publish a similar index. The Agency, therefore, has made no changes to the final rule in response to this comment.

One commenter expressed concern that the proposed indemnification policy is too broad. The commenter agreed that indemnification is appropriate in cases where a lender commits fraud, but the commenter expressed concern about a lender being required to provide indemnification due to an oversight by the lender or deception by the borrower. The Agency has revised the rule to clarify and limit the circumstances under which indemnification may be required. These changes, which address the commenter's concerns, are described in greater detail below.

Another commenter made similar comments. The commenter agreed that indemnification is appropriate in cases of lender fraud or lender negligence, but the commenter expressed concern about lenders being held liable due to unforeseen circumstances or circumstances beyond their control. This commenter recommended four specific changes to the rule.

First, the commenter stated that lender indemnification for fraud should exclude fraud committed by a third party, such as a borrower, real estate agent, or seller. The Agency does not intend to seek indemnification when fraud was committed by a third party and the lender had no knowledge of such fraud. The Agency has revised the rule to clarify that indemnification will apply ''when there was fraud or misrepresentation in connection with origination of the loan of which the originating Lender had actual knowledge at the time it became such Lender or which the originating Lender participated in or condoned.''

Second, the commenter stated that indemnification should not be automatic in cases where the Agency pays a claim within 24 months of closing. The commenter wrote that lenders should not be subject to indemnification when borrowers default on their loans due to circumstances beyond the lender's control. The Agency disagrees with the commenter that indemnification is automatic. A prerequisite to indemnification in the proposed rule was a determination by the Agency that the Lender did not originate a loan in accordance with the requirements in 7 CFR part 1980, subpart D. Further, the Agency has revised the rule to clarify what conditions must be satisfied before the Agency can require indemnification after paying a claim within 24 months of loan closing.

Third, the commenter recommended that in order for a lender to be liable due to misrepresentation, the misrepresentation must be proven by clear and convincing evidence and the misrepresentation must have been discoverable prior to loan closing. The Agency has revised the rule to provide clarification regarding the circumstances under which indemnification may be required. If RHS pays a loss claim within 24 months of loan origination as a result of the originating lender's nonconforming action or failure to act, RHS may seek indemnification if: (1) The originating lender utilized unsupported data or omitted material information when submitting the request for a conditional commitment to RHS; (2) the originating lender failed to properly verify and analyze the applicant's income and employment history in accordance with Agency guidelines; (3) the originating lender failed to address property deficiencies identified in the appraisal or inspection report that affect the health and safety of the occupants or the structural integrity of the property; or (4) the originating lender used an appraiser that was not properly licensed or certified, as appropriate, to make residential real estate appraisals in accordance with 7 CFR 1980.334(a). In addition, RHS may seek indemnification at any time, regardless of how long ago the loan closed, if RHS determines that there was fraud or misrepresentation in connection with the origination of the loan of which the originating lender had actual knowledge at the time it became such lender or which the originating lender participated in or condoned and RHS paid a loss claim as a result of the originating lender's nonconforming action or failure to act. In this context, misrepresentation includes negligent misrepresentation. With regard to the commenter's other suggestion, the Agency has decided not to incorporate the ''clear and convincing evidence'' standard into the rule. The Agency will seek indemnification only when an analysis of all available evidence establishes that indemnification is appropriate under the standards set forth in the rule. Lenders are protected in that a decision to require indemnification from the lender may be appealed to the USDA National Appeals Division (NAD), and the final determination of NAD shall be reviewable by any United States District Court of competent jurisdiction according to NAD regulations at 7 CFR part 11.

Fourth, the commenter requested that program violations be limited to only material program violations that adversely affect the program. The Agency agrees with the commenter that indemnification is appropriate only where the lender's violation is material. As discussed above, the Agency has revised the rule to clarify and limit the circumstances under which indemnification may be required. The Agency may seek indemnification only when RHS pays a claim under the loan note guarantee as a result of the originating Lender's nonconforming action or failure to act.

The commenter also expressed concern about whether lenders would have appeal rights. As noted above, indemnification will be treated as an adverse decision, and the lender may appeal the decision. The Agency has revised section 1980.399(a)(2) of the rule to make clear that the Lender may appeal an indemnification decision alone, without the participation of the borrower.

One commenter stated that the Agency's indemnification policy should be like the Federal Housing Administration's policy in that it should apply only to the originating lender and not to the servicer. The Agency agrees and has clarified that indemnification may only be sought from originating lenders. As noted in 7 CFR 1980.309(f), lenders are fully responsible for their own actions and the actions of those acting on their behalf, including during loan origination.

One commenter asked for clarification whether the same indemnification standards would apply to loans that are manually underwritten and loans that are submitted through the Guaranteed Underwriting System (GUS). The Agency will apply the same indemnification standards to all guaranteed loans.

List of Subjects in 7 CFR Part 1980

Home improvement, Loan programs—Housing and community development, Mortgage insurance, Mortgages, Rural areas.

For the reason stated in the preamble, Chapter XVIII, Title 7 of the Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

■ 1. The authority citation for part 1980 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989. Subpart E also issued under 7 U.S.C. 1932(a).

Subpart D—Rural Housing Loans

■ 2. Section 1980.308 is revised to read as follows:

§ 1980.308 Full faith and credit and indemnification.

(a) *Full faith and credit.* The loan note guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it becomes such Lender or which the Lender participates in or condones. Misrepresentation includes negligent misrepresentation. A note which provides for the payment of interest on interest shall not be guaranteed. Any guarantee or assignment of a guarantee attached to or relating to a note which provides for the payment of interest on interest is void. Notwithstanding the prohibition of interest on interest, interest may be capitalized in connection with reamortization over the remaining term with written concurrence of RHS. The loan note guarantee will be unenforceable to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which RHS acquires knowledge of the foregoing. Negligent servicing is defined as servicing that is inconsistent with this subpart and includes the failure to perform those services which a reasonably prudent lender would perform in servicing its own loan portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act, but also not acting in a timely manner or acting contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those authorized in this subpart. When the lender conducts liquidation

in an expeditious manner, in accordance with the provisions of § 1980.374 of this subpart, the loan note guarantee shall cover interest until the claim is paid within the limit of the guarantee.

(b) *Indemnification.* If RHS determines that a Lender did not originate a loan in accordance with the requirements in this subpart, and RHS pays a loss claim under the loan note guarantee as a result of the originating Lender's nonconforming action or failure to act, RHS may revoke the originating Lender's eligibility status in accordance with § 1980.309(h) of this subpart and may also require the originating Lender:

(1) To indemnify RHS for the loss, if the payment under the guarantee was made within 24 months of loan closing, when one or more of the following conditions is satisfied:

(i) The originating Lender utilized unsupported data or omitted material information when submitting the request for a conditional commitment to RHS;

(ii) The originating Lender failed to properly verify and analyze the applicant's income and employment history in accordance with Agency guidelines;

(iii) The originating Lender failed to address property deficiencies identified in the appraisal or inspection report that affect the health and safety of the occupants or the structural integrity of the property;

(iv) The originating Lender used an appraiser that was not properly licensed or certified, as appropriate, to make residential real estate appraisals in accordance with § 1980.334(a) of this subpart; or,

(2) To indemnify RHS for the loss, regardless of how long ago the loan closed, if RHS determines that there was fraud or misrepresentation in connection with the origination of the loan of which the originating Lender had actual knowledge at the time it became such Lender or which the originating Lender participated in or condoned. Misrepresentation includes negligent misrepresentation.

■ 3. Section 1980.320 is revised to read as follows:

§ 1980.320 Interest rate.

The interest rate must not exceed the established, applicable usury rate. Loans guaranteed under this subpart must bear a fixed interest rate over the life of the loan. The rate shall be agreed upon by the borrower and the Lender and must not be more than the current Fannie Mae rate as defined in § 1980.302(a) of this subpart. The Lender must document the rate and the date it was determined.

■ 4. Section 1980.353(c)(4) is revised to read as follows:

§ 1980.353 Filing and processing applications.

* * * * *

(c) * * *

(4) Anticipated loan rates and terms, the date and amount of the Fannie Mae rate used to determine the interest rate, and the Lender's certification that the proposed rate is in compliance with § 1980.320 of this subpart.

* * * * *

■ 5. Section 1980.399(a)(2) is revised to read as follows:

§ 1980.399 Appeals.

* * * * *

(a) * * *

(2) The Lender may appeal without the borrower where RHS has:

(i) Denied or reduced the amount of a loss payment to the Lender; or

(ii) Required an originating Lender to indemnify RHS for a loss payment.

* * * * *

Dated: April 15, 2011.

Dallas Tonsanger,

Under Secretary, Rural Development.

Dated: April 21, 2011.

Michael Scuse,

Acting Under Secretary, Farm and Foreign Agricultural Services.

[FR Doc. 2011–13061 Filed 5–27–11; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. APHIS–2008–0112]

RIN 0579–AD31

Importation of Horses From Contagious Equine Metritis-Affected Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule; delay of enforcement.

SUMMARY: On March 25, 2011, we published an interim rule in the **Federal Register** to amend the regulations regarding the importation of horses from countries affected with contagious equine metritis (CEM) by incorporating an additional certification requirement for imported horses 731 days of age or less and adding new testing protocols for test mares and imported stallions and mares more than 731 days of age. That interim rule became effective on March 25, 2011; however, we are delaying the enforcement of the interim rule until July 25, 2011. This action is necessary to provide CEM testing facilities time to make adjustments to their operating procedures that are necessary for the rule to be successfully implemented.

DATES: Enforcement of the interim rule amending 9 CFR part 93, published at 76 FR 16683–16686 on March 25, 2011, is delayed until July 25, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. Ellen Buck, Senior Staff Veterinarian, Equine Imports, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737–1231; (301) 734–8364.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 (referred to below as the regulations) prohibit or restrict the importation of certain animals into the United States to prevent the introduction of communicable diseases of livestock and poultry. ''Subpart C—Horses,'' §§ 93.300 through 93.326, pertains to the importation of horses into the United States. Sections 93.301 and 93.304 of the regulations contain specific provisions for the importation of horses from regions affected with contagious equine metritis (CEM), which is a highly contagious venereal disease of horses and other equines caused by an infection with the bacterium *Taylorella equigenitalis.*

On March 25, 2011, we published an interim rule in the **Federal Register** (76 FR 16683–16686, Docket No. APHIS–2008–0112) to amend the regulations regarding the importation of horses from countries affected with CEM by incorporating an additional certification requirement for imported horses 731 days of age or less and adding new testing protocols for test mares and imported stallions and mares more than 731 days of age. The provisions of the interim rule became effective March 25, 2011, and we will consider all comments on the interim rule received on or before May 24, 2011.

Delay of Enforcement

After the publication of the interim rule, we received comments that raised a variety of issues, including the feasibility of immediately implementing certain requirements.

Based on our review of the comments received to date, we consider it advisable to delay our enforcement of