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SELLER-SPONSORED LOAN PARTICIPATION 1651.0020

CHAPTER 1651 RURAL FINANCE AUTHORITY SELLER-SPONSORED LOAN PARTICIPATION PROGRAM

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1651.0010 APPLICABILITY AND PURPOSE.

Subpart 1. **Applicability.** Parts 1651.0010 to 1651.0100 establish the criteria and procedures to be used by the Rural Finance Authority in the administration of the seller-sponsored loan participation program authorized by Minnesota Statutes, sections 41B.01 to 41B.23.

Subp. 2. **Purpose.** The purpose of the Rural Finance Authority seller-sponsored loan participation program and for the issuance of bonds to finance or provide security for the program is to preserve and develop the state's agricultural resources. This is accomplished by extending credit on real estate security through the purchase of participation interests in first priority mortgage farm real estate loans. Loans to persons entering or reentering farming and meeting the eligibility criteria set forth in this chapter are eligible for participation. Under this program, the eligible owner of a farm must partially finance the sale of the farm through a loan to an eligible borrower. An eligible lender and the state, acting through the Rural Finance Authority, will jointly provide the remainder of the financing needed by the borrower.

Statutory Authority: *MS s 41B.07*

History: *14 SR 906*

1651.0020 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to parts 1651.0010 to 1651.0100.

Subp. 2. **Agricultural purposes.** "Agricultural purposes" means the production of livestock, dairy animals, dairy products, poultry or poultry products, fur-bearing animals, horticultural or nursery stock, fruit, vegetables, forage, grains, timber, trees, or bees and apiary products. Agricultural purposes also includes the use of the following types of real property: wetlands, pasture, forest land, wildlife, and homestead and other real property adjacent to or associated with the agricultural use of land.

Subp. 3. **Applicant.** "Applicant" means a potential borrower who submits an application to the RFA through an eligible lender.

Subp. 4. **Application.** "Application" means the application for the seller-sponsored loan participation is the form prescribed and provided by the RFA.

Subp. 5. **Assets.** "Assets" mean property, real or personal, tangible or intangible, and all contract rights of value that constitute assets, including cash crops or feed on hand, livestock held for sale, breeding stock, marketable bonds and securities, securities not readily marketable, accounts receivable, notes receivable, cash invested in growing crops, cash value of life insurance, machinery and equipment, cars and trucks, farm and other real estate including life estates and personal residence, and the value of a beneficial interest in trusts.

Subp. 6. **Borrower.** "Borrower" means the person or persons liable on a first

mortgage loan made under this program. A borrower may also be a domestic family farm corporation as defined in Minnesota Statutes, section 500.24.

Subp. 7. **Collateral.** "Collateral" means all assets pledged as security for a borrower's obligation under a first mortgage loan made under this program. It includes all instruments, personal and real property, guaranties, money, letters of credit, and assignments and pledges of money or property for or on which the lender has a security interest or lien.

Subp. 8. **First mortgage loan.** "First mortgage loan" means a loan secured by a first priority real estate mortgage on a farm, made by an eligible lender to an eligible borrower for the purchase of the farm, that is offered to the RFA for participation under the seller-sponsored program, and in which the RFA purchases a participation.

Subp. 9. **Liabilities.** "Liabilities" means the debts or other obligations for which an applicant is responsible including: accounts payable, notes or other indebtedness owed, taxes, rent, amounts owed on real estate contracts or mortgages, judgments, and accrued interest payable.

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

Subp. 11. **Note and loan agreement.** "Note and loan agreement" means the form prescribed by the RFA that is signed by a borrower evidencing the terms of the first mortgage loan and the borrower's obligation to repay the loan.

Subp. 12. **Participation agreement.** "Participation agreement" means the document entered into between the RFA and an approved lender that establishes the relationship between the parties and the terms and conditions of first mortgage loans to be offered to the RFA for participation under the seller-sponsored loan participation program.

Subp. 13. **RFA.** "RFA" means the Rural Finance Authority established by Minnesota Statutes, sections 41B.01 to 41B.23.

Subp. 14. **RFA participation.** "RFA participation" means the RFA's undivided interest in the principal of a first mortgage loan, all payments arising under the loan, the first security real estate mortgage securing the loan, any other collateral pledged to secure the loan, and the first mortgage loan documents.

Subp. 15. **RFA seller-sponsored loan participation program.** "RFA seller-sponsored loan participation program" or "seller-sponsored program" means the RFA program for the purchase of participation interests in first security mortgage real estate loans made under these rules.

Subp. 16. **Seller.** "Seller" means the person or persons selling a farm under the seller-sponsored program.

Subp. 17. **Seller-sponsor's loan commitment form.** "Seller-sponsor's loan commitment form" means the form prescribed by the RFA that is signed by a seller evidencing the seller's understanding of the seller-sponsored program, its rules, and the seller's commitment to make a loan to an applicant and to subordinate the seller's loan to the first mortgage loan made by an eligible lender.

Statutory Authority: *MS s 41B.07*

History: *14 SR 906*

1651.0030 SELLER ELIGIBILITY.

To qualify as an eligible seller under the program, a seller must meet the following criteria:

A. a seller must be a natural person, a partnership, or a family farm corporation as defined in Minnesota Statutes, section 500.24, selling a farm located within the state of Minnesota;

B. the seller must not be a current or former participant in the family farm security program under Minnesota Statutes, chapter 41;

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C. the seller must complete a seller-sponsor's loan commitment form certifying that the seller will partially finance the purchase of the farm property by making a loan to the borrower;

D. the seller's loan to the borrower must be for a minimum of 20 percent of the total financing after the down payment, if any;

E. the seller's real estate mortgage or other instrument securing the seller's loan to the borrower must be subordinated to the first mortgage loan of the lender in which the RFA is a participant; and

F. the seller must disclose all of the terms and conditions of the seller-sponsored sale in a written purchase agreement to be given to the lender at the time of application.

Statutory Authority: *MS s 41B.07*

History: *14 SR 906*

1651.0040 BORROWER ELIGIBILITY.

Subpart 1. Criteria. To be eligible for assistance under the seller-sponsored program, all applicants must meet the criteria stated in subpart 2. Applicants must also meet the requirements of either subpart 3 or 4.

Subp. 2. General eligibility criteria. Each applicant must:

A. be a resident of Minnesota as evidenced by the applicant's income tax returns;

B. certify that the applicant or one of the applicants will be the principal operator of the farm, will make farming their principal occupation, and that the farm being purchased will be used for agricultural purposes only;

C. not be a current or previous participant in an RFA program;

D. not be a current or previous participant in the family farm security program under Minnesota Statutes, chapter 41; and

E. certify that the applicant is eligible for the program.

Subp. 3. Beginning farmer criteria. In addition to the requirements of subpart 2, beginning farmer applicants must:

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

B. have a financial need for the loan and the ability to repay the first mortgage loan;

C. agree to enroll and continue in a farm business management program approved by the Minnesota commissioner of agriculture for the first five years of the loan, if an approved program is available within 45 miles from the borrower's residence;

D. agree to file an approved soil and water conservation plan with the soil conservation service office in the county where the land is located;

E. have a total net worth of less than \$100,000 as defined in part 1651.0020, subpart 10; and

F. not own more than 160 acres of farmland.

Subp. 4. Reentry farmer criteria. In addition to the requirements of subpart 2, reentry farmer applicants must:

A. fulfill the criteria stated in subpart 3, items A to D;

B. have a total net worth of less than \$100,000 as defined in part 1651.0020, subpart 10, excluding the value of the applicant's residential structure;

C. have previously owned and operated a farm; and

D. not currently own more than 160 acres of farm real estate that is used for an agricultural purpose other than a homestead as defined by Minnesota Statutes, chapter 510.

Statutory Authority: *MS s 41B.01 to 41B.23*

History: *14 SR 906; 15 SR 1519*

1651.0050 LENDER ELIGIBILITY.

Subpart 1. **Statutory eligibility.** Any bank, credit union, or savings and loan association chartered by the state or federal government, a subdivision of the Farm Credit System, the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or any insurance company, fund, or other financial institution doing business as an agricultural lender within the state may apply to the RFA for certification as an approved lender.

Subp. 2. **Approval.** Upon a lender's demonstration of its ability to originate and service agricultural real estate loans, the RFA shall designate them as an approved lender for purposes of RFA programs.

Subp. 3. **Participation agreement.** Before offering first mortgage loans to the RFA for participation, each approved lender must enter into an RFA participation agreement. The agreement shall specify the contractual relationship between the parties and the terms and conditions of first mortgage loans to be made by the lender under the seller-sponsored program and offered to the RFA for participation.

Statutory Authority: *MS s 41B.07*

History: *14 SR 906*

1651.0060 APPLICATION PROCESS AND OFFER OF PARTICIPATION.

Subpart 1. **Request for a first mortgage loan.** A sponsoring seller and an applicant must jointly present an initial proposal to an approved lender. The proposal must include a signed and dated purchase agreement and a completed seller-sponsor's loan commitment form evidencing the seller's intent to make a loan to the applicant as required under the program.

Subp. 2. **Lender determination.** The lender shall review the proposal and determine the creditworthiness of the applicant and the value of the collateral to be used to secure the loan. If the lender agrees to make a first mortgage loan to the applicant, the lender and the applicant shall jointly prepare an application and the required loan documents described in the application and master participation agreement.

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

Statutory Authority: *MS s 41B.07*

History: *14 SR 906*

1651.0070 RFA REVIEW, NOTICE, APPEAL.

Subpart 1. **RFA review.** Within ten working days after receipt of a lender's offer, the RFA shall accept or reject the lender's offer to participate in the loan. If the documentation is not sufficient to make a determination, the RFA may request additional information as needed.

Subp. 2. **RFA acceptance.** The RFA will accept all offers, unless the RFA determines any of the following:

A. The seller is not eligible.

B. The applicant is not eligible.

C. The applicant does not demonstrate an ability to repay the first mortgage loan and other obligations based on the financial information submitted under part 1651.0040, subpart 2.

D. The sale price of the property is substantially in excess of its fair market value.

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E. The RFA does not have sufficient funds available to purchase a participation in the loan.

Subp. 3. RFA notice. The RFA shall promptly notify the lender in writing whether or not the offer is accepted. If the offer is not accepted, the notice must state the reasons.

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

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

Statutory Authority: *MS s 41B.07*

History: *14 SR 906*

1651.0080 LOAN CLOSING, PURCHASE OF PARTICIPATION, AND LOAN MANAGEMENT.

Subpart 1. Closing. Upon receiving notification of RFA acceptance, the lender shall close the first mortgage loan. At the time of closing, the sponsoring seller must present all legal documents relating to the sale, including the seller's proposed mortgage for their loan to the applicant. The lender must record and cross-reference all documents relating to the loan, including the RFA note and loan agreement. While the lender is not responsible for preparation of the seller's mortgage and note, they must record the seller's mortgage to ensure that it is recorded in a secondary security position. The lender must notify the RFA that the loan is closed and recorded by submitting copies of the recorded documents to the RFA.

Subp. 2. Payment. Within five business days of receipt of written notice under subpart 1, that the first mortgage loan is closed and recorded, the RFA shall pay the lender for the RFA's participation interest in the loan.

Subp. 3. Participation certificate. Within five working days after receipt of finally collected funds, the lender shall complete and return a participation certificate as prescribed by the RFA witnessing the RFA's undivided pro rata interest in the seller-sponsored first mortgage loan.

Subp. 4. Loan management. The lender shall manage the first mortgage loan, including the RFA participation interest, with the degree of care and diligence usually maintained by agricultural real estate lenders. The lender shall have custody and control of all loan documents except the original application which shall be retained by the RFA.

The lender shall manage, administer, and enforce the loan documents in its own name and also on behalf of itself and the RFA, including, without limitation, the right to accelerate a seller-sponsored first mortgage loan on default and to foreclose or otherwise enforce remedies against the borrower.

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

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

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

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

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

Subp. 7. **Limitations on responsibility.** Neither the lender nor the RFA is in any way responsible for the administration of the seller-sponsor's loan, or the protection of any of the seller's legal rights.

Statutory Authority: *MS s 41B.07*

History: *14 SR 906*

1651.0090 PARTICIPATION REPURCHASE.

An originating lender is under no obligation to repurchase any RFA participation interest in a seller-sponsored first mortgage loan except as provided in this section.

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

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

A lender must repurchase the RFA participation interest if the lender has made misrepresentations or fails to perform its obligations under the participation agreement, has received written notice from the RFA, and has not corrected the representation or performance under the notice.

Any repurchase shall be for the principal balance of the RFA participation plus accrued interest and any penalties or costs incurred by the RFA to secure repurchase.

Statutory Authority: *MS s 41B.07*

History: *14 SR 906*

1651.0100 REVIEW OF LOAN AND COLLATERAL.

Subpart 1. **Inspection.** At any time during the term of a seller-sponsored first mortgage loan, the RFA or the state legislative auditor may inspect the books, records, documents, and accounting practices of the lender relative to the loan to determine compliance with the terms and conditions of the loan and the participation agreement. Any inspections shall be during the lender's normal business hours. The lender must allow the RFA to copy any documents relating to the first mortgage loan.

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

Statutory Authority: *MS s 41B.07*

History: *14 SR 906*