

CHAPTER 1651
RURAL FINANCE AUTHORITY
SELLER-SPONSORED LOAN PARTICIPATION

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1651.0010 [Repealed, 20 SR 2251(NO. 42)]

SELLER-SPONSORED LOAN PARTICIPATION PROGRAM

1651.0011 APPLICABILITY AND PURPOSE.

Subpart 1. **Applicability.** Parts 1651.0011 to 1651.0101 establish the criteria and procedures to be used by the RFA in administering the seller-sponsored loan participation program authorized by Minnesota Statutes, chapter 41B.

Subp. 2. **Purpose.** The purpose of the RFA 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 in this chapter are eligible for participation. Under this program, the eligible seller 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 RFA, shall jointly provide the remainder of the financing needed by the borrower.

Statutory Authority: *MS s 41B.07*

History: *20 SR 2251(NO. 42)*

1651.0020 [Repealed, 20 SR 2251(NO. 42)]

1651.0021 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to parts 1651.0011 to 1651.0101.

Subp. 2. **Agricultural purposes or farming.** "Agricultural purposes" or "farming" means the cultivation or use of land or land improvements and personal property for the production of agricultural crops, vegetables, fruit, or other horticultural crops, forest products, bees and apiary products, livestock, dairy animals, dairy products, poultry or poultry products, fur-bearing animals, aquaculture, hydroponics, exotic species of plants or animals, or other agriculturally related products. "Agricultural purposes" and "farming" include:

A. the use of wetlands, pasture, forest land, wildlife, and homestead and other real property associated with the agricultural use of land; and

B. the practices and facilities needed to conserve soil and water, protect human and animal health, have a safe and efficient operation, and meet local, state, and federal laws and regulations relating to the operation of a farm.

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 in the form 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. **Executive Director.** "Executive director" means the executive director of the RFA or any other officer authorized to act on behalf of the RFA board or its executive director.

Subp. 9. **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. 10. **Liabilities.** "Liabilities" means the debts or other obligations for which an applicant is responsible, including: accounts payable, notes or other indebtedness, taxes, rent, amounts owed on real estate contracts or mortgages, judgments, and accrued interest payable.

Subp. 11. **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. 12. **Note and loan agreement.** "Note and loan agreement" means the form provided 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. 13. **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. 14. **RFA.** "RFA" means the Rural Finance Authority established by Minnesota Statutes, section 41B.025.

Subp. 15. **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. 16. **RFA seller-sponsored loan participation program; seller-sponsored program; or seller-assisted loan participation program.** "RFA seller-sponsored loan participation program," "seller-sponsored program," or "seller-assisted loan participation program" means the RFA program for the purchase of participation interests in first security mortgage real estate loans made under parts 1651.0011 to 1651.0101.

Subp. 17. **Seller.** "Seller" means the person or persons selling a farm under the seller-sponsored program.

Subp. 18. **Seller-sponsor's loan commitment form or seller-assisted loan commitment form.** "Seller-sponsor's loan commitment form" or "seller-assisted loan commitment form" means the form provided 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

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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: *20 SR 2251(NO. 42)*

1651.0030 [Repealed, 20 SR 2251(NO. 42)]

1651.0031 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 Minnesota;

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

C. the seller must complete a seller-assisted 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 the additional required financing necessary to complete the transaction after the down payment, if any;

E. the seller's financing made 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-assisted sale in a written purchase agreement to be given to the lender at the time of application.

Statutory Authority: *MS s 41B.07*

History: *20 SR 2251(NO. 42)*

1651.0040 [Repealed, 20 SR 2251(NO. 42)]

1651.0041 BORROWER ELIGIBILITY.

Subpart 1. **Criteria.** To be eligible for assistance under the seller-sponsored program, all applicants must meet the criteria 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;

B. certify that the applicant or one of the applicants will be the principal operator of the farm and 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 the family farm security program under Minnesota Statutes, chapter 41;

D. certify that the applicant is eligible for the program;

E. submit the correct fees as established in Minnesota Statutes, section 41B.03, subdivision 6; and

F. not be a current or previous participant in the RFA Restructure II Program.

Subp. 3. **Beginning farmer criteria.** In addition to the requirements of subpart 2, a beginning farmer applicant 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 commissioner of agriculture in accordance with Minnesota Statutes, section 41B.03, subdivision 3, paragraph (a), clause (7), for the first five years of the loan, if an approved program is available within 45 miles from the borrower's residence;

D. visit the soil and water conservation district office or the natural resources conservation service in the county where the land is located to inquire about the soil and water conservation needs for the identified farm property; and

E. have a total net worth not to exceed the amount established pursuant to Minnesota Statutes, section 41B.03, subdivision 3, the current amount of which is available from the RFA office.

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

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

B. have a total net worth not to exceed the amount established pursuant to Minnesota Statutes, section 41B.03, subdivision 3, excluding the value of the applicant's residential structure;

C. have previously owned and operated a farm; and

D. not currently own any 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.07*

History: *20 SR 2251(NO. 42)*

1651.0050 [Repealed, 20 SR 2251(NO. 42)]

1651.0051 LENDER ELIGIBILITY.

Subpart 1. **Statutory eligibility.** A bank, credit union, or savings association chartered by the state or federal government, a subdivision of the Farm Credit System (Agri Bank), the Federal Deposit Insurance Corporation, or an 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 it 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 must 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: *20 SR 2251(NO. 42)*

1651.0060 [Repealed, 20 SR 2251(NO. 42)]

1651.0061 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 and agreeing to subordinate their financing 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.

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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: *20 SR 2251(NO. 42)*

1651.0070 [Repealed, 20 SR 2251(NO. 42)]

1651.0071 RFA REVIEW, NOTICE, AND APPEAL.

Subpart 1. **RFA review.** The RFA shall accept or reject a lender's offer to participate in the loan within 30 business days after receipt of the lender's offer. If the documentation is not sufficient to make a determination, the RFA may request additional information to establish creditworthiness and eligibility of the applicant.

Subp. 2. **RFA acceptance.** The RFA shall accept an offer if:

- A. the seller is eligible;
- B. the applicant is eligible;
- C. the applicant demonstrates an ability to repay the first mortgage loan and other obligations based on the financial information submitted under part 1651.0061, subpart 2;
- D. the sale price of the property is not substantially in excess of its fair market value; and
- E. the RFA has 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 RFA 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 executive 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 executive director's decision directly to the RFA board by written notice to the executive director within 15 days of receiving the executive director's reconsideration decision. The decision of the board is final.

Statutory Authority: *MS s 41B.07*

History: *20 SR 2251(NO. 42)*

1651.0080 [Repealed, 20 SR 2251(NO. 42)]

1651.0081 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 financing for the seller's loan to the applicant. The lender must record and cross-reference all documents relating to the loan, including the RFA note and loan agreement. The lender is not responsible for preparation of the seller's financing, but must record the seller's financing 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 certifying and submitting the original RFA application and copies of the recorded documents and final title opinion to the RFA.

Subp. 2. **Payment.** Within ten business days of receipt of written notice under subpart 1 that the first mortgage loan is closed and recorded, the RFA shall initiate payment to 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 provided 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 must 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. The lender shall also notify the seller of any defaults that remain unresolved over 45 days.

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: *20 SR 2251(NO. 42)*

1651.0090 [Repealed, 20 SR 2251(NO. 42)]

1651.0091 PARTICIPATION REPURCHASE.

A. 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 part.

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

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

D. 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.

E. Any repurchase must 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: *20 SR 2251(NO. 42)*

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1651.0100 [Repealed, 20 SR 2251(NO. 42)]

1651.0101 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. Inspections must 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. An inspection must be conducted at a reasonable time.

Statutory Authority: *MS s 41B.07*

History: *20 SR 2251(NO. 42)*