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October 14, 2005

Branch Chief
Guaranteed Loan Servicing and Inventory Property Branch Loan Servicing
and Property Management Division
Farm Service Agency
United States Department of Agriculture
1400 Independence Avenue
Stop 0523
Washington, DC 20250-0523

RE: Proposed Rule; Guaranteed Loans: Retaining PLP Status and Payment of Interest Accrued During Bankruptcy and Redemption Rights Periods; 70 Federal Register, No. 156; 47730-47733, August 15, 2005

Dear Sir or Madam:

The American Bankers Association (“ABA”) appreciates this opportunity to comment on the above referenced proposed rule regarding retaining Preferred Lender Program or “PLP”) status administered by the Farm Service Agency (“FSA”) of the U.S. Department of Agriculture (“USDA”). The ABA brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership—which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks—makes ABA the largest banking trade association in the nation.

Retaining PLP Status- Increased Flexibility by FSA

ABA fully supports the increased flexibility the agency proposes to apply in considering continued eligibility for PLP status.

The amendment will allow a PLP lender to maintain its status as a PLP lender for up to one year after its loss ratio exceeds, for reasons which are beyond its control, the maximum allowable PLP loss rate. Lenders would be required to explain the reason their loss rate exceeds the allowable limit, and develop and implement a plan to reduce the loss rate below the allowable limit within the one year period. We believe this is a rational amendment which will enhance the program.

This amendment also would broaden the conditions under which FSA may grant a waiver to existing PLP lenders for exceeding the maximum loss ratio. Present regulations at 7 CFR 762.106(c)(4) provide that the Agency may waive the maximum PLP loss ratio if the applicable lender's loss rate was substantially affected by a disaster (such as storms, earthquakes, drought,

flooding, and freezes). This provision only covers natural disasters that are widespread enough to be declared a disaster. Conditions, such as a freeze with only local impact, may not be declared a disaster but may cause excessive losses for one or two lenders in a community. Further, lender loss ratios may be affected by an unforeseeable economic downturn, drops in land value, industry moving into or out of an area, a loss of access to a market, biological or chemical damage, or other circumstances beyond the lender's control. Such one-occasion losses may have an inordinate affect on a lender in that local area, or a lender with a concentration of loans to producers of a commodity suffering localized reduction in production and market prices. The proposal would allow the Agency more flexibility in granting a waiver to an existing PLP lender for exceeding the maximum loss ratio for reasons beyond their control. ABA strongly supports this added flexibility in dealing with occurrences beyond the control of the lender.

Accrual of Interest in Chapter 7 filings and state mandated redemption programs

We appreciate the fact that the FSA is responding to the concerns of commercial lenders on the issue of interest accrual in the case of Chapter 7 bankruptcy filing, and in the case of state mandated rights of redemption. Payment of accrued interest in these situations has been an important issue to the American Bankers Association and to our member banks. This limited proposal by FSA to allow payment of some additional accrued interest to lenders is a step in the right direction- but clearly does not reflect the reality bankers face in our Bankruptcy Courts. The rule proposes that 7 CFR 762.149(d)(2) be amended to provide that a lender receive the guaranteed percentage of the interest that accrued on the amount that had been estimated to be secure, but upon final disposition of collateral was found to be unsecured. Interest will not be paid on the amount estimated to be unsecured, and will not be paid if the lender did not submit an estimated loss claim within the established timeframe. The Agency proposes to pay the additional interest up to a maximum of 45 days after the earlier of the relief from stay, or discharge of the Chapter 7 Bankruptcy.

Chapter 7 Bankruptcy and state mandated right(s) of redemption programs often result in a delay of liquidation of assets, resulting in lenders being unable to close out loans to such customers that file in what would normally be a timely manner. While we support the proposed rule, we are not convinced that 45 additional days are sufficient time to address the situation faced by many commercial banks. This seems to us to only be a half step. Additionally we feel that distinguishing between secured and unsecured debt is needlessly complicated.

In a Chapter 7 situation, the lender is completely at the mercy of the court when it comes to acting to liquidate the collateral. Bankruptcy judges often grant debtors extraordinary leeway in terms of the timing of the disposition of assets to satisfy creditors.

ABA believes that while helpful, the proposed rule is needlessly complicated. We believe it would more accurately reflect reality if FSA were to grant lenders 45 days to liquidate the collateral, after the judge issues the final order to liquidate the debtor's assets, not when the debtor files Chapter 7. As long as the lender has filed an estimated loss claim, regardless of the amount estimated to be secured or unsecured, interest due to the lender should be paid.

In many cases, involving the US Bankruptcy Courts, it takes creditors more than 45 days just to get into court to file a proof of claim, and to convince the judge to lift the stay--- this is especially true if there are multiple lenders, if there are disagreements between the lender and the borrower, and if collateral has been converted. All of the above are often the case.

We further assume that the notice of filing of Chapter 7 will serve as the lender's liquidation plan, and thus eliminate the need for the lender to file a detailed liquidation plan with FSA. After a Chapter 7 filing, other than identifying for FSA how the assets are to be sold, and where they are to be sold, there should not be a need for any more details in the liquidation plan from the lender.

Again, we appreciate the FSA taking an initial first step to more accurately reflect the reality faced by the banking industry. We feel that this is only a preliminary step and does not adequately address what bankers often confront in Bankruptcy Court. The 45 day extension should start once the court orders the lifting of the stay, not when the debtor files for protection.

Conclusion

The ABA fully supports and appreciates the efforts of the FSA to address concerns raised by commercial lenders with regard to retention of PLP status and the accrual of interest in Chapter 7 filings. While we believe that the additional 45 days of interest allowed under the proposed rule does not fully address lenders' concerns, we do appreciate the incremental step taken by the Agency.

If you have any questions or concerns regarding this comment letter, please contact the undersigned at (202) 663-5480.

Sincerely,

Joseph Pigg
Senior Counsel