

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1823 and 1956

RIN 0560-AF43

Debt Forgiveness for Loans to Indian Tribes and Tribal Corporations

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

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The Farm Service Agency (FSA) is reviewing regulations and is considering revising its debt relief regulations for Indian Tribal Land Acquisition Program (ITLAP) loans. Current Agency regulations only provide limited debt relief authority for ITLAP loans. This review will assure the participation of interested parties to better balance program participants' needs and public concerns. The review will also serve to gather information and solicit comments on potential revisions to the regulations.

DATES: Comments on this advance notice of proposed rulemaking, including comments on alternatives to this proposal must be received on or before April 2, 1999 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this advance notice of proposed rulemaking to: Veldon Hall, Director, Farm Loan Programs, Loan Servicing Division, USDA/FSA/LSPMD/STOP 0523, 1400 Independence Avenue, SW, Washington, DC 20250-0523, telephone (202) 720-4572, fax (202) 690-0949 or (202) 720-7686; e-mail comments may be sent to: VHall@wdc.fsa.usda.gov

All written comments received in response to this advance notice will be

available for public inspection in Room 5449 South Building, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC between 8:15 a.m. and 4:45 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Gary M. West, telephone (202) 690-4008.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

It has been determined that this advance notice is Significant under Executive Order 12866 and has been reviewed by OMB. Because of the preliminary nature of this notice, information is not yet available with which to prepare a Cost Benefit Assessment or a Civil Rights Analysis. The analyses will be completed and available when the proposed rule, if any, is prepared.

Executive Order 13084

On May 14, 1998, President Clinton issued Executive Order 13084 entitled "Consultation and Coordination with Indian Tribal Governments." This Executive Order, which became effective on August 12, 1998, recognizes the unique legal relationship that exists between the Government of the United States and the Indian tribal governments and states that the "United States continues to work with Indian tribes on a Government-to-Government basis to address issues concerning Indian tribal self-government, trust resources, and Indian tribal treaty and other rights." This Executive Order provides that Federal agencies must be flexible in reviewing requests for waivers of regulatory requirements in connection with programs administered by the agencies "with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate." It is the purpose of this Advance Notice of Proposed Rulemaking to consider different policies in connection with the ITLAP, particularly focusing on the possibility of relief from ITLAP debt obligations so that tribes with diminished resources can direct their revenue to other activities.

Background

Pub. L. 91-229 (25 U.S.C. 488-494) authorized the Secretary of Agriculture to establish the Indian Tribal Land Acquisition Program (ITLAP). This program was administered by the former Farmers Home Administration to make loans to Indian tribes to acquire land and fractional interests in land within the tribes' reservations. The program is now administered by the Farm Service Agency (FSA).

Regulations implementing this program for loan making are in 7 CFR part 1823, subpart N; for loan servicing, 7 CFR part 1951, subpart E; and for debt settlement, 7 CFR part 1956, subpart C.

At the present time 28 tribes have ITLAP loans with a total outstanding balance of approximately \$71 million for all ITLAP loans. The regulations of the former Farmers Home Administration at § 1823.409, which are still in effect, authorize security for ITLAP loans to be either traditional mortgages or assignments of tribal income. In accordance with § 1823.406, loans under ITLAP may be made for a term not to exceed 40 years. Since the lands being purchased using ITLAP were often small, discontinuous tracts or were fractional undivided interests as a result of Indian heirship proceedings, the security for these loans has generally been an assignment of the tribe's income and a mortgage has not been taken. Normally the tribes rented the land purchased with ITLAP funds, often combined with other tribally owned land, for farming and ranching purposes. Rent from tribal operations is paid to the Bureau of Indian Affairs (BIA) and is held in a tribal account along with other tribal funds. The annual payments on the ITLAP loans were automatically made by the BIA from income held by the BIA in tribal accounts. In many cases, the annual ITLAP loan payments exceed the rental income from the lands purchased with ITLAP funds. The automatic nature of the payments prevents the tribes from defaulting on the ITLAP loans and using these funds for other tribal purposes.

Because of the assignment of income payment mechanism, ITLAP loans have generally remained current, even through the agricultural financial crisis of the 1980's, assistance to the tribes has decreased, making it more difficult for the tribes to meet all of their tribal commitments and simultaneously have

full loan payments automatically made to FSA by BIA from the assignments of reduced tribal income. One increased tribal expense involves the responsibility which the tribes have been given for waste management on reservations. Additionally, welfare reform under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, will decrease welfare assistance to tribal members, causing tribal governments to provide additional resources to individual tribal members to make up for the decrease. In many cases, unemployment on reservations with ITLAP loans is 85 to 90 percent and there are no viable employment opportunities within the reservation or nearby communities; therefore, the tribal government will have to assume more responsibility for subsistence payments for its members. In addition, past reduction in funds appropriated to the BIA for Tribal Priority Allocations, *i.e.*, public safety, fire protection, road maintenance, education, health care, and other infrastructure requirements, are causing further financial difficulties for tribes in meeting their responsibilities to their members.

Legal Background for ITLAP Debt Relief

ITLAP loans are authorized in 25 U.S.C. 488-494. Section 494 of title 25 provides partial authority for servicing these loans by incorporating portions of subtitle D of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981-2008j). Section 331(b)(4) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981(b)(4)), which is part of subtitle D, gives the Secretary of Agriculture the authority to "compromise, adjust, reduce, or charge-off debts or claims * * * and adjust, modify, subordinate, or release the terms of security instruments, leases, contracts, and agreements entered into or administered by [FSA]. * * *" The Secretary has implemented this debt settlement authority for several loan programs formerly administered by the Farmers Home Administration, including ITLAP, in 7 CFR part 1956, subpart C. This regulation has not been rewritten since the former Farmers Home Administration was abolished in October 1994, when its programs were divided between the FSA and the Rural Development mission area.

The ITLAP debt settlement regulation provides that loans can be canceled or modified depending on the circumstances, but requires as a prerequisite to any debt settlement relief that the ITLAP debt must be all due and payable, either under its own terms or

because it has been accelerated (§ 1956.109(a)). As noted above, because of the assignment of income provisions, none of the ITLAP loans have been accelerated and very few are even delinquent. Thus, under the debt settlement regulation, the loans do not qualify for debt settlement. (There is "exception" authority at § 1956.148 which could allow the "all due and payable" requirement to be waived, but only if the failure to waive this requirement would adversely affect the Government's interest.)

In addition to the debt settlement provisions of 331(b)(4) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981(b)(4)) which are applicable to ITLAP, Pub. L. 91-229 (August 14, 1989) was enacted to provide additional relief for ITLAP borrowers. The 1989 law authorizes the Secretary to "reduce the unpaid principal balance of [an ITLAP loan] to the current fair market value of the land purchased with the proceeds of the loan or loans if (1) the fair market value of the land has declined by at least 25 percent since such land was purchased by the borrower; (2) the land has been held by the borrower for a period of at least 5 years; and (3) the Secretary of the Interior finds that the borrower has insufficient income to repay the loans or loans and provide normal tribal governmental services." There is no "all due and payable" requirement for the relief available under this law. Pursuant to this authority, the principal of several ITLAP loans was reduced.

The relief in Pub. L. 91-229 may not address the concerns of current tribal borrowers because in most cases the land has not declined in value by the required 25 percent. In addition, because ITLAP funds were used to purchase undivided interests and small parcels, it is in many cases extremely difficult and time consuming to determine the fair market value of the land purchased with ITLAP funds.

Budgetary Impact

One concern with providing debt relief for ITLAP loans involves the funding mechanism for all Government direct loan programs. Under the Federal Credit Reform Act of 1990 (Title V of the Congressional Budget Act of 1974, as amended by § 13201 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508 (November 5, 1990)) (Credit Reform Act) and OMB Circular A-129, "Policies for Federal Credit Programs and Non-Tax Receivables (January 11, 1993), the amount of Federal funding for a credit program is a function of the cost of the program. As the cost of the program increases, the amount of

appropriations available for the loan program decreases. Debt relief to individual ITLAP borrowers would cause the costs to increase and, in the absence of increased levels of funding for the ITLAP, the amount of loan funds in future years will be lowered due to these increased costs.

Possible Debt Relief Alternatives

Under current FSA regulations, the tribes are not eligible for debt relief for their ITLAP loans. It is the purpose of this Advance Notice of Proposed Rulemaking to determine if debt relief is appropriate for ITLAP loans and, if so, what form the relief should take and the criteria for determining eligibility for this relief. We are also interested in the practical implications of the suggested alternatives.

While the following is not an exhaustive list and the Agency is interested in all possibilities, the following are ideas for debt relief that may be considered. The Agency is interested in comments on these ideas, as well as any other alternatives that commenters may suggest.

1. Cancel the ITLAP debts in full. What criteria would be used to determine if a debt should be canceled?
2. Reduce the principal amount of the outstanding ITLAP debt to the present value of expected future annual rental value of the land purchased with ITLAP loan funds and set the annual ITLAP loan payment at the annual rent received or that could be received from this land.
3. Restructure the loan by lowering the interest rate and reamortizing the balance of the loan over the remaining loan term.
4. Release the assignments of income and substitute real estate mortgages on the land purchased with ITLAP funds. The regulation could provide that payment terms of the loans would be restructured at such time.

5. Consider the changes in tribal revenues from all sources or other Government sources and grant a corresponding reduction in the loan principal.

6. Grant deferrals of annual payments if the income loss is temporary.

Dated: February 24, 1999.

August Schumacher, Jr.,
Under Secretary for Farm and Foreign Agricultural Services.

Dated: February 25, 1999.

Jill Long Thompson,
Under Secretary for Rural Development.
[FR Doc. 99-5225 Filed 3-2-99; 8:45 am]

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