

the terms and conditions under which these producers can supply the additional power and energy needs of the applicant, without RUS financial assistance. Such solicitations should be placed in at least three national newspapers or trade publications, and they meet all planning, coordination or other requirements imposed by state authorities, as well as the environmental requirements of RUS.

(d) When solicitations are received in accordance with paragraph (c) of this section, the applicant will evaluate all alternative proposals on an economic, present-value basis, giving consideration to cost-effectiveness, reliability of service, the short-term and long-term financial viability of the supplier, and the financial risk to the borrower and its creditors. The applicant will keep RUS fully informed on these evaluations and provide supporting information and analysis as requested by RUS.

(e) After evaluation of all proposals received in accordance with paragraph (c) of this section, and having informed RUS of the results, the applicant may be required to negotiate final proposals with the entities submitting the best acceptable offers. Contracts requiring RUS approval will either be approved in advance by the Administrator or contain a provision that the contract is not valid until approved, in writing, by the Administrator. The Administrator will approve the contracts in a timely manner provided that the borrower has met all applicable requirements, including, among other matters, evidence that the alternative source of power selected is an economical and effective alternative.

* * * * *

Dated: May 5, 2000.

Jill Long Thompson,

Under Secretary, Rural Development.

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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 1951

RIN 0560-AF91

Disaster Set-Aside Program—Second Installment Set-Aside

AGENCY: Farm Service Agency, USDA.

ACTION: Interim rule.

SUMMARY: The Farm Service Agency (FSA) is amending the disaster set-aside program requirement to allow FSA to

set aside portions of loan installments that could not be made as scheduled due to a natural disaster, as declared by the President or Secretary of Agriculture, or because of low commodity prices received during the 1999 crop year. In addition, disaster set-aside eligibility requirements are amended to require borrowers to develop a positive cash flow projection which will at least permit the borrower to pay all operating and family living expenses and meet scheduled payments on all debts for the next business accounting year. These provisions will allow the agency to service the loans of farmers who have experienced losses due to a natural disaster or low commodity prices in an efficient and timely manner while ensuring the future viability of the operation.

DATES: The effective date for this rule is May 17, 2000. Comments on this rule must be submitted by July 17, 2000 to be assured consideration.

ADDRESSES: Submit written comments to Director, Farm Loan Programs, Loan Servicing and Property Management Division, United States Department of Agriculture, Farm Service Agency, STOP 0523, 1400 Independence Avenue, SW, Washington, DC 20250-0523.

FOR FURTHER INFORMATION CONTACT: Michael Cumpton, telephone (202) 690-4014; electronic mail: mike—cumpton@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Large entities are subject to these rules to the same extent as small entities. Therefore, a regulatory flexibility analysis was not performed.

Environmental Impact Statement

It is the determination of FSA that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969, and 7 CFR part 1940, subpart G,

an Environmental Impact Statement is not required.

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 the 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.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11, and 7 CFR part 780 if the decision is made by the FSA county committee or personnel subordinate to the county committee, must be exhausted before bringing suit in court challenging action taken under this rule.

Executive Order 12372

For reasons contained in the notice related to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs to which this rule pertains are excluded from the scope of E.O. 12372, requiring intergovernmental consultation with State and local officials.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector of \$100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA requires FSA to prepare a written statement, including a cost benefit assessment, for proposed and final rules with "Federal mandates" that may result in such expenditures for State, local, or tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates, as defined under title II of the UMRA, for State, local, and tribal governments or the private sector. Thus,

this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act of 1995

The amendments to 7 CFR part 1951 contained in this rule require no revisions to the information collection requirements (0560-0164) that were previously submitted to OMB on October 12, 1999.

Federal Assistance Programs

These changes affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance:

- 10.404—Emergency Loans
- 10.406—Farm Operating Loans
- 10.407—Farm Ownership Loans

Discussion of the Interim Rule

The Farm Service Agency (FSA) publishes these amendments to subpart T of part 1951 without prior notice and comment because of the emergency nature of the program and the eligibility requirements involved. Publication as a proposed rule for notice and comment is impractical and contrary to the public interest as discussed below.

The Disaster Set-Aside (DSA) program was first made available to FSA Farm Loan Programs (FLP) borrowers beginning October 21, 1994, because of the heavy flooding in the Midwest and extreme drought in the South. Since that time almost 20,000 borrowers have received DSA assistance. The overall success of the program can be attributed to the relatively small amount of paperwork required in applying for and processing DSA requests. DSA gives FLP borrowers a chance to recover from their losses without having to incur additional debt to pay creditors or liquidate essential assets.

Because many delinquent borrowers received a previous writedown of debt under subpart S of 7 CFR part 1951, they are ineligible for additional debt forgiveness and most farm loans under § 373 of the Consolidated Farm and Rural Development Act. As stated in the interim rule designed to assist borrowers for the 1998 crop year, published at 64 FR 392 (January 5, 1999), an estimated 11,424 borrowers would suffer to irreparable financial harm without the interim rule taking immediate effect. Since low commodity prices continued to exist for the 1999 crop year, as well as the occurrence of several natural disasters, the Agency estimates that a similar number of borrowers were affected in the 1999 crop year and became delinquent in repayment of their FSA, FLP loan installments due to these adverse effects. Therefore, this rule will take

effect immediately without prior notice and comment. There is justification for the rule to become effective immediately after publication; nevertheless, FSA will accept public comments on this interim rule for 60 days after the rule becomes effective.

Section 7 CFR 1951.954 generally provides that each loan can only have one set-aside installment outstanding (7 CFR 1951.954(b)(2)(i)). A borrower could receive DSA again only if the existing set-aside installment were paid in full, or canceled through restructuring under subpart S of 7 CFR part 1951. This rule will allow borrowers who were affected by low commodity prices or by a natural disaster in a county declared a disaster by the President or Secretary to receive a second installment set aside without the first set-aside installment being paid in full or canceled. Because widespread disasters have occurred and low commodity prices continued to exist in the 1999 crop year, the Agency is offering second installment DSAs for the 1999 crop year to borrowers who have previously received DSA. Applications must be filed by August 31, 2000, for DSA due to low commodity prices. For DSAs due to natural disasters, borrowers in counties designated as disaster areas and borrowers farming in contiguous counties must file DSA applications within 8 months of the disaster designation.

FSA records show that 25 percent of borrowers who receive DSA become immediately become delinquent the year following the set-aside. This is a much higher percentage than borrowers who have their debt restructured under subpart S of 7 CFR part 1951. In order to ensure the future viability of the farming operation, save borrower equity and reduce government losses, eligibility requirements for DSA have been amended to require borrowers to develop a cash flow projection for the next business accounting year. The cash flow projection must show that the borrower will at least be able to pay all operating expenses and taxes, provide for essential family living expenses and meet scheduled payments on all debts. The positive cash flow projection must be prepared in accordance with 7 CFR 1924.56(b).

This rule will allow such borrowers to receive immediate financial relief from their FLP obligations in a more expedient manner than under subpart S of 7 CFR part 1951. When the borrower pays any portion of the set-aside installments in the future, the payment will be applied to the oldest installment set-aside.

List of Subjects in 7 CFR Part 1951

Accounting, Credit, Disaster assistance, Loan programs—agriculture, Loan programs—housing and community development, Low and moderate income housing.

Accordingly, 7 CFR part 1951 is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

Subpart T—Disaster Set-Aside Program

2. Amend § 1951.951 by revising the second sentence to read as follows:

§ 1951.951 Purpose

* * * The DSA program is available to Farm Loan Program (FLP) borrowers, as defined in subpart S of this part, who suffered losses as a result of a natural disaster or low commodity prices in 1999. * * *

3. Amend § 1951.952 by revising the second sentence to read as follows:

§ 1951.952 General

* * * The intent of this program is to relieve some of the borrower's immediate financial stress caused by a disaster or low commodity prices and avoid foreclosure by the Government. * * *

4. Amend § 1951.953 by revising paragraph (b) to read as follows:

§ 1951.953 Notification and request for DSA.

(a) * * *

(b) *Deadline to apply.* All FLP borrowers liable for the debt must request DSA within 8 months from the date the disaster was designated, in accordance with 7 CFR part 1945, subpart A. Applications due to low commodity prices in 1999 must be received on or before August 31, 2000. * * *

5. Amend § 1951.954 as follows:

- a. Revise paragraphs (a)(1)(ii), (a)(1)(iii), (a)(5), and (b)(2)(i);
- b. Redesignate paragraphs (a)(6) and (a)(7) as (a)(7) and (a)(8), respectively, and add new paragraph (a)(6).

The revisions and additions read as follows:

§ 1951.954 Eligibility and loan limitation requirements.

- (a) * * *
- (1) * * *
- (ii) If the borrower is applying for a second installment to be set aside based

on a declared disaster, the borrower must have operated in a county declared a major disaster by the President or the Secretary, or in a county contiguous to such a county, and the Agency must have determined that second set-asides can be processed and approved for declared disasters in the specified year. The first set aside must have been provided for a previous crop year.

(iii) All FLP borrowers may apply for an installment to be set aside based on low commodity prices during 1999. If the borrower is applying for a second installment to be set aside based on low commodity prices, the first set-aside must have been provided for a previous crop year. County location, or proximity to a disaster declared county is not a consideration when the DSA is justified by low commodity prices.

* * * * *

(5) As a direct result of the declared disaster or the 1999 low commodity prices, both pursuant to paragraph (a)(1) of this section, the borrower does not have sufficient income available to pay all family living and operating expenses, other creditors, and FSA. This determination will be based on the borrower's actual production, income and expense records for the disaster or affected year and any other records required by the servicing official. Compensation received for losses shall be considered as well as increased expenses incurred because of a disaster. Consideration will also be given to insufficient income for the next production and marketing period following the affected year if the borrower establishes that production will be reduced or expenses increased as a result of the disaster or the 1999 low commodity prices.

(6) For the next business accounting year, the borrower must develop a positive cash flow projection showing that the borrower will at least be able to pay all operating expenses and taxes due during the year, essential family living expenses and meet scheduled payments on all debts. The cash flow projection must be prepared in accordance with 7 CFR 1924.56. The borrower will provide any documentation required to support the cash flow projection.

* * * * *

- (b) * * *
- (2) * * *

(i) Except as provided in paragraph (a) of this section, only one unpaid installment for each FLP loan may be set-aside.

* * * * *

6. In subpart T of part 1951, revise all references to "FC" to read "FLP".

Signed in Washington, DC, on May 8, 2000.

August Schumacher, Jr.,

Under Secretary for Farm and Foreign Agricultural Services.

[FR Doc. 00-12335 Filed 5-16-00; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 361

RIN 3064-AB12

Minority and Women Outreach Program—Contracting

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Board of Directors of the Federal Deposit Insurance Corporation (FDIC) is amending its regulation establishing an outreach program for minority- and women-owned businesses and announcing its policy to utilize that portion of the Federal Affirmative Action Contracting Program, set forth in the Federal Acquisition Regulations, providing contracting benefits to Small Disadvantaged Businesses. The FDIC will no longer grant a price incentive based solely on race and gender criteria. The FDIC will, however, continue its outreach programs for minorities and women, and entities owned by them.

EFFECTIVE DATE: May 10, 2000.

FOR FURTHER INFORMATION CONTACT: Martin Blumenthal, Counsel, Legal Division, Corporate Operations Branch, Corporate Legal Issues Section, Contracting Law Unit (202) 736-0756; David McDermott, Chief, Policy and Compliance Unit, Acquisition and Corporate Services Branch, Division of Administration, (202) 942-3434; Rita Wiles Ross, Counsel, Legal Division, Corporate Operations Branch, Legal Operations Section, Legal Services Unit, (202) 736-3072; or Judith M. Wood, Chief, Diversity Branch, Office of Diversity and Economic Opportunity, (202) 416-2456.

SUPPLEMENTARY INFORMATION:

I. Background

In 1989, with enactment of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA), Congress mandated that the FDIC augment its program for contracting activities by prescribing

“regulations to establish and oversee minority outreach program [s] * * * to ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women

* * * in all contracts entered into by the agency * * *” 12 U.S.C. 1833e(c).

In response, the FDIC adopted a regulation that obligates and requires the Corporation to engage in outreach efforts to identify and register minority- and women-owned businesses (MWOBs) that can provide the goods and services utilized by the FDIC. 12 CFR 361.6(b); Minority and Women Outreach Program—Contracting, 57 FR 15004 (April 24, 1992). In addition, to ensure that MWOBs are “being included in each solicitation, the solicitation process will include: * * * (3) Allowing qualified MWOBs a 3% price incentive and additional technical consideration for competitively bid services; * * *” 12 CFR 361.8(b)(3).

However, the Supreme Court has held that all such racial classifications, whether imposed by federal, state, or local governments, must be analyzed by a reviewing court under strict scrutiny. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227; 115 S.Ct. 2097, 2113 (1995). Thereafter, in 1996, the Department of Justice invited public comments on a system designed to reform affirmative action in federal procurement in response to *Adarand*. 61 FR 26042, May 23, 1996. Continuing in that vein, in 1998, the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration published a revision to the Federal Acquisition Regulations (FAR) implementing a new program of affirmative action in federal procurement. 63 FR 52426, September 30, 1998.

In this program, each year, the Department of Commerce makes a determination as to which industries demonstrate the results of past discrimination and are thereby eligible for a benefit in federal contracting. The Department of Commerce also determines the size of a price evaluation adjustment, not to exceed 10%, to be available in those industries. In the first year of the program, eligible industries that are generally used by the FDIC include accounting firms, asset managers, information technology contractors, office services, and building services. The amount of the price evaluation adjustment for 1999 is 10%.

The price evaluation adjustment is available to firms certified as Small Disadvantaged Businesses (SDBs) by the Small Business Administration (SBA). An SDB is a small business firm that is at least 51% owned by individuals who are both socially and economically disadvantaged. Socially disadvantaged individuals include Black Americans,