

# Proposed Rules

Federal Register

Vol. 73, No. 190

Tuesday, September 30, 2008

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

### Farm Service Agency

#### 7 CFR Parts 761 and 762

RIN 0560-AH66

#### Maximum Interest Rates on Guaranteed Farm Loans

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

**SUMMARY:** The Farm Service Agency (FSA) is proposing to amend its guaranteed farm loan program regulations governing interest rates to increase clarity and to be more consistent with other government loan guarantee programs. FSA is proposing to tie the maximum interest rate that may be charged on FSA guaranteed farm loans to nationally published indices such as the Wall Street Journal Prime (also known as New York Prime), or the 10-year Treasury note rate unless the lender uses a formal written risk-based pricing model for loans, in which case the rate will be the rate charged to moderate risk borrowers. This proposed rule specifically asks for comments on the index to be used and the maximum allowable spread between the base rate and the rate to be charged to FSA guaranteed borrowers.

**DATES:** We will consider comments that we receive by December 1, 2008.

**ADDRESSES:** We invite you to submit comments on this proposed rule. In your comment, include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *E-Mail:* [Trent.Rogers@wdc.usda.gov](mailto:Trent.Rogers@wdc.usda.gov).
- *Fax:* (202) 720-6797.
- *Mail:* Director, Loan Making

Division, Farm Service Agency, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 0522, Washington, DC 20250-0522.

- *Hand Delivery or Courier:* Deliver comments to Farm Service Agency, Loan Making Division, 1280 Maryland

Ave., SW., Suite 240, Washington, DC 20024.

• *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Comments may be inspected in the Office of the Director, Loan Making Division, Farm Services Agency, USDA, Suite 240, 1280 Maryland Ave., SW., Washington, DC 20024, between 8 a.m. and 4:30 p.m., except holidays.

#### FOR FURTHER INFORMATION CONTACT:

Trent Rogers, Senior Loan Officer, Loan Making Division, Farm Service Agency; *telephone:* (202) 720-3889; *facsimile:* (202) 720-6797; *e-mail:*

[Trent.Rogers@wdc.usda.gov](mailto:Trent.Rogers@wdc.usda.gov). Persons with disabilities or who require alternative means for communications should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

#### SUPPLEMENTARY INFORMATION:

##### Background

FSA guaranteed loans are a means of providing credit to farmers whose financial risk exceeds a level acceptable to commercial lenders. The guarantee reduces the lender's risk of default and loss, and thus the lender's credit cost. FSA believes that part of the intent of the program is for the borrower to receive the benefit of the reduction in the lender's credit cost in the form of a lower interest rate.

The existing regulation, 7 CFR 762.124(a)(3), limits the interest rate that a lender may charge guaranteed loan customers to a rate that does not exceed the rate charged to its "average agricultural loan customers" as defined in § 761.2. Currently, 7 CFR 762.124(a)(2) states that variable rates, if used, may change according to the normal practices of the lender for its average agricultural loan customer, but the frequency of change must be specific in the loan instrument. Some lenders have indicated that the term "average agricultural loan customer" is overly vague and have encouraged the agency to review its current interest rate policy. FSA proposes to clarify this section of the regulations to simplify compliance for stakeholders by setting a maximum rate based on certain widely published indices, while permitting the continued use of risk-based pricing models for lenders that prefer that approach.

The agriculture credit industry continues to undergo rapid

transformation in response to the impact of technology and globalization of financial markets. FSA's current interest rate policies that are tied to the rate of an average customer are no longer consistent with industry pricing practices that generally consider the anticipated risks, costs, market competition, and terms of the loan or with the practices of other government agencies that administer similar programs. For example, the Small Business Administration has imposed rate ceilings which are linked to the "prime" rate or other index, depending on loan size, terms, and rate structure.

FSA believes that the FSA guarantee compensates the lender for much of the lender's risk of loss and that the interest rate charged by the lender to the producer should reflect that reduced risk. The changes proposed are consistent with that policy. In this rule FSA is proposing to eliminate the term "average agricultural loan customer" from 7 CFR 762.124(a)(2) and (3). FSA proposes new interest rate limits based on widely recognized indices, which will provide simple, clear limits rather than an "average" customer. For lenders who use a formal written risk-based pricing model for loans, the option to use the rate charged to moderate risk borrowers will still be included in the regulation.

FSA has selected the indices that it believes most accurately represent current rates. FSA has conducted an analysis of its guarantee portfolio and the rates lenders have charged their agricultural loan customers since 1999 in order to identify a correlation between these rates and a published index. That analysis indicated that the 10-year Treasury note rate was the index that most closely tracked farm real estate loans and Wall Street Journal prime was the index that most closely tracked short and intermediate term loans. The rate for 10 year Treasury notes is the yield on 10 year Treasury notes issued by the U.S. Department of the Treasury through the Bureau of Public Debt. The Wall Street Journal prime is the rate that at least 23 of the 30 largest U.S. banks charge for corporate loans, as published in the print edition of the Wall Street Journal. It is sometimes called the New York Prime rate.

The average rate charged on guaranteed Farm Ownership (FO) loans

since 1999 was 291 basis points (2.91 percent) over the 10-year Treasury rate. FSA proposes to limit the interest rate charged on guaranteed FO loans to no more than 350 basis points (3.5 percent) over the 10-year Treasury rate. Of the FO loans made since 1999, most would have met this interest rate limit, had it been in effect.

The average rate charged on guaranteed Operating Loans (OL) during the same time period was New York Prime plus 195 basis points (1.95 percent). FSA proposes to limit the guaranteed OL interest rate to no more than 250 basis points (2.5 percent) over the New York Prime rate. Had the proposed interest rate limit been in effect, most of the guaranteed OLs made since 1999 would have met this limit. These limits will apply to both fixed and variable rate guaranteed loans and lines of credit.

FSA realizes that financial markets can be very volatile and that lenders use various methodologies to manage their funding sources. This proposal does not require that the lender tie its guaranteed loan interest rates to these indices, nor does it require that the rate remain below these maximums throughout the term of the loan. It only sets the maximum rate that may be charged to the customer at the time of loan origination. In addition, to ensure that the benefit of the guarantee is passed on to borrowers in financial distress, these interest rate limits will apply to guaranteed loans at such time that they are restructured, too. FSA is specifically requesting comments on the suitability of using these indices or recommendations for another index, such as a London Inter Bank Offered Rate (known as LIBOR), or the Farmer Mac II cost of funds index or alternative methodologies for setting maximum interest rates.

FSA also realizes that some lenders have well developed risk based pricing models and are able to document how the interest rate on a guaranteed loan reflects the reduced risk of loss due to the guarantee. FSA is proposing to continue to permit such lenders to price guaranteed loans at a rate not exceeding the rate charged to their typical, moderate risk agricultural loan customer. The rate charged this customer would be limited to no more than the highest interest rate for the tier of the lender's risk rating matrix that reflects moderate risk. This would typically be the lender's middle tier, or for those lenders with an even number of tiers, a rate no higher than an average of the lender's two middle tiers. If such tier had a range of interest rates, the maximum rate permitted would be the

highest rate for that tier. Specific comments are requested to further define this moderate risk agricultural loan rate. The lender will be required to provide the Agency with their pricing model.

Again, FSA is inviting comments that will address the indices to be used, as well as the maximum yield spreads. FSA is attempting to adhere to current lending standards, propose changes that will provide clear and straightforward guidance for lenders to improve lender compliance, allow guaranteed loan borrowers to receive the benefit resulting from the reduced risk of loss with a guarantee, and to promote active competition among lenders. FSA proposes to reserve the right to change the maximum rates on a temporary basis by **Federal Register** notice to ensure liquidity in the farm loan market, as determined in consultation with the Department of the Treasury, in response to conditions that result in large interest rate changes or term structure changes. Examples of these conditions include increased loan losses in the sector or significant changes in the yield curve.

#### **Executive Order 12866**

This rule has been designated as not significant under Executive Order 12866 and has not been reviewed by the Office of Management and Budget.

#### **Regulatory Flexibility Act**

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601, FSA certifies that there would not be a significant economic impact on a substantial number of small entities. This rule is not expected to change the ability of applicants, borrowers, or lenders to receive FSA guaranteed loans, and would not increase the costs of compliance with the program. Further, all applicants or borrowers affected by this change are small, but no lenders are considered small entities. Changes will be applied to all affected entities equally, however, without regard to their size.

#### **Unfunded Mandates Reform Act of 1995**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### **Executive Order 12612**

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

#### **Executive Order 12372**

These regulations are not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

#### **Executive Order 12988**

This rule has been reviewed under Executive Order 12988, on Civil Justice Reform. The provisions of this rule are not retroactive. The provisions of this rule preempt State and local laws to the extent such State and local laws are inconsistent. Generally, all administrative appeal provisions, including those published at 7 CFR part 11, must be exhausted before any action for judicial review may be brought in connection with the matters that are the subject of this rule.

#### **Environmental Evaluation**

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321-4347, the regulations of the Council on Environmental Quality, 40 CFR parts 1500-1508, and the FSA regulations for compliance with NEPA (7 CFR 799 and 7 CFR part 1940, subpart G). FSA concluded that this rule will not have a significant impact on the quality of the human environment either individually or cumulatively and therefore is categorically excluded and not subject to environmental assessments or environmental impact statements in accordance with 7 CFR 1940.310(e)(3).

#### **Paperwork Reduction Act of 1995**

The information collections to which this rule applies have been reviewed by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), approved, and assigned OMB control number 0560-0155. This rule involves no change to the currently approved collection of information.

**E-Government Act Compliance**

FSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

**List of Subjects***7 CFR Part 761*

Accounting, Loan programs—agriculture, Rural areas.

*7 CFR Part 762*

Agriculture, Credit, Loan programs—agriculture, Grant programs—agriculture, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 7 CFR parts 761 and 762 are proposed to be amended as follows:

**PART 761—GENERAL PROGRAM ADMINISTRATION**

1. The authority citation for part 761 continues to read as follows:

**Authority:** 5 U.S.C. 301 and 7 U.S.C. 1989.

**§ 761.2 [Amended]**

2. In § 761.2(b), remove the definition of “average agricultural loan customer.”

**PART 762—GUARANTEED FARM LOANS**

3. The authority citation for part 762 continues to read as follows:

**Authority:** 5 U.S.C. 301, 7 U.S.C. 1989.

4. Amend § 762.124 by revising paragraphs (a)(2) and (a)(3) to read as follows:

**§ 762.124 Interest rate, terms, charges, and fees.**

(a) \* \* \*

(2) If a variable rate is used, it must be tied to an index or rate specifically agreed to between the lender and borrower in the loan instruments and the rate adjustments must be in accordance with normal practices of the lender for unguaranteed loans. Upon request, the lender must provide the Agency with copies of written rate adjustment practices.

(3) At loan closing and at the time of loan restructuring, the interest rate on the guaranteed portion and the unguaranteed portion of a fixed or variable rate loan may not exceed the following, as applicable:

(i) For lenders utilizing a pricing model based on loan risk, the highest interest rate for tier of the lender’s risk rating matrix that reflects moderate risk. The lender must provide the Agency with this pricing model.

(ii) For lenders without a risk based pricing model, the 10-year Treasury rate plus 350 basis points for FO and the New York Prime (as published in the Wall Street Journal) plus 250 basis points for OL. In the event of extraordinary conditions resulting in large interest rate changes or term structure changes, the Agency may temporarily set a different maximum rate under this paragraph as determined in consultation with the Department of the Treasury; and

\* \* \* \* \*

5. Amend § 762.150 by revising paragraph (g) to read as follows:

**§ 762.150 Interest Assistance Program.**

\* \* \* \* \*

(g) *Rate of Interest.* The lender interest rate will be set according to § 762.124(a).

\* \* \* \* \*

Signed at Washington, DC, on September 24, 2008.

**Glen L. Keppy,**

*Acting Administrator, Farm Service Agency.*  
[FR Doc. E8–22871 Filed 9–29–08; 8:45 am]

**BILLING CODE 3410–05–P**

**DEPARTMENT OF THE TREASURY****Office of the Comptroller of the Currency****12 CFR Part 3**

[Docket ID OCC–2008–0014]

RIN 1557–AD13

**FEDERAL RESERVE SYSTEM****12 CFR Parts 208 and 225**

[Regulations H and Y; Docket No. R–1329]

**FEDERAL DEPOSIT INSURANCE CORPORATION****12 CFR Part 325**

RIN 3064–AD32

**DEPARTMENT OF THE TREASURY****Office of Thrift Supervision****12 CFR Part 567**

[Docket No. OTS–2008–0010]

RIN 1550–AC22

**Minimum Capital Ratios; Capital Adequacy Guidelines; Capital Maintenance; Capital: Deduction of Goodwill Net of Associated Deferred Tax Liability**

**AGENCIES:** Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

**ACTION:** Joint notice of proposed rulemaking.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the Agencies) are proposing to permit banks, bank holding companies, and savings associations (collectively, banking organizations) to reduce the amount of goodwill that a banking organization must deduct from tier 1 capital by the amount of any deferred tax liability associated with that goodwill. The proposed change would effectively reduce the amount of goodwill that a banking organization must deduct from tier 1 capital and would reflect a banking organization’s maximum exposure to loss in the event that such goodwill is impaired or derecognized for financial reporting purposes.

**DATES:** Comments must be received on or before October 30, 2008.

**ADDRESSES:** Comments should be directed to:

*OCC:* Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or e-mail, if possible. Please use the title “Capital Adequacy Guidelines; Deduction of Goodwill Net of Associated Deferred Tax Liability” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—“Regulations.gov”:* Go to <http://www.regulations.gov>, under the “More Search Options” tab click next to the “Advanced Docket Search” option where indicated, select “Comptroller of the Currency” from the agency drop-down menu, then click “Submit.” In the “Docket ID” column, select “OCC–2008–0014” to submit or view public comments and to view supporting and related materials for this notice of proposed rulemaking. The “How to Use This Site” link on the Regulations.gov