

CHAPTER 138a. FAMILY FARM DEVELOPMENT PROGRAM

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Authority

The provisions of this Chapter 138a issued under the Agricultural Development Act (3 P. S. §§ 1301—1314), unless otherwise noted.

Source

The provisions of this Chapter 140 adopted November 14, 1986, effective November 15, 1986, 16 Pa.B. 4498; renumbered to Chapter 138a on November 21, 1986, effective November 22, 1986, 16 Pa.B. 4564, unless otherwise noted.

§ 138a.1. Program objectives.

The Family Farm Development Program was created to maintain and expand family farming through economic initiatives for beginning farmers, and farmers desiring to change, maintain, make capital improvements or expand their family farms.

§ 138a.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Applicant—A family farm enterprise applying for a family farm loan guarantee or an interest deferral.

Area loan organization—A local development district of the Appalachian Regional Commission, an industrial development corporation organized and existing under the Pennsylvania Industrial Development Authority Act (73 P. S. §§ 301—314) or another nonprofit economic development organization certified by the Secretary and the Secretary of Commerce as possessing an acceptable loan review committee, professional staff support and other qualifications that are necessary to evaluate and administer loan guarantees and interest deferrals made under the Agricultural Development Act (3 P. S. §§ 1301—1314).

Borrower—A person or equity, who participates in the Family Farm Development Program and meets one of the following eligibility criteria:

(i) A natural person domiciled in this Commonwealth or showing evidence of intention to establish a domicile in this Commonwealth. The person shall reside on or actively operate or manage a family farm.

(ii) A Commonwealth corporation formed for the purpose of conducting a family farm enterprise in which the majority of the voting stock is owned by natural persons who are engaged in farming on behalf of the corporation or are the spouses or relatives of the persons. Individuals holding the majority of voting stock shall be domiciled in this Commonwealth or show evidence of their intention to establish a domicile in this Commonwealth. At least one of the majority stockholders shall reside on or actively operate or manage the family farm, and none of the stockholders may be corporations.

(iii) A general family farm partnership entered into for the purpose of farming, and having no more than three unrelated members. One of the members shall reside on or actively operate or manage the family farm.

Committee—The Agricultural Development Advisory Committee.

Commodities—Agricultural crops, livestock or livestock products, poultry or poultry products, milk and dairy products, aquaculture or fruit or other horticultural products.

Department—The Department of Agriculture of the Commonwealth.

Family farm enterprise—The term includes one of the following:

(i) A natural person, family farm corporation or family farm partnership engaged in farming, including the processing and marketing of its agricultural commodities directly, if the agricultural commodities are or would be produced on the farm for which financial assistance is sought.

(ii) A natural person domiciled in this Commonwealth or showing evidence of intention to establish a domicile in this Commonwealth. The person shall reside on or actively operate or manage the family farm or intend to do so within 6 months from the date the Secretary grants the interest deferral or loan guarantee.

Lender—A bank, savings bank, mutual savings bank, building and loan association or savings and loan association, organized under the statutes of the Commonwealth or the United States; trust companies and trust companies acting as fiduciaries; other financial institutions subject to the supervision of the Department of Banking; foreign or domestic insurance companies subject to the supervision of the Insurance Commissioner; financial institutions operating under the supervision of the Federal Farm Credit Administration; or the seller of property in the case of a seller-sponsored loan or purchase money loan.

Secretary—The Secretary of the Department.

§ 138a.3. Eligibility.

The Department may guarantee loans and provide interest payments to a lender for up to the first 3 years of a loan to a borrower, except in the case of a loan for working capital when interest deferrals will be provided for only the first year of the loan.

§ 138a.4. Permissible uses of loan proceeds and maximum terms of loans.

Loan proceeds which are guaranteed by the Department or have received an interest deferral shall be used for the following eligible agricultural purposes:

- (1) Acquisition, construction or rehabilitation of farmland and farm structures located on farmland within this Commonwealth owned or leased by a family farm enterprise. The term of the loan may not exceed 20 years.
- (2) Acquisition, repair or replacement of capital assets, such as equipment and livestock to be used on farmland within this Commonwealth by a family farm enterprise. The term of the loan may not exceed 7 years.
- (3) Working capital for the acquisition of fertilizer, seed, livestock feed and other supplies which will be used on farmland within this Commonwealth by a family farm enterprise. The term of the loan may not exceed 1 year.

Cross References

This section cited in 7 Pa. Code § 138a.6 (relating to condition of loan guarantees); and 7 Pa. Code § 138a.7 (relating to conditions on interest deferrals).

§ 138a.5. Limitation.

The Department will not guarantee a loan or provide an interest deferral unless the applicant demonstrates that the assistance would be used by the borrower for the production of agricultural commodities on land or in facilities suitable for the production and would:

- (1) Facilitate the continued operation or transfer of a farm within this Commonwealth which is currently active. In utilizing this requirement, consideration may be given to the need for assistance in order to acquire productive assets to recover from:
 - (i) A natural disaster, other than a disease-related disaster, in the applicant's location, such as fire, drought or flood if Federal or other assistance is not available on a timely basis.
 - (ii) A bankruptcy or an unforeseen financial setback which is not the fault of the borrower.
- (2) Help the applicant convert all or part of a farm's production to production of an agricultural commodity for which there is more likely to be an adequate market.
- (3) Help the family farm enterprise to process or directly market agricultural commodities produced on the farm seeking assistance.

§ 138a.6. Condition of loan guarantees.

(a) Upon default of a loan guaranteed under this program, the Commonwealth will pay the lender the lesser of:

(1) Ninety-percent of the deficiency on the loan following liquidation of collateral, where the loan deficiency means the outstanding principal balance of the loan less the collateral and all other security on the loans; and less estimated loss settlements previously paid by the Department under subsection (d).

(2) Two-hundred thousand dollars for the portion of the loan used for farmland and farm structures; \$150,000 for the portion of the loan used for acquiring equipment, livestock and capital assets; \$50,000 for the portion of the loan used for working capital for the acquisition of fertilizer, seed, livestock feed and other supplies to be used on farmland by a borrower.

(b) The lender is responsible for all aspects of loan administration. The lender is required to disburse and service the loan, and enforce remedies under the financing documents, including liquidation of collateral—tangible, intangible and proceeds—and enforcement of security interests upon default.

(c) The lender is required to fully secure the loan with no less than a second lien position on assets and collateral. When necessary and approved by the Secretary, subordinated positions may be taken.

(d) In case of default by the borrower, if either the lender or the Department concludes that liquidation is necessary, the lender, unless the Department decides to carry out liquidation, will be required to liquidate assets used as collateral and apply the entire proceeds against the outstanding principal balance owed by the borrower. The Commonwealth will pay an estimated loss settlement to the lender prior to completion of liquidation.

(e) A loan guarantee will not be permitted as part of a general refinancing of a current loan from the lender to the borrower unless the current loan was made for a permissible use as set forth in § 138a.4 (relating to permissible uses of loan proceeds and maximum terms of loans), and one of the following occurs:

(1) The refinancing is necessary due to a natural disaster suffered by the borrower.

(2) If it is needed to avoid the foreclosure of a mortgage on the borrower's farm, where the foreclosure is due to serious financial hardship not the fault of the borrower and the borrower has a reasonable prospect of resuming full payment of the principal and interest on the farm mortgage.

(3) The primary purpose of the refinancing is to facilitate the implementation of a business plan reasonably designed to improve the operating results of the borrower's family farm through substantial changes in the operations of the farm.

Cross References

This section cited in 7 Pa. Code § 138a.7 (relating to conditions on interest deferrals).

§ 138a.7. Conditions on interest deferrals.

(a) Interest deferrals shall continue for up to the first 3 years of a loan, except in the case of a loan for working capital when interest deferrals will be provided for only the first year of the loan.

(b) The borrower shall fully reimburse the Department through the lender over a term not to exceed the length of the remaining term of the loan. Interest may not be charged on interest deferrals. The Secretary will specify the date on which the interest deferral payments will cease and the date on which repayments of interest deferred will commence.

(c) An interest deferral will not be permitted as part of a general refinancing of a current loan from the lender to the borrower unless the current loan was made for a permissible use as set forth in § 138a.4 (relating to permissible uses of loan proceeds and maximum terms of loans) and one of the following exists:

(1) The refinancing is necessary due to a natural disaster suffered by the borrower.

(2) If it is needed to avoid the foreclosure of a mortgage on the borrower's farm, where the foreclosure is due to serious financial hardship not the fault of the borrower and the borrower has a reasonable prospect of resuming full payment of principle and interest on the farm mortgage.

(3) The primary purpose of the refinancing is to facilitate the implementation of a business plan reasonably designed to improve the operating results of the borrower's family farm through substantial changes in the operations of the farm.

(d) Interest deferrals may not be made on loans or portions of loans which exceed the dollar limitations in § 138a.6(a) (relating to condition of loan guarantees).

(e) The lender shall hold adequate security or collateral on the interest deferred and shall collect the repayments of interest deferred on behalf of the Commonwealth according to a schedule agreed to by the Commonwealth and the lender. No less than a second lien position on assets and collateral may be taken to secure repayment, unless a lower position is necessary and is approved by the Secretary.

(f) Interest deferrals may be granted for a working capital loan for up to 1 year. The borrower shall fully reimburse the Department through the lender for the amount of the interest deferred by a one time payment to be made on the last day of the 1 year loan.

§ 138a.8. General conditions.

(a) A borrower who sells or conveys the property for which an interest deferral or loan guarantee was granted shall immediately repay the loan in full to the lender and repay outstanding interest deferral owed to the Commonwealth through the lender.

(b) A borrower who fails to maintain the land or facility for which an interest deferral or loan guarantee was granted for a period longer than 1 year shall be considered to be in default and shall repay the loan in full to the lender and repay outstanding interest deferral to the Commonwealth. The default may be waived by the Secretary in the event of a physical disability of the borrower or other extenuating circumstances.

§ 138a.9. Review of application.

The evaluation of the loan guarantee or interest deferral application will be based on the following criteria:

- (1) The education, training and experience of the borrower in the type of farming for which the loan guarantee or interest deferral is requested.
- (2) The financial ability of the borrower to meet and satisfy debt service as it becomes due and payable as determined by financial statements and cash flow statements.
- (3) The sufficiency of available collateral.
- (4) The relevant criminal and credit history and ratings of the borrower as determined from credit reporting services and other sources.
- (5) The eligibility of the borrower and the project for which the guarantee or interest deferral is being sought.
- (6) The capital needs of the borrower.
- (7) The payment to date of all tax obligations due and owing by the borrower to the Commonwealth or political subdivisions.
- (8) Evidence that insufficient private funds are available at reasonable rates and terms within the necessary time without the requested assistance.

Cross References

This section cited in 7 Pa. Code § 138a.10 (relating to administration).

§ 138a.10. Administration.

(a) The Department of Commerce and the Department will jointly certify area loan organizations for the processing of loan applications. The area loan organizations shall enter into a contract with the Commonwealth specifying their respective duties and obligations.

- (1) To receive certification, the area loan organization shall possess and demonstrate expertise in matters relating to agriculture and farm lending as evidenced by an acceptable loan review committee and professional staff support.
- (2) An area loan organization may establish and charge, without prior Department approval, a service fee of not greater than \$50 for each application received and reviewed and may establish and charge an additional service fee for each application given formal approval by the Secretary in an amount not to exceed \$150 for an application of \$100,000 or less and in an amount not to

exceed \$200 for applications greater than \$100,000. Fees in excess of these amounts may only be established and charged upon application to and with prior approval of the Department.

(b) Only one area loan organization will be certified for a particular county or group of counties, unless a local organization demonstrates strong reasons to permit multiple designations for a geographic area.

(1) The lender may, after consulting with the borrower, submit the application either to an area loan organization or directly to the Department of Commerce.

(2) The area loan organization, if utilized, shall review the application and make its initial recommendation based on the criteria in § 138a.9 (relating to review of application) and forward the application to the Department of Commerce. The area loan organization shall make the recommendation within 30 days of receipt of the completed application from the lender.

(c) Within 30 days of receipt of a properly submitted and documented application, the Secretary of Commerce will conduct a financial review of the application and recommend approval, approval with special conditions or rejection of the application on the basis of the recommendation of the area loan organization, if utilized, and the criteria in § 138a.9.

(d) The Secretary of Commerce will forward the recommendation to the Secretary.

(e) The Committee will review the application and make a recommendation regarding approval or disapproval of the application to the Secretary based on the vote of a majority of the quorum present at the meeting. If the Committee does not submit its recommendation to the Secretary within 90 days, the Committee will be deemed to have recommended approval of the application.

(f) The Secretary will grant an interest deferral or loan guarantee to an applicant only after consideration of a recommendation made by the Committee and the recommendation of the Secretary of Commerce and only in accordance with the eligibility criteria and loan limits prescribed. The Secretary may grant an interest deferral or a loan guarantee in a lesser amount and on less favorable terms than recommended by the Committee or the Secretary of Commerce and may impose conditions not recommended by the Committee or the Secretary of Commerce. The Secretary will make a determination within 10 days after receipt of the approved application from the Committee.

(g) The Secretary will not approve an application for a loan guarantee or interest deferral which will cause the Commonwealth's total liability for payments on loans still outstanding to exceed \$10 million.

(h) Before an application is approved, the Secretary, on behalf of the Commonwealth, will enter into a contract with the lender and borrower specifying the terms and conditions of the loan guarantee or interest deferral.

§ 138a.11. Expiration.

No loan guarantees or interest deferrals will be approved after June 30, 1987.

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