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## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### 7 CFR Part 770

RIN 0560-AG87

#### Revision of Indian Tribal Land Acquisition Program Loan Regulations

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

**SUMMARY:** This rule clarifies the Indian Tribal Land Acquisition Program (ITLAP) regulations for borrowers who apply for a rental value write-down. The rule clarifies the method for determining the rental value of security for purposes of a write-down, adds a definition of "rental value," clarifies other write-down eligibility provisions, and limits new loan eligibility for borrowers who have received a write-down in the past. These clarifications are intended to reduce the borrower's costs of applying for a rental value write-down, and reduce the burden on Agency employees in processing requests.

EFFECTIVE DATE: March 14, 2005.

**FOR FURTHER INFORMATION CONTACT:** Mel Thompson, Senior Loan Officer, Farm Service Agency; telephone: 202-720-7862; Facsimile: 202-690-1196; E-mail: [mel\\_thompson@wdc.usda.gov](mailto:mel_thompson@wdc.usda.gov). Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

#### SUPPLEMENTARY INFORMATION:

##### Discussion of the Final Rule

This rule clarifies the write-down servicing policies of the Farm Service Agency's (FSA) Indian Tribal Land Acquisition Loan Program (ITLAP). The first change it makes is to clarify "rental value" by adding a definition at section

770.2(b). The second change removes the requirement for an appraisal needed to apply for a rental value write-down and replaces it with a market value rent study report prepared by a certified general appraiser. Currently a complete appraisal is required to establish the rental value of the subject property. The appraisal includes a comparable sales approach, an income approach and a cost approach to determine the value of the property. For a rental value write-down, the appraisal is excessive for the determination of the rental value as only the income approach of the appraisal is relevant. Therefore, the appraisal requirement is eliminated and replaced with the requirement for a market value rent study. The market value rent study compares the rental income of properties similar and in the area of the subject property in order to establish the 5-year average rental value of the land purchased with ITLAP funds. This change will reduce the borrower's costs, reduce the appraiser's time required to complete the report, and reduce FSA's application processing time. The third change requires that write-down applicants must establish that the delinquency is beyond their control and cannot be brought current within one year, and that they cannot meet their annual loan payments. These requirements will assure that write-downs are provided to those borrowers faced with circumstances outside their control.

For rental value write-downs, section 770.10(e)(4)(iv) of the existing rule prohibits additional write-downs of the specific ITLAP loan that has received the rental value write-down previously. It also prohibits additional write-downs of the specific loan that has received a land value write-down within the last five years. This limitation is modified in this final rule to preclude an additional rental value write-down of any loan when any loan has previously received a rental value write-down. It also prohibits a write-down of any loan when the borrower has received a land value write-down on any loan within the last five years. This revision limits potential losses on future rental value write-downs.

In addition, the final rule adds a loan eligibility requirement to section 770.3. Since write-downs are the consequence of a borrower's seriously deteriorating financial condition, the rule prohibits

ITLAP loans to borrowers that have received an ITLAP rental value or land value write-down within the last five years. The additional eligibility requirement enables FSA to make more creditworthy loans and decrease the possibility of further Agency losses.

This rule will result in better service and substantial monetary and time savings for borrowers who apply for a write-down based on rental value. In addition, it will increase the protection of the Government from potential loss and reduce the agency official's burden in administering the servicing of the Indian Tribal Land Acquisition Program.

##### Discussion of Comments on the Proposed Rule

On March 14, 2003, the Farm Service Agency published a Proposed Rule (68 FR 12309) requesting comments regarding proposed changes to ITLAP. One response was received from a Native American Tribe which contained four comments that are addressed as follows:

The first comment states that FSA did not comply with the provisions of Executive Order 13175 (E.O. 13175) and did not consult with this Tribe prior to publishing the Proposed Rule. E.O. 13175 requires that Tribal officials be consulted early in the process of developing regulations that are likely to affect them.

The Agency complied with the requirements of E.O. 13175. The proposed rule resulted from requests for debt write-down and the concern that the appraisal required was too costly. This rule was proposed in part to address that concern. This rule will reduce the cost to apply for a write-down by replacing the appraisal requirement with a rental value market study. To comply further with E.O. 13175, the proposed rule was sent in advance of final Agency approval and publication to all Native American Tribes that have ITLAP loans. The original debt write-down requirements published January 9, 2001, resulted from requests from Tribes for debt relief. This rule results from direct discussions with Tribes after publication of the 2001 rule, consistent with the consultation requirement of 5(b)(2) of E.O. 13175. Thus, the Agency has complied with the requirement in EO 13175 to consult with Tribes on regulation changes.

The second and third comments state that requiring a market study of the rental value of the land purchased with ITLAP funds is still impractical for a Tribe to qualify for a write-down based on rental value. The respondent states that the market study would be required for over 8,000 interests in land acquired with ITLAP funds and the costs would be prohibitive. As an alternative to the Agency's proposed rule, the respondent suggests that the land's rental value be based on the Tribe's ability to make payments on the loan and the past revenue from the land purchased with ITLAP funds.

The Agency must utilize a valid method of valuation of the loan collateral to determine if a write-down of the debt is warranted. An analysis of the value of the land based on its rental value was determined to be the most cost effective solution. A study of the rental market in the subject area performed by a certified general appraiser according to the Uniform Standards for Professional Appraisal Practice (USPAP) meets this requirement. This substantially reduces the cost to the debt write-down applicant by eliminating the full breadth of requirements for a traditional appraisal by focusing only on the rental value of the land. Basing the rental value on actual income from a specific parcel may not be valid if that parcel is poorly managed, not farmed, or rented for less than market rent in the area. The write-down, and subsequently, the loss to the Government, would be more in such case than it would be based on a valid rental market study. Using historical revenues from rent, as proposed by the respondent, could cause the debt on the land to be written off entirely if the borrower simply did not farm or rent that parcel in recent years. Requiring the market rental value study, on which to base rental value, will avoid such a result. Therefore, the comment and the suggested alternative to the Agency's proposal were not adopted.

The fourth comment suggests that FSA authorize certain Agency officials to make an exception to the write-down regulation to avoid appraisal requirements. The respondent asserts that "FSA has exception authority for those programs utilized by non-Indian borrowers and USDA civil rights policies require that Native Americans be treated equitably."

A general exception authority is not necessary to address the problem of appraisals intended to be corrected by this rule. The appraisal requirement is being replaced with a market value rent study requirement. Furthermore, typical

exception authorities used in other farm loan programs are contingent on the proposed action being consistent with statutory authorities and in the best interests of the Government. Given the fact that the Agency receives an assignment of income from the Tribe through the Bureau of Indian Affairs to cover loan payments, the Agency does not believe write-downs other than those specifically authorized by part 770 would ever be in the best interests of the Government. Therefore, the Agency does not adopt the suggestion.

#### *Executive Order 13175*

The requirements of Executive Order 13175 have been met with the promulgation of this rule. The rule is the result of consultation with a Tribe applicant for a write-down and all Tribes who currently have an ITLAP loan were sent an advance copy of the proposed rule and requested to comment. The impact of the rule is to reduce the cost to the applicant for a write-down by removing the appraisal requirement and replacing it with a market value rent study. In addition, due to the time typically associated with the completion of an appraisal, the time associated with processing the application is substantially reduced.

#### *Executive Order 12866*

This rule has been determined under Executive Order 12866 to be not significant and was not reviewed by the Office of Management and Budget.

#### *Regulatory Flexibility Act*

In accordance with the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, the Agency has determined that there will be no significant economic impact on a substantial number of small entities. There are currently 25 ITLAP borrowers with 107 loans totaling \$59 million who may be affected by this rule. The RFA requires agencies to consider the impact of their regulatory proposals on small entities, minimize small entity impacts, and provide their analyses for public comment. This rule affects Indian Tribes, and such Tribes are not small businesses as defined by and subject to the Regulatory Flexibility Act. Nevertheless, this rule provides a substantial reduction in cost to the debt write-down applicant. Thus, to the extent an Indian Tribe may be affected by this rule, there are no negative impacts. Further, FSA stated its finding in the proposed rule at 68 FR 12309, March 14, 2003, that the rule will not have a significant economic impact on a substantial number of small entities, and received no comments on this finding.

#### *Environmental Evaluation*

The environmental impacts of this rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR Parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR part 1940, subpart G. FSA completed an environmental evaluation and concluded the rule requires no further environmental review.

#### *Executive Order 12988*

This rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with that Executive Order: (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 parts 11 and 780 must be exhausted before requesting judicial review.

#### *Executive Order 12372*

As stated in the Notice related to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) the programs and activities within this rule do not require consultation with state and local officials under the scope of Executive Order 12372.

#### *Unfunded Mandates*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, requires Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments or the private sector of expenditures of \$100 million or more in any one year. This rule contains no Federal mandates, as defined by title II of the UMRA; therefore, this rule is not subject to sections 202 and 205 of the UMRA.

#### *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.

#### *Paperwork Reduction Act*

The information collections were previously approved under OMB control number 0560–0198, but the package was retired since there are less than ten respondents annually and the collections are, therefore, not subject to

the Paperwork Burden Act. The number of estimated annual respondents is not increased by this rule and the time burden on respondents is decreased.

#### *Federal Assistance Program*

The changes affect the following program listed in the Catalog of Federal Domestic Assistance: 10.421—Indian Tribes and Tribal Corporation Loans.

#### **List of Subjects in 7 CFR Part 770**

Agriculture, Credit, Indians, Rural areas, Loan programs.

■ Accordingly, for the reasons stated in the preamble, 7 CFR part 770 is amended as follows:

#### **PART 770—INDIAN TRIBAL LAND ACQUISITION LOANS**

■ 1. The authority citation for part 770 continues to read as follows:

**Authority:** 5 U.S.C. 301, 25 U.S.C. 490.

■ 2. Amend § 770.2 by adding the abbreviation *USPAP* in alphabetical order in paragraph (a) and a definition for *Rental value* in alphabetical order in paragraph (b) to read as follows:

#### **§ 770.2 Abbreviations and definitions.**

(a) *Abbreviations.*

\* \* \* \* \*

*USPAP* Uniform Standards of Professional Appraisal Practice.

(b) *Definitions.*

\* \* \* \* \*

*Rental value* is the potential annual rental income of a parcel of real estate as determined by a market analysis of annual rental incomes of like real estate in the subject property area.

\* \* \* \* \*

■ 3. Amend § 770.3 by adding paragraph (h) to read as follows:

#### **§ 770.3 Eligibility requirements.**

\* \* \* \* \*

(h) Have not received a write-down as provided in § 770.10(e) within the preceding 5 years.

■ 4. Amend § 770.10 by revising paragraphs (e)(3)(iii) and (e)(3)(iv), adding paragraph (e)(3)(v), revising paragraphs (e)(4)(iii) and (e)(4)(iv) and adding paragraph (e)(4)(v), to read as follows:

#### **§ 770.10 Servicing.**

\* \* \* \* \*

(e) *Debt write-down.*

\* \* \* \* \*

(3) *Land value write-down.*

\* \* \* \* \*

(iii) The loan was made more than 5 years prior to the application for land value write-down;

(iv) The loan has not previously been written down under paragraph (e)(4) of this section and has not been written down within the last 5 years under this paragraph, and

(v) The borrower must meet the eligibility requirements of paragraphs (a)(1)(ii) or (iii) of this section.

(4) *Rental value write-down.*

\* \* \* \* \*

(iii) The borrower provides a current market value rent study report for the land for the preceding 5 years, which identifies the average rental value. The report must be prepared by a certified general appraiser and meet the requirements of USPAP;

(iv) The borrower has not previously received a write-down under this paragraph and has not had a loan written down within the last 5 years under paragraph (e)(3) of this section, and

(v) The borrower must meet the eligibility requirements of paragraph (a)(1)(ii) or (iii) of this section.

\* \* \* \* \*

Signed in Washington, DC, on January 25, 2005.

**James R. Little,**

*Administrator, Farm Service Agency.*

[FR Doc. 05-2678 Filed 2-10-05; 8:45 am]

**BILLING CODE 3410-05-P**

#### **DEPARTMENT OF TRANSPORTATION**

#### **Federal Aviation Administration**

#### **14 CFR Part 39**

[Docket No. 2003-SW-23-AD; Amendment 39-13966; AD 2005-03-10]

**RIN 2120-AA64**

#### **Airworthiness Directives; Bell Helicopter Textron, A Division of Textron Canada Model 222, 222B, 222U and 230 Helicopters**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD) for Bell Helicopter Textron, A Division of Textron Canada (BHTC) Model 222, 222B, 222U, and 230 helicopters, that currently requires a visual check of each main rotor grip (grip) and pitch horn assembly without disassembling the main rotor hub assembly (hub assembly), and a visual inspection at specified intervals of each affected grip and pitch horn assembly for a crack using a 10-power or higher magnifying glass. If a crack is found, the existing AD

requires replacing each unairworthy grip or pitch horn with an airworthy part before further flight. This amendment requires those same actions, and also requires an additional inspection of the grip and pitch horn assembly for a crack in the disassembled hub assembly, and replacing any cracked part with an airworthy part. This amendment is prompted by the determination that an additional enhanced inspection is needed to ensure the integrity of the hub assembly. The actions specified by this AD are intended to prevent failure of the grip or pitch horn and subsequent loss of control of the helicopter.

**DATES:** Effective March 18, 2005.

#### **FOR FURTHER INFORMATION CONTACT:**

Charles Harrison, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, Fort Worth, Texas 76193-0110, telephone (817) 222-5128, fax (817) 222-5961.

#### **SUPPLEMENTARY INFORMATION:**

A proposal to amend 14 CFR part 39 by superseding AD 2002-08-54, Amendment 39-12835 (67 FR 50793, August 6, 2002), and a correction published on August 21, 2002 (67 FR 54259), for the specified BHTC model helicopters was published in the **Federal Register** on January 21, 2004 (69 FR 2855). The action proposed to require, before further flight and at specified intervals, visually checking each affected grip and pitch horn for a crack. The action also proposed to require using a 10-power or higher magnifying glass to visually inspect each affected grip and pitch horn for a crack at specified intervals. If a crack is found, the action proposed replacing each unairworthy grip or pitch horn with an airworthy part before further flight.

BHTC has issued Bell Helicopter Textron Alert Service Bulletin No. 222-02-93, Revision A, No. 222U-02-64, Revision A, and 230-02-26, Revision A, all dated March 3, 2003. The service bulletins introduce a daily check and a recurrent 25 hour inspection requirement for grips and pitch horns with more than 1,250 hours since new. In addition, the service bulletins provide inspection instructions for the main rotor grip assemblies and pitch horns. The service bulletins also specify that all main rotor hub assemblies, which have accumulated more than 2,500 hours of operation since new, overhaul, or the last 2,500 hour scheduled inspection, be inspected in accordance with maintenance requirements listed in Chapter 5 of the applicable maintenance manual.