IMPLEMENTING GUIDELINES ON REMEDIAL MANAGEMENT SYSTEM FOR DA-ACEF ACCOUNTS

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1. RATIONALE

Pursuant to Republic Act No. 9496 and Administrative Order No. 18, Series of 2011 otherwise known as the Revised Implementation Guidelines on the Utilization of ACEF, the DA-ACEF invested in projects designed to support the agricultural and fisheries sectors to become globally competitive, viable, efficient and sustainable. In view of the inherent high risk associated with the agricultural credit however, it shall be the primary responsibility of the DA-ACEF to protect its interest by adopting measures that will address the existing/potential problems and changing needs of the ACEF borrowers in order to keep their businesses operationally sustainable. Indeed, a number of borrowers nationwide have petitioned the DA-ACEF for appropriate remedial measures, which shall provide them a greater leeway to overcome the vicious effects of the market and to make their projects viable yet, its structure is not designed to accommodate such numerous requests, which require account evaluation, thus, the need for external support for greater collection efficiency.

2. OBJECTIVES

2.1

Enable ACEF borrowers to overcome the constraints in their cash flow and make their projects viable and sustainable through remedial measures.

2.2

Standardize loan documentation in support of the credit accommodation.

2.3

Provide optimum protection to DA-ACEF through timely, judicial and extrajudicial measures.

3. LEGAL BASES

Administrative Order (AO) No. 18, Series of 2011 otherwise known as the Revised Implementation Guidelines on the Utilization of ACEF, which implements RA 9496 of 2008.

4. DEFINITION OF TERMS

Accounts In-Arrears - are accounts that have not matured yet but with unpaid amortization/s as of a given date.

Amortization - refers to the amount to be paid at a given schedule/date during the term of the loan.

Amortization Schedule - refers to a document showing definite information such as, but not limited to: (a) the outstanding balance of the loan; and (b) the amount of amortization due at regular intervals over the term of the loan.

Borrower - shall refer to an individual or entity, which availed of a loan under the DA-ACEF program.

Collateral - refers to a security offered to ensure the payment of the loan.

Current Accounts - are accounts whose terms have not yet lapsed/expired, the amortizations of which are paid in accordance with the Amortization Schedule.

Date of Release - refers to the date when the proceeds of the loan was released or granted to the borrower.

Deferment - refers to the temporary suspension in the payment of a regular amortization due by way of holding the deposit of the check covering the said payment, provided that a specific time is given by borrower on when said check will be deposited including surcharges to be charged to the borrower.

Debt Moratorium - refers to the suspension in the payment of amortization dues for a given time.

Debt Take-Out - refers to the payment of outstanding obligation by any financial institution to DA-ACEF in behalf of its borrower.

Debt Assumption - refers to the transfer of DA-ACEF borrower's obligation to another person/entity by way of a Debt Assumption Agreement.

Debt Restructuring - refers to a process by which accounts whose terms and conditions have been modified by virtue of a Restructuring Agreement, which may include changes in the face amount of the debt as well as the mode of payment and may cover other charges, if any. (for distinction, please read item no. 6.4.4)

Delinquent Borrowers - are borrowers who failed to settle their loan obligations under the DA-ACEF Program.

Interest rate - refers to the amount of the interest imposed to the borrower on a yearly basis for the duration of the loan term.

Final Demand Letter - a letter by which the creditor explains its legal position over the loan account and requests the borrower to fully settle his obligation immediately or take the risks of being sued.

Maturity Date - refers to the date when the loan is to be finally/fully settled.

Outstanding Balance - refers to the total loan amount which remains unpaid as of a given date.

Past Due Accounts - refers to accounts whose loan term has lapsed/expired but remain unsettled or the same have been declared due and demandable by virtue of a final demand letter issued to the borrower, accelerating demandability of his/her obligation.

Penalty - refers to amount imposed to the borrower based on the principal balance after the maturity date.

Principal - refers to the amount of loan as indicated in the Promissory Note or Loan Agreement and the succeeding balances if repayments were made.

Real Estate - refers to a titled land, all rights and interests thereto, and all improvements, such as buildings and other structures affixed to the land.

Statement of Account - refers to a document showing the total amount to be paid by the borrower against his total payments made. Other information includes the name of the borrower, program, amount of loan, date of release and date of maturity.

Surcharge - refers to the amount imposed to the borrower on every day/month of delay of payment of the loan amortization/s as of a given period within the loan term.

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5. SCOPE

This Administrative Order shall provide the policies and procedures for the remedial management of delinquent ACEF borrowers, and if warranted, the filing of appropriate legal action against the said borrowers.

6. STATEMENT OF POLICIES

6.1 Eligibility

ACEF delinquent borrowers shall be eligible to apply for any remedial measures resulting from any of the following circumstances as certified to by an appropriate office/agency:

6.1.1

Natural calamities or fortuitous events, which adversely affected the business or paying capacity of the borrower;

6.1.2

Serious illness, accident or tragedy causing huge expenses on the part of the borrower or any of his immediate family members which affected materially the borrower's cash flow;

6.1.3

Adverse government action, court ruling or governmental reorganization, streamlining or retrenchment directly affecting the borrower's business;

6.1.4

Unexpected drop in prices or demand for goods in the market resulting to serious business reverses; and

6.1.5

Any similar highly justifiable circumstances.

6.2 Responsibility

The ACEF Executive Committee (Execom) shall have the primary responsibility of approving remedial actions on ACEF delinquent borrowers as evaluated and endorsed by the National Technical Committee (NTC).

In case where remedies could no longer be pursued, the concerned office shall immediately endorse the same for appropriate legal action.

6.3 Modes of Remedial Measures

Any or combination of the following remedial actions may be undertaken:

6.3.1 Deferment

Temporary suspension in the payment of regular amortization due by holding the deposit of the check covering the said payment shall be allowed provided that surcharges accruing to the unpaid amortization due are charged to the borrower.

The maximum period within which the borrower is given time to make good of his/her payment shall not exceed 90 calendar days regardless of the amount.

Debt Moratorium

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As a matter of policy, debt moratorium shall be allowed within the loan term only as indicated in the LA/Promissory Note (PN) and must not exceed one (1) year from the date of approval of the moratorium.

Issued PDCs for the amortization dues prior to the approval of the moratorium will be cancelled and the borrower shall be required to issue new set of PDCs to cover the new loan payments in accordance with the new amortization schedule.

6.3.2 Debt Take-Out and Debt Assumption

Debt Take-Out could be availed by an ACEF borrower who obtained approval from other financing sources (e.g. banking/financing institutions or other informal lenders) for the purpose of paying his/her outstanding obligation with the DA-ACEF. Consequently, a Deed of Undertaking or Letter Guarantee, stating among others that all related documents shall be turned-over to the financier upon the perfection of the take-out and/or after the loan is fully settled. All fees relative to the cancellation and the subsequent registration of the documents with the proper agency shall be borne by the paying financial institution/financier and/or the borrower.

On the other hand, a loan of a DA-ACEF borrower may be transferred to another person/entity by way of a Debt Assumption Agreement, which may cover modified terms and conditions. The concerned borrower shall be evaluated in accordance with the existing guidelines of DA covering new loans.

6.3.3 Debt Restructuring

As a general rule, restructuring shall be allowed only once.

The following vital conditions shall be considered prior to recommendation under this mode:

- The amount to be restructured shall be the outstanding principal. Other unpaid charges, if any, maybe capitalized;

- Initial payment may be required;

- Before debt restructuring is recommended, a thorough and careful review of the documents shall be undertaken to prevent possible novation of the previous loan agreement/s;

- Posting of additional security such as, but not limited to collaterals enumerated below, shall be encouraged to ensure payment of the loan:

- Real Estate Mortgage;
- Chattel Mortgage;
- Assignment of Government Bonds/Securities;
- Assignment of Bank Deposits/Placements;
- Assignment of Shares of Stocks; and
- Other acceptable collateral.

- The loan shall have a definite schedule of amortization, which sets payment for equal installments, whether monthly, quarterly, semiannually and so forth; and

- The new terms and conditions that are stipulated in the Restructuring Agreement shall not operate in anyway to relieve or dismiss the liability of the maker /s or to release and/or diminish the existing securities of the obligation, if any.

6.4 Documentary Requirements

6.4.1 Deferment

- Letter request from the borrower indicating his/her explanation on the temporary suspension of payment of the loan, and his/her proposed settlement plan on the same; and

- Certification from appropriate agency/office, if applicable.

6.4.2 General Requirements on Other Remedial Action

- Letter request from the borrower, or in case of a juridical entity, Board Resolution authorizing the request and naming its authorized signatories to transact business with DA-ACEF;

- List of new set of officers; if any

- Certification from an appropriate agency/office indicating proof/reason for non-payment of loan;

- Account Management Proposal Memo;

- Evaluation report and recommendation for remedial action;

- Duly certified Statement of Account (SOA);

- Duly certified copy of the Loan Ledger; and

- Loan Agreement (LA).

6.3.3 Additional Requirements

For Debt Moratorium

- Signed Promissory Note;

- New Amortization Schedule; and

- New set of Post Dated Checks.

For Debt Take-Out

- Letter of intent from interested party/entity in lieu of item (a) under the general requirements; and

- Others, which may be required under the circumstances.

For Debt Assumption

- Letter of intent from the interested party/entity in lieu of item a under the general requirements;

- Projected Cash Flow;

- Financial Statements for the last two years;

- New Amortization Schedule;

- Debt Assumption Agreement and Promissory Note (PN);

- New set of Post Dated Checks; and

- Others, which may be required under the circumstances.

For Debt Restructuring

- Projected Cash Flow;

- Financial Statements for the last two years;

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- Copy of Official Receipt for initial payment tendered;

- New Amortization Schedule;

- Signed Restructuring Agreement and PN;

- New set of Post Dated Checks; and

- Others, which may be required under the circumstances.

6.5 Evaluation and Approval

6.5.1 Final evaluation and approval for remedial actions shall be by the ACEF Execom as recommended by the ACEF NTC. Any remedial action, which may not be covered by this Guideline, shall be presented to the DA-ACEF-NTC for its deliberation and recommendation for approval by the EXECOM.
6.5.2 The approval of the remedial measure shall not mean a waiver of the DA-ACEF's right to proceed against erring borrowers either civilly or criminally, as the case may be.
6.5.3 Upon approval of the remedial measure, the borrower shall be furnished with an Amortization Schedule as reference in paying the loan.

6.6 Surcharges and Penalties

Any delay in the payment of the loan amortization shall be subject to surcharges of one percent (1%) per month until actual payment but not beyond the maturity date.

Likewise, delay in loan payment beyond the maturity date shall be subject to a penalty of two percent (2.0%) per month based on the outstanding principal of the loan

Above charges must be specifically indicated in the PN/MOA/Agreement/ Contract with ACEF borrowers under the remedial action.

7. OPERATING PROCEDURES

Responsible Person/Unit

Responsibility

ACEF Borrower

1. Applies for remedial measures and submits requirements to the Regional Field Unit/Regional Technical Committee.

ACEF RTC

2. Conducts thorough review and evaluation on the account vis-à-vis the proposal

3. Deliberates and recommends appropriate remedial and/or legal action to ACEF Regional Technical Committee.

4. Conducts further review and evaluation on the account and endorses/presents the same to the Remedial Management Committee (RMC)

5. Deliberates further on the account and submits recommendation to the ACEF NTC.

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ACEF NTS

6. Checks completeness of documents and presents the same before the ACEF NTC.

ACEF NTC

7. Deliberates and recommend actions on the proposed remedial action.

ACEF EXECOM

8. Deliberates and Approves recommendation.

ACEF NTC

9. Through the NTS, informs RTC on the approval of the recommendation and returns pertinent documents

RTC/RTS

10. Through the NTS, informs RTC on the approval of the recommendation and returns ACEF pertinent documents

11. Through the RTS, informs Borrower and on the approved recommendation.

RTS

12. Facilitates execution and notarization of documents and provides copies of said documents to the borrower and

13. Monitors and Prepares Report on periodic basis

8. SPECIAL PROVISIONS

8.1 There shall be a periodic consultation among the ACEF Enabling Committees and other concerned government agencies for the purpose of enhancing the effectiveness of this program.

8.2 The ACEF Execom reserves the right to promulgate such rules and regulations (including exceptions thereto) and adopt other measures as may be incidental to, appropriate and necessary for the attainment of the objectives of this program.

9. EFFECTlVITY

This Administrative Order shall take effect immediately.

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Secretary

For the COCAFM:

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