

§ 1493.520 Recovery of losses.

(a) *Notification.* Upon payment of loss to the exporter or the exporter's assignee, CCC will notify the importer of CCC's rights under the subrogation agreement to recover all moneys in default.

(b) *Receipt of monies.* (1) In the event that monies for a defaulted payment are recovered by the exporter or the exporter's assignee from the importer or any other source whatsoever, such monies shall be immediately paid to the Treasurer, CCC. If such monies are not received by CCC within 15 business days from the date of recovery by the exporter or the exporter's assignee, the exporter or the exporter's assignee will owe to CCC interest from the date of recovery to the date of receipt by CCC. This interest will be calculated based on the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery and will accrue from such date to the date of payment by the exporter or the exporter's assignee to CCC. Such interest will be charged only on CCC's share of the recovery.

(2) If CCC recovers monies that should be applied to a payment guarantee for which a claim has been paid by CCC, CCC will pay the holder of the payment guarantee its pro rata share immediately, provided that the required information necessary for determining pro rata distribution has been furnished. If payment is not made by CCC within 15 business days from the date of recovery or 15 business days from receiving the required information for determining pro rata distribution, whichever is later, CCC will pay interest calculated on the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery and such interest will accrue from such date to the date of payment by CCC. The interest will apply only to the portion of the recovery payable to the holder of the payment guarantee.

(c) *Allocation of recoveries.* Recoveries made by CCC from the importer, and recoveries received by CCC from the exporter, the exporter's assignee, or any other source whatsoever, will be

allocated by CCC to the exporter or the exporter's assignee and to CCC on a pro rata basis determined by their respective interests in such recoveries. The respective interest of each party will be determined on a pro rata basis, based on the combined amount of principal and interest in default. Once CCC has paid out a particular claim under a payment guarantee, CCC pro rates any collections it receives and shares these collections proportionately with the holder of the guarantee until both CCC and the holder of the guarantee have been reimbursed in full. Appendix A to §1493.520—Illustration of Pro Rata Allocation of Recoveries—provides an example of the methodology used by CCC in applying this paragraph (c).

(d) *Liabilities to CCC.* Notwithstanding any other terms of the payment guarantee, the exporter may be liable to CCC for any amounts paid by CCC under the payment guarantee when and if it is determined by CCC that the exporter has engaged in fraud, or has been or is in material breach of any contractual obligation, certification or warranty made by the exporter for the purpose of obtaining the payment guarantee or for fulfilling obligations under SCGP. Further, the exporter's assignee may be liable to CCC for any amounts paid by CCC under the payment guarantee when and if it is determined by CCC that the exporter's assignee has engaged in fraud or otherwise violated program requirements.

(e) *Good faith.* The violation by an exporter of the certifications in §§1493.440(b) and 1493.480(d) or the failure of an exporter to comply with the provisions of §§1493.490 or 1493.530(e) will not affect the validity of any payment guarantee with respect to an assignee which had no knowledge of such violation or failure to comply at the time such exporter applied for the payment guarantee or at the time of assignment of the payment guarantee.

(f) *Cooperation in recoveries.* Upon payment by CCC of a claim to the exporter or the exporter's assignee, the exporter or the exporter's assignee will cooperate with CCC to effect recoveries from the importer.

Commodity Credit Corporation, USDA

§ 1493.530

APPENDIX A TO § 1493.520—ILLUSTRATION OF PRO RATA ALLOCATION OF RECOVERIES

The following example illustrates CCC's policy, as set forth in § 1493.520(c), regarding pro rata sharing of recoveries made for claims filed under the SCGP. A typical case might be as follows:

1. The U.S. exporter enters into a \$200,000, 180 day credit arrangement with the importer calling for two equal payments of principal and two equal payments of interest at a rate of 10 percent per annum and a penalty interest rate of 12 percent per annum (basis 360 days) on overdue amounts until the overdue amount is paid. (Basis for interest calculation may be 360 or 365 days.)

2. The importer fails to make the final principal payment of \$100,000 and an interest payment of \$2,500.00 (10% per annum for 90 days on \$100,000), both due on January 31.

3. On February 10, the U.S. exporter files a claim in good order with CCC.

4. CCC's guarantee states that CCC's maximum liability is limited to 60 percent of the principal amount due (\$60,000) and interest at a rate of 8 percent per annum (basis 365 days) on 60 percent of the principal outstanding (\$1,183.56) (8% per annum for 90 days on \$60,000). (CCC's basis for interest calculation is 365 days.)

5. CCC pays the claim on February 22.

6. The average investment rate of the most recent 91-day Treasury Bill auction average which has been published by the Department of Treasury in effect on the date of non-payment by CCC (January 31) is 7 percent. (CCC's late interest rate.)

COMPUTATION OF OBLIGATIONS

Using the above case, CCC's payment to the holder of the payment guarantee would be computed as follows:

1. CCC's Obligation under the Payment Guarantee:	
(a) Principal coverage—(60% \$100,000)	\$60,000.00
(b) Interest coverage—(8% per annum for 90 days on \$60,000, basis 365 days)	1,183.56
	<hr/>
	\$61,183.56
(c) Late interest due from CCC (7% per annum for 11 days on \$61,183.56, basis 365 days)	129.07
	<hr/>
(d) Amount paid by CCC on February 22	\$61,312.63
	<hr/>
2. Importer's obligation under the importer obligation:	
(a) Principal due January 31	\$100,000.00

Interest due January 31 (10% per annum for 90 days on \$100,000, basis 360 days)	2,500.00
	<hr/>
Amount owed by importer as of January 31	\$102,500.00
(b) Penalty interest due (12% per annum for 22 days on \$102,500.00, basis 360 days)	751.67
	<hr/>
(c) Amount owed by importer as of February 22	\$103,251.67
3. Amount of importer's obligation not covered by CCC's payment guarantee:	
\$41,939.04 (\$103,251.67—\$61,312.63)..	

COMPUTATION OF PRO RATA SHARING IN RECOVERY OF LOSSES

In establishing each party's respective interest in any recovery of losses, the total amount due under the importer obligation would be determined as of the date the claim is paid by CCC (February 22). Using the above example in which the amount owed by the importer is \$103,251.67, CCC would be entitled to 59.38 percent (\$61,312.63 divided by \$103,251.67) and the holder of the payment guarantee would be entitled to 40.62 percent (\$41,939.04 divided by \$103,251.67) of any recoveries of losses after settlement of the claim. Since in this example, the losses were recovered after the claim has been paid by CCC, § 1493.520(b) would apply.

§ 1493.530 Miscellaneous provisions.

(a) *Assignment.* (1) The exporter may assign the proceeds which are, or may become, payable by CCC under a payment guarantee or the right to such proceeds only to a financial institution in the U.S. The assignment must cover all amounts payable under the payment guarantee not already paid, may not be made to more than one party, and may not, unless approved in advance by CCC, be:

- (i) Made to one party acting for two or more parties; or
- (ii) Subject to further assignment.

(2) An original and two copies of the written notice of assignment signed by the parties thereto must be filed by the assignee with the Treasurer, CCC, at the address specified in the Contacts P/R.