

(e) *Debt write-down—(1) Application.* The Agency will consider debt write-down under either the land value option or rental value option, as requested by the borrower.

(i) The borrower must submit a completed Agency application form;

(ii) If the borrower applies and is determined eligible for a land value and a rental value write-down, the borrower will receive a write-down based on the write-down option that provides the greatest debt reduction.

(2) *Eligibility.* To be eligible for debt write-down, the borrower (in the case of a tribal corporation, the Native American tribe of the borrower) must:

(i) Be located in a county which is identified as a persistent poverty county by the United States Department of Agriculture, Economic Research Service pursuant to the most recent data from the Bureau of the Census; and

(ii) Have a socio-economic condition over the immediately preceding 5 year period that meets the following two factors as certified by the Native American tribe and the Department of the Interior:

(A) The Native American tribe has a per capita income for individual enrolled tribal members which is less than 50 percent of the Federally established poverty income rate established by the Department of Health and Human Services;

(B) The tribal unemployment rate exceeds 50 percent;

(3) *Land value write-down.* The Agency may reduce the unpaid principal and interest balance on any loan made to the current market value of the land that was purchased with loan funds provided:

(i) The market value of such land has declined by at least 25 percent since the land was purchased as established by a current appraisal;

(ii) Land value decrease is not attributed to the depletion of resources contained on or under the land;

(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.* The Agency may reduce the unpaid principal and interest on any loan, so the annual loan payment for the remaining term of each loan equals the average of annual rental value of the land purchased by each such loan for the immediately preceding 5-year period provided:

(i) The loan was made more than 5 years prior to the rental value writedown;

(ii) The description of the land purchased with the loan funds and the rental values used to calculate the 5 year average annual rental value of the land have been certified by the Department of the Interior;

(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.

(f) *Release of reserve.* Existing reserve accounts may be released for the purpose of making ITLAP loan payments or to purchase additional lands, subject to the following:

(1) A written request is received providing details of the use of the funds;

(2) The loan is not delinquent;

(3) The loan adequately secured by a general assignment of tribal income.

[66 FR 1567, Jan. 9, 2001; 66 FR 47877, Sept. 14, 2001, as amended at 70 FR 7167, Feb. 11, 2005]

PART 771—BOLL WEEVIL ERADICATION LOAN PROGRAM

Sec.

771.1 Introduction.

771.2 Abbreviations and definitions.

771.3 [Reserved]

771.4 Eligibility requirements.

771.5 Loan purposes.

771.6 Environmental requirements.

771.7 Equal opportunity and non-discrimination requirements.

Farm Service Agency, USDA

§ 771.5

- 771.8 Other Federal, State, and local requirements.
- 771.9 Interest rates, terms, security requirements, and repayment.
- 771.10 [Reserved]
- 771.11 Application.
- 771.12 Funding applications.
- 771.13 Loan closing.
- 771.14 Loan monitoring.
- 771.15 Loan servicing.

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989; and Pub. L. 104-180, 110 Stat. 1569.

SOURCE: 67 FR 59771, Sept. 24, 2002, unless otherwise noted.

§ 771.1 Introduction.

The regulations in this part set forth the terms and conditions under which loans are made through the Boll Weevil Eradication Loan Program. The regulations in this part are applicable to applicants, borrowers, and other parties involved in the making, servicing, and liquidation of these loans. The program's objective is to assist producers and state government agencies in the eradication of boll weevils from cotton producing areas.

§ 771.2 Abbreviations and definitions.

The following abbreviations and definitions apply to this part:

(a) Abbreviations:

APHIS means the Animal and Plant Health Inspection Service of the United States Department of Agriculture, or any successor Agency.

FSA means the Farm Service Agency, its employees, and any successor agency.

(b) Definitions:

Extra payment means a payment derived from the sale of property serving as security for a loan, such as real estate or vehicles. Proceeds from program assessments and other normal operating income, when remitted for payment on a loan, will not be considered as an extra payment.

Non-profit corporation means a private domestic corporation created and organized under the laws of the State(s) in which the entity will operate whose net earnings are not distributable to any private shareholder or individual, and which qualifies under the Internal Revenue Service code.

Restructure means to modify the terms of a loan. This may include a

modification of the interest rate and/or repayment terms of the loan.

Security means assets pledged as collateral to assure repayment of a loan in the event of default on the loan.

State organization means a quasi-state run public operation exclusively established and managed by state and/or non-state employees, with all employees currently dedicated to the specific task of eliminating the boll weevil from the cotton growing area of the state.

§ 771.3 [Reserved]

§ 771.4 Eligibility requirements.

(a) An eligible applicant must:

(1) Meet all requirements prescribed by APHIS to qualify for cost-share grant funds as determined by APHIS, (FSA will accept the determination by APHIS as to an organization's qualification);

(2) Have the appropriate charter and/or legal authority as a non-profit corporation or as a State organization specifically organized to operate the boll weevil eradication program in any State, biological, or geographic region of any State in which it operates;

(3) Possess the legal authority to enter into contracts, including debt instruments;

(4) Operate in an area in which producers have approved a referendum authorizing producer assessments and in which an active eradication or post-eradication program is underway or scheduled to begin no later than the fiscal year following the fiscal year in which the application is submitted;

(5) Have the legal authority to pledge producer assessments as security for loans from FSA.

(b) Individual producers are not eligible for loans.

§ 771.5 Loan purposes.

(a) Loan funds may be used for any purpose directly related to boll weevil eradication activities, including, but not limited to:

(1) Purchase or lease of supplies and equipment;

(2) Operating expenses, including but not limited to, travel and office operations;

(3) Salaries and benefits.

(b) Loan funds may not be used to pay expenses incurred for lobbying, public relations, or related activities, or to pay interest on loans from the Agency.

§ 771.6 Environmental requirements.

No loan will be made until all Federal and state statutory and regulatory environmental requirements have been complied with.

§ 771.7 Equal opportunity and non-discrimination requirements.

No recipient of a boll weevil eradication loan shall directly, or through contractual or other arrangement, subject any person or cause any person to be subjected to discrimination on the basis of race, religion, color, national origin, gender, or other prohibited basis. Borrowers must comply with all applicable Federal laws and regulations regarding equal opportunity in hiring, procurement, and related matters.

§ 771.8 Other Federal, State, and local requirements.

(a) In addition to the specific requirements in this subpart, loan applications will be coordinated with all appropriate Federal, State, and local agencies.

(b) Borrowers are required to comply with all applicable:

- (1) Federal, State, or local laws;
- (2) Regulatory commission rules; and
- (3) Regulations which are presently in existence, or which may be later adopted including, but not limited to, those governing the following:
 - (i) Borrowing money, pledging security, and raising revenues for repayment of debt;
 - (ii) Accounting and financial reporting; and
 - (iii) Protection of the environment.

§ 771.9 Interest rates, terms, security requirements, and repayment.

(a) *Interest rate.* The interest rate will be fixed for the term of the loan. The rate will be established by FSA, based upon the cost of Government borrowing for instruments on terms similar to that of the loan requested.

(b) *Term.* The loan term will be based upon the needs of the applicant to ac-

complish the objectives of the loan program as determined by FSA, but may not exceed 10 years.

(c) *Security requirements.* (1) Loans must be adequately secured as determined by FSA. FSA may require certain security, including but not limited to the following:

- (i) Assignments of assessments, taxes, levies, or other sources of revenue as authorized by State law;
- (ii) Investments and deposits of the applicant; and
- (iii) Capital assets or other property of the applicant or its members.

(2) In those cases in which FSA and another lender will hold assignments of the same revenue as collateral, the other lender must agree to a prorated distribution of the assigned revenue. The distribution will be based upon the proportionate share of the applicant's debt the lender holds for the eradication zone from which the revenue is derived at the time of loan closing.

(d) *Repayment.* The applicant must demonstrate that income sources will be sufficient to meet the repayment requirements of the loan and pay operating expenses.

§ 771.10 [Reserved]

§ 771.11 Application.

A complete application will consist of the following:

- (a) An application for Federal assistance (available in any FSA office);
- (b) Applicant's financial projections including a cash flow statement showing the plan for loan repayment;
- (c) Copies of the applicant's authorizing State legislation and organizational documents;
- (d) List of all directors and officers of the applicant;
- (e) Copy of the most recent audited financial statements along with updates through the most recent quarter;
- (f) Copy of the referendum used to establish the assessments and a certification from the Board of Directors that the referendum passed;
- (g) Evidence that the officers and employees authorized to disburse funds are covered by an acceptable fidelity bond;
- (h) Evidence of acceptable liability insurance policies;

(i) Statement from the applicant addressing any current or pending litigation against the applicant as well as any existing judgments;

(j) A copy of a resolution passed by the Board of Directors authorizing the officers to incur debt on behalf of the borrower;

(k) Any other information deemed to be necessary by FSA to render a decision.

§ 771.12 Funding applications.

Loan requests will be processed based on the date FSA receives the application. Loan approval is subject to the availability of funds. However, when multiple applications are received on the same date and available funds will not cover all applications received, applications from active eradication areas, which FSA determines to be most critical for the accomplishment of program objectives, will be funded first.

§ 771.13 Loan closing.

(a) *Conditions.* The applicant must meet all conditions specified by the loan approval official in the notification of loan approval prior to closing.

(b) *Loan instruments and legal documents.* The borrower, through its authorized representatives will execute all loan instruments and legal documents required by FSA to evidence the debt, perfect the required security interest in property and assets securing the loan, and protect the Government's interest, in accordance with applicable State and Federal laws.

(c) *Loan agreement.* A loan agreement between the borrower and FSA will be required. The agreement will set forth performance criteria and other loan requirements necessary to protect the Government's financial and programmatic interest and accomplish the objectives of the loan. Specific provisions of the agreement will be developed on a case-by-case basis to address the particular situation associated with the loan being made. However, all loan agreements will include at least the following provisions:

(1) The borrower must submit audited financial statements to FSA at least annually;

(2) The borrower will immediately notify FSA of any adverse actions such as:

(i) Anticipated default on FSA debt;

(ii) Potential recall vote of an assessment referendum; or

(iii) Being named as a defendant in litigation;

(3) Submission of other specific financial reports for the borrower;

(4) The right of deferral under 7 U.S.C. 1981a; and

(5) Applicable liquidation procedures upon default.

(d) *Fees.* The borrower will pay all fees for recording any legal instruments determined to be necessary and all notary, lien search, and similar fees incident to loan transactions. No fees will be assessed for work performed by FSA employees.

§ 771.14 Loan monitoring.

(a) *Annual and periodic reviews.* At least annually, the borrower will meet with FSA representatives to review the financial status of the borrower, assess the progress of the eradication program utilizing loan funds, and identify any potential problems or concerns.

(b) *Performance monitoring.* At any time FSA determines it necessary, the borrower must allow FSA or its representative to review the operations and financial condition of the borrower. This may include, but is not limited to, field visits, and attendance at Foundation Board meetings. Upon FSA request, a borrower must submit any financial or other information within 14 days unless the data requested is not available within that time frame.

§ 771.15 Loan servicing.

(a) *Advances.* FSA may make advances to protect its financial interests and charge the borrower's account for the amount of any such advances.

(b) *Payments.* Payments will be made to FSA as set forth in loan agreements and debt instruments. The funds from extra payments will be applied entirely to loan principal.

(c) *Restructuring.* The provisions of 7 CFR part 1951, subpart S, are not applicable to loans made under this section. However, FSA may restructure loan debts; provided:

(1) The Government's interest will be protected;

(2) The restructuring will be performed within FSA budgetary restrictions; and

(3) The loan objectives cannot be met unless the loan is restructured.

(d) *Default.* In the event of default, FSA will take all appropriate actions to protect its interest.

PART 772—SERVICING MINOR PROGRAM LOANS

Sec.

- 772.1 Policy.
- 772.2 Abbreviations and definitions.
- 772.3 Compliance.
- 772.4 Environmental requirements.
- 772.5 Security maintenance.
- 772.6 Subordination of security.
- 772.7 Leasing minor program loan security.
- 772.8 Sale or exchange of security property.
- 772.9 Releases.
- 772.10 Transfer and assumption—AMP loans.
- 772.11 Transfer and assumption—IMP loans.
- 772.12 Graduation.
- 772.13 Delinquent account servicing.
- 772.14 Reamortization of AMP loans.
- 772.15 Protective advances.
- 772.16 Liquidation.
- 772.17 Equal Opportunity and non-discrimination requirements.
- 772.18 Exception authority.

AUTHORITY: 5 U.S.C. 301, 7 U.S.C. 1989, 25 U.S.C. 490.

SOURCE: 68 FR 69949, Dec. 16, 2003, unless otherwise noted.

§ 772.1 Policy.

(a) *Purpose.* This part contains the Agency's policies and procedures for servicing Minor Program loans which include: Grazing Association loans, Irrigation and Drainage Association loans, and Non-Farm Enterprise and Recreation loans to individuals.

(b) *Appeals.* The regulations at 7 CFR parts 11 and 780 apply to decisions made under this part.

§ 772.2 Abbreviations and Definitions.

(a) *Abbreviations.*

AMP Association-Type Minor Program loan;
CFR Code of Federal Regulations;
FO Farm Ownership Loan;
FSA Farm Service Agency;
IMP Individual-Type Minor Program loan;

OL Operating Loan;

USDA United States Department of Agriculture.

(b) *Definitions.*

Association-Type Minor Program loans (AMP): Loans to Grazing Associations and Irrigation and Drainage Associations.

Entity: Cooperative, corporation, partnership, joint operation, trust, or limited liability company.

Graduation: The requirement contained in loan documents that borrowers pay their FSA loan in full with funds received from a commercial lending source as a result of improvement in their financial condition.

Individual-type Minor Program loans (IMP): Non-Farm Enterprise or Recreation loans to individuals.

Member: Any individual who has an ownership interest in the entity which has received the Minor Program loan.

Minor Program: Non-Farm Enterprise, Individual Recreation, Grazing Association, or Irrigation and Drainage loan programs administered or to be administered by FSA

Review official: An agency employee, contractor or designee who is authorized to conduct a compliance review of a Minor Program borrower under this part.

§ 772.3 Compliance.

(a) *Requirements.* No Minor Program borrower shall directly, or through contractual or other arrangement, subject any person or cause any person to be subjected to discrimination on the basis of race, color, national origin, or disability. Borrowers must comply with all applicable Federal laws and regulations regarding equal opportunity in hiring, procurement, and related matters. AMP borrowers are subject to the nondiscrimination provisions applicable to Federally assisted programs contained in 7 CFR part 15, subparts A and C, and part 15b. IMP loans are subject to the nondiscrimination provisions applicable to federally conducted programs contained in 7 CFR parts 15d and 15e.

(b) *Reviews.* In accordance with Title VI of the Civil Rights Act of 1964, the Agency will conduct a compliance review of all Minor Program borrowers, to determine if a borrower has directly,