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(b) The lender or Agency may request updated information from the borrower to implement an appeal decision.

(c) Appeals will be handled in accordance with parts 11 and 780 of this title.

[64 FR 7378, Feb. 12, 1999, as amended at 72 FR 63297, Nov. 8, 2007]

§ 762.105 Eligibility and substitution of lenders.

(a) *General.* To participate in FSA guaranteed farm loan programs, a lender must meet the eligibility criteria in this part. The standard eligible lender must demonstrate eligibility and provide such evidence as the Agency may request.

(b) *Standard eligible lender eligibility criteria.* (1) A lender must have experience in making and servicing agricultural loans and have the capability to make and service the loan for which a guarantee is requested;

(2) The lenders must not have losses or deficiencies in processing and servicing guaranteed loans above a level which would indicate an inability to properly process and service a guaranteed agricultural loan.

(3) A lender must be subject to credit examination and supervision by an acceptable State or Federal regulatory agency;

(4) The lender must maintain an office near enough to the collateral's location so it can properly and efficiently discharge its loan making and loan servicing responsibilities or use Agency approved agents, correspondents, branches, or other institutions or persons to provide expertise to assist in carrying out its responsibilities. The lender must be a local lender unless it:

(i) Normally makes loans in the region or geographic location in which the applicant's operation being financed is located, or

(ii) Demonstrates specific expertise in making and servicing loans for the proposed operation.

(5) The lender, its officers, or agents must not be debarred or suspended from participation in Government contracts or programs or be delinquent on a Government debt.

(c) *Substitution of lenders.* A new eligible lender may be substituted for the original lender, upon the original lender's

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concurrency, under the following conditions:

(1) The Agency approves of the substitution in writing by executing a modification of the guarantee to identify the new lender, the amount of debt at the time of the substitution and any new loan terms if applicable.

(2) The new lender agrees in writing to:

(i) Assume all servicing and other responsibilities of the original lender and to acquire the unguaranteed portion of the loan;

(ii) Execute a lender's agreement if one is not in effect;

(iii) [Reserved]

(iv) Give any holder written notice of the substitution. If the rate and terms are changed, written concurrence from the holder is required.

(3) The original lender will:

(i) Assign their promissory note, lien instruments, loan agreements, and other documents to the new lender.

(ii) If the loan is subject to an existing interest assistance agreement, submit a request for subsidy for the partial year that it has owned the loan.

(d) *Lender name or ownership changes.*

(1) When a lender begins doing business under a new name or undergoes an ownership change the lender will notify the Agency.

(2) The lender's CLP or PLP status is subject to reconsideration when ownership changes.

(3) The lender will execute a new lender's agreement when ownership changes.

[64 FR 7378, Feb. 12, 1999, as amended at 66 FR 7567, Jan. 24, 2001]

§ 762.106 Preferred and certified lender programs.

(a) *General.* (1) Lenders who desire PLP or CLP status must prepare a written request addressing:

(i) The States in which they desire to receive PLP or CLP status and their branch offices which they desire to be considered by the Agency for approval; and

(ii) Each item of the eligibility criteria for PLP or CLP approval in this section, as appropriate.

(2) The lender may include any additional supporting evidence or other information the lender believes would be

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helpful to the Agency in making its determination.

(3) The lender must send its request to the Agency State office for the State in which the lender's headquarters is located.

(4) The lender must provide any additional information requested by the Agency to process a PLP or CLP request if the lender continues with the approval process.

(b) *CLP criteria.* The lender must meet the following requirements to obtain CLP status:

(1) Qualify as a standard eligible lender under § 762.105;

(2) Have a lender loss rate not in excess of the maximum CLP loss rate established by the Agency and published periodically in a FEDERAL REGISTER Notice. The Agency may waive the loss rate criteria for those lenders whose loss rate was substantially affected by a disaster as defined in part 1945, subpart A, of this title.

(3) Have proven an ability to process and service Agency guaranteed loans by showing that the lender:

(i) Submitted substantially complete and correct guaranteed loan applications; and

(ii) Serviced all guaranteed loans according to Agency regulations;

(4) Have made the minimum number of guaranteed OL, FO, CL, or SW loans established by the Agency and published periodically in a FEDERAL REGISTER Notice.

(5) Not be under any regulatory enforcement action such as a cease and desist order, written agreement, or an appointment of conservator or receiver, based upon financial condition;

(6) Designate a qualified person or persons to process and service Agency guaranteed loans for each of the lender offices which will process CLP loans. To be qualified, the person must meet the following conditions:

(i) Have attended Agency sponsored training in the past 12 months or will attend training in the next 12 months; and

(ii) Agree to attend Agency sponsored training each year;

(7) Use forms acceptable to the Agency for processing, analyzing, securing, and servicing Agency guaranteed loans and lines of credit;

(c) *PLP criteria.* The lender must meet the following requirements to obtain PLP status:

(1) Meet the CLP eligibility criteria under this section.

(2) Have a credit management system, satisfactory to the Agency, based on the following:

(i) The lender's written credit policies and underwriting standards;

(ii) Loan documentation requirements;

(iii) Exceptions to policies;

(iv) Analysis of new loan requests;

(v) Credit file management;

(vi) Loan funds and collateral management system;

(vii) Portfolio management;

(viii) Loan reviews;

(ix) Internal credit review process;

(x) Loan monitoring system; and

(xi) The board of director's responsibilities.

(3) Have made the minimum number of guaranteed OL, FO, CL, or SW loans established by the Agency and published periodically in a FEDERAL REGISTER Notice.

(4) Have a lender loss rate not in excess of the rate of the maximum PLP loss rate established by the Agency and published periodically in a FEDERAL REGISTER Notice. The Agency may waive the loss rate criteria for those lenders whose loss rate was substantially affected by a disaster as defined in part 1945, subpart A, of this title.

(5) Show a consistent practice of submitting applications for guaranteed loans containing accurate information supporting a sound loan proposal.

(6) Show a consistent practice of processing Agency guaranteed loans without recurring major or minor deficiencies.

(7) Demonstrate a consistent, above average ability to service guaranteed loans based on the following:

(i) Borrower supervision and assistance;

(ii) Timely and effective servicing; and

(iii) Communication with the Agency.

(8) Designate a person or persons, either by name, title, or position within the organization, to process and service PLP loans for the Agency.

(d) *CLP and PLP approval.* (1) If a lender applying for CLP or PLP status is or has recently been involved in a merger or acquisition, all loans and losses attributed to both lenders will be considered in the eligibility calculations.

(2) The Agency will determine which branches of the lender have the necessary experience and ability to participate in the CLP or PLP program based on the information submitted in the lender application and on Agency experience.

(3) Lenders who meet the criteria will be granted CLP or PLP status for a period not to exceed 5 years.

(4) PLP status will be conditioned on the lender carrying out its credit management system as proposed in its request for PLP status and any additional loan making or servicing requirements agreed to and documented the PLP lender's agreement. If the PLP lender's agreement does not specify any agreed upon process for a particular action, the PLP lender will act according to regulations governing CLP lenders.

(e) *Monitoring CLP and PLP lenders.* CLP and PLP lenders will provide information and access to records upon Agency request to permit the Agency to audit the lender for compliance with these regulations.

(f) *Renewal of CLP or PLP status.* (1) PLP or CLP status will expire within a period not to exceed 5 years from the date the lender's agreement is executed, unless a new lender's Agreement is executed.

(2) Renewal of PLP or CLP status is not automatic. A lender must submit a written request for renewal of a lender's agreement with PLP or CLP status which includes information:

(i) Updating the material submitted in the initial application; and,

(ii) Addressing any new criteria established by the Agency since the initial application.

(3) PLP or CLP status will be renewed if the applicable eligibility criteria under this section are met, and no cause exists for denying renewal under paragraph (g) of this section.

(g) *Revocation of PLP or CLP status.* (1) The Agency may revoke the lender's

PLP or CLP status at any time during the 5 year term for cause.

(2) Any of the following instances constitute cause for revoking or not renewing PLP or CLP status:

(i) Violation of the terms of the lender's agreement;

(ii) Failure to maintain PLP or CLP eligibility criteria. The Agency may allow a PLP lender with a loss rate which exceeds the maximum PLP loss rate, to retain its PLP status for a two-year period, if:

(A) The lender documents in writing why the excessive loss rate is beyond their control;

(B) The lender provides a written plan that will reduce the loss rate to the PLP maximum rate within two years from the date of the plan, and

(C) The Agency determines that exceeding the maximum PLP loss rate standard was beyond the control of the lender. Examples include, but are not limited to, a freeze with only local impact, economic downturn in a local area, drop in local land values, industries moving into or out of an area, loss of access to a market, and biological or chemical damage.

(D) The Agency will revoke PLP status if the maximum PLP loss rate is not met at the end of the two-year period, unless a second two year extension is granted under this subsection.

(iii) Knowingly submitting false or misleading information to the Agency;

(iv) Basing a request on information known to be false;

(v) Deficiencies that indicate an inability to process or service Agency guaranteed farm loan programs loans in accordance with this subpart;

(vi) Failure to correct cited deficiencies in loan documents upon notification by the Agency;

(vii) Failure to submit status reports in a timely manner;

(viii) Failure to use forms, or follow credit management systems (for PLP lenders) accepted by the Agency; or

(ix) Failure to comply with the reimbursement requirements of §762.144(c)(7) and (c)(8).

(3) A lender which has lost PLP or CLP status must be reconsidered for eligibility to continue as a Standard Eligible Lender (for former PLP and CLP lenders), or as a CLP lender (for

former PLP lenders) in submitting loan guarantee requests. They may reapply for CLP or PLP status when the problem causing them to lose their status has been resolved.

[64 FR 7378, Feb. 12, 1999; 64 FR 38298, July 16, 1999, as amended at 70 FR 56107, Sept. 26, 2005; 71 FR 43957, Aug. 3, 2006; 75 FR 54013, Sept. 3, 2010]

§§ 762.107–762.109 [Reserved]

§ 762.110 Loan application.

(a) *Loans for \$125,000 or less.* All lenders except PLP lenders will submit the following items:

(1) A complete application for loans of \$125,000 or less must, at least, consist of:

- (i) The application form;
- (ii) Loan narrative;
- (iii) Balance sheet;
- (iv) Cash flow budget, unless waived when conditions in paragraph (d) of this section are met;
- (v) Credit report;
- (vi) A plan for servicing the loan;
- (vii) For CL guarantees, a copy of the conservation plan;
- (viii) To request consideration for priority funding for CL guarantees, plans to transition to organic or sustainable agriculture when the funds requested will be used to facilitate the transition.

(2) In addition to the minimum requirements, the lender will perform at least the same level of evaluation and documentation for a guaranteed loan that the lender typically performs for non-guaranteed loans of a similar type and amount.

(3) The \$125,000 threshold includes any single loan, or package of loans submitted for consideration at any one time. A lender must not split a loan into two or more parts to meet the threshold thereby avoiding additional documentation.

(4) The Agency may require lenders with a lender loss rate in excess of the rate for CLP lenders to assemble additional documentation from paragraph (b) of this section.

(b) *Loans over \$125,000.* A complete application for loans over \$125,000 will require items specified in paragraph (a) of this section, plus the following items

unless waived when conditions in paragraph (d) of this section are met:

- (1) Verification of income;
- (2) Verification of debts over \$1,000;
- (3) Three years financial history;
- (4) Three years of production history (for standard eligible lenders only);
- (5) Proposed loan agreements; and,
- (6) If construction or development is planned, a copy of the plans, specifications, and development schedule.

(c) *Applications from PLP lenders.* Notwithstanding paragraphs (a) and (b) of this section, a complete application for PLP lenders will consist of at least:

- (1) An application form;
- (2) A loan narrative;
- (3) For CL guarantees, a copy of the conservation plan;
- (4) To request consideration for priority funding for CL guarantees, plans to transition to organic or sustainable agriculture when the funds requested will be used to facilitate the transition.
- (5) Any other items agreed to during the approval of the PLP lender's status and contained in the PLP lender agreement.

(d) *Streamlined CL guarantee.* For CL guarantee applicants meeting all the following criteria, the cash flow budget requirement in this section will be waived:

- (1) Be current on all payments to all creditors including the Agency (if currently an Agency borrower),
 - (2) Debt to asset ratio is 40 percent or less,
 - (3) Balance sheet indicates a net worth of 3 times the requested loan amount or greater, and
 - (4) FICO credit score is at least 700.
- For entity applicants, the FICO credit score of the majority of the individual members of the entity must be at least 700.

(e) *Submitting applications.* (1) All lenders must compile and maintain in their files a complete application for each guaranteed loan. See paragraphs (a), (b), and (c) of this section.

(2) The Agency will notify CLP lenders which items to submit to the Agency.

(3) PLP lenders will submit applications in accordance with their agreement with the Agency for PLP status.