

§§ 767.203–767.250 [Reserved]

Subpart F—Exception Authority

§ 767.251 Agency exception authority.

On an individual case basis, the Agency may consider granting an exception to any regulatory requirement or policy of this part if:

(a) The exception is not inconsistent with the authorizing statute or other applicable law; and

(b) The Agency’s financial interest would be adversely affected by acting in accordance with published regulations or policies and granting the exception would reduce or eliminate the adverse effect upon the its financial interest.

PARTS 768–769 [RESERVED]

PART 770—INDIAN TRIBAL LAND ACQUISITION LOANS

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AUTHORITY: 5 U.S.C. 301, 25 U.S.C. 488.

SOURCE: 66 FR 1567, Jan. 9, 2001, unless otherwise noted.

§ 770.1 Purpose.

This part contains the Agency’s policies and procedures for making and servicing loans to assist a Native American tribe or tribal corporation with the acquisition of land interests within the tribal reservation or Alaskan community.

§ 770.2 Abbreviations and definitions.

(a) *Abbreviations.*

FSA Farm Service Agency, an Agency of the United States Department of Agriculture, including its personnel and any successor Agency.

ITLAP Indian Tribal Land Acquisition Program.

USPAP Uniform Standards of Professional Appraisal Practice.

(b) *Definitions.*

Administrator is the head of the Farm Service Agency.

Agency is Farm Service Agency (FSA).

Appraisal is an appraisal for the purposes of determining the market value of land (less value of any existing improvements that pass with the land) that meets the requirements of part 761 of this chapter.

Applicant is a Native American tribe or tribal corporation established pursuant to the Indian Reorganization Act seeking a loan under this part.

Loan funds refers to money loaned under this part.

Native American tribe is:

(1) An Indian tribe recognized by the Department of the Interior; or

(2) A community in Alaska incorporated by the Department of the Interior pursuant to the Indian Reorganization Act.

Rental value for the purpose of rental value write-downs, equals the average actual rental proceeds received from the lease of land acquired under ITLAP. If there are no rental proceeds, then rental value will be based on market data according to §770.10(e)(4).

Reservation is lands or interests in land within:

(1) The Native American tribe’s reservation as determined by the Department of the Interior; or

(2) A community in Alaska incorporated by the Department of the Interior pursuant to the Indian Reorganization Act.

Reserve is an account established for loans approved in accordance with regulations in effect prior to February 8, 2001 which required that an amount equal to 10 percent of the annual payment be set aside each year until at least one full payment is available.

Tribal corporation is a corporation established pursuant to the Indian Reorganization Act.

[66 FR 1567, Jan. 9, 2001, as amended at 70 FR 7167, Feb. 11, 2005; 72 FR 51990, Sept. 12, 2007]

§ 770.3 Eligibility requirements.

An applicant must:

(a) Submit a completed Agency application form;

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(b) Except for refinancing activities authorized in § 770.4(c), obtain an option or other acceptable purchase agreement for land to be purchased with loan funds;

(c) Be a Native American tribe or a tribal corporation of a Native American tribe without adequate uncommitted funds, based on Generally Accepted Accounting Principles, or another financial accounting method acceptable to Secretary of Interior to acquire lands or interests therein within the Native American tribe's reservation for the use of the Native American tribe or tribal corporation or the members of either;

(d) Be unable to obtain sufficient credit elsewhere at reasonable rates and terms for purposes established in § 770.4;

(e) Demonstrate reasonable prospects of success in the proposed operation of the land to be purchased with funds provided under this part by providing:

(1) A feasibility plan for the use of the Native American tribe's land and other enterprises and funds from any other source from which payment will be made;

(2) A satisfactory management and repayment plan; and

(3) A satisfactory record for paying obligations.

(f) Unless waived by the FSA Administrator, not have any outstanding debt with any Federal Agency (other than debt under the Internal Revenue Code of 1986) which is in a delinquent status.

(g) Not be subject to a judgment lien against the tribe's property arising out of a debt to the United States.

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

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

§ 770.4 Authorized loan uses.

Loan funds may only be used to:

(a) Acquire land and interests therein (including fractional interests, rights-of-way, water rights, easements, and other appurtenances (excluding improvements) that would normally pass with the land or are necessary for the proposed operation of the land) located within the Native American tribe's res-

ervation which will be used for the benefit of the tribe or its members.

(b) Pay costs incidental to land acquisition, including but not limited to, title clearance, legal services, land surveys, and loan closing.

(c) Refinance non-United States Department of Agriculture preexisting debts the applicant incurred to purchase the land provided the following conditions exist:

(1) Prior to the acquisition of such land, the applicant filed a loan application regarding the purchase of such land and received the Agency's approval for the land purchase;

(2) The applicant could not acquire an option on such land;

(3) The debt for such land is a short term debt with a balloon payment that cannot be paid by the applicant and that cannot be extended or modified to enable the applicant to satisfy the obligation; and

(4) The purchase of such land is consistent with all other applicable requirements of this part.

(d) Pay for the costs of any appraisal conducted pursuant to this part.

§ 770.5 Loan limitations.

(a) Loan funds may not be used for any land improvement or development purposes, acquisition or repair of buildings or personal property, payment of operating costs, payment of finder's fees, or similar costs, or for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agriculture commodity as further established in exhibit M to subpart G of part 1940 of this title.

(b) The amount of loan funds used to acquire land may not exceed the market value of the land (excluding the value of any improvements) as determined by a current appraisal.

(c) Loan funds for a land purchase must be disbursed over a period not to exceed 24 months from the date of loan approval.

(d) The sale of assets that are not renewable within the life of the loan will require a reduction in loan principal equal to the value of the assets sold.