

§ 764.52

(f) The applicant need not submit any information under this section that already exists in the applicant's Agency file and is still current.

[72 FR 63298, Nov. 8, 2007, as amended at 75 FR 54015, Sept. 3, 2010; 76 FR 75434, Dec. 2, 2011; 77 FR 15938, Mar. 19, 2012]

§ 764.52 Processing an incomplete application.

(a) Within 10 days of receipt of an incomplete application, the Agency will provide the applicant written notice of any additional information which must be provided. The applicant must provide the additional information within 20 calendar days of the date of this notice.

(b) If the additional information is not received, the Agency will provide written notice that the application will be withdrawn if the information is not received within 10 calendar days of the date of this second notice.

§ 764.53 Processing the complete application.

Upon receiving a complete loan application, the Agency will:

(a) Consider the loan application in the order received, based on the date the application was determined to be complete.

(b) Provide written notice to the applicant that the application is complete.

(c) Within 60 calendar days after receiving a complete loan application, the Agency will complete the processing of the loan request and notify the applicant of the decision reached, and the reason for any disapproval.

(d) Except for CL requests, if based on the Agency's review of the application, it appears the applicant's credit needs could be met through the guaranteed loan program, the Agency will assist the applicant in securing guaranteed loan assistance under the market placement program as specified in § 762.110(h) of this chapter.

(e) In the absence of funds for a direct loan, the Agency will keep an approved loan application on file until funding is available. At least annually, the Agency will contact the applicant to determine if the Agency should retain the application or if the applicant wants the application withdrawn.

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(f) If funding becomes available, the Agency will resume processing of approved loans in accordance with this part.

[72 FR 63298, Nov. 8, 2007, as amended at 75 FR 54015, Sept. 3, 2010]

§ 764.54 Preferences when there is limited funding.

(a) *First priority.* When there is a shortage of loan funds, approved applications will be funded in the order of the date the application was received, whether or not complete.

(b) *Secondary priorities.* If two or more applications were received on the same date, the Agency will give preference to:

(1) First, an applicant who is a veteran of any war;

(2) Second, an applicant who is not a veteran, but:

(i) Has a dependent family;

(ii) Is able to make a downpayment; or

(iii) Owns livestock and farm implements necessary to farm successfully.

(3) Third, to other eligible applicants.

§§ 764.55–764.100 [Reserved]

Subpart C—Requirements for All Direct Program Loans

§ 764.101 General eligibility requirements.

The following requirements must be met unless otherwise provided in the eligibility requirements for the particular type of loan.

(a) *Controlled substances.* The applicant, and anyone who will sign the promissory note, must not be ineligible for loans as a result of a conviction for controlled substances according to 7 CFR part 718 of this chapter.

(b) *Legal capacity.* The applicant, and anyone who will sign the promissory note, must possess the legal capacity to incur the obligation of the loan. A Youth loan applicant will incur full personal liability upon execution of the promissory note without regard to the applicant's minority status.

(c) *Citizenship.* The applicant, and anyone who will sign the promissory note, must be a citizen of the United

States, United States non-citizen national, or a qualified alien under applicable Federal immigration laws.

(d) *Credit history.* The applicant must have acceptable credit history demonstrated by debt repayment.

(1) As part of the credit history, the Agency will determine whether the applicant will carry out the terms and conditions of the loan and deal with the Agency in good faith. In making this determination, the Agency may examine whether the applicant has properly fulfilled its obligations to other parties, including other agencies of the Federal Government.

(2) When the applicant caused the Agency a loss by receiving debt forgiveness, the applicant may be ineligible for assistance in accordance with eligibility requirements for the specific loan type. If the debt forgiveness is cured by repayment of the Agency's loss, the Agency may still consider the debt forgiveness in determining the applicant's credit worthiness.

(3) A history of failures to repay past debts as they came due when the ability to repay was within the applicant's control will demonstrate unacceptable credit history. The following circumstances, for example, do not automatically indicate an unacceptable credit history:

(i) Foreclosures, judgments, delinquent payments of the applicant which occurred more than 36 months before the application, if no recent similar situations have occurred, or Agency delinquencies that have been resolved through loan servicing programs available under 7 CFR part 766.

(ii) Isolated incidents of delinquent payments which do not represent a general pattern of unsatisfactory or slow payment.

(iii) "No history" of credit transactions by the applicant.

(iv) Recent foreclosure, judgment, bankruptcy, or delinquent payment when the applicant can satisfactorily demonstrate that the adverse action or delinquency was caused by circumstances that were of a temporary nature and beyond the applicant's control; or the result of a refusal to make full payment because of defective goods or services or other justifiable dispute

relating to the purchase or contract for goods or services.

(e) *Availability of credit elsewhere.* Except for CL, the applicant, and all entity members in the case of an entity, must be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms. The Agency will evaluate the ability to obtain credit based on factors including, but not limited to:

(1) Loan amounts, rates, and terms available in the marketplace; and

(2) Property interests, income, and significant non-essential assets.

(f) *Not in delinquent status on Federal debt.* As provided in 31 CFR part 285, except for EM loan applicants, the applicant, and anyone who will sign the promissory note, must not be in delinquent status on any Federal debt, other than a debt under the Internal Revenue Code of 1986 at the time of loan closing. All delinquent debts, however, will be considered in determining credit history and ability to repay under this part.

(g) *Outstanding judgments.* The applicant, and anyone who will sign the promissory note, must have no outstanding unpaid judgments obtained by the United States in any court. Such judgments do not include those filed as a result of action in the United States Tax Courts.

(h) *Federal crop insurance violation.* The applicant, and all entity members in the case of an entity, must not be ineligible due to disqualification resulting from Federal crop insurance violation according to 7 CFR part 718.

(i) *Managerial ability.* The applicant must have sufficient managerial ability to assure reasonable prospects of loan repayment, as determined by the Agency. The applicant must demonstrate this managerial ability by:

(1) *Education.* For example, the applicant obtained a 4-year college degree in agricultural business, horticulture, animal science, agronomy, or other agricultural-related field.

(2) *On-the-job training.* For example, the applicant is currently working on a farm as part of an apprenticeship program.

(3) *Farming experience.* For example, the applicant has been an owner, manager, or operator of a farm business for

at least one entire production cycle. Farm experience of the applicant, without regard to any lapse of time between the farm experience and the new application, will be taken into consideration in determining loan eligibility. If farm experience occurred more than 5 years prior to the date of the new application, the applicant must demonstrate sufficient on-the-job training or education within the last 5 years to demonstrate managerial ability.

(j) *Borrower training.* The applicant must agree to meet the training requirements in subpart K of this part.

(k) *Operator of a family farm.* Except for CL:

(1) The applicant must be the operator of a family farm after the loan is closed.

(2) For an entity applicant, if the entity members holding a majority interest are:

(i) Related by blood or marriage, at least one member must be the operator of a family farm;

(ii) Not related by blood or marriage, the entity members holding a majority interest must be operators of a family farm.

(3) Except for EM loans, the collective interests of the members may be larger than a family farm only if:

(i) Each member's ownership interest is not larger than a family farm;

(ii) All of the members of the entity are related by blood or marriage; and

(iii) All of the members are or will become operators of the family farm; and

(4) If the entity applicant has an operator and ownership interest for farm ownership loans and emergency loans for farm ownership loan purposes, in any other farming operation, that farming operation must not exceed the requirements of a family farm.

(l) *Entity composition.* If the applicant is an entity, the entity members are not themselves entities.

[72 FR 63298, Nov. 8, 2007, as amended at 75 FR 54015, Sept. 3, 2010; 76 FR 75434, Dec. 2, 2011]

§ 764.102 General limitations.

(a) Limitations specific to each loan program are contained in subparts D through I of this part.

(b) The total principal balance owed to the Agency at any one time by the applicant, or any one who will sign the promissory note, cannot exceed the limits established in § 761.8 of this chapter.

(c) The funds from the FLP loan must be used for farming operations located in the United States.

(d) The Agency will not make a loan if the proceeds will be used:

(1) For any purpose that contributes to excessive erosion of highly erodible land, or to the conversion of wetlands;

(2) To drain, dredge, fill, level, or otherwise manipulate a wetland; or

(3) To engage in any activity that results in impairing or reducing the flow, circulation, or reach of water, except in the case of activity related to the maintenance of previously converted wetlands as defined in the Food Security Act of 1985.

(e) Any construction financed by the Agency must comply with the standards established in § 761.10 of this chapter.

(f) Loan funds will not be used to establish or support a non-eligible enterprise, even if the non-eligible enterprise contributes to the farm. Notwithstanding this limitation, an EM loan may cover qualified equine losses as specified in subpart I of this part.

[72 FR 63298, Nov. 8, 2007, as amended at 75 FR 54015, Sept. 3, 2010; 76 FR 75434, Dec. 2, 2011]

§ 764.103 General security requirements.

(a) Security requirements specific to each loan program are outlined in subparts D through I of this part.

(b) All loans must be secured by assets having a security value of at least 100 percent of the loan amount, except for EM loans as provided in subpart I of this part. If the applicant's assets do not provide adequate security, the Agency may accept:

(1) A pledge of security from a third party; or

(2) Interests in property not owned by the applicant (such as leases that provide a mortgageable value, water rights, easements, mineral rights, and royalties).

(c) An additional amount of security up to 150 percent of the loan amount