

## Farm Service Agency, USDA

## § 762.101

farmers and socially disadvantaged farmers under the Downpayment loan program; and

(b) September 1 of each fiscal year the Agency will use available unsubsidized guaranteed OL loan funds to make approved direct FO loans to beginning farmers.

[72 FR 63285, Nov. 8, 2007, as amended at 73 FR 74345, Dec. 8, 2008. Redesignated at 75 FR 54013, Sept. 3, 2010]

### PART 762—GUARANTEED FARM LOANS

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AUTHORITY: 5 U.S.C. 301 and 7 U.S.C. 1989.

SOURCE: 64 FR 7378, Feb. 12, 1999, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 762 appear at 72 FR 63297, Nov. 8, 2007.

#### §§ 762.1-762.100 [Reserved]

#### § 762.101 Introduction.

(a) *Scope.* This subpart contains regulations governing Operating loans, Farm Ownership loans, and Conservation loans guaranteed by the Agency. This subpart applies to lenders, holders, borrowers, Agency personnel, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans.

(b) *Lender list.* The Agency maintains a current list of lenders who express a desire to participate in the guaranteed loan program. This list is made available to farmers upon request.

(c) *Lender classification.* Lenders who participate in the Agency guaranteed loan program will be classified into one of the following categories:

(1) Standard Eligible Lender under § 762.105;

(2) Certified Lender, or

(3) Preferred Lender under § 762.106.

(d) *Type of guarantee.* Guarantees are available for both a loan note or a line of credit. A loan note is used for a loan of fixed amount and term. A line of credit has a fixed term, but no fixed amount. The principal amount outstanding at any time, however, may not exceed the line of credit ceiling contained in the contract. Both guarantees are evidenced by the same loan guarantee form.

(e) *Termination of loan guarantee.* The loan guarantee will automatically terminate as follows:

(1) Upon full payment of the guaranteed loan. A zero balance within the period authorized for advances on a line of credit will not terminate the guarantee;

(2) Upon payment of a final loss claim; or

(3) Upon written notice from the lender to the Agency that a guarantee is no longer desired provided the lender holds all of the guaranteed portion of

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the loan. The loan guarantee will be returned to the Agency office for cancellation within 30 days of the date of the notice by the lender.

[64 FR 7378, Feb. 12, 1999, as amended at 72 FR 63297, Nov. 8, 2007; 75 FR 54013, Sept. 3, 2010]

## § 762.102 Abbreviations and definitions.

Abbreviations and definitions for terms used in this part are provided in § 761.2 of this chapter.

[72 FR 63297, Nov. 8, 2007]

## § 762.103 Full faith and credit.

(a) *Fraud and misrepresentation.* The loan guarantee constitutes an obligation supported by the full faith and credit of the United States. The Agency may contest the guarantee only in cases of fraud or misrepresentation by a lender or holder, in which:

(1) The lender or holder had actual knowledge of the fraud or misrepresentation at the time it became the lender or holder, or

(2) The lender or holder participated in or condoned the fraud or misrepresentation.

(b) *Lender violations.* The loan guarantee cannot be enforced by the lender, regardless of when the Agency discovers the violation, to the extent that the loss is a result of:

(1) Violation of usury laws;

(2) Negligent servicing;

(3) Failure to obtain the required security; or,

(4) Failure to use loan funds for purposes specifically approved by the Agency.

(c) *Enforcement by holder.* The guarantee and right to require purchase will be directly enforceable by the holder even if:

(1) The loan guarantee is contestable based on the lender's fraud or misrepresentation; or

(2) The loan note guarantee is unenforceable by the lender based on a lender violation.

## § 762.104 Appeals.

(a) A decision made by the lender adverse to the borrower is not a decision by the Agency, whether or not con-

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curred in by the Agency, and may not be appealed.

(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