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(3) The lender will make its records available to the Agency for the Agency's audit of the propriety of any loss payment.

(4) All lenders will submit the following documents with a final loss claim:

(i) An accounting of the use of loan funds;

(ii) An accounting of the disposition of loan security and its proceeds;

(iii) A copy of the loan ledger indicating loan advances, interest rate changes, protective advances, and application of payments, rental proceeds, and security proceeds, including a running outstanding balance total; and

(iv) Documentation, as requested by the Agency, concerning the lender's compliance with the requirements of this part.

(5) The Agency will notify the lender of any discrepancies in the final loss claim or, approve or reject the claim within 40 days. Failure to do so will result in additional interest being paid to the lender for the number of days over 40 taken to process the claim.

(6) The Agency will reduce a final loss claim based on its calculation of the dollar amount of loss caused by the lender's negligent servicing of the account. Loss claims may be reduced or rejected as a result of the following:

(i) A loss claim may be reduced by the amount caused by the lender's failure to secure property after a default, and will be reduced by the amount of interest that accrues when the lender fails to contact the borrower or takes no action to cure the default, once it occurs. Losses incurred as a result of interest accrual during excessive delays in collection, as determined by the Agency, will not be paid.

(ii) Unauthorized release of security proceeds, failure to verify ownership or possession of security to be purchased, or failure to inspect collateral as often required so as to ensure its maintenance.

(7) Losses will not be reduced for the following:

(i) Servicing deficiencies that did not contribute materially to the dollar amount of the loss.

(ii) Unaccounted security, as long as the lender's efforts to locate and recover the missing collateral was equal to that which would have been expended in the case of an unguaranteed loan in the lender's portfolio.

(8) Default interest, late charges, and loan servicing fees are not payable under the loss claim.

(9) The final loss will be the remaining outstanding balance after application of the estimated loss payment and the application of proceeds from the liquidation of the security.

(10) If the final loss is less than the estimated loss, the lender will reimburse the Agency for the overpayment, plus interest at the note rate from the date of the estimated loss payment.

(11) The lender will return the original guarantee marked paid after receipt of a final loss claim.

(j) *Future Recovery*. The lender will remit any recoveries made on the account after the Agency's payment of a final loss claim to the Agency in proportion to the percentage of guarantee, in accordance with the lender's agreement, until the account is paid in full or otherwise satisfied.

(k) *Overpayments*. The lender will repay any final loss overpayment determined by the Agency upon request.

(l) *Electronic funds transfer*. The lender will designate one or more financial institutions to which any Agency payments will be made via electronic funds transfer.

(m) *Establishment of Federal debt*. Any amounts paid by the Agency on account of liabilities of the guaranteed loan borrower will constitute a Federal debt owing to the Agency by the guaranteed loan borrower. In such case, the Agency may use all remedies available to it, including offset under the Debt Collection Improvement Act of 1996, to collect the debt from the borrower. Interest charges will be established at the note rate of the guaranteed loan on the date the final loss claim is paid.

[64 FR 7378, Feb. 12, 1999, as amended at 67 FR 44016, July 1, 2002; 69 FR 44580, July 27, 2004; 71 FR 43957, Aug. 3, 2006; 73 FR 32637, June 10, 2008; 78 FR 65530, Nov. 1, 2013]

### § 762.150 Interest assistance program.

(a) *Requests for interest assistance*. In addition to the loan application items required by § 762.110, to apply for interest assistance the lender's cash flow budget for the guaranteed applicant

must reflect the need for interest assistance and the ability to cash flow with the subsidy. Interest assistance is available only on new guaranteed Operating Loans (OL).

(b) *Eligibility requirements*. The lender must document that the following conditions have been met for the applicant to be eligible for interest assistance:

(1) A feasible plan cannot be achieved without interest assistance, but can be achieved with interest assistance.

(2) If significant changes in the borrower's cash flow budget are anticipated after the initial 12 months, then the typical cash flow budget must demonstrate that the borrower will still have a feasible plan following the anticipated changes, with or without interest assistance.

(3) The typical cash flow budget must demonstrate that the borrower will have a feasible plan throughout the term of the loan.

(4) The borrower, including members of an entity borrower, does not own any significant assets that do not contribute directly to essential family living or farm operations. The lender must determine the market value of any such non-essential assets and prepare a cash flow budget and interest assistance calculations based on the assumption that these assets will be sold and the market value proceeds used for debt reduction. If a feasible plan can then be achieved, the borrower is not eligible for interest assistance.

(5) A borrower may only receive interest assistance if their total debts (including personal debts) prior to the new loan exceed 50 percent of their total assets (including personal assets). An entity's debt to asset ratio will be based upon a financial statement that consolidates business and personal debts and assets of the entity and its members. Beginning farmers §761.2(b) of this chapter, as defined in §762.102, are excluded from this requirement.

(c) *Maximum assistance*. The maximum total guaranteed OL debt on which a borrower can receive interest assistance is $400,000, regardless of the number of guaranteed loans outstanding. This is a lifetime limit.

(d) *Maximum time for which interest assistance is available*. (1) A borrower may only receive interest assistance for one 5-year period. The term of the interest assistance agreement executed under this section shall not exceed 5 consecutive years from the date of the initial agreement signed by the applicant, including any entity members, or the outstanding term of the loan, whichever is less. This is a lifetime limit.

(2) Beginning farmers §761.2(b) of this chapter, as defined in §762.102, however, may be considered for two 5-year periods. The applicant must meet the definition of a beginning farmer and meet the other eligibility requirements outlined in paragraph (b) of this section at the onset of each 5-year period. A needs test will be completed in the fifth year of IA eligibility for beginning farmers, to determine continued eligibility for a second 5-year period.

(3) Notwithstanding the limitation of paragraph (d)(1) of this section, a new interest assistance agreement may be approved for eligible borrowers to provide interest assistance through June 8, 2009, provided the total period does not exceed 10 years from the effective date of the original interest assistance agreement.

(e) *Multiple loans*. In the case of a borrower with multiple guaranteed loans with one lender, interest assistance can be applied to each loan, only to one loan or any distribution the lender selects, as necessary to achieve a feasible plan, subject to paragraph (c) of this section.

(f) *Terms*. The typical term of scheduled loan repayment will not be reduced solely for the purpose of maximizing eligibility for interest assistance. A loan must be scheduled over the maximum term typically used by lenders for similar type loans within the limits in §762.124. An OL for the purpose of providing annual operating and family living expenses will be scheduled for repayment when the income is scheduled to be received from the sale of the crops, livestock, and/or livestock products which will serve as security for the loan. An OL for purposes other than annual operating and family living expenses (i.e. purchase of equipment or livestock, or refinancing existing debt) will be scheduled over 7 years from the effective date of the

proposed interest assistance agreement, or the life of the security, whichever is less.

(g) *Rate of interest.* The lender interest rate will be set according to § 762.124(a).

(h) *Agreement.* The lender and borrower must execute an interest assistance agreement as prescribed by the Agency.

(i) *Interest assistance claims and payments.* To receive an interest assistance payment, the lender must prepare and submit a claim on the appropriate Agency form. The following conditions apply:

(1) Interest assistance payments will be four (4) percent of the average daily principal loan balance prorated over the number of days the loan has been outstanding during the payment period. For loans with a note rate less than four (4) percent, interest assistance payments will be the weighted average interest rate multiplied by the average daily principal balance.

(2) The lender may select at the time of loan closing the date that they wish to receive an interest assistance payment. That date will be included in the interest assistance agreement.

(i) The initial and final claims submitted under an agreement may be for a period less than 12 months. All other claims will be submitted for a 12-month period, unless there is a lender substitution during the 12-month period in accordance with this section.

(ii) In the event of liquidation, the final interest assistance claim will be submitted with the estimated loss claim or the final loss claim if an estimated loss claim was not submitted. Interest will not be paid beyond the interest accrual cutoff dates established in the loss claims according to § 762.149(d)(2).

(3) A claim should be filed within 60 days of its due date. Claims not filed within 1 year from the due date will not be paid, and the amount due the lender will be permanently forfeited.

(4) All claims will be supported by detailed calculations of average daily principal balance during the claim period.

(5) Requests for continuation of interest assistance for agreements dated prior to June 8, 2007 will be supported by the lender's analysis of the applicant's farming operation and need for continued interest assistance as set out in their Interest Assistance Agreements. The following information will be submitted to the Agency:

(i) A summary of the operation's actual financial performance in the previous year, including a detailed income and expense statement.

(ii) A narrative description of the causes of any major differences between the previous year's projections and actual performance, including a detailed income and expense statement.

(iii) A current balance sheet.

(iv) A cash-flow budget for the period being planned. A monthly cash-flow budget is required for all lines of credit and operating loans made for annual operating purposes. All other loans may include either an annual or monthly cash-flow budget.

(v) A copy of the interest assistance needs analysis portion of the application form which has been completed based on the planned period's cash-flow budget.

(6) Interest Assistance Agreements dated June 8, 2007 or later do not require a request for continuation of interest assistance. The lender will only be required to submit an Agency IA payment form and the average daily principal balance for the claim period, with supporting documentation.

(7) Lenders may not charge or cause a borrower with an interest assistance agreement to be charged a fee for preparation and submission of the items required for an annual interest assistance claim.

(j) *Transfer, consolidation, and writedown.* Loans covered by interest assistance agreements cannot be consolidated. Such loans can be transferred only when the transferee was liable for the debt on the effective date of the interest assistance agreement. Loans covered by interest assistance can be transferred to an entity if the entity is eligible in accordance with §§ 762.120 and 762.150(b) and at least one entity member was liable for the debt on the effective date of the interest assistance agreement. Interest assistance will be discontinued as of the date of

any writedown on a loan covered by an interest assistance agreement.

(k) *Rescheduling and deferral*. When a borrower defaults on a loan with interest assistance or the loan otherwise requires rescheduling or deferral, the interest assistance agreement will remain in effect for that loan at its existing terms. The lender may reschedule the loan in accordance with § 762.145. For Interest Assistance Agreements dated June 8, 2007 or later increases in the restructured loan amount above the amount originally obligated do not require additional funding; however, interest assistance is not available on that portion of the loan as interest assistance is limited to the original loan amount.

(l) *Bankruptcy*. In cases where the interest on a loan covered by an interest assistance agreement is reduced by court order in a reorganization plan under the bankruptcy code, interest assistance will be terminated effective on the date of the court order. Guaranteed loans which have had their interest reduced by bankruptcy court order are not eligible for interest assistance.

(m) *Termination of interest assistance payments*. Interest assistance payments will cease upon termination of the loan guarantee, upon reaching the expiration date contained in the agreement, or upon cancellation by the Agency under the terms of the interest assistance agreement. In addition, for loan guarantees sold into the secondary market, Agency purchase of the guaranteed portion of a loan will terminate the interest assistance.

(n) *Excessive interest assistance*. Upon written notice to the lender, borrower, and any holder, the Agency may amend or cancel the interest assistance agreement and collect from the lender any amount of interest assistance granted which resulted from incomplete or inaccurate information, an error in computation, or any other reason which resulted in payment that the lender was not entitled to receive.

(o) *Condition for cancellation*. The Interest Assistance Agreement is incontestable except for fraud or misrepresentation, of which the lender or borrower have actual knowledge at the time the interest assistance agreement is executed, or which the lender or borrower participates in or condones.

(p) *Substitution*. If there is a substitution of lender, the original lender will prepare and submit to the Agency a claim for its final interest assistance payment calculated through the effective date of the substitution. This final claim will be submitted for processing at the time of the substitution.

(1) Interest assistance will continue automatically with the new lender.

(2) The new lender must follow paragraph (i) of this section to receive their initial and subsequent interest assistance payments.

(q) *Exception Authority*. The Deputy Administrator for Farm Loan Programs has the authority to grant an exception to any requirement involving interest assistance if it is in the best interest of the Government and is not inconsistent with other applicable law.

[72 FR 17358, Apr. 9, 2007, as amended at 78 FR 14005, Mar. 4, 2013; 78 FR 65530, Nov. 1, 2013]

### §§ 762.151–762.158 [Reserved]

### § 762.159 Pledging of guarantee.

A lender may pledge all or part of the guaranteed or unguaranteed portion of the loan as security to a Federal Home Loan Bank, a Federal Reserve Bank, a Farm Credit System Bank, or any other funding source determined acceptable by the Agency.

[70 FR 56107, Sept. 26, 2005]

### § 762.160 Assignment of guarantee.

(a) The following general requirements apply to assigning guaranteed loans:

(1) Subject to Agency concurrence, the lender may assign all or part of the guaranteed portion of the loan to one or more holders at or after loan closing, if the loan is not in default. However, a line of credit cannot be assigned. The lender must always retain the unguaranteed portion in their portfolio, regardless of how the loan is funded.

(2) The Agency may refuse to execute the Assignment of Guarantee and prohibit the assignment in case of the following:

(i) The Agency purchased and is holder of a loan that was assigned by the