

§ 769.123

(2) The restructuring will be performed within the Agency's budget authority; and

(3) The loan objectives cannot be met unless the HFIL loan is restructured.

(c) *Default.* In the event of monetary or non-monetary default, the Agency will take all appropriate actions to protect its interest, including, but not limited to, declaring the debt fully due and payable and may proceed to enforce its rights under the loan agreement or any other loan instruments relating to the loan under applicable law and regulations, and commencement of legal action to protect the Agency's interest. The Agency will work with the intermediary lender to correct any default, subject to the requirements of paragraph (b) of this section. Violation of any agreement with the Agency or failure to comply with reporting or other program requirements will be considered non-monetary default.

§ 769.123 Transfer and assumption.

(a) All transfers and assumptions must be approved in advance in writing by the Agency. The assuming entity must meet all eligibility criteria for the HFIL Loan Program.

(b) Available transfer and assumption options to eligible intermediary lenders include the following:

(1) The total indebtedness may be transferred to another eligible intermediary lender on the same terms; or

(2) The total indebtedness may be transferred to another eligible intermediary lender on different terms not to exceed the term for which an initial loan can be made. The assuming entity must meet all eligibility criteria for the HFIL Loan Program.

(c) The transferor must prepare the transfer document for the Agency review prior to the transfer and assumption.

(d) The transferee must provide the Agency with information required in the application as specified in § 769.109.

(e) The Agency prepared assumption agreement will contain the Agency case number of the transferor and transferee.

(f) The transferee must complete an application as specified in § 769.109(a).

(g) When the transferee makes a cash down-payment in connection with the

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transfer and assumption, any proceeds received by the transferor will be credited on the transferor's loan debt in order of maturity date.

(h) The Administrator or designee will approve or decline all transfers and assumptions.

§ 769.124 Appeals.

Any appealable adverse decision made by the Agency may be appealed upon written request of the intermediary as specified in 7 CFR part 11.

§ 769.125 Exceptions.

The Agency may grant an exception to any of the requirements of this part if the proposed change is in the best financial interest of the Government and not inconsistent with the authorizing law or any other applicable law.

PART 770—INDIAN TRIBAL LAND ACQUISITION LOANS

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§ 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.

Farm Service Agency, USDA

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(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;

(b) Except for refinancing activities authorized in § 770.4(c), obtain an op-

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