

be financed subject to the limitations in § 762.122);

(3) Promote soil and water conservation and protection; examples include the correction of hazardous environmental conditions, and the construction or installation of tiles, terraces and waterways;

(4) Pay closing costs, including but not limited to, purchasing stock in a cooperative and appraisal and survey fees; and

(5) Refinancing indebtedness incurred for authorized FO and OL purposes, provided the lender and applicant demonstrate the need to refinance the debt.

(c) *Highly erodible land or wetlands conservation.* Loans may not be made for any purpose which contributes to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity. A decision by the Agency to reject an application for this reason may be appealable. An appeal questioning whether the presence of a wetland, converted wetland, or highly erodible land on a particular property must be filed directly with the USDA agency making the determination in accordance with the agency's appeal procedures.

(d) *Judgment debts.* Loans may not be used to satisfy judgments obtained in the United States District courts. However, Internal Revenue Service judgment liens may be paid with loan funds.

[64 FR 7378, Feb. 12, 1999, as amended at 72 FR 63297, Nov. 8, 2007; 73 FR 74345, Dec. 8, 2008]

§ 762.122 Loan limitations.

(a) *Dollar limits.* The Agency will not guarantee any loan that would result in the applicant's total indebtedness exceeding the limits established in § 761.8 of this chapter.

(b) *OL term limitations.* (1) No guaranteed OL shall be made to any applicant after the 15th year that a applicant, or any individual signing the promissory note, received a direct or guaranteed OL.

(2) Notwithstanding paragraph (b)(1) of this section, if a borrower had any combination of direct or guaranteed OL closed in 10 or more prior calendar years prior to October 28, 1992, eligibility to receive new guaranteed OL is

extended for 5 additional years from October 28, 1992, and the years need not run consecutively. However, in the case of a line of credit, each year in which an advance is made after October 28, 1992, counts toward the 5 additional years. Once determined eligible, a loan or line of credit may be approved for any authorized term.

(c) *Leased land.* When FO funds are used for improvements to leased land the terms of the lease must provide reasonable assurance that the applicant will have use of the improvement over its useful life, or provide compensation for any unexhausted value of the improvement if the lease is terminated.

(d) *Tax-exempt transactions.* The Agency will not guarantee any loan made with the proceeds of any obligation the interest on which is excluded from income under section 103 of the Internal Revenue Code of 1986. Funds generated through the issuance of tax-exempt obligations may not be used to purchase the guaranteed portion of any Agency guaranteed loan. An Agency guaranteed loan may not serve as collateral for a tax-exempt bond issue.

(e) *Floodplain restrictions.* The Agency will not guarantee any loan to purchase, build, or expand buildings located in a special 100 year floodplain as defined by FEMA flood hazard area maps unless flood insurance is available and purchased.

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§ 762.123 Insurance and farm inspection requirements.

(a) *Insurance.* (1) Lenders must require borrowers to maintain adequate property, public liability, and crop insurance to protect the lender and Government's interests.

(2) By loan closing, applicants must either:

(i) Obtain at least the catastrophic risk protection (CAT) level of crop insurance coverage, if available, for each crop of economic significance, as defined by part 402 of this title, or

(ii) Waive eligibility for emergency crop loss assistance in connection with the uninsured crop. EM loan assistance

under part 764 of this chapter is not considered emergency crop loss assistance for purposes of this waiver and execution of the waiver does not render the borrower ineligible for EM loans.

(3) Applicants must purchase flood insurance if buildings are or will be located in a special flood hazard area as defined by FEMA flood hazard area maps and if flood insurance is available.

(4) Insurance, including crop insurance, must be obtained as required by the lender or the Agency based on the strengths and weaknesses of the loan.

(b) *Farm inspections.* Before submitting an application the lender must make an inspection of the farm to assess the suitability of the farm and to determine any development that is needed to make it a suitable farm.

[64 FR 7378, Feb. 12, 1999, as amended at 70 FR 56107, Sept. 26, 2005; 72 FR 63297, Nov. 8, 2007]

§762.124 Interest rates, terms, charges, and fees.

(a) *Interest rates.* (1) The interest rate on a guaranteed loan or line of credit may be fixed or variable as agreed upon between the borrower and the lender. The lender may charge different rates on the guaranteed and the non-guaranteed portions of the note. The guaranteed portion may be fixed while the unguaranteed portion may be variable, or vice versa. If both portions are variable, different bases may be used.

(2) If a variable rate is used, it must be tied to a rate specifically agreed to between the lender and borrower in the loan instruments. Variable rates may change according to the normal practices of the lender for its average agricultural loan customer, but the frequency of change must be specified in the loan or line of credit instrument.

(3) Neither the interest rate on the guaranteed portion nor the unguaranteed portion may exceed the rate the lender charges its average agricultural loan customer. At the request of the Agency, the lender must provide evidence of the rate charged the average agricultural loan customer. This evidence may consist of average yield data, or documented administrative differential rate schedule formulas used by the lender.

(4) Interest must be charged only on the actual amount of funds advanced and for the actual time the funds are outstanding. Interest on protective advances made by the lender to protect the security will be charged at the note rate but limited to paragraph (a)(3) of this section.

(5) The lender and borrower may collectively obtain a temporary reduction in the interest rate through the interest assistance program in accordance with §762.150.

(b) *OL terms.* (1) Loan funds or advances on a line of credit used to pay annual operating expenses will be repaid when the income from the year's operation is received, except when the borrower is establishing a new enterprise, developing a farm, purchasing feed while feed crops are being established, or recovering from disaster or economic reverses.

(2) The final maturity date for each loan cannot exceed 7 years from the date of the promissory note or line of credit agreement. Advances for purposes other than for annual operating expenses will be scheduled for repayment over the minimum period necessary considering the applicant's ability to repay and the useful life of the security, but not in excess of 7 years.

(3) All advances on a line of credit must be made within 5 years from the date of the Loan Guarantee.

(c) *FO terms.* Each loan must be scheduled for repayment over a period not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure that the loan will be adequately secured, taking into account the probable depreciation of the security.

(d) *Balloon installments under loan note guarantee.* Balloon payment terms are permitted on FO or OL subject to the following:

(1) Extended repayment schedules may include equal, unequal, or balloon installments if needed on any guaranteed loan to establish a new enterprise, develop a farm, or recover from a disaster or an economical reversal.

(2) Loans with balloon installments must have adequate collateral at the time the balloon installment comes due. Crops, livestock other than breeding livestock, or livestock products