

Farm Service Agency, USDA

§ 764.401

(2) The interest rate charged will be the lower rate in effect at the time of loan approval or loan closing.

(b) *Terms.* (1) The Agency schedules repayment of EM loans based on the useful life of the security, the applicant's repayment ability, and the type of loss.

(2) The repayment schedule must include at least one payment every year.

(3) EM loans for annual operating expenses, except expenses associated with establishing a perennial crop that are subject to paragraph (b)(4), must be repaid within 12 months. The Agency may extend this term to not more than 18 months to accommodate the production cycle of the agricultural commodities.

(4) EM loans for production losses or physical losses to chattel (including, but not limited to, assets with an expected life between one and 7 years) may not exceed 7 years. The Agency may extend this term up to a total length not to exceed 20 years, if necessary to improve the applicant's repayment ability and real estate security is available.

(5) The repayment schedule for EM loans for physical losses to real estate is based on the applicant's repayment ability and the useful life of the security, but in no case will the term exceed 40 years.

§ 764.355 Security requirements.

(a) EM loans made under § 764.351(a)(1) must comply with the general security requirements established at §§ 764.103, 764.104 and 764.155(b).

(b) EM loans made under § 764.351(a)(2) and (b) must comply with the general security requirements established at §§ 764.103, 764.104 and 764.255(b).

(c) Notwithstanding the requirements of paragraphs (a) and (b) of this section, when adequate security is not available because of the disaster, the loan may be approved if the Agency determines, based on an otherwise feasible plan, there is a reasonable assurance that the applicant has the ability to repay the loan provided:

(1) The applicant has pledged as security for the loan all available personal and business security, except as provided in § 764.106;

(2) The farm operating plan, approved by the Agency, indicates the loan will be repaid based upon the applicant's production and income history; addresses applicable pricing risks through the use of marketing contracts, hedging, options, or other revenue protection mechanisms, and includes a marketing plan or similar risk management practice;

(3) The applicant has had positive net cash farm income in at least 3 of the past 5 years; and

(4) The applicant has provided the Agency an assignment on any USDA program payments to be received.

(d) For loans over \$25,000, title clearance is required when real estate is taken as security.

(e) For loans of \$25,000 or less, when real estate is taken as security, a certification of ownership in real estate is required. Certification of ownership may be in the form of an affidavit which is signed by the applicant, names the record owner of the real estate in question and lists the balances due on all known debts against the real estate. Whenever the Agency is uncertain of the record owner or debts against the real estate security, a title search is required.

§ 764.356 Appraisal and valuation requirements.

(a) In the case of physical losses associated with livestock, the applicant must have written documentation of the inventory of livestock and records of livestock product sales sufficient to allow the Agency to value such livestock or livestock products just prior to the loss.

(b) In the case of farm assets damaged by the disaster, the value of such security shall be established as of the day before the disaster occurred.

§§ 764.357–764.400 [Reserved]

Subpart I—Loan Decision and Closing

§ 764.401 Loan decision.

(a) *Loan approval.* (1) The Agency will approve a loan only if it determines that:

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(i) The applicant's farm operating plan reflects a feasible plan, which includes repayment of the proposed loan and demonstrates that all other credit needs can be met;

(ii) The proposed use of loan funds is authorized for the type of loan requested;

(iii) The applicant has been determined eligible for the type of loan requested;

(iv) All security requirements for the type of loan requested have been, or will be met before the loan is closed;

(v) The applicant's total indebtedness to the Agency, including the proposed loan, will not exceed the maximum limits established in §761.8 of this chapter;

(vi) There have been no significant changes in the farm operating plan or the applicant's financial condition since the time the Agency received a complete application; and

(vii) All other pertinent requirements have been, or will be met before the loan is closed.

(2) The Agency will place conditions upon loan approval it determines necessary to protect its interest and maximize the applicant's potential for success.

(b) *Loan denial.* The Agency will not approve a loan if it determines that:

(1) The applicant's farm operating plan does not reflect a feasible plan;

(2) The proposed use of loan funds is not authorized for the type of loan requested;

(3) The applicant does not meet the eligibility requirements for the type of loan requested;

(4) There is inadequate security for the type of loan requested;

(5) Approval of the loan would cause the applicant's total indebtedness to the Agency to exceed the maximum limits established in §761.8 of this chapter;

(6) The applicant's circumstances may not permit continuous operation and management of the farm; or

(7) The applicant, the farming operation, or other circumstances surrounding the loan are inconsistent with the authorizing statutes, other Federal laws, or Federal credit policies.

(c) *Overturn of an Agency decision by appeal.* If an FLP loan denial is overturned on administrative appeal, the Agency will not automatically approve the loan. Unless prohibited by the final appeal determination or otherwise advised by the Office of General Counsel, the Agency will:

(1) Request current financial information from the applicant as necessary to determine whether any changes in the applicant's financial condition or agricultural conditions which occurred after the Agency's adverse decision was made will adversely affect the applicant's farming operation;

(2) Approve a loan for crop production:

(i) Only if the Agency can determine that the applicant will be able to produce a crop in the production cycle for which the loan is requested; or

(ii) For the next production cycle, upon review of current financial data and a farm operating plan for the next production cycle, if the Agency determines the loan can be repaid. The new farm operating plan must reflect any financial issues resolved in the appeal.

(3) Determine whether the applicant's farm operating plan, as modified based on the appeal decision, reflects a feasible plan, which includes repayment of the proposed loan and demonstrates that all other credit needs can be met.

§ 764.402 Loan closing.

(a) *Signature requirements.* Signatures on loan documents are required as follows:

(1) For individual applicants, only the applicant is required to sign the promissory note.

(2) For entity applicants, the promissory note will be executed to evidence the liability of the entity and the individual liability of all members of the entity.

(3) Despite minority status, a youth executing a promissory note for a Youth loan will incur full personal liability for the debt.

(4) A cosigner will be required to sign the promissory note if they assist the applicant in meeting the repayment requirements for the loan requested.