§ 764.103 General security requirements.

(a) Security requirements specific to each loan program are outlined in subparts D through I of this part.

(b) All loans must be secured by assets having a security value of at least 100 percent of the loan amount, except for EM loans as provided in subpart I of this part. If the applicant’s assets do not provide adequate security, the Agency may accept:

(1) A pledge of security from a third party; or

(2) Interests in property not owned by the applicant (such as leases that provide a mortgageable value, water rights, easements, mineral rights, and royalties).

(c) An additional amount of security up to 150 percent of the loan amount will be taken when available, except for downpayment loans, MLs made for purposes other than annual operating, and youth loans.

(d) The Agency will choose the best security available when there are several alternatives that meet the Agency’s security requirements.

(e) The Agency will take a lien on all assets that are not essential to the farming operation and are not being converted to cash to reduce the loan amount when each such asset, or aggregate value of like assets (such as stocks), has a value in excess of $5,000. The value of this security is not included in the Agency’s additional security requirement stated in paragraph (c) of this section. This requirement does not apply to downpayment loans, CL, ML, or youth loans.

§ 764.104 General real estate security requirements.

(a) Agency lien position requirements. If real estate is pledged as security for a loan, the Agency must obtain a first lien, if available. When a first lien is not available, the Agency may take a junior lien under the following conditions:

(1) The prior lien does not contain any provisions that may jeopardize the Agency’s interest or the applicant’s ability to repay the FLP loan;

(2) Prior lienholders agree to notify the Agency prior to foreclosure;

(3) The applicant must agree not to increase an existing prior lien without the written consent of the Agency; and

(4) Equity in the collateral exists.

(b) Real estate held under a purchase contract. If the real estate offered as security is held under a recorded purchase contract:

(1) The applicant must provide a security interest in the real estate;

(2) The applicant and the purchase contract holder must agree in writing that any insurance proceeds received for real estate losses will be used only for one or more of the following purposes:

(i) To replace or repair the damaged real estate improvements which are essential to the farming operation;

(ii) To make other essential real estate improvements; or

(iii) To pay any prior real estate lien, including the purchase contract.

(3) The purchase contract must provide the applicant with possession, control and beneficial use of the property, and entitle the applicant to marketable title upon fulfillment of the contract terms.

(4) The purchase contract must not:

(i) Be subject to summary cancellation upon default;

(ii) Contain provisions which jeopardize the Agency’s security position or the applicant’s ability to repay the loan.

(5) The purchase contract holder must agree in writing to:
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§764.107 General chattel security requirements.

(i) Not sell or voluntarily transfer their interest without prior written consent of the Agency;
(ii) Not encumber or cause any liens to be levied against the property;
(iii) Not take any action to accelerate, forfeit, or foreclose the applicant’s interest in the security property until a specified period of time after notifying the Agency of the intent to do so;
(iv) Consent to the Agency making the loan and taking a security interest in the applicant’s interest under the purchase contract as security for the FLP loan;
(v) Not take any action to foreclose or forfeit the interest of the applicant under the purchase contract because the Agency has acquired the applicant’s interest by foreclosure or voluntary conveyance, or because the Agency has subsequently sold or assigned the applicant’s interest to a third party who will assume the applicant’s obligations under the purchase contract;
(vi) Notify the Agency in writing of any breach by the applicant; and
(vii) Give the Agency the option to rectify the conditions that amount to a breach within 30 days after the date the Agency receives written notice of the breach.

§764.106 Exceptions to security requirements.

Notwithstanding any other provision of this part, the Agency will not take a security interest:
(a) When adequate security is otherwise available and the lien will prevent the applicant from obtaining credit from other sources;
(b) When the property could have significant environmental problems or costs as described in subpart G of 7 CFR part 1940;
(c) When the Agency cannot obtain a valid lien;
(d) When the property is the applicant’s personal residence and appurtenances and:
   (1) They are located on a separate parcel; and
   (2) The real estate that serves as security for the FLP loan plus crops and chattels are greater than or equal to 150 percent of the unpaid balance due on the loan;
(e) When the property is subsistence livestock, cash, working capital accounts the applicant uses for the farming operation, retirement accounts, personal vehicles necessary for family living, household contents, or small equipment such as hand tools and lawn mowers; or
(f) On marginal land and timber that secures an outstanding ST loan.

§764.107 General appraisal requirements.

(a) Establishing value for real estate. The value of real estate will be established by an appraisal completed in accordance with §761.7 of this chapter.
(b) Establishing value for chattels. The value of chattels will be established as follows:
   (1) Annual production. The security value of annual livestock and crop production is presumed to be 100 percent of the amount loaned for annual operating and family living expenses, as