

Farm Service Agency, USDA

§ 765.402

(1) Applied on liens in order of priority;

(2) To pay customary costs appropriate to the transaction, which meet the following conditions:

- (i) Are reasonable in amount;
- (ii) Cannot be paid by the borrower;
- (iii) Will not be paid by the purchaser;
- (iv) Must be paid to consummate the transaction; and
- (v) May include postage and insurance when it is necessary for the Agency to present the promissory note to the recorder to obtain a release of a portion of the real estate from the mortgage.

(3) For development or enlargement of real estate owned by the borrower as follows:

(i) Development or enlargement must be necessary to improve the borrower's debt repayment ability, place the borrower's farming operation on a sound basis, or otherwise enhance the objectives of the loan;

(ii) Such use will not conflict with the loan purposes, restrictions or requirements of the type of loan involved;

(iii) Funds will be deposited in a supervised bank account in accordance with subpart B of part 761 of this chapter;

(iv) The Agency has, or will obtain, a lien on the real estate developed or enlarged;

(v) Construction and development will be completed in accordance with §761.10 of this chapter.

(b) After acceleration, the Agency may approve transactions only when all the proceeds will be applied to the liens against the security in the order of their priority, after deducting customary costs appropriate to the transaction. Such approval will not cancel or delay liquidation, unless all loan defaults are otherwise cured.

§ 765.353 Determining market value.

(a) *Security proposed for disposition.* (1) The Agency will obtain an appraisal of the security proposed for disposition.

(2) The Agency may waive the appraisal requirement when the estimated value is less than \$50,000.

(b) *Security remaining after disposition.* The Agency will obtain an appraisal of

the remaining security if it determines that the transaction will reduce the value of the remaining security.

(c) *Appraisal requirements.* Appraisals, when required, will be conducted in accordance with §761.7 of this chapter.

[72 FR 63309, Nov. 8, 2007, as amended at 86 FR 43392, Aug. 9, 2021]

§§ 765.354–765.400 [Reserved]

Subpart I—Transfer of Security and Assumption of Debt

§ 765.401 Conditions for transfer of real estate and chattel security.

(a) *General conditions.* (1) Approval of a security transfer and corresponding loan assumption obligates a new borrower to repay an existing FLP debt.

(2) All transferees will become personally liable for the debt and assume the full responsibilities and obligations of the debt transferred when the transfer and assumption is complete. If the transferee is an entity, the entity and each entity member must assume personal liability for the loan.

(3) A transfer and assumption will only be approved if the Agency determines it is in the Agency's financial interest.

(b) *Agency consent.* A borrower must request and obtain written Agency consent prior to selling or transferring security to another party.

[72 FR 63309, Nov. 8, 2007, as amended at 79 FR 60745, Oct. 8, 2014]

§ 765.402 Transfer of security and loan assumption on same rates and terms.

An eligible applicant may assume an FLP loan on the same rates and terms as the original note if:

(a) The original borrower has died and the spouse, other relative, or joint tenant who is not obligated on the note inherits the security property;

(b) A family member of the borrower or an entity comprised solely of family members of the borrower assumes the debt along with the original borrower;

(c) An individual with an ownership interest in the borrower entity buys the entire ownership interest of the other members and continues to operate the farm in accordance with loan

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requirements. The new owner must assume personal liability for the loan;

(d) A new entity buys the borrower entity and continues to operate the farm in accordance with loan requirements; or

(e) The original loan is an EM loan for physical or production losses and persons who were directly involved in the farm's operation at the time of the loss will assume the loan. If the original loan was made to:

(1) An individual borrower, the transferee must be a family member of the original borrower or an entity in which the entity members are comprised solely of family members of the original borrower.

(2) A trust, partnership or joint operation, the transferee must have been a member, partner or joint operator when the Agency made the original loan or remain an entity comprised solely of people who were original entity members, partners or joint operators when the entity received the original loan.

(3) A corporation, limited liability company, cooperative, or other legal business organization, the transferee must:

(i) Have been a corporate stockholder, cooperative member or other member of a legal business organization, when the Agency made the original loan or will be an entity comprised solely of entity members who were entity members when the entity received the loan; and

(ii) Assume only the portion of the physical or production loss loan equal to the transferee's percentage of ownership. In the case of entity transferees, the transferee must assume that portion of the loan equal to the combined percentages of ownership of the individual stockholders or entity members in the transferee.

[72 FR 63309, Nov. 8, 2007, as amended at 79 FR 60745, Oct. 8, 2014]

§ 765.403 Transfer of security to and assumption of debt by eligible applicants.

(a) *Transfer of real estate and chattel security.* The Agency may approve transfers of security with assumption of FLP debt, other than EM loans for physical or production losses, by trans-

ferees eligible for the type of loan being assumed if:

(1) The transferee meets all loan and security requirements in part 764 of this chapter for the type of loan being assumed; and

(2) The outstanding loan balance (principal and interest) does not exceed the maximum loan limit for the type of loan as contained in § 761.8 of this chapter.

(b) *Assumption of Non-program loans.* Applicants eligible for FO loans under part 764 of this chapter may assume Non-program loans made for real estate purposes if the Agency determines the property meets program requirements. In such case, the Agency will reclassify the Non-program loan as an FO loan.

(c) *Loan types that the Agency no longer makes.* Real estate loan types the Agency no longer makes (*i.e.* EE, RL, RHF) may be assumed and reclassified as FO loans if the transferee is eligible for an FO loan under part 764 of this chapter and the property proposed for transfer meets program requirements.

(d) *Amount of assumption.* The transferee must assume the lesser of:

(1) The outstanding balance of the transferor's loan; or

(2) The market value of the security, less prior liens and authorized costs, if the outstanding loan balance exceeds the market value of the property.

(e) *Rates and terms.* The interest rate and loan term will be determined according to rates and terms established in part 764 of this chapter for the type of loan being assumed.

§ 765.404 Transfer of security to and assumption of debt by ineligible applicants.

(a) *General.* (1) The Agency will allow the transfer of real estate and chattel security property to applicants who are ineligible for the type of loan being assumed only on Non-program loan rates and terms.

(2) The Agency will reclassify the assumed loan as a Non-program loan.

(b) *Eligibility.* Transferees must:

(1) Provide written documentation verifying their credit worthiness and debt repayment ability;

(2) Not have received debt forgiveness from the Agency;