

§§ 767.203–767.250 [Reserved]

Subpart F—Exception Authority

§ 767.251 Agency exception authority.

On an individual case basis, the Agency may consider granting an exception to any regulatory requirement or policy of this part if:

(a) The exception is not inconsistent with the authorizing statute or other applicable law; and

(b) The Agency's financial interest would be adversely affected by acting in accordance with published regulations or policies and granting the exception would reduce or eliminate the adverse effect upon the its financial interest.

PART 768—EQUITABLE RELIEF

768.1 Providing equitable relief.

768.2 [Reserved]

AUTHORITY: 5 U.S.C. 301 and 7 U.S.C. 1989.

SOURCE: 87 FR 13124, Mar. 9, 2022, unless otherwise noted.

§ 768.1 Providing equitable relief.

(a) If the Farm Service Agency (Agency or FSA) determines that a borrower is not in compliance with direct FO, OL, or EM requirements, the Agency may consider equitable relief as specified in this section:

(1) *Requirements.* After determination that a borrower is in noncompliance with loan program requirements, the Agency may provide equitable relief to a borrower if it is determined that the borrower:

(i) Acted in good faith; and

(ii) Relied on a material action, advice, or non-action from an Agency official to the detriment of the borrower's operation or the action approved by the Agency official resulted in the borrower becoming noncompliant with the loan program requirements.

(2) *Determination.* The material action, advice, or response from an Agency official under paragraph (a)(1) of this section must be documented, unless the Agency official with authority to grant equitable relief determines that documentation is not reasonably available. Notwithstanding any delega-

tions in this chapter, only the Secretary, FSA Administrator, Deputy Administrator for Farm Loan Programs, or any other official within U.S. Department of Agriculture (USDA) specifically designated by the Secretary, may make the determination for the Agency to grant equitable relief and must document the basis for that determination.

(3) *Relief.* If the borrower meets the requirements in paragraph (a)(1) of this section, the Agency may provide to a borrower either or both of the following forms of equitable relief:

(i) The borrower may choose to keep loans at current rates or other terms received in association with the loan which was determined to be noncompliant; or

(ii) The borrower may receive other equitable relief as the Agency determines to be appropriate.

(4) *Conditions.* As a condition of receiving relief, the Agency may require the borrower to take actions to remedy the noncompliance, provided the borrower agrees those actions do not adversely affect the long-term viability of the borrower's operation.

(b) A determination or action of the Agency under this section is final and not subject to administrative appeal or judicial review.

[87 FR 13124, Mar. 9, 2022, as amended at 89 FR 65062, Aug. 8, 2024]

§ 768.2 [Reserved]

PART 769—FARM LOAN PROGRAMS RELENDING PROGRAMS

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AUTHORITY: 5 U.S.C. 301, 7 U.S.C. 1989, and 25 U.S.C. 488.

SOURCE: 80 FR 74970, Dec. 1, 2015, unless otherwise noted.

Subpart A—Highly Fractionated Indian Land Loan Program

§ 769.101 Purpose.

(a) This part contains regulations for loans made by the Agency to eligible intermediary lenders and applies to intermediary lenders and ultimate recipient involved in making and servicing Highly Fractionated Indian Land (HFIL) loans.

(b) The purpose of the HFIL Loan Program is to establish policies and procedures for a revolving loan fund through intermediary lenders for the purchase of HFIL by a Native American tribe, tribal entity, or member of either.

§ 769.102 Abbreviations and definitions

(a) *Abbreviations.* The following abbreviations are used in this part:

BIA—The Department of the Interior's Bureau of Indian Affairs (BIA).

HFIL—Highly Fractionated Indian Land.

(b) *Definitions.* The following definitions are used in this part:

Administrator means the head of the Farm Service Agency or designee.

Highly Fractionated Indian Land (HFIL) means for the purpose of this part only, Highly Fractionated Indian Land is undivided interests held by four or more individuals as a result of ownership or original allotments passing by state laws of intestate succession for multiple generations.

Indian Country land, communities, and allotments means the following:

(1) All land within the limits of any Indian reservation under the jurisdiction of the U.S. Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation,

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same; or

(4) All land, communities, and allotments that meet the definition of 18 U.S.C. 1151.

Intermediary lender means the entity requesting or receiving HFIL loan funds for establishing a revolving fund and relending to ultimate recipients.

Intermediary relending agreement means the signed agreement between FSA and the intermediary that specifies the terms and conditions of the HFIL loan.

Native American tribe means the following:

(1) An Indian tribe recognized by the U.S. Department of the Interior; or

(2) A community in Alaska incorporated by the U.S. Department of the Interior pursuant to the Indian Reorganization Act.

Revolving funds means a fund that has two types of deposit accounts, one of which will be HFIL funds from FSA and the other will be comprised of repayments of loans from the ultimate recipients, interest earned on funds in the account and cash, or other short-

term marketable assets that the intermediary lender chooses to deposit. Revolving funds are not considered Federal funds.

Tribal entity means an eligible entity established pursuant to the Indian Reorganization Act.

Ultimate recipient means Native American tribe, tribal entity, or member of either that receives a loan from an intermediary lender's HFIL revolving fund.

Undivided interest means a common interest in the whole parcel of land that is owned by two or more people. Owners of undivided interest do not own a specific piece of a parcel of land; rather they own a percentage interest in the whole.

§ 769.103 Eligibility requirements of the intermediary lender.

(a) *Eligible entity types.* The types of entities that may become an intermediary lender are:

- (1) Private and Tribal operated non-profit corporations;
- (2) Public agencies—Any State or local government, or any branch or agency of such government having authority to act on behalf of that government, borrow funds, and engage in activities eligible for funding under this part;
- (3) Indian tribes or tribal corporations; or
- (4) Lenders who are subject to credit examination and supervision by an acceptable State or Federal regulatory agency.

(b) *Intermediary lender requirements.* The intermediary lender must:

- (1) Have the legal authority necessary for carrying out the proposed loan purposes and for obtaining, giving security for, and repaying the proposed loan;
- (2) Have a record of successful lending in Indian Country and knowledge and experience working with the BIA. The Agency will assess the applicant staff's training and experience in lending in Indian Country based on recent experience in loan making and servicing with loans that are similar in nature to the HFIL program. If consultants will be used, FSA will assess the staff's experience in choosing and supervising consultants; and

(3) Have an adequate assurance of repayment of the loan based on the fiscal and managerial capabilities of the proposed intermediary lender.

(c) *The Intermediary Relending Agreement.* The intermediary lender and the Agency will enter into an Intermediary Relending Agreement, satisfactory to the Agency based on:

- (1) Loan documentation requirements including planned application forms, security instruments, and loan closing documents;
- (2) List of proposed fees and other charges it will assess the ultimate recipients;
- (3) The plan for relending the loan funds. The plan must have sufficient detail to provide the Agency with a complete understanding of the complete mechanics of how the funds will get from the intermediary lender to the ultimate recipient. Included in the plan are the service area, eligibility criteria, loan purposes, rates, terms, collateral requirements, a process for addressing environmental issues on property to be purchased, limits, priorities, application process, analysis of new loan requests, and method of disbursement of the funds to the ultimate recipient;
- (4) Loan review plans that specify how the intermediary lender will review the loan request from the ultimate recipient and make an eligibility determination;
- (5) An explanation of the intermediary lender's established internal credit review process; and
- (6) An explanation of how the intermediary lender will monitor the loans to the ultimate recipients.

§ 769.104 Requirements of the ultimate recipient.

- (a) Ultimate recipients must be individual Tribal members, Tribes or eligible Tribal entities, with authority to incur the debt and carry out the purpose of the loan.
- (b) The intermediary lender will make this determination in accordance with the Intermediary Relending Agreement.

§ 769.105 Authorized loan purposes.

- (a) *Intermediary lender.* Agency HFIL loan funds must be placed in the

intermediary's HFIL revolving fund and used by the intermediary to provide direct loans to eligible ultimate recipients.

(b) *Ultimate recipient.* Loans from the intermediary lender to the ultimate recipient using the HFIL revolving fund:

(1) Must be used to acquire and consolidate at least 50 percent of the highly fractionated Indian land parcel and interests in the land. The interests include rights-of-way, water rights, easements, and other appurtenances that would normally pass with the land or are necessary for the proposed operation of the land located within the tribe's reservation;

(2) Must finance land that will be used for agricultural purposes during the term of the loan;

(3) May be used to pay costs incidental to land acquisition, including, but not limited to, title clearance, legal services, archeological or land surveys, and loan closing; and

(4) May be used to pay for the costs of any appraisal conducted in accordance with this part.

§ 769.106 Limitations.

(a) Loan funds may not be used for any land improvement or development purposes, acquisition or repair of buildings or personal property, payment of operating costs, payment of finders' fees, or similar costs, or for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity as specified in 7 CFR part 12.

(b) The amount of loan funds used to acquire land may not exceed the current market value of the land as determined by a current appraisal that meets the requirements as specified in 7 CFR 761.7(b)(1).

(c) Agency HFIL loan funds may not be used for payment of the intermediary's administrative costs or expenses. The amount removed from the HFIL revolving fund for administrative costs in any year must be reasonable, must not exceed the actual cost of operating the HFIL revolving fund and must not exceed the amount approved by the Agency in the intermediary lender's annual loan monitoring report.

(d) No loan to an intermediary lender may exceed the maximum amount the intermediary can reasonably expect to lend to eligible ultimate recipients, based on anticipated demand for loans to consolidate fractioned interests and capacity of the intermediary to effectively carry out the terms of the loan.

§ 769.107 Rates and terms.

(a) Loans made by the Agency to the intermediary lender will bear interest at a fixed rate as determined by the Administrator, but not less than 1 percent per year over the term of the loan.

(1) Interest rates charged by intermediary lender to ultimate recipients on loans from the HFIL revolving fund will be negotiated between the intermediary lender and ultimate recipient, but the rate must be within limits established by the Intermediary Relending Agreement.

(2) The rate should normally be the lowest rate sufficient to cover the loan's proportional share of the revolving fund's debt service costs and administrative costs.

(b) No loan to an intermediary lender will be extended for a period exceeding 30 years. Interest will be due annually but principal payments may be deferred by the Agency.

(1) Loans made by an intermediary lender to an ultimate recipient from the HFIL revolving fund will be scheduled for repayment over a term negotiated by the intermediary lender and ultimate recipient but will not exceed 30 years or the date of the end of the term of the HFIL loan, whichever is sooner.

(2) The term of an HFIL loan must be reasonable and prudent considering the purpose of the loan, expected repayment ability of the ultimate recipient, and the useful life of collateral, and must be within any limits established by the intermediary lender's Intermediary Relending Agreement.

§ 769.108 Security requirements for HFIL loans and the ultimate recipients.

(a) *HFIL loans.* Security for all loans to intermediaries must be such that the repayment of the loan is reasonably assured, taking into consideration the intermediary's financial condition,

Intermediary Relending Agreement, and management ability. The intermediary is responsible to make loans to ultimate recipients in such a manner that will fully protect the interest of the intermediary and the Government. The Agency will require adequate security, as determined by the Agency, to fully secure the loan, including but not limited to the following:

(1) Assignments of assessments, taxes, levies, or other sources of revenue as authorized by law;

(2) Investments and deposits of the intermediary; and

(3) Capital assets or other property of the intermediary and its members.

(b) *Liens.* In addition to normal security documents, a first lien interest in the intermediary's revolving fund account will be accomplished by a control agreement satisfactory to the Agency. The control agreement does not require the Agency's signature for withdrawals. The depository bank must waive its offset and recoupment rights against the depository account to the Agency and subordinate any liens it may have against the HFIL depository bank account.

(c) *Ultimate recipient.* Security for a loan from an intermediary lender's HFIL revolving fund to an ultimate recipient will be adequate to fully secure the loan as specified in the relending agreement.

(1) The Agency will only require concurrence in the intermediary lender's security requirement for a specific loan when security for the loan from the intermediary lender to the ultimate recipient will also serve as security for an Agency loan.

(2) The ultimate recipient will take appropriate action to obtain and provide security for the loan.

§ 769.109 Intermediary lender's application.

(a) The application will consist of:

(1) An application form provided by the Agency;

(2) A draft Intermediary Relending Agreement and other evidence the Agency requires to show the feasibility of the intermediary lender's program to meet the objectives of the HFIL Loan Program; and

(3) Applications from intermediary lenders that already have an active HFIL loan may be streamlined by filing a new application and a statement that the new loan would be operated in accordance with the Intermediary Relending Agreement on file for the previous loan. This statement may be submitted at the time of application in lieu of a new Intermediary Relending Agreement.

(4) Documentation of the intermediary lender's ability to administer HFIL in accordance with this part;

(5) Submission of a completed Agency application form;

(6) Prior to approval of a loan or advance of funds, certification of whether or not the intermediary lender is delinquent on any Federal debt, including, but not limited to, Federal income tax obligations or a loan or loan guarantee or from another Federal agency. If delinquent, the intermediate lender must explain the reasons for the delinquency, and the Agency will take such written explanation into consideration in deciding whether to approve the loan or advance of funds;

(7) Prior to approval of a loan or advance of funds, certification as to whether the intermediary lender has been convicted of a felony criminal violation under Federal law in the 24 months preceding the date of application.

(8) Certification of compliance with the restrictions and requirements in 31 U.S.C. 1352, and 2 CFR 200.450 and part 418.

(9) Certification to having been informed of the collection options the Federal government may use to collect delinquent debt.

(b) An intermediary lender that has received one or more HFIL loans may apply for and be considered for subsequent HFIL loans provided:

(1) The intermediary lender is relending all collections from loans made from its revolving fund in excess of what is needed for required debt service, approved administration costs, and a reserve for debt service;

(2) The outstanding loans of the intermediary lender's HFIL revolving fund are performing; and

(3) The intermediary lender is in compliance with all regulations and its loan agreements with the Agency.

§ 769.110 Letter of conditions.

(a) The Agency will provide the intermediary lender a letter listing all requirements for the loan. After reviewing the conditions and requirements in the letter of conditions, the intermediary lender must complete, sign, and return the form provided by the Agency indicating the intermediary lender's intent to meet the conditions. If certain conditions cannot be met, the intermediary lender may propose alternate conditions in writing to the Agency. The Agency loan approval official must concur with any changes made to the initially issued or proposed letter of conditions prior to acceptance. The loan request will be withdrawn if the intermediary lender does not respond within 15 days.

(b) At loan closing, the intermediary lender must certify that:

(1) No major changes have been made in the Intermediary Relending Agreement except those approved in the interim by the Agency;

(2) All requirements of the letter of conditions have been met; and

(3) There has been no material change in the intermediary lender or its financial condition since the issuance of the letter of conditions. If there have been changes, the intermediary lender must explain the changes to the Agency. The changes may be waived, at the sole discretion of the Agency.

§ 769.111 Loan approval and obligating funds.

(a) Loan requests will be processed based on the date the Agency receives the application. Loan approval is subject to the availability of funds.

(b) The loan will be considered approved for the intermediary lender on the date the signed copy of the obligation of funds document is mailed to the intermediary lender.

§ 769.120 Loan closing.

(a) *Loan agreement.* A loan agreement or supplement to a previous loan agreement must be executed by the intermediary lender and the Agency at loan

closing for each loan setting forth, at a minimum,

(1) The amount of the loan, the interest rate, the term and repayment schedule,

(2) The requirement to maintain a separate ledger and segregated account for the HFIL revolving fund; and

(3) It agrees to comply with Agency reporting requirements.

(b) *Loan closing.* Intermediary lenders receiving HFIL loans will be governed by this part, the loan agreement, the approved Intermediary Relending Agreement, security instruments, and any other conditions that the Agency requires on loans made from the "HFIL revolving fund." The requirement applies to all loans made by an intermediary lender to an ultimate recipient from the intermediary lender's HFIL revolving fund for as long as any portion of the intermediary lender's HFIL loan from the Agency remains unpaid.

(c) *Intermediary lender certification.* The intermediary lender must include in their file a certification that:

(1) The proposed ultimate recipient is eligible for the loan;

(2) The proposed loan is for eligible purposes; and

(3) The proposed loan complies with all applicable laws and regulations.

§ 769.121 Maintenance and monitoring of HFIL revolving fund.

(a) *Maintenance of revolving fund.* The intermediary lender must maintain the HFIL revolving fund until all of its HFIL obligations have been paid in full. All HFIL loan funds received by an intermediary lender must be deposited into an HFIL revolving fund account. Such accounts must be fully covered by Federal deposit insurance or fully collateralized with U.S. Government obligations. All cash of the HFIL revolving fund must be deposited in a separate bank account or accounts so as not to be commingled with other financial assets of the intermediary lender. All money deposited in such bank account or accounts must be security assets of the HFIL revolving fund. Loans to ultimate recipients must be from the HFIL revolving fund.

(1) The portion of the HFIL revolving fund that consists of Agency HFIL loan

funds may only be used for making loans in accordance with § 769.105. The portion of the HFIL revolving fund that consists of repayments from ultimate recipients may be used for debt service, reasonable administrative costs, or for making additional loans;

(2) An intermediary lender may use revolving funds and HFIL loan funds to make loans to ultimate recipients without obtaining prior Agency concurrence in accordance with the Intermediary Relending Agreement;

(3) Any funds in the HFIL revolving fund from any source that is not needed for debt service, approved administrative costs, or reasonable reserves must be available for additional loans to ultimate recipients;

(4) All reserves and other funds in the HFIL revolving loan fund not immediately needed for loans to ultimate recipients or other authorized uses must be deposited in accounts in banks or other financial institutions. Such accounts must be fully covered by Federal deposit insurance or fully collateralized with U.S. Government obligations, and will be interest bearing. Any interest earned thereon remains a part of the HFIL revolving fund;

(5) If an intermediary lender receives more than one HFIL loan, it does not need to establish and maintain a separate HFIL revolving loan fund for each loan; it may combine them and maintain only one HFIL revolving fund, unless the Agency requires separate HFIL revolving funds because there are significant differences in the loan purposes, Intermediary Relending Agreement, loan agreements, or requirements for the loans; and

(6) A reasonable amount of revolved funds must be used to create a reserve for bad debts. Reserves should be accumulated over a period of years. The total amount should not exceed maximum expected losses, considering the quality of the intermediary lender's portfolio of loans. Unless the intermediary lender provides loss and delinquency records that, in the opinion of the Agency, justifies different amounts, a reserve for bad debts of 6 percent of outstanding loans must be accumulated over 5 years and then maintained.

(b) *Loan monitoring reviews.* The intermediary lender must complete loan monitoring reviews, including annual and periodic reviews, and performance monitoring.

(1) At least annually, the intermediary lender must provide the Agency documents for the purpose of reviewing the financial status of the intermediary Lender, assessing the progress of utilizing loan funds, and identifying any potential problems or concerns. Non-regulated intermediary lenders must furnish audited financial statements at least annually.

(2) At any time the Agency determines it is necessary, the intermediary lender must allow the Agency or its representative to review the operations and financial condition of the intermediary lender. Upon the Agency requests, the Intermediary must submit financial or other information within 14 days unless the data requested is not available within that time frame.

(c) *Progress reports.* Each intermediary lender will be monitored by the Agency based on progress reports submitted by the intermediary lender, audit findings, disbursement transactions, visitations, and other contact with the intermediary lender as necessary.

§ 769.122 Loan servicing.

(a) *Payments.* Payments will be made to the Agency as specified in loan agreements and debt instruments. The funds from any extra payments will be applied entirely to loan principal.

(b) *Restructuring.* The Agency may restructure the intermediary lender's loan debt, if:

(1) The Government's interest will be protected;

(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 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.

Subpart B—Heirs' Property Relending Program

SOURCE: 86 FR 43393, Aug. 9, 2021, unless otherwise noted.

§ 769.150 Purpose.

(a) This subpart contains regulations for loans made by the Agency to eligible intermediaries that will make and service loans to ultimate recipients pursuant to requirements in this subpart. This subpart applies to intermediaries, ultimate recipients, and other parties involved in making such loans.

(b) The purpose of HPRP is to assist heirs with undivided ownership interests resolve ownership and succession issues on a farm that is owned by multiple owners. This purpose is achieved by providing loan funds to eligible intermediaries who will re-lend to individuals and entities for the purpose of developing and implementing a succession plan and to resolve title issues.

(c) Intermediaries receiving HPRP loans must comply with this subpart, the HPRP loan agreement, the intermediary's relending plan approved by the Agency, the HPRP loan documents and security instruments and any other conditions that the Agency may impose in making a loan.

§ 769.151 Abbreviations and definitions.

Abbreviations and definitions used in this subpart are found in § 761.2 of this chapter.

§ 769.152 Eligibility requirements of the intermediary.

(a) *Eligible entity types.* Cooperatives, credit unions, and nonprofit organizations are eligible to participate as intermediaries.

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(b) *Certification.* The intermediary must be certified as a community development financial institution under 12 CFR 1805.201 to operate as a lender.

(c) *Citizenship.* The applicant and the members of the intermediary must be a U.S. citizen or qualified alien (see 8 U.S.C. 1641). Each intermediary must certify to the citizenship requirement in the HPRP loan application.

(d) *Experience.* The intermediary must have:

(1) The requisite experience and capability in making and servicing agricultural and commercial loans that are similar in nature to HPRP. If consultants will be used in the making and servicing of HPRP loans, the Agency will assess the intermediary's experience in choosing and supervising consultants based on information intermediaries include in their application describing the particular lending functions they typically rely on agents to fulfill and also describe their policies and procedures for monitoring these agents;

(2) The legal authority necessary to carry out the proposed loan purposes and to obtain, provide security for, and repay the proposed loan; and

(3) Demonstrated ability and willingness to repay the loan based on the intermediary's financial condition, managerial capabilities, and other resources.

§ 769.153 Eligibility requirements of the ultimate recipient.

(a) The eligibility requirements for the ultimate recipient are:

(1) Ultimate recipients must be individuals or legal entities, with authority to incur the debt and to resolve ownership and succession of a farm owned by multiple owners;

(2) Individual ultimate recipients or members of entity ultimate recipients must be a family member or heir-at-law related by blood or marriage to the previous owner of the real property; and

(3) The ultimate recipient must agree to complete a succession plan.

(b) The intermediary will determine the eligibility of the applicant to become the ultimate recipient in accordance with the rules provided in this subpart and in accordance with the

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intermediary's relending plan as approved by the Agency in the HPRP loan agreement.

§ 769.154 Authorized loan purposes.

(a) *Loans to the intermediary.* HPRP loan funds must be used by the intermediary to provide direct loans to eligible ultimate recipients according to the rules provided in this subpart and pursuant to the HPRP loan agreement approved by the Agency.

(b) *Loans to the ultimate recipients.* HPRP loan funds:

(1) Must be used to assist heirs with undivided ownership interests to resolve ownership and succession of a farm owned by multiple owners;

(2) Must be sufficient to cover costs and fees associated with development and implementation of the succession plan, including closing costs (such as costs for preparing documents, appraisals, surveys, and title reports) and other associated legal services (such as fees incurred for mediation); and

(3) May be used to purchase and consolidate fractional interests held by other heirs in jointly-owned property, and to purchase rights-of-way, water rights, easements, and other appurtenances that would normally pass with the property and are necessary for the proposed operation of the farm.

§ 769.155 Loan limitations.

(a) For each application period:

(1) Loans to intermediaries will not exceed \$5,000,000 to any intermediary;

(2) Loans to ultimate recipients will not exceed the loan limit for a Direct Farm Ownership loan as specified in § 761.8(a)(1)(i) of this chapter to any ultimate recipient.

(b) Loans to the ultimate recipient may not be used:

(1) For any land improvement, development purpose, acquisition or repair of buildings, acquisition of personal property, payment of operating costs, payment of finders' fees, or similar costs;

(2) For any purpose that will contribute to excessive erosion of highly erodible land or for the conversion of wetlands to produce an agricultural commodity as specified in 7 CFR part 12; or

(3) To resolve heirs' property issues on property that will not be used, or has traditionally not been used, for production agricultural purposes.

(c) The HPRP loan amount may not exceed the current market value of the land determined by an appraisal that meets the requirements specified in § 761.7(b)(1) of this chapter; and

(d) Intermediaries who receive HPRP funding are not permitted to charge the ultimate recipients for mediation services provided through grants received under the Agency's State Agriculture Mediation Program (part 785 of this chapter).

§ 769.156 Rates and terms.

(a) For loans to intermediaries:

(1) The rate of interest for an HPRP loan will bear a fixed rate over the term of the loan of 1 percent or less as determined by the Administrator;

(2) The repayment term for an HPRP loan will not exceed 30 years; and

(3) Annual payments will be established. Interest will be due annually; however, principal payments may be deferred by the Agency.

(b) Loans to the ultimate recipient from the HPRP revolving loan fund are required to have rates and terms clearly and publicly disclosed to qualified ultimate recipients.

(1) The interest rate for loans to ultimate recipients will be set by the intermediary within the limits established by the intermediary's relending plan approved by the Agency. The rate should normally be the lowest rate sufficient to cover the loan's proportional share of the HPRP revolving loan fund's debt service costs, reserve for bad debts, and administrative costs.

(2) Loans made by an intermediary to an ultimate recipient will be scheduled for repayment over a term negotiated by the intermediary and ultimate recipient; but in no case will the loan term exceed 30 years, unless otherwise specified by the Agency.

§ 769.157 Intermediary's relending plan.

(a) The intermediary must submit a proposed relending plan which, once approved by the Agency, will be incorporated by reference as an attachment to the HPRP loan agreement. The re-

lending plan will explain in sufficient detail the mechanics of how the funds will be distributed from the intermediary to the ultimate recipient.

(b) The intermediary's relending plan must include copies of the intermediary's proposed application forms, loan documents and security instruments, if available, and should include information regarding:

(1) The service area;

(2) The proposed fees and other charges the intermediary will assess the ultimate recipients;

(3) Eligibility criteria for the ultimate recipient;

(4) Authorized loan purposes;

(5) Loan limitations;

(6) Loan underwriting methods and criteria;

(7) Loan rates and terms;

(8) Security requirements;

(9) The method of disbursement of the funds to the ultimate recipient;

(10) The process for addressing environmental issues on property to be purchased;

(11) The proposed process for reviewing loan requests from ultimate recipients and making eligibility determinations;

(12) A description of the established internal credit review process;

(13) The monitoring and servicing of loans distributed to the ultimate recipients;

(14) The amount that will be set aside to maintain a reserve for bad debts; and

(15) A description of the requirements for maintaining adequate hazard insurance, workmen's compensation insurance on ultimate recipients, and flood insurance.

[86 FR 43393, Aug. 9, 2021, as amended at 89 FR 65062, Aug. 8, 2024]

§ 769.158 Intermediary's loan application.

(a) The intermediary's loan application will consist of:

(1) An application form provided by the Agency;

(2) A relending plan addressing the items in § 769.157;

(3) A copy of the intermediary's certification as a community development financial institution;

(4) A signed form, to be provided by the Agency, assuring the intermediary's compliance and continued compliance with Title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1688) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1–2000d–7);

(5) Other evidence the Agency requires to determine that the intermediary satisfies the eligibility requirements in § 769.152, and that the intermediary's proposed relending plan is feasible and meets the objectives of HPRP;

(6) Documentation of the intermediary's ability to administer the HPRP loan funds in accordance with this subpart; and

(7) The name(s) of attorneys or any third parties involved with the application process.

(b) Prior to loan approval and advancing funds, the intermediary must certify that:

(1) The intermediary and its officers, or agents are not delinquent on any Federal debt, including, but not limited to, federal income tax obligations, federal loan or loan guarantee, or obligation from another Federal agency. If delinquent, the intermediary must provide in writing the reasons for the delinquency, and the Agency will take this into consideration in deciding whether to approve the loan or advance of funds;

(2) The intermediary and its officers have not been convicted of a felony criminal violation under Federal law in the 24 months preceding the date of the loan application;

(3) The intermediary is in compliance with the restrictions and requirements in 31 U.S.C. 1352, limitation on use of appropriated funds to influence certain Federal contracting and financial transactions;

(4) The intermediary has been informed of the options by the Federal Government to collect delinquent debt; and

(5) The intermediary, its officers, or agents are not debarred or suspended from participation in Government contracts or programs.

(c) An intermediary that has received one or more HPRP loans may apply for

and be considered for subsequent HPRP loans provided:

(1) The intermediary is relending all collections from loans made from its revolving fund in excess of what is needed for the required debt service reserve and approved administrative costs;

(2) The outstanding loans of the intermediary's HPRP revolving loan fund are performing; and

(3) The intermediary is following all regulatory requirements and is complying with the terms and conditions of its HPRP loan agreement(s) and the intermediary's relending plan(s) approved by the Agency.

(d) The Agency may require the intermediary to provide information relating to applications from ultimate recipients the intermediary has in process.

§ 769.159 Processing loan applications.

(a) *Intermediary loan application review.* The Agency will review submitted applications from intermediaries for compliance with the provisions of this subpart.

(b) *Loan approval.* Loan approval is subject to the availability of funds. The loan will be considered approved for the intermediary on the date the Agency signs the obligation of funds confirmation.

(c) *Preferences for loan funding.* When necessary to address funding constraints, the Agency will fund eligible applications from intermediaries in the order specified in paragraphs (c)(1) through (4) of this section:

(1) First, to those with not less than 10 years of experience serving socially disadvantaged farmers and ranchers that are located in states that have adopted a statute consisting of an enactment or adoption of the Uniform Partition of Heirs Property Act, as approved and recommended for enactment in all States by the National Conference of Commissioners on Uniform State Laws in 2010, that relend to owners of heirs property (as defined by the Uniform Partition of Heirs Property Act);

(2) Second, to those that have applications from ultimate recipients already in process, or that have a history

of successfully relending previous HPRP funds;

(3) Multiple applications in the same priority tier, will be processed based by date of application received; and

(4) Any remaining applications, after priority tiers 1 and 2 have been funded as specified in paragraphs (c)(1) and (2) of this section, will be funded in order of the date the application was received.

(d) *Current information required.* Information supplied by the intermediary in the loan application must be updated by the intermediary if the information is more than 90 days old at the time of loan closing.

[89 FR 65062, Aug. 8, 2024]

§ 769.160 Letter of conditions.

(a) If the Agency approves a loan application, the Agency will provide the intermediary with a letter of conditions listing all requirements for the loan.

(b) Immediately after reviewing the conditions and requirements in the letter of conditions, the intermediary should complete, sign, and return the form provided by the Agency indicating the intermediary's intent to meet the conditions.

(1) If certain conditions cannot be met, the intermediary may propose alternative conditions to the Agency.

(2) The Agency loan approval official must concur with any changes made to the initially issued or proposed letter of conditions prior to loan approval.

(c) The loan request will be considered withdrawn if the intermediary does not respond within 15 calendar days from the date the letter of conditions was sent.

§ 769.161 Loan agreements.

(a) The HPRP loan agreement will specify the terms of each loan, such as:

- (1) The amount of the loan;
- (2) The interest rate;
- (3) The term and repayment schedule;
- (4) Any provisions for late charges;
- (5) The disbursement procedure;
- (6) Provisions regarding default; and
- (7) Fidelity insurance.

(b) As a condition of receiving HPRP loan funds, the intermediary will agree:

(1) To obtain written approval from the Agency prior to making any changes in the intermediary's articles of incorporation, charter, or by-laws;

(2) To maintain a separate ledger and segregated account for the HPRP revolving loan fund;

(3) To comply with the Agency's annual reporting requirements in § 769.164(g);

(4) To obtain prior written approval from the Agency regarding all forms to be used for relending purposes, as well as the intermediary's policy with regard to the amount and security to be required;

(5) To obtain written approval from the Agency prior to making any significant changes in the proposed forms, security policy, or the intermediary's relending plan;

(6) To maintain the collateral pledged as security for the HPRP loan; and

(7) To request demographics data from ultimate recipients on race, ethnicity, and gender. The response to the data request will be voluntary. The intermediary will maintain the information when voluntarily submitted by the ultimate recipient. The intermediary agrees to make this information available when requested by FSA.

§ 769.162 Security.

(a) *Loans to intermediaries.* Security pledged to the Agency by intermediaries must be sufficient to reasonably assure repayment of the loan, while taking into consideration the intermediary's financial condition, the intermediary's relending plan, and the intermediary's management ability. The Agency will require adequate security, as determined by the Agency, to fully secure the loan:

(1) Primary security for HPRP loan will consist of a pledge by the intermediary of all assets now or hereafter placed in the HPRP revolving loan fund, including cash and investments, notes receivable from ultimate recipients, and the intermediary's security interest in collateral pledged by ultimate recipients. A first lien in the intermediary's HPRP revolving loan fund account(s) will be accomplished by a deposit agreement. The deposit agreement with the depository bank

will perfect the Agency's security interest in the intermediary's depository accounts. The deposit agreement must be approved by the Agency. The deposit agreement will not require the Agency's signature for withdrawals. The intermediary must use a depository bank that agrees to waive its offset and recoupment rights against the depository account and subordinate any liens it may have against the HPRP depository account in favor of the Agency;

(2) Additional security as needed, which includes, but is not limited to:

(i) Assignments of assessments, taxes, levies, or other sources of revenue as authorized by law;

(ii) Financial assets of the intermediary and its members; and

(ii) Capital assets or other property of the intermediary and its members.

(b) *Loans to the ultimate recipient.* The intermediary is responsible for obtaining adequate security for all loans made to ultimate recipients from the HPRP revolving loan funds as specified in the HPRP loan agreement and intermediary's relending plan. The Agency will only require concurrence with the intermediary's proposed security for a loan to an ultimate recipient from the HPRP revolving loan fund if the proposed security will also serve as security for an unrelated Agency loan.

[86 FR 43393, Aug. 9, 2021, as amended at 89 FR 65063, Aug. 8, 2024]

§ 769.163 Loan closing.

(a) *HPRP loan documents and security instruments.* At loan closing, the intermediary will execute the HPRP loan agreement or supplemental loan agreement, HPRP promissory note, the HPRP security agreement, the control agreement, and any other security instruments required by the Agency.

(b) *Intermediary certification.* At loan closing, the intermediary must certify that:

(1) No changes have been made in the intermediary's relending plan except those approved in the interim by the Agency;

(2) All requirements in the letter of conditions have been met; and

(3) There has been no material change in the intermediary or its financial condition since the issuance of the letter of conditions. If there have

been changes, the intermediary must explain the changes to the Agency. The Agency will review the changes and respond in writing prior to loan closing.

§ 769.164 Postaward requirements.

(a) *Applicability.* Whenever this subpart imposes a requirement on loan funds from the HPRP revolving loan fund, the requirement will apply to all loans made by an intermediary to an ultimate recipient from the intermediary's HPRP revolving loan fund for as long as any portion of the intermediary's HPRP loan remains unpaid.

(b) *Applicability for HPRP loan funds.* Whenever this subpart imposes a requirement on loans made by intermediaries from HPRP loan funds, without specific reference to the HPRP revolving loan fund, such requirement only applies to loans made by an intermediary using HPRP loan funds, and will not apply to loans made from revolved funds.

(c) *File maintenance.* In addition to information normally maintained by lenders in each loan file associated with a relending loan to an ultimate recipient, the intermediary must include a certification and supporting documentation in its file demonstrating that:

(1) The ultimate recipient is eligible for the loan;

(2) The loan is for eligible purposes; and

(3) The loan complies with all applicable laws, regulations, and the intermediary's HPRP loan agreement.

(d) *Maintenance of HPRP revolving loan fund.* For as long as any part of an HPRP loan remains unpaid, the intermediary must maintain the HPRP revolving loan fund in accordance with the requirements in paragraphs (d)(1) through (11) of this section:

(1) All HPRP loan funds received by an intermediary must be deposited into the HPRP revolving loan fund. The intermediary may transfer additional assets into the HPRP revolving loan fund;

(2) All cash of the HPRP revolving loan fund must be deposited in a separate bank account or accounts;

(3) The HPRP revolving loan fund must be segregated from other financial assets of the intermediary, and no other funds of the intermediary will be commingled with the HPRP revolving loan fund;

(4) All moneys deposited in the HPRP revolving loan fund account or accounts will be money from the HPRP revolving loan fund;

(5) Loans to ultimate recipients are advanced from the HPRP revolving loan fund;

(6) The receivables created by making loans to ultimate recipients, the intermediary's security interest in collateral pledged by ultimate recipients, collections on the receivables, interest, fees, and any other income or assets derived from the operation of the HPRP revolving loan fund are a part of the HPRP revolving loan fund;

(7) The portion of the HPRP revolving loan fund consisting of HPRP loan funds may only be used for making loans in accordance with § 769.154. The portion of the HPRP revolving loan fund that consists of revolved funds may be used for debt service reserve, approved administrative costs, or for making additional loans;

(8) A reasonable amount of revolved funds must be maintained as a reserve for bad debts. The total amount should not exceed maximum expected losses, considering the credit quality of the intermediary's portfolio of loans. The amount of reserved funds proposed by the intermediary requires written concurrence from the Agency. Unless the intermediary provides loss and delinquency records that, in the opinion of the Agency, justifies different amounts, a reserve for bad debts of 6 percent of outstanding loans must be accumulated over 5 years and then maintained;

(9) Any funds in the HPRP revolving loan fund from any source that is not needed for debt service reserve, approved administrative costs, or reasonable reserves must be available for additional loans to ultimate recipients:

(i) Funds may not be used for any investments in securities or certificates of deposit of over 30-day duration without the Agency's concurrence; and

(ii) Any funds that have not been used within 6 months to make loans to

an ultimate recipient must be returned to the Agency unless the Agency provides a written exception based on evidence satisfactory to the Agency that funds will be used within an additional 6 months;

(10) All reserves and other cash in the HPRP revolving loan fund must be deposited in accounts in banks or other financial institutions. Such accounts must be fully covered by Federal deposit insurance or the HPRP revolving loan fund must be protected by alternative measures approved by the Agency. The account must be interest-bearing, if feasible, and any interest earned on the account remains a part of the HPRP revolving loan fund; and

(11) If an intermediary receives more than one HPRP loan, it does not need to establish and maintain a separate HPRP revolving loan fund for each loan; it may combine them and maintain only one HPRP revolving loan fund.

(e) *Budgets and administrative costs.* The intermediary must submit an annual budget of proposed administrative costs for Agency approval. The annual budget should itemize cash income and cash out-flow. Projected cash income should consist of, but is not limited to, collection of principal repayment, interest repayment, interest earnings on deposits, fees, and other income. Projected cash out-flow should consist of, but is not limited to, principal and interest payments, reserve for bad debt, and an itemization of administrative costs to operate the HPRP revolving loan fund.

(1) Proceeds received from the collection of principal repayment cannot be used for administrative expenses.

(2) The amount removed from the HPRP revolving loan fund for administrative costs in any year must be reasonable, must not exceed the actual cost of operating the HPRP revolving loan fund, including loan servicing and providing technical assistance, and must not exceed the amount approved by the Agency in the intermediary's annual budget.

(f) *Loan monitoring reviews.* The Agency may conduct loan monitoring reviews, including annual and periodic reviews, and performance monitoring.

(1) At least annually, the intermediary must provide the Agency documents for reviewing the financial status of the intermediary, assessing the progress of using loan funds, and identifying any potential problems or concerns. Non-regulated intermediaries must furnish audited financial statements at least annually.

(2) The intermediary must allow the Agency or its representative to review the operations and financial condition of the intermediary upon the Agency's request. The intermediary and its agents must provide access to all pertinent information to allow the Agency, or any party authorized by the Agency, to conduct such reviews. The intermediary must submit financial or other information within 14 calendar days upon receipt of the Agency's request, unless the data requested is not available within that time frame. Failure to supply the requested information to the satisfaction of the Agency will constitute non-monetary default. The Agency may conduct reviews, including on-site reviews, of the intermediary's operations and the operations of any agent of the intermediary, for the purpose of verifying compliance with Agency regulations and guidelines. These reviews may include, but are not limited to, audits of case files; interviews with owners, managers, and staff; audits of collateral; and inspections of the intermediary's and its agents underwriting, servicing, and liquidation guidelines.

(g) *Annual monitoring reports.* Each intermediary will be monitored by the Agency through annual monitoring reports submitted by the intermediary. Annual monitoring reports must include a description of the use of loan funds, information regarding the acreage, the number of heirs both before and after loan was made, audit findings, disbursement transactions, and any other information required by the Agency, as necessary.

(h) *Unused loan funds.* If any part of the HPRP loan has not been used in accordance with the intermediary's relending plan within 3 years from the date of the HPRP loan agreement, the Agency may cancel the approval of any funds not delivered to the inter-

mediary. The Agency may also direct the intermediary to return any funds delivered to the intermediary that have not been used by that intermediary in accordance with the intermediary's relending plan. The Agency may, at its sole discretion, allow the intermediary additional time to use the HPRP loan funds.

[86 FR 43393, Aug. 9, 2021, as amended at 89 FR 65063, Aug. 8, 2024]

§ 769.165 Loan servicing.

(a) *Payments.* The intermediary will make payments to the Agency as specified in the HPRP loan documents. All payments will be applied to interest first, any additional amount will be applied to principal.

(b) *Restructuring.* The Agency may restructure the intermediary's loan debt, if:

(1) The loan objectives cannot be met unless the HPRP loan is restructured;

(2) The Agency's interest will be protected; and

(3) The restructuring will be within the Agency's budget authority.

(c) *Default.* The Agency will work with the intermediary to correct any default, subject to the requirements of paragraph (b) of this section. 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 HPRP loan agreement, and any other loan instruments relating to the loan under applicable law and regulations, and commencement of legal action to protect the Agency's interest. Violation of any agreement with the Agency or failure to comply with reporting or other HPRP requirements will be considered non-monetary default.

§ 769.166 Transfers and assumptions.

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

(b) Available transfer and assumption options to eligible intermediaries include:

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

(2) The total indebtedness may be transferred to another eligible intermediary on different terms not to exceed the term for which an initial loan can be made.

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

(d) The transferee must provide the Agency with information required in the application as specified in § 769.158.

(e) The Agency's approved form of the assumption agreement will formally authorize the transfer and assumption and will contain the Agency case number of the transferor and transferee.

(f) When the transferee makes a cash down-payment in connection with the transfer and assumption, any proceeds received by the transferor will be credited on the transferor's loan debt in order of maturity date.

§ 769.167 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.

§ 769.168 Exceptions.

The Agency may grant an exception to any of the requirements of this subpart 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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AUTHORITY: 5 U.S.C. 301 and 25 U.S.C. 5136.

SOURCE: 66 FR 1567, Jan. 9, 2001, unless otherwise noted.

§ 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.

(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