

§ 771.10

(ii) Investments and deposits of the applicant; and

(iii) Capital assets or other property of the applicant or its members.

(2) In those cases in which FSA and another lender will hold assignments of the same revenue as collateral, the other lender must agree to a prorated distribution of the assigned revenue. The distribution will be based upon the proportionate share of the applicant's debt the lender holds for the eradication zone from which the revenue is derived at the time of loan closing.

(d) *Repayment.* The applicant must demonstrate that income sources will be sufficient to meet the repayment requirements of the loan and pay operating expenses.

§ 771.10 [Reserved]

§ 771.11 Application.

A complete application will consist of the following:

(a) An application for Federal assistance (available in any FSA office);

(b) Applicant's financial projections including a cash flow statement showing the plan for loan repayment;

(c) Copies of the applicant's authorizing State legislation and organizational documents;

(d) List of all directors and officers of the applicant;

(e) Copy of the most recent audited financial statements along with updates through the most recent quarter;

(f) Copy of the referendum used to establish the assessments and a certification from the Board of Directors that the referendum passed;

(g) Evidence that the officers and employees authorized to disburse funds are covered by an acceptable fidelity bond;

(h) Evidence of acceptable liability insurance policies;

(i) Statement from the applicant addressing any current or pending litigation against the applicant as well as any existing judgments;

(j) A copy of a resolution passed by the Board of Directors authorizing the officers to incur debt on behalf of the borrower;

(k) Any other information deemed to be necessary by FSA to render a decision.

7 CFR Ch. VII (1-1-05 Edition)

§ 771.12 Funding applications.

Loan requests will be processed based on the date FSA receives the application. Loan approval is subject to the availability of funds. However, when multiple applications are received on the same date and available funds will not cover all applications received, applications from active eradication areas, which FSA determines to be most critical for the accomplishment of program objectives, will be funded first.

§ 771.13 Loan closing.

(a) *Conditions.* The applicant must meet all conditions specified by the loan approval official in the notification of loan approval prior to closing.

(b) *Loan instruments and legal documents.* The borrower, through its authorized representatives will execute all loan instruments and legal documents required by FSA to evidence the debt, perfect the required security interest in property and assets securing the loan, and protect the Government's interest, in accordance with applicable State and Federal laws.

(c) *Loan agreement.* A loan agreement between the borrower and FSA will be required. The agreement will set forth performance criteria and other loan requirements necessary to protect the Government's financial and programmatic interest and accomplish the objectives of the loan. Specific provisions of the agreement will be developed on a case-by-case basis to address the particular situation associated with the loan being made. However, all loan agreements will include at least the following provisions:

(1) The borrower must submit audited financial statements to FSA at least annually;

(2) The borrower will immediately notify FSA of any adverse actions such as:

(i) Anticipated default on FSA debt;

(ii) Potential recall vote of an assessment referendum; or

(iii) Being named as a defendant in litigation;

(3) Submission of other specific financial reports for the borrower;

(4) The right of deferral under 7 U.S.C. 1981a; and

(5) Applicable liquidation procedures upon default.

(d) *Fees.* The borrower will pay all fees for recording any legal instruments determined to be necessary and all notary, lien search, and similar fees incident to loan transactions. No fees will be assessed for work performed by FSA employees.

§ 771.14 Loan monitoring.

(a) *Annual and periodic reviews.* At least annually, the borrower will meet with FSA representatives to review the financial status of the borrower, assess the progress of the eradication program utilizing loan funds, and identify any potential problems or concerns.

(b) *Performance monitoring.* At any time FSA determines it necessary, the borrower must allow FSA or its representative to review the operations and financial condition of the borrower. This may include, but is not limited to, field visits, and attendance at Foundation Board meetings. Upon FSA request, a borrower must submit any financial or other information within 14 days unless the data requested is not available within that time frame.

§ 771.15 Loan servicing.

(a) *Advances.* FSA may make advances to protect its financial interests and charge the borrower's account for the amount of any such advances.

(b) *Payments.* Payments will be made to FSA as set forth in loan agreements and debt instruments. The funds from extra payments will be applied entirely to loan principal.

(c) *Restructuring.* The provisions of 7 CFR part 1951, subpart S, are not applicable to loans made under this section. However, FSA may restructure loan debts; provided:

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

(2) The restructuring will be performed within FSA budgetary restrictions; and

(3) The loan objectives cannot be met unless the loan is restructured.

(d) *Default.* In the event of default, FSA will take all appropriate actions to protect its interest.

PART 772—SERVICING MINOR PROGRAM LOANS

Sec.

- 772.1 Policy.
- 772.2 Abbreviations and definitions.
- 772.3 Compliance.
- 772.4 Environmental requirements.
- 772.5 Security maintenance.
- 772.6 Subordination of security.
- 772.7 Leasing minor program loan security.
- 772.8 Sale or exchange of security property.
- 772.9 Releases.
- 772.10 Transfer and assumption—AMP loans.
- 772.11 Transfer and assumption—IMP loans.
- 772.12 Graduation.
- 772.13 Delinquent account servicing.
- 772.14 Reamortization of AMP loans.
- 772.15 Protective advances.
- 772.16 Liquidation.
- 772.17 Equal Opportunity and non-discrimination requirements.
- 772.18 Exception authority.

AUTHORITY: 5 U.S.C. 301, 7 U.S.C. 1989, 25 U.S.C. 490.

SOURCE: 68 FR 69949, Dec. 16, 2003, unless otherwise noted.

§ 772.1 Policy.

(a) *Purpose.* This part contains the Agency's policies and procedures for servicing Minor Program loans which include: Grazing Association loans, Irrigation and Drainage Association loans, and Non-Farm Enterprise and Recreation loans to individuals.

(b) *Appeals.* The regulations at 7 CFR parts 11 and 780 apply to decisions made under this part.

§ 772.2 Abbreviations and Definitions.

(a) Abbreviations.

AMP Association-Type Minor Program loan;

CFR Code of Federal Regulations;

FO Farm Ownership Loan;

FSA Farm Service Agency;

IMP Individual-Type Minor Program loan;

OL Operating Loan;

USDA United States Department of Agriculture.

(b) Definitions.

Association-Type Minor Program loans (AMP): Loans to Grazing Associations and Irrigation and Drainage Associations.

Entity: Cooperative, corporation, partnership, joint operation, trust, or limited liability company.