

Farm Service Agency, USDA

§ 762.150

(3) The lender will make its records available to the Agency for the Agency's audit of the propriety of any loss payment.

(4) All lenders will submit the following documents with a final loss claim:

(i) An accounting of the use of loan funds;

(ii) An accounting of the disposition of loan security and its proceeds;

(iii) A copy of the loan ledger indicating loan advances, interest rate changes, protective advances, and application of payments, rental proceeds, and security proceeds, including a running outstanding balance total; and

(iv) Documentation, as requested by the Agency, concerning the lender's compliance with the requirements of this part.

(5) The Agency will notify the lender of any discrepancies in the final loss claim or, approve or reject the claim within 40 days.

(6) The Agency will reduce a final loss claim based on its calculation of the dollar amount of loss caused by the lender's negligent servicing of the account. Loss claims may be reduced or rejected as a result of the following:

(i) A loss claim may be reduced by the amount caused by the lender's failure to secure property after a default, and will be reduced by the amount of interest that accrues when the lender fails to contact the borrower or takes no action to cure the default, once it occurs. Losses incurred as a result of interest accrual during excessive delays in collection, as determined by the Agency, will not be paid.

(ii) Unauthorized release of security proceeds, failure to verify ownership or possession of security to be purchased, or failure to inspect collateral as often required so as to ensure its maintenance.

(7) Losses will not be reduced for the following:

(i) Servicing deficiencies that did not contribute materially to the dollar amount of the loss.

(ii) Unaccounted security, as long as the lender's efforts to locate and recover the missing collateral was equal to that which would have been expended in the case of an unguaranteed loan in the lender's portfolio.

(8) Default interest, late charges, and loan servicing fees are not payable under the loss claim.

(9) The final loss will be the remaining outstanding balance after application of the estimated loss payment and the application of proceeds from the liquidation of the security.

(10) If the final loss is less than the estimated loss, the lender will reimburse the Agency for the overpayment, plus interest at the note rate from the date of the estimated loss payment.

(11) The lender will return the original guarantee marked paid after receipt of a final loss claim.

(j) *Future Recovery.* The lender will remit any recoveries made on the account after the Agency's payment of a final loss claim to the Agency in proportion to the percentage of guarantee, in accordance with the lender's agreement, until the account is paid in full or otherwise satisfied.

(k) *Overpayments.* The lender will repay any final loss overpayment determined by the Agency upon request.

(l) *Electronic funds transfer.* The lender will designate one or more financial institutions to which any Agency payments will be made via electronic funds transfer.

§ 762.150 Interest assistance program.

(a) *Requests for interest assistance.* (1) To apply for interest assistance in conjunction with a new request for guarantee, the lender will submit the following:

(i) A completed cash flow projection and interest assistance needs analysis portion of the application form. Interest assistance can be applied to each loan, only to one loan or any distribution the lender selects; however, interest assistance is only available on as many loans as necessary to achieve a positive cash flow.

(ii) For loans with unequal payments, a proposed debt repayment schedule which shows principal and interest payments for the subject loan, in each year of the loan.

(2) To request interest assistance on an existing guaranteed loan, the lender must submit to the Agency the following:

(i) A completed cash flow projection and interest assistance needs analysis

portion of the application form. Interest assistance can be applied to each loan, only to one loan or any distribution the lender selects as required to achieve a feasible plan.

(ii) For loans with unequal payments, a proposed debt repayment schedule which shows scheduled payments for the subject loan in each of the remaining years of the loan.

(iii) Cash flow budgets and supporting justification to document that the request meets the requirements outlined in paragraph (b) of this section. This will include a typical cash flow if the projected cash flow budget is atypical.

(3) Requests for interest assistance on lines of credit or loans made for annual operating purposes must be accompanied by a projected monthly cash flow budget.

(b) *Requirements.* (1) The typical term of scheduled loan repayment will not be reduced solely for the purpose of maximizing eligibility for interest assistance. To be eligible for interest assistance, a loan must be scheduled over the maximum terms typically used by lenders for similar type loans within the limits set by §762.124 of this part. At a minimum, loans will be scheduled for repayment over the terms listed below, but for OL not to exceed the life of the security:

(i) An OL for the purpose of providing annual operating and living expenses will be scheduled for repayment when the income is scheduled to be received from the sale of the crops, livestock, and livestock products which will serve as security for the loan.

(ii) OL for purposes other than annual operating and living expenses (i.e. equipment, livestock, refinancing of existing debt) will be scheduled over 7 years from the effective date of the proposed interest assistance agreement.

(iii) FO and SW secured by real estate will be scheduled for 20 years from the closing date of the original note covered by the guarantee.

(2) The lender must document that positive cash flow, as defined in §762.102(b), is not possible without reducing the interest rate on the borrower's loan and with the debt restruc-

tured over the term of repayment cited above.

(3) The lender must determine whether the borrower, including members of an entity, owns any significant assets which do not contribute directly to essential family living or farm operations. The lender must determine the market value of these assets and prepare a cash flow budget based on the assumption that the value of these assets will be used for debt reduction. If a positive cash flow can then be achieved, the borrower is not eligible for interest assistance. All interest assistance calculations will be based on the cash-flow budget which assumes that the assets will be sold.

(4) A borrower's new guaranteed loan is eligible for interest assistance if all the following conditions are met:

(i) The applicant needs interest assistance in order to achieve a positive cash flow as defined in §762.102(b).

(ii) If significant changes in the borrower's cash flow budget are anticipated after the initial 12 months, then the typical cash flow budget must demonstrate that the borrower will still have a feasible plan, as defined in §762.102(b), following the anticipated changes, with or without interest assistance.

(iii) If a positive cash flow cannot be achieved, even with other creditors voluntarily adjusting their debts and with the interest assistance, the interest assistance request will not be approved.

(5) An existing guaranteed loan is eligible for interest assistance if the borrower needs interest assistance to achieve a feasible plan as defined in §762.102(b), and the borrower meets the eligibility criteria of §762.120, except the provision regarding prior debt forgiveness. If a feasible plan cannot be achieved, even with other creditors voluntarily adjusting their debts and with the interest assistance, the interest assistance request will not be approved. If a borrower has multiple loans, interest assistance may be provided on one or each loan, as available, to the extent necessary to achieve a feasible plan.

(6) The term of the interest assistance agreement under this section shall not exceed 10 years from the date

of the first interest assistance agreement signed by the loan applicant, including entity members, or the outstanding term of the loan, as limited by this section, whichever is less.

(7) The lender may charge a fixed or variable interest rate. The type of rate must be the same as the type of rate in the underlying note or line of credit agreement. The lender will reduce the interest rate charged the borrower's account by at least the amount of interest assistance.

(8) The borrower must be an operator of not larger than a family size farm.

(c) *Interest assistance closing.* (1) Initial guaranteed loans will be closed in accordance with § 762.130.

(2) The lender will then prepare and deliver to the Agency a closing report for each initial and existing guaranteed loan which has been granted interest assistance.

(3) When all requirements have been met, the lender and the Agency will execute an interest assistance agreement.

(d) *Interest assistance claims and payments.* (1) The interest assistance claim will be prepared by the lender. The following conditions apply to the claims process:

(i) No claim period can exceed 12 months. The initial and final claim periods may be less than 12 months. In such claims, the 4 percent payment will be prorated over the number of months in the claim period. The period for all other claims must be 12 months.

(ii) To permit the borrower to prepare for the upcoming year, a claim should be filed within 60 days of each anniversary date. Claims not filed within 1 year of the anniversary date will not be paid and the amount due the lender is permanently forfeited.

(iii) If a claim is submitted without an interest assistance review in accordance with § 762.102, when it is required, the claim will not be processed until the review is submitted by the lender.

(iv) Upon full payment of the note or line of credit, the lender will immediately prepare the request for interest assistance payment and submit it to the Agency.

(v) Interest assistance payments shall cease upon the assumption and transfer of the loan if the transferee

was not liable for the debt on the effective date of the interest assistance agreement. The lender shall request payment through the date of the transfer or assumption. The claim must be submitted within 1 year or it will be denied and the payment permanently forfeited.

(vi) All claims will be supported by detailed calculations of average daily principal balances during the claim period.

(vii) The Agency will review the claim and the supporting documentation. If the information and the supporting documentation is not complete and correct, the reviewing official will notify the lender in writing, of the actions needed to correct the request.

(viii) If there is a substitution of lender, a claim for the first lender's interest assistance, through the effective date of the substitution, will be submitted by the first lender and processed at the time of the substitution.

(ix) Interest assistance claims shall be submitted concurrently with the submission of estimated loss claims where interest accrual ceases, or final loss claims that are not preceded by an estimated loss claim.

(2) [Reserved]

(e) *Request for continuation of interest assistance.* (1) For all interest assistance agreements exceeding 12 months, the lender will perform an analysis of the applicant's farming operation and need for continued interest assistance. The following information will be submitted to the Agency:

(i) A summary of the operation's actual financial performance in the previous year, including a detailed income and expense statement.

(ii) A narrative description of the causes of any major differences between the previous year's projections and actual performance.

(iii) A current balance sheet.

(iv) A cash flow budget for the period being planned. A monthly cash flow budget is required for all lines of credit and operating loans made for annual operating purposes. All other loans may include either an annual or monthly cash flow budget.

(v) A copy of the interest assistance needs analysis portion of the application form which has been completed

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based on the planned period's cash flow budget.

(2) The loan will be eligible for continuation of interest assistance if the cash flow budget projects a feasible plan with interest assistance applied. However, interest assistance can be applied only to as many loans as necessary to achieve a positive cash flow for the plan period. If the cash flow budget indicates that the borrower requires a level of interest assistance greater than 4 percent to project a feasible plan, then the Agency will deny the continuation of interest assistance. Interest assistance will be reduced to zero during that period. See § 762.102(b) for the definition of feasible plan.

(3) The documentation listed above will be provided to the Agency concurrently with the lender's submission of its request for interest assistance payment. This information will be provided to the Agency within 60 days after the review date specified on the interest assistance agreement.

(4) A request for continuation of interest assistance will be completed for 12 month periods, effective on the anniversary date.

(5) The initial review may be submitted in conjunction with any claim within the initial 12 month period. The anniversary date and length of the review period will be stated on the interest assistance agreement. Any request for interest assistance adjustment submitted effective any time other than the review date will be denied, except for those cases where it is necessary to service the loan with rescheduling, re-amortization, deferral or writedown.

(6) If the review is not completed and submitted to the Agency within 1 year of the review date, no claim will be paid for that period.

(f) *Notification of Adverse Action.* The lender will be notified in writing of all Agency decisions in which a request for interest assistance, a request for continuation of interest assistance or lender's claim for interest assistance are denied. The notification letter will provide specific reasons for the decision and appeals will be handled in accordance with parts 11 and 780 of this title.

(g) *Servicing of loans covered by an interest assistance agreement.*

(1) Loans covered by interest assistance agreements cannot be consolidated.

(2) The loan will be transferred with the interest assistance agreement only in cases where the transferee was liable for the debt at the time interest assistance was granted. Under no other circumstances will the interest assistance be transferred. If interest assistance is necessary for the transferee to achieve a positive cash flow, the lender may request such assistance, which may be approved if interest assistance funds are available and the applicant is eligible. The maximum length of the agreement will be 10 years from the date of the first agreement covering a loan for which the transferee was liable. If interest assistance is necessary for a positive cash flow and funds are not available, the request for assumption of the Agency guaranteed debt will be denied.

(3) When consideration is given to using a debt writedown to service a delinquent account, the subsidy level will be recalculated prior to any writedown. If a feasible plan can be obtained using interest assistance and funds are available, then the interest assistance will be authorized and no writedown will be approved. If a feasible plan cannot be achieved using 4 percent interest assistance, all further calculations for determining debt writedown eligibility and amounts to be written down will be based on the borrower receiving no interest assistance. If debt writedown is approved, the interest assistance claim for the previous review period will be processed in conjunction with the writedown loss claim. The interest assistance agreement will not be canceled and the anniversary date can remain the same or be re-established under the same guidelines that it was originally established. If the lender determines through its annual analysis that interest assistance is necessary for a feasible plan, a request to reinstate the subsidy in a subsequent review period may be submitted in accordance with paragraph (e) of this section.

(4) In the event of rescheduling or deferral of loans with interest assistance, interest assistance will remain available for that loan under the terms of

the existing interest assistance agreement. Additional years of interest assistance and/or increases in the restructured loan amount will require additional funding. If the additional interest assistance is needed in order to produce a feasible plan throughout the life of the rescheduled loan and funds are not available for the additional interest assistance, then the rescheduling will not be approved by the Agency. In no case will the subsidy be extended more than 10 years from the effective date of the first interest assistance agreement signed by the loan applicant or by anyone who signed the note or line of credit agreement.

(5) In cases where the interest on a loan covered by an interest assistance agreement is reduced by court order in a reorganization plan under the bankruptcy code, interest assistance agreement will be terminated effective on the date of the court ordered interest reduction. The lender will file a claim due through the effective date of the court ordered interest reduction. Guaranteed loans which have had their interest reduced by bankruptcy court order are not eligible to receive interest assistance.

(6) For Loan Guarantees held by holders, Agency purchase of the guaranteed portion of a loan will stop interest assistance payments on that portion. Interest assistance payments will cease upon termination of the Loan Guarantee, upon reaching the expiration date contained in the agreement or upon cancellation by the Agency.

(7) When a borrower defaults on a loan, interest assistance may be considered in conjunction with a rescheduling action in accordance with § 762.145(b). After the meeting required by § 762.143(b)(3) and consideration of actions to correct the delinquency, the lender will notify the Agency of the results of the meeting. If the restructuring proposal includes interest assistance, the lender will provide the items required by paragraph (d) of this section in addition to those items required by § 762.145. Liquidation must not be initiated, except in accordance with § 762.143(b)(3)(v).

(h) *Cancellation of interest assistance agreement.* The interest assistance agreement is incontestable except for

fraud or misrepresentation, of which the lender and borrower have actual knowledge at the time that the interest assistance agreement is executed, or which the lender or borrower participates in or condones.

(i) *Adjustment of assistance level between review dates.* After the initial or renewal request for interest assistance is processed, no adjustments can be made until the next review or adjustment date except when necessary to service the loan with a rescheduling or deferral.

(j) *Excessive interest assistance.* Upon written notice to the lender, borrower and any holder, the Agency may amend or cancel the interest assistance agreement and collect from the lender any amount of interest Assistance granted which resulted from incomplete or inaccurate information, an error in computation, or any other reason which resulted in payment that the lender was not entitled to receive.

(k) The Deputy Administrator for Farm Loan Programs has the authority to grant an exception to any requirement involving interest Assistance if it is in the best interest of the Government.

[64 FR 7378, Feb. 12, 1999; 64 FR 38298, July 16, 1999]

§§ 762.151-762.159 [Reserved]

§ 762.160 Sale, assignment and participation.

(a) The following general requirements apply to selling, assigning or participating guaranteed loans.

(1) Subject to Agency concurrence, the lender may sell, assign or participate all or part of the guaranteed portion of the loan to one or more holders at or after loan closing, only if the loan is not in default. However, a line of credit can be participated, but not sold or assigned.

(2) The Agency may refuse to execute the Assignment of Guarantee and prohibit the sale in case of the following:

(i) The Agency purchased and is holder of a loan that was sold by the lender that is requesting the assignment.

(ii) The lender has not complied with the reimbursement requirements of § 762.144(c)(7), except when the 180 day