

reimbursement or liquidation requirement has been waived by the Agency.

(3) The lender will provide the Agency with copies of all appropriate forms used in the sale or assignment.

(4) The guaranteed portion of the loan may not be sold or assigned by the lender until the loan has been fully disbursed to the borrower, except a line of credit may be participated prior to being fully advanced.

(5) The lender is not permitted to sell, assign or participate any amount of the guaranteed or unguaranteed portion of loan to the loan applicant or borrower, or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary, or affiliate.

(6) Upon the lender's sale or assignment of the guaranteed portion of the loan, or participation of the line of credit, the lender will remain bound to all obligations indicated in the Guarantee, lender's agreement, the Agency program regulations, and to future program regulations not inconsistent with the provisions of the Lenders agreement. The lender retains all rights under the security instruments for the protection of the lender and the United States.

(b) The following will occur upon the lender's sale or assignment of the guaranteed portion of the loan:

(1) The holder will succeed to all rights of the Guarantee pertaining to the portion of the loan purchased.

(2) The lender will send the holder the borrower's executed note attached to the Guarantee.

(3) The holder, upon written notice to the lender and the Agency, may assign the unpaid guaranteed portion of the loan. The holder must sell the guaranteed portion back to the original lender if requested for servicing or liquidation of the account.

(4) The guarantee or assignment of guarantee in the holder's possession does not cover:

(i) Interest accruing 90 days after the holder has demanded repurchase by the lender, except as provided in the assignment of guarantee and §762.144(c)(3)(iii).

(ii) Interest accruing 90 days after the lender or the Agency has requested the holder to surrender evidence of

debt repurchase, if the holder has not previously demanded repurchase.

(c) In a participation, the lender sells an interest in a loan but retains the note, the collateral securing the note, and all responsibility for loan servicing and liquidation. The guarantee does not encompass the participant.

(1) The lender must retain at least 10 percent of the total guaranteed loan amount from the unguaranteed portion of the loan in its portfolio, except when the loan guarantee exceeds 90 percent, the lender must retain the total unguaranteed portion.

(2) Participation with a lender by any entity does not make that entity a holder or a lender as defined in this part.

(d) Negotiations concerning premiums, fees, and additional payments for loans are to take place between the holder and the lender. The Agency will participate in such negotiations only as a provider of information.

[64 FR 7358, Feb. 12, 1999; 64 FR 38298, July 16, 1999]

## PART 773—SPECIAL APPLE LOAN PROGRAM

Sec.

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### § 773.1 Introduction.

This part contains the terms and conditions for loans made under the Special Apple Loan Program. These

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regulations are applicable to applicants, borrowers, and other parties involved in making, servicing, and liquidating these loans. The program objective is to assist producers of apples suffering from economic loss as a result of low apple prices.

### § 773.2 Definitions.

As used in this part, the following definitions apply:

*Agency* is the Farm Service Agency, its employees, and any successor agency.

*Apple producer* is a farmer in the United States or its territories that produced apples, on not less than 10 acres, for sale in 1999 or 2000.

*Applicant* is the individual or business entity applying for the loan.

*Business entity* is a corporation, partnership, joint operation, trust, limited liability company, or cooperative.

*Cash flow budget* is a projection listing all anticipated cash inflows (including all farm income, nonfarm income and all loan advances) and all cash outflows (including all farm and nonfarm debt service and other expenses) to be incurred by the borrower during the period of the budget. A cash flow budget may be completed either for a 12 month period, a typical production cycle or the life of the loan, as appropriate.

*Domestically owned enterprise* is an entity organized in the United States under the law of the state or states in which the entity operates and a majority of the entity is owned by members meeting the citizenship test.

*False information* is information provided by an applicant, borrower, or other source to the Agency which information is known by the provider to be incorrect, and was given to the Agency in order to obtain benefits for which the applicant or borrower would not otherwise have been eligible.

*Feasible plan* is a plan that demonstrates that the loan will be repaid as agreed, as determined by the Agency.

*Security* is real or personal property pledged as collateral to assure repayment of a loan in the event there is a default on the loan.

*USPAP* is Uniform Standards of Professional Appraisal Practice.

### § 773.3 Appeals.

A loan applicant or borrower may request an appeal or review of an adverse decision made by the Agency in accordance with 7 CFR part 11.

### §§ 773.4–773.5 [Reserved]

### § 773.6 Eligibility requirements.

Loan applicants must meet all of the following requirements to be eligible for a Special Apple Program Loan:

(a) The loan applicant must be an apple producer;

(b) The loan applicant must be a citizen of the United States or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationalization Act. For a business entity applicant, the majority of the business entity must be owned by members meeting the citizenship test or, other entities that are domestically owned. Aliens must provide the appropriate Immigration and Naturalization Service forms to document their permanent residency;

(c) The loan applicant and anyone who will execute the promissory note must possess the legal capacity to enter into contracts, including debt instruments;

(d) At loan closing the loan applicant and anyone who will execute the promissory note must not be delinquent on any Federal debt, other than a debt under the Internal Revenue Code of 1986;

(e) At loan closing the loan applicant and anyone who will execute the promissory note must not have any outstanding unpaid judgments obtained by the United States in any court. Such judgments do not include those filed as a result of action in the United States Tax Courts;

(f) The loan applicant, in past or present dealings with the Agency, must not have provided the Agency with false information; and

(g) The individual or business entity loan applicant and all entity members must have acceptable credit history demonstrated by debt repayment. A history of failure to repay past debts as they came due (including debts to the Internal Revenue Service) when the ability to repay was within their control will demonstrate unacceptable