

Farm Service Agency, USDA

§ 762.105

State. The major political subdivision of the United States and the organization of program delivery for the Agency.

Subordination. A document executed by a lender to relinquish their priority of lien in favor of another lender that provides the other lender with a priority right to collect a debt of a specific dollar amount from the sale of the same collateral.

Subsequent loans. Any loans processed by the Agency after an initial loan has been made to the same borrower.

Transfer and assumption. The conveyance by a debtor to an assuming party of the assets, collateral, and liabilities of the loan in return for the assuming party's binding promise to pay the debt outstanding.

Typical plan. A projected income and expense statement listing all anticipated cash flows for a typical 12-month production cycle; including all farm and nonfarm income and all expenses (including debt service) to be incurred by the borrower during such period.

Unaccounted for security. Items, as indicated on the lender's loan application, request for guarantee, or any interim agreements provided to the Agency, that are security for the guaranteed loan that were misplaced, stolen, sold, or otherwise missing, where replacement security was not obtained or the proceeds from their sale have not been applied to the loan.

United States. The United States itself, each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Veteran. Any person who served in the military, naval, or air service during any war as defined in section 101(12) of title 38, United States Code.

[64 FR 7378, Feb. 12, 1999, as amended at 66 FR 7567, Jan. 24, 2001]

§ 762.103 Full faith and credit.

(a) *Fraud and misrepresentation.* The loan guarantee constitutes an obligation supported by the full faith and credit of the United States. The Agency may contest the guarantee only in cases of fraud or misrepresentation by a lender or holder, in which:

(1) The lender or holder had actual knowledge of the fraud or misrepresentation at the time it became the lender or holder, or

(2) The lender or holder participated in or condoned the fraud or misrepresentation.

(b) *Lender violations.* The loan guarantee cannot be enforced by the lender, regardless of when the Agency discovers the violation, to the extent that the loss is a result of:

(1) Violation of usury laws;

(2) Negligent servicing;

(3) Failure to obtain the required security; or,

(4) Failure to use loan funds for purposes specifically approved by the Agency.

(c) *Enforcement by holder.* The guarantee and right to require purchase will be directly enforceable by the holder even if:

(1) The loan guarantee is contestable based on the lender's fraud or misrepresentation; or

(2) The loan note guarantee is unenforceable by the lender based on a lender violation.

§ 762.104 Appeals.

(a) The loan applicant or borrower and lender must jointly execute the written request for review of an alleged adverse decision made by the Agency. However, in cases where the Agency has denied or reduced the amount of the final loss payment, the decision may be appealed by the lender only.

(b) A decision made by the lender adverse to the borrower is not a decision by the Agency, whether or not concurred in by the Agency, and may not be appealed.

(c) The lender or Agency may request updated information from the borrower to implement an appeal decision.

(d) Appeals will be handled in accordance with parts 11 and 780 of this title.

§ 762.105 Eligibility and substitution of lenders.

(a) *General.* To participate in FSA guaranteed farm loan programs, a lender must meet the eligibility criteria in this part. The standard eligible lender must demonstrate eligibility and provide such evidence as the Agency may request.