

(C) Loans to beginning farmers or ranchers involved in the direct beginning farmer downpayment program.

(e) *Promissory notes, line of credit agreements, mortgages, and security agreements.* The lender will use its own promissory notes, line of credit agreements, real estate mortgages (including deeds of trust and similar instruments), and security agreements (including chattel mortgages in Louisiana and Puerto Rico), provided:

(1) The forms meet Agency requirements;

(2) Documents comply with State law and regulation;

(3) The principal and interest repayment schedules are stated clearly in the notes and are consistent with the conditional commitment;

(4) The note is executed by the individual liable for the loan. For entities, the note is executed by the member who is authorized to sign for the entity, and by all members of the entity as individuals. Individual liability can be waived by the Agency for members holding less than 10 percent ownership in the entity if the collectability of the loan will not be impaired; and

(5) When the loan purpose is to refinance or restructure the lender's own debt, the lender may continue to use the existing debt instrument and attach an allonge that modifies the terms of the original note.

(f) *Replacement of loan guarantee, or assignment guarantee agreement.* If the guarantee or assignment guarantee agreements are lost, stolen, destroyed, mutilated, or defaced, except where the evidence of debt was or is a bearer instrument, the Agency will issue a replacement to the lender or holder upon receipt of acceptable documentation including a certificate of loss and an indemnity bond.

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§ 762.140 General servicing responsibilities.

(a) *General.* (1) Lenders are responsible for servicing the entire loan in a reasonable and prudent manner, protecting and accounting for the collateral, and remaining the mortgagee or secured party of record.

(2) The lender cannot enforce the guarantee to the extent that a loss results from a violation of usury laws or negligent servicing.

(b) *Borrower supervision.* The lender's responsibilities regarding borrower supervision include, but are not limited to the following:

(1) Ensuring loan funds are not used for unauthorized purposes.

(2) Ensuring borrower compliance with the covenants and provisions contained in the promissory note, loan agreement, mortgage, security instruments, any other agreements, and this part. Any violations which indicate non-compliance on the part of the borrower must be reported, in writing, to both the Agency and the borrower.

(3) Ensuring the borrower is in compliance with all laws and regulations applicable to the loan, the collateral, and the operations of the farm.

(4) Receiving all payments of principal and interest on the loan as they fall due and promptly disbursing to any holder its pro-rata share according to the amount of interest the holder has in the loan, less only the lender's servicing fee.

(5) Performing an annual analysis of the borrower's financial condition to determine the borrower's progress. The annual analysis will include:

(i) For loans secured by real estate only, the analysis for standard eligible lenders must include an analysis of the borrower's balance sheet. CLP lenders will determine the need for the annual analysis based on the financial strength of the borrower and document the file accordingly. PLP lenders will perform an annual analysis in accordance with the requirements established in the lender's agreement.

(ii) For loans secured by chattels, all lenders will review the borrower's progress regarding business goals, trends and changes in financial performance, and compare actual to planned income and expenses for the past year.

(iii) An account of the whereabouts or disposition of all collateral.

(iv) A discussion of any observations about the farm business with the borrower.

(c) *Monitoring of development.* The lender's responsibilities regarding the

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construction, repairs, or other development include, but are not limited to:

(1) Determining that all construction is completed as proposed in the loan application;

(2) Making periodic inspections during construction to ensure that any development is properly completed within a reasonable period of time; and

(3) Verification that the security is free of any mechanic's, materialmen's, or other liens which would affect the lender's lien or result in a different lien priority from that proposed in the request for guarantee.

(d) The guaranteed loan installments will be paid before unguaranteed loans held by the same lender.

§ 762.141 Reporting requirements.

Lenders are responsible for providing the local Agency credit officer with all of the following information on the loan and the borrower:

(a) When the guaranteed loan becomes 30 days past due, and following the lender's meeting or attempts to meet with the borrower, all lenders will submit the appropriate Agency form showing guaranteed loan borrower default status. The form will be resubmitted every 60 days until the default is cured either through restructuring or liquidation.

(b) All lenders will submit the appropriate guaranteed loan status reports as of March 31 and September 30 of each year;

(c) CLP lenders also must provide the following:

(1) A written summary of the lender's annual analysis of the borrower's operation. This summary should describe the borrower's progress and prospects for the upcoming operating cycle. This annual analysis may be waived or postponed if the borrower is financially strong. The summary will include a description of the reasons an analysis was not necessary.

(2) For lines of credit, an annual certification stating that a cash flow projecting at least a feasible plan has been developed, that the borrower is in compliance with the provisions of the line of credit agreement, and that the previous year income and loan funds and security proceeds have been accounted for.

(d) In addition to the requirements of paragraphs (a), (b), and (c) of this section, the standard eligible lender also will provide:

(1) Borrower's balance sheet, and income and expense statement for the previous year.

(2) For lines of credit, the cash flow for the borrower's operation that projects a feasible plan or better for the upcoming operating cycle. The standard eligible lender must receive approval from the Agency before advancing future years' funds.

(3) An annual farm visit report or collateral inspection.

(e) PLP lenders will submit additional reports as required in their lender's agreement.

(f) A lender receiving a final loss payment must complete and return an annual report on its collection activities for each unsatisfied account for 3 years following payment of the final loss claim.

§ 762.142 Servicing related to collateral.

(a) *General.* The lender's responsibilities regarding servicing collateral include, but are not limited to, the following:

(1) Obtain income and insurance assignments when required.

(2) Ensure the borrower has or obtains marketable title to the collateral.

(3) Inspect the collateral as often as deemed necessary to properly service the loan.

(4) Ensure the borrower does not convert loan security.

(5) Ensure the proceeds from the sale or other disposition of collateral are accounted for and applied in accordance with the lien priorities on which the guarantee is based or used for the purchase of replacement collateral.

(6) Ensure the loan and the collateral are protected in the event of foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation.

(7) Ensure taxes, assessments, or ground rents against or affecting the collateral are paid.

(8) Ensure adequate insurance is maintained.