

CHAPTER 1650

RURAL FINANCE AUTHORITY

BEGINNING FARMER LOANS

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1650.0010 APPLICABILITY AND PURPOSE.

Subpart 1. **Applicability.** Parts 1650.0010 to 1650.0070 establish the criteria and procedures to be used by the Rural Finance Authority in the administration of the basic beginning farmer loan participation program authorized by Minnesota Statutes, sections 41B.01 to 41B.23.

Subp. 2. **Purpose.** The purpose of the Rural Finance Authority basic beginning farmer loan participation program and for the issuance of bonds to finance or provide security for the program is to preserve and develop the state's agricultural resources. This is accomplished by extending credit on real estate security through the purchase of participation interests in first priority mortgage farm real estate loans. Loans to persons entering or currently farming and meeting the eligibility criteria in part 1650.0030 are eligible for participation.

Statutory Authority: *MS s 41B.01 to 41B.23*

History: *14 SR 906; 15 SR 1520; 17 SR 1878*

1650.0020 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to parts 1650.0010 to 1650.0070.

Subp. 2. **Agricultural purposes; farming.** "Agricultural purposes" or "farming" means the cultivation or use of land or land improvements and personal property for the production of agricultural crops, vegetables, fruit, or other horticultural crops, forest products, bees and apiary products, livestock, dairy animals, dairy products, poultry or poultry products, fur-bearing animals, aquaculture, hydroponics, exotic species of plants or animals, or other agriculturally related products. "Agricultural purposes" and "farming" include:

A. the use of wetlands, pasture, forest land, wildlife, and homestead and other real property associated with the agricultural use of land; and

B. the practices and facilities needed to conserve soil and water, protect human and animal health, have a safe and efficient operation, and meet local, state, and federal laws and regulations relating to the operation of a farm.

Subp. 3. **Applicant.** "Applicant" means a potential borrower who submits an application to the RFA through an eligible lender.

Subp. 4. **Application.** "Application" means the application for the basic beginning farmer loan participation in the form prescribed and provided by the RFA.

Subp. 5. **Assets.** "Assets" means property, real or personal, tangible or intangible, and all contract rights of value that constitute assets, including cash crops or feed on hand, livestock held for sale, breeding stock, marketable bonds and securities, securities not readily marketable, accounts receivable, notes receivable, cash invested in growing crops, cash value of life insurance, machinery and equipment, cars and trucks, farm and other real estate including life estates and personal residence, and the value of a beneficial interest in trusts.

Subp. 6. **Beginning farmer loan.** "Beginning farmer loan" means a first mortgage loan made by an eligible lender to an eligible borrower, offered to the RFA for participation, and in which the RFA has purchased a participation.

Subp. 7. **Borrower.** "Borrower" means the person or persons liable on a first mortgage participation made under this program. A borrower may also be a domestic family farm corporation as defined in Minnesota Statutes, section 500.24, subdivision 2.

Subp. 8. **Debt to asset ratio.** "Debt to asset ratio" means the total outstanding liabilities of an applicant divided by the total outstanding assets of the applicant expressed as a percentage.

Subp. 9. **Liabilities.** "Liabilities" means the debts or other obligations for which an applicant is responsible including: accounts payable, notes or other indebtedness owed to any source, taxes, rent, amount owed on real estate contracts or mortgages, judgments, and accrued interest payable.

Subp. 10. **Net worth.** "Net worth" means the total value of an applicant's assets and the assets of the applicant's spouse and dependents, less the liabilities of the same parties.

Subp. 10a. **Note and loan agreement.** "Note and loan agreement" means the form prescribed by the RFA that is signed by a borrower evidencing the terms of the first mortgage loan and the borrower's obligation to repay the loan.

Subp. 11. **Participation agreement.** "Participation agreement" means the document entered into between the RFA and an approved lender that establishes the relationship between the parties and the terms and conditions of first mortgage loans to be offered to the RFA for participation under the basic beginning farmer participation program.

Subp. 12. **RFA.** "RFA" means the Rural Finance Authority established by Minnesota Statutes, sections 41B.01 to 41B.23.

Subp. 13. **RFA beginning farmer program.** "RFA beginning farmer program" means the RFA program for the purchase of participation interests in first mortgage real estate loans made to eligible borrowers so that the borrowers may use the real estate for agricultural purposes.

Subp. 14. **RFA participation.** "RFA participation" means the RFA's undivided interest in the principal of a first mortgage loan, all rights and interests in the loan documents, all payments arising under the loan, the first security real estate mortgage securing the loan, and any other collateral pledged to secure the loan.

Statutory Authority: *MS s 41B.07*

History: *14 SR 906; 17 SR 1878; 18 SR 783*

1650.0030 BORROWER ELIGIBILITY.

Subpart 1. **Criteria.** To be eligible for assistance under the basic beginning farmer program, an applicant must meet the criteria in subparts 2a and 3a.

Subp. 2. [Repealed, 17 SR 1878]

Subp. 2a. **General eligibility criteria.** Each applicant must:

A. be a resident of Minnesota as evidenced by the applicant's income tax returns. New residents may submit other evidence, if acceptable to the RFA;

B. certify that the applicant or one of the applicants will be the principal operator of the farm, and will make farming that applicant's principal occupation, and that the farm being purchased will be used for agricultural purposes only;

C. certify that the applicant is eligible for the program; and

D. submit the correct fees as determined by the RFA.

Subp. 3. [Repealed, 17 SR 1878]

Subp. 3a. **Beginning farmer criteria.** In addition to the requirements of subpart 2a, beginning farmer applicants must:

A. have sufficient education, training, or experience to succeed in the type of farming to be undertaken;

B. have a financial need for the loan and the ability to repay the first mortgage loan;

C. agree to enroll and continue in a farm business management program approved by the commissioner of agriculture for the first five years of the loan, if an approved program is available within 45 miles from the borrower's residence;

D. agree to file an approved soil and water conservation plan with the soil conservation service office in the county where the land is located;

E. have a total net worth not to exceed current RFA guidelines, as adjusted for inflation pursuant to Minnesota Statutes, section 41B.03, subdivision 3, the current amount of which is available from the RFA office; and

F. not currently own more than 240 acres of farmland.

Subp. 4. [Repealed, 17 SR 1878]

Statutory Authority: *MS s 41B.01 to 41B.23*

History: *14 SR 906; 15 SR 1520; 17 SR 1878; 18 SR 783*

1650.0040 LENDER ELIGIBILITY.

Subpart 1. **Statutory eligibility.** Any bank, credit union, or savings and loan association chartered by the state or federal government, a subdivision of the farm credit system (Agri Bank), the Federal Deposit Insurance Corporation, or any insurance company, fund, or other financial institution doing business as an agricultural lender within the state may apply to the RFA for certification as an approved lender.

Subp. 2. **Approval.** Upon a lender's demonstration of its ability to originate and service agricultural real estate loans, the RFA shall designate the lender as an approved lender for purposes of RFA programs.

Subp. 3. **Participation agreement.** Before offering first mortgage loans to the RFA for participation, each approved lender must enter into an RFA master participation agreement. The agreement must specify the contractual relationship between the parties and the terms and conditions of first mortgage loans to be made by the lender under the basic beginning farmer program and offered to the RFA for participation.

Statutory Authority: *MS s 41B.07*

History: *14 SR 906; 17 SR 1878*

1650.0045 APPLICATION PROCESS AND OFFER OF PARTICIPATION.

Subpart 1. **Request for a first mortgage loan.** A lender and an applicant must jointly complete and sign an application and prepare all supporting documents identified in the application.

Subp. 2. **Lender determination.** The lender shall initially review the proposal and determine the creditworthiness of the applicant and the value of the collateral to be used to secure the loan. If the lender agrees to make a first mortgage loan to the applicant, the lender and the applicant shall jointly prepare the application and required loan documents.

Subp. 3. **Offer.** The lender, as the originator of the first mortgage loan, shall present the application and loan documents to the RFA. Presentation of the documents constitutes an offer to sell a participation interest in the loan.

Statutory Authority: *MS s 41B.07*

History: *17 SR 1878*

1650.0050 [Repealed, 17 SR 1878]

1650.0055 RFA REVIEW, NOTICE, APPEAL.

Subpart 1. **RFA review.** Within a reasonable time after receipt of a lender's offer, the RFA shall accept or reject the lender's offer to participate in the loan. If the documentation is not sufficient to make a determination, the RFA may request additional information as needed.

Subp. 2. **RFA acceptance.** The RFA will accept all offers, unless the RFA determines that:

- A. the applicant is not eligible;
- B. the applicant does not demonstrate an ability to repay the first mortgage loan and other obligations based on the financial information submitted under part 1650.0045;
- C. the sale price of the property is substantially in excess of its fair market value; or
- D. the RFA does not have sufficient funds available to purchase a participation in the loan.

Subp. 3. **RFA notice.** The RFA shall promptly notify the lender in writing whether or not the offer is accepted. If the offer is not accepted, the notice must state the reasons.

Subp. 4. **Administrative appeal.** If an offer is rejected, either the lender or the applicant may petition for RFA reconsideration. The petition must be in writing and must be sent within 30 working days of the date of the RFA notice. The petition must state the grounds for the appeal, and may include additional relevant information. Within 15 working days of receiving the petition, the RFA program director shall send a written response to the petitioner upholding or reversing the original decision and giving the reasons for the decision.

Subp. 5. **Formal appeal.** After administrative appeal, a petitioner may appeal the program director's decision directly to the RFA board, by written notice to the director within 15 days of receiving the director's reconsideration decision. The decision of the board is final.

Statutory Authority: *MS s 41B.07*

History: *17 SR 1878*

1650.0060 [Repealed, 17 SR 1878]

1650.0065 LOAN CLOSING, PURCHASE OF PARTICIPATION, AND LOAN MANAGEMENT.

Subpart 1. **Closing.** Upon receiving notification of RFA acceptance, the lender shall close the first mortgage loan. The lender must record and cross-reference all documents relating to the loan including the RFA note and loan agreement. The lender must notify the RFA that the loan is closed and recorded by signing Part VII and submitting the original RFA application and may include copies of the recorded documents to the RFA.

Subp. 2. **Payment.** Within ten business days of receipt of written notice under subpart 1 that the first mortgage loan is closed and recorded, the RFA shall pay the lender for the RFA's participation interest in the loan.

Subp. 3. **Participation certificate.** Within five working days after receipt of payment under subpart 2, the lender shall complete and return a participation certificate, as prescribed by the RFA, witnessing the RFA's undivided pro rata interest in the basic beginning farmer first mortgage loan.

Subp. 4. **Loan management.** The lender shall manage the first mortgage loan, including the RFA participation interest, with the degree of care and diligence usually maintained by agricultural real estate lenders. The lender shall have custody and control of all loan documents except the original application, which must be kept by the RFA. The lender shall manage, administer, and enforce the loan documents in its own name and also on behalf of itself and the RFA, including, without limitation, the right to accelerate a seller-sponsored first mortgage loan on default and to foreclose or otherwise enforce remedies against the borrower.

Subp. 5. **Lender notification.** The lender shall promptly notify the RFA of occurrences that substantially affect the security, collection, or enforcement of any first mortgage loan. The lender shall also notify the seller of any defaults that remain unresolved over 45 days.

Subp. 6. **Prior written consent.** The lender shall obtain the prior written consent of the borrower and the RFA before:

A. making or consenting to a release, substitution, or exchange of collateral that reduces the aggregate value of the collateral;

B. waiving a claim against the borrower or a guarantor, surety, or obligor in connection with the indebtedness; or

C. modifying or waiving a term of the notes or related instruments evidencing or securing the first mortgage loan.

Statutory Authority: *MS s 41B.07*

History: *17 SR 1878*

1650.0067 PARTICIPATION REPURCHASE.

An originating lender is under no obligation to repurchase any RFA participation interest in a basic beginning farmer first mortgage loan, except as provided in this part.

A lender may, at its option and upon written approval by the RFA, repurchase an RFA participation interest at any time.

A lender must repurchase the RFA participation interest whenever the first mortgage loan is paid in full or refinanced.

A lender must repurchase the RFA participation interest if the lender has made misrepresentations or fails to perform its obligations under the participation agreement, has received written notice from the RFA, and has not corrected the representation or performance under the notice.

Any repurchase must be for the principal balance of the RFA participation plus accrued interest and any penalties or costs incurred by the RFA to secure repurchase.

Statutory Authority: *MS s 41B.07*

History: *17 SR 1878*

1650.0070 REVIEW OF LOAN AND COLLATERAL.

Subpart 1. **Inspection.** At any time during the term of a basic beginning farmer first mortgage loan, the RFA or the state legislative auditor may inspect the books, records, documents, and accounting practices of the lender relative to the loan to determine compliance with the terms and conditions of the loan and the participation agreement. Any inspections must be during the lender's normal business hours. The lender must allow the RFA to copy any documents relating to the first mortgage loan and the RFA participation.

Subp. 2. **Collateral.** The lender and the RFA may physically inspect the collateral securing the first mortgage loan upon notice to the borrower. Any inspections must be conducted at a reasonable time.

Statutory Authority: *MS s 41B.07*

History: *14 SR 906; 17 SR 1878*

AGRICULTURAL DEVELOPMENT BOND BEGINNING FARMER LOAN PROGRAM

1650.0500 ESTABLISHMENT OF PROGRAM; PROGRAM RULES.

Subpart 1. **Establishment of program.** The rural finance authority, by its Resolution No. 92-04, has established an agricultural development bond beginning farmer loan program, consisting of the issuance of bonds to finance loans to be made to beginning farmers for eligible purposes.

Subp. 2. **Authority and purpose.** Parts 1650.0500 to 1650.0570 are adopted by the authority under Minnesota Statutes, section 41C.13, to define and provide for the administration of the program.

Subp. 3. **Application.** Parts 1650.0500 to 1650.0570 apply to all applications for and loans made and bonds issued under the program, the use of loan proceeds, all loan applicants, and all eligible borrowers and lenders participating in the program.

Statutory Authority: *MS s 41C.13*

History: *16 SR 2678*

1650.0510 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to parts 1650.0500 to 1650.0570.

Subp. 2. **Act.** "Act" means the Minnesota Agricultural Development Act, Minnesota Statutes, chapter 41C.

Subp. 2a. **Agricultural farmland.** "Agricultural farmland" means productive, tillable land or land used for pasture.

Subp. 3. **Applicant.** "Applicant" means an individual or partnership who submits a completed application for a loan under the program to the authority through an eligible lender.

Subp. 4. **Application.** "Application" means an application for a loan under the program in the form prescribed by the authority or its executive director.

Subp. 5. **Authority.** "Authority" means the Minnesota rural finance authority established by Minnesota Statutes, section 41B.025, acting through its board or its duly authorized officers.

Subp. 6. **Bond.** "Bond" means a special, limited obligation revenue bond issued by the authority to an eligible lender to finance a loan to an eligible borrower for an eligible purpose pursuant to a loan agreement between the eligible lender and the authority.

Subp. 7. **Borrower.** "Borrower" means an eligible borrower who has received a loan under the program.

Subp. 8. **Code.** "Code" means the Internal Revenue Code of 1986, as amended, and all rules, regulations, and revenue procedures issued under it.

Subp. 9. **Depreciable agricultural property.** "Depreciable agricultural property" means property of a character that is subject to the allowance for depreciation under the code and which is to be owned and used by an eligible borrower for farming purposes.

Subp. 10. **Eligible borrower.** "Eligible borrower" means a Minnesota resident or a Minnesota partnership consisting only of individuals who are Minnesota residents, who:

A. has a low or moderate net worth of no more than \$200,000 in the case of an individual, the individual's spouse, and the individual's children, or \$400,000 in the case of a partnership, if each partner meets the \$200,000 net worth requirement for individuals;

B. will engage in farming as a principal occupation;

C. has sufficient education, training, or experience in the type of farming for which the loan is desired;

D. will agree to participate in a farm management program for the first five years of the loan if an approved program is available within 45 miles of the residence of the borrower or one of the borrower's partners;

E. will agree to file an approved soil and water conservation plan with the county conservation service office; and

F. is a first time farmer, as defined in subpart 15, who will be the principal user of the property financed under the code, and will materially and substantially participate in the operation of the farm of which the property is a part or on which the property will be used.

Subp. 11. **Eligible lender.** "Eligible lender" means a bank, credit union, savings and loan association, insurance company, or other financial institution that is authorized to do business in Minnesota, or an individual.

Subp. 12. **Eligible purpose.** "Eligible purpose" means:

A. the purchase of Minnesota land and improvements on the land, other than a residence, by an eligible borrower for farming purposes;

B. the construction of new improvements, or of additions to or renovations of existing improvements, other than a residence, for farming purposes; or

C. the purchase of depreciable agricultural property by an eligible borrower for farming purposes.

Subp. 13. **Executive director.** "Executive director" means the authority's executive director or any other officer duly authorized to act on behalf of the authority's board or its executive director.

Subp. 14. **Farming.** "Farming" means the cultivation or use of land or land improvements, and personal property for the cultivation of agricultural crops, the production of fruit or other horticultural crops, or the production of forest products, for the raising of poultry, the production of eggs, or the production of milk, for the production of fur-bearing animals, or for the grazing or production of livestock.

Subp. 15. **First time farmer.** "First time farmer" means an individual who, together with the individual's spouse and minor children:

A. has not at any time had any direct or indirect ownership interest in agricultural farmland that is 15 percent or more of the median size farm in the county where located or that had a market value at any time in excess of \$125,000 unless the farm was disposed of while the individual was insolvent and code section 108 applied to indebtedness with respect to the farm; and

B. has not received other similar tax-exempt financing in any state in an amount that, together with the current loan, exceeds \$250,000.

Subp. 16. **Improvements.** "Improvements" to farm land means items that, when complete, become part of the farm land or fixtures, including but not limited to confinement sys-

terms, barns and other out buildings, silos and other crop storage facilities, and improvements to land such as tiling, terraces, ponds, erosion control structures, and waterways.

Subp. 17. **Lender.** "Lender" means an eligible lender who has purchased a bond under the program.

Subp. 18. **Loan.** "Loan" means the loan of the proceeds of a bond to an eligible borrower for an eligible purpose pursuant to a loan agreement between the authority and the eligible borrower.

Subp. 19. **Net worth.** "Net worth" means the total value of an applicant's assets and the assets of the applicant's spouse and dependents, less the liabilities of those parties. For purposes of calculating net worth, "assets" means property, real or personal, tangible or intangible, and all contract rights of value that constitute assets, including cash crops or feed on hand, livestock held for sale, breeding stock, marketable bonds and securities, securities not readily marketable, accounts receivable, notes receivable, cash invested in growing crops, cash value of life insurance, machinery and equipment, cars and trucks, farm and other real estate including life estates and personal residence, and the value of a beneficial interest in any trust. For purposes of calculating net worth, the term "liabilities" means the debts or other obligations for which an applicant is responsible including accounts payable, notes or other indebtedness owed to any source, taxes and rent due or past due, amounts owed on real estate contracts or mortgages, judgments, and accrued interest payable.

Subp. 20. **Principal user.** "Principal user" means a person who is a principal owner, a principal lessee, a principal output purchaser, or an "other" principal user as defined in the code.

Subp. 21. **Program.** "Program" means the agricultural development bond beginning farmer loan program established by the authority.

Statutory Authority: *MS s 41C.13*

History: *16 SR 2678; 17 SR 1016*

1650.0520 BORROWER ELIGIBILITY.

Subpart 1. **Eligibility.** To be eligible for a loan under the program an applicant must be an eligible borrower.

Subp. 2. **Certification.** An applicant must certify to the authority in each loan application that the applicant understands and meets the definition of eligible borrower for the program.

Subp. 3. **Net worth.** A financial statement showing an applicant's net worth should be submitted with the application and may not include the value of the property or improvements to be acquired with the proceeds of the loan or the liability of the loan. At the loan closing the eligible lender must recertify that the applicant's net worth does not exceed program limits.

Statutory Authority: *MS s 41C.13*

History: *16 SR 2678; 17 SR 1016*

1650.0530 OPERATION OF PROGRAM.

Subpart 1. **Loan transactions and security.**

A. The authority shall make unsecured loans to eligible borrowers for eligible purposes under a loan agreement between the authority as lender and the eligible borrower as borrower. The loans must be evidenced by promissory notes payable to the authority or its assigns.

B. A loan may not be made that violates any of the restrictions in subitems (1) to (6).

(1) A loan may not exceed \$250,000 and may not finance more than \$62,500 of used depreciable agricultural property.

(2) Ninety-five percent of the loan proceeds in excess of loan transaction costs must be expended for an eligible purpose, and not more than two percent of the loan proceeds may be used to pay loan transaction costs.

(3) The maturity of a loan or portion of a loan made to finance improvements or depreciable agricultural property may not exceed 120 percent of the useful life of the improvements or depreciable agricultural property under the code.

(4) Not more than five percent of the loan proceeds in excess of loan transaction costs may be used to refinance existing indebtedness, or to finance the purchase or improvement of a residence or working capital or inventory such as seed, fertilizer, or feeder livestock. Use of loan proceeds for reimbursement of costs incurred prior to the adoption by the authority of a preliminary resolution approving a loan and the issuance of a bond to fund it as described in part 1650.0550 or money borrowed to pay such costs constitutes use of loan proceeds for working capital or refinancing.

(5) All loan proceeds must be expended within six months of the loan closing.

(6) Loan proceeds may not be used to finance the purchase of land, improvements, or depreciable agricultural property from a related person. For the purpose of this subitem, "related person" means a spouse, lineal descendant, or sibling, or a partnership or corporation owned, directly or indirectly, more than 50 percent by the borrower and one or more of the borrower's spouse, lineal descendant, or sibling.

C. The authority shall issue a bond to provide money to fund each loan. The authority has no other money available for this purpose. The bond must be issued to the eligible lender who has agreed with the eligible borrower to finance the eligible borrower's loan by jointly submitting a loan application according to part 1650.0540. The bond must be issued in fully registered form under a loan agreement between the lender and the authority.

D. The bond must be a special, limited obligation of the authority payable solely from loan payments payable by the eligible borrower under the borrower's loan agreement and the promissory note evidencing the loan, that must be assigned to the lender and pledged to the payment of the principal of and interest on the bond, without recourse to the authority. The bond must not be a general obligation of the authority, the state of Minnesota, or any department, agency, or political subdivision of the state. The full faith and credit of the authority or the state or any department, agency, or political subdivision of the state must not be pledged for the bond's payment.

E. A bond may be additionally secured by a mortgage on or security interest in the property financed or other property provided by the borrower, or by personal guaranties made by the borrower or another individual. All agreements and documents providing or evidencing additional security must be entered into between the borrower or another individual and the lender. The authority may not be a party to the agreement or document and is not responsible in any way with respect to the authorization, execution, effectiveness, or adequacy of the additional security.

Subp. 2. Loan evaluation. The lender must determine and evaluate the eligible borrower's financial condition, net worth, and ability to repay the loan of the bond proceeds to be made by the authority, and the lender is solely responsible for that determination. The authority shall not make any independent evaluation of any of these matters, but shall rely upon certifications provided to it by the applicant and the lender as part of an application.

Subp. 3. Loan terms. The payment terms of each loan and the bond that will be issued to fund the loan must be identical and, subject to the applicable provisions of state and federal law or the code, must be established by the eligible borrower and the lender.

Subp. 4. Loan documents. Except as provided in subpart 1 with respect to certain loan security agreements, all loan and bond transactions must be evidenced by use of the authority's standard loan documents. The documentation must include loan agreements, a promissory note, a bond, various closing certificates, legal opinions, and other documents the authority requires.

Subp. 5. Tax exemption.

A. The authority shall try to issue each bond as a "qualified small issue bond" within the meaning of section 144(a) of the code. Interest payable on a qualified small issue bond is not includable in gross income of the recipient for federal income tax purposes, or in net income of individuals, estates, or trusts for Minnesota income tax purposes. At the loan closing, the authority shall furnish to the lender an opinion of an attorney or firm of attorneys nationally recognized as bond counsel as to the validity of the bond and the tax exempt nature of the interest payable on the bond, addressed to the lender. The form of that opinion is available upon request to the authority by any eligible lender joining in a loan application.

B. The lender may not rely upon information provided by the authority as to state and federal tax matters, but may rely only upon representations, warranties, or covenants made by the authority in the loan documents and the legal opinion.

C. The lender is responsible to determine the applicability and effect of other state and federal laws on the lender's income, deductions, or tax status for state and federal tax purposes as a result of the purchase of a bond.

Subp. 6. **Use of bond proceeds; certification.** Bond proceeds may not be used for a purpose other than an eligible purpose or by a person other than an eligible borrower. Following disbursement of the bond proceeds, the lender and borrower may be required to certify to the authority that the proceeds were used for an eligible purpose by an eligible borrower, and were fully expended within six months after the loan closing date.

Subp. 7. **Assignment of bond.** A lender may assign a bond in whole or in part to any person, but the lender is responsible for compliance with all state and federal laws applicable to the assignment. Servicing of the loan may also be assigned, but must at all times be with an eligible lender as defined in Minnesota Statutes, section 41B.02, subdivision 8. The authority must be notified in writing prior to assignment of servicing of a loan.

Subp. 8. **Assumption of loans; substitution of collateral and transfer of property.** Loans may not be assumed without the prior approval of the authority, and then only if the purchaser of the property is an eligible borrower. Depreciable agricultural property may be exchanged or traded for similar property, and other property such as breeding livestock may be added or substituted as collateral at the discretion of the lender without the prior approval of the authority. The benefits of the loan made at the tax exempt rate from the proceeds of an authority bond must remain with the eligible lender, and no person to whom property is traded or otherwise transferred may obtain the benefits of the authority loan.

Statutory Authority: *MS s 41C.13*

History: *16 SR 2678; 17 SR 1279*

1650.0540 APPLICATION PROCEDURES.

Subpart 1. Application.

A. An applicant and an eligible lender who wish to request the authority to make a loan to the applicant and issue a bond to the lender to fund the loan should jointly complete, sign, and submit to the authority an approved application. All supporting documents should be submitted with the application.

B. The eligible lender should present the documents in item A to the authority by the close of the business day on the Friday prior to the first Wednesday of each month. Presentation of the documents constitutes an offer to purchase a bond to fund the loan.

C. Lenders shall use their own forms of financial statement and other forms considered necessary to document the eligibility of the applicant. Financial statements should be dated as of a date not more than 15 days before the date on which the application is submitted to the authority.

Subp. 2. **Application fee.** The applicant shall provide to the eligible lender for submission to the authority with the application a check payable to the Minnesota Department of Agriculture in an amount established by the authority under Minnesota Statutes, section 41C.12, as an application fee. The fee is not refundable.

Subp. 3. **Volume cap allocation charge.** The applicant should also provide to the eligible lender for submission to the authority with the application, a check payable to the Minnesota Department of Agriculture in the amount determined under Minnesota Statutes, section 474A.03, as a volume cap allocation fee. If the application is approved and the authority makes application for a volume cap allocation as described in part 1650.0550, subpart 2, the fee must be delivered to the commissioner of finance in payment of the application charge imposed by Minnesota Statutes, chapter 474A. If the application is rejected, the volume cap allocation fee must be returned to the applicant.

Subp. 3a. **Use of allocation.** The allocation purchased from the finance department must be used within 90 days. If the allocation expires due to no fault of the authority, the authority may require payment of additional fees to secure a new allocation.

Subp. 3b. **Insufficient funds.** If there are insufficient funds to allocate to all applications received, priority must be given in the order of the application number. If the allocation

requested exceeds the allocation fund balance, the next application must then be allowed to request the allocation. This procedure must be used until the balance of the allocation fund is depleted. Eligible lenders are responsible to verify that an allocation has been secured before closing on their bond.

Subp. 4. Authority review. The executive director, or a designee, shall review the information provided and accept or reject the application. If the information provided is not sufficient to make a determination, the executive director, or a designee, shall request additional information from the eligible lender and applicant. The review must include, but is not limited to, whether the loan complies with the act and parts 1650.0500 to 1650.0570. The authority may notify the applicant and eligible lender whether the application has been approved or rejected. If the application is not approved, a written notice must state the reasons for disapproval.

Subp. 5. Administrative reconsideration. If a proposed application is not approved, the applicant or the eligible lender may petition the executive director for an administrative reconsideration. The petition must be in writing and must be sent within 15 business days of the date of the disapproval. The petition must state the petitioner's reasons for disagreeing with the disapproval and may include additional information relevant to the request for reconsideration. Within 15 business days of receiving the petition, the executive director shall send a written response to the petitioner upholding or reversing the original decision and giving the reasons for the decision.

Subp. 6. Appeal. A petitioner may appeal the executive director's reconsideration directly to the authority's board, by written notice to the executive director within 15 business days of receiving the executive director's reconsideration decision. The decision of the board is final.

Subp. 7. Application expiration. An application that remains inactive for 120 days from the date of the preliminary resolution is considered canceled and the application fee is forfeit.

Statutory Authority: *MS s 41C.13*

History: *16 SR 2678; 17 SR 1016*

1650.0550 HEARING AND OTHER PROCEDURAL REQUIREMENTS.

Subpart 1. Hearing and approval requirement. Under section 147(f) of the code, in order to make the interest payable on a bond excludable from gross income for federal tax purposes, prior to the issuance of the bond the authority or its designated representative must hold a public hearing on the issuance of the bond, and the issuance of the bond must be approved by an "applicable elected representative" of the state, which means, in this case, the governor or another elected official of the state designated by the governor. Notice of the hearing must be published at least 14 days before the hearing in a newspaper of general circulation in the state and where the property being financed is or is to be located. The notice must set forth the date, time, place, and purpose of the hearing; the authority's intention to issue the bond; the maximum principal amount of the bond to be issued; the source of payment of the bond; the purpose for which the proceeds of the bond will be loaned to the borrower; the name of the borrower; and the location of the property being acquired with the proceeds of the loan or where it will be used.

Subp. 2. Volume cap allocation requirement. Under section 146 of the code, in order to make the interest payable on a bond excludable from gross income for federal tax purposes, the authority must obtain a volume cap allocation in an amount equal to the amount of the bond, pursuant to the state volume cap allocation law, Minnesota Statutes, chapter 474A. In order to obtain a volume cap allocation, the authority must submit an application for it to the state Department of Finance together with a preliminary resolution of the authority approving the loan and the issuance of a bond to fund it, a statement of bond counsel that the proposed bond requires an allocation under Minnesota Statutes, chapter 474A, and a statement that the bond is a "qualified small issue bond" within the meaning of section 144 of the code. The authority has no control over whether a volume cap allocation will be received with respect to any volume cap application submitted by it.

Subp. 3. Executive director authority. If upon review of a loan application and all supporting documents and other information requested by the authority in connection with the

application the executive director or a designee determines that the application is in compliance with the program and parts 1650.0500 to 1650.0570, the executive director may:

A. cause a preliminary resolution approving the loan and the issuance of the bond requested by the application to be placed upon the agenda of the next meeting of the authority for consideration by it;

B. establish a date, time, and place of the public hearing required in subpart 1 and cause notice of the hearing to be published, which date must be at least three business days after the meeting of the authority at which the preliminary resolution approving the loan and bond described in the notice will be considered by the authority;

C. conduct, or designate other members of the authority's staff to conduct the public hearing; and

D. following adoption of the preliminary resolution by the authority, make application for a volume cap allocation as described in subpart 2.

Subp. 4. Preliminary resolution. The authority shall consider the adoption of the preliminary resolution described in subpart 3 at its first meeting following approval of an application by the executive director or program director.

Subp. 5. Public hearing. A public hearing must be held at the offices of the authority during regular business hours on regular business days. A person appearing in person at the hearing will be allowed ten minutes to present views. A protest may also be made in writing by mailing or faxing it to the authority. The authority is not responsible for delays in delivery of written protests. The person conducting the hearing shall make a written record of the hearing and all information or views presented at the hearing. The record must be maintained as part of the public records of the authority.

Subp. 6. Public approval. Following the public hearing, if no information is presented indicating that the loan to be made and the bond to be issued are not in accordance with the program and parts 1650.0500 to 1650.0570, the executive director shall cause to be prepared and sent to the governor's office, or the office of the elected official of the state designated by the governor, a statement describing each bond or series of bonds it proposes to issue, along with a summary of the public comments received at the hearings. Any information received at the hearing must be presented to the authority at its next meeting, at which the authority shall confirm or take further action on the application in question that may be indicated.

Statutory Authority: *MS s 41C.13*

History: *16 SR 2678; 17 SR 1016*

1650.0560 LOAN DOCUMENTS; CLOSING PROCEDURES.

Subpart 1. Loan documents. The executive director shall cause to be prepared and revised from time to time as necessary, standard forms of all loan documents and closing documents necessary to evidence a bond and related loan transaction, and shall provide the forms to all applicants and prospective lenders. All bond and loan transactions must be done on standard forms, with only insertions and changes necessary to accurately reflect the transaction in question or to assure compliance with section 144 of the code.

Subp. 2. Lender's responsibility. The lender should use its own form of additional security documents (mortgage, security agreement, or guarantee) it believes are necessary and appropriate under the particular loan circumstances. These items must be referenced in the bond documents. Any additional requirements not specifically provided for in the bond documents, such as insurance coverage and amounts, must also be added. It is the lender's responsibility to ensure that any security agreements, mortgages, guarantees, or other security documents that the lender requires in a transaction, have been completed and signed, and that any financing statements have been filed, mortgages recorded, or any other necessary steps taken to protect the lender's interests. The authority makes no warranties or representations with respect to the effectiveness, validity, or priority of any liens or security interests, that a lender has, or believes it may have, with respect to a particular loan or bond.

Subp. 3. Authority's responsibility. The authority shall by resolution authorize all documents to be executed by it and is responsible for the preparation, execution, and delivery by the borrower and the authority of the authority's loan documents and closing documents; compliance with the procedures in part 1650.0550; the issuance of necessary legal opinions

by the authority's bond counsel; the filing with the Internal Revenue Service of all reports and forms required to be filed in connection with the issuance of a bond; and the furnishing of fully executed copies of those items to the borrower and the lender.

Subp. 4. Origination fee and closing costs. At the loan closing, the applicant shall deliver to the authority a check payable to the Minnesota Department of Agriculture in an amount equal to 1.5 percent of the amount of the loan as an origination fee. Under no circumstances shall this fee be less than \$200. The authority shall estimate and the borrower shall pay these costs at closing. Loan proceeds may be used to pay closing costs subject to the limitation established by the code, which is described in part 1650.0530, subpart 1, item B, subitem (2).

Statutory Authority: *MS s 41C.13*

History: *16 SR 2678; 17 SR 1016*

1650.0570 GENERAL MATTERS.

Subpart 1. Forms. The executive director shall prepare and, as needed, revise and amend forms necessary for administration and implementation of the program. The number and type of forms must be sufficient to safeguard the interests of the authority. The authority shall annually assess the effectiveness of parts 1650.0500 to 1650.0570 and its administrative procedures, including all forms, and make any modifications that, in the judgment of the authority, are necessary or would facilitate efficient operation of the program.

Subp. 2. Waivers. The authority or the executive director may waive or vary particular provisions of parts 1650.0500 to 1650.0570 to conform to requirements of the code necessary to make the interest on any bond excludable from gross income of the recipient for federal tax purposes, or to avoid inequitable, harsh, or unforeseen results from the application of parts 1650.0500 to 1650.0570. No waiver may conflict with Minnesota Statutes, chapter 41C.

Subp. 3. Right to audit. The authority may audit at any time the records of the lender and the borrower relating to a loan and bond to ensure that bond proceeds were used for an eligible purpose by an eligible borrower.

Subp. 4. Data privacy. Financial information, including credit reports, financial statements, and net worth calculations received by the authority regarding any loan and the name of each eligible borrower who is the recipient of a loan are private data under Minnesota Statutes, chapter 13, and may be disclosed only in accordance with Minnesota Statutes, chapter 13. The name of an eligible borrower, the proposed amount of any loan, the purpose of the loan, and the location of the property to be acquired with the loan proceeds or the location where it is to be used must be disclosed as provided in part 1650.0550 and as required by the code in order to make the interest payable on the bond issued to fund the loan excludable from gross income for federal tax purposes.

Statutory Authority: *MS s 41C.13*

History: *16 SR 2678*

AGRICULTURAL IMPROVEMENT LOAN PROGRAM

1650.0600 PURPOSE.

Parts 1650.0600 to 1650.0650 establish the criteria and procedures to be used by the rural finance authority in the administration of the agricultural improvement loan program authorized by Minnesota Statutes, section 41B.043. The purpose of the agricultural improvement loan program is to issue bonds to finance agricultural improvements loans from the authority to eligible applicants. Loans under this program will be made to applicants who meet the eligibility requirements in part 1650.0620. Repayment of the loans must be secured by mortgage liens on real property and other security the authority considers necessary.

Statutory Authority: *MS s 41B.07*

History: *17 SR 1018; 18 SR 779*

1650.0610 DEFINITIONS.

Subpart 1. Scope. The definitions in this part apply to parts 1650.0600 to 1650.0650.

Subp. 2. **Agricultural improvements.** "Agricultural improvements" has the meaning given in Minnesota Statutes, section 41B.02, subdivision 19.

Subp. 3. **Agricultural improvement loan program; program.** "Agricultural improvement loan program" or "program" means the program authorized by Minnesota Statutes, section 41B.043.

Subp. 4. **Agricultural land.** "Agricultural land" means land suitable for use in farming.

Subp. 5. **Applicant.** "Applicant" means a potential borrower who submits an application directly to the authority for a direct loan or through an eligible lender for a loan participation.

Subp. 6. **Application.** "Application" means an application for a loan under the agricultural improvement loan program in the form provided by the authority.

Subp. 7. **Assets.** "Assets" means all property, real or personal, tangible or intangible, and all contract rights of value that constitute assets, including cash crops or feed on hand, livestock held for sale, breeding stock, receivable notes, receivables, cash invested in growing crops, cash value of life insurance, machinery and equipment, cars, trucks, farms and other real estate including life estates and personal residences, and the value of a beneficial interest in trusts.

Subp. 8. **Authority.** "Authority" means the rural finance authority.

Subp. 9. **Borrower.** "Borrower" means the person or persons liable on a mortgage loan made under the program. A borrower may also be a domestic family farm corporation as defined in Minnesota Statutes, section 500.24.

Subp. 10. **Collateral.** "Collateral" means all assets pledged as security for a borrower's obligation under a mortgage loan made under the program. It includes all assets, guarantees, money, letters of credit, or assignments of collateral or a pledge for a loan on which the lender has a security interest or lien.

Subp. 10a. **Direct loan.** "Direct loan" means a loan originated and serviced by the authority without involvement of an eligible lender.

Subp. 11. **Executive director.** "Executive director" means the executive director of the authority or any other officer authorized to act on behalf of the board of the authority or its executive director.

Subp. 11a. **Farming.** "Farming" means the cultivation or use of land or land improvements, and personal property for the production of agricultural crops, vegetables, fruit or other horticultural crops, forest products, bees and apiary products, livestock, dairy animals, dairy products, poultry or poultry products, fur-bearing animals, aquaculture, hydroponics, exotic species of plants or animals, or other products related to agriculture. Farming also includes the use of wetlands, pasture, forest land, wildlife, and homestead and other real property associated with the agricultural use of land. Farming also includes the practices and facilities needed to conserve soil and water, protect human and animal health, have a safe and efficient operation, and meet local, state, and federal laws and regulations relating to the operation of the farm.

Subp. 12. **Fixtures.** "Fixtures" means an article of personal property that has been affixed or annexed to real estate so that it is regarded as a part of the real property. A thing is considered to be affixed or assumed to real estate if it is attached to it by roots, imbedded in it, permanently resting upon it, or permanently attached to it, as by means of cement, plaster, nails, bolts, or screws.

Subp. 13. [Repealed, 18 SR 779]

Subp. 14. **Liabilities.** "Liabilities" means debts or other obligations for which an applicant is responsible, including accounts payable, notes or other indebtedness owed, taxes, rent, amounts owed on real estate contracts or mortgages, judgments, and accrued interest payable.

Subp. 15. **Mortgage loan or loan.** "Mortgage loan" or "loan" means a direct loan from the authority or loan participation under the program that is secured by a first mortgage on real property.

Subp. 16. **Net worth.** "Net worth" means the total value of an applicant's assets and the assets of the applicant's spouse and dependents, less the liabilities of the same parties.

Subp. 17. **Real estate.** "Real estate" means land and anything permanently affixed to the land, such as buildings, fences, and things attached to the buildings, such as light fixtures, plumbing, and heating fixtures, or other items that would be personal property if not attached.

Statutory Authority: *MS s 41B.07*.

History: *17 SR 1018; 18 SR 779*

1650.0620 BORROWER ELIGIBILITY-DIRECT LOANS.

To receive a direct loan under the agricultural improvement loan program, applicants must meet the criteria in items A to F.

A. The applicants must be residents of Minnesota or a domestic family farm corporation as defined in Minnesota Statutes, section 500.24, subdivision 2.

B. At least one of the applicants must be the principal operator of the farm upon which the agricultural improvements will be located.

C. At least one of the applicants must be actively engaged in farming.

D. The applicants must show the ability to repay the loan.

E. The applicants must show that they would not be able to make the proposed improvements without the availability of this financing.

F. The applicants' total net worth must not exceed \$400,000.

Statutory Authority: *MS s 41B.07*

History: *17 SR 1018; 18 SR 779*

1650.0630 APPLICATION AND PROCEDURES-DIRECT LOANS.

Subpart 1. **Application forms.** All applications under the program must be on forms designated by the authority. The applicant should complete the application form and submit it to the authority along with other information required by the authority. Financial statements should be dated within 90 days of the application.

Subp. 2. **Personal history letter signed by the applicant.** A personal history letter may be submitted with the application to explain the type of project for which funds will be used, the applicant's background, and the type of farming unit.

Subp. 3. **Fees.** The applicant must submit with the application a nonrefundable \$50 application fee. A loan origination fee equal to 1-1/2 percent of the amount of the loan must be submitted by the applicant at the closing of the loan. The loan origination fee and other loan closing expenses may be financed with proceeds of the loan. The applicant must also pay all other out-of-pocket costs required to complete the closing of the loan, such as filing fees, mortgage registration, taxes, and appraisal fees. The authority shall pay its own legal fees.

Subp. 4. **Terms of loan.** The maximum term of a loan is ten years. The applicant must agree on the loan terms such as interest rate, length of loan, repayment schedule, and prepayment options. The maximum loan amount is \$35,000 and the loan may have a balloon. The collateral securing the loan must have a value of at least 150 percent of the amount of the loan.

Subp. 5. **Interim financing.** The applicant shall not begin acquisition or construction of any part of the agricultural improvements before the authority approves the application. When the application has been approved, upon notice to and approval by the authority, the applicant may move forward with acquisition or construction of the agricultural improvements. A lender may provide interim financing for the agricultural improvements until the closing of the loan. The interim financing, principal only, will be paid with the proceeds of the loan.

Subp. 6. **Misrepresentation in application.** If a change occurs in the information provided by the applicant to the authority, the applicant shall immediately update and correct that information. Misrepresentation in the application or failure to update any required information is grounds to reject an application, revoke a notice of approval, or refuse to close the loan.

Statutory Authority: *MS s 41B.07*

History: *17 SR 1018; 18 SR 779*

1650.0640 AUTHORITY REVIEW, NOTICE, APPEAL.

Subpart 1. **Authority review.** The authority shall accept or reject applications within 30 working days of their receipt. If the documentation is not sufficient to make a determination, the authority may request additional information as needed.

Subp. 2. **Authority acceptance.** The authority shall accept applications based upon whether:

- A. the applicant meets all eligibility criteria;
- B. the proposed agricultural improvements meet specifications set by statute and rule;
- C. the applicant demonstrates an ability to repay the mortgage loan and other obligations, based on the financial information submitted with the application; and
- D. the authority has sufficient funds available to make the loan.

Subp. 3. **Authority notice.** The authority shall promptly notify the applicant in writing whether or not the application is approved. If the application is rejected, the notice must state the reasons. For accepted applications, the notice shall delineate any conditions related to the acceptance of the application.

Subp. 4. **Administrative appeal.** If the application is rejected, the applicant may petition the executive director for reconsideration. The petition must be in writing and must be sent within 15 working days of the authority's mailing of its notice of rejection. The petition must state the grounds for the appeal and may include additional relevant information. Within 15 working days of receiving the petition, the executive director shall send a written response to the petitioner upholding or reversing the original decision and giving reasons for the decision.

Subp. 5. **Formal appeal.** After appeal to the executive director, a petitioner may appeal the executive director's decision directly to the authority's board by written notice to the executive director within 15 working days of the executive director's mailing of its notice of rejection. The decision of the board is final.

Statutory Authority: *MS s 41B.07*

History: *17 SR 1018*

1650.0650 LOAN ADMINISTRATION.

Subpart 1. **Loan administration.** The authority shall perform all tasks and functions customarily performed in administering the loans with the degree of care and diligence usually maintained by agricultural real estate lenders. The authority has custody and control of all loan documents.

Subp. 2. **Enforcement.** The authority shall manage, administer, and enforce the loan, including, without limitation, the right to accelerate the loan on default and to foreclose or otherwise enforce remedies against the borrower.

Subp. 3. **Inspection.** At any time during the term of a loan, the authority or the state legislative auditor may inspect the collateral during normal business hours.

Statutory Authority: *MS s 41B.07*

History: *17 SR 1018*

1650.0660 LOAN PARTICIPATION.

Subpart 1. **Borrower eligibility.** To be eligible for assistance through a loan participation under the agricultural improvement loan program, applicants must meet the criteria in this subpart.

- A. The applicants must be residents of the state of Minnesota or a domestic family farm corporation as defined in Minnesota Statutes, section 500.24, subdivision 2.
- B. At least one of the applicants must be the principal operator of the farm upon which the agricultural improvement will be located.
- C. At least one of the applicants must be actively engaged in farming.
- D. The applicants must show the ability to repay the loan.
- E. The applicants' total net worth must not exceed \$400,000.

Subp. 2. Lender eligibility.

A. Any bank, credit union, or savings and loan association chartered by the state or federal government, a subdivision of the farm credit system (Agri Bank), the Federal Deposit Insurance Corporation, or any insurance company, fund, or other financial institution doing business as an agricultural lender in Minnesota may apply to the authority for certification as an approved lender.

B. Upon a lender's demonstration of its ability to originate and service agricultural real estate loans, the authority shall designate the lender as an approved lender for purposes of authority programs.

C. Before offering mortgage loans to the authority for participation, each approved lender must enter into an authority master participation agreement. The agreement shall specify the relationship between the parties and the terms and conditions of mortgage loans to be made by the lender under the agricultural improvement loan program and offered to the authority for participation.

Subp. 3. Application process and offer of participation.

A. All applications under the program must be in forms designated by the authority. A lender and an applicant must jointly complete and sign an application and prepare all supporting documents identified in the application. Financial statements must be dated within 90 days of the application.

B. The lender shall complete the initial review of the proposal and determine the creditworthiness of the applicant and the value of the collateral to be used to secure the loan. If the lender agrees to make a mortgage loan to the applicant, the lender and the applicant shall jointly prepare the application and the required loan documents.

C. The lender, as the originator of the mortgage loan, shall present the application and loan documents to the authority. Presentation of the documents constitutes an offer to sell a participation interest in the loan.

D. A nonrefundable \$50 application fee must be submitted with the application.

E. The loan must be for a maximum term of ten years. The maximum participation is 45 percent of the loan principle or \$50,000, whichever is less. The loan may have a balloon.

F. If a change occurs in the information provided by the lender to the authority, the lender shall immediately update and correct that information. Misrepresentation in the application or failure to update any required information is grounds to reject an application, revoke a notice of approval, or refuse to close the loan.

Subp. 4. Authority review, notice, appeal.

A. Within a reasonable time after receipt of a lender's offer, the authority shall accept or reject the lender's offer to participate in the loan. If the documentation is not sufficient to make a determination, the authority may request additional information as needed.

B. The authority shall accept applications based upon whether:

- (1) the applicant meets all eligibility criteria;
- (2) the applicant demonstrates an ability to repay the mortgage loan and other obligations based on the financial information submitted with the application;
- (3) the proposed agricultural improvements meet specifications set by statute and rule; and
- (4) the authority has sufficient funds available to purchase a participation in the loan.

C. The authority shall promptly notify the lender in writing whether or not the offer is accepted. If the offer is not accepted, the notice must state the reasons.

D. If an offer is rejected, either the lender or the applicant may petition for administration reconsideration. The petition must be in writing and must be sent within 30 days of the date of the authority notice. The petition must state the grounds for the appeal, and may include additional relevant information. Within 15 working days of receiving the petition, the executive director shall send a written response to the petitioner upholding or reversing the original decision and giving the reasons for the decision.

E. After administrative appeal, a petitioner may appeal the executive director decision directly to the authority board by written notice to the director within 15 days of receiving the director's reconsideration decision. The decision of the board is final.

Subp. 5. Loan closing, purchase of participation, and loan management.

A. Upon receiving notification of authority acceptance, the lender shall close the mortgage loan. The lender must record and cross-reference all documents relating to the loan, including the authority note and loan agreement. The lender must notify the authority that the loan is closed and recorded and submit the original authority application and copies of the recorded documents to the authority.

B. Within ten business days of receipt of written notice under item A that the mortgage loan is closed and recorded, the authority shall pay the lender for the authority's participation interest in the loan.

C. Within five working days after the receipt of finally collected funds, the lender shall complete and return a participation certificate as prescribed by the authority witnessing the authority's undivided pro rata interest in the agricultural improvement mortgage loan.

D. The lender shall manage the loan, including the authority participation interest, with the degree of care and diligence usually maintained by agricultural real estate lenders. The lender shall have custody and control of all loan documents, except the original application which shall be retained by the authority. The lender shall manage, administer, and enforce the loan documents in the lender's own name and also on behalf of itself and the authority, including, without limitation, the right to accelerate a mortgage loan on default and to foreclose or otherwise enforce remedies against the borrower.

E. The lender shall promptly notify the authority of occurrences that substantially affect the security, collection, or enforcement of any mortgage loan.

F. The lender shall obtain the prior written consent of the borrower and the authority before:

(1) making or consenting to a release, substitution, or exchange of collateral that reduces the aggregate value of the collateral;

(2) waiving a claim against the borrower or a guarantor, surety, or obligor in connection with the indebtedness; or

(3) modifying or waiving a term of the notes or related instruments evidencing or securing the first mortgage loan.

Subp. 6. Participation repurchase.

A. An originating lender is under no obligation to repurchase authority participation interest in an agricultural improvement mortgage loan except as provided in this subpart.

B. A lender may, at its option and upon written approval by the authority, repurchase authority participation interest at any time.

C. A lender shall repurchase the authority participation interest when the first mortgage loan is paid in full or refinanced.

D. A lender shall repurchase the authority participation interest if the lender has made misrepresentations or fails to perform its obligations under the participation agreement, has received written notice from the authority, and has not corrected the representation or performance under the notice.

E. Any repurchase must be for the principal balance of the authority participation plus accrued interest and any penalties or costs incurred by the authority to secure repurchase.

Subp. 7. Review of loan and collateral.

A. At any time during the term of an agricultural improvement mortgage loan, the authority or the state legislative auditor may inspect the books, records, documents, and accounting practices of the lender relative to the loan to determine compliance with the terms and conditions of the loan and the participation agreement. Any inspections must be made during the lender's normal business hours. The lender shall allow the authority to copy any documents relating to the mortgage loan and the authority participation.

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B. The lender and the authority may physically inspect the collateral securing the mortgage loan upon notice to the borrower. Any inspections must be conducted at a reasonable time.

Statutory Authority: *MS s 41B.07*

History: *18 SR 779*