

1650.0661 LOAN PARTICIPATION.

Subpart 1. **Borrower eligibility.** To be eligible for assistance through a loan participation under the agricultural improvement loan program, an applicant must meet the criteria in items A to E.

A. The applicant must meet the requirements of Minnesota Statutes, section 41B.03, subdivision 1, clause (1).

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 applicant must show the ability to repay the loan.

E. The applicant's total net worth must not exceed the total net worth established for the basic beginning farmer loan participation program.

Subp. 2. Lender eligibility.

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

B. 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.

C. Before offering mortgage loans to the RFA for participation, each approved lender must enter into an RFA master participation agreement. The agreement must 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 RFA for participation.

Subp. 3. Application process and offer of participation.

A. All applications under the program must be in forms provided by the RFA. 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 120 days of the application.

B. The applicant shall not begin acquisition or construction of any part of the agricultural improvements before RFA approval of the application. Upon notice to the lender of approval by the RFA, the applicant may move forward with acquisition or construction of the agricultural improvements.

C. 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.

D. The lender, as the originator of the 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.

E. The nonrefundable application fee as established in Minnesota Statutes, section 41B.043, subdivision 3, must be submitted with the application.

F. The loan must be for a maximum term of ten years. The maximum participation is the amount established in Minnesota Statutes, section 41B.043, subdivision 1b.

G. The RFA is restricted to participation in loans that do not exceed 80 percent of the appraised value of the real estate offered for collateral. Additional collateral may be required based on the depreciability and saleability of the collateral and creditworthiness of the applicant.

H. If a change occurs in the information provided by the lender to the RFA, 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. RFA review, notice, appeal.

A. Within 30 business days 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 to establish creditworthiness and eligibility of the applicant.

B. The RFA shall accept an application if:

(1) the applicant meets all eligibility criteria of parts 1650.0601 to 1650.0661 and Minnesota Statutes, section 41B.043, subdivision 1a or 1b;

(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 RFA has sufficient funds available to purchase a participation in the loan.

C. 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.

D. 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 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 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 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.

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 security documents relating to the loan. The lender must notify the RFA that the loan is closed and recorded by completing the lender certification section and returning the original RFA application and copies of the recorded documents, note and loan agreement, and final title opinion to the RFA.

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

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

D. The lender shall manage the 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 the lender's own name and also on behalf of itself and the RFA, 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 RFA of occurrences that substantially affect the security, collection, or enforcement of a mortgage loan.

F. The lender shall obtain the prior written consent of the borrower and the RFA 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 RFA 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 RFA, repurchase RFA participation interest at any time.

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

D. A lender shall 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.

E. A 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.

Subp. 7. Review of loan and collateral.

A. At any time during the term of an agricultural improvement 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. An inspection must be made during the lender's normal business hours. The lender shall allow the RFA to copy any documents relating to the mortgage loan and the RFA participation.

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

Statutory Authority: *MS s 41B.07; 41C.13*

History: *20 SR 2427; 30 SR 372*

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