

1654.0070 AUTHORITY PARTICIPATION.

Subpart 1. **Procedure.** If the financial assistance is in the form of participation with a lender, the procedures in this section must be followed.

Subp. 2. **Lender eligibility.**

A. Any 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 any insurance company, fund, or other financial institution doing business as an agricultural lender within the state may apply to the authority for certification as an approved lender.

B. Upon a lender's demonstration of its ability to originate and service commercial real estate and equipment loans, the authority shall designate them as an approved lender for purposes of the ethanol production facility loan program.

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

Subp. 3. **Loan closing, purchase of participation, and loan management.**

A. Upon receiving notification of approval by the authority of a loan participation, the lender shall proceed to close the 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 copies of the recorded documents to the authority.

B. Within ten business days of receipt of written notice under item A, that the loan is closed and recorded, the authority shall pay the lender 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 evidencing the authority's undivided pro rata interest in the ethanol production facility loan.

D. The lender shall manage the loan, including the authority participation interest, with the degree of care and diligence usually maintained by commercial 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 its own name and also on behalf of itself and the authority, including, without limitation, the right 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 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 note or related instruments evidencing or securing the loan.

Subp. 4. **Participation repurchase.** An originating lender is under no obligation to repurchase any authority participation interest in an ethanol production facility loan except as provided in this section.

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

B. A lender must repurchase the authority's participation interest whenever the loan is refinanced.

C. A lender must repurchase the authority's 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 of performance under the notice.

D. Any repurchase shall be for the principal balance of the authority's participation plus accrued interest and any penalties or costs incurred by the authority to secure repurchase.

Subp. 5. **Review of loan and collateral.**

A. At any time during the term of an ethanol production facilities 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 participation agreement. Any inspections shall be during the lenders normal business hours. The lender must allow the authority to copy any documents relating to the loan and the authority's participation.

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

Statutory Authority: *MS s 41B.07*

History: *18 SR 774; L 1995 c 202 art 1 s 25*

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