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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 761, 762, 764, 765, 766, and 769

[Docket ID FSA-2021-0002]

RIN 0560-AI44

**Heirs' Property Relending Program (HPRP), Improving Farm Loan Program
Delivery, and Streamlining Oversight Activities**

AGENCY: Farm Service Agency, USDA.

ACTION: Final Rule.

SUMMARY: The Farm Service Agency (FSA) is implementing a new Heirs' Property Relending Program (HPRP) authorized in the Agricultural Improvement Act of 2018 (the 2018 Farm Bill). HPRP provides loans to eligible entities to relend with the purpose of assisting heirs with undivided ownership interests resolve ownership and succession issues on farms that are owned in common by multiple heirs. The loan funds may be used by an ultimate recipient to purchase and consolidate fractional interests held by other heirs in jointly-owned property to pay for costs and fees associated with developing and implementing a succession plan, and to pay for costs associated with buying out fractional interests held in tenancy in common by other heirs in jointly-owned property to clear the title (for example closing costs, appraisals, title searches, surveys, preparing documents, mediation, and legal services). FSA is also amending the Farm Loan Programs (FLP) regulations to revise its rules related to loan making and servicing to improve program delivery and consolidate value-added oversight activities.

DATES: *Effective:* [Insert date of publication in the *FEDERAL REGISTER*].

Comment due date: We will consider comments that we receive by [Insert date 60 days after publication in the *FEDERAL REGISTER*].

ADDRESSES: We invite you to submit comments on the rule. You may submit comments by either of the following methods, although FSA prefers that you submit comments electronically through the Federal eRulemaking Portal:

- Federal Rulemaking Portal: <http://www.regulations.gov> and search for Docket ID FSA–2021–0002. Follow the instructions for submitting comments.
- Mail: Md Mutaleb, Senior Loan Officer, Loan Making Division, Deputy Administrator for Farm Loan Programs, FSA, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop 0522, Washington, DC 20250–0522. In your comment, specify Docket ID FSA–2021–0002.

Comments will be available online at <http://www.regulations.gov>. A copy of this rule is available through the FSA home page at <http://www.fsa.usda.gov/>.

FOR FURTHER INFORMATION CONTACT: Md Mutaleb; Telephone; telephone: (202) 720-3168; email: md.mutaleb@usda.gov. Persons with disabilities or who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice).

SUPPLEMENTARY INFORMATION

Background of HPRP

FSA is implementing HPRP as authorized in section 5104 of the 2018 Farm Bill (Pub. L. 115-334), codified in 7 U.S.C. 1936c. FSA will loan funds to eligible entities,

including cooperatives, credit unions, and nonprofit organizations certified to operate as a lender, to serve as intermediaries that will relend the funds to individuals and entities for purposes that assist heirs with undivided ownership interests to resolve ownership and succession issues on a farm that has multiple owners (commonly referred to as “Heirs’ Property”).

In developing HPRP, FSA relied heavily on the design of Rural Development’s (RD) relending programs, which have a long history of success, including the Intermediary Relending Program (IRP) found in 7 CFR part 4274. FSA considers the IRP to be a successful relending program and a good model for achieving the goals of HPRP. In developing HPRP, FSA relied on RD’s rules, forms, and framework as a model for establishing a relending program, while adapting provisions to ensure they were workable for HPRP’s intermediaries and ultimate recipients.

FSA considers heirs’ property to be land that has been passed down to subsequent generations via intestate succession (that is, without a will) or via a will that divides real estate assets equally among all heirs. When a landowner dies without a last will and testament or estate plan, state law determines which heirs or classes of family members inherit the land of the deceased, and the ownership share for each heir.

This form of property ownership results in the land being owned in common by all heirs-at-law, each of which owns a fractional interest in the land. As a result, the absence of clear title prevents the owners who farm the land and pay real estate taxes from gaining access to the legal, financial, and managerial transactions needed to effectively manage the land.

FSA is amending 7 CFR part 769 to designate the regulations for the Highly Fractionated Indian Land Loan Program as subpart A, and to add subpart B to specify the requirements for HPRP.

FSA is adding definitions for the terms “Heirs’ Property,” “HPRP Loan Agreement,” “HPRP Loan Funds,” “HPRP Revolving Loan Fund,” “Intermediary,” “Revolved Funds,” “Succession Plan,” “Ultimate Recipient,” and “Undivided Ownership Interest” relating to HPRP to 7 CFR 761.2.

This rule implements HPRP in order to provide a way for heirs to obtain assistance resolving property issues through intermediaries.

Administrative and National Policy Requirements

Intermediaries will request demographics data from ultimate recipients on race, sex (gender), and ethnicity (national origin). The response to the data request will be voluntary. Intermediaries will maintain the data when voluntarily submitted to them by the ultimate recipients. Race and ethnicity data will be collected in accordance with the OMB notice published in the *Federal Register* on October 30, 1997, (62 FR 58782-58790), “Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity” and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1 – 2000d-7). Sex (gender) data will be collected in accordance with Title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1688). The intermediary does not need to submit these documents with the application, but will need to make these documents available when requested by FSA. See the Paperwork Reduction Act section below for more information.

HPRP is subject to environmental compliance provisions, which are specified in 7 CFR part 799. Therefore, each intermediary is required to provide FSA with documentation of its process to address environmental issues.

Ultimate Recipient

An ultimate recipient is an individual or entity that receives a loan from an intermediary's HPRP revolving loan fund. The eligibility requirements of an ultimate recipient are specified in 7 CFR part 769 and mirror the requirements that are specified in 7 U.S.C. 1936c. As authorized by 7 U.S.C. 1936c(e)(3), individual heirs and entities who have an undivided ownership interest in a farm that are willing to complete a succession plan as a condition of the loan are eligible to be an ultimate recipient of HPRP loan funds. The intent of HPRP is to help families resolve titles issues on heirs' property. To ensure the HPRP loans are used for this purpose rather than by investors to acquire land, FSA has specified the requirement that an ultimate recipient must be a family member or heir-at-law related by blood or marriage to the previous owner of the real property.

Intermediaries

As specified in 7 U.S.C. 1936c(c), HPRP provides loan funds to intermediaries who will re-lend loan funds to individuals and entities with undivided ownership interests in order to resolve ownership and succession issues relating to a farm owned in common by multiple owners. To address these issues, FSA has determined that HPRP loan funds may be used for the following:

- To buy out fractional interests held in tenancy in common by other heirs in jointly-owned property, and

- To pay for costs associated with developing and implementing a succession plan (such as closing costs, appraisals, title searches, surveys, preparing documents, mediation, and legal services).

After researching the heirs' property issue, FSA believes these loan purposes will help ultimate recipients resolve title issues by financing the purchase of property interests and paying to finance the many related costs associated with implementing a succession plan.

In 7 CFR part 769, and as specified in 7 U.S.C. 1936c(b), FSA requires that the intermediary have experience working with socially disadvantaged or beginning farmers. As 7 U.S.C. 1936c(d) requires, preference is given to intermediaries with not less than 10 years' experience serving socially disadvantaged farmers and ranchers and is also given to intermediaries located in states that have adopted a statute consisting of an enactment or adoption of the Uniform Partition of Heirs Property Act.

Under 7 CFR part 769.156, intermediaries are required to determine the rates, terms, and payment structure for loans to ultimate recipients in an amount sufficient to cover the cost of operating and sustaining the revolving loan fund; and must clearly and publicly disclose the loan terms and conditions to qualified ultimate recipients. FSA will review the annual monitoring reports of intermediaries, as well as provide oversight of the intermediary's loan processes and procedures.

Use of HPRP Loan Funds

The HPRP funds can only be used for the purposes specified in 7 CFR 769.154 and as explained above.

Loan limitations are specified in 7 CFR 769.155. FSA is establishing maximum limits for loans to intermediaries and ultimate recipients to help manage risk and ensure funds are available for multiple intermediaries. For ultimate recipients, FSA is establishing maximum limits to help ensure that loans are used by family farms rather than larger entities. For each application period, loans to intermediaries will not exceed \$5 million for each intermediary, and loans to ultimate recipients will not exceed the loan limit for a Direct Farm Ownership loan as specified in 7 CFR 761.8(a)(1)(i) (which is currently \$600,000).

In 7 CFR 769.156, the rates and terms for HPRP loans are specified. For loans to intermediaries, the FSA Administrator will set the interest rate as a fixed rate over the term of the loan of 1 percent or less; the repayment term for HPRP loans will not exceed 30 years; and annual payments will be established. For loans to ultimate recipients, the interest rate will be set by the intermediary within the limits established by the intermediary's relending plan approved by FSA; and the repayment period may not exceed 30 years.

Intermediary's Relending Plan

FSA will provide flexibility to the intermediary to develop a relending plan to be approved by FSA that governs the use of the HPRP revolving loan fund. The relending plan must be approved by FSA prior to closing the initial HPRP loan to the intermediary and must include a detailed explanation of the intermediary's fund administration policies and procedures, and planned use of the HPRP revolving loan fund after the funds in the revolving loan fund have revolved. The required elements of the relending plan are

specified in 7 CFR 769.157; and the relending plan must contain, in detail, the policies and procedures that the intermediary must follow with respect to the HPRP loan.

The rates, terms, and payment structure for loans approved by an intermediary to an ultimate recipient must be an amount sufficient to cover the cost of operating and sustaining the revolving loan fund; and must be clearly and publicly disclosed to qualified ultimate recipients. In addition, the proposed rates, terms, and payment structure of any loan made by the intermediary to an ultimate recipient must be reasonable and prudent considering the purpose of the loan, expected repayment ability of the ultimate recipient, the useful life of the collateral, and must adhere to the terms of the approved HPRP loan agreement.

Processing HPRP Loan Applications

The opening and closing date for the HPRP application submission will be announced in a notice in the Federal Register. The initial application period will open **[Insert date 21 days after date of publication in the *FEDERAL REGISTER*]** and will close on **[Insert date 81 days after date of publication in the *FEDERAL REGISTER*]**. If funds are not sufficient to fully fund all approved applications from intermediaries, 7 CFR 769.159 specifies the priorities used to allocate loan funds to intermediaries. In 7 USC 1936c(e), it specifies that intermediaries with not less than 10 years' experience serving socially disadvantaged farmers and ranchers, and that are located in states that have adopted a statute consisting of an enactment or adoption of the Uniform Partition of Heirs Property Act will receive first priority. After funding has been provided to those listed in 7 USC 1936c(e), FSA will then give priority to intermediaries that have applications from ultimate recipients already in process, or intermediaries that have a

history of fully relending previous HPRP funds. Multiple applications in the same priority tier will be processed based on the date received. Finally, any remaining eligible applications will be funded based on the date received.

HPRP Loan Agreement

An HPRP loan agreement must be executed by the intermediary and FSA at loan closing for each loan. The HPRP loan agreement will specify the terms of each loan (such as the loan amount, interest rate, term and repayment schedule, disbursement procedure, provisions for late charges, provisions regarding default, and insurance requirements). As a condition of receiving HPRP funds, the intermediary agrees to seek prior written approval from FSA before making changes to its articles of incorporation, charter, by laws, draft loan documents, security policy, or relending policies when any of these are related to HPRP loans. In addition, 7 CFR 769.165 states that the intermediary must agree to maintain a separate ledger and segregated account for the HPRP revolving loan fund; comply with FSA's annual monitoring reporting requirements on HPRP activities; and pledge the HPRP revolving loan fund and any other form of security that FSA may require.

HPRP Revolving Loan Fund

Primary security for HPRP will be in the form of a first lien on the intermediary's HPRP revolving loan fund. Additional security will be required if needed to fully secure the loan.

The intermediary will be required to establish a revolving loan fund that must be maintained for as long as an HPRP loan to an intermediary remains unpaid. All HPRP loan funds received by an intermediary must be deposited into an HPRP revolving loan

fund account to be used by the intermediary to provide direct loans to eligible ultimate recipients. Such accounts must be fully covered by Federal deposit insurance or fully collateralized with other securities in accordance with normal banking practices and all applicable State laws. Maintenance requirements of the revolving loan fund are specified in 7 CFR 769.164.

Post Award Requirements

FSA determined that annual monitoring reports would be both necessary for the success of HPRP and to ensure intermediaries' compliance with HPRP rules; therefore, FSA will require the intermediary to provide reports that include a description of the use of loan funds, information regarding the acreage, the number of heirs both before and after loan was made, audit findings, disbursement transactions, and any other information required by FSA.

Transfer and Assumption of HPRP Loans

As specified in 7 CFR 769.166, FSA will allow for transfer and assumptions of the HPRP loans if an intermediary must discontinue participation in HPRP.

Background of Improving Farm Loan Program Delivery and Streamlining

Oversight Activities

The Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1921 – 2009cc-18) authorizes FSA's Direct and Guaranteed Farm Loan Programs. FSA makes and services a variety of direct and guaranteed loans to farmers who are unable to obtain private commercial credit with reasonable rates and terms. FSA also provides direct loan borrowers with credit counseling and oversight. FSA loan applicants are often Beginning Farmers (BF) and Socially Disadvantaged (SDA) farmers who do not qualify for

conventional loans because of insufficient net worth, or established farmers who have suffered financial setbacks due to natural disasters or economic downturns.

This rule streamlines and consolidates to improve program delivery, to improve the oversight of direct loan servicing activities, and to eliminate requirements that are costly, repetitive, or do not further the program's goals. These changes will reduce burden on farmers, ranchers, and FSA staff.

The loan making and servicing revisions included in this rule are intended to improve delivery of farm loans. More specifically, as explained in further detail below, this rule:

- Corrects the spelling of “down payment” throughout the regulations;
- Revises the family farm definition to ensure applicants are the operator of a farm;
- Adds a definition of non-monetary default.
- Authorizes the use of appraisals completed within the previous 18 months for loan making and servicing actions;
- Provides additional guidance on the use of supervised bank accounts;
- Modifies operating plan development rules to authorize realistic county or state average yields to be used in place of actual producer yields during disaster years;
- Modifies the requirement to verify applicant debts for loan program participants;
- Clarifies that entity members holding at least 50 percent interest in the entity must be the owners and operators of the farm;

- Clarifies that costs associated with compliance of the Occupational Safety and Health Act of 1970 are an eligible use of guaranteed Operating Loan (OL) funds;
- Corrects an existing cross reference to crop insurance regulations;
- Revises direct loan application review and response timeframes;
- Exempts non-essential assets valued up to \$15,000 from being pledged as security for direct loan applicants;
- Authorizes fixtures as an authorized use of funds for direct operating loans;
- Authorizes an annual OL and Emergency Loan (EM) to carry a repayment term of 24 months;
- Authorizes a waiver of previously required borrower training requirements;
- Eliminates obsolete supervisory language and replaces it with language to better reflect FSA's current resources and mission;
- Ties the assessment to the frequency of required classification or graduation reviews;
- Eliminates year end analysis requirement for borrowers who received a direct loan, chattel subordination, or primary loan servicing action during the previous year;
- Changes the limited resource review requirement from annually to every 2 years;

- Adds sole member LLCs to the protections for borrowers entering the armed forces;
- Prohibits large-scale surface leases for non-agricultural purposes;
- Eliminates appraisal requirement on release of property without monetary consideration where FSA is well secured;
- Raises the estimated value for the appraisal requirement from \$25,000 to \$50,000;
- Increases the processing time for Primary Loan Servicing applications from 60 days to 90 days when a real estate appraisal is required; and
- Allows a borrower to accept a non-writedown offer and waive the need for a writedown offer when an appraisal would be required for the writedown offer.

Spelling of “Down Payment”

Currently, the regulations use the term “downpayment” as one word in twelve locations. As “downpayment” is a misspelling, this rule corrects the term to “down payment” as two separate words.

Family Farm Definition

Eligibility criteria for most direct and guaranteed farm loans requires an applicant to operate a “family farm.” The definition of a “family farm” is provided in 7 CFR 761.2(b).

It is commonly understood that the borrower themselves will provide substantial labor and make the majority of daily operating decisions and all strategic business decisions associated with the operation. However, the existing definition allows

operational inputs to be provided by the borrower and relatives, with no delineation as to how much management or labor is specifically expected of the borrower or the relative. This can result in an individual obtaining a farm loan with the intention of having a relative operate the farm for all practical purposes, essentially relegating the borrower to a minor role.

This rule amends the definition of “family farm” to close the unintended loophole that would create a scenario where the borrower has only a minor role in actually operating the farm, while maintaining the ability of a borrower to rely on management and labor input from relatives. Specifically, this rule amends the definition of “family farm” to require the borrower to be the one to provide the required substantial labor, and make the majority of daily operating decisions, and all strategic management decisions; while the relatives can provide input and assistance with both the labor to operate the farm and daily operating and strategic management decisions.

Addition of Non-Monetary Default Definition

FSA is adding the definition of “non-monetary default” to the general program definitions in 7 CFR 761.2. Previously, certain FSA documents contained this definition, and FSA is incorporating it into its regulations. No change is being made to the definition.

Use of Appraisals Issued within 18 Months

Appraisals of proposed real estate loan security are necessary to ensure farm loans are adequately collateralized. Currently in 7 CFR 761.7, an appraisal can be relied upon to determine security values if it was completed within the previous 12 months and if market values have remained stable since the original appraisal was completed.

Many applicants apply for additional loan making or servicing benefits at the end of a crop year, typically within 12 to 18 months of when initial loan benefits were obtained. If subsequent loan making or servicing benefits require appraised values of real estate collateral, an updated appraisal typically needs to be obtained as the original appraisal was completed more than 12 months prior. This results in significant additional time and cost to obtain an updated appraisal that often results in only minor changes in value.

This rule amends 7 CFR 761.7(c) and 766.202(a) to allow the use of real estate appraisals completed within the previous 18 months if FSA determines market values have remained stable.

Supervised Bank Account Guidance

Supervised bank accounts are accounts with financial institutions established through a deposit agreement entered into between the borrower, FSA, and the financial institution. To ensure direct loan funds are used for authorized purposes, 7 CFR 761.51(a) describes the various uses of a supervised bank account.

This rule amends 7 CFR 761.51(a) to memorialize the current practice in the regulation and specify additional common uses of supervised bank accounts that are currently described in administrative handbook guidance including construction and site development work, and sale of basic security.

Substituting Realistic County or State Yields to Develop Operating Plans

Projected yields used to develop farm operating plans for direct loans are typically calculated using the applicant or borrower's own production history for the previous 3 years. Currently, if an applicant for a direct loan has historical yields in the previous 3

years that are substantially affected by a qualifying declared disaster, 7 CFR 761.104(c)(4)(i) allows the applicant or borrower to choose to use county or state average yields in place of their actual disaster year yields when developing a farm operating plan.

While the existing rule often ensures reasonable and accurate yield projections, substituting disaster year yields with county or state average yields does not always result in the development of realistic operating plans. While it is particularly rare, it can occur when county or state average yields are higher than an applicant's yields in non-disaster years.

Section 331E(a) of the CONACT (7 USC 1981e(a)), requires farm operating plans be based on accurate projections. To ensure accurate plans are developed, this rule amends 7 CFR 761.104(c)(4)(i) to allow for the use of county or state yields only when those yields are realistic and reasonable compared to an applicant's actual non-disaster year yields.

If the agency approval official determines the county or state yields are not realistic and reasonable compared to an applicant's actual non-disaster year yields, the applicant or borrower may no longer exercise the provision in 7 CFR 761.104(c)(4)(i), but may continue to exercise the provision in 7 CFR 761.104(c)(4)(ii), authorizing the exclusion of the production year with the lowest actual or county average yield if their yields are affected by disasters in at least 2 of the 3 years.

This amendment will help ensure the success of an applicant or borrower by ensuring the development of farm operating plans based only on realistic and reasonable yield projections.

Loan Debt Verification

Guarantee loan applications and direct loan debt settlement applications require verification of all applicant debts over \$1,000. However, direct loan making applications require verification of all applicant debts over \$5,000. The direct loan making program increased this threshold from \$1,000 to \$5,000 administratively in November 2020 as regulations governing the direct loan program do not identify the dollar threshold for requiring debt verifications.

To ensure consistency among loan programs, this rule amends 7 CFR 761.405(a)(6), 762.110(d) and 762.145(b) to allow FSA to administratively establish the minimum threshold for debt verification on guaranteed loans. FSA is setting the threshold at \$5,000 initially to be consistent with the direct loan making program. This change will improve program delivery by reducing the time required for an applicant to complete an application and reducing the time required by FSA to analyze an application. Program integrity will not be compromised as all significant debts will continue to be verified, and credit reports will continue to be obtained to verify debts of all sizes from lenders reporting to credit bureaus.

Entity Owner and Operator Requirements

The entity owner-operator rules for direct and guaranteed farm ownership loans are stated similarly and both have the same minor inconsistency. The rules initially state that when entity members are not related, the members holding a majority interest must own and operate the farm. However, the rule subsequently states that members of the farm entity (real estate) must own at least 50 percent of the family farm (operating entity). As 50 percent ownership does not constitute a majority, this minor inconsistency

can cause confusion for applicants who are unsure if they can own the farm themselves if they only own 50 percent of the operating entity.

This rule amends 7 CFR 762.120(i)(2) and (j)(2), 764. 101(k), and 764.152(c) to ensure the rules consistently state that members owning at least 50 percent of the entity must own the farm.

Guaranteed Operating Loan Use of Funds

Direct and guaranteed operating loan funds may be used to cover the costs associated with compliance with the standards established by the Occupational Safety and Health Act of 1970 (OSHA). Under 7 CFR 764.251(a)(8), direct operating loan funds can be used for expenses involving OSHA compliance if the applicant demonstrates that compliance or non-compliance with the standards will cause substantial economic injury.

This rule amends the guarantee operating loan use of funds regulation in 7 CFR 762.121(a)(1)(ix) to match the regulation covering direct operating loan use of funds in 7 CFR 764.251(a)(8). Specifically, this rule adds the term “or non-compliance” to 7 CFR 764.121(a)(1)(ix) to clarify that the applicant may receive assistance if they demonstrate that the cost of compliance or resolving “non-compliance” with standards will cause substantial economic injury. This provides applicants additional flexibility to demonstrate the need for this assistance and encourages applicants to bring their operations into compliance with OSHA standards.

Reference to Crop Insurance

This rule amends 7 CFR 762.123(2)(i) to correct a cross reference to crop insurance requirements. The correct reference is 7 CFR 400.651.

Timeframes for Direct Loan Application Processing

Per 7 CFR 764.52(a), applicants for direct loan program benefits currently wait up to 10 calendar days from the date of application before they are notified whether their application for loan benefits is complete, or what additional information is required in order to complete the application. If additional information is required of the applicant, FSA provides written notice to the applicants that they must submit the information within 20 calendar days (see 7 CFR 764.52(a)). Should outstanding items still remain at the end of that 20-day period, 7 CFR 764.52(b) requires that FSA provides the applicant with an additional notification letter allowing for 10 additional days before the application would be withdrawn due to a lack of information.

To improve customer service and reduce application processing times, this rule amends 7 CFR 764.52 (a) and (b) to reduce application processing time from within 10 days to 7 days. FSA will review an initial application for completeness, and provide an applicant two 15-day opportunities to provide outstanding application items required to make an application complete.

Applicants will still be provided a total of 30 days to submit outstanding items for a complete application. However, modifying the initial incomplete letter response date from 20 to 15 days, and expanding the response timeframe of the second incomplete letter from 10 to 15 days, will result in improved processing timeframes as applicants will often make concerted efforts to ensure an application is completed within the timeframes provided in the initial response letter.

Non-Essential Asset Security Requirements

To reduce FSA credit needs or other outstanding obligations, direct loan applicants are required to liquidate or pledge non-essential assets with an aggregate value of over \$5,000. An applicant may choose to not liquidate assets, and instead pledge the assets as security for the loan. The intent behind this rule is that FSA is assisting only those customers who truly require assistance.

This rule amends 7 CFR 764.103(e) to increase the allowable aggregate value of non-essential assets to be maintained by the borrower up to \$15,000 without having to pledge those assets as security. This adjustment is necessary to account for inflationary increases value of goods and allow a reasonable amount of non-essential assets to be retained.

Direct Operating Loan Use of Funds

Direct and guaranteed operating loan funds may be used to cover the purchase of equipment, which sometimes can be construed as minor fixtures to real property, including but not limited to, irrigation equipment or small wind machines. While it is commonly understood that mechanical equipment that are fixtures are eligible for both direct and guaranteed operating loan purposes, currently only the guaranteed operating loan rules specifically state fixtures are an authorized use of funds.

This rule amends the direct operating loan use of funds regulation in 7 CFR 764.251(a)(2) to memorialize the current practice in the regulation by matching the rule covering guaranteed operating loan use of funds in 7 CFR 762.121(a). Specifically, this rule adds the term “or fixtures” to 7 CFR 764.251(a)(2) to specify that farm equipment or fixtures are an authorized use of direct operating loan funds.

Annual OL and EM Repayment Terms

Working capital requirements for farms have become increasingly complex with the advent of new commodities, production techniques, commodity storage technologies, and marketing systems. This has resulted in earlier preparation and plantings and extended marketing periods for a single crop. Currently, the repayment term of an annual direct OL and annual EM loan may not exceed 18 months, unless there are specific unusual circumstances and security other than the commodity available to fully secure the loan. As a result, loans to producers who would typically require an annual operating loan term of up to 24 months are limited to a term of just 18 months. This will sometimes result in the producer being unable to repay a loan at maturity, thereby requiring a restructure of their account to provide additional time to repay the loan. This is an unnecessary administrative burden for both the borrower and Agency.

This rule amends 7 CFR 764.254(b)(1) and 764.354(b)(3) to allow the standard repayment term of an annual direct OL and annual EM to be up to 24 months. This will ensure producers whose industry includes unique commodities, technologies or marketing systems are not disenfranchised from farm loan program benefits.

Borrower Training Waivers

Currently, unless previously completed, an applicant must agree to financial and production training at the time of application. As specified in 7 CFR 764.453, FSA may choose to waive training requirements should the applicant's history suggest they have undergone similar training, if training would not be beneficial to the applicant, or if training is not available. Borrowers are required to complete assigned financial or production training within 2 years from the date of loan closing, with the possibility of a

1-year extension in certain circumstances. However, a borrower cannot have previously required training requirements waived.

There are numerous circumstances that might justify a waiver of previously required borrower training. For example, a borrower may have voluntarily completed training from a non-approved vendor that results in demonstrable increased knowledge of and proficiency in financial or production concepts. However, even if it is clear the borrower will not benefit from an approved vendor's training, there is no mechanism for FSA to provide a waiver of the previously required training.

This rule amends 7 CFR 764.453 by adding a new provision to allow FSA to waive previously required borrower training, if warranted, by reviewing evidence already obtained from an applicant that demonstrates the applicant now possesses experience and training necessary for a successful and efficient operation.

Progression Lending

FSA is revising outdated provisions in the regulations. Historically, FSA and its predecessor Agency, the Farmers Home Administration, has used the term “supervised credit” to describe its role as serving as a temporary source of credit for farmers and ranchers unable to secure commercial credit, often beginning or underserved farmers, or those who suffered financial setbacks due to adverse weather or economic conditions. . FSA is seeking to modify this long-term description of its role with more customer friendly language that is reflective of our mission to serve as a temporary source of credit and assist the borrower in graduating to commercial credit.

Therefore, FSA is replacing references to “supervision” throughout 7 CFR part 761 with the term “progression lending” or similar pro-graduation terminology.

Assessment

Regulations at 761.103 provide FSA, in collaboration with the loan applicant, will assess the farming operation to determine the applicant's financial condition organizational structure, and management strengths and weaknesses; identify and prioritize training needs; and develop a plan to assist the applicant in transitioning to commercial credit. As provided in 7 CFR 761.103(e), FSA reviews the assessment annually to determine the borrower's progress. Additionally, FSA classifies accounts as required by the Consolidated Farm and Rural Development Act and reviews accounts classified as "commercial" or "standard" for graduation to commercial credit. The regulation in 7 CFR 761.103(e) is being revised to clarify that the assessment review will be completed simultaneously with the classification or graduation review every other year to improve the efficiency of interactions between FSA and borrowers by minimizing the number of meetings required to fulfill loan servicing requirements.

Year-End Analyses

The regulations in 7 CFR 761.105 require FSA to conduct a year-end analysis (YEAs) if the borrower has received any direct loan (except for streamlined Conservation loans), chattel subordination, or primary loan servicing action within the last year. In order to better manage the limited time resources of FSA staff, FSA is revising 7 CFR 761.105 to eliminate the requirement to complete YEAs on chattel subordinations that are current or paid in full and Primary Loan Servicing actions successfully completed in the last year. FSA would continue to complete YEAs on financially distressed or delinquent borrowers and on borrowers with deferred loan payments. YEAs would also be required for existing borrowers receiving new direct loans or new subordinations.

Limited Resource Reviews

The regulations in 7 CFR 761.51 require FSA to conduct a review of each borrower receiving limited resource interest rates each year. Due to low interest rates, limited resource interest rates have been higher than the regular program interest rates, and have significantly reduced the demand for limited resource rates over the last decade. Also, cash flows for farming operations do not typically change significantly from year to year. Therefore, FSA is amending 7 CFR 761.51 to require a limited resource review every 2 years. This will reduce the workload for the FSA field staff when interest rates rise again. Reviewing the rates every 2 years will also tie in with the current classification and graduation review requirements and permit FSA loan officials to continue to monitor the borrower's progress, while reducing the number of appeals.

Borrower Entering the Armed Forces

Section 332 of the CONACT states that a mobilized military reservist is an "individual;" but FSA's regulations do not address whether FSA considers sole member operating entities to be individuals for the purposes of section 332 of the CONACT. FSA is amending the regulations by adding a new 7 CFR 765.161 to specify that a sole member operating entity falls under the protections provided by section 332 of the CONACT.

Surface Leases

The regulations in 7 CFR 765.252 address surface and mineral leases, but do not specifically address large scale surface leases for non-agricultural purposes, such as solar farms, that take many acres out of agriculture production. FSA is experiencing increased demand for these types of leases from borrowers, which remove large tracts of land from

agricultural production. This can significantly impact the market value of FSA loan security, including the value of non-farm tracts and can potentially place the borrower in non-monetary default for not farming the loan security. FSA is amending 7 CFR 765.252 to prohibit leases for purposes such as developing a solar farm. Leases for nonfarm purposes which do not require acreage to be taken out of agricultural production or on non-productive land may be considered.

Release Without Compensation

The regulations in 7 CFR 765.351 allow FSA to release collateral without monetary consideration in cases where the agency is well-secured, and the borrower has not had a disaster set-aside or primary loan servicing in the previous 3 years. The regulation states that the value of retained and released security will be evaluated. FSA is amending 7 CFR 765.351 to eliminate the appraisal requirement on the property being released. This will reduce workload on field offices, improve customer service by reducing the time it takes to process releases, and result in cost savings to the Government since FSA pays for these appraisals.

Appraisal Waiver

The regulations in 7 CFR 765.353 permits FSA to waive an appraisal requirement when the estimated value is less than \$25,000. This waiver has been in place since 2004. With inflation, the value of the \$25,000 is now \$34,000. In addition, there is a considerable amount of comparable sale information available to allow loan officials to obtain an accurate estimate of property value. FSA is amending 7 CFR 765.353 to increase the limit to \$50,000. The amendment will improve customer service by

reducing the time it takes to process releases. More importantly, it will provide significant cost savings to the Government since FSA pays for these appraisals.

PLS Notification Timeframe

CONACT section 353(c)(4) provides FSA with 90 days to process primary loan servicing (PLS) and to notify borrower of its decision. Primary loan servicing includes debt consolidation, restructuring, reamortization, deferral, and debt writedown. The regulations in 7 CFR 766.106 reduced the PLS processing timeframe to 60 days. Increasing the timeframe to 90 days for cases where a real estate appraisal is required (typically for debt writedown or conservation contract) will permit the local FSA agency official an additional 30 days to complete PLS processing. Real estate appraisals often take weeks to obtain, which causes delay to the final PLS decision. Therefore, FSA is amending 7 CFR 766.106 to increase this timeframe to 90 days when a real estate appraisal is required.

Writedown and Non-Writedown Offers

The regulations in 7 CFR 766.111 require that a borrower be offered both a writedown and non-writedown restructuring offer when both result in a feasible plan, even though the writedown offer can take longer to develop and requires additional appraisals. Often, the borrower does not request the writedown consideration since it results in debt forgiveness and can negatively impact eligibility for future loan assistance. Because FSA is required to complete the appraisals to determine a writedown amount, in many cases unnecessary time and expense is incurred for this process to be completed. As a result, FSA is amending 7 CFR 766.111 to allow the borrower to waive the writedown offer when the non-writedown offer results in a feasible plan. The change

will result in a significant savings of FSA time and cost of obtaining appraisals in instances where the borrower does not request a writedown. FSA will discuss the alternatives with the borrower and will consider a writedown if desired. This modification will allow borrowers to make an informed decision regarding a writedown and limitations established by Section 355 of the CONACT which only allows a borrower one writedown, not to exceed \$300,000.

Notice, Comment, and Effective DateThe Administrative Procedure Act (5 U.S.C. 553) provides that the notice and comment and 30-day delay in the effective date of the provisions do not apply when the rule involves a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts (5 U.S.C. 553(a)(2)). This rule involves loans and therefore falls within that exemption. In addition, because this rule is exempt from the requirements in 5 U.S.C. 553, is it also exempt from the regulatory analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The requirements for the regulatory flexibility analysis in 5 U.S.C. 603 and 604 are specifically tied to the agency being required to issue a proposed rule by section 553 or any other law, further, the definition of rule in 5 U.S.C. 601 is tied to the publication of a proposed rule.

This rule is not a major rule for purposes of the Congressional Review Act; therefore, FSA is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review. Consequently, this rule is effective upon publication in the Federal Register.

Executive Orders 12866 and 13563

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13573 for the analysis of costs and benefits to loans apply to rules that are determined to be significant.

The Office of Management and Budget (OMB) designated this rule as significant under Executive Order 12866, and therefore, OMB has reviewed this rule. The costs and benefits of this rule are summarized below. The full cost benefit analysis is available on regulations.gov.

Cost Benefit Analysis Summary

HPRP assists in the resolution of heirs’ property issues through intermediary lenders (experienced non-governmental non-profit organizations). HPRP assists intermediary lenders in the establishment of revolving funds for the purpose of financing owners of heirs’ property seeking to resolve land titles.

The benefits are derived from clearly identifying the titles or deeds¹ to agricultural land by assisting with legal services and providing funding for heirs to buy

¹“In real property law: Title is the means whereby the owner of lands has the just possession of his property. Co. Litt 345; 2 Bl. Comm. 195. Title is the mean whereby a

out other heirs’ interest in jointly held land, resulting in improved participants’ financial standing. Landowners with a clear title will have greater access to credit and will be able to more easily participate in Federal and State farm and conservation programs, leading to increased land values. The net benefit of HPRP is estimated using a present value analysis of the beneficial cash flows for an average program participant. This estimate is then summed over the total number of heirs’ properties traditionally used for agriculture in Uniform Partition of Heirs Property Act states.

Over the course of a 20-year period, when all the estimated impacts of HPRP are summed up, there are a little over \$1.109 billion in benefits compared to total costs of \$869 million for a total net benefit of \$239.7 million.

Economic Benefit and Cost of HPRP to USDA (in millions)	
Total Benefits	\$1,108.7
Total Costs.....	(869.0)
Net Benefit of HPRP	239.7

Heirs’ property values are expected to be restored to fair market value resulting in a benefit of \$365 million that includes a \$209 million effect to access to direct government payments that accrue primarily to socially disadvantaged landowners (see table below). The increase in credit made available from the ability to collateralize the market value of heirs’ property is estimated to lead to incremental cash flows in farm income worth a little over \$122 million. In addition, clear title allows increased

person’s right to property is established. Code Ga. 1S82.” (Black’s Law Dictionary). Proof of title to land is usually shown by a deed filed in real estate records in the county where the land is located. “Clear title” means that there is no competing claim of ownership or interest in the property—that is, no other person or entity can claim a superior right of ownership or financial interest in the property.

opportunity for enrollment in farm programs, which has a direct value of almost \$299 million. The legal costs and interest charges on the loans used to pay them reduce this amount by almost \$295 million. Additionally, untitled co-tenants, who are typically family members of the heir gaining title, gain \$171 million when they are bought out. However, this is also a cost to the titled heir and so has a neutral effect on the participants' costs and benefits. Therefore, net expected benefits to HPRP participants are estimated at \$654 million.

Net benefits of nearly \$133 million also accrue to the intermediary lenders. This results from \$158 million in returns to lending minus \$25 million in servicing and marketing costs.

Costs to the Federal Government are estimated to be \$547 million, but \$508 million are direct Farm Program payments and their impact on the sales value of properties that are transfers from a society-wide perspective (included in the table below as both a benefit and a cost of HPRP, so they become a net cost of zero). Actual program costs to the Federal Government are estimated to be only \$39 million over 20 years. This includes the 20 years of appropriations and administrative costs of HPRP. When all costs are considered, the net benefit of HPRP is estimated to be \$240 million.

Economic Benefit and Cost of HPRP Life of Program (20 Years) By Stakeholder (\$ millions)	
HPRP Participants	
<i>Benefits</i>	
Restoration of Sales Value (without USDA payments).....	\$147.3
Net Increase in Sales Value of Properties due to USDA payments.....	209.1
Increase in Net Farm Income (without USDA payments).....	122.4
Benefit to Untitled Co-tenants from Buy-outs	170.9
Direct Government Payments	298.6
<i>Total Benefits</i>	948.3

<i>Costs</i>	
Legal Services	(117.9)
Purchasing Interests of Co-tenants.....	(170.9)
Loan Application Paperwork	(5.7)
<i>Total Costs</i>	(294.5)
<i>Net Expected Benefit</i>	653.8
Intermediary Lenders	
Benefit – Returns to Loans	157.6
Cost – Non-interest Expense.....	(12.0)
Cost – Communication Expense	(12.6)
<i>Net Expected Benefit</i>	133.0
FSA	
Cost – Budget and Subsidy Costs	(41.4)
Cost – Administrative Costs.....	(0.8)
Benefit – Offset Returns to Loans.....	\$2.8
Total – Administrative and Budget Costs	(39.4)
Transfer – Direct USDA Payments	(298.6)
Transfer – Impact to Sales Value due to USDA payments.....	(209.1)
<i>Net Expected Cost</i>	(547.1)
Net Benefit of HPRP	239.7

Separate from heirs’ property considerations, the final rule also streamlines and consolidates various loan-making processes, thereby reducing unnecessary burdens on customers and FSA personnel. These changes are minor and are not expected to affect budget considerations associated with farm loan program lending authorities. As a result, no further analysis of these changes is provided in the cost benefit analysis for this rule.

Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and the FSA regulations for compliance with NEPA (7 CFR part 799). This rule implements the new HPRP, as authorized by the 2018 Farm Bill.

The discretionary provisions needed to implement HPRP, specifically those relating to FSA loans to the intermediaries include the loan making and servicing rules. One discretionary provision that will not mirror current FSA direct and guaranteed loan programs rules is that implementation will be through an intermediary that will relend the HPRP funds. HPRP funds may not be used for new development or change in land use. All discretionary aspects of these loan actions are covered by the Categorical Exclusions in 7 CFR 799.31(b).

FSA will continue to require site-specific reviews for each loan application, as defined in §§ 799.31, 799.32, and 799.33. As such, FSA will not prepare an environmental assessment or environmental impact statement for this regulatory action.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. The rule does not have retroactive effect. The administrative appeal provisions of 7 CFR parts 11 and 780 are to be exhausted before any judicial action may be brought regarding the provisions of this rule.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a Government-to-Government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy

statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

The USDA's Office of Tribal Relations (OTR) has assessed the impact of this rule on Indian Tribes and determined that this rule does have Tribal implications. OTR has determined that Tribal consultation under Executive Order 13175 is not required at this time and two different opportunities were afforded to consult on this topic. If a tribe requests consultation, FSA will work with OTR to ensure meaningful consultation is provided where changes, additions, and modifications identified in this rule are not expressly mandated by law. OTR strongly suggests that the FSA Outreach plan be implemented as soon as possible for our tribal stakeholders.

Tribal consultation for this rule was included in the 2018 Farm Bill consultation held on May 1, 2019, at the National Museum of the American Indian, in Washington DC. The portion of the Tribal consultation relative to this rule was conducted by Bill Northey, as the USDA Under Secretary for the Farm Production and Conservation mission area at that time, as part of the Title I session. There were no specific comments from Tribes on this rule during Tribal consultation.

There was a second Tribal Consultation on the Implementation of the 2018 Farm Bill held at the National Congress for the American Indian conference on June 26, 2019, in Sparks, Nevada. This rule was not raised as an issue by the Tribal leaders. Tribes can request consultation at any time. FSA will work with OTR to ensure meaningful consultation is provided where changes, additions, and modifications identified in this rule are not expressly mandated by law.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions on State, local, or Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternative methods and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 for State, local, or Tribal governments, or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

FSA expects to have fewer than 10 intermediary lenders eligible to participate in HPRP annually. There are limited entities that will qualify to be intermediary lenders for HPRP. Current appropriations will not fund a significant number of intermediary lenders. Therefore, HPRP would not require OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The annual monitoring reports and the agreements approved by FSA that were discussed above will be provided by the intermediary lenders. We will provide the USDA form for the voluntary collection of race, ethnicity, and gender from the ultimate recipients (form AD-2106, Form to Assist in Assessment of USDA Compliance with Civil Rights Laws). As noted above, the

intermediaries will request the information and maintain it. The public burden for the use of the form is covered under OMB control number 0503-0019.

The program delivery and oversight changes will not impact the burden estimate for the information collection for FSA's farm loans.

Additionally, FSA will not be collecting any information from the ultimate recipients who receive funds pursuant to Heirs' Property Relending. There are application and reporting requirements on HPRP activities from intermediaries to FSA. The intermediaries must allow FSA to review the ultimate recipients' records; the intermediary's records are expected to be a part of customary and usual business practices for processing loans. Therefore, the burden associated with recordkeeping is excluded. FSA will lend funds to an eligible entity, which will then relend directly to an individual or an entity. The intermediary lender will be an entity that meets certain criteria to be established by FSA. Examples of such criteria include requirements that the intermediary lender:

- (1) Is certified as a community development financial institution under 12 CFR 1805.201 (or successor regulations) to operate as a lender; and
- (2) Has the requisite experience and capability to make and service agricultural and commercial loans that are similar in nature to HPRP.

Federal Assistance Programs

The title and number of each Federal Assistance Program found in the Catalog of Federal Domestic Assistance, to which this rule applies, are:

- 10.099 Conservation Loans;
- 10.404 Emergency Loans;

- 10.406 Farm Operating Loans;
- 10.407 Farm Ownership Loans; and
- 10.128 Heirs' Property Relending Program.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the

information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or email: OAC@usda.gov.

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List of Subjects

7 CFR Part 761

Accounting, Loan Programs-Agriculture, Rural areas.

7 CFR Part 762

Agriculture, Banks, Banking, Credit, Loan Programs – Agriculture.

7 CFR Part 764

Agriculture, Credit, Loan programs – Agriculture.

7 CFR Part 765

Agriculture, Agricultural commodities, Credit, Livestock, Loan Programs – Agriculture.

7 CFR Part 766

Agriculture, Agricultural commodities, Credit, Livestock, Loan Programs – Agriculture.

7 CFR Part 769

Loan program-Agriculture, Land.

For the reasons discussed above, FSA amends 7 CFR chapter VII as follows:

**PART 761 – FARM LOAN PROGRAMS; GENERAL PROGRAM
ADMINISTRATION**

1. The authority citation for part 761 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart A – General Provisions

2. Amend § 761.2 by:

a. In paragraph (a), add the acronym HPRP in alphabetical order;

b. In paragraph (b):

i. Remove the definition of “Downpayment loan”;

ii. Add, in alphabetical order, the definition of “Down payment loan”;

iii. In the definition of “Family Farm”, in subparagraphs (2)(i)(A) and (ii)(A), remove the words “borrower and” and add “borrower, with input and assistance allowed from” in its place; and

iv. Add, in alphabetical order, the definitions of “Heirs’ Property”; “HPRP Loan Agreement”, “HPRP Loan Funds”; “HPRP Revolving Loan Fund”; “Intermediary”; “Non-Monetary Default”; “Revolved Funds”; “Succession Plan”; “Ultimate Recipient”; and “Undivided Ownership Interest” in alphabetical order.

The additions read as follows:

§ 761.2 Abbreviations and definitions.

* * * * *

(a) * * *

* * * * *

HPRP The Heirs' Property Relending Program.

* * * * *

(b) * * *

* * * * *

Down payment loan is a type of FO loan made to beginning farmers and socially disadvantaged farmers to finance a portion of a real estate purchase under part 764, subpart E of this chapter.

* * * * *

Heirs' Property means a farm that is jointly held by multiple heirs as tenants in common as a result of inheriting title from a relative.

HPRP Loan Agreement means the signed agreement between FSA and the intermediary that specifies the terms and conditions of the HPRP loan.

HPRP Loan Funds means cash proceeds of a loan obtained through HPRP, including the portion of an HPRP revolving loan fund directly provided by the HPRP loan as well as the proceeds advanced to an ultimate recipient. HPRP loan funds are Federal funds.

HPRP Revolving Loan Fund means a group of assets, obtained through or related to an HPRP loan and recorded by the intermediary in a bookkeeping account or set of

accounts and accounted for, along with related liabilities, revenues, and expenses, as an entity or enterprise separate from the intermediary's other assets and financial activities.

Intermediary means the entity requesting or receiving HPRP loan funds for establishing a revolving loan fund and relending to ultimate recipients.

Non-Monetary Default means a situation where a borrower is not in compliance with the covenants or requirements of the loan documents, program requirements, or loan.

Revolved Funds means the cash portion of an HPRP revolving loan fund that is not composed of HPRP loan funds, including funds that are repayments of HPRP loans and including fees and interest collected on such loans.

Succession Plan means a general plan to address the continuation of the farm, which may include specific intra-family succession agreements or strategies to address business asset transfer planning to create opportunities for farmers and ranchers.

Ultimate Recipient means an entity or individual that receives a loan from an intermediaries' HPRP revolving loan fund.

Undivided Ownership Interest means a common interest in the whole parcel of land that is owned by two or more people. Undivided ownership interest does not include those who own a specific piece of a parcel of land; rather they own a percentage interest in a parcel of land as a whole.

§ 761.7 [Amended]

3. Amend § 761.7 paragraphs (c)(1) and (c)(2) by removing the number “12” and add the number “18” in its place.

§ 761.8 [Amended]

4. Amend § 761.8(a)(1) by removing the word “Downpayment” and adding the words “Down payment” in its place.

Subpart B—Supervised Bank Accounts

5. Revise paragraph (a)(1) to read as follows:

§ 761.51 Establishing a supervised bank account.

(a) * * *

(1) Assure correct use of funds are planned and released for capital purchases, construction projects, site development work, debt refinancing, or proceeds from the sale of basic security, and perfection of the Agency’s security interest in assets purchased or refinanced when electronic funds transfer or treasury check processes are not practicable;

* * * * *

Subpart C – Progression Lending

6. Revise the subpart C heading to read as set forth above.

7. Amend § 761.103 as follows:

a. In paragraph (a)(3), remove the words “plan of supervision” and add the words “progressive lending plan” in its place;

b. In paragraphs (b)(8) and (c)(5), remove the word “Supervisory” and add the words “Progression lending” in its place; and

c. Revise paragraph (e).

§ 761.103 Farm assessment.

* * * * *

(e) The Agency reviews the assessment to determine a borrower's progress at least annually, combining any required classification and graduation reviews as part of the review. For streamlined CLs, the borrower must provide a current balance sheet and income tax records. Any negative trends noted between the previous years' and the current years' information must be evaluated and addressed in the assessment of the streamlined CL borrower.

* * * * *

8. Revise paragraph § 761.104(c)(4)(i) to read as follows:

§ 761.104 Developing the farm operating plan.

* * * * *

(c) * * *

(4) * * *

(i) Use county average yields, or state average yields if county average yields are not available, in place of the disaster year yields when the county or state average yields are realistic and reasonable compared to the applicant's actual non-disaster year yields, as determined by the agency approval official; or

* * * * *

9. Revise § 761.105 paragraphs (a)(1) and (4) to read as follows:

§ 761.105 [Amended] Year-end analysis.

(a) * * *

(1) Is being considered for a new direct loan or subordination;

* * * * *

(4) Is receiving a limited resource interest rate on any loan, in which case the review will be completed at least every 2 years.

* * * * *

Subpart D—Allocation of Farm Loan Programs Funds to State Offices

§ 761.211 [Amended]

10. Amend paragraph (a) by removing the word “Downpayment” and adding the words “Down payment” in its place.

Subpart F—Farm Loan Programs Debt Settlement

§ 761.405 [Amended]

11. Amend § 761.405(a)(6) by removing the words “greater than \$1,000” and adding the words “exceeding an amount determined by the Agency” in its place.

PART 762 – GUARANTEED FARM LOANS

12. The authority citation for part 762 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

§ 762.110 [Amended]

13. Amend § 762.110(d)(2) by removing “over \$1,000” and adding “exceeding an amount determined by the Agency” in its place.

§ 762.120 [Amended]

14. Amend § 762.120 as follows:

a. In paragraph (i)(2)(iii) by removing the words “a majority interest must” and adding “at least 50 percent interest must” in their place; and

b. In paragraph (j)(2)(iii) by removing the words “a majority interest must operate the family farm and the entity members holding a majority interest” and adding “at least 50 percent interest must operate the family farm and the entity members holding at least 50 percent” in their place.

§ 762.121 [Amended]

15. Amend § 762.121 as follows:

a. In paragraph (a)(1)(ix), add the words “or non-compliance” after the word “compliance” in the second sentence; and

b. In paragraph (b)(1), remove the word “downpayment” and add the words “down payment” in its place.

§ 762.123 [Amended]

16. Amend § 762.123 in paragraph (a)(2)(i) by removing “part 402” and adding “§ 400.651” in its place.

§ 762.127 [Amended]

17. Amend § 762.127 in paragraphs (c)(2) and (3) by removing the number “12” and adding the number “18” in its place each time it appears.

§ 762.129 [Amended]

18. Amend § 762.129(b)(ii) by removing the word “downpayment” and adding “down payment” in its place.

§ 762.130 [Amended]

19. Amend § 762.130(d)(4)(iii)(C) by removing the word “Downpayment” and adding the words “Down Payment” in its place.

§ 762.145 [Amended]

20. Amend § 762.145(b)(2)(iv) by removing the words “of \$1000 or more” and adding the words “exceeding an amount determined by the Agency.” in their place.

PART 764 – DIRECT LOAN MAKING

21. The authority citation for part 764 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart B—Loan Application Process

§ 764.52 [Amended]

22. Amend § 764.52 as follows:

a. In paragraph (a), remove the number “10” and add “7 calendar” in its place; and remove the number “20” and add the number “15” in its place; and

b. In paragraph (b), remove the number “10” and add the number “15” in its place.

§ 764.54 [Amended]

23. Amend § 764.54(b)(2)(ii) by removing the word “downpayment” and adding the words “down payment” in its place.

Subpart C—Requirements for All Direct Program Loans

§ 764.101 [Amended]

24. Amend § 764.101(k)(2)(ii) by removing the words “a majority” and adding “at least 50 percent” in their place.

§ 764.103 [Amended]

25. Amend § 764.103(e) by removing the amount “\$5,000” and adding the amount “\$15,000” in its place.

Subpart D—Farm Ownership Loan Program

§ 764.152 [Amended]

26. Amend § 764.152(c)(3)(ii) by removing the words “a majority” and adding “at least 50 percent” in its place each time it appears.

Subpart E—Downpayment Loan Program

§ 764.201 Down payment loan uses.

27. Amend § 764.201 as follows:

a. Revise the heading to read as set forth above; and

b. in the undesignated paragraph, remove the word “Downpayment” and adding the words “Down payment” in its place.

§ 764.203 [Amended]

28. Amend § 764.203 as follows:

a. In paragraph (a)(2), remove the word “downpayment” and add the words “down payment” in its place; and

b. In paragraphs (b) and (c) by removing “Downpayment” and adding “Down payment” in its place.

§ 764.204 [Amended]

29. Amend § 764.204 in paragraphs (a) and (b)(1) by removing the word “Downpayment” and adding the words “Down payment” in its place

§ 764.205 [Amended]

30. Amend § 764.205 in the undesignated introductory paragraph by removing the word “Downpayment” and adding the words “Down payment” in its place.

Subpart G—Operating Loan Program

§ 764.251 [Amended]

31. Amend § 764.251(a)(2) by adding the words “or fixtures” after the word “equipment”.

§ 764.254 [Amended]

32. Amend § 764.254(b)(1)(i) and (ii) to remove the number “18” and add “24” in its place.

Subpart I—Emergency Loan Program

§ 764.354 [Amended]

33. Amend § 764.354(b)(3) by removing the number “18” and adding “24” in its place.

Subpart K—Borrower Training and Training Vendor Requirements

34. Amend § 764.453 to add a new paragraph (d) to read as follows.

§ 764.453 Agency waiver of training requirements.

* * * * *

(d) When considering subsequent loan actions, previous training requirements that have not yet been satisfied may be waived by the Agency should the borrower submit satisfactory evidence in accordance with § 764.453(b).

PART 765 – DIRECT LOAN SERVICING – REGULAR

35. The authority citation for part 765 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart B – Borrowers with Limited Resource Interest Rate Loans

36. Revise § 765.51, heading and paragraph (a) to read as set forth below.

§ 765.51 Required Review.

(a) At least every 2 years, a borrower with limited resource interest rate loans is required to provide the operation's financial information to the Agency; for the Agency to determine if the borrower can afford to pay a higher interest rate on the loan. The Agency will review the information provided in accordance with § 761.105 of this chapter.

Subpart D – Borrower Payments

§§ 765.156 to 765.160 [Reserved]

37. Reserve §§ 765.156 to 765.160.

38 Add § 765.161 to read as set forth below.

§ 765.161 Borrowers entering the Armed Forces.

(a) *Protections for borrowers on active duty.* The Servicemembers Civil Relief Act (Public Law 108-189) and the Ronald W. Reagan National Defense Authorization Act for Fiscal Year (FY) 2005 (Public Law 108-375) provide certain loan servicing protections for military borrowers. The Agency will apply those loan servicing protections to applicable Farm Loan borrowers.

(1) The benefits and protections of the Servicemembers Civil Relief Act apply to borrowers on active duty at all times.

(2) The requirements of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year (FY) 2005 apply during a time of a war or national emergency as declared by the President or Congress.

(b) *Eligibility for National Guard members and military reservists.* Borrowers who are National Guard members or military reservists will be eligible for the protections covered by this section, as specified in paragraphs (b)(1) and (2) of this section:

(1) National Guard members must be on duty for at least 30 consecutive calendar days.

(2) Military reservists are eligible from the date orders are received to report for active duty.

(c) *Entity eligibility.* National Guard members and military reservists on active duty and any operating entity owned solely by the active duty borrower may be considered for protections specified in paragraph (a) of this section.

§§ 765.162-765.200 [Reserved]

Subpart F – Required Use and Operation of Agency Security

39. Revise § 765.252 in paragraph (a)(4) to read as set forth below.

§ 765.252 Lease of security.

(a) * * *

* * * * *

(4) The lease does not hinder the future operation or success of the farm, or, if the borrower has ceased to operate the farm, the requirements specified in § 765.253 are met. Leases for nonfarm enterprises, such as solar farms, which take significant acreage of the operation out of agriculture production are not authorized. Non-productive land may be considered for this type of lease; and.

* * * * *

Subpart H – Partial Release of Real Estate Security

§ 765.351 [Amended]

40. Amend § 765.351 in paragraph (f)(6) by removing the words “and released”.

§ 765.353 [Amended]

41. Amend § 765.353 in paragraph (a)(2) by removing the amount “\$25,000” and adding the amount “\$50,000” in its place.

PART 766 – DIRECT LOAN SERVICING – SPECIAL

42. The authority citation for part 766 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, and 1981d(c).

Subpart C – Loan Servicing Programs

§ 766.106 [Amended]

43. In § 766.106 amend the undesignated introductory paragraph by adding the second sentence “Except that when a real estate appraisal is involved, the Agency will send the borrower notification of the Agency’s decision within 90 calendar days after receiving a complete application.”

44. Amend § 766.111 as follows:

a. In paragraph (a), introductory text, remove the word “Eligibility” and add “Borrower eligibility” in its place; and

b. Revise paragraph (b).

The revision reads as set forth below.

§ 766.111 Writedown.

(a) * * *

* * * * *

(b) *Conditions.* The conditions required for approval of writedown are:

(1) Rescheduling, consolidation, reamortization, deferral or some combination of these options on all of the borrower's loans would not result in a feasible plan with a 110 percent debt service margin. If a feasible plan is achieved with a debt service margin of 101 percent or more, the Agency will permit a borrower to accept a non-writedown servicing offer and waive the right to a writedown offer when the writedown offer will require additional time and appraisals to fully develop. If after obtaining an appraisal a feasible plan is achieved with and without a writedown and the borrower meets all the eligibility requirements, both options will be offered and the borrower may choose one option.

* * * * *

§ 766.202 [Amended]

45. Amend § 766.202(a) by removing the number “12” and adding the number “18” in its place.

PART 769—FARM LOAN PROGRAMS RELENDING PROGRAMS

46. Revise the heading for part 769 to read as set forth above.

§§ 769.101 through 769.125 [Redesignated as Subpart A]

47. Redesignate §§ 769.101 through 769.125 as subpart A and add a heading for subpart A to read as follows:

Subpart A—Highly Fractionated Indian Land Loan Program

§§ 769.126 through 769.149 [Added and Reserved]

48. Add and reserve §§ 769.126 through 769.149.

49. Add subpart B, consisting of §§ 769.150 through 769.168 to read as follows:

Subpart B—Heirs’ Property Relending Program

Sec.

- § 769.150 Purpose.
- § 769.151 Abbreviations and definitions.
- § 769.152 Eligibility requirements of the intermediary.
- § 769.153 Eligibility requirements of the ultimate recipient.
- § 769.154 Authorized loan purposes.
- § 769.155 Loan limitations.
- § 769.156 Rates and terms.
- § 769.157 Intermediary’s relending plan.
- § 769.158 Intermediary’s loan application.
- § 769.159 Processing loan applications
- § 769.160 Letter of conditions.
- § 769.161 Loan agreements.
- § 769.162 Security.
- § 769.163 Loan closing.
- § 769.164 Post award requirements.
- § 769.165 Loan servicing.
- § 769.166 Transfers and assumptions.
- § 769.167 Appeals.
- § 769.168 Exceptions.

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, and 25 U.S.C. 488.

Subpart B—Heirs’ Property Relending Program

§ 769.150 Purpose.

(a) This subpart contains regulations for loans made by the Agency to eligible intermediaries that will make and service loans to ultimate recipients pursuant to requirements in this subpart. This subpart applies to intermediaries, ultimate recipients, and other parties involved in making such loans.

(b) The purpose of HPRP is to assist heirs with undivided ownership interests resolve ownership and succession issues on a farm that is owned by multiple owners. This purpose is achieved by providing loan funds to eligible intermediaries who will re-

lend to individuals and entities for the purpose of developing and implementing a succession plan and to resolve title issues.

(c) Intermediaries receiving HPRP loans must comply with this subpart, the HPRP loan agreement, the intermediary's relending plan approved by the Agency, the HPRP loan documents and security instruments and any other conditions that the Agency may impose in making a loan.

§ 769.151 Abbreviations and definitions.

Abbreviations and definitions used in this subpart are found in part 761 of this chapter.

§ 769.152 Eligibility requirements of the intermediary.

(a) *Eligible entity types.* Cooperatives, credit unions, and nonprofit organizations are eligible to participate as intermediaries.

(b) *Certification.* The intermediary must be certified as a community development financial institution under 12 CFR 1805.201 (or successor regulations) to operate as a lender.

(c) *Citizenship.* The applicant and the members of the intermediary must be a U.S. citizen or qualified alien (see 8 U.S.C. 1641). Each intermediary must certify to the citizenship requirement in the HPRP loan application.

(d) *Experience.* The intermediary must have:

(1) The requisite experience and capability in making and servicing agricultural and commercial loans that are similar in nature to HPRP. If consultants will be used in the making and servicing of HPRP loans, the Agency will assess the intermediary's experience in choosing and supervising consultants based on information intermediaries

include in their application describing the particular lending functions they typically rely on agents to fulfill and also describe their policies and procedures for monitoring these agents;

(2) The legal authority necessary to carry out the proposed loan purposes and to obtain, provide security for, and repay the proposed loan; and

(3) Demonstrated ability and willingness to repay the loan based on the intermediary's financial condition, managerial capabilities, and other resources.

§ 769.153 Eligibility requirements of the ultimate recipient.

(a) The eligibility requirements for the ultimate recipient are:

(1) Ultimate recipients must be individuals or legal entities, with authority to incur the debt and to resolve ownership and succession of a farm owned by multiple owners;

(2) Individual ultimate recipients or members of entity ultimate recipients must be a family member or heir-at-law related by blood or marriage to the previous owner of the real property; and

(3) The ultimate recipient must agree to complete a succession plan.

(b) The intermediary will determine the eligibility of the applicant to become the ultimate recipient in accordance with the rules provided in this subpart and in accordance with the intermediary's relending plan as approved by the Agency in the HPRP loan agreement.

§ 769.154 Authorized loan purposes.

(a) *Loans to the intermediary.* HPRP loan funds must be used by the intermediary to provide direct loans to eligible ultimate recipients according to the rules

provided in this subpart and pursuant to the HPRP loan agreement approved by the Agency.

(b) *Loans to the ultimate recipients.* HPRP loan funds:

(1) Must be used to assist heirs with undivided ownership interests to resolve ownership and succession of a farm owned by multiple owners;

(2) Must be sufficient to cover costs and fees associated with development and implementation of the succession plan, including closing costs (such as costs for preparing documents, appraisals, surveys, and title reports) and other associated legal services (such as fees incurred for mediation); and

(3) May be used to purchase and consolidate fractional interests held by other heirs in jointly-owned property, and to purchase rights-of-way, water rights, easements, and other appurtenances that would normally pass with the property and are necessary for the proposed operation of the farm.

§ 769.155 Loan limitations.

(a) For each application period:

(1) Loans to intermediaries will not exceed \$5,000,000 to any intermediary;

(2) Loans to ultimate recipients will not exceed the loan limit for a Direct Farm Ownership loan as specified in § 761.8(a)(1)(i) of this chapter to any ultimate recipient.

(b) Loans to the ultimate recipient may not be used:

(1) For any land improvement, development purpose, acquisition or repair of buildings, acquisition of personal property, payment of operating costs, payment of finders' fees, or similar costs;

(2) For any purpose that will contribute to excessive erosion of highly erodible land or for the conversion of wetlands to produce an agricultural commodity as specified in part 12 of this title; or

(3) To resolve heirs' property issues on property that will not be used, or has traditionally not been used, for production agricultural purposes.

(c) The HPRP loan amount may not exceed the current market value of the land determined by an appraisal that meets the requirements specified in § 761.7(b)(1) of this chapter; and

(d) Intermediaries who receive HPRP funding are not permitted to charge the ultimate recipients for mediation services provided through grants received under the Agency's State Agriculture Mediation Program (part 785 of this chapter).

§ 769.156 Rates and terms.

(a) For loans to intermediaries:

(1) The rate of interest for an HPRP loan will bear a fixed rate over the term of the loan of 1 percent or less as determined by the Administrator;

(2) The repayment term for an HPRP loan will not exceed 30 years; and

(3) Annual payments will be established. Interest will be due annually; however, principal payments may be deferred by the Agency.

(b) Loans to the ultimate recipient from the HPRP revolving loan fund are required to have rates and terms clearly and publicly disclosed to qualified ultimate recipients.

(1) The interest rate for loans to ultimate recipients will be set by the intermediary within the limits established by the intermediary's relending plan approved

by the Agency. The rate should normally be the lowest rate sufficient to cover the loan's proportional share of the HPRP revolving loan fund's debt service costs, reserve for bad debts, and administrative costs.

(2) Loans made by an intermediary to an ultimate recipient will be scheduled for repayment over a term negotiated by the intermediary and ultimate recipient; but in no case will the loan term exceed 30 years, unless otherwise specified by the Agency.

§ 769.157 Intermediary's relending plan.

(a) The intermediary must submit a proposed relending plan which, once approved by the Agency, will be incorporated by reference as an attachment to the HPRP loan agreement. The relending plan will explain in sufficient detail the mechanics of how the funds will be distributed from the intermediary to the ultimate recipient.

(b) The intermediary's relending plan must include copies of the intermediary's proposed application forms, loan documents and security instruments, and should include information regarding:

(1) The service area;

(2) The proposed fees and other charges the intermediary will assess the ultimate recipients;

(3) Eligibility criteria for the ultimate recipient;

(4) Authorized loan purposes;

(5) Loan limitations;

(6) Loan underwriting methods and criteria;

(7) Loan rates and terms;

(8) Security requirements;

- (9) The method of disbursement of the funds to the ultimate recipient;
- (10) The process for addressing environmental issues on property to be purchased;
- (11) The proposed process for reviewing loan requests from ultimate recipients and making eligibility determinations;
- (12) A description of the established internal credit review process;
- (13) The monitoring and servicing of loans distributed to the ultimate recipients;
- (14) The amount that will be set aside to maintain a reserve for bad debts; and
- (15) A description of the requirements for maintaining adequate hazard insurance, life insurance (for principals and key employees of the ultimate recipient), workmen's compensation insurance on ultimate recipients, flood insurance, and fidelity bond coverage.

§ 769.158 Intermediary's loan application.

- (a) The intermediary's loan application will consist of:
 - (1) An application form provided by the Agency;
 - (2) A relending plan addressing the items in § 769.157;
 - (3) A copy of the intermediary's certification as a community development financial institution;
 - (4) A signed form, to be provided by the Agency, assuring the intermediary's compliance and continued compliance with Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 - 1688) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1 – 2000d-7);

(5) Other evidence the Agency requires to determine that the intermediary satisfies the eligibility requirements in § 769.152, and that the intermediary's proposed relending plan is feasible and meets the objectives of HPRP;

(6) Documentation of the intermediary's ability to administer the HPRP loan funds in accordance with this subpart; and

(7) The name(s) of attorneys or any third parties involved with the application process.

(b) Prior to loan approval and advancing funds, the intermediary must certify that:

(1) The intermediary and its officers, or agents are not delinquent on any Federal debt, including, but not limited to, federal income tax obligations, federal loan or loan guarantee, or obligation from another Federal agency. If delinquent, the intermediary must provide in writing the reasons for the delinquency, and the Agency will take this into consideration in deciding whether to approve the loan or advance of funds;

(2) The intermediary and its officers have not been convicted of a felony criminal violation under Federal law in the 24 months preceding the date of the loan application;

(3) The intermediary is in compliance with the restrictions and requirements in 31 U.S.C. 1352, Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions;

(4) The intermediary has been informed of the options by the Federal Government to collect delinquent debt; and

(5) The intermediary, its officers, or agents are not debarred or suspended from participation in Government contracts or programs.

(c) An intermediary that has received one or more HPRP loans may apply for and be considered for subsequent HPRP loans provided:

(1) The intermediary is relending all collections from loans made from its revolving fund in excess of what is needed for the required debt service reserve and approved administrative costs;

(2) The outstanding loans of the intermediary's HPRP revolving loan fund are performing; and

(3) The intermediary is following all regulatory requirements and is complying with the terms and conditions of its HPRP loan agreement(s) and the intermediary's relending plan(s) approved by the Agency.

(d) The Agency may require the intermediary to provide information relating to applications from ultimate recipients the intermediary has in process.

§ 769.159 Processing loan applications.

(a) *Application dates.* The opening and closing dates for the HPRP applications submission will be announced in *Federal Register*.

(b) *Intermediary loan application review.* After the closing date, the Agency will review applications from intermediaries for compliance with the provisions of this subpart.

(c) *Loan approval.* Loan approval is subject to the availability of funds. The loan will be considered approved for the intermediary on the date the Agency signs the obligation of funds confirmation.

(d) *Preferences for loan funding.* The Agency will fund eligible applications from intermediaries:

(1) First, to those with not less than 10 years' experience serving socially disadvantaged farmers and ranchers that are located in states that have adopted a statute consisting of an enactment or adoption of the Uniform Partition of Heirs Property Act, as approved and recommended for enactment in all States by the National Conference of Commissioners on Uniform State Laws in 2010, that relend to owners of heirs property (as defined by the Uniform Partition of Heirs Property Act);

(2) Second, to those that have applications from ultimate recipients already in process, or that have a history of successfully relending previous HPRP funds; and

(3) Multiple applications in the same priority tier, will be processed based by date of application received; and

(4) Any remaining applications, after priority tiers 1 and 2 have be funded, will be funded in order of the date the application was received.

(e) *Current information required.* Information supplied by the intermediary in the loan application must be updated by the intermediary if the information is more than 90 days old at the time of loan closing.

§ 769.160 Letter of conditions.

(a) If the Agency approves a loan application, the Agency will provide the intermediary with a letter of conditions listing all requirements for the loan.

(b) Immediately after reviewing the conditions and requirements in the letter of conditions, the intermediary should complete, sign, and return the form provided by the Agency indicating the intermediary's intent to meet the conditions.

(1) If certain conditions cannot be met, the intermediary may propose alternative conditions to the Agency.

(2) The Agency loan approval official must concur with any changes made to the initially issued or proposed letter of conditions prior to loan approval.

(c) The loan request will be considered withdrawn if the intermediary does not respond within 15 calendar days from the date the letter of conditions was sent.

§ 769.161 Loan agreements.

(a) The HPRP loan agreement will specify the terms of each loan, such as:

- (1) The amount of the loan;
- (2) The interest rate;
- (3) The term and repayment schedule;
- (4) Any provisions for late charges;
- (5) The disbursement procedure;
- (6) Provisions regarding default; and
- (7) Fidelity insurance.

(b) As a condition of receiving HPRP loan funds, the intermediary will agree:

- (1) To obtain written approval from the Agency prior to making any changes in the intermediary's articles of incorporation, charter, or by-laws;
- (2) To maintain a separate ledger and segregated account for the HPRP revolving loan fund;
- (3) To comply with the Agency's annual reporting requirements in § 769.164(g);
- (4) To obtain prior written approval from the Agency regarding all forms to be used for relending purposes, as well as the intermediary's policy with regard to the amount and security to be required;

- (5) To obtain written approval from the Agency prior to making any significant changes in the proposed forms, security policy, or the intermediary's relending plan;
- (6) To maintain the collateral pledged as security for the HPRP loan; and
- (7) To request demographics data from ultimate recipients on race, ethnicity, and gender. The response to the data request will be voluntary. The intermediary will maintain the information when voluntarily submitted by the ultimate recipient. The intermediary agrees to make this information available when requested by FSA.

§ 769.162 Security.

(a) *Loans to intermediaries.* Security pledged to the Agency by intermediaries must be sufficient to reasonably assure repayment of the loan, while taking into consideration the intermediary's financial condition, the intermediary's relending plan, and the intermediary's management ability. The Agency will require adequate security, as determined by the Agency, to fully secure the loan:

(1) Primary security for HPRP loan will be in the form of a first lien upon the intermediary's revolving loan fund and such accounts must be fully covered by Federal deposit insurance or fully collateralized with other securities in accordance with normal banking practices and all applicable State laws. The form of the control agreement with the depository bank that will be used to perfect the Agency's security interest in the depository accounts used by the intermediary to maintain HPRP funds must be approved by the Agency. The control agreement will not require the Agency's signature for withdrawals. Among other things, the intermediary must use a depository bank that agrees to waive its offset and recoupment rights against the depository account and

subordinate any liens it may have against the HPRP depository account in favor of the Agency;

(2) Additional security as needed, which includes, but is not limited to:

(i) Assignments of assessments, taxes, levies, or other sources of revenue as authorized by law;

(ii) Financial assets of the intermediary and its members; and

(ii) Capital assets or other property of the intermediary and its members.

(b) *Loans to the ultimate recipient.* The intermediary is responsible for obtaining adequate security for all loans made to ultimate recipients from the HPRP revolving loan funds as specified in the HPRP loan agreement and intermediary's relending plan. The Agency will only require concurrence with the intermediary's proposed security for a loan to an ultimate recipient from the HPRP revolving loan fund if the proposed security will also serve as security for an unrelated Agency loan.

§ 769.163 Loan closing.

(a) *HPRP loan documents and security instruments.* At loan closing, the intermediary will execute the HPRP loan agreement or supplemental loan agreement, HPRP promissory note, the HPRP security agreement, the control agreement, and any other security instruments required by the Agency.

(b) *Intermediary certification.* At loan closing, the intermediary must certify that:

(1) No changes have been made in the intermediary's relending plan except those approved in the interim by the Agency;

(2) All requirements in the letter of conditions have been met; and

(3) There has been no material change in the intermediary or its financial condition since the issuance of the letter of conditions. If there have been changes, the intermediary must explain the changes to the Agency. The Agency will review the changes and respond in writing prior to loan closing.

§ 769.164 Post award requirements.

(a) *Applicability.* Whenever this subpart imposes a requirement on loan funds from the HPRP revolving loan fund, the requirement will apply to all loans made by an intermediary to an ultimate recipient from the intermediary's HPRP revolving loan fund for as long as any portion of the intermediary's HPRP loan remains unpaid.

(b) *Applicability for HPRP loan funds.* Whenever this subpart imposes a requirement on loans made by intermediaries from HPRP loan funds, without specific reference to the HPRP revolving loan fund, such requirement only applies to loans made by an intermediary using HPRP loan funds, and will not apply to loans made from revolved funds.

(c) *File maintenance.* In addition to information normally maintained by lenders in each loan file associated with a relending loan to an ultimate recipient, the intermediary must include a certification and supporting documentation in its file demonstrating that:

- (1) The ultimate recipient is eligible for the loan;
- (2) The loan is for eligible purposes; and
- (3) The loan complies with all applicable laws, regulations, and the intermediary's HPRP loan agreement.

(d) *Maintenance of HPRP revolving loan fund.* For as long as any part of an HPRP loan remains unpaid, the intermediary must maintain the HPRP revolving loan fund in accordance with the requirements in paragraphs (c)(1) through (11) of this section:

(1) All HPRP loan funds received by an intermediary must be deposited into the HPRP revolving loan fund. The intermediary may transfer additional assets into the HPRP revolving loan fund;

(2) All cash of the HPRP revolving loan fund must be deposited in a separate bank account or accounts;

(3) The HPRP revolving loan fund must be segregated from other financial assets of the intermediary, and no other funds of the intermediary will be commingled with the HPRP revolving loan fund;

(4) All moneys deposited in the HPRP revolving loan fund account or accounts will be money from the HPRP revolving loan fund;

(5) Loans to ultimate recipients are advanced from the HPRP revolving loan fund;

(6) The receivables created by making loans to ultimate recipients, the intermediary's security interest in collateral pledged by ultimate recipients, collections on the receivables, interest, fees, and any other income or assets derived from the operation of the HPRP revolving loan fund are a part of the HPRP revolving loan fund;

(7) The portion of the HPRP revolving loan fund consisting of HPRP loan funds may only be used for making loans in accordance with §§ 769.154. The portion of the

HPRP revolving loan fund that consists of revolved funds may be used for debt service reserve, approved administrative costs, or for making additional loans;

(8) A reasonable amount of revolved funds must be maintained as a reserve for bad debts. The total amount should not exceed maximum expected losses, considering the credit quality of the intermediary's portfolio of loans. The amount of reserved funds proposed by the intermediary requires written concurrence from the Agency. Unless the intermediary provides loss and delinquency records that, in the opinion of the Agency, justifies different amounts, a reserve for bad debts of 6 percent of outstanding loans must be accumulated over 5 years and then maintained; and

(9) Any funds in the HPRP revolving loan fund from any source that is not needed for debt service reserve, approved administrative costs, or reasonable reserves must be available for additional loans to ultimate recipients.

(i) Funds may not be used for any investments in securities or certificates of deposit of over 30-day duration without the Agency's concurrence.

(ii) The intermediary must make one or more loans to ultimate recipients within 6 months of any disbursement it receives from the Agency. If funds have been unused to make loans to ultimate recipients for 6 months or more, those funds will be returned to the agency unless the Agency provides a written exception based on evidence satisfactory to the Agency that every effort is being made by the intermediary to utilize the HPRP funding in conformance with HPRP objectives;

(10) All reserves and other cash in the HPRP revolving loan fund that are not immediately needed for loans to ultimate recipients or other authorized uses must be deposited in accounts in banks or other financial institutions. Such accounts must be

fully covered by Federal deposit insurance or fully collateralized with other securities in accordance with normal banking practices and all applicable State laws. Any interest earned on the account remains a part of the HPRP revolving loan fund; and

(11) If an intermediary receives more than one HPRP loan, it does not need to establish and maintain a separate HPRP revolving loan fund for each loan; it may combine them and maintain only one HPRP revolving loan fund.

(e) *Budgets and administrative costs.* The intermediary must submit an annual budget of proposed administrative costs for Agency approval. The annual budget should itemize cash income and cash out-flow. Projected cash income should consist of, but is not limited to, collection of principal repayment, interest repayment, interest earnings on deposits, fees, and other income. Projected cash out-flow should consist of, but is not limited to, principal and interest payments, reserve for bad debt, and an itemization of administrative costs to operate the HPRP revolving loan fund.

(1) Proceeds received from the collection of principal repayment cannot be used for administrative expenses.

(2) The amount removed from the HPRP revolving loan fund for administrative costs in any year must be reasonable, must not exceed the actual cost of operating the HPRP revolving loan fund, including loan servicing and providing technical assistance, and must not exceed the amount approved by the Agency in the intermediary's annual budget.

(f) *Loan monitoring reviews.* The Agency may conduct loan monitoring reviews, including annual and periodic reviews, and performance monitoring.

(1) At least annually, the intermediary must provide the Agency documents for reviewing the financial status of the intermediary, assessing the progress of using loan funds, and identifying any potential problems or concerns. Non-regulated intermediaries must furnish audited financial statements at least annually.

(2) The intermediary must allow the Agency or its representative to review the operations and financial condition of the intermediary upon the Agency's request. The intermediary and its agents must provide access to all pertinent information to allow the Agency, or any party authorized by the Agency, to conduct such reviews. The intermediary must submit financial or other information within 14 calendar days upon receipt of the Agency's request, unless the data requested is not available within that time frame. Failure to supply the requested information to the satisfaction of the Agency will constitute non-monetary default. The Agency may conduct reviews, including on-site reviews, of the intermediary's operations and the operations of any agent of the intermediary, for the purpose of verifying compliance with Agency regulations and guidelines. These reviews may include, but are not limited to, audits of case files; interviews with owners, managers, and staff; audits of collateral; and inspections of the intermediary's and its agents underwriting, servicing, and liquidation guidelines.

(g) *Annual monitoring reports.* Each intermediary will be monitored by the Agency through annual monitoring reports submitted by the intermediary. Annual monitoring reports must include a description of the use of loan funds, information regarding the acreage, the number of heirs both before and after loan was made, audit findings, disbursement transactions, and any other information required by the Agency, as necessary.

(h) *Unused loan funds.* If any part of the HPRP loan has not been used in accordance with the intermediary's relending plan within 3 years from the date of the HPRP loan agreement, the Agency may cancel the approval of any funds not delivered to the intermediary. The Agency may also direct the intermediary to return any funds delivered to the intermediary that have not been used by that intermediary in accordance with the intermediary's relending plan. The Agency may, at its sole discretion, allow the intermediary additional time to use the HPRP loan funds.

§ 769.165 Loan servicing.

(a) *Payments.* The intermediary will make payments to the Agency as specified in the HPRP loan documents. All payments will be applied to interest first, any additional amount will be applied to principal.

(b) *Restructuring.* The Agency may restructure the intermediary's loan debt, if:

- (1) The loan objectives cannot be met unless the HPRP loan is restructured;
- (2) The Agency's interest will be protected; and
- (3) The restructuring will be within the Agency's budget authority.

(c) *Default.* The Agency will work with the intermediary to correct any default, subject to the requirements of paragraph (b) of this section. In the event of monetary or non-monetary default, the Agency will take all appropriate actions to protect its interest, including, but not limited to, declaring the debt fully due and payable and may proceed to enforce its rights under the HPRP loan agreement, and any other loan instruments relating to the loan under applicable law and regulations, and commencement of legal action to protect the Agency's interest. Violation of any agreement with the Agency or failure to

comply with reporting or other HPRP requirements will be considered non-monetary default.

§ 769.166 Transfers and assumptions.

(a) All transfers and assumptions must be approved in advance by the Agency.

The assuming entity must meet all eligibility criteria for HPRP.

(b) Available transfer and assumption options to eligible intermediaries include:

(1) The total indebtedness may be transferred to another eligible intermediary on the same rates and terms; or

(2) The total indebtedness may be transferred to another eligible intermediary on different terms not to exceed the term for which an initial loan can be made.

(c) The transferor must prepare the transfer document for the Agency's review prior to the transfer and assumption.

(d) The transferee must provide the Agency with information required in the application as specified in § 769.158.

(e) The Agency's approved form of the assumption agreement will formally authorize the transfer and assumption and will contain the Agency case number of the transferor and transferee.

(f) When the transferee makes a cash down-payment in connection with the transfer and assumption, any proceeds received by the transferor will be credited on the transferor's loan debt in order of maturity date.

§ 769.167 Appeals.

Any appealable adverse decision made by the Agency may be appealed upon written request of the intermediary as specified in 7 CFR part 11.

§ 769.168 Exceptions.

The Agency may grant an exception to any of the requirements of this subpart if the proposed change is in the best financial interest of the Government and not inconsistent with the authorizing law or any other applicable law.

Zach Ducheneaux,
Administrator,
Farm Service Agency.