

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### 7 CFR Part 770

### Rural Housing Service

### Rural Business-Cooperative Service

### Rural Utilities Service

### Farm Service Agency

#### 7 CFR Parts 1823, 1902, 1951, and 1956

RIN 0560-AF43

### Loans to Indian Tribes and Tribal Corporations

**AGENCY:** Farm Service Agency, Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule consolidates and revises the Indian Tribal Land Acquisition Program (ITLAP) regulations. The rule eliminates the reserve requirement and the waiver of sovereign immunity for all new loans; allows borrowers to use the loan reserve accounts as either an extra payment on their loans to the Farm Service Agency (FSA) or for other tribal needs; provides borrowers additional servicing options; allows ITLAP funds to be used for certain refinancing activities; expands the uses borrowers may make of land purchased with ITLAP funds; requires ITLAP loan applications, in most cases, to include a copy of the borrower's option to purchase the land; and provides for subsequent loans to be made to ITLAP borrowers.

**EFFECTIVE DATE:** February 8, 2001.

**FOR FURTHER INFORMATION CONTACT:** Gary West, Senior Loan Officer, Farm Loan Programs, Loan Servicing and Property Management Division, Farm Service

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#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This rule has been determined to be significant under E.O. 12866 and has been reviewed by the Office of Management and Budget.

##### Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-602), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Thus, large entities are subject to these rules to the same extent as small entities. Therefore, a regulatory flexibility analysis was not performed.

##### Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." The issuing agency has determined that this action does not affect the quality of human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

##### Executive Order 12988

This rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR parts 11 and 780 must be exhausted before bringing suit in court challenging action taken under this rule.

##### Executive Order 12372

For reasons set forth in the Notice related to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs within this rule are excluded from the scope of E.O. 12372, which

requires intergovernmental consultation with State and local officials.

##### Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. The rule does not add any new significant loan making criteria, but changes the format of the regulation in compliance with efforts to streamline our loan making and loan servicing criteria.

##### The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector of \$100 million or more in any 1 year. When a rule contains such mandates, section 205 of the UMRA requires agencies to prepare a written statement, including a cost benefit assessment, for proposed and final rules with "Federal mandates" that may result in such expenditures for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates, as defined under Title II of the UMRA, for State, local, and Tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

##### Paperwork Reduction Act of 1995

The Agency announced its intent to obtain Office of Management and Budget (OMB) approval of the information collections established under 7 CFR part 770 under a new OMB control number in the notice of proposed rule (64 FR 59131). No comments were received from the public regarding the proposed

information collections and the Agency has requested OMB approval.

#### **Federal Assistance Programs**

These changes affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance.

10.421—Indian Tribes and Tribal Corporation Loans.

#### **Discussion of the Comments on the Proposed Rule**

On November 2, 1999, the Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and the Farm Service Agency published a Proposed Rule (64 FR 59131) requesting comments regarding proposed changes to ITLAP. On March 31, 2000, an extension to the comment period was published. In response to the request for public comment, 29 comments were received. The breakdown of the five groups and or individuals who commented were: Three Native American tribes, one individual and one Federal Government agency.

Four comments were received regarding the cancellation of ITLAP debt. One comment opposed reducing or canceling any ITLAP debt that is fully secured and collectable because (1) The Federal Government has an affirmative responsibility to collect such debt and to not take that action turns the loans into grants and (2) it would violate the appropriations process. Three comments supported the cancellation of debt in some unspecified form, or supported a broad based cancellation of the debt. In response to the comment that the Agency not reduce any ITLAP debt that is fully secured and collectable, these loans are based upon the value of the land purchased and not the general assignment of income that is generally subordinated by the tribe to the Agency to secure repayment. The general assignment of funds comes from all tribal sources and not just the income generated from the land. So while the repayment is secured by the assignment, many loans are in fact not fully collateralized based upon the value of the land. It is the intent of the Agency in the final rule in situations where certain tribal economic impact factors are extreme to provide a mechanism for debt reduction, thereby reducing tribal payments to be more in line with the value of the lands purchased with these loan funds.

Also, while we agree that the Federal Government has an affirmative responsibility to collect its legitimate debts in accordance with various statutes, the Federal Government also has an affirmative responsibility to

manage its loan programs in a manner that takes into consideration economic realities and circumstances beyond the control of participants in its loan programs. The Agency is not turning loans into grants but simply providing options for loan restructuring and debt relief for those who qualify. Providing such measures is consistent with actions taken to provide assistance to all program applicants in other Federal loan programs. However, the Agency has determined that it will limit the term of restructured loans to remain within the maximum 40-year term to help balance the needs of tribes for relief from economic hardship with the need to protect the financial integrity of government loan programs.

In response to the comments that suggested the Agency adopt a policy of canceling ITLAP debt, the Agency cannot justify the simple cancellation of ITLAP debt with respect to the program's current borrowers or future borrowers. Such an action would be inconsistent with the intent of the program, which is to provide credit to Native American tribes for the purchase of reservation land. When Congress amended the ITLAP legislation in 1989 (sec. 303 of Pub. L. 101-82) to authorize debt relief, it tied such relief to changes in the value of the land. In this amendment, Congress did not suggest or encourage the Agency to use its debt settlement authorities to provide broad debt relief. While comments to the proposed regulations did suggest new eligibility criteria and specifics on debt reduction, which are addressed here, none of the comments provided specific criteria to support when complete cancellation of debt should take place. Also, providing such relief could jeopardize the future of ITLAP because, at a minimum, if such relief is not clearly limited, it could substantially increase the projected costs for future ITLAP loans. The increased loan losses would mean that under the Credit Reform Act of 1990, the cost of loans would increase which would result in the Agency having less program loan funding available for such loans, even if the appropriation level of the program remains unchanged. The decreased funding would have a negative impact on ITLAP applicants. Therefore, the Agency has concluded at this point that the proposal of broadly canceling ITLAP debts will not be implemented.

Three respondents submitted comments regarding the methodology and eligibility for reducing the principal amount of the outstanding ITLAP debt to the present value of expected future annual rental value of the land purchased with ITLAP loan funds and

setting the annual ITLAP loan payment at the annual rent received or that could be received from this land. Two of these comments stated that the principal balance of such loans should be reduced to the present value of future annual rents that could be generated on the land purchased with loan funds. Two comments supported the concept that loan payments should be adjusted to equal rental income received from land purchased with loan funds. In addition, one comment suggested that eligibility for debt relief be tied to the unusually high rates of unemployment encountered on Native American reservations. Three comments supported eligibility criteria based upon socio-economic factors but indicated that the proposed rule criteria was too complicated and terms such as unfunded mandates and quantifying public health and safety needs could never be accurately measured. These comments are indicative that many tribes are having or have experienced severe socio-economic problems and are finding it difficult to meet the basic needs of their members. As a result, the Agency has determined that debt relief to an ITLAP borrower could be extended to those who face extreme poverty and unemployment.

The final rule contains a provision that would allow an ITLAP loan to be written down to a level where annual loan payments are based upon the previous 5-year average annual rental payment received for the land purchased with loan funds projected over the remaining term of the loan. The rental rate information will be obtained from the Native American tribe or tribal corporation and verified with the Department of Interior. This would occur if the Native American tribe is facing extreme socio-economic problems, which are a part of the eligibility criteria for debt relief. In further response to the comments the Agency has changed the eligibility criteria to include socio-economic factors that are more easily measured, such as per capita income and tribal unemployment. However, a Native American tribe's loan could receive the benefit of such a write-down regarding its ITLAP loans only once, provided it has not received a land value write-down in the last 5 years. Such a write-down could involve as many ITLAP loans of the tribe as meet the criteria under this regulation at the time of the write-down application.

Two comments were received with regard to the number of years used to determine the average rental value of the land purchased under the rental value write-down option. The

commenters believed that the Agency did not go far enough in using the preceding 5 years to determine the average rental value of the land purchased with loan funds. The commenters contended that the entire history of the rental value of the land should be considered because there have been several periods over the life of the existing loans during which tribes have suffered financial hardships. The Agency considered these comments but any write-down must be based upon an accurate representation of the value of the land. To go back more than 5 years could result in a misstatement of the current land value. It is not the purpose of the rental value write-down option to compensate the borrower for financial hardship that it may have suffered in the past. The purpose of the new write-down servicing option is to provide a measure of relief, if necessary based upon the most recent indicators of land value.

One comment was received regarding the restructuring of a loan by lowering the interest rate and reamortizing the balance of the loan over the remaining loan term. The comments were not opposed to lowering the interest rate but were opposed to reamortizing over the remaining term. They felt that keeping within the remaining term when no debt relief is proposed simply increases a payment that already cannot be met. This comment also referred to year 40 of the note as the balloon payment date. In response, the Agency feels that routine loan restructuring should take place when necessitated by temporary circumstances and should be reamortized within the original note terms in order to stay within the budgetary confines of program allocations and to project a realistic repayment schedule for the loan. Also, the Agency is publishing a deferral option in the final rule that will further provide for temporary relief. If long-term problems are encountered the debt-relief provisions of this rule should be explored. In response to the balloon payment reference, the Agency believes that 40 years is a more than adequate repayment period for any note. Under the equal amortization schedule the note is set up or restructured under, year 40 is the final due date of the last installment and not a balloon payment.

Two comments suggested that ITLAP borrowers should be eligible for servicing options, such as reamortizations and deferrals (codified at 7 CFR part 1951, subpart S), and debt settlement options (codified at 7 CFR part 1956) that are available to Farm Loan Program (FLP) borrowers. Based on a review of the FLP loan-making and

servicing procedures, we have determined that loan-making and servicing procedures for FLP are not consistent with the statutorily established purposes of ITLAP. The purpose of FLP loans is to assist family farming and ranching operations in becoming economically successful. Conversely, the statutory purpose of ITLAP loans is to assist Native American tribes in the purchase of land and interests in land for the purpose of consolidating their ownership of land within their reservations, regardless of the economic use such tribe may make of the land. Thus, FLP loans made to farmers and ranchers versus ITLAP loans made to Native American tribes are substantially different in the types of borrowers being targeted, the importance of how the borrower's operation is structured, and the importance of the economic viability of the project being funded. In order to accomplish the purpose of these respective loan programs, the servicing options offered to borrowers under each program must be different and tailored to the distinct purposes of these programs. With respect to debt settlement, for individual loans the security must be liquidated in order to debt settle. In many cases, even when the security is liquidated a debt settlement is not granted until a borrower makes a compromise offer to settle the remaining indebtedness even though all the collateral has been liquidated. The comments received considered this but felt that land holdings on the reservation are unique because they are generally secured by payment assignments, so collateral liquidation provisions should not apply. To the extent that a final debt settlement procedure is necessary, the Agency will use the general government procedures at (4 CFR parts 101–105). The final rule implements loan servicing and debt write-down provisions that are specially tailored and unique to ITLAP and will maintain the economic viability of tribal lands purchased with ITLAP funds.

Three comments were received regarding releasing assignments of income and substituting real estate mortgages on the land purchased with ITLAP funds. The comments suggest that the Agency take mortgages as security for these existing loans in exchange for the release of the general assignments of income that currently secure many of these loans. The Agency does not agree with these comments. The assignment guarantees repayment and since the ITLAP program is a credit program the Agency is responsible for providing the best possible method of

collecting taxpayer dollars loaned. Also, in many of these cases taking security in the form of a mortgage is not practical because the ITLAP funds are being used to purchase fractional interests in land. A mortgage on such fractional interests may not provide the Agency with adequate security for the loan. However, the Agency is eliminating the reserve account requirement for all new loans and providing reserve account release criteria for existing loans in this rule. The reserve is set up for tribes to pay and deposit one-tenth of their regularly scheduled payment in the account until one full payment is in reserve. The release may help to free funds for borrowers to use in other areas rather than have them tied up in the reserve account.

One comment was received regarding granting of deferrals of annual payments if the income loss is temporary. The comment recommended that debt relief should be provided when a producer who rents land from the borrower suffers a reduction in commodity prices. The Agency agrees and has provided specific deferral criteria in § 770.10(c) of the final rule.

One comment suggested that debt relief should be provided if the making of the loan payments by the borrower will impede the borrower's ability to resolve fractional land interests on the reservation. One comment stated that debt relief should be provided if the making of loan payments impedes the borrower's ability to repay other loans or meet other tribal needs. In response, the ITLAP program that provides credit for a tribe to purchase land is not a program designed to solve all tribal needs, nor could it possibly be designed to do so. If tribes have other payment obligations, they may also approach those creditors for relief. ITLAP is a loan program in which tribes recognize their repayment responsibilities when entering into the loan. The Agency cannot promulgate regulations that simply allow a borrower to not make payments because it has decided that purchasing additional lands is a priority.

Two comments indicated that the Agency should take action regarding debt relief without promulgating new regulations, since such regulations are not necessary and would violate Executive Order (E.O.) 13084. These comments indicated that the E.O. obligates the Secretary of Agriculture to take actions to assist Native American tribes while waiving the normal regulatory requirements to take such actions. The Agency agrees that the E.O. does place an obligation on the Secretary of Agriculture to take steps

wherever possible to assist Native American tribes. As indicated in the Proposed Rule the Agency re-examined ITLAP to determine if there are ways in which the Agency can provide more debt relief options to borrowers. The Agency, however, does not agree that the E.O. would allow the Agency to implement such policy changes in violation of the requirements of notice and comment rulemaking requirements in section 553 of Title 5, United States Code and the Statement of Policy of the Secretary of Agriculture relating to notices of proposed rulemaking and public participation (36 FR 13804). Further, while the public notification and subsequent comment periods of the informal rulemaking process has taken additional time, this process has given all interested parties, including affected Native American tribes, the opportunity to participate in the development of this final rule, thus ensuring that their interests and concerns have been heard. Therefore, the Agency proceeded with the consideration and development of ITLAP debt relief changes through the notice and comment rulemaking process.

One comment indicated that the Agency's concerns regarding the budgetary impacts of providing debt relief to borrowers were misplaced because such relief would enable borrowers to purchase more fractional interests and thus reduce the overall Federal Government's costs in tracking these fractional interests. The comment indicated that any additional costs to the Federal Government would be offset by the reduction in costs to administer programs on Native American reservations. The comment indicated that this information is readily available from the Department of the Interior's Bureau of Indian Affairs and that a reduction in debt would have a corollary effect of reducing the costs incurred by the Federal Government of managing fractional interests within the confines of Federally Recognized Indian Reservations. Only authorizing legislation could allow for consideration of such a proposal. In addition, these comments ignore the Agency's concerns expressed in the Proposed Rule of the impact on the Federal budget that any ITLAP debt relief will have on the Agency and the reality of the Federal budgeting process.

One comment indicated that funding for the loan program should be provided to the full program authorization level of \$50 million and that such a change would be in the best interests of the program. The Agency has no comment as the Congressional appropriation

process establishes program funding levels, not the Agency.

One comment requested clarification on the definition of Reservation to include the former reservations in Oklahoma. While inclusion of these lands would be consistent with other FSA loan programs, the statute authorizing ITLAP, 25 U.S.C. 488, limits ITLAP loans to "interests \* \* \* within the tribe's reservation as determined by the Secretary of the Interior or within a community in Alaska incorporated by the Secretary \* \* \*". Former reservations lands are not covered by the ITLAP authorizing statute and thus the comment was not adopted.

One comment indicated that under the proposed land value or rental value write-down criteria the appraisal that would be necessary would be cost prohibitive because of fractionated interests in land. The Agency maintains that a value must be established prior to any write-down just as it was when the loans were originally made. If the appraisal cost is viewed as being excessive, then, as with any loan, the borrower will have to make a decision on what is in its best interest.

Two comments requested that any requirement for the tribe to waive its sovereign immunity be removed. The Agency agrees and will no longer require the waiver. The lack of a waiver does not prevent the Federal Government from bringing suit against the borrower.

One comment suggested that the Agency is not equipped to handle loans to tribes and that the ITLAP program should be transferred to an Agency that is better suited to understanding and working with tribal programs, such as the Department of the Interior. This type of a loan program transfer between departments of the Federal Government would require enacting legislation.

There were other comments relating to specifics of the Agency's internal administrative processing of various loan making or servicing actions. These comments and recommended actions are solely administrative in nature and will be covered in the Agency handbook.

#### Discussion of the Final Rule

Public Law 91-229 (25 U.S.C. 488-494) authorized the Secretary of Agriculture to establish ITLAP to make loans to Native American tribes and tribal corporations to acquire land and fractional interests in land on the tribes' reservations. This program was administered by the former Farmers Home Administration (FmHA). Under the authority of the Department of Agriculture Reorganization Act of 1994,

Pub. L. 103-354, on October 20, 1994, FmHA's ITLAP functions were transferred to FSA. Regulations for implementing this program are found at 7 CFR part 1823, subpart N for loan making; 7 CFR part 1951, subpart E for loan servicing; and 7 CFR part 1956, subpart C, for debt settlement. The final rule will consolidate the ITLAP regulations into one part and clarify that this program is exclusively administered by FSA.

The final rule will eliminate the reserve account. With respect to loans that are not delinquent and that are presently adequately secured by a general assignment of tribal income, the Agency will release its interest in existing reserve accounts and allow them to be returned to the Native American tribe or tribal corporation. During the review of ITLAP in preparation of the proposed rule and the final rule, the Agency determined that a general assignment of tribal income provides the Agency sufficient security for ITLAP loans. The additional security provided by the reserve account is unnecessary. ITLAP loans secured by an assignment of income have a very low delinquency rate. The release of the reserve would allow Native American tribes and tribal corporations to use these funds towards an extra payment or for other tribal operations. Also, with this change, the borrowers could use the reserve account funds to purchase additional land that could increase its future income or for other pressing tribal needs. The Agency believes that these changes are consistent with the intent of ITLAP to assist Native American tribes and tribal corporations to consolidate their ownership in reservation lands.

The final rule also adopts the use of unemployment rates and tribal per capita income for enrolled tribal members as an eligibility criteria more easily obtainable than calculating the percentage or tribal shortfall to meet unfunded State or Federal mandates.

The final rule expands the use of ITLAP loan funds to include: Refinancing of an existing debt incurred by the Native American tribe or tribal corporation to purchase land, provided the loan application and land purchase proposal was received by the Agency and approved prior to the purchase of the land; the Native American tribe or tribal corporation was not able to obtain an option on the land; the debt to be refinanced is short term debt with a balloon payment that cannot otherwise be refinanced with the creditor; and the debt secured by the land subject to the refinancing must otherwise meet the requirements of ITLAP.

The final rule allows certain ITLAP loans to be written down to a value where the annual loan payment would equal the 5-year average rental value for the land purchased with such loan funds if the borrower could establish that the Native American tribe was facing economic hardships based on a combination of certain eligibility criteria. Such a write-down could involve as many ITLAP loans of the tribe as meet the criteria under this regulation at the time of the write-down application.

The final rule clarifies the process under which the Agency will reduce the interest rate of an ITLAP loan to the interest in effect at the time of application for such a reduction. Such a reduction will take place if the ITLAP loan has been in effect for more than 5 years. This change is being made to allow borrowers who have extreme impoverished circumstances to benefit from any program interest rate changes. Borrowers could qualify if the tribe has a per capita income for enrolled tribal members which is less than the Federally established poverty income rate by more than 50 percent and the tribal unemployment rate exceeds 50 percent.

The final rule clarifies the approved uses of land that are the subject of an ITLAP loan to ensure that the Agency's mortgage or income assignment on the land is protected by requiring Agency approval prior to such land being either leased, sold, or exchanged. The final rule clarifies that a subsequent ITLAP loan may be made to a borrower for the same purposes and under the same conditions as a prior loan. The final rule requires that prior to obtaining an ITLAP loan, the Native American tribe or tribal corporation must obtain an option or other acceptable purchase agreement to purchase the land at issue and that a copy of such agreement accompany the ITLAP loan application. The purpose for this change is to allow the Agency to have all relevant information regarding the land purchase for which ITLAP loan funds are being sought. The final rule will also eliminate the need for the tribe to waive their right to sovereign immunity as the Government will receive an assignment of income that has been approved by Department of Interior, Bureau of Indian Affairs, which serves to guarantee the repayment of the loan, negating the need for the waiver of sovereign immunity.

## List of Subjects

### 7 CFR Part 770

Credit, Indians, Loan programs—agriculture.

### 7 CFR Part 1823

Credit, Grazing lands, Indians, Loan programs—agriculture, Rural areas, Soil conservation.

### 7 CFR Part 1902

Accounting, Banks, banking, Grant programs—Housing and community development, Loan programs—Agriculture, Loan programs—Housing and community development.

### 7 CFR Part 1951

Accounting, Grant programs—Housing and community development; Reporting and recordkeeping requirements, Rural areas.

### 7 CFR Part 1956

Accounting, Loan programs—Agriculture, Rural areas.

Accordingly, for the reasons stated in the preamble, 7 CFR part 770 is added and 7 CFR parts 1823, 1902, 1951, and 1956 are amended as follows:

1. Part 770 is added to read as follows:

## PART 770—INDIAN TRIBAL LAND ACQUISITION LOANS

### Sec.

- 770.1 Purpose.
- 770.2 Abbreviations and definitions.
- 770.3 Eligibility requirements.
- 770.4 Authorized loan uses.
- 770.5 Loan limitations.
- 770.6 Rates and terms.
- 770.7 Security requirements.
- 770.8 Use of acquired land.
- 770.9 Appraisals.
- 770.10 Servicing.

**Authority:** 5 U.S.C. 301, 25 U.S.C. 490.

### § 770.1 Purpose.

This part contains the Agency's policies and procedures for making and servicing loans to assist a Native American tribe or tribal corporation with the acquisition of land interests within the tribal reservation or Alaskan community.

### § 770.2 Abbreviations and definitions.

#### (a) Abbreviations.

FSA Farm Service Agency, an Agency of the United States Department of Agriculture, including its personnel and any successor Agency.

ITLAP Indian Tribal Land Acquisition Program.

#### (b) Definitions.

Administrator is the head of the Farm Service Agency.

Agency is Farm Service Agency (FSA).

*Appraisal* is an appraisal for the purposes of determining the market value of land (less value of any existing improvements that pass with the land) that meets the requirements of part 761 of this chapter.

*Applicant* is a Native American tribe or tribal corporation established pursuant to the Indian Reorganization Act seeking a loan under this part.

*Loan funds* refers to money loaned under this part.

*Native American tribe* is:

(1) An Indian tribe recognized by the Department of the Interior; or

(2) A community in Alaska incorporated by the Department of the Interior pursuant to the Indian Reorganization Act.

*Reservation* is lands or interests in land within:

(1) The Native American tribe's reservation as determined by the Department of the Interior; or

(2) A community in Alaska incorporated by the Department of the Interior pursuant to the Indian Reorganization Act.

*Reserve* is an account established for loans approved in accordance with regulations in effect prior to February 8, 2001 which required that an amount equal to 10 percent of the annual payment be set aside each year until at least one full payment is available.

*Tribal corporation* is a corporation established pursuant to the Indian Reorganization Act.

### § 770.3 Eligibility requirements.

An applicant must:

(a) Submit a completed Agency application form;

(b) Except for refinancing activities authorized in § 770.4(c), obtain an option or other acceptable purchase agreement for land to be purchased with loan funds;

(c) Be a Native American tribe or a tribal corporation of a Native American tribe without adequate uncommitted funds, based on Generally Accepted Accounting Principles, or another financial accounting method acceptable to Secretary of Interior to acquire lands or interests therein within the Native American tribe's reservation for the use of the Native American tribe or tribal corporation or the members of either;

(d) Be unable to obtain sufficient credit elsewhere at reasonable rates and terms for purposes established in § 770.4;

(e) Demonstrate reasonable prospects of success in the proposed operation of the land to be purchased with funds provided under this part by providing:

(1) A feasibility plan for the use of the Native American tribe's land and other

enterprises and funds from any other source from which payment will be made;

(2) A satisfactory management and repayment plan; and

(3) A satisfactory record for paying obligations.

(f) Unless waived by the FSA Administrator, not have any outstanding debt with any Federal Agency (other than debt under the Internal Revenue Code of 1986) which is in a delinquent status.

(g) Not be subject to a judgment lien against the tribe's property arising out of a debt to the United States.

#### **§ 770.4 Authorized loan uses.**

Loan funds may only be used to:

(a) Acquire land and interests therein (including fractional interests, rights-of-way, water rights, easements, and other appurtenances (excluding improvements) that would normally pass with the land or are necessary for the proposed operation of the land) located within the Native American tribe's reservation which will be used for the benefit of the tribe or its members.

(b) Pay costs incidental to land acquisition, including but not limited to, title clearance, legal services, land surveys, and loan closing.

(c) Refinance non-United States Department of Agriculture preexisting debts the applicant incurred to purchase the land provided the following conditions exist:

(1) Prior to the acquisition of such land, the applicant filed a loan application regarding the purchase of such land and received the Agency's approval for the land purchase;

(2) The applicant could not acquire an option on such land;

(3) The debt for such land is a short term debt with a balloon payment that cannot be paid by the applicant and that cannot be extended or modified to enable the applicant to satisfy the obligation; and

(4) The purchase of such land is consistent with all other applicable requirements of this part.

(d) Pay for the costs of any appraisal conducted pursuant to this part.

#### **§ 770.5 Loan limitations.**

(a) Loan funds may not be used for any land improvement or development purposes, acquisition or repair of buildings or personal property, payment of operating costs, payment of finder's fees, or similar costs, or for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agriculture commodity as further

established in exhibit M to subpart G of part 1940 of this title.

(b) The amount of loan funds used to acquire land may not exceed the market value of the land (excluding the value of any improvements) as determined by a current appraisal.

(c) Loan funds for a land purchase must be disbursed over a period not to exceed 24 months from the date of loan approval.

(d) The sale of assets that are not renewable within the life of the loan will require a reduction in loan principal equal to the value of the assets sold.

#### **§ 770.6 Rates and terms.**

(a) *Term.* Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note.

(b) *Interest rate.* The interest rate charged by the Agency will be the lower of the interest rate in effect at the time of the loan approval or loan closing, which is the current rate available in any FSA office. Except as provided in § 770.10(b) the interest rate will be fixed for the life of the loan.

#### **§ 770.7 Security requirements.**

(a) The applicant will take appropriate action to obtain and provide security for the loan.

(b) A mortgage or deed of trust on the land to be purchased by the applicant will be taken as security for a loan, except as provided in paragraph (c) of this section.

(1) If a mortgage or deed of trust is to be obtained on trust or restricted land and the applicant's constitution or charter does not specifically authorize mortgage of such land, the mortgage must be authorized by tribal referendum.

(2) All mortgages or deeds of trust on trust or restricted land must be approved by the Department of the Interior.

(c) The Agency may take an assignment of income in lieu of a mortgage or deed of trust provided:

(1) The Agency determines that an assignment of income provides as good or better security; and

(2) Prior approval of the Administrator has been obtained.

#### **§ 770.8 Use of acquired land.**

(a) *General.* Subject to § 770.5(d) land acquired with loan funds, or other property serving as the security for a loan under this part, may be leased, sold, exchanged, or subject to a subordination of the Agency's interests, provided:

(1) The Agency provides prior written approval of the action;

(2) The Agency determines that the borrower's loan obligations to the Agency are adequately secured; and

(3) The borrower's ability to repay the loan is not impaired.

(b) *Title.* Title to land acquired with a loan made under this part may, with the approval of the Secretary of the Interior, be taken by the United States in trust for the tribe or tribal corporation.

#### **§ 770.9 Appraisals.**

(a) The applicant or the borrower, as appropriate, will pay the cost of any appraisal required under this part.

(b) Appraisals must be completed in accordance with § 761.7 of this chapter.

#### **§ 770.10 Servicing.**

(a) *Reamortization.*

(1) *Eligibility.* The Agency may consider reamortization of a loan provided:

(i) The borrower submits a completed Agency application form; and

(ii) The account is delinquent due to circumstances beyond the borrower's control and cannot be brought current within 1 year; or

(iii) The account is current, but due to circumstances beyond the borrower's control, the borrower will be unable to meet the annual loan payments.

(2) *Terms.* The term of a loan may not be extended beyond 40 years from the date of the original note.

(i) Reamortization within the remaining term of the loan will be predicated on a projection of the tribe's operating expenses indicating the ability to meet the new payment schedule; and

(ii) No intervening lien exists on the security for the loan which would jeopardize the Government's security priority.

(3) *Consolidation of notes.* If one or more notes are to be reamortized, consolidation of the notes is authorized.

(b) *Interest rate reduction.* The Agency may consider a reduction of the interest rate for an existing loan to the current interest rate as available from any Agency office provided:

(1) The borrower submits a completed Agency application form;

(2) The loan was made more than 5 years prior to the application for the interest reduction; and

(3) The Department of the Interior and the borrower certify that the borrower meets at least one of the criteria contained in paragraph (e)(2) of this section.

(c) *Deferral.* The Agency may consider a full or partial deferral for a period not to exceed 5 years provided:

(1) The borrower submits a completed Agency application form;

(2) The borrower presents a plan which demonstrates that due to circumstances beyond their control, they will be unable to meet all financial commitments unless the Agency payment is deferred; and

(3) The borrower will be able to meet all financial commitments, including the Agency payments, after the deferral period has ended.

(d) *Land exchanges.* In the cases where a borrower proposes to exchange any portion of land securing a loan for other land, title clearance and a new mortgage on the land received by the borrower in exchange, which adequately secures the unpaid principal balance of the loan, will be required unless the Agency determines any remaining land or other loan security is adequate security for the loan.

(e) *Debt write-down.*

(1) *Application.* The Agency will consider debt write-down under either the land value option or rental value option, as requested by the borrower.

(i) The borrower must submit a completed Agency application form;

(ii) If the borrower applies and is determined eligible for a land value and a rental value write-down, the borrower will receive a write-down based on the write-down option that provides the greatest debt reduction.

(2) *Eligibility.* To be eligible for debt write-down, the borrower (in the case of a tribal corporation, the Native American tribe of the borrower) must:

(i) Be located in a county which is identified as a persistent poverty county by the United States Department of Agriculture, Economic Research Service pursuant to the most recent data from the Bureau of the Census; and

(ii) Have a socio-economic condition over the immediately preceding 5 year period that meets the following two factors as certified by the Native American tribe and the Department of the Interior:

(A) The Native American tribe has a per capita income for individual enrolled tribal members which is less than 50 percent of the Federally established poverty income rate established by the Department of Health and Human Services;

(B) The tribal unemployment rate exceeds 50 percent;

(3) *Land value write-down.* The Agency may reduce the unpaid principal and interest balance on any loan made to the current market value of the land that was purchased with loan funds provided:

(i) The market value of such land has declined by at least 25 percent since the land was purchased as established by a current appraisal;

(ii) Land value decrease is not attributed to the depletion of resources contained on or under the land;

(iii) The loan was made more than 5 years prior to the application for land value writedown; and

(iv) The loan has not previously been written down under paragraph (d)(4) of this section and has not been written down within the last 5 years under this paragraph.

(4) *Rental value write-down.* The Agency may reduce the unpaid principal and interest on any loan, so the annual loan payment for the remaining term of each loan equals the average of annual rental value of the land purchased by each such loan for the immediately preceding 5-year period provided:

(i) The loan was made more than 5 years prior to the rental value writedown;

(ii) The description of the land purchased with the loan funds and the rental values used to calculate the 5 year average annual rental value of the land have been certified by the Department of the Interior;

(iii) The borrower provides a current appraisal of the land; and

(iv) The loan has not been previously written down under this paragraph and has not been written down within the last 5 years under paragraph (d)(3) of this section.

(e) *Release of reserve.* Existing reserve accounts may be released for the purpose of making ITLAP loan payments or to purchase additional lands, subject to the following:

(1) A written request is received providing details of the use of the funds;

(2) The loan is not delinquent;

(3) The loan adequately secured by a general assignment of tribal income.

#### **PART 1823—[Reserved]**

2. Remove and reserve part 1823.

#### **PART 1902—SUPERVISED BANK ACCOUNTS**

3. The authority citation is revised to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480; 7 CFR 2.16 and 2.42.

#### **§ 1902.15 [Amended]**

4. Amend the first sentence of paragraph (c) of § 1902.15 by removing the words “Indian Land Acquisition,”.

#### **PART 1951—SERVICING AND COLLECTIONS**

5. The authority citation continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1932 Note, 7 U.S.C. 1989, 42 U.S.C. 1480.

#### **Subpart E—Servicing of Community and Direct Business Programs Loans and Grants**

##### **§ 1951.201 [Amended]**

6. Amend the first sentence of § 1951.201 by removing the words “loans to Indian Tribes and Tribal Corporations;”.

##### **§ 1951.221 [Amended]**

7. Amend the heading of § 1951.221(b) by removing the words “and Indian Tribes and Tribal Corporation Loans”.

##### **§ 1951.222 [Amended]**

8. Remove § 1951.222(a)(11).

##### **§ 1951.230 [Amended]**

9. Amend § 1951.230 as follows:

a. Add the word “and” at the end of paragraph (b)(5);

b. Remove the word “; and” and add in its place “.” at the end of paragraph (b)(6); and

c. Remove paragraph (b)(7).

#### **PART 1956—DEBT SETTLEMENT**

10. The authority citation for part 1956 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 31 U.S.C. 3711; 42 U.S.C. 1480.

#### **Subpart C—Debt Settlement—Community and Business Programs**

11. Amend § 1956.101 by removing the phrase “and Indian Tribal Land Acquisition loans;”

##### **§ 1956.105 [Amended]**

12. Amend § 1956.105 by removing paragraph (k).

##### **§ 1956.137 [Removed and reserved]**

13. Remove and reserve § 1956.137.

Signed at Washington, DC, on December 22, 2000.

**August Schumacher,**

*Under Secretary for Farm and Foreign Agricultural Services.*

**Jill Long Thompson,**

*Under Secretary for Rural Development.*  
[FR Doc. 01–100 Filed 1–8–01; 8:45 am]

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