

floodplains and other Federally-designated important resources. Federally-designated important resources include, but are not limited to:

- (1) Listed or proposed endangered or threatened species;
- (2) Listed or proposed critical habitats for endangered or threatened species;
- (3) Designated or proposed wilderness areas;
- (4) Designated or proposed wild or scenic rivers;
- (5) Historic or archeological sites listed or eligible for listing on the National Register of Historic Places;
- (6) Coastal barriers included in Coastal Barrier Resource Systems;
- (7) Natural landmarks listed on National Registry of Natural Landmarks; and
- (8) Sole source aquifer recharge areas as designated by EPA.

(c) *Discretionary easements.* The Agency may grant or sell an easement, restriction, development right, or similar legal right to real property for conservation purposes to a State government, a political subdivision of a State government, or a private non-profit organization.

(1) The Agency may grant or sell discretionary easements separate from the underlying fee or property rights.

(2) The Agency may convey property interests under this paragraph by negotiation to any eligible recipient without giving public notice if the conveyance does not change the intended use of the property.

(d) *Conservation transfers.* The Agency may transfer real estate inventory property to a Federal or State agency provided the following conditions are met:

- (1) The transfer of title must serve a conservation purpose;
- (2) A predominance of the property must:
 - (i) Have marginal value for agricultural production;
 - (ii) Be environmentally sensitive; or
 - (iii) Have special management importance;
- (3) The homestead protection rights of the previous owner have been exhausted;
- (4) The Agency will notify the public of the proposed transfer; and

(5) The transfer is in the Agency's financial interest.

(e) *Use restrictions on real estate inventory property with important resources.*

(1) Lessees and purchasers receiving Agency credit must follow a conservation plan developed with assistance from NRCS.

(2) Lessees and purchasers of property with important resources or real property interests must allow the Agency or its representative to periodically inspect the property to determine if it is being used for conservation purposes.

[72 FR 63358, Nov. 8, 2007, as amended at 81 FR 51285, Aug. 3, 2016]

§ 767.202 Real estate inventory property located in special hazard areas.

(a) The Agency considers the following to be special hazard areas:

- (1) Mudslide hazard areas;
- (2) Special flood areas; and
- (3) Earthquake areas.

(b) The Agency will use deed restrictions to prohibit residential use of properties determined to be unsafe in special hazard areas.

(c) The Agency will incorporate use restrictions in its leases of property in special hazard areas.

§§ 767.203–767.250 [Reserved]

Subpart F—Exception Authority

§ 767.251 Agency exception authority.

On an individual case basis, the Agency may consider granting an exception to any regulatory requirement or policy of this part if:

(a) The exception is not inconsistent with the authorizing statute or other applicable law; and

(b) The Agency's financial interest would be adversely affected by acting in accordance with published regulations or policies and granting the exception would reduce or eliminate the adverse effect upon the its financial interest.

PART 768—EQUITABLE RELIEF

768.1 Providing equitable relief.

768.2 [Reserved]

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

§ 768.1

SOURCE: 87 FR 13124, Mar. 9, 2022, unless otherwise noted.

§ 768.1 Providing equitable relief.

(a) If the Farm Service Agency (Agency or FSA) determines that a borrower is not in compliance with Agency loan requirements in this chapter, the Agency may consider equitable relief as specified in this section:

(1) *Requirements.* After determination that a borrower is in noncompliance with loan program requirements in this chapter, the Agency may provide equitable relief to a borrower if it is determined that the borrower:

(i) Acted in good faith; and
(ii) Relied on a material action, advice, or non-action from an Agency official to the detriment of the borrower's operation or the action approved by the Agency official resulted in the borrower becoming noncompliant with the loan program requirements in this chapter.

(2) *Determination.* The material action, advice, or response from an Agency official under paragraph (a)(1) of this section must be documented, unless the Agency official with authority to grant equitable relief determines that documentation is not reasonably available. Notwithstanding any delegations in this chapter, only the Secretary, FSA Administrator, Deputy Administrator for Farm Loan Programs, or any other official within U.S. Department of Agriculture (USDA) specifically designated by the Secretary, may make the determination for the Agency to grant equitable relief and must document the basis for that determination.

(3) *Relief.* If the borrower meets the requirements in paragraph (a)(1) of this section, the Agency may provide to a borrower either or both of the following forms of equitable relief:

(i) The borrower may choose to keep loans at current rates or other terms received in association with the loan which was determined to be noncompliant; or

(ii) The borrower may receive other equitable relief for the loan as the Agency determines to be appropriate.

(4) *Conditions.* As a condition of receiving relief, the Agency may require the borrower to take actions to remedy

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the noncompliance, provided the borrower agrees those actions do not adversely affect the long-term viability of the borrower's operation.

(b) A determination or action of the Agency under this section is final and not subject to administrative appeal or judicial review.

§ 768.2 [Reserved]

PART 769—FARM LOAN PROGRAMS RELENDING PROGRAMS

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