

**UNITED STATES DEPARTMENT OF AGRICULTURE**

Farm Service Agency  
Washington, DC 20250

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**Guaranteed Loan Making and Servicing  
2-FLP**

**Amendment 20**

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**Approved by:** Deputy Administrator, Farm Loan Programs



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**Amendment Transmittal**

**A Reasons for Amendment**

Subparagraph 69.5 B has been amended to refer to the paragraph that explains how electronic applications will be processed.

Subparagraph 70 A has been amended to refer to the paragraph that explains how electronic applications will be processed.

Subparagraph 73 B has been amended to explain how electronic applications will be processed.

Subparagraph 108 D has been amended to clarify when Federal debt is considered delinquent.

Subparagraph 166 D has been amended to remove reference to guaranteed loan installments.

Subparagraph 263 B has been amended to clarify the order in which loan installments will be paid.

Subparagraph 278 A has been amended to add a bullet explaining that lenders may subordinate their interest in basic security when the purpose of the subordination is to refinance an existing prior lien, with no additional debt being incurred, and the lender's lien position is not adversely affected.

Subparagraph 278 B has been amended to make an exception to approval requirements, so the local Authorized Agency Official can approve subordinations which are only used for the refinancing of prior debt, with no additional debt being incurred, and the lender's lien position is not adversely affected.

Subparagraph 281 D has been amended to indicate that guarantee loan fees are not required when processing a transfer and assumption.

Subparagraph 312 A has been amended to remove the prohibition on using balloon payments for loan restructuring, and add security and appraisal requirements for loans restructured with balloon payments.

## Amendment Transmittal (Continued)

### A Reasons for Amendment (Continued)

Subparagraphs 359 B and 360 F have been amended to indicate that packager fees and outside consultant fees for servicing of guaranteed loans are not covered by the guarantee, and will not be paid either in an estimated or final loss claim.

Subparagraph 375 E has been amended to correct a wording error in the previous language. The words “lender” and “holder” had been reversed in the existing paragraph.

Exhibit 18, page 3 has been amended to remove a statement under Non-Centralized Administrative offset that is inconsistent with the Exhibit and replace it with consistent language.

### B Complete Section, Part, and Exhibit Reprint

This handbook has been converted to the revised format. Even though every page of the sections, parts, and exhibits being included in this amendment have not been amended, because the handbook has been converted, they are being released for reprint. The major changes are listed in subparagraph A.

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**69.5 Requirements for Loans of \$125,000 or Less (7 CFR 762.110) (Continued)**

**B Application Form**

Lenders may use FSA-1980-25 or their own loan application form if it contains the same information. If a lender uses its own application form, the lender must attach an executed FSA-1980-25 containing the loan applicant's name and address and any information not on the lender's form.

**\*--Note:** Applications submitted electronically will be processed according to subparagraph 73 B.--\*



## Section 2 Preferred Lender Applications

## 70 Application Requirements for PLP Lenders (7 CFR 762.110)

## A Application Requirements

A complete application for PLP lenders will consist of:

- **an application form** (FSA-1980-28)
- **\*--Note:** Applications submitted electronically will be processed according to subparagraph 73 B.--\*
- **a loan narrative**
- **any other items agreed to during the approval of the PLP lender's status and contained in the PLP lender agreement.**

**PLP lenders must certify that the required items, not submitted, are in their files.** On a case-by-case basis, **the Agency may request additional information from any lender or review the lender's files as needed to make eligibility and approval decisions.** These requests shall be made only in situations when, because of the unique characteristics of the loan request, an eligibility or approval decision cannot be made without additional information.

FSA can conduct its environmental review in most cases without additional information from the lender. However, occasionally additional information is needed, and until this information is received, the application is not complete, and the 14-calendar-day timeframe does not start. Situations needing additional information often involve wetland determinations, potential historical or archaeological sites, or construction of major confinement livestock facilities. The review is FSA's responsibility to conduct. However, the information to complete this review is part of a complete application.

**70 Application Requirements for PLP Lenders (7 CFR 762.110) (Continued)****B Loan Narrative**

FSA expects PLP lenders to include a discussion of the 5 “C’s” of credit; that is, character, capacity, capital, conditions, and collateral; in the narrative. The narrative prepared by PLP lenders should contain applicable information similar to subparagraph 69.5 C.

For many PLP lenders, the narrative will often contain the same information submitted to the lender’s loan committee. Since the Authorized Agency Official will rely on the narrative and application form for making the loan approval decision, it is important that the narrative cover any issues or questions that may arise during the evaluation process.

**\*--C Submitting Applications Outside Normal Trade Area**

PLP status will be approved for the lender’s normal trade area as defined in CMS. If a lender wants to make a guaranteed loan outside of this area, the lender should contact the State Office responsible for that area for guidance on where to submit the request for guarantee. On a case-by-case basis, SED may authorize the approval of guarantees outside the lender’s normal trade area if SED determines that the lender can adequately make and service the loan. If the lender wants to permanently expand its approved normal trade area, it will request an expansion through SED to DAFLP.--\*

**Section 3 Other Guaranteed Application Options****71 Application Requirements for Subsequent OL's****A Application Requirements**

Subsequent OL's within the same operating cycle do not require the complete application submission in paragraphs 69, 69.5, 69.6, 69.7, and 70. Only those items that have changed from the original application must be submitted, such as the cash flow projection.

**72 Market Placement Program (7 CFR 1910.4(c))****A Purpose**

The Market Placement Program:

- is designed to assist qualified existing direct loan borrowers and new direct loan applicants in obtaining a guaranteed farm loan from a commercial lender
- reduces the number of direct loans FSA makes, which reduces FSA costs while still meeting the credit needs of the farmer
- helps new lenders become familiar with FSA lending standards and, therefore, serves a marketing function for the Guaranteed Farm Loan Program.

**B Lender Participation**

Each County Office shall identify lenders who are interested in participating in the Market Placement Program. To identify lenders, the County Office shall contact lenders:

- currently participating in the Guaranteed Farm Loan Program
- who are **not** participating in the Guaranteed Farm Loan Program.

\*--Lenders should advise FSA of their interest.--\*

## 72 Market Placement Program (7 CFR 1910.4(c)) (Continued)

**C FSA Preparation of Loan Application**

**If the loan assessment completed in accordance with the direct loan application concludes that guaranteed assistance may be available, FSA will send the information in the loan application to area lenders.**

In the Market Placement Program, direct loan applications are processed under the standard direct loan procedures. If the loan applicant is eligible and may qualify to receive a guaranteed loan, the Authorized Agency Official shall present the completed guaranteed loan application to 1 or more lenders, selected by the loan applicant, who have expressed an interest in the Market Placement Program. The lenders are informed that FSA will guarantee a loan when an application package is presented to them.

FSA shall complete and provide the following to lenders:

- FSA-1980-25
- FSA-431-2
- a narrative
- a suggested plan for servicing
- an appraisal.

To complete the guaranteed loan application, the Authorized Agency Official shall use estimated interest rates and terms. If more than 1 lender is interested in the guaranteed loan, the loan applicant shall select 1 of the lenders. The lender must prepare the loan or LOC agreement. SEL's must submit the loan or LOC agreement to FSA before FSA issues FSA-1980-15. FSA-1980-15 shall be issued upon the lender's acceptance of the loan application and confirmation that funds are available.

## 73 Filing Applications Electronically

### A Registering to Submit Applications

Lenders may submit applications electronically through USDA's Online Services website. Lenders interested in filing electronically must first register. An explanation of the registration process, along with the necessary form, can be found by either:

- clicking on "Register" at [www.sc.egov.usda.gov](http://www.sc.egov.usda.gov)
- contacting any USDA Service Center.

Currently, registration is limited to individuals; **lenders cannot be registered as organizations**. However, persons representing lenders may register as an individual, and then may electronically sign and submit applications on behalf of the lender.

### B Submitting Applications

Once a lender's representative has registered and received a user ID and password, the representative may submit applications by clicking on "eForms" at [www.sc.egov.usda.gov](http://www.sc.egov.usda.gov), signing in, and following the instructions to find, complete, and submit forms. Other electronic documents needed for a complete application may be attached to the application form and submitted to FSA.

If the lender submits the application electronically, the application will be processed. However, the original, completed FSA-1980-25 or FSA-1980-28, with appropriate \*--loan applicant signatures, must be provided to FSA before the Agency will issue--\* the guarantee.

74-82 (Reserved)



**108 General Eligibility Requirements for OL and FO (7 CFR 762.120) (Continued)****D Delinquency on Federal Debt**

**The loan applicant, and anyone who will execute the promissory note, is not delinquent on any Federal debt, other than a debt under the Internal Revenue Code of 1986. Any debt under the Internal Revenue code of 1986 may be considered by the lender in determining cash flow and credit worthiness.**

**\*--Federal debt not paid within 90 days of the due date is considered delinquent.--\***

The loan applicant may be considered eligible if the delinquency will be remedied by the date of loan closing. Unless otherwise prohibited, loan applicants may use loan funds to cure delinquencies. Federal debt includes, but is not limited to, student loans, CCC loans, FSA direct loans, VA loans, and SBA loans. FSA-guaranteed loans are not Federal debts.

Loans made using FSA-1980-25 or FSA-1980-28 with the July 20, 2001, or later revision date become a delinquent Federal debt upon the payment of a final loss claim.

**E Outstanding Recorded Judgments**

**The loan applicant, and anyone who will execute the promissory note, has no outstanding unpaid judgments obtained by the United States in any court. Such judgments do not include those filed as a result of action in the United States Tax Courts.**

Loan applicants must provide evidence that all Federal judgments have been released or paid in full to be eligible for guaranteed loans. Loan funds will not be used to pay Federal judgments. Questions by FSA employees regarding outstanding judgments should be directed to OGC.

**F United States Citizenship**

**The applicant must be a citizen of the United States, a United States non-citizen national, or a qualified alien under applicable Federal immigration laws. For an entity applicant, the majority interest of the entity must be held by members who are United States citizens, United States non-citizen nationals, or qualified aliens under applicable Federal immigration laws.**

**United States non-citizen nationals and qualified aliens must provide the appropriate documentation as to their immigration status as required by the United States Department of Homeland Security, Bureau of Citizenship and Immigration Services.**

U.S. non-citizen nationals and qualified aliens must submit appropriate documentation to verify immigration status as provided in Exhibits 7 and 8, as applicable.

**108 General Eligibility Requirements for OL and FO (7 CFR 762.120) (Continued)****G Legal Capacity to Incur Loan**

**The loan applicant and all borrowers on the loan must possess the legal capacity to incur the obligations of the loan.**

The loan applicant must be of legal age, mental capacity, and authority to enter into a legally binding agreement with the lender. An entity applicant and the entity members must be able to enter into such a contract.

**H Past Dealings**

**The loan applicant, in past dealings with the Agency, must not have provided the Agency with false or misleading documents or statements.**

**I Credit History**

**The individual or entity loan applicant and all entity members must have acceptable credit history demonstrated by debt repayment. A history of failures to repay past debts as they came due when the ability to repay was within their control will demonstrate unacceptable credit history. Unacceptable credit history will not include either of the following:**

- **isolated instances of late payments which do not represent a pattern and were clearly beyond their control**
- **lack of credit history.**

**J Test for Credit**

**The loan applicant is unable to obtain sufficient credit elsewhere without a guarantee to finance actual needs at reasonable rates and terms. The potential for sale of any significant nonessential assets will be considered when evaluating the availability of other credit. Ownership interests in property and income received by an individual or entity loan applicant, or any entity members as individuals also will be considered when evaluating the availability of other credit to the loan applicant.**

The loan applicant's inability to obtain credit will be demonstrated when the lender certifies that they would not make the loan without a guarantee. The lender certifies this by signing the application form.

## Subsection 2 Security of the Loan

**166 Amount and Quality of Security (7 CFR 762.126)****A Purpose**

The lender is responsible for ensuring that proper and adequate security for the guaranteed loan is obtained and maintained. Lenders must obtain the lien position proposed in the application for each security item and perfect each lien. This paragraph explains the guidelines FSA will use in evaluating whether the lender has proposed adequate security for the guaranteed loan.

**B Adequate Security**

**The lender is responsible for ensuring that proper and adequate security is obtained and maintained to fully secure the loan, protect the interest of the lender and the Agency, and assure repayment of the loan or line of credit.**

**The lender will obtain a lien on additional security when necessary to protect the Agency's interest.**

The lender must determine the amount of security required to adequately secure a loan. At a minimum, FSA requires the value of the security to be at least equal to the loan amount. However, more security will be taken whenever it is available. A 1:1 loan to value ratio is not adequate when additional security is available. The adequacy of security will be judged in consideration of the total security available, prior liens, and the lender's normal practices. More security may be required if the quality of the security is low, cash flow is below average, production capability is suspect, management history is limited, or enterprise is not firmly established or is atypical for the area.

**All security must secure the entire loan or line of credit. The lender may not take separate security to secure only that portion of the loan or line of credit not covered by the guarantee.**

**The lender may not require compensating balances or certificates of deposit as means of eliminating the lender's exposure on the unguaranteed portion of the loan or line of credit. However, compensating balances or certificates of deposit as otherwise used in the ordinary course of business are allowed for both the guaranteed and unguaranteed portions.**

**166 Amount and Quality of Security (7 CFR 762.126) (Continued)****B Adequate Security (Continued)**

To evaluate the quality and overall adequacy of the proposed security, the Authorized Agency Official should evaluate the lender's analysis of the security and the loan applicant's financial position. The Authorized Agency Official may determine that more security is required to protect FSA's interests based on the answers to the following questions.

- Is the value of the primary security at least equal to the proposed loan amount?
- Is additional security available?
- Is this a specialized operation with limited sale opportunities?
- What is the age, durability, probable depreciation rate, and life of the security and how does this compare to the term of the loan?
- What is the proposed lien position on the primary security?
- Is the applicant's net worth high or low compared with their total liabilities, including the proposed amount of the loan or LOC?
- Does the loan applicant have a strong cash flow position and high profitability?

**C Security Requirements for SEL's and CLP and PLP Lenders**

The type of lender has no bearing on the type or amount of security required to adequately secure a loan. The Authorized Agency Official should evaluate the proposed security for loan applications from SEL's and CLP and PLP lenders using the same evaluation criteria.

## 166 Amount and Quality of Security (7 CFR 762.126) (Continued)

**D Lien Position**

**\*--All guaranteed loans will be secured by the best lien obtainable. Provided that:--\***

- **when the loan is made for refinancing purposes, the guaranteed loan must hold a security position no lower than on the refinanced loan**

**Note:** The lender must obtain a lien on all of the collateral that secured the debt that was refinanced, and the lien position on that collateral must be no lower than that which secured the existing debt.

- **any chattel-secured guaranteed loan must have a higher lien priority (including purchase money interest) than an unguaranteed loan secured by the same chattels and held by the same lender**

**Note:** Any lender, who holds an unguaranteed loan with a first lien on the same collateral proposed as primary security for a guaranteed loan, must subordinate its lien position to the guaranteed loan.

\* \* \*

- **junior lien positions are acceptable only if the equity position is strong**

**Note:** The strength of the equity position will be evaluated by examining the appraisal, balance sheet, cash flow, as appropriate, and proposed loan amount to determine the equity in the collateral to secure the guaranteed loan. In no case will a guarantee be approved, secured by a junior lien on collateral with a 1:1 loan to value ratio.

- **junior liens on crops or livestock products will not be relied upon for security unless the lender is involved in multiple guaranteed loans to the same borrower, and also has first lien on the collateral**

**Note:** Junior liens on income security may be taken as security, but will be considered to have no collateral value unless the prior lien is securing an FSA-guaranteed loan to the same lender.

## 166 Amount and Quality of Security (7 CFR 762.126) (Continued)

**D Lien Position (Continued)**

- **additional security or any loan of \$10,000 or less may be secured by the best lien obtainable on real estate without title clearance or legal services normally required, provided the lender believes from a search of the county records that the loan applicant can give a mortgage on the farm and provided that the lender would, in the normal course of business, waive the title search**

**Notes: This exception to title clearance will not apply when land is to be purchased.**

Title clearance work can be expensive and cost-prohibitive in some cases. Title clearance is not required for loans of \$10,000 or less if the lender feels such a search is not necessary. In addition, FSA does not want to discourage taking additional security. Therefore, any amount of real estate to be taken as additional security that is clearly in excess of what is needed to fully secure the loan does not need title clearance. Both of these exceptions require that the lender conduct an informal check, be reasonably certain that a lien can be perfected, and otherwise follow internal lending policy on title clearance.

- **when taking a junior lien, prior lien instruments will not contain future advance clauses (except for taxes, insurance, or other reasonable costs to protect security), or cancellation, summary forfeiture, or other clauses that jeopardize the Government's or the lender's interest or the borrower's ability to pay the guaranteed loan, unless any such undesirable provisions are limited, modified, waived or subordinated by the lienholder for the benefit of the Agency and the lender.**

**Note:** Provisions on prior lien instruments, such as prepayment penalties, will be considered when evaluating the collateral value of the lender's security on the guaranteed loan.

**167 Identifiable Collateral (7 CFR 762.126(c))****A Purpose**

All of the collateral must be identifiable. This paragraph describes the guidelines for evaluating whether the security obtained for a guaranteed loan is identifiable.

**B Identifiable Security**

**The guaranteed loan must be secured by identifiable collateral. To be identifiable, the lender must be able to distinguish the collateral item and adequately describe it in the security instrument.**

Guaranteed loans must be secured by collateral that can be distinguished from other collateral items and can be adequately described in security instruments.

**Example:** A tractor described by its make, model, year, and serial number is identifiable collateral, while a truck that is only described as “flat-bed truck” is not identifiable collateral.

**C Equipment**

Equipment should be identified by manufacturer, model, year, and serial number, where available. If this information is not available, the lender should provide a sufficient written description of the equipment so that it is easily identifiable.

**D Livestock**

Livestock taken as security will be fully described, including breed, age group, and type, and will indicate the numbers in each group. This provision allows the farmer to perform routine culling and replace livestock without obtaining a release of security. The lender is responsible for ensuring that the borrower maintains the livestock numbers by periodically monitoring the livestock on the farm and ensuring that liens have not been provided to other creditors.

Particularly high value livestock can be appraised as such if the animals are clearly identified, monitored, and accounted for.

**167 Identifiable Collateral (7 CFR 762.126(c)) (Continued)**

**E Real Estate**

Real estate can be identified using tax lot and block numbers, full metes and bounds, or rectangular survey description or similar system. A survey is not required if the property is adequately described and determined unnecessary by the lender’s internal lending policy.

**168 Type of Security Required by Type of Loan (7 CFR 762.126(d))**

**A Purpose**

The type of security obtained for a loan must be appropriate to the type of loan, and the loan terms must be consistent with the useful life of the security. This paragraph describes the guidelines for evaluating whether the type of security is appropriate for the proposed loan.

**B Security Requirements**

**Guaranteed loans may be secured by any property if the term of the loan and expected life of the property will not cause the loan to be undersecured.**

Typically, annual operating loans will be secured by crops and livestock, loans to be repaid within 2 to 7 years by breeding livestock and equipment, and loans repaid over greater than 7 years by real estate.

**For loans with terms greater than 7 years, a lien must be taken on real estate.**

The guidelines for short-, intermediate-, and long-term loans are as follows.

Loans	Guidelines
Short-term	Annual OL’s should be secured at least by crops and livestock that will generally be sold during the term of the loan.
Intermediate-term	OL’s should be secured by collateral that has a life expectancy at least as long as the loan. Loans to be repaid over a 2- to 7-year period should be secured by breeding livestock and equipment. The lender should evaluate the equipment proposed to be used for security to ensure that it will not depreciate faster than the loan is repaid.
Long-term	Loans scheduled to be repaid over more than 7 years must be secured by real estate. Anticipated depreciation of the improvements must be considered when establishing terms.

**168 Type of Security Required by Type of Loan (7 CFR 762.126(d)) (Continued)****C Leasehold Properties**

**Loans can be secured by a mortgage on leasehold properties if the lease has a negotiable value and is subject to being mortgaged.**

If the Authorized Agency Official does not have experience in making loans secured by leaseholds, they should contact the State Office for assistance.

**D Additional Personal or Corporate Guarantees**

**The lender or Agency may require additional personal or corporate guarantees to adequately secure the loan. These guarantees are separate from, and in addition to, the personal obligations arising from members of an entity signing the note as individuals.**

If the farm operation does not have adequate security for the proposed loan, additional security, such as personal or corporate guarantees, may be used to secure the loan. Therefore, entity members may be required to pledge their personal property or other nonfarm assets. For individual loan applicants, an additional guarantee may be provided by a co-signer.

\*--For entities, the instruments are executed by the member who is authorized to sign for the entity, and by all members of the entity as individuals. Individual liability can be waived by FSA for members holding less than 10 percent ownership in the entity if collectibility of the loan will not be impaired.--\*

**169 Multiple Security Owners and Exceptions to Security Requirements (7 CFR 762.126)**

**A Multiple Security Owners**

**If security has multiple owners, all owners must execute the security documents for the loan.**

**B Exceptions to Security Requirements**

**The Deputy Administrator for Farm Loan Programs has the authority to grant an exception to any of the requirements involving security, if the proposed change is in the best interest of the Government and the collectability of the loan will not be impaired.**

DAFLP has the authority to make exceptions to the rules regarding security. Exceptions will only be made on a case-by-case basis where the proposed exception is in the best interest of FSA, the lender, and the loan applicant. The exception must not reduce either of the following:

- loan applicant's ability to make regular loan payments
- lender's ability to collect on the debt obligation through the sale of collateral.

DAFLP's decision on granting exceptions is final and not appealable. SED's should evaluate all requests for exceptions, and forward them to DAFLP with their analysis of the benefits or problems, and a recommendation for their approval or rejection. No exception will be granted without an analysis and documentation of why such an exception is in the Government's best interest.

**170-180 (Reserved)**

## 263 Borrower Supervision (7 CFR 762.140(b)) (Continued)

**B Lender Supervision of Borrowers (Continued)**

- receiving all payments of principal and interest on the loan as they fall due and promptly disbursing to any holder its pro-rata share according to the amount of interest the holder has in the loan, less only the lender's servicing fee
- performing an annual analysis of the borrower's financial condition to determine the borrower's progress.

**\*--(7 CFR 762.140(d)) When a lender receives a payment from the sale of encumbered property, loan installments will be paid in the order of lien priority. When a payment is received from the sale of unencumbered property or other sources of income, loan installments will be paid in order of their due date. Agency approval is required for any other proposed payment plans.--\***

The loan application and other loan specific documents, including FSA-1980-15, will detail the purposes and conditions for the loan. Lenders must inform FSA of any changes in the use of loan funds. SEL's must first receive FSA concurrence before allowing a change in the use of loan funds. If a borrower uses loan funds improperly, the lender must take steps to correct the violation. If improper use of loan funds results in a loss claim, lenders must make every effort to collect the loan's remaining outstanding debt and minimize loss to FSA.

Failure by the lender to report a borrower violation to FSA in a timely manner could result in the reduction or denial of a loss claim.

Borrower's progress is demonstrated by an annual improvement in balance sheets and the meeting of any interim goals. See paragraph 265.

The lender shall obtain a perfected security interest in the loan collateral. Lenders must obtain secure liens on all collateral as outlined in FSA-1980-15. A loss claim may be reduced if a lender failed to perfect the loan security.

**C FSA Monitoring of Borrower Supervision**

If FSA discovers that a lender does not have adequate procedures in place to ensure sound borrower supervision, the Authorized Agency Official should inform the lender in writing of the deficiency and, if necessary, require the lender to submit a plan outlining the actions they will take to correct the deficiency. Failure on the part of the lender to submit a plan or take action to correct the deficiency may result in denial of future loan applications or revocation of status.

For CLP and PLP lenders, any finding of a major deficiency should be forwarded to SED for action.

**264 Servicing Collateral (7 CFR 762.142(a))****A Lender Servicing of Collateral**

**The lender's responsibilities regarding servicing collateral include, but are not limited to, the following:**

- **obtain income and insurance assignments when required**
- **ensure the borrower has or obtains marketable title to the collateral**
- **inspect the collateral as often as deemed necessary to properly service the loan**
- **ensure the borrower does not convert loan security**
- **\*--ensure the proceeds from the sale or other disposition of collateral are accounted--\*  
for and applied in accordance with the lien priorities on which the guarantee is based or used for the purchase of replacement collateral**
- **ensure the loan and the collateral are protected in the event of foreclosure, bankruptcy (Part 13), receivership, insolvency, condemnation, or other litigation**
- **ensure taxes, assessments, or ground rents against or affecting the collateral are paid**
- **ensure adequate insurance is maintained**
- **ensure that insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or used to rebuild or acquire needed replacement collateral.**

These requirements spell out the standard servicing of collateral responsibilities for every FSA-guaranteed loan; however, the lender and the Authorized Agency Official should refer to the specific loan documents, such as FSA-1980-15, for additional servicing requirements on a loan-by-loan basis.

## Section 2 General Servicing Actions

## 278 Subordination of Guaranteed Loan Security (7 CFR 762.142)

## A Overview

**\* \* \* The lender may not subordinate its interest in property which secures a  
\*--guaranteed loan except as follows:--\***

- **the lender may subordinate its security interest in crops, feeder livestock, livestock offspring, or livestock products when no funds have been advanced from the guaranteed loan for their production, so a lender can make a loan for annual production expenses**
- **\*--the lender may, with written Agency approval, subordinate its interest in basic security in cases where the subordination is required to allow another lender to refinance an existing prior lien, no additional debt is being incurred, and the lender's security position will not be adversely affected by the subordination--\***
- **the Agency's National Office may provide an exception to the subordination prohibition if such action is in the Agency's best interest.**

**However, in no case can the loan made under the subordination include tax exempt financing.**

## B Lender Request for Subordination of Guaranteed Loan Security

The local Authorized Agency Official may approve a lender's request to subordinate crops, feeder livestock, livestock offspring, milk, produce, and other normal income security that were not produced through advances made under the guaranteed loan, to allow a borrower to obtain unguaranteed annual operating credit. Multi-year assignments of FSA program payments will not be subordinated. However, in those cases where normal income security is being subordinated so another lender can make a loan for annual production expenses, any amount that exceeds the guaranteed loan payment for that year may be released.

## 278 Subordination of Guaranteed Loan Security (7 CFR 762.142) (Continued)

**B Lender Request for Subordination of Guaranteed Loan Security (Continued)**

FSA discourages subordination of real estate, equipment, and other basic security and will  
 \*--not provide regulatory approval authority at levels lower than DAFLP, except in cases where the subordination is required to allow another lender to refinance an existing prior lien the local authorized agency official will approve the subordination, provided:

- no additional debt is being incurred
- the lender's security position will not be adversely affected by the subordination.

When SED determines that the subordination of basic security for any other purpose is in the best interest of the Agency and the borrower, the request shall be forwarded to the National Office for DAFLP approval. Subordination of basic security will not be approved simply--\* to allow the operation to expand, or to allow a lender to secure an operating loan with basic security. The request should contain:

- a description of the transaction including the use of the funds to be obtained through the subordination
- explanation of the borrower's cash flow before and after the proposed subordination documenting the improvement to be attained
- certification that the guaranteed loan will still be secured after the subordination based on a current appraisal

**Note:** If the subordination request is to refinance existing real estate debt and no additional funds are provided, an appraisal is not required.

- an explanation of how the subordination is necessary to keep the borrower in business, or otherwise how the Government will benefit from the subordination, other than through conservation of loan funds.

Agency refusal to grant an exception to published regulations is not appealable.

**281 Transfers and Assumptions (7 CFR 762.142(d))****A Overview**

A transfer and assumption is an action whereby a new, eligible guaranteed loan applicant assumes an existing guaranteed loan. The transfer and assumption process is very similar to the application and approval of a new loan.

**B Lender Request for a Transfer and Assumption**

**For standard eligible and CLP lenders, the servicing action must be approved by the Agency in writing. For standard eligible and CLP lenders, the transferee must apply for a loan in accordance with § 762.110 (Part 5), including a current appraisal, unless the lien position of the guaranteed loan will not change, and any other information requested by the Agency to evaluate the transfer and assumption.**

**PLP lenders may process transfers and assumptions in accordance with their agreement with the Agency.**

**Any required security appraisals must meet the requirements of § 762.127 (Part 8, Section 4, Subsection 3).**

Lenders must also submit a request to release the transferor, guarantor, or any third party from liability according to paragraph 285.

**C Conditions and Requirements for a Transfer and Assumption**

**The following limitations apply to transfers and assumptions.**

- **The transferee must meet the eligibility requirements and loan limitations for the loan being transferred, all requirements relating to loan rates and terms, loan security, feasibility, and environmental and other laws applicable to a loan applicant under this subpart.**
- **The lender will use its own assumption agreements or conveyance instruments providing they are legally sufficient to obligate the transferee for the total outstanding debt.**

## 281 Transfers and Assumptions (7 CFR 762.142(d)) (Continued)

**C Conditions and Requirements for a Transfer and Assumption (Continued)**

- **The lender must give any holder notice of the transfer. If the rate and terms are changed, written concurrence from the holder is required.**

Additional limitations that apply to transfers and assumptions are as follows:

- the market value of the security being acquired, plus any additional security the transferee proposes to give, must be adequate to secure the balance of the guaranteed loan plus any prior liens
- at the time of the assumption, the indebtedness of the transferee may not exceed the limits outlined in subparagraph 244 A.

**D FSA Response to Request for Transfer and Assumption**

**The Agency will review, approve or reject the request in accordance with the time frames in § 762.130 of this part (Part 6).**

**The Agency approves the transfer and assumption by executing a modification of the guarantee to designate the party that assumed the guaranteed debt, the amount of the debt at the time of the assumption, including interest that is being capitalized, and any new loan terms, if applicable.**

The Authorized Agency Official will execute FSA-1980-84 and provide it to the lender for attachment to the original FSA-1980-27.

**The Agency will agree to releasing the transferor or any guarantor from liability only if the requirements of § 762.146(c) (paragraph 285) are met.**

The Authorized Agency Official should treat a request for a transfer as an application for a new guaranteed loan. If all of the program requirements are met the transfer and assumption should be approved by FSA.

The Authorized Agency Official will attach the assumption agreement to FSA-1980-27 or FmHA-449-34. To notify the Finance Office of the assumption, complete and forward \*--FSA-1980-86. Guaranteed loan fees are not required for transfer and assumption.--\*

**The lender will provide the Agency copies of any agreements executed to carry out the servicing action.**

## Section 2 Restructuring Requirements for Guaranteed Loans

## 312 Lender Requirements and Conditions for Loan Restructuring (7 CFR 762.145)

## A General Requirements

For any restructuring action, the following conditions apply.

- **The borrower meets the eligibility criteria of § 762.120, except the provisions regarding prior debt forgiveness and delinquency on a Federal debt do not apply.**

**Note:** When a lender submits a request for FSA concurrence with a restructuring action, the Authorized Agency Official will review the borrower's eligibility for the loan. However, the eligibility provisions of subparagraphs 108 C and D do not apply to the restructuring of existing loans.

- **The borrower's ability to make the amended payment is documented by the following:** (SEL and CLP lender only; PLP lender shall see the lender's agreement)

- **a feasible plan (see section 762.102(b))**

**Note:** If interest assistance is required to achieve a feasible plan, the items required by Sec. 762.150(d) must be submitted with a restructuring request.

- **current financial statements from all liable parties**
- **verification of nonfarm income**
- **verification of all debts of \$1,000 or more**
- **applicable credit reports**
- **financial history (and production history for standard eligible lenders) for the past 3 years to support the cash flow projections.**
- **A final loss claim may be reduced, adjusted, or rejected as a result of negligent servicing after the concurrence with a restructuring action under this section.**

**312 Lender Requirements and Conditions for Loan Restructuring (7 CFR 762.145)  
(Continued)****A General Requirements (Continued)**

- \*--Loans secured by real estate and/or equipment can be restructured using a balloon payment, equal installments, or unequal installments. Under no circumstances may livestock or crops alone be used as security for a loan to be rescheduled using a balloon payment. If a balloon payment is used, the projected value of the real estate and/or equipment security must indicate that the loan will be fully secured when the balloon payment becomes due. The projected value will be derived from a current appraisal adjusted for depreciation of depreciable property, such as buildings and other improvements, that occurs until the balloon payment is due. For equipment security, a current appraisal is required. The lender is required to project the security value of the equipment at the time the balloon payment is due based on the remaining life of the equipment, or the depreciation schedule on the borrower's Federal income tax return. Loans restructured with a balloon payment that are secured by real estate will have a minimum term of 5 years, and other loans will have a minimum of 3 years before the scheduled balloon payment. If statutory limits on terms of loans prevent the minimum terms, balloon payments may not be used. If the loan is restructured with unequal installments, a feasible plan, as defined in §762.102(b), must be projected for when installments are scheduled to increase.--\*

**Example of unequal installment:** A payment that increases as the cash flow and debt repayment ability of the farming operation increases because of development or expansion. Unequal installments may be used when development is being financed, such as the planting of orchards or other perennial crops, the construction of livestock or other processing facilities, or the purchase of foundation livestock. Since typical production income may not be realized for quite a number of years in some cases, higher installments could be scheduled later in the life of the loan. For instance, an orchard development may be financed resulting in the planting of immature trees. In years 1 through 3, there may be no realized production and income. In years 4 through 6, initial production may be anticipated; however, full production may not be expected until years 8 through 10. Unequal payments may be adjusted accordingly.

- **If a borrower is current on a loan, but will be unable to make a payment, a restructuring proposal may be submitted prior to the payment coming due.**
- **The lender may capitalize the outstanding interest.** See subparagraph 326 D.

**312 Lender Requirements and Conditions for Loan Restructuring (7 CFR 762.145)  
(Continued)****A General Requirements (Continued)**

- **The lender's security position will not be adversely affected because of the restructuring. New security instruments may be taken if needed, but a loan does not ~~have to be fully secured in order to be restructured, unless it is restructured with a balloon payment. When a loan is restructured using a balloon payment, the lender must take a lien on all assets and project the loan to be fully secured at the time the balloon payment becomes due, in accordance with 7 CFR 762.145 (b)(4).~~**

**Note:** If the lender takes additional security as part of the loan restructuring, a list of the new security items and their estimated values should be forwarded to the Authorized Agency Official along with all other restructuring materials according to paragraph 313.

- **Any holder agrees in writing to any changes in the original loan terms, including the approval of interest assistance. If the holder does not agree, the lender must repurchase the loan from the holder for any loan restructuring to occur.**

**All lenders will submit copies of any restructured notes or lines of credit to the Agency.**

If a co-borrower or co-signer is required to execute a note in conjunction with a restructuring, the lender must provide the name, Social Security number, and current address of the co-borrower or co-signer to the Agency.

**313 Specific Lender Requirements for Loan Restructuring (7 CFR 762.145)**

**A SEL Request for Restructuring**

**Standard eligible lenders must obtain prior written approval of the Agency for all restructuring actions.**

After SEL has restructured the loan, the lender must submit:

- FSA-1980-44 indicating that the loan is current
- copies of restructured notes or LOC's.

After SEL has submitted all of these documents, FSA shall:

- review the documents for compliance
- input FSA-1980-44 into GLS
- execute FSA-1980-84 and provide a copy to the lender, if applicable
- complete and forward FSA-1980-48 to KCFO.

**Note:** For loans with IA, see subparagraphs 230 D and E for additional requirements.

**313 Specific Lender Requirements for Loan Restructuring (7 CFR 762.145) (Continued)****B CLP Restructuring Requirements**

**CLP lenders must obtain prior written approval of the Agency only for debt write down under this section.**

**For restructuring other than write down, CLP lenders will provide FSA with a certification that each requirement of this section (part) has been met, a narrative outlining the circumstances surrounding the need for restructuring, and copies of any applicable calculations.**

In addition, the CLP lender will provide:

- copies of any restructured notes
- FSA-1980-44 to show the loan is current.

After the CLP lender has submitted all of these documents, FSA shall complete the same actions as for SEL's.

**C PLP Restructuring Requirements**

**PLP lenders will restructure loans in accordance with their lender's agreement.**

A PLP lender may request guidance on or concurrence with a restructuring proposal. The Authorized Agency Official shall review the lender's request for compliance with the terms indicated in the credit management plan of their PLP FSA-1980-38.

**313 Specific Lender Requirements for Loan Restructuring (7 CFR 762.145) (Continued)****C PLP Restructuring Requirements (Continued)**

All PLP lenders will submit copies of any restructured notes to FSA. With the copies of any restructured notes, PLP's must attach a cover memo explaining the restructuring and FSA-1980-44 to confirm that the loan is once again current.

\*--After the PLP lender has submitted all of these documents, FSA shall complete the same actions as for CLP lenders.--\*

**314 FSA Response to Restructuring Requests****A Authorized Agency Official Responsibilities**

Authorized Agency Officials have several responsibilities in the event a loan defaults and a lender submits a restructuring plan, including:

- provide loan restructuring assistance and guidance as requested
- review FSA-1980-44 for compliance with FSA guarantee documents, the lender's loan agreement, promissory note, and FSA regulations
- inform the lender if the borrower is eligible for IA if requested
- process all FSA-1980-44's in GLS.

The Authorized Agency Official should contact the lender to discuss any problems with the proposal, request corrections, or suggest revisions. If the requested corrections are significant, this contact should be followed up with a letter outlining the additional information needed and a time frame for it to be provided. If the proposal is approved, the Authorized Agency Official will inform the lender that they may proceed to restructure the loan.

If the lender fails to provide updates on recent or planned collection actions, estimated timeframes for corrective actions proposed by the borrower, or other information reviewed that indicates that the lender is not acting timely or prudently to protect their interest, the Authorized Agency Official will inform the lender in writing of the problems noted and request modifications.

**359 Lender Submission of Estimated Loss Claim (7 CFR 762.149)****A Overview**

An estimated loss claim will be submitted by the lender with the liquidation plan if the liquidation is expected to exceed 90 days. The estimated loss will be based on the following:

- the Agency will pay the lender the guaranteed percentage of the total outstanding debt, less the net recovery value of the remaining security, less any unaccounted for security
- the lender will discontinue interest accrual on the defaulted loan at the time the estimated loss claim is paid by the Agency. If the lender estimates that there will be no loss after considering the costs of liquidation, interest accrual will cease after 90 days from the decision to liquidate or an estimated loss of zero will be submitted.

See subparagraph 329 C for loss claims on restructured loans.

**B Estimated Liquidation Expenses**

Certain reasonable costs to liquidate a loan may be included in the estimated loss claim. Eligible liquidation expenses include, but are not limited to, the following:

- appraisals
- marketing expenses
- auctioneer expenses
- legal fees.

**Note:** Legal fees associated with the liquidation are a liquidation expense. FSA allows reasonable and necessary legal fees, including fees incurred in a Chapter 7 liquidation bankruptcy, to be deducted from the sale of the collateral before application of the net proceeds to the guaranteed debt. Lenders will be compensated for liquidation expenses incurred before the filing of a reorganization bankruptcy proceeding. An estimate of legal fees, and all liquidation costs, must be provided with an estimated loss claim, and documentation of actual expenses incurred must be provided with the final loss claim.

**\*--Packager fees and outside consultant fees for servicing of guaranteed loans are not covered by the guarantee, and will not be paid in an estimated or final loss claim.--\***

**359 Lender Submission of Estimated Loss Claim (7 CFR 762.149) (Continued)****B Estimated Liquidation Expenses (Continued)**

In-house expenses are not allowable liquidation costs. In-house expenses include, but are not limited to, the following:

- employee salaries
- staff lawyers
- photocopying
- travel.

**C Lender Submission of Estimated Loss Claim**

Lenders will submit the estimated loss claim on RD-449-30 to the Authorized Agency Official and prepared according to the instructions attached to RD-449-30. Calculations and other documentation to support the figures and estimates used on RD-449-30 must be attached.

The lender's supporting documentation shall include the following:

- unpaid accrued interest
- advances
- payments
- periods of time
- interest rates
- principal balances.

SEL and CLP lenders will also be required to submit appraisals and other documentation to support the estimates on RD-449-30. Estimated loss claims for PLP lenders will only be reviewed for accuracy and calculations of RD 449-30. RD-449-30 FMI provides examples on how to complete certain fields.

The lender must justify and explain any liquidation expenses on the estimated loss claim in a separate memo submitted with the estimated loss claim.

**D Unapproved Loans or Advances**

**The amount of any payments made by the borrower on unapproved loans or advances outside of the guarantee will be deducted from any loss claim submitted by the lender on the guaranteed loan, if that loan or advance was paid prior, and to the detriment of, the guaranteed loan.**

**359 Lender Submission of Estimated Loss Claim (7 CFR 762.149) (Continued)****E FSA Approval of Protective Advances**

FSA will approve a request for a protective advance if the request is reasonable and the value of the security would decrease significantly if the advance was not made. FSA will respond within 14 calendar days to an SEL and CLP written request for concurrence on a protective advance. Concurrence with protective advances can be provided separately from approval of the liquidation plan.

PLP lenders will make protective advances according to FSA-1980-38.

**F FSA Approval and Payment of Estimated Loss Claim**

The estimated loss claim may be reviewed and approved separately from the liquidation plan using FSA-1980-06. The estimated loss claim is submitted on RD-449-30 to the Authorized Agency Official. After reviewing RD-449-30, the Authorized Agency Official shall forward RD-449-30 and supporting documentation to SED with a recommendation to approve or dispute the estimated loss claim.

If SED finds the estimated loss claim to be accurate, SED shall approve the payment within 30 calendar days of estimated loss claim submission. If FSA wishes to dispute the estimated loss claim, FSA shall attempt to resolve the differences with the lender within 30 calendar days of the submission.

After approval by SED, SED shall forward RD-449-30 to the Finance Office for payment of the estimated loss claim. The mailing address for the Finance Office is:

Farm Service Agency  
Loan Operations Division  
P.O. Box 200003  
St. Louis, MO 63120.

FAXes for States:

- 01-32 shall be sent to 314-539-3111
- 33-64 shall be sent to 314-539-6447.

The Finance Office shall issue a check to the lender within 30 calendar days of receiving RD-449-30. The PLP estimated loss claim will be paid after a brief review for accuracy.



**360 Lender Submission of Final Loss Claim (7 CFR 762.149) (Continued)****D Protective Advances (Continued)**

**Payment for protective advances is made by the Agency when the final loss claim is approved, except in bankruptcy actions.**

**Protective advances are used only when the borrower is in liquidation, liquidation is imminent, or when the lender has taken title to real property in a liquidation action.**

**Legal fees are not a protective advance.**

**Protective advances may only be made when the lender can demonstrate the advance is in the best interest of the lender and the Government.**

**Protective advances must constitute a debt of the borrower to the lender and be secured by the security instrument.**

**Protective advances must not be made in lieu of additional loans.**

Protective advances approved by FSA may be made by a lender to protect or preserve the collateral from loss or deterioration. Additional loans made to improve the value of security, such as loans for home improvement, are not protective advances and should not be approved. Protective advances and the interest that accrues on the advances are covered by the guarantee.

**E Legal Fees**

Legal fees associated with liquidation are a liquidation expense, see subparagraph 359 B. Documentation of actual legal expenses incurred must be provided with the final loss claim.

**F FSA Approval and Payment of Final Loss Claim**

**The Agency will notify the lender of any discrepancies in the final loss claim or, approve or reject the claim within 40 days.** FSA officials may use FSA-1980-07 for this discrepancy review.

**\*--Note:** For loans made using FSA-1980-25 or FSA-1980-28 with the July 20, 2001, or later revision date, before the payment of a final loss claim, FSA officials must have a copy of the original application, promissory note, FSA-1980-27, and the current interest rate if a variable rate loan.--\*

**360 Lender Submission of Final Loss Claim (7 CFR 762.149) (Continued)****F FSA Approval and Payment of Final Loss Claim (Continued)**

The Agency will reduce a final loss claim based on its calculation of the dollar amount of loss caused by the lender's negligent servicing of the account. Loss claims may be reduced or rejected as a result of the following:

- a loss claim may be reduced by the amount caused by the lender's failure to secure property after a default, and will be reduced by the amount of interest that accrues when the lender fails to contact the borrower or takes no action to cure the default, once it occurs
- losses incurred as a result of interest accrual during excessive delays in collection, as determined by the Agency, will not be paid
- unauthorized release of security proceeds, failure to verify ownership or possession of security to be purchased, or failure to inspect collateral as often as required to ensure its maintenance.

**\*--Packager fees and outside consultant fees for servicing of guaranteed loans are not covered by the guarantee, and will not be paid in an estimated or final loss claim.--\***

Losses will not be reduced for the following:

- servicing deficiencies that did not contribute materially to the dollar amount of the loss
- unaccounted for security, as long as the lender's efforts to locate and recover the missing collateral was equal to that which would have been expended in the case of an unguaranteed loan in the lender's portfolio.

Default interest, late charges, and loan servicing fees are not payable under the loss claim.

The final loss will be the remaining outstanding balance after application of the estimated loss payment and the application of proceeds from the liquidation of the security. The lender will designate one or more financial institutions to which any Agency payments will be made via electronic funds transfer.

**360 Lender Submission of Final Loss Claim (7 CFR 762.149) (Continued)****F FSA Approval and Payment of Final Loss Claim (Continued)**

FSA shall pay the lender the guaranteed percentage of the unpaid balance remaining on the loan after liquidation and application of proceeds. To verify that the amount requested is valid, SED shall review the County Office loan file, the lender's loan ledgers, and, for PLP, the lender's loan file. If there are any discrepancies in the lender's application processing or loan servicing, the lender will be requested to provide clarification or explanation if the concern may have contributed to failure of the loan or caused a monetary loss. If security was not obtained as indicated on the application, the value will be deducted from the lender's claim, if that value is known or can be reasonably estimated. In the case of unaccounted for security that was not sold, traded, or explained in some manner, the value of the collateral will be deducted only to the extent that the actions of the lender contributed to its misplacement.

Interest accrual on a final loss should be the same as on the estimated loss except for the amount that accrued while the payment was being issued. If liquidation was completed as planned and the claim was timely submitted to FSA, additional interest may be paid for the number of calendar days over 40 that FSA took to review the claim up to the date of the check. If an estimated loss was not paid, SED shall determine whether the lender has liquidated the account in a timely manner. If liquidation was unduly delayed or the lender did not comply with the reporting requirements of this part, interest accrual will be included on the claim to the date that SED determines that liquidation should have reasonably been accomplished.

Interest accrual as part of a lender's final loss claim will never exceed 90 calendar days from the date of the decision to liquidate, plus any additional days over 40 calendar days that it took FSA to review the claim up to the date of the check, for all claims made after February 12, 1999, in which an estimated claim was not filed and the final claim was submitted within 90 calendar days of the date of the decision to liquidate.

If an estimated claim was not submitted and the final claim was submitted beyond 90 calendar days of the date of the decision to liquidate, interest accrual will not be paid beyond 90 calendar days from the date of the decision to liquidate for all claims made after February 12, 1999.

Interest accrual as part of a final claim will be the same as the estimated claim for all final claims in which an estimated claim was previously submitted.

FSA may pay a loss when a borrower sells security out of trust. If the borrower has converted loan security, the lender shall determine whether litigation is cost-effective. The lender must determine whether civil or criminal action is cost-effective and will be pursued. If the lender does not pursue the recovery, the reason must be documented when a loss claim is submitted. If recovery of converted security through legal action is possible, a lender may still submit a final loss claim and reimburse FSA according to subparagraph 362 A after proceeds are collected.

**360 Lender Submission of Final Loss Claim (7 CFR 762.149) (Continued)****F FSA Approval and Payment of Final Loss Claim (Continued)**

If a lender's loss claim is denied or reduced, SED shall notify the lender in writing immediately of the decision. Lenders may appeal this decision according to 1-APP.

**\*--Note:** For loans made before February 12, 1999, denied lender's loss claims will be handled according to FmHA Instructions 1980-A and 1980-B in effect at the time the guarantee was issued. See Exhibit 16.5.--\*

When the final RD-449-30 is accepted by the Authorized Agency Official and approved by SED, SED shall forward RD-449-30 to the Finance Office for payment. The final loss claim will be paid up to the maximum amount allowed as provided in subparagraph 195 C. In the case of a loan that is a total loss, the loss payment may exceed the original guaranteed principal and accrued interest, if it includes emergency advances or protective advances.

**G Overpayment**

**If the final loss is less than the estimated loss, the lender will reimburse the Agency for the overpayment plus interest at the note rate from the date of the estimated loss payment.**

The lender's ledger provided with the final loss claim should reflect that since the estimated claim was paid, the following has occurred:

- application of liquidation proceeds net of expenses
- approved protective advances
- any voluntary payments
- no additional interest accrual except on protective advances.

The ledger should not reflect that the FSA-estimated loss claim was applied as a regular payment. The amount of overpayment or underpayment will be calculated on RD-449-30. The interest due on any loss claim will be calculated by KCFO, St. Louis based upon the borrower's rate of interest and the date the estimated claim was paid. If the lender wishes to submit a check with their request for a final loss claim, this amount may be obtained by contacting the KCFO, St. Louis technician before submitting RD-449-30.

**H Return of Guarantee**

The lender will return the original Guarantee marked paid after receipt of a final loss claim.

The final loss claim payment will be sent by EFT whenever possible. Return of the Guarantee is not required before EFT or delivery of a check. After verification that the final loss claim has been paid, the account will be terminated in GLS.

**361 Release of Liability After Liquidation (7 CFR 762.146(c))****A Overview**

For loans made using FSA-1980-25 or FSA-1980-28 with the revision date before July 20, 2001, after a final loss claim has been paid, the lender may release the borrower or any guarantor from liability with FSA concurrence if the conditions of subparagraph B can be met.

**B Loans Made Using FSA-1980-25 or FSA-1980-28 With a Revision Date Before July 20, 2001**

After a final loss claim has been paid on the borrower's account, the lender may release the borrower or guarantor from liability if:

- the Agency agrees to the release in writing
- the lender documents its consideration of the following factors concerning the borrower or guarantors:
  - the likelihood that the borrower or guarantor will have a sufficient level of income in the reasonably near future to contribute to a meaningful reduction of the debt
  - the prospect that the borrower or guarantor will inherit assets in the near term that may be attached by the Agency for payment of a significant portion of the debt
  - whether collateral has been properly accounted for, and whether liability should be retained in order to take action against the borrower or a third party for conversion of security property
  - the availability of other income or assets which are not security
  - the possibility that assets have been concealed or improperly transferred
  - the effect of other guarantors on the loan
  - cash consideration or other collateral in exchange for the release of liability.

**The lender will execute its own release of liability documents.**

The lender will submit a narrative to the Authorized Agency Official explaining the borrower or entity should be released from liability. The Authorized Agency Official may ask for documentation to support the lender's argument. The Authorized Agency Official will forward all relevant material to SED for review and approval.

**361 Release of Liability After Liquidation (7 CFR 762.146(c)) (Continued)****\*--C Loans Made Using FSA-1980-25 or FSA-1980-28 With the July 20, 2001, or Later Revision Date**

For loans made using FSA-1980-25 or FSA-1980-28 with the July 20, 2001, or later revision date, release of liability can only be approved by DAFLP. The payment of a final loss claim on these loans established a Federal debt and is subject to offset. Collection of the Federal debt will be pursued according to 7 CFR 762.149(m). See paragraph 363.

SED's shall thoroughly evaluate all requests and forward them to DAFLP with their recommendation. All requests will include an analysis along with supporting documentation that includes a monetary analysis as to why such an exception is in the Government's best interest. DAFLP will evaluate each request on a case-by-case basis. DAFLP's decision is final and is not appealable.--\*

**362 Miscellaneous Liquidation Items (7 CFR 762.149)****A Future Recovery**

**The lender will remit any recoveries made on the account after the Agency's payment of a final loss claim to the Agency in proportion to the percentage of guarantee in accordance with the Lender's Agreement until the account is paid in full or otherwise satisfied.**

A lender receiving a loss payment must complete and return in a timely manner a report on its collection activities, FSA-1980-26, for each unsatisfied account for three years following payment of loss claims.

In late October of each year, the Authorized Agency Official will forward FSA-1980-26 with instructions to lenders that have received a loss claim because of liquidation in the past 3 years. FSA-1980-26 must be completed and returned by November 30.

**Note:** FSA-1980-26 will not be completed for Chapter 7 liquidation bankruptcy cases that have received a discharge.

SED shall compile the State's reports and submit the results to the National Office upon request.

\*--When FSA's share of an amount is received, the funds will be deposited according to 3-FI. The following items will be completed on RD-449-30:

- enter code 4 in item 3A, "Report Type Code"
- enter the date funds were received in item 10, "Date of Settlement"
- enter the amount received in item 44, "Amount Due USDA by Lender".--\*

**Part 15 Secondary Market****373 Overview of the Secondary Market for FSA Guaranteed Loans****A Overview**

The secondary market is a mechanism that allows lenders to obtain liquidity to make additional loans. Through the secondary market, the lender may:

- reduce their interest rate risk

**Note:** The lender can transfer the risk of interest rate increases to the secondary market through the sale of the guaranteed portion of the loan.

- increase liquidity

**Note:** The lender can use funds received from a loan sale for additional lending or investing activity.

- increase return on investment

**Note:** By selling the loan to the secondary market and keeping a servicing fee, a lender may increase their return on the loan and reduce their interest rate risk.

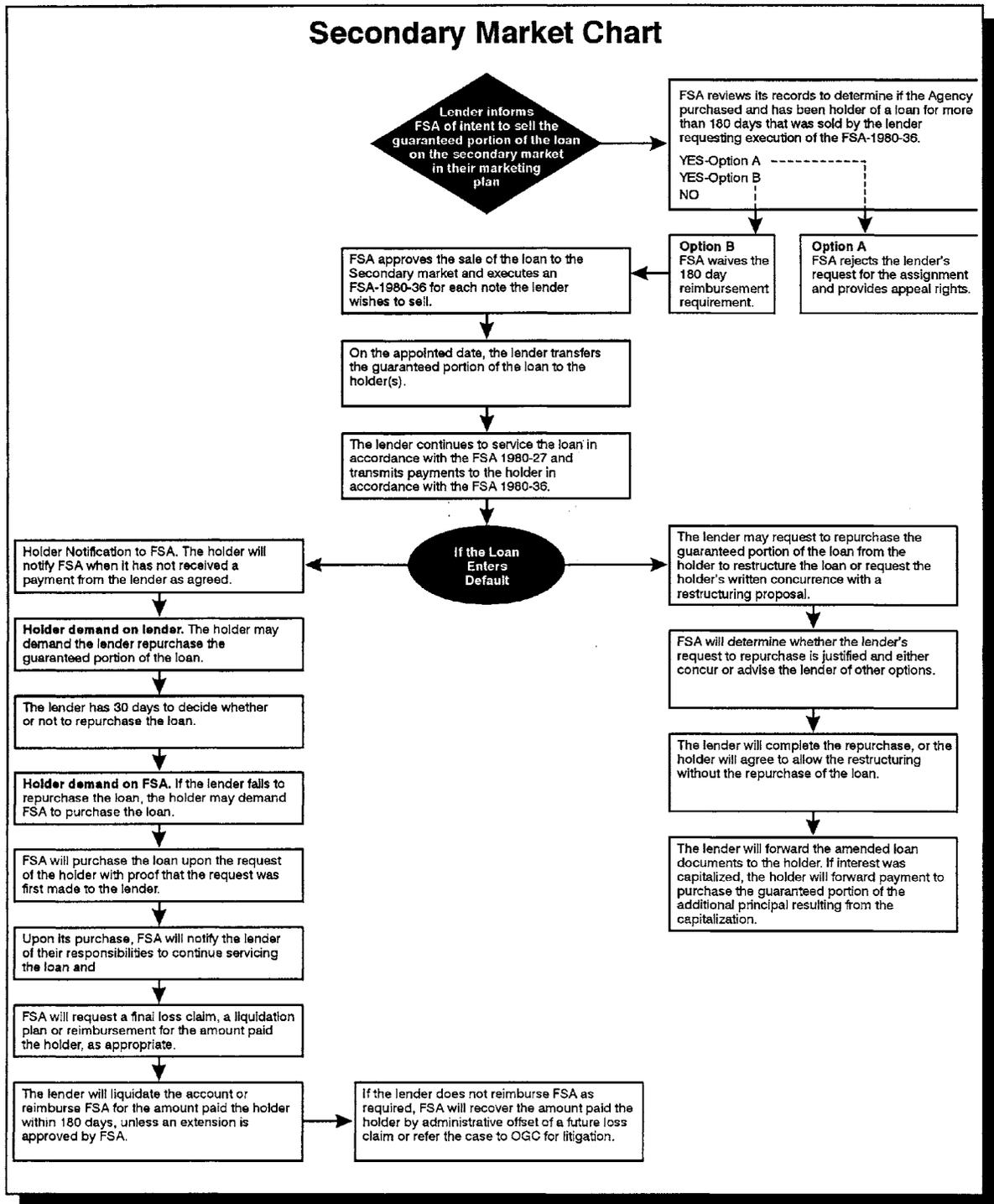
- increase the flexibility of loan terms.

**Note:** The presence of the secondary market creates the ability for lenders to provide longer fixed rate terms than they would normally offer.

373 Overview of the Secondary Market for FSA Guaranteed Loans (Continued)

B Secondary Market Flowchart

Following is the secondary market flowchart.



**373 Overview of the Secondary Market for FSA Guaranteed Loans (Continued)****C Holder Versus Participant**

FSA makes a clear distinction between a holder of the loan and a participant in the loan.

- A holder is a person or organization other than the lender who holds all or part of the **guaranteed portion** of the loan with no servicing responsibilities. The holder “holds” the note and the guarantee and, therefore, is backed 100 percent by the “Full Faith and Credit” of the U.S. Government in case of default. All holders must have FSA-1980-36 that has been executed by FSA.
- A participant is a person or organization that buys an interest in the loan in which the originating lender keeps the note, the collateral securing the note, and all responsibility for loan servicing. A participant has no claim to the guarantee in case of default. The originating lender is required to keep a minimum of 10 percent of the total loan amount in its portfolio. When FSA-1980-27 exceeds 90 percent, the lender must keep the entire unguaranteed portion.

**374 Agency Requirements (7 CFR 762.160)****A Loan Requirements for Sale on the Secondary Market**

**Subject to Agency concurrence, the lender may sell, assign or participate all or part of the guaranteed portion of the loan to one or more holders at or after loan closing, only if the loan is not in default. However, a line of credit can be participated, but not sold or assigned.**

**The Agency may refuse to execute the Assignment of Guarantee and prohibit the sale when the Agency purchased and is holder of a loan that was sold by the lender that is requesting the assignment and the lender has not complied with the reimbursement requirements of § 762.144 (c)(7) (paragraph 376) of this part, except when the 180 day reimbursement or liquidation requirement has been waived by the Agency.**

**The guaranteed portion of the loan may not be sold or assigned by the lender until the loan has been fully disbursed to the borrower. A line of credit may be participated prior to being fully advanced.**

**The lender is not permitted to sell, assign or participate any amount of the guaranteed or unguaranteed portion of loan to the loan applicant or borrower, or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary, or affiliate.**

**374 Agency Requirements (7 CFR 762.160) (Continued)****A Loan Requirements for Sale on the Secondary Market (Continued)**

**Upon the lender's sale or assignment of the guaranteed portion of the loan, or participation of the line of credit, the lender will remain bound to all obligations indicated in the Guarantee, Lender's Agreement, the Agency program regulations, and to future program regulations not inconsistent with the provisions of the Lenders Agreement. The lender retains all rights under the security instruments for the protection of the lender and the United States.**

The lender may sell, assign or participate all or part of the guaranteed portion of the loan to 1 or more holders at or after loan closing if the loan is not in default and proceeds have been fully disbursed.

Only the guaranteed portion of a loan may be sold on the secondary market. In a secondary market sale the guaranteed portion of the loan is transferred to a holder while the lender keeps servicing responsibilities for the loan.

The lender is not permitted to sell or participate any amount of the guaranteed or unguaranteed portion of the loan to the applicant or borrower; members of their immediate families; their officers, directors, stockholders, or other owners; or any parent, subsidiary, or affiliate.

**B LOC Requirements for Sale on the Secondary Market**

**In a participation, the lender sells an interest in a loan but retains the note, the collateral securing the note, and all responsibility for loan servicing and liquidation. The guarantee does not encompass the participant.**

**The lender must retain at least 10 percent of the total guaranteed loan amount from the unguaranteed portion of the loan in its portfolio, except when the loan guarantee exceeds 90 percent, the lender must retain the total unguaranteed portion.**

**Participation with a lender by any entity does not make that entity a holder or a lender as defined in this part.**

LOC's may be participated, but may not be sold or assigned. In a participation, the lender keeps both the note and the servicing responsibilities, the participant merely buys an interest in the loan or LOC. No Agency notification is required if the lender merely chooses to "participate" the loan.

## 374 Agency Requirements (7 CFR 762.160) (Continued)

**C Transfer to the Secondary Market**

Lenders generally market guaranteed loans to investors through an intermediary or directly to Farmer Mac.

Lenders are regularly contacted by and normally maintain a list of brokers or dealers interested in the purchase of FSA Guaranteed Loans. In an average transaction, lenders take the following steps to make a typical sale of a guaranteed loan on the secondary market.

- Contact several brokers or Farmer Mac for bids on the loan. The brokers will need to know:
  - loan amount and the size of the guaranteed portion
  - coupon rate (variable or fixed)  
**Note:** If variable, the broker will need to know the interest adjustment period.
  - if it is a new loan, when the loan will be funded
  - maturity date
  - payment schedule.
- Determine loan servicing fee. Obtain a commitment on the loan servicing fee, usually ranging from 0.4 to 2 percent.
- Select a bid. Analyze all the offers, select the most appropriate, and contact the winning broker. **Negotiations concerning premiums, fees, and additional payments for loans are to take place between the holder and the lender. The Agency will participate in such negotiations only as a provider of information.**
- Review documents. The broker or intermediary should send the lender a purchase commitment letter. The lender must notify the FSA office that the loan is being sold and obtain the documents that the lender will need to execute. To complete the sale, the lender should sign and return 1 copy of the commitment letter to the broker along with the following:
  - copy of the note
  - copy of FSA-1980-27
  - FSA-1980-36.

## 374 Agency Requirements (7 CFR 762.160) (Continued)

**C Transfer to the Secondary Market (Continued)**

\* \* \*

- Close the transaction.
  - Upon receipt of the forms, the holder or broker prepares FSA-1980-36 and sends it to the lender in triplicate. For sales to Farmer Mac, FSA-1980-36 is prepared by the lender.
  - The lender signs all 3 forms and forwards them to FSA for execution.
  - FSA signs the forms and forwards them to the investment broker. The settlement date is established by the broker.
  - The broker returns the original copy to the lender and another copy to FSA.
  - On settlement date, the broker wires the funds to the lender.

**D Agency Execution of FSA-1980-36**

The lender shall provide FSA with copies of all appropriate forms used in the sale or assignment.

If a lender intends to sell the loan to the secondary market, they should inform FSA of their plans during the post-closing review (subparagraph 247 A).

In selling a loan on the secondary market, lender will occasionally break the loan into more than 1 note. For each note, FSA will need a separate FSA-1980-27 and the lender/broker or holder will need to execute a separate FSA-1980-36. See subparagraph C.

Once the lender accepts a specific buyer's offer, the lender should notify FSA that the loan is being sold. The Authorized Agency Official should inform the lender that they must submit FSA-1980-36 to FSA for execution.

**\*--Note:** The Authorized Agency Official shall execute FSA-1980-36 after reviewing it according to this subparagraph. FSA-1980-36 does not have to be signed by the holder before FSA approval of the assignment. After execution by the lender and FSA, the holder will execute it and return a copy to FSA for retention in the borrower's FSA file.--\*

## 374 Agency Requirements (7 CFR 762.160) (Continued)

**D Agency Executions of FSA-1980-36 (Continued)**

Before executing FSA-1980-36, the Authorized Agency Official should review the documents to determine the following items.

- To whom the loan is being sold? According to subparagraph A, a loan may not be sold to the borrower or someone who has a relationship to the borrower or is an owner or subsidiary of the lender itself.
- Is the loan delinquent? Delinquent loans may not be sold into the secondary market.
- Is the lender attempting to sell any of the unguaranteed portion of the loan? The lender is only permitted to sell the guaranteed portion of the loan into the secondary market.
- Is FSA currently holding the guaranteed portion of a loan that was purchased more than 180 calendar days after the lender refused the request to repurchase from the holder?

\*--Once the Authorized Agency Official is satisfied that all 4 of these conditions are met, FSA-1980-36 will be executed and all copies returned to the holder.--\*

**Upon the lender's sale or assignment of the guaranteed portion of the loan, or participation of the line of credit, the lender will remain bound to all obligations indicated in the Guarantee, lender's agreement, the Agency program regulations and to future program regulations not inconsistent with the provisions of the lender's agreement. The lender retains all rights under the security instruments for the protection of the lender and the United States.**

**The lender will send the holder the borrower's executed note attached to the Guarantee.**

**The holder will succeed to all rights of the guarantee pertaining to the portion of the loan purchased.**

**The holder, upon written notice to the lender and the Agency, may assign the unpaid guaranteed portion of the loan.**

**The holder must sell the guaranteed portion back to the original lender if necessary for servicing or liquidation of the account.**

**The guarantee or assignment of guarantee in the holder's possession does not cover interest accruing 90 days after the holder has demanded repurchase by the lender, except as provided in the assignment of guarantee and § 762.144(c)(3)(iii), or interest accruing 90 days after the lender or the Agency requested the holder to surrender evidence of debt repurchase, if the holder has not previously demanded repurchase.**

**375 Repurchase of Guaranteed Portion From a Secondary Market Holder (7 CFR 762.144)****A Holder Demand for Repurchase**

**The holder may request the lender to repurchase the unpaid guaranteed portion of the loan when either:**

- **the borrower has not made a payment of principal and interest due on the loan for at least 60 days**
- **the lender has failed to give the holder its pro-rata share of any payment made by the borrower within 30 days of receipt of a payment.**

\*--The holder shall notify FSA when these circumstances exist. If the holder chooses not to make demand, Authorized Agency Officials will monitor the account. If the loan remains past due for 90 calendar days, the lender will be requested to repurchase the loan. If the lender refuses to repurchase, FSA will immediately require the holder and lender to reconcile the loan balances. FSA will then repurchase from the holder no later than 150 calendar days past due.--\*

**When a lender is requested to repurchase a loan from the holder, the lender must consider the request according to the servicing actions that are necessary on the loan. In order to facilitate servicing and simplified accounting of loan transactions, lenders are encouraged to repurchase the loan upon the holder's request.**

**If the lender does not repurchase the loan, the holder must inform the Agency in writing that demand was made on the lender and the lender refused. Following the lender's refusal, the holder may continue as holder of the guaranteed portion of the loan or request that the Agency purchase the guaranteed portion. Within 30 days after written demand to the Agency from the holder with required attachments, the Agency will forward to the holder payment of the unpaid principal balance, with accrued interest to the date of repurchase. If the holder does not desire repurchase or purchase of a defaulted loan, the lender must forward the holder its pro-rata share of payments, liquidation proceeds and Agency loss payments.**

If the lender believes the holder is making demand for repayment outside the allowable reasons, the lender should detail why they believe the demand is unreasonable in a refusal letter to the holder. A copy of this letter should also be forwarded to FSA.

Upon repurchase, the lender shall notify FSA by returning the original FSA-1980-36.

**375 Repurchase of Guaranteed Portion From a Secondary Market Holder (7 CFR 762.144)  
(Continued)**

**B Lender Initiated Repurchase**

**If due to loan default or imminent loan restructuring, the lender determines that its repurchase is necessary to adequately service the loan, the lender may repurchase the guaranteed portion of the loan from the holder, with the written approval of the Agency.**

The requirements in FSA-1980-36 are as follows:

- the lender may demand repurchase to conduct any of the servicing actions in Part 9, 12, or 14
- lender repurchase is not required if the holder will agree to the restructured terms of the note
- if interest is capitalized, a new note is taken, the original note is amended, or the principal amount is modified, the lender must ensure that the assignment is amended to reflect the actual guaranteed portion held by the holder

**Note:** In cases involving the secondary market, a restructuring action may involve repurchase from the holder.

- **the lender will not repurchase from the holder for arbitrage purposes. With its request for Agency concurrence, the lender will notify the Agency of its plans to resell the guaranteed portion following servicing**
- **the holder will sell the guaranteed portion of the loan to the lender for an amount agreed to between the lender and the holder.**

If the lender chooses to repurchase the loan for servicing, SEL and CLP lenders must receive written approval from the Authorized Agency Official or SED or designee before repurchasing a guarantee. The request for approval must include the reason for repurchase; for example, IA, interest rate adjustments, default, restructuring, or liquidation; and the proposed servicing or liquidation plan, if any, for the loan or asset.

Once the request is received by FSA, the lender will receive notification of FSA's approval or rejection within 14 calendar days. PLP's do not need Agency approval to repurchase, but must repurchase the guarantee according to the terms of their FSA-1980-38.

The lender must document all attempts to repurchase the loan from the holder in the loan file.

**375 Repurchase of Guaranteed Portion From a Secondary Market Holder (7 CFR 762.144)  
(Continued)****C Purchase of the Loan or Note by FSA**

**With its demand on the Agency, the holder will include:**

- **a copy of the written demand made upon the lender**
- **originals of the Guarantee and note properly endorsed to the Agency, or the original of the Assignment of Guarantee**
- **a copy of any written response to the demand provided by the lender to the holder**
- **an account which the Agency can forward the purchase amount to via electronic funds transfer.**

**The amount due the holder from the Agency includes unpaid principal, unpaid interest to the date of demand, and interest which has accrued from the date of demand to the proposed payment date.**

**\*--The Authorized Agency Official will select a proposed settlement date no later than 30 calendar days from the date of the holder's demand letter to FSA. FSA will only pay interest that accrues based on the accrual method established by the terms of the promissory note.--\***

**Upon Agency request, the lender will provide a current statement stating the unpaid principal and interest owed by the borrower and the amount due the holder. A bank officer must certify the statement. Any discrepancy between the amount claimed by the holder and the information submitted by the lender must be resolved by the lender and the holder before payment will be approved by the Agency.**

**The Agency will not participate in resolution of any such discrepancy. When there is a discrepancy, the 30 day Agency payment requirement to the holder will be suspended until the discrepancy is resolved (subparagraph A).**

**375 Repurchase of Guaranteed Portion From a Secondary Market Holder (7 CFR 762.144)  
(Continued)****C Repurchase of the Loan or Note by FSA (Continued)**

Within 30 calendar days of the holder's demand for purchase, the Authorized Agency Official shall:

- review the borrower's loan file

**Note:** If the file indicates that a rescheduling or reamortization could correct the default then the Authorized Agency Official should remind the lender of their responsibility for expeditiously liquidating the loan collateral in the event of an FSA purchase. Restructuring of the loan cannot occur once FSA purchase occurs.

- verify the amounts owed to the lender and the holder
- complete FSA-1980-37 and forward it to the Finance Office for processing.

**At the time of purchase by the Agency, the original Assignment of Guarantee (FSA-1980-36) will be assigned by the holder to the Agency without recourse, including all rights, title, and interest in the loan.**

**Purchase by the Agency does not change, alter, or modify any of the lender's obligations to the Agency specified in the Lender's Agreement or the Guarantee. Nor does the purchase waive any of the Agency's rights against the lender. The Agency succeeds to all rights of the holder under the Guarantee including the right to set-off against the lender.**

**D Repurchase Price of the Loan or Note**

**The repurchase by the lender will be for an amount equal to the portion of the loan held by the holder plus accrued interest.**

**The Agency Guarantee will not cover servicing fees that the lender accrues after the repurchase.**

When the lender makes a demand on FSA to purchase the guaranteed portion of the loan, the purchase price will be equal the unpaid principal and accrued interest. See subparagraph E.

**375 Repurchase of Guaranteed Portion From a Secondary Market Holder (7 CFR 762.144)  
(Continued)**

**E Interest Paid Upon Agency Repurchase**

**In the case of a request for Agency purchase, the government will only pay interest that accrues for up to 90 days from the date of the demand letter to the lender requesting \*--the repurchase. However, if the holder requested repurchase from the Agency within 60 days of the request to the lender and for any reason not attributable to the holder and the lender, the Agency cannot make payment within 30 days of the holder's demand to the Agency, the holder will be entitled to interest to the date of the payment. See 7 CFR 762.160(b)(4)(i), subparagraph 374 D. --\***

If at the time the holder requests FSA to purchase a loan or note, more than 90 calendar days have passed since the holder's demand to the lender, the holder will only receive principal and interest due at the time of the holder's request to the lender.

Unless otherwise agreed to by SED and the holder, payment will be made in 30 calendar days of the receipt of the request from the holder.

**376 Actions After Agency Repurchase (7 CFR 762.144)**

**A Request for Lender Repayment**

**Within 180 days of the Agency's repurchase, the lender will reimburse the Agency the amount of purchase, plus accrued interest, in one of the following ways:**

- **by liquidating the loan security and paying the Agency its pro-rata share of liquidation proceeds**
- **paying the Agency [from its own capital] the full amount paid to the holder plus any accrued interest**
- **the Agency may sell a purchased guaranteed loan on a non-recourse basis, if it determines that selling the portion of the loan that it holds is in the Government's best interest.**

**376 Actions After Agency Repurchase (7 CFR 762.144) (Continued)****A Request for Lender Repayment (Continued)**

If SED has a loan in their State, which has been purchased by FSA, that they propose to sell to another lender, they will obtain agreement from the current owner of the note and security instruments and forward the following to DAFLP:

- the reasons why the lender cannot comply with the 180-calendar-day reimbursement requirement
- a copy of the request from the lender to whom the loan will be sold
- economic justification for the sale price.

A nonrecourse sale will be at a price determined by DAFLP. **A non-recourse purchase from the Agency requires a written request to the Agency from the party that wishes to purchase it, and written concurrence from the lender.**

Once FSA purchases the guarantee from the holder, the Authorized Agency Official shall immediately notify the lender in writing that they must continue to service the loan and pass all payments to FSA according to FSA-1980-27. The Authorized Agency Official will request 1 of the following actions by the lender within 60 calendar days.

- Payment of the entire purchase amount (guaranteed portion plus accrued interest) of the loan held by FSA. Details of the purchase will be provided in the FSA request including:
  - date demand was made on the lender
  - date demand was made on FSA
  - name of the previous holder
  - amount of purchase price paid by FSA
  - daily interest accrual on the purchase amount.
- The Authorized Agency Official shall complete RD-1980-43 and forward the payment to KCMO, St. Louis Finance Office. The lender must complete FSA-1980-41 indicating that the guarantee is to be terminated.

## 376 Actions After Agency Repurchase (7 CFR 762.144) (Continued)

**A Request for Lender Repayment (Continued)**

- A properly completed RD-449-30 with loan ledgers and supporting documents. RD-449-30 will be coded for final loss review by SED or designee. If the loss amount is less than the amount held by FSA, the loss claim must include a check from the lender for the difference, plus interest up to the date of payment. See subparagraph 360 F.
- A liquidation plan, if not already received (subparagraph 358 B). Interest accruing to FSA as holder will continue until payment is received from the lender. If liquidation is projected to take longer than 180 calendar days after FSA purchase, the lender will be requested to submit a final loss claim based on receiving the market value of the collateral. See RD-449-30 for calculation of the final loss claim.

FSA will make similar requests of the lender again after 90 and 120 calendar days. If the lender refuses or fails to comply with the request after 180 calendar days, then SED will follow the procedures in subparagraph B.

If a lender fails to comply with the requests, SED shall:

- notify the lender of FSA's intent to collect the purchase amount by administrative offset according to RD Instruction 1951-C

**Notes:** Form letter RD-1951-C-1 or a similar format may be used.

An administrative offset will occur against future loss claims the lender may submit.

- refer the case to the Regional OGC for referral to the US Attorney's office to initiate legal action to collect the amount owed FSA for purchase
- determine whether lender status should be revoked according to 7 CFR 762.106(a)(2)(ix), if the lender is a PLP or CLP lender. See Part 4 for further information on revoking lender status.

## 376 Actions After Agency Repurchase (7 CFR 762.144) (Continued)

**B Failure to Reimburse FSA**

If the lender does not reimburse FSA within 180 calendar days, **the lender will be liable for the repurchase amount and any expenses incurred by the Agency to maintain the loan in its portfolio or liquidate the security. While the Agency holds the guaranteed portion of the loan, the lender will transmit to the Agency any payment received from the borrower, including the pro-rata share of liquidation or other proceeds.**

**If the borrower files for reorganization under the provisions of the bankruptcy code or pays the account current while the purchase by the Government is being processed, the Agency may hold the loan as long it determines this action to be in the Agency's interest. If the lender is not proceeding expeditiously to collect the loan or reimbursement is not waived under this paragraph, the Agency will demand payment by the lender and collect the purchase amount through administrative offset of any claims due the lender.**

Upon approval by SED, FSA may continue as holder of the guaranteed portion of the loan until it can be refinanced or the bankruptcy plan is completed, whichever comes first. In such a situation, the Authorized Agency Official shall notify the lender that the lender must send the pro rata share of the borrower's payments directly to FSA.



**Demand for Payment, Notice That Non-Centralized Administrative Offset, Including Internal Administrative Offset, Has Been Taken and Will Continue, and Intent to Collect by Centralized Offset and Other Applicable Debt Collection Methods (Continued)**

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**Ineligibility for Federal Assistance**

If you do not resolve your delinquent Federal debt within the time frames provided in this notice, you will be ineligible to receive future Federal financial assistance including loans (except disaster loans), loan guarantees and loan insurance.

**Disclosure**

Your delinquent debt also will be disclosed to a commercial credit reporting bureau. To avoid this action you must either repay your debt immediately, propose an acceptable repayment agreement or request an appeal within the time frames provided in this letter. See the instructions above for immediate repayment and the instructions below for other rights.

**Non-Centralized Administrative Offset**

FSA intends to take any future payment that you are to receive from your participation in any USDA program or contract (this includes any FSA program or contract). The amount to be offset also will include any payments to other entities equal to your *pro rata* share in the entities if FSA has a legally enforceable right under state law or otherwise to pursue entity payments. Non-Centralized administrative offset has been exercised as explained on page 1 of this letter and will continue to be exercised unless you resolve the debt with the options set out in this letter.

**Centralized Offset**

Your delinquent debt will be referred to Treasury for TOP and for centralized salary offset computer matching as required by the Debt Collection Improvement Act of 1996 (DCIA), 31 U.S.C. 3716; the Federal Claims Collection Standards, and Department of Treasury Regulations if the debt is not satisfied by non-centralized administrative offset of payments within USDA. Under DCIA, FSA debts over 180 days delinquent must be referred to Treasury for such collection.

**Litigation**

FSA intends to enforce collection by referring the debt to the Department of Justice to initiate litigation if you fail to pay or otherwise resolve the debt.

**Debtors' Rights**

You have the right to inspect and copy Agency records, to make other arrangements for repaying your debt and to request an appeal of this demand for payment to the National Appeals Division (NAD).

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**\*--Demand for Payment, Notice That Non-Centralized Administrative Offset, Including Internal Administrative Offset, Has Been Taken and Will Continue, and Intent to Collect by Centralized Offset and Other Applicable Debt Collection Methods (Continued)**

**Access to Agency Records of the Debt**

You may inspect and copy your Agency file regarding this debt by notifying your local servicing office indicated below in writing within *20 calendar days* from the date of receipt of this notice. In response, FSA will notify you regarding a time and place for your review. At your request, one copy of the documents regarding this debt will be provided at our expense.

**Opportunity to Propose a Repayment Agreement**

At any time within *20 calendar days* of the date of receipt of this notice, you may present a written agreement to repay the debt as an alternative non-centralized administrative offset. Your proposed repayment agreement must document your ability to pay the delinquent Federal debt within a short period of time. A written repayment plan for paying the delinquent Federal debt may be accepted by the Agency in lieu of collection of the debt through non-centralized administrative offset of payments you are to receive.

**Right to Appeal to NAD**

You have the right to appeal this demand for payment to NAD review in accordance with regulations published at 7 C.F.R. part 11. The issues under appeal will be limited to the existence of the debt, and the amount of the debt. If you wish to appeal this demand for payment, your written request for appeal must be postmarked no later than *30 calendar days* from the date you received this notice. Send the request for appeal to the office of the Area Supervisor, National Appeals Division, [Insert NAD Address] [NAD address continuation].

The request for appeal must include a copy of this notice and a statement explaining why you think the demand for payment is incorrect. The request should also include your name, address, and phone number. NAD will advise you of the time and place of any hearing and of any procedural requirements. A copy of your request for appeal and any attachments should be sent to this office. When you request a NAD appeal, there will be an immediate stay of the non-centralized administrative offset and referral for centralized offset until the NAD reviewing official issues a final written decision.

Please do not delay action to pay your delinquent Federal debt or exercise the rights offered in this notice. Your delinquent Federal debt will have a negative impact on your ability to obtain other credit. No additional advance notice will be forthcoming before referral of your debt to Treasury for TOP. If a Federal income tax return is filed, and your spouse is not responsible for this debt, please contact your local IRS office before filing your return to learn how to protect your spouse's share of the refund.