

**Part 14 Liquidation**

**355 Liquidation Process (7 CFR 762.149)**

**A Liquidation Process Overview**

After a lender has determined that a borrower’s financial difficulties cannot be solved with any 1 or combination of the loan restructuring options, the lender must liquidate the loan. All lenders are expected to proceed with liquidation in the following chronological order.

- The lender must give the borrower notice that the loan will be liquidated.
- The lender must accelerate the note.
- The lender must prepare a liquidation plan. SEL and CLP lenders will provide FSA with a copy.
- The lender must submit an estimated loss claim with the liquidation plan if liquidation is expected to exceed 90 calendar days.
- The lender must liquidate the security.
- The lender must submit a final loss claim.
- The lender must remit future recoveries to FSA in proportion to the percentage of the guarantee.

Liquidation steps (maximum timeframes) are summarized as follows.

All dates measured in days after payment due date unless otherwise noted	
<b>60 Days*</b>	Earliest Date that Lender Can File to Liquidate Security
<b>90 Days</b>	Lender Gives Notice to Borrower and Accelerates the Loan or Implements a Loan Restructuring Plan
<b>120 Days</b>	Lender must reach decision as to whether the account will be restructured or liquidated.
<b>150 Days</b>	Liquidation plan and estimated loss claim must be submitted.
<b>164 Days</b>	Estimated protective advances must be concurred with by FSA.
<b>170 Days</b>	Liquidation plan must be approved by FSA.
<b>180 Days</b>	Estimated loss claim must be approved by FSA.
<b>260 Days</b>	Liquidation completed.
<b>290 Days</b>	Final loss claim submitted.
<b>330 Days**</b>	FSA should approve or request modification of final loss claim.
* 60 days after disposition of IA eligibility issue (see paragraph 300)	
** 40 days after submission of final loss claim (see subparagraph 360 F)	

**355 Liquidation Process (7 CFR 762.149) (Continued)****B Earliest Date the Lender Can File to Liquidate Security**

The lender may not initiate foreclosure action on the loan until 60 calendar days after eligibility of the borrower to participate in the IA Program has been established by FSA. The lender and borrower must discuss IA Program eligibility at the default meeting. See paragraph 300 for more information on this meeting. If IA eligibility was waived in writing by the borrower, the lender may prepare to liquidate the loan immediately following receipt of the waiver.

It is the lender's prerogative to request IA on a loan, regardless of the borrower's desire or eligibility for the subsidy. However, it must be considered and documented in some fashion that it was rejected as an option. The Authorized Agency Official shall remind the lender of this requirement if they attend the post default lender borrower meeting. Following this meeting or receipt of FSA-1980-44, the Authorized Agency Official shall make a written entry in the running record of the borrower's FSA file as to the date that IA was considered and when the 60-calendar-day abeyance period ends.

**C FSA-1980-44 Is Submitted**

FSA-1980-44 must be submitted following the lender-borrower default meeting and every 60 calendar days thereafter. The original report will notify FSA that the borrower is in default. Subsequent FSA-1980-44 reports will comment on the progress of liquidation and identify any problems the lender is having or may have in completing the liquidation in a timely manner.

If FSA-1980-44 is not received as required, the Authorized Agency Official shall contact the lender, inquire as to the status of the account and request that an accurate report be provided. If necessary, this contact should be followed up with a letter, and if the Authorized Agency Official feels it is necessary, a copy provided to SED. Interest that accrues during unnecessary delays will not be paid as part of a loss claim. SED and DD shall monitor guaranteed loan delinquency reports to ensure that liquidating accounts are being monitored and reports are being filed timely.

## 355 Liquidation Process (7 CFR 762.149) (Continued)

**D Decision to Liquidate Must Be Reached or a Loan Restructuring Plan Must Be Implemented**

Sometime between the date that the borrower's payment was due but not paid and 45 calendar days thereafter, the lender is expected to notify the borrower of the default and meet with the borrower to discuss solutions. Within 75 calendar days of this meeting (or unsuccessful attempts to meet) the account should be paid current or restructured. If a solution that requires more than 75 calendar days (90 calendar days after default) is agreed to, the reasons should be indicated on FSA-1980-44. The Authorized Agency Official shall review FSA-1980-44 and depending on what the lender's plans are, concur with the lender's plan, request a restructuring plan, request a liquidation plan, or mark the file for a follow up action as of the date the account is supposed to be paid current.

**E Liquidation Plan and Estimated Loss Claim Must Be Submitted**

**Within 30 days of the decision to liquidate, standard eligible and CLP lenders will submit a written liquidation plan to the Agency (see paragraph 358). An estimated loss claim will be submitted by the lender with the liquidation plan if the liquidation is expected to exceed 90 days (see paragraph 359). PLP lenders will submit a liquidation plan if it is required by their Lender's Agreement.**

If the liquidation is expected to be completed within 90 calendar days of the decision to liquidate, the submission of an estimated loss claim is not necessary.

The Authorized Agency Official shall review the lender's estimates of time frames and, based on their knowledge of the case and similar cases in their area, advise the lender of any concerns. If the lender estimates that liquidation will take less than 90 calendar days, FSA shall pay no more than 90 calendar days of interest on the final loss. Also, if liquidation is expected to take longer than 90 calendar days and the lender estimates that there will be no loss on the loan after considering the net recovery value of the security, the lender will either discontinue interest on the loan as of 90 calendar days after the decision to liquidate, or \*--submit an estimated loss of \$0. If liquidation is expected to exceed 90 calendar days and a loss is expected, the lender must submit an estimated loss claim. The lender will discontinue interest accrual on the defaulted loan at the time the estimated loss claim is paid by FSA. See subparagraph 359 A. If the lender fails to report default on a guaranteed loan to FSA or--\* otherwise comply with the requirements of this part, FSA shall pay interest that accrues only up to 90 calendar days after default as part of a final loss claim.

**355 Liquidation Process (7 CFR 762.149) (Continued)****F Liquidation Plan Is Approved or Rejected by FSA**

When the decision has been made to liquidate, a liquidation plan is required to be submitted by a CLP lender or SEL in all cases, including where all of the security has been sold, the borrower is liquidating voluntarily, or when no loss is expected. FSA shall review a lender's liquidation plan and either approve it or request modifications within 20 calendar days after it is received. See subparagraph 358 F.

**G Estimated Loss Claim Is Approved by FSA or Modified by Lender**

If an estimated loss claim is submitted, it may be reviewed and approved separately from the liquidation plan. FSA shall respond in writing within 30 calendar days of the receipt of the lender's estimated loss claim. If FSA wishes to dispute the estimated loss claim, FSA will resolve their differences with the lender before this 30-calendar-day deadline. See subparagraph 359 F.

SED shall determine the level of review to be conducted on each estimated loss claim. Estimated loss claims submitted by PLP lenders will be reviewed only for the accuracy of RD-449-30 and any mathematical calculations. Lender's will reimburse FSA for any \*--overpayments on estimated loss claims at the time of a final loss, plus interest, at the note rate.--\*

**H Liquidate**

Liquidation is expected to be completed within 230 calendar days after the borrower was declared in default, unless otherwise approved in the liquidation plan.

**I Final Loss Claim Is Submitted**

**Lenders may submit a final loss claim when the security has been liquidated and all proceeds have been received and applied to the account.** See paragraph 360.

A final loss claim should be submitted within 30 calendar days of the completion of liquidation or within 260 calendar days after the borrower was declared in default, unless an extension of this period is granted. The Authorized Agency Official shall document the request for an extension and approve it or reject it as soon as practical.

The Authorized Agency Official shall monitor liquidations and request a loss claim when they are aware that an account has been liquidated. A final loss claim will be reduced if there are unjustified delays in liquidation or submission of a claim. If the account is paid in full, FSA-1980-44 and FSA-1980-41 shall be input indicating that the loan is paid and the guarantee terminated.

## 356 Mediation (7 CFR 762.149(a))

**A Mediation Requirements**

**When it has been determined that a default cannot be cured through any of the servicing options available or if the lender does not wish to utilize any of the authorities provided in this part, the lender must:**

- **participate in mediation according to the rules and regulations of any State which has a mandatory farmer-creditor mediation program**
- **consider private mediation services in those states which do not have a mandatory farmer-creditor mediation program**
- **not agree to any proposals to rewrite the terms of a guaranteed loan which do not comply with this part.**

**Any agreements reached as a result of mediation involving defaults and or loan restructuring must have written concurrence from the Agency before they are implemented.**

If requested by the lender, FSA may participate in mediation to provide guidance on FSA regulations and guidelines. However, the FSA representative may not concur on any restructuring plans that require FSA approval during a mediation meeting. Restructuring plans developed during mediation that require FSA approval must be submitted to the local credit office according to Part 12.

Though not indicated in the liquidation time line, the mediation process should begin immediately following a lender's decision to liquidate a loan. If the borrower fails to attend the default meeting required by paragraph 300, or if this meeting does not result in a plan for restructuring, then the lender should notify the borrower of the results of the meeting and their intention to proceed with liquidation of the account. This notification should include an offer of mediation, an explanation of what mediation may accomplish, and instructions on how and where a mediation hearing may be requested. This information is available from FSA State Offices or the State Department of Agriculture of the State in which the borrower is located.

If SED determines that a lender's failure to participate in a mediation program caused a loss to the Government, a final loss claim payment may be reduced or denied. SEL lenders who consistently fail to participate in mediation may jeopardize consideration for CLP or PLP status.

**357 Foreclosure and Acceleration (7 CFR 762.149)****A Overview**

Once the lender has made the decision to liquidate a loan, the lender must initiate foreclosure action and accelerate the loan. The lender may not initiate foreclosure action on the loan until 60 calendar days after eligibility of the borrower to participate in the IA Programs has been established by FSA. The lender may accelerate the loan before FSA approval of a liquidation plan.

**B Borrower Files for Bankruptcy After Loan Note is Accelerated**

If the borrower files for bankruptcy after the loan note is accelerated, the lender suspends liquidation proceedings until 1 of the following actions:

- bankruptcy case is dismissed or closed
- order lifting automatic stay is obtained from the court
- property is no longer property of bankruptcy estate and customer has been discharged (see Part 13).

**C Acceleration**

**If the borrower is not in bankruptcy, the lender shall send the borrower notice that the loan is in default and the entire debt has been determined due and payable immediately after other servicing options have been exhausted.** Foreclosure proceedings commence once a loan is accelerated.

**The loan cannot be accelerated until after the borrower has been considered for Interest Assistance and the conclusion of mandatory mediation in accordance with § 762.149(a) (paragraph 356).**

**The lender will submit a copy of the acceleration notice or other document to the Agency.**

**357 Foreclosure and Acceleration (7 CFR 762.149) (Continued)****C Acceleration (Continued)**

The lender accelerates a loan note by giving the borrower written notice via certified mail that the loan is in default and the entire debt is due and payable. The lender must make a copy of the acceleration notice and attach it to the first FSA-1980-44 that is submitted \*--following note acceleration. Once a note is accelerated, the borrower will have typically--\* 30 calendar days from the date of acceleration to make payment in full by cash, transfer, sale of property, or voluntary conveyance. If the borrower fails to satisfy the account in the \* \* \* period specified in the notice, the foreclosure process will continue until the loan security is liquidated.

Once the note is accelerated all other servicing procedures other than liquidation and its associated actions, such as making protective advances, cease.

**D Foreclosure**

**The lender is responsible for determining who the necessary parties are to any foreclosure action or who should be named on a deed of conveyance taken in lieu of foreclosure.**

**When the property is liquidated, the lender will apply the net proceeds to the guaranteed loan debt.**

**When it is necessary to enter a bid at a foreclosure sale, the lender may bid the amount that it determines is reasonable to protect its and the Agency's interest. At a minimum, the lender will bid the lesser of the net recovery value or the unpaid guaranteed loan balance.**

Foreclosure refers to the comprehensive process of preparing for and selling the collateral that secures a loan that is being liquidated. Therefore, the foreclosure process begins once the lender decides to accelerate the loan in preparation for liquidation and ends once the loan's security is liquidated.

**358 Lender Liquidation Plan (7 CFR 762.149(b))****A Overview**

Once the decision has been made to liquidate, the lender must submit a liquidation plan and, if applicable, a request for IA reimbursement to FSA within 30 calendar days. The liquidation plan must include a schedule of all projected liquidation activities, and a complete inventory of the security to be sold.

**B General Requirements**

**If a default cannot be cured after considering servicing options and mediation, the lender will proceed with liquidation of the collateral in accordance with the following.**

For SEL's \* \* \* and CLP lenders, **within 30 days of the decision to liquidate, all lenders** will submit a written plan to the Agency which includes:

- **a current balance sheet from all liable parties or, if the parties are not cooperative, the best information available, or in liquidation bankruptcies, a copy of the bankruptcy schedules or discharge notice**
- **a proposed method of maximizing the collection of debt which includes specific plans to collect any remaining loan balances on the guaranteed loan after loan collateral has been liquidated, including possibilities for judgment**
  - **If the borrower has converted loan security, the lender will determine whether litigation is cost effective. The lender must address, in the liquidation plan, whether civil or criminal action will be pursued. If the lender does not pursue the recovery, the reason must be documented when an estimated loss claim is submitted (subparagraph 360 E).**
  - **Any proposal to release the borrower from liability will be addressed in the liquidation plan in accordance with § 762.146(c)(2) (paragraph 361).**

**Note:** If according to paragraph 361 the release of liability can be approved, it will not be granted until either all of the collateral is voluntarily conveyed to the lender or it is liquidated.

**358 Lender Liquidation Plan (7 CFR 762.149(b)) (Continued)****B General Requirements (Continued)**

- **an independent appraisal report on all collateral securing the loan that meets the requirements of § 762.127 (paragraphs 181 through 183) and a calculation of the net recovery value of the security as defined in §762.102 (Exhibit 10). The appraisal requirement may be waived by the Agency in the following cases:**
  - **the bankruptcy trustee is handling the liquidation and the lender has submitted the trustee's determination of value**
  - **the lender's proposed method of liquidation rarely results in receipt of less than market value for livestock and used equipment**
  - **a purchase offer has already been received for more than the debt.**
- **an estimate of time necessary to complete the liquidation**
- **an estimated loss claim if the liquidation period is expected to exceed 90 days (paragraph 359)**
- **an estimate of reasonable liquidation expenses**
- **an estimate of any protective advances (paragraph 360).**

**C Liquidation Status Reports**

Lenders must submit FSA-1980-44 to the Authorized Agency Official every 60 calendar days during liquidation to report on the progress of liquidation. This report should provide information on the disposition of collateral, costs incurred, and specific actions taken by the lender or their representative since the previous FSA-1980-44 submission.

Details on future planned actions and their estimated dates, must be identified on FSA-1980-44. Further, any changes in the approved liquidation plan must also be identified on FSA-1980-44. The Authorized Agency Official shall input the loan status information on FSA-1980-44 into the Guaranteed Loan System and monitor lender compliance with the 60-calendar-day reporting cycle for any loan in default until payment of a final loss claim.

**D IA Reimbursement**

IA payment will be conducted according to paragraph 228.

**358 Lender Liquidation Plan (7 CFR 762.149(b)) (Continued)****E Lender Liquidation Plan and Holders**

If the guaranteed portion of a loan undergoing liquidation was sold on the secondary market, see Part 15.

If the holder has not requested the lender to repurchase the guarantee but the lender determines that repurchase of the guarantee 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 FSA. See Part 15 for information on the repurchase of loans sold on the secondary market and FSA approval of repurchase.

If the loan undergoing liquidation was sold on the secondary market and the unpaid guaranteed portion is still held by the holder at the time of liquidation plan submission, the liquidation plan must address the lender's plans to repurchase the guarantee. If the lender does not plan to repurchase the guarantee, the liquidation plan must include written notice from the holder certifying that the holder wishes to keep the guarantee during liquidation. If the lender plans to repurchase the guarantee, the date of planned repurchase must be noted in the liquidation plan along with a request for FSA concurrence on the repurchase.

**F FSA Approval of Liquidation Plan**

**[7 CFR 762.149(c)] CLP lender's or standard eligible lender's liquidation plan, and any revisions of the plan, must be approved by the Agency.**

**If, within 20 calendar days of the Agency's receipt of the liquidation plan, the Agency fails to approve it or fails to request that the lender make revisions, the lender may assume the plan is approved. The lender may then proceed to begin liquidation actions at its discretion as long as it has been at least 60 days since the borrower's eligibility for interest assistance was considered.**

Upon receipt of the plan, FSA has 20 calendar days to respond in writing, either granting approval of the plan or requesting modification of the plan. The lender's liquidation plan must be submitted to the Authorized Agency Official. The Authorized Agency Official will receive the plan from the lender and notify the lender in writing of the decision to approve or request modification of the plan.

As part of a liquidation plan or a method for liquidation, the lender may propose to accept a deed from the borrower in lieu of a forced liquidation. The estimated loss claim will be based on the net recovery value of the property at the time the lender takes possession of it.

**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.--\*

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.

**359 Lender Submission of Estimated Loss Claim (7 CFR 762.149) (Continued)****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.

The lender must justify and explain any liquidation expenses on the estimated loss claim in a separate memo submitted with the estimated loss claim. RD-449-30 FMI provides examples on how to complete certain fields.--\*

**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.**

**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.

**359 Lender Submission of Estimated Loss Claim (7 CFR 762.149) (Continued)****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.--\*



**359 Lender Submission of Estimated Loss Claim (7 CFR 762.149) (Continued)****G Application of Estimated Loss Payment**

**\* \* \* 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 90 days after the decision to liquidate or an estimated loss of zero will be submitted.**

\*--Interest may be paid in addition to the 90 calendar days allowed by this paragraph by the number of days the FSA review and approval of the claim extends beyond 30 calendar days when the delays were caused by FSA.

The estimated loss payment compensates the lender for the loss, but does not reduce the loan balance or cure a delinquency, and should not be reflected as such on FSA-1980-44.--\*

**360 Lender Submission of Final Loss Claim (7 CFR 762.149)****A Overview**

**Lenders may submit a final loss claim when the security has been liquidated and all proceeds have been received and applied to the account.**

**B General Requirements**

**If a lender acquires title to property either through voluntary conveyance or foreclosure proceeding, the lender will submit a final loss claim after disposing of the property. The lender may pay reasonable maintenance expenses to protect the value of the property while it is owned by the lender. These may be paid as protective advances or deducted as liquidation expenses from the sales proceeds when the lender disposes of the property. The lender must obtain Agency written concurrence before incurring maintenance expenses which exceed the amounts allowed in § 762.149(e)(1) (subparagraph D).**

**The lender will make its records available to the Agency for the Agency's audit of the propriety of any loss payment.**

The final loss claim will be based on the amount received from the sale of the property, less expenses incurred for its care and maintenance, assuming the lender has acted expeditiously and prudently to sell it.

**360 Lender Submission of Final Loss Claim (7 CFR 762.149) (Continued)****C Lender Submissions of Final Loss Claim**

**All lenders will submit the following documents with a final loss claim:**

- **an accounting of the use of loan funds**
- **an accounting of the disposition of loan security and its proceeds**
- **a copy of the loan ledger indicating loan advances, interest rate changes, protective advances, and application of payments, rental proceeds, and security proceeds, including a running outstanding balance total**

**Note:** The lender's supporting documentation shall include the following:

- unpaid accrued interest
- advances
- payments
- periods of time
- interest rates
- principal balances.
- **documentation, as requested by the Agency, concerning the lender's compliance with the requirements of this part**
- **\*--the name, Social Security number, and current address of any co-borrower or co-signer for liquidation of loans that were made using FSA-1980-25 or FSA-1980-28 with the July 20, 2001, or later revision date, if not previously submitted to the Agency.--\***

See subparagraph 359 B for liquidation expenses and legal fees.

**The lender will designate one or more financial institutions to which any Agency payments will be made via electronic funds transfer.**

Lenders should also submit the EFT account number that is to be used for transmission of any loss payment from the Government.

The lender must justify and explain protective advances in a separate cover memo submitted with the final loss claim.

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

Protective advances are expenses incurred by a lender to protect or preserve collateral from loss or deterioration. Protective advances should be shown on RD-449-30.

**Prior written authorization from the Agency is required for all protective advances in excess of \$5,000 for CLP lenders, \$3,000 for standard eligible lenders. The dollar amount of protective advances for PLP lenders will be specified when PLP status is awarded by the Agency or as contained in the Lender's Agreement.**

Prior FSA written authorization of protective advances in excess of \$5,000 is required for PLP lenders with lender's agreements that provide that protective advances will be handled according to the provisions of 2-FLP.

**The lender may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances allowed in this part, plus interest that accrues on the protective advances.**

Interest that accrues on protective advances is limited to the guaranteed loan interest accrual cutoff if the protective advance is used to pay off the lender's prior lien.



**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.

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.

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.

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

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.

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.

**360 Lender Submission of Final Loss Claim (7 CFR 762.149) (Continued)****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.--\*

**361 Release of Liability After Liquidation (7 CFR 762.146(c)) (Continued)****\*--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".--\*

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

\*--RD-449-30 will be FAXed or sent to KCFO, St. Louis as follows:

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

States 01 - 32 shall FAX to 314-539-3111.  
States 33 - 64 shall FAX to 314-539-6447.

For loans made using FSA-1980-25 or FSA-1980-28 with a July 20, 2001, or later revision date, lenders may only issue IRS-1099-C on the unguaranteed portion of the debt once the lender has met its future recovery obligations.

Once FSA has concluded its collection efforts, then FSA will cancel any remaining debt and report to IRS accordingly.--\*

**B FSA Option to Liquidate**

**At its option, the Agency may liquidate the guaranteed loan as follows.**

- **Upon Agency request, the lender will transfer to the Agency all rights and interests necessary to allow the Agency to liquidate the loan. The Agency will not pay the lender for any loss until after the collateral is liquidated and the final loss is determined.**
- **If the Agency conducts the liquidation, interest accrual will cease on the date the Agency notifies the lender in writing that it assumes responsibility for the liquidation.**

Upon the recommendation of SED, DAFLP may approve liquidation of a guaranteed loan by FSA.

The lender will transfer to FSA all rights and interest necessary to allow the Authorized Agency Official to liquidate the loan.

**362 Miscellaneous Liquidation Items (7 CFR 762.149) (Continued)****B FSA Option to Liquidate (Continued)**

SED shall consult with OGC to answer questions relating to the assignment and transfer of the lender's loan documents to FSA. After the loan is transferred, the Authorized Agency Official shall summarize the history of case, list all of the loan security and its estimated value, and address any other issues that SED or OGC have regarding the liquidation. SED shall refer the case to OGC to process the request for liquidation by the Government. SED shall send RD-1980-45 to the Finance Office, and the Authorized Agency Official shall oversee the liquidation. If requested by the lender, FSA shall provide an update on the liquidation proceedings. Interest accrual will stop when FSA notifies the lender in writing that FSA is assuming responsibility of the liquidation process. The final loss payment to the lender will not include interest beyond the date FSA took responsibility to liquidate. In this event, the lender is not paid for any loss until the collateral is liquidated and the final loss is determined.

**\*--363 Collecting Final Loss Claim Payments From Guaranteed Loan Debtors (7 CFR 762.149(m))****A Establishment of a Federal Debt**

**[7 CFR 762.149(m)] Any amounts paid by the Agency on account of liabilities of the guaranteed loan borrower will constitute a Federal debt owing to the Agency by the guaranteed loan borrower. In such case, the Agency may use all remedies available to it, including offset under the Debt Collection Improvement Act of 1996 (DCIA), to collect the debt from the borrower. Interest charges will be established at the note rate of the guaranteed loan on the date that the final loss claim is paid.**

Federal debt is established on the effective date of the final loss claim payment. All individuals liable for the debt will be subject to offset. FSA will use non-centralized administrative offset, including IAO of payments made by USDA, and centralized offset from the U.S. Department of Treasury's TOP, and by any other applicable debt collection methods to collect the debt owed to FSA.

FSA shall obtain copies of the promissory note, the original application, the loan guarantee, the final loss claim, and current interest rate as of the final loss payment date, if a variable rate loan, as documentation of the establishment of a Federal debt.

The Authorized Agency Official shall ensure that all co-borrowers and co-signers are entered in GLS.--\*

**\*--363 Collecting Final Loss Claim Payments From Guaranteed Loan Debtors  
(7 CFR 762.149(m)) (Continued)**

**B Guaranteed Final Loss Claim Payments Not Subject to Offset**

Final loss claim payments for borrowers who executed FSA-1980-25 with a revision date of July 27, 1999, or earlier, or FSA-1980-28 with a revision date of April 7, 1999, or earlier, shall not be offset.

Loans approved using FSA-1980-25 or FSA-1980-28 with the July 20, 2001, or later revision date, that are discharged in bankruptcy will establish a Federal debt, but are not subject to offset.

**Notes:** Any debt reaffirmed under Chapter 7 bankruptcy on which a final loss claim is later paid, is considered a Federal debt and shall be subject to offset.

In a reorganization bankruptcy, if the confirmed plan is not successfully completed and the bankruptcy is dismissed, the payment of a final loss claim will be considered a Federal debt and shall be subject to offset.

**C Payments Not Subject to Offset**

The following payments are not subject to offset:

- Federal crop insurance indemnity payments
- the initial payment for planting expenses under certain conservation programs
- program payments ineligible for offset.

Payments will not be offset when the Authorized Agency Official determines that it is not in the best interest of the Government.

**D Debtor Notification of FSA's Intent to Offset**

Immediately upon confirmation of a final loss claim payment, the Authorized Agency Official shall provide the debtor and any co-debtors notification of intent to offset using Exhibit 17, according to this subparagraph and 7 CFR Part 3.

Exhibit 17 must be sent to debtors by certified mail. If Exhibit 17 is returned, the Authorized Agency Official shall use first class mail or personal delivery.

The date Exhibit 17 was received by the debtor and/or co-debtor will be entered in GLS for:

- tracking
- referral of debt for offset.--\*

**363 Collecting Final Loss Claim Payments From Guaranteed Loan Debtors  
(7 CFR 762.149(m)) (Continued)**

**D Debtor Notification of FSA's Intent to Offset (Continued)**

The Authorized Agency Official shall provide written notification to debtors a minimum of:

- 30 calendar days before affecting non-centralized administrative offset and IAO
- 60 calendar days before affecting TOP.

If a USDA payment will be made to a debtor within 30 calendar days of the payment of a final loss claim and FSA finds that failure to take the offset would substantially prejudice the Government's ability to collect the debt, FSA shall notify the debtor that FSA will/has offset the payment due using Exhibit 18.

Exhibit 18 shall:

- contain the reasons FSA had to affect IAO and non-centralized administrative offset
- be sent to the debtor as soon as possible.

The debtor's pro rata share of entity payments will be offset according to 7 CFR Part 3 and RD Instruction 1951-C, section 1951.106 after the nondebtor entity members have been notified using Exhibit 19 or 20, as appropriate.

**Note:** The Authorized Agency Official shall request written concurrence from SED before  
\*--sending Exhibit 18 or 20.--\*

Authorized Agency Officials shall follow RD Instruction 1951-C, paragraphs 1951.103 (c) through (g) to handle debtor requests received as a result of the receipt of Exhibits 17 through 20.

Debtors proposing an agreement to repay the debt as an alternative to offset must include the full amount of the Federal debt. The Federal debt must be paid within a short period of time.

**E Salary Offset**

The Authorized Agency Official shall determine whether collection by salary offset is feasible according to 7 CFR Part 3 and RD Instruction 1951-C, paragraph 1951.111.

**F Referral of Debt for IAO Offset**

The Authorized Agency Official shall refer debtors:

- immediately for IAO and non-centralized administrative offset if Exhibit 18 or 20 was sent
- for IAO and non-centralized administrative offset 30 calendar days after sending Exhibit 17 or 19, and/or after the conclusion of a review or appeal.

**\*--363 Collecting Final Loss Claim Payments From Guaranteed Loan Debtors  
(7 CFR 762.149(m)) (Continued)**

**F Referral of Debt for IAO Offset (Continued)**

The Authorized Agency Official must complete the debtor's IAO referral information in GLS for the debt to be referred for offset.

**Note:** Debtors who are ineligible for IAO or who later become ineligible for IAO shall be removed from referral in GLS.

**G Referral of Debt to TOP**

The State Office official shall refer debtors to TOP 60 calendar days after:

- Exhibit 17 or 18 was sent
- the conclusion of a review or appeal.

The State Office official must complete the debtor's TOP referral information in GLS. Once the information is entered, debtors will be programmatically referred according to the established Treasury quarterly referral schedule.

Once the debt is referred for TOP, KCFO, St. Louis will send Exhibit 21. The date of Exhibit 21 will be shown on the debtor's GLS maintenance screen.

**Note:** Debtors who are ineligible for TOP or who later become ineligible for TOP shall be removed from referral on the GLS maintenance screen.

**H State Office Responsibility**

SED shall ensure that FSA employees responsible for servicing FLP guaranteed loans notify all County Offices where the debtor receives Federal payments that these payments are to be offset.

DD shall ensure that all County Offices are updated monthly on debtors whose payments are eligible to be offset.

**Note:** Management reports for debts currently referred for IAO and TOP are available in GLS.--\*

**\*--363 Collecting Final Loss Claim Payments From Guaranteed Loan Debtors  
(7 CFR 762.149(m)) (Continued)**

**I Collections and Refunds**

Amounts collected through administrative offset will be applied to the debtor’s account according to 3-FI using the Guaranteed Collection Codes in this table.

<b>Code</b>	<b>Description</b>
70	Administrative Offset – Other
71	Administrative Offset – DCP
72	Administrative Offset – LCP
73	Administrative Offset – CRP
74	Administrative Offset – EQIP
75	Administrative Offset – Tobacco
76	Administrative Offset – Peanuts
77	Administrative Offset – Rice
78	Administrative Offset – LDP/Markt Asst Loan
79	Administrative Offset – DCP in Stay
80	Voluntary Collection
81	DOJ Collection
82	Debt Settlement Collection
83	Other Collection

**Notes:** Collections will be applied to the oldest delinquent Federal debt first.

According to 58-FI, paragraph 164, delinquent debts due to FSA will be collected before an assignment is honored.

Refunds of amounts offset will be made within 45 calendar days if FSA determines that an amount should not have been offset or that the debtor has prevailed in an appeal. SED shall approve and submit refund requests to KCFO, LOD, St. Louis.

**J Notifying Lender of FSA Collections**

County Offices shall notify the lender of any collections received through IAO or TOP by November 30 of each year. The annual notification shall include the following:

- amount collected by loan number
- current balance of the Federal debt.

**Note:** County Offices can obtain account information from the GLS loan offset view screen.--\*

**\*--363 Collecting Final Loss Claim Payments From Guaranteed Loan Debtors  
(7 CFR 762.149(m)) (Continued)**

**K Debt Settlement**

Once a final loss claim is paid, FSA will be able to consider settlement offers received directly from the debtor. Compromise and adjustment offers should be compared against other collection options available, such as IAO and TOP. The option that offers the greatest recovery to the Government should be pursued.

FSA shall process a compromise or adjustment offer according to RD Instruction 1956-B, section 1956.66.

The debt settlement will only cover the Federal debt owed by the debtor. FSA shall notify the lender of the approval of a debt settlement.

After all payments under the compromise or adjustment offer have been received, the remaining balance of the debt will be written off. SED shall FAX or mail a copy of RD-1956-1 along with a memorandum requesting that the debt be written off to KCFO, St. Louis.

**L Bankruptcy Effect**

FSA, subject to advice provided by the Regional OGC, will immediately file a proof of claim upon notification of a bankruptcy filing for any debtor subject to offset. At a minimum, the following shall be filed with the proof of claim as evidence of the debt:

- FSA-1980-25 or FSA-1980-28
- FSA-1980-27
- copy of the promissory note
- documentation of FSA's final loss claim payment to the lender.

Bankruptcy filing will halt any FSA offsetting actions. The debtor shall be removed from referral of IAO and TOP through the GLS maintenance screens.

Debts discharged in bankruptcy will be written off upon receipt of the discharge order. SED shall FAX or mail a copy of the discharge order along with a memorandum requesting that the debt be written off to KCFO, St. Louis.

**M Write Off of Debt When the Debtor Is Released From Liability by DAFLP**

Debtors released from liability under subparagraph 361 C will have their outstanding debt written off. SED shall FAX or mail a copy of DAFLP approval along with a memorandum requesting that the debt be written off to KCFO, St. Louis.--\*

**364-372 (Reserved)**

