

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

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

Amendment 15

Approved by: Deputy Administrator, Farm Loan Programs



Amendment Transmittal

A Reason for Amendment

Subparagraph 227 A has been amended to provide guidance for completing RD-1980-19, item 24.

Subparagraph 228 A has been amended to provide information for calculating ADP balance and interest assistance payments.

Subparagraph 228 B has been amended to provide guidance for calculating interest assistance on loans with interest rates below 4 percent.

Subparagraph 265 F has been amended to specify the lender types required to submit annual financial analyses.

Subparagraph 267 E has been amended to clarify the Authorized Agency Official's responsibility during lender file reviews.

Subparagraph 278 B has been amended to provide that an appraisal is not required for a subordination request to refinance existing real estate debt when additional funds are not provided.

Subparagraph 280 B has been amended to clarify that security released outright, with no consideration, can not be significant income generating property.

Subparagraph 287 B has been amended to correct RD-1980-42 to FSA 1980-42.

Paragraph 313 has been amended to require the completion of FSA-1980-48 to request KCFO to restructure a guaranteed loan.

Subparagraph 326 E has been amended to specify that FSA shall complete FSA-1980-84 and not the lender.

Amendment Transmittal (Continued)

A Reason for Amendment (Continued)

Subparagraph 327 B has been amended to clarify the use of deferrals on LOC loans.

Subparagraph 329 A has been amended to clarify the Agency’s actions on reviewing restructured loans.

Subparagraph 359:

- C B has been amended to provide additional information on legal fees
- C C has been amended to clarify what shall be included in the lender’s supporting documentation
- C F has been amended to include the Finance Office’s mailing address and FAX numbers.

Subparagraph 360:

- C C has been amended to clarify what shall be included in the lender’s supporting documentation
- C D has been amended to remove information on legal fees
- C E has been amended to provide guidance on legal fees associated with liquidations
- C F has been amended to delete the example.

Subparagraph 362 A has been amended to clarify that FSA-1980-26 will not be completed for Chapter 7 liquidation bankruptcy cases that received a discharge.

Subparagraph 375 C has been amended to provide that FSA will only pay interest that accrues based on the accrual method established by the terms of the promissory note.

Page Control Chart		
TC	Text	Exhibit
	9-7, 9-8 9-8.5 through 9-8.8 (add) 9-9 through 9-12 11-9, 11-10 11-13, 11-14 11-37, 11-38 11-41, 11-42 11-51 through 11-54 12-28.5, 12-28.6 (add) 12-57 through 12-60 12-63, 12-64 14-1, 14-2 14-11, 14-12 14-12.5, 14-12.6 (add) 14-13, 14-14 14-14.5, 14-14.6 (add) 14-15 through 14-20 15-9, 15-10 15-13, 15-14	1, pages 1-4

**A
Closing
Requirements**

Initial guaranteed loans will be closed in accordance with Part 10. IA will be closed according to this table.

Step	Action
1	<p>The lender will then prepare and deliver to the Agency a closing report for each initial and existing guaranteed loan which has been granted interest assistance.</p> <p>Lender shall submit RD 1980-19.</p> <p>*--If a lender indicates a 360/365 accrual method on the promissory note, ENTER "365" on RD-1980-19, item 28.--*</p>
2	<p>When all requirements have been met, the lender and the Agency will execute an interest assistance agreement.</p> <p>Agency, lender, and borrower shall execute FSA-1980-64.</p> <p>C An original FSA-1980-64 will be prepared for each note or LOC agreement executed.</p> <p>C FSA-1980-64 will be executed even if there is a 0 percent subsidy for the first year.</p> <p>C All originals of FSA-1980-64 will be provided to the lender and attached to the note with the original guarantee.</p>

228 Annual Request for IA Payment or Continuation (7 CFR 762.150)

**A
Request for IA
Payment and
Renewal**

Within 60 calendar days of the annual review date, the lender shall submit the following to FSA:

C for payment claim information:

C FSA-1980-24

Notes: FSA-1980-24 shall be used to both request payment for the previous year and document the need for IA for the coming year.

The lender shall provide FSA with an Electronic Funds Transfer account number so the IA payment may be transmitted to them electronically.

C a detailed statement of activity, including all disbursements and payments applied to the loan or LOC account

C detailed calculations of ADPB's for the claim period

Notes: All claims will be supported by detailed calculations of average daily principal balance during the claim period.

*--Calculate ADP by multiplying the principal balance times the actual number of days it is outstanding. The sum of the daily principal balance is then divided by the total calendar days outstanding for a partial year or by 365 calendar days for a full year regardless of the interest accrual method to calculate ADPB.

The following is an example of a **partial year** calculation for ADPB.

Date	Number of Days	Principal Balance	Total
June 12 - August 2	51	\$15,000	\$765,000
August 3 - September 28	57	\$10,000	\$570,000
September 29 - October 29	31	\$12,000	\$372,000
Total	139		\$1,707,000

$\$1,707,000 \div 139 = \$12,280.58$ ADPB for the partial year.--*

Continued on the next page

228 Annual Request for IA Payment or Continuation (7 CFR 762.150) (Continued)

A
Request for IA
Payment and
Renewal
(Continued)

*--The following is an example of a full year calculation for ADPB.

Date	Number of Days	Principal Balance	Total
January 1 - April 15	105	\$25,000	\$2,625,000
April 16 - July 15	91	\$20,000	\$1,820,000
July 16 - September 15	62	\$15,000	\$930,000
September 16 - January 1	107	\$10,000	\$1,020,000
Total	365		\$6,445,000

$\$6,445,000 \div 365 = \$17,657.53$ ADPB for a full year.

- C The lender can use interest basis (360, 365, 360/365) as indicated by the promissory note for calculating interest for the borrower. Some methods results in a slightly higher interest payment by the borrower; however, this is irrelevant to the amount FSA is allowed to pay, which is fixed by law at 4 percent.
- C An interest assistance claim submitted with interest accrual based on 360 and then multiplied by 365 is not acceptable.
- C If a loan is closed on a 365-calendar-day basis, interest that accrues on February 29 is not recognized by the finance office computer system and will not be paid.
- C GLS does not count the first day of the claim period. The ending day of a claim period becomes the first day on the next claim period.--*

Continued on the next page

228 Annual Request for IA Payment or Continuation (7 CFR 762.150) (Continued)

A
Request for IA
Payment and
Renewal
(Continued)

*--Interest assistance will be calculated and paid according to the formulas indicated in the following table.

Full Year
ADPB x 4 percent
Note: Interest basis is not an issue.
Example: \$100,000 x 4 percent = \$4,000
Partial Year (360-Day Base)
ADPB x 4 percent x [(number of months in the claim period x 30 calendar days) + additional days in excess of a month] ÷ 360
Note: Convert all months to 30 calendar days. The system does not count the first day of the claim period. The ending day of a claim period becomes the first day on the next claim period.
Example: Claim period is March 1 through June 5 (3 months x 30 calendar days = 90 + 5 - 1 = 94 calendar days). \$100,000 x 4 percent = \$4,000 x 94 calendar days ÷ 360 = \$1,044.44 interest assistance payment.
Partial Year (365-Day Base)
ADPB x 4 percent x actual days in the claim period ÷ 365.
Note: Count actual days in the month. The system does not count the first day of the claim period. The ending day of a claim period becomes the first day on the next claim period.
Example: Claim period is March 1 through June 5, which equals 97 - 1 calendar days. \$100,000 x 4 percent = \$4,000 x 96 calendar days ÷ 365 = \$1,052.05 interest assistance payment.

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228 Annual Request for IA Payment or Continuation (7 CFR 762.150) (Continued)

**A
Request for IA
Payment and
Renewal
(Continued)**

- C for a continuation of IA:
- C a summary of the operation’s actual financial performance in the previous year, including a detailed income and expense statement
- C a narrative description of the causes of any major differences between the previous year’s projections and actual performance

Note: For all IA agreements exceeding 12 months, the lender will perform an analysis of the applicant’s farming operation and need for continued IA.

- C a current balance sheet
- C a cash flow budget for the period being planned

Note: A monthly cash-flow budget is required for all lines of credit and OL’s made for annual operating purposes. All other loans may include either an annual or monthly cash flow budget.

- C a copy of the interest assistance needs analysis portion of the application form which has been completed based on the planned period’s cash flow budget.

**B
*--Interest
Assistance Loans
With Interest
Rates Below
4 Percent**

The “ADD Interest Asst Claim” transaction in GLS programmatically calculates the interest assistance payable by multiplying ADPB entered times 4 percent. However, FSA cannot pay an interest assistance claim in excess of the interest that has accrued during the claim period.

To process an interest assistance payment when the interest rate has averaged below 4 percent, Authorized Agency Officials must determine ADPB by completing the following:

- C total the interest that accrued at the note rate
- C divide the total accrued interest by 4 percent to calculate an adjusted ADPB.

The Authorized Agency Official shall then enter the agency-adjusted ADPB in the “Avg. Prin Balance” field to process the interest assistance claim.--*

Continued on the next page

228 Annual Request for IA Payment or Continuation (7 CFR 762.150) (Continued)

C

**Final Request for
Payment**

Upon full payment of the note or line of credit, the lender will immediately prepare the request for interest assistance payment and submit it to the Agency.

The final claim period may be less than 12 months.

D

**Final IA
Requests From
Liquidated
Accounts**

Final IA claims must be submitted concurrently with the submission of any estimated loss claims, which cause interest to cease to accrue, or with final loss claims.

Continued on the next page

228 Annual Request for IA Payment or Continuation (7 CFR 762.150) (Continued)**E****Rules for IA Claims**

No claim period can exceed 12 months. The initial and final claim periods may be less than 12 months. In such claims, the 4 percent payment will be prorated over the number of days in the claim period. The period for all other claims must be 12 months.

- C The initial claim will cover the entire period between the effective date of the agreement and the annual review date.
- C Subsequent requests must cover 12-month periods of IA, and must be prepared by the lender and submitted within 60 calendar days after the annual review date.

To permit the borrower to prepare for the upcoming year, a claim should be filed within 60 days of each anniversary date. Claims not filed within 1 year will not be paid and the amount due the lender is permanently forfeited.

FSA-1980-24 should be submitted even if the claim amount is 0.

If a claim is submitted without an interest assistance review, when it is required, the claim will not be processed until the review is submitted by the lender.

Interest assistance claims shall be submitted concurrently with the submission of estimated loss claims where interest accrual ceases, or final loss claims that are not preceded by an estimated loss claim.

F**Rules for Continuation of IA**

A request for continuation of Interest Assistance will be completed for 12 month periods, effective on the anniversary date.

The initial review may be submitted in conjunction with any claim within the initial 12 month period. The anniversary date and length of the review period will be stated on the interest assistance agreement. Any request for interest assistance adjustment submitted effective any time other than the review date will be denied, except for those cases where it is necessary to service the loan with rescheduling, reamortization, deferral or writedown.

Continued on the next page

228 Annual Request for IA Payment or Continuation (7 CFR 762.150) (Continued)

F
Rules for
Continuation
of IA
(Continued)

The loan will be eligible for continuation of interest assistance if the cash flow budget projects a feasible plan with interest assistance applied.

To continue IA, the cash flow budget must project that a feasible plan is not possible without subsidy, but at least a feasible plan can be achieved with 4 percent subsidy.

However, IA can be applied only to as many loans as necessary to achieve a positive cash flow for the plan period.

If the cash flow budget indicates that the borrower requires a level of interest assistance greater than 4 percent to project a feasible plan, then the Agency will deny the continuation of interest assistance. Interest assistance will be reduced to zero during that period. The lender will be notified according to paragraph 229.

If the review is not completed and submitted to the Agency within 1 year of the review date, no claim will be paid for that period.

G
FSA Review of
Request for IA
Payment

Follow this table for reviewing IA payment requests.

Step	Action
1	The Agency will review the claim and the supporting documentation within 3 workdays of receipt. If the information and the supporting documentation is not complete and correct, the reviewing official will notify the lender in writing of the actions needed to correct the request.
2	The reviewing official shall document a comparison of actual and projected income and expenses. Any major differences from previous projections to actual performance as well as major changes from the previous year's balance sheet should be noted.
3	The Authorized Agency Official shall complete the appropriate portion of FSA-1980-24 to reflect the amount of IA approved for the coming year. This should be completed even if the assistance level will be 0 percent so that adjustments in the obligation records can be made.
4	The original will be returned to the lender for attachment to the original FSA-1980-64.

229 Notification of Adverse Action

A**Notification of FSA Action**

The lender will be notified in writing of all Agency decisions in which a request for interest assistance, a request for continuation of interest assistance or lender's claim for interest assistance are denied. The notification letter will provide specific reasons for the decision and appeals will be handled in accordance with parts 11 and 780 of this title.

230 Servicing of Loans Covered by FSA-1980-64 (7 CFR 762.150(g))

A**Consolidation of Loans**

Loans covered by Interest Assistance Agreements cannot be consolidated.

B**Transfer and Assumption**

Interest assistance payments shall cease upon the assumption and transfer of the loan if the transferee was not liable for the debt on the effective date of the interest assistance agreement. The lender shall request payment through the date of the transfer or assumption. The claim must be submitted within 1 year or it will be denied and the payment permanently forfeited.

The loan will be transferred with the interest assistance agreement only in cases where the transferee was liable for the debt at the time the interest assistance was granted. Under no other circumstances will the interest assistance be transferred. If interest assistance is necessary for the transferee *--to achieve a feasible plan, the lender may request such assistance, which may be approved if interest assistance funds are available and the applicant is eligible. The maximum length of the agreement will be 10 years from the date of the first agreement covering a loan for which the transferee was liable. If Interest Assistance is necessary for a feasible plan and funds are--* not available, the request for assumption of the Agency guaranteed debt will be denied.

Continued on the next page

265 Annual Analysis of Borrower's Financial Condition (7 CFR 762.140(b)(5)) (Continued)

F**FSA Review of Annual Financial Analyses**

Upon receiving the annual borrower financial analysis supporting documentation from SEL, the Authorized Agency Official should review the documentation for the following:

- C indications of borrower financial distress or major changes in the borrower's financial status from the previous year
- C changes in the appearance of the operation or collateral. If the Authorized Agency Official notices any problems, he or she should call the lender to discuss these concerns.

For borrowers with LOC, FSA must determine at this time whether or not LOC should be renewed for the next year.

Upon receiving the annual borrower financial analysis supporting documentation from a CLP lender, the Authorized Agency Official should review the documentation of the borrower's progress on loan payback. The narrative should summarize factors of financial strength which support the lender's determination that further analysis is unnecessary, if applicable.

--After reviewing the annual financial analyses submitted by the SEL and CLP lender, the Authorized Agency Official must document their review of the annual financial analysis by making an entry in the borrower's County Office guaranteed loan file. To the extent the Authorized Agency Official has concerns about a-- specific borrower or lender's management and supervision of FSA-guaranteed loans in general, the Authorized Agency Official should communicate these concerns to the lender in writing.

Copies of correspondence, including authorization to advance LOC funds, will be placed in the borrower's Agency guaranteed loan file. A copy of any correspondence sent to a lender regarding their management of a loan will be placed in the lender's file and, if the deficiency is major, a copy forwarded to SED. The borrower's file will be marked for necessary follow up actions.

266 Lender Reporting Requirements (7 CFR 762.141)

A**Overview**

This section covers the general reporting requirements for all lenders. These reporting requirements are not tied to any specific servicing action. Many servicing actions require additional reports and updates from lenders, which this paragraph does not cover. See Exhibit 15 for a checklist of all lender reporting requirements.

B**General Reporting Requirements**

Lenders are responsible for providing the local Agency credit officer with all of the following information on the loan and the borrower:

- C When the guaranteed loan becomes 30 days past due, and following the lender's meeting or attempts to meet with the borrower, all lenders will submit the appropriate Agency form showing guaranteed loan borrower default status. The form will be resubmitted every 60 days until the default is cured either through restructuring or liquidation.**
- C All lenders will submit the appropriate guaranteed loan status reports as of March 31 and September 30 of each year.**
- C PLP lenders will submit additional reports as required in their Lender's Agreement.**
- C A lender receiving a final loss payment must complete and return an annual report on its collection activities for each unsatisfied account for 3 years following payment of the final loss claim.**

Lenders shall submit FSA-1980-44 to comply with the requirement to report borrower defaults. This report is used first to notify FSA that a loan is in default, second, as a progress report on the lender's attempt to make the loan current again, and third, once a loan is brought current, as a means to notify FSA of the new loan terms and conditions. See Part 12 for more details on this reporting requirement.

Lenders should submit FSA-1980-41 to comply with the requirement to submit a semi-annual loan status report. This report provides an update on the borrower's progress on loan payback and the loan's terms and conditions.

Continued on the next page

267 FSA Loan Servicing Responsibilities (Continued)

B**Lender Loan
Files Review
Priorities
(Continued)**

FSA-1980-03 and FSA-1980-04 may be used to document the lender file reviews. All questions on each FSA-1980-03 and FSA-1980-04 do not require completion for each file reviewed, as long as reviews are sufficient to document that lenders are meeting the underwriting, origination, and servicing requirements of their FSA-1980-38's and this handbook. In addition to the lender's loan file, a copy of the loan account ledger should be obtained and reviewed. Additional information may be requested and reviewed by FSA, if necessary, based on deficiencies noted in the file, in loss claim reviews, or as suggested by other parties. SED shall determine how the file review requirement will be met in their State.

C**Multi-State PLP
Lender File
Review**

Where PLP lenders are approved to make and service loans in multiple States, it may be beneficial to both FSA and the lender to conduct a multi-State file review to meet the file review requirement. This review can benefit:

- C FSA by:
 - C helping to lead toward a more consistent handling of the reviews and the associated findings
 - C having an opportunity to identify and correct inconsistent practices of the lender or FSA
- C lenders by:
 - C gaining a better understanding of across-the-board FSA expectations of the lender
 - C having minimal disruption to their State operations as a result of FSA file reviews.

To ensure that multi-State reviews are given full consideration, the following procedures will be followed.

- C*--In January of each year, the National Office will contact each lender that has PLP status in a minimum of 3 States and the appropriate States in which that lender has PLP status. This contact will determine, based upon the lender and the States' opinion, whether a multi-State review is necessary. If it is determined that a multi-State review is necessary, the National Office will take the lead in contacting the lender and coordinating the review. Multi-State reviews may be scheduled at any time during the year.--*

Continued on the next page

267 FSA Loan Servicing Responsibilities (Continued)

C**Multi-State PLP Lender File Review (Continued)**

- C In January of each year, the National Office will provide a list of lenders that have PLP status in only 2 States to appropriate Farm Loan Chiefs. Farm Loan Chiefs will be responsible for contacting each other to determine whether a multi-State review is necessary. State Offices will take the lead in coordinating the reviews. Farm Loan Chiefs will determine review participants.

The multi-State review will not alleviate the lender of their responsibility to provide Authorized Agency Officials access to any particular file or files of the lender if in the Authorized Agency Official's opinion an additional review is necessary.

D**Authorized Agency Official Review of PLP Lender Loan Files**

PLP loan file reviews will be documented by completing FSA-1980-04. The review of PLP loan files will be based on the terms and conditions specified in FSA-1980-38. The following questions should be considered during the loan file review.

- C Do the files contain sufficient information to document that the underwriting and servicing was consistent with FSA-1980-38?
- C Were servicing actions implemented in a manner consistent with FSA-1980-38?
- C Was servicing prudent and reasonable?
-

E**Authorized Agency Official Response to Loan File Review**

--During the lender loan file reviews, the Authorized Agency Official shall hold an entrance and exit conference with the lender. At the entrance conference, the Authorized Agency Official will outline the purpose of the review and request any information that will be required to complete the review. At the exit conference, the Authorized Agency Official will discuss with the lender any deficiencies as well as the lender's accomplishments. The Authorized Agency Official will forward a letter to the lender outlining the findings of the loan file review. Letters or reports from lender visits and loan file reviews must be filed according to 25-AS, Exhibit 40.5, with copies forwarded to DD. If the review reveals frequent deficiencies, a report should be forwarded to SED.--

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Section 2 General Servicing Actions

278 Subordination of Guaranteed Loan Security (7 CFR 762.142)

**A
Overview**

Subordination of guaranteed loan security. **The lender may not subordinate its interest in property which secures a guaranteed loan except** either of the following:

- C 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**
- C 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.

Continued on the next page

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. If a request is received that SED feels is in the best interest of the Government and the borrower, it can be forwarded to the National Office for final consideration. Subordinations 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:

- C a description of the transaction including the use of the funds to be obtained through the subordination
- C explanation of the borrower's cash flow before and after the proposed subordination documenting the improvement to be attained
- C 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.--*

- C 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.

B**Lender Request
for Partial
Release
(Continued)**

C *--security, other than significant income generating property, **will be--***
**released outright, with no consideration, but the total unpaid balance of
the guaranteed loan is less than or equal to 75 percent of the value of the
security for the loan after the release, excluding the value of growing
crops or planned production, based on a current appraisal of the security**

C **significant income generating property will not be released unless it is
being replaced, and business assets will not be released for use as a gift or
any similar purpose**

Note: The release must serve a purpose other than to simply allow a
borrower to obtain clear title to security items. Cropland, significant
machinery, and business assets will not be released, unless it is being
replaced, proceeds are being used for authorized loan purposes, or the
borrower's cash flow or security position is being improved.

C **Agency concurrence is provided in writing to a lender's written request.**

Note: **Standard eligible lenders and CLP lenders will submit the
following to the Agency:**

C **a current balance sheet on the borrower**

C **a current appraisal of the security**

Note: Unless specifically requested by the Agency, the lender will
not be required to provide an appraisal of any real estate
security being released. **Based on the level of risk and
estimated equity involved, the Agency shall determine
what security needs to be appraised. Any required
security appraisals must meet the requirements of
§ 762.127.**

C **a description of the purpose for the release**

C **any other information requested by the Agency to evaluate the
proposed servicing action.**

Continued on the next page

280 Partial Releases (7 CFR 762.142(b)) (Continued)

C**FSA Response to Request for Partial Release**

Written consent of any prior or junior lien holder must be obtained and delivered to FSA if any proceeds are not applied according to lien priority.

A partial release will not be allowed if it would result in the borrower being released from loan liability.

D**Reviewing Requests for Partial Releases**

FSA shall review and approve or reject the request and notify SEL within 30 calendar days, and CLP and PLP lenders within 14 calendar days, from receipt of a complete request for servicing.

When reviewing a lender's request for a partial release, the Authorized Agency Official should carefully consider any partial release intended as a gift. In all instances, the Authorized Agency Official should assess whether or not the release of land will affect the overall value of the remaining security. In addition, the Authorized Agency Official shall determine whether an appraisal of security is necessary based on risk and perceived equity involved in the release. If there is a question on the value of the security, the Authorized Agency Official should request an appraisal. The appraisal must be paid for by the lender or borrower and meet the requirements of Part 8, Section 4, Subsection 3.

The lender will provide the Agency copies of any agreements executed to carry out the servicing action. PLP lenders will request servicing approval in accordance with their agreement with the Agency at the time of PLP status *-certification. Approval of requests forwarded to DAFLP for special consideration may be delayed beyond 30 calendar days.--*

287 Substitution of Lender (7 CFR 762.105)

A

Overview

When a borrower wishes to move their guaranteed loan from 1 lender to another, or a lender wishes to sell a guaranteed loan to another lender, with or without the borrower's consent, FSA must process a substitution of lender.

B

Lender Requirements

A new eligible lender may be substituted for the original lender, if the original lender concurs, under the following conditions.

The Agency approves of the substitution in writing by executing a modification of the guarantee to identify the new lender, the amount of debt at the time of the substitution and any new loan terms if applicable. The new lender agrees in writing to:

- C assume all servicing and other responsibilities of the original lender and to acquire the unguaranteed portion of the loan**
- C execute a lender's agreement if one is not in effect**
- C submit a request to the Authorized Agency Official that the new lender be approved as a substitute lender for the loan
- C give any holder written notice of the substitution. If the rate and term are changed, written concurrence from the holder or repurchase is required.** The Authorized Agency Official shall review the FSA file and determine if the loan has been sold. If the loan has been sold, the Authorized Agency Official shall remind the lender of special considerations warranted by its sold status.
- C The Authorized Agency Official shall review the borrower and lender's substitution request as follows:
 - C determine whether the requirements of this section are met
 - C determine whether the new lender possesses the ability to service agricultural loans and, if necessary, discuss the loan with the lender and ensure that they are aware of their responsibilities
 - C notify the Finance Office of the substitution by completing and submitting *--FSA 1980-42.--*

Continued on the next page

287 Substitution of Lender (7 CFR 762.105) (Continued)

B**Lender Requirements (Continued)**

- C The original lender will assign their promissory note, lien instruments, loan agreements, and other documents to the new lender. The guarantee documents will then be assigned to the new lender. The original lender must:**

* * *

- C assign their promissory note, lien instruments, loan agreements, and other documents to the new lender**
- C if the loan is subject to an existing IA Agreement, submit a request for subsidy for the partial year that they have owned the loan**

Note: FSA-1980-64 can then be transferred to the new lender. When a substitution is being processed, Authorized Agency Officials should review the file to determine whether the loan has IA. If so, they should remind the:

- C original lender of the need for a subsidy request**
C new lender of special servicing requirements of a loan with IA.

- C if the original lender does not concur, the substitution cannot take place. If the borrower still wants to move their loan, the new lender may refinance the debt of the original lender.**

C**Lender Name or Ownership Changes**

When a lender begins doing business under a new name or, undergoes an ownership change, the lender will notify the Agency. If the lender simply changes their name and there is no change in ownership, location, or tax ID numbers, the Authorized Agency Official shall:

- C submit a request to the Finance Office to change the lender name**
- C attach a printout of the lender cross-reference screen from GLS with marks to explain the change.**

Continued on the next page

287 Substitution of Lender (7 CFR 762.105) (Continued)

C

Lender Name or Ownership Changes (Continued)

The lender's CLP or PLP status is subject to reconsideration when ownership changes. If a status lender is merged with or purchased by a nonstatus lender, and the original lender's management, operating policies, CMS, and personnel are changed as a result, the lender's CLP or PLP status should be revoked. If the newly merged or purchased lender will continue to operate the status lender substantially as it has been managed in the past, revocation may not be necessary. The nonstatus lender will apply for status or their present status will be revoked. If a lender sells any guaranteed loans in their entirety, SED shall determine whether volume requirements of subparagraph 52 D are still being met.

The lender will execute a new Lender's Agreement.

The new lender must provide FSA with:

- C its new tax ID number
- C a list of all its branches where they will service guaranteed loans, their addresses, and responsible contacts.

Note: An interim request for subsidy payment from the original lender is not required when the entire lender has changed.

FSA 1980-42 must be completed and submitted to the Finance Office. One FSA 1980-42 may be completed with a list of the names, FSA case numbers, and loan numbers for the entire guaranteed loan portfolio of the lender attached.

Although guaranteed lenders are responsible for informing FSA when ownership changes occur, acquiring lenders are often unaware of this responsibility. If the Authorized Agency Official becomes aware that a lender with FSA-guaranteed loans has been purchased by or merged with another lender, the Authorized Agency Official shall contact the new management and remind them of their responsibilities under existing FSA-1980-38's and the need to process a substitution. If Authorized Agency Officials learn that a lender has been closed or placed in receivership by a financial institution regulatory agency, they shall contact their SED for guidance.

A**Overview**

When receiving a debt writedown, a borrower is required to execute FSA-1980-89 that entitles the lender to future payments if the real estate used to secure the written down loan appreciates in value. FSA-1980-89 gives both the lender and FSA the possibility of recapturing money that was written off as a result of a debt writedown.

Before executing FSA-1980-89, the lender must obtain an appraisal of the real estate that is used to secure the written down loan. The appraisal figure will be recorded on FSA-1980-89. * * * The appraisal must be dated within 1 year of FSA-1980-89 execution to be valid.

All servicing requirements apply to all existing SAA's that were entered into before SAA becoming FSA-1980-89. For purposes of this handbook, wherever FSA-1980-89 is referred to, it will also pertain to existing SAA's.

All requirements in this paragraph apply to all lender types, unless otherwise noted.

B

**Lender
Responsibilities
When Servicing
FSA-1980-89**

The lender is responsible for:

- C monitoring the borrower's compliance with the Shared Appreciation Agreement**
- C notifying the borrower of the amount of recapture due**
- C beginning October 1, 1999, a notice of the agreement's provisions not later than 12 months before the end of the agreement**
- C reimbursing the Agency for its pro-rata share of recapture due.**

Continued on the next page

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

A
SEL Request for Restructuring (Continued)

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

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

* * *

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

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.

Continued on the next page

326 Rescheduling of Debt (7 CFR 762.145) (Continued)

D**Capitalization of Interest (Continued)**

- C Only interest that has accrued at the rate indicated on the borrower's original promissory notes may be capitalized. Late payment fees or default interest penalties that have accrued due to the borrower's failure to make payments as agreed are not covered under the guarantee and may not be capitalized.**
- C Approved capitalized interest will be treated as part of the principal and interest that accrues thereon, in the event that a loss should occur.**

As part of restructuring request, SEL's must receive FSA concurrence before interest can be capitalized.

Following restructuring, the lender should submit FSA-1980-44 indicating that the loan is current.

The lender may keep a record of late fees and default charges and collect them from the borrower in the case of extra payments or payment in full.

E**FSA Review of Capitalization Request**

The Agency will execute a modification of guarantee form to identify the new loan principal and the guaranteed portion if greater than the original loan amounts, and to waive the restriction on capitalization of interest, if applicable, to the existing guarantee documents. The modification form will be attached to the original Guarantee as an addendum.

When CLP or PLP has rescheduled or reamortized a loan with capitalized interest, or when the Authorized Agency Official has concurred with SEL restructuring *--plan that includes capitalized interest, FSA must complete FSA-1980-84 to reflect the new guaranteed principal and any capitalized interest.

A copy of FSA-1980-84 will be placed in the FSA guaranteed loan file and the original will be attached to the original guarantee.--*

Continued on the next page

326 **Rescheduling of Debt (7 CFR 762.145) (Continued)**

* * *

F

IA

Rescheduling of a loan with IA must meet all the conditions described in this paragraph and Part 9.

G

Loan

Consolidation

If a borrower has 2 or more guaranteed loans, the lender, under certain circumstances, may consolidate the guaranteed loans before rescheduling. The single, consolidated loan would be rescheduled according to this paragraph. See paragraph 286 for conditions regarding the consolidation of guaranteed loans.

327 Deferrals (7 CFR 762.145(d))

A**General
Description**

A deferral postpones the payment of principal and interest on FO, OL, or LOC to accommodate a temporary inability of the borrower to make scheduled payments. Loan principal can be deferred in whole or part. If the deferment period is 1 year or less, interest can be deferred in whole or in part. Interest may only be deferred in part if the deferral period extends over 1 year.

B**Conditions**

The following conditions apply to deferrals:

- C Payments may be deferred up to 5 years, but the loan may not be extended beyond the final due date of the note.**
- C The principal portion of the payment may be deferred either in whole or in part.**
- C Interest may be deferred only in part. Payment of a reasonable portion of accruing interest as indicated by the borrower's cash flow projections is required for multi-year deferrals.**
- C There must be a reasonable prospect that the borrower will be able to resume full payments at the end of the deferral period.**

The amount of principal and interest deferred must be based on the borrower's current ability to pay and projections regarding ability to pay in the future. If the deferral period is to extend beyond 1 year, only a portion of the interest can be deferred.

--If a LOC deferral exceeds 1 year, then LOC must be restructured and no new advances can be made. For LOC deferrals for less than 1 year there must be either inventory on hand to cover the carryover debt balances or they must show repayment of the carryover debt plus the new operating cycle advances. If the LOC deferral is 1 year or less, it is unnecessary to notify the Finance Office.--

The loan may be rescheduled after the deferral if payments as scheduled cannot be made.

C**Lender Request
to Defer a Loan**

To request a deferral, SEL lenders must submit documentation according to the *--requirements listed in paragraph 313. Based on this documentation, the--* Authorized Agency Official will notify the lender in a timely manner whether or not the deferral plan is approved.

CLP lenders must submit documentation according to paragraph 313, after completing the loan restructuring.

PLP must restructure loans according to FSA-1980-38 and provide post-restructuring documentation to FSA according to paragraph 313.

A**Overview**

A debt writedown involves writing off a portion of the outstanding balance of a loan. A lender may write down a delinquent guaranteed loan only in an amount sufficient to enable the borrower to repay the reduced debt over the remaining term of the loan. All lenders must seek FSA concurrence before they can execute a debt writedown. Debt writedown loss claims must be approved by SED.

B**General Requirements**

The following conditions apply to debt writedown:

- C A lender may only writedown a delinquent guaranteed loan or line of credit in an amount sufficient to permit the borrower to develop a feasible plan of operation as defined in § 762.102(b).**
 - C The lender will request other creditors to negotiate their debts before a writedown is considered.**
 - C The borrower cannot develop a feasible plan after consideration is given to rescheduling and deferral under this section.**
 - C The present value of the loan to be written down, based on the interest rate of the rescheduled loan, will be equal to or exceed the net recovery value of the loan collateral.**
 - C The loan will be restructured with regular payments at terms no shorter than 5 years for a line of credit and OL loan note and no shorter than *--20 years for FO, unless required to be shorter by § 762.145(c)(1)(i) and--* (ii).**
 - C No further advances may be made on a line of credit that is written down.**
 - C Loans may not be written down with interest assistance. If a borrower's loan presently on interest assistance requires a writedown, the writedown will be considered without interest assistance.**
 - C The writedown is based on writing down the shorter-term loans first.**
-

Continued on the next page

328 Debt Writedown (7 CFR 762.145(e)) (Continued)

D**Lender Actions to Support Write Down Debt Request (Continued)**

The appraisal will be paid for by the lender, but the cost can be passed to the borrower.

FSA-1980-88 will be used to calculate lender loss. After the lender loss has been calculated on FSA-1980-88, the lender loss claim will be submitted on RD-449-30. Lender loss will be the percentage of the guarantee multiplied by the difference between the outstanding principal and interest balance of the loan before the writedown and the outstanding balance of the loan after the writedown.

In addition to the materials noted in this paragraph, SEL's and CLP's must submit materials according to paragraph 313 to request a debt writedown.

329 FSA Review and Monitoring of Restructured Loans (7 CFR 762.145(b))

A**Post-Restructuring Review and FSA Reporting Requirements**

--The Authorized Agency Official shall, after receiving a restructured note or LOC or an amendment to a note or LOC from a lender, review all applicable-- restructuring documents received by FSA, including the restructured note and FSA-1980-44 stating that the loan is current, and ensure that the loan was restructured with the principal, accrued interest, payments, interest rate and terms to which FSA agreed. If any discrepancies are found between regulatory requirements or the restructuring plan FSA originally agreed to and the executed restructuring, the lender must correct the restructured note. After the correctness of the restructured note has been verified, the restructured or amended note and the Modification of Guarantee, if interest was capitalized, should be attached to the copy of the original note.

* * *

Continued on the next page

329 FSA Review and Monitoring of Restructured Loans (7 CFR 762.145(b)) (Continued)

**B
FSA Monitoring
of Lender Loan
Files With
Restructured
Loans**

When reviewing files of loans that have been restructured, FSA employees must ensure that lenders restructured their loans according to the terms agreed to by FSA according to their FSA-1980-38. If the loan was restructured with terms that FSA did not agree to, the lender must adjust the loan terms to comply with terms FSA agreed to originally.

When reviewing CLP loan files, Authorized Agency Officials should ensure that loans were restructured according to FSA rules and regulations and that the materials submitted in support of a restructuring action are accurate.

When reviewing restructured loan files made by PLP lenders, Authorized Agency Officials should ensure that all restructuring was done according to FSA-1980-38. If FSA-1980-38 is silent on a certain restructuring subject, the PLP lender must follow FSA rules and regulations for CLP lenders.

FSA may use FSA-1980-05 as a guide for reviewing debt writedowns.

**C
FSA Monitoring
of Loans That
Have Been
Restructured**

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.

If the lender submits a loss claim on a loan that was restructured, and the loan was not restructured according to FSA-approved terms, the loss claim may be reduced or denied altogether.

330-339 (Reserved)

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.

- C The lender must give the borrower notice that the loan will be liquidated.
- C The lender must accelerate the note.
- C The lender must prepare a liquidation plan. SEL and CLP lenders will provide FSA with a copy.
- C The lender must submit an estimated loss claim with the liquidation plan if liquidation is expected to exceed 90 calendar days.
- C The lender must liquidate the security.
- C The lender must submit a final loss claim.
- C 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	
60 Days*	Earliest Date that Lender Can File to Liquidate Security
90 Days	Lender Gives Notice to Borrower and Accelerates the Loan or Implements a Loan Restructuring Plan
120 Days	Lender must reach decision as to whether the account will be restructured or liquidated.
150 Days	Liquidation plan and estimated loss claim must be submitted.
164 Days	Estimated protective advances must be concurred with by FSA.
170 Days	Liquidation plan must be approved by FSA.
180 Days	Estimated loss claim must be approved by FSA.
260 Days	Liquidation completed.
290 Days	Final loss claim submitted.
330 Days**	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)	

Continued on the next page

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.

Continued on the next page

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:

- C 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**
- C 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:

- C appraisals
- C marketing expenses
- C auctioneer expenses
- C*--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:

- C employee salaries
 - C staff lawyers
 - C photocopying
 - C 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:

- C unpaid accrued interest
- C advances
- C payments
- C periods of time
- C interest rates
- C 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.

Continued on the next page

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:

- C 01-32 shall be sent to 314-539-3111
- C 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.

Continued on the next page

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.

Continued on the next page

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:**

- C an accounting of the use of loan funds**
- C an accounting of the disposition of loan security and its proceeds**
- C 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:

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

- C documentation, as requested by the Agency, concerning the lender's compliance with the requirements of this part.**

--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.

Continued on the next page

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.

Continued on the next page

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.

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:

- C 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**
-

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

**F
FSA Approval
and Payment of
Final Loss Claim
(Continued)**

- C losses incurred as a result of interest accrual during excessive delays in collection, as determined by the Agency, will not be paid**
- C 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:

- C servicing deficiencies that did not contribute materially to the dollar amount of the loss**
- C 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.

* * *

Continued on the next page

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.

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:

- C application of liquidation proceeds net of expenses
- C approved protective advances
- C any voluntary payments
- C 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 the * * * Finance Office 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 * * * Finance Office 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**

After a final loss claim has been paid, the lender can release the borrower or any guarantor from liability with FSA concurrence. The lender will decide whether or not to seek release of liability for a borrower or entity based on an assessment of the value of any income or assets to offset FSA or lender losses.

Continued on the next page

361 Release of Liability After Liquidation (7 CFR 762.146(c)) (Continued)

B**General Requirements**

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

- C** the Agency agrees to the release in writing
- C** the lender documents its consideration of the following factors concerning the borrower or guarantors:
 - C** 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
 - C** 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
 - C** 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
 - C** the availability of other income or assets which are not security
 - C** the possibility that assets have been concealed or improperly transferred
 - C** the effect of other guarantors on the loan
 - C** cash consideration or other collateral in exchange for the release of liability.

The lender will execute its own release of liability documents.

C**FSA Approval of Release of Liability After Liquidation**

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.

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 and RD-449-30 will be completed and submitted according to the FMI.

B**FSA Option to Liquidate**

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

C 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.

C 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.

Continued on the next page

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:

- C the lender may demand repurchase to conduct any of the servicing actions in Part 9, 12, or 14
- C lender repurchase is not required if the holder will agree to the restructured terms of the note
- C 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.

- C **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**
- C **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.

Continued on the next page

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:

- C a copy of the written demand made upon the lender**
- C originals of the Guarantee and note properly endorsed to the Agency, or the original of the Assignment of Guarantee**
- C a copy of any written response to the demand provided by the lender to the holder**
- C 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).

Continued on the next page

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:

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

- C 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:
 - C date demand was made on the lender
 - C date demand was made on FSA
 - C name of the previous holder
 - C amount of purchase price paid by FSA
 - C daily interest accrual on the purchase amount.
- C 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.

Continued on the next page

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

- C 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.
- C 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:

- C 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.

- C 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
- C 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.

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Reports, Forms, Abbreviations, and Delegations of Authority

Reports None

Forms This table lists all forms referenced in this handbook.

Number	Title	Display Reference	Reference
AD-1026	Highly Erodible Land Conservation and Wetland Conservation Certification		69.5, 208
FEMA-81-93	Standard Flood Hazard Determination Form		138
FmHA-449-34	Loan Note Guarantee		281, 267
FmHA 1940-3 <u>1/</u>	Request for Obligation of Funds Guaranteed Loans		230
FSA-431-2	Farm and Home Plan		72
FSA-440-32	Request for Statement of Debts and Collateral		69.6, 152
FSA-1940-3	Request for Obligation of Funds Guaranteed Loans		230
FSA-1940-10	Cancellation of U.S. Treasury Check and/or Obligation		249
FSA-1980-01	Lender's Processing Checklist		69, 95
FSA-1980-02	Guaranteed Loan Processing Checklist		69
FSA-1980-03	Annual File Review Checklist for SEL and CLP Lenders		267
FSA-1980-04	Annual File Review Checklist for PLP Lenders		267
FSA-1980-05	Debt Writedown Review Checklist		329
FSA-1980-06	Guaranteed Estimated Loss Review Checklist for SEL and CLP Lenders		342, 359
FSA-1980-07	Guaranteed Loan Final Loss Review Checklist		360
FSA-1980-15	Conditional Commitment		Text
FSA-1980-22	Lender Certification		247
FSA-1980-24	Request for Interest Assistance Payment		228, 326
FSA-1980-25	Application for Guarantee		Text
FSA-1980-26	Report on Collection Activities on Liquidated Accounts		266, 362
FSA-1980-27	Loan Guarantee		267

1/ This form is obsolete.

Reports, Forms, Abbreviations, and Delegations of Authority (Continued)
**Forms
(Continued)**

Number	Title	Display Reference	Reference
FSA-1980-27	Loan Guarantee		247, 248, 250, 281, 373, 374, 376
FSA-1980-28	Preferred Lender Application for Guarantee		Text
FSA-1980-36	Assignment of Guarantee		373-375
FSA-1980-37	FSA Purchase of a Guaranteed Loan Portion		375
FSA-1980-38	Lender's Agreement		Text
FSA-1980-41	Guaranteed Farm Loan Status Report as of _____		266, 355, 376
FSA-1980-42	Notice of Substitution of Lender (Transaction 4034)		287
FSA-1980-44	Guaranteed Farm Loan Default Status Report		266, 300, 313, 314, 326, 329, 355, 357-359
FSA-1980-48	Request for Restructuring Guaranteed Loans		313
FSA-1980-49	Guaranteed Loan Status Update Adjustment (Transaction 4048)		288
FSA-1980-64	Interest Assistance Agreement		224, 225, 227, 228, 230, 231, 287
FSA-1980-84	Modification of Loan Guarantee		281, 313, 326
FSA-1980-86	Notification of Transfer and Assumption of a Guaranteed Loan Transaction Code 4037		281
FSA-1980-88	Farm Loan Programs Guaranteed Writedown Worksheet		328
FSA-1980-89	Shared Appreciation Agreement for Guaranteed Loans		181, 288, 328, 341
G-641	Application for Verification of Information From Immigration and Naturalization Records		108
I-151	Alien Registration Receipt Card		108
I-551	Alien Registration Receipt Card		108
RD-449-30	Loan Note Guarantee Report of Loss		136, 288, 328, 342, 344, 355, 360, 362, 376

Reports, Forms, Abbreviations, and Delegations of Authority (Continued)

Forms
(Continued)

Number	Title	Display Reference	Reference
RD-1910-5	Request for Verification of Employment		69.6, 152
RD-1940-3 1/	Request for Obligation of Funds Guaranteed Loans		226, 230, 244, 245, 326
RD-1951-C-1	Notice of Intent to Collect by Administrative Offset		376
RD-1980-7	Notification of Transfer and Assumption of a Guaranteed Loan		281
RD-1980-19	Guaranteed Loan Closing Report		227, 247, 249, 286
RD-1980-43	Lender's Guaranteed Loan Payment to USDA		376
RD-1980-45	Notice of Liquidation Responsibility		362
RD-1980-47	Guaranteed Loan Borrower Adjustments		281, 284, 288
W-2	Wage and Tax Statement		152

1/ This form is obsolete.

Abbreviations
Not Listed in
1-CM

The following abbreviations are not listed in 1-CM.

Approved Abbreviation	Term	Reference
ADPB	average daily principal balance	228
ALP	Approved Lender Program	34
CLP	Certified Lender Program	Text
CMS	Credit Management System	52-54, 151, 262, 287
CONACT	Consolidated Farm and Rural Development Act	108
ECOA	Equal Credit Opportunity Act	31, 210
EFT	Electronic Funds Transfer	360

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Reports, Forms, Abbreviations, and Delegations of Authority (Continued)

Abbreviations
Not Listed in
1-CM
(Continued)

Approved Abbreviation	Term	Reference
EIS	Executive Information System	84
EM	emergency loans	108, 138, 244
FmHA	Farmer's Home Administration (formerly by FSA)	108
FMI	Forms Manual Inserts	226, 328, 359, 362
FO	farm ownership loan	Text
GLS	Guaranteed Loan System	Text
IA	interest assistance	Text
INS	Immigration and Naturalization Service	108
LOC	line of credit	Text
MOU	Memorandum of Understanding	Ex. 16
OL	operating loan	Text, Ex. 2
PLP	Preferred Lender Program	Text
SAA	Shared Appreciation Agreement	286, 288
SEL	Standard Eligible Lender	Text
SW	soil and water loan	49, 50, 52, 108, 244, 281, 326
USPAP	Uniform Standards of Professional Appraisal Practice	181, 183, 267

Redelegations
of Authority

This table lists the redelegations of authority in this handbook.

Redelegation	Reference
Administering handbook provisions	20