

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

**Guaranteed Loan Making and Servicing
2-FLP (Revision 1)**

Amendment 49

Approved by: Deputy Administrator, Farm Loan Programs



Amendment Transmittal

A Reasons for Amendment

Subparagraph 278 A has been amended to provide clarification on requirement for Agency written approval for subordinations.

Subparagraph 280 B has been amended to include an allowance for a security item to be exchanged with a like item.

Subparagraph 281 B has been amended to provide the correct reference for release of liability after transfer and assumption.

Subparagraph 287 B has been amended to include applicable forms references.

Subparagraph 376 A has been amended to provide clarification on requesting lender repayment of loans repurchased by the agency.

Page Control Chart		
TC	Text	Exhibit
	11-37 through 11-40 11-43, 11-44 11-55, 11-56 15-15, 15-16	

Section 2 General Servicing Actions

278 Subordination of Guaranteed Loan Security (7 CFR 762.142)**A Overview**

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

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

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

B Lender Request for Subordination of Guaranteed Loan Security

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

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

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

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

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

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

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

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

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

- if funds are to be advanced for expansion or improvements, an explanation as to how the proposal is necessary for the feasibility of the operation.

FSA's refusal to grant an exception to published regulations is **not** appealable.

279 Subordination of Direct Loan Security (7 CFR 762.142(c))

A Direct Loan Subordination When Guaranteed Loan Is Being Made

The Agency may subordinate its security interest on a direct loan when a guaranteed loan is being made if, as appropriate, the requirements of the regulations governing Agency direct loan subordinations are met and only in the following circumstances:

- to permit a guaranteed lender to advance funds and perfect a security interest in crops, feeder livestock, livestock offspring, or livestock products, such as milk, eggs, wool, etc.
- when the lender requesting the guarantee needs the subordination of the Agency's lien position to maintain its lien position when servicing or restructuring
- when the lender requesting the guarantee is refinancing the debt of another lender and the Agency's position on real estate security will not be adversely affected

--Note: Chattel security may not be subordinated when the lender requesting the guarantee is refinancing the debt of another lender.--

- to permit a Line of Credit to be advanced for annual operating expenses.

See 4-FLP for additional guidance.

B Direct Loan Subordination to Secure LOC

The Agency may subordinate its basic security in a direct loan to permit guaranteed line of credit only when both of the following additional conditions are met.

- The total unpaid balance of the direct loans is less than or equal to 75 percent of the value of all of the security for the direct loans, excluding the value of growing crops or planned production, at the time of the subordination. The direct loan security value will be determined by an appraisal. The lender requesting the subordination and guarantee is responsible for providing the appraisal and may charge the applicant a reasonable appraisal fee.
- The applicant cannot obtain sufficient credit through a conventional guaranteed loan without a subordination. Before approving a combination guaranteed loan and subordination, the local loan approval official will document that the applicant requested a Contract of Guarantee - LOC through at least 1 participating lender. If the local loan approval official has information available that supports a conclusion that credit is not available without a subordination, documentation in the case file will be sufficient to verify that other credit is not available.

280 Partial Releases (7 CFR 762.142(b))**A Overview**

A partial release is the release of a portion of security used as collateral for a loan.

B Lender Request for Partial Release

A lender may release guaranteed loan security without FSA concurrence as follows:

- **when the security item is being sold for market value and the proceeds will be applied to the loan in accordance with lien priorities**

Note: In the case of term loans, proceeds will be applied as extra payments and not as a regular installment on the loan. Security will not be released for the purposes of providing collateral for another loan.

- **the security item will be used as a trade-in or source of down payment funds for a like item that will be taken as security**

***--Notes:** The security may be exchanged for a like item of equal or greater value, based on a current appraisal.

FSA input may be requested when there is a question of whether a reasonable--* value is being obtained for the security.

- **the security item has no present or prospective value.**

Note: Older security items that are now junk or obsolete may be left off of the lender's security agreement when it is updated. Regardless, proceeds from the sale of such items as scrap or salvage should be applied to the loan as an extra payment.

A partial release of security may be approved in writing by the Agency upon the lender's request when:

- **proceeds will be used to make improvements to real estate that increase the value of the security by an amount equal to or greater than the value of the security being released**

Example: A borrower may sell a parcel of real estate to provide funds for construction of a dwelling.

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

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

B Lender Request for a Transfer and Assumption

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

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

Note: If transfers and assumptions are not covered in the Lender's Agreement with FSA, the PLP lender will process transfers and assumptions under the same conditions as SEL or CLP lenders.

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

Lenders must also submit a request to release the transferor, guarantor, or any third party ~~from~~ liability when applicable. The request must include documentation to support the release in accordance with § 762.146(c) (paragraph 361).

Note: A release of liability as a result of a transfer and assumption is considered a release due to liquidation. The transferor is liquidating by transferring the operation to a different individual or entity but with no loss to the agency.--*

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

C Conditions and Requirements for a Transfer and Assumption

The following limitations apply to transfers and assumptions.

- **The transferee must meet the eligibility requirements and loan limitations for the loan being transferred, all requirements relating to loan rates and terms, loan security, feasibility, and environmental and other laws applicable to an applicant under this subpart.**
- ***--Note:** Loans made to beginning or socially disadvantaged farmers in conjunction with the direct FO downpayment loan program may be transferred to and assumed only by beginning farmers and socially disadvantaged farmers. Loans made to beginning farmers participating in a qualified State beginning farmer program may be transferred to and assumed only by beginning farmers.--*
- **The lender will use its own assumption agreements or conveyance instruments providing they are legally sufficient to obligate the transferee for the total outstanding debt.**
- **The lender must give any holder notice of the transfer. If the rate and terms are changed, written concurrence from the holder is required.**

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

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

287 Substitution of Lender (7 CFR 762.105)**A Overview**

When a borrower wants to move their guaranteed loan from 1 lender to another, or a lender wants 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 the substitution in writing by executing a modification of ~~the guarantee~~ (FSA-2245, Modification of Loan 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:**
 - **assume all servicing and other responsibilities of the original lender and to acquire the unguaranteed portion of the loan**
 - **execute a lender's agreement if one is not in effect**
 - **submit a request to the authorized agency official that the new lender be approved as a substitute lender for the loan**
 - **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.

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

B Lender Requirements (Continued)

- The authorized agency official shall review the borrower and lender's substitution request as follows:
 - determine whether the requirements of this section are met
 - 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
 - notify NFAOC, Farm and Community Services Branch of the substitution by ~~completing and submitting FSA-2243, and changes to the rate and term, if applicable, by completing and submitting FSA-2249.~~*
- **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:
 - **assign their promissory note, lien instruments, loan agreements, and other documents to the new lender**
 - **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-2221 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:

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

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

A Request for Lender Repayment (Continued)

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 or Loan Guarantee. The authorized *--agency official will request in writing, one of the three following actions by the lender--* within 60 calendar days.

- Payment of the entire purchase amount (guaranteed portion plus accrued interest) of the loan held by FSA. Details of the purchase will be provided in the FSA request including:
 - date demand was made on the lender
 - date demand was made on FSA
 - name of the previous holder
 - amount of purchase price paid by FSA
 - daily interest accrual on the purchase amount
- *--notification that the FSA loan guarantee is forfeited upon payment of the purchase amount and that the lender must submit the FSA-2241 indicating the guarantee is to be terminated.

Note: Upon receipt of the payment and completed FSA-2241 from the lender, the authorized agency official shall complete FSA-2251 and forward the payment to NFAOC, Farm and Community Services Branch. Termination of the guarantee should be completed in GLS once the lender's payment has processed.

- If liquidation of loan security has been completed, a properly completed FSA-2254 with loan ledgers and supporting documents. FSA-2254 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 (subparagraph 360 F).
- If liquidation has not been completed, a liquidation plan, if not already received (subparagraph 358 B). Interest accruing to FSA as holder on the repurchase amount--* 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 FSA-2254 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.

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

A Request for Lender Repayment (Continued)

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

- *--Contact the National Office loan servicing division for instructions on notifying the lender of FSA's intent to collect the purchase amount by administrative offset (FSA-2701), according to 7-FLP

Notes: Contact the National Office for appropriate Due Process Notification.--*

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

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

B Failure to Reimburse FSA

*--If the lender does not reimburse FSA within 180 calendar days, [7 CFR 762.144 (c)] **the lender will be liable for the repurchase amount and any expenses incurred by the Agency to maintain the loan in its portfolio or liquidate the security. While the Agency holds the guaranteed portion of the loan, the lender will transmit to the Agency any payment received from the borrower, including the pro-rata share of liquidation or other proceeds.**

*--[7 CFR 762.144 (c)(9)] **If the borrower files for reorganization under the provisions of the bankruptcy code or pays the account current while the purchase by the Government is being processed, the Agency may hold the loan as long it determines this action to be in the Agency's interest. If the lender is not proceeding expeditiously to collect the loan or reimbursement is not waived under this paragraph, the Agency will demand payment by the lender and collect the purchase amount through administrative offset of any claims due the lender.**

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