

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

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

Amendment 53

Approved by: Deputy Administrator, Farm Loan Programs



Amendment Transmittal

A Reasons for Amendment

The following subparagraphs have been amended to reflect the recent name change from NFAOC to the RD Business Center, Guaranteed Commercial Branch:

- 15 C
- 230 D, E
- 248 B, C
- 281 D
- 286 D
- 287 B, C
- 288 F
- 313 A
- 327 B
- 342 B
- 344 A, C
- 359 F
- 360 F, G
- 362 A, B
- 363 B, G, H, I, K, L, M
- 375 C
- 376 A.

Subparagraph 46 C has been amended to correct the FDIC hyperlink.

Subparagraph 70 A has been amended to correct erroneously omitted words in the summary chart.

Subparagraph 110 A has been amended to clarify the owner and operator requirements for Farm Ownership Loans.

Amendment Transmittal (Continued)

A Reasons for Amendment (Continued)

Subparagraph 123 B has been amended to clarify the Farm Ownership Loans approved purposes.

Subparagraphs 342 B and 344 A have been amended to clarify what must be submitted to the RD Business Center, Guaranteed Commercial Branch upon confirmation of a reorganization bankruptcy plan.

Subparagraphs 363 E and K have been amended to correct the reference to 7-FLP.

Exhibit 10 has been amended to reflect the recent name change from NFAOC to GLS.

Exhibit 15.4 has been amended to reflect the recent name change from NFAOC to the RD Business Center.

Exhibit 21 has been amended to reflect the recent name change from NFAOC to the RD Business Center.

| Page Control Chart | | |
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| TC | Text | Exhibit |
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Part 2 Guaranteed FLP

15 Program Purpose and Eligible Lenders

A Program Purpose

FSA's Guaranteed FLP:

- enables lenders to extend credit to family farm owners or operators who do not qualify for standard commercial loans
- benefits beginning farmers and family farmers experiencing financial distress, as well as lending institutions and the local community as a whole

Note: Farmers receive credit at reasonable terms to finance their current operations or to expand their business. Financial institutions receive additional loan business and servicing fees, as well as other benefits from the program.

- serves the local community by protecting family farmers and farm-related businesses
- enables lenders to extend conservation credit to some farmers who are **not** eligible for guaranteed FO's or OL's.

B Requirements

Lenders who are subject to credit examination and supervision by an acceptable State or Federal regulatory agency, and have experience in agricultural lending are eligible to *--participate in all FSA Guaranteed Farm Loan Program. Lenders not subject to traditional credit examination and supervision, or who have little or no experience with agricultural loans may qualify as MLP lenders and make loans under the EZ Guarantee Program.--*

Lenders who have a positive track record of participation in the program may participate in one of FSA's status lender programs. CLP and PLP are the 2 status lender programs. Once lenders are approved by FSA as a CLP or PLP lender, they may process loans under the reduced paperwork and supervision requirements afforded to the respective status lender program.

For more information on the different lender types, see Part 4.

15 Program Purpose and Eligible Lenders (Continued)

C Lenders Agreement

The purpose of the Lender's Agreement is to:

- establish the lender as an approved participant in the FSA Guaranteed Farm Loan Program
- outline the terms and conditions for originating and servicing FSA-guaranteed loans.

The lender is responsible for originating and servicing all guaranteed loans in their portfolio according to Lenders Agreement that is valid at the time.

Example: If a lender has an approved SEL Lenders Agreement, they will originate and service loans under SEL requirements spelled out in 7 CFR Part 762 and this handbook.

If the same lender later applies for PLP status and is approved, a new PLP Lenders Agreement will be executed. As long as the PLP Lenders Agreement remains in effect, the lender will originate and service all FSA-guaranteed loans in their portfolio, including loans originated while the lender was SEL, under the conditions agreed to in the PLP Lenders Agreement.

For MLP, CLP, and PLP lenders, the Lender Agreement is valid for 5 years from the date of execution by the authorized agency official, SED, or DAFLP. For SELs, the Lenders Agreement is valid indefinitely from the time of execution by authorized agency official, unless otherwise terminated or replaced by FSA.

For each State covered by the approved Lenders Agreement, the State Office is responsible for entering the details of the approved Lenders Agreement in GLS. State Offices may *--seek assistance from the RD Business Center, Guaranteed Commercial Branch for--* particularly complex situations.

Part 4 Lender Eligibility**46 Eligibility Requirements for SEL (7 CFR 762.105(b))****A Overview**

The basic level of participation in the FSA Guaranteed Farm Loan Program is SEL. SEL must meet the eligibility criteria in this section to submit an application for a guarantee. If the lender does not meet the eligibility criteria to the satisfaction of FSA, the application will be denied.

B Capacity

A lender must have experience in making and servicing agricultural loans and have the capability to make and service the loan for which a guarantee is requested.

In reviewing the SEL request, the authorized agency official shall consider FSA's prior experience with the lender in assessing whether or not they have the capability to make and service the loan. An important factor in reviewing the lender's capacity is their experience in agricultural lending. Experience in agricultural lending must be demonstrated for either the lender or the lender's personnel.

The lenders must not have losses or deficiencies in processing and servicing guaranteed loans above a level which would indicate an inability to properly process and service a guaranteed agricultural loan.

Previous problems with a lender, as evidenced in monitoring reports, excessive loss claims, or denial of loss claims, should be considered in this determination.

C Examination and Supervision

A lender must be subject to credit examination and supervision by an acceptable State or Federal regulatory agency.

Only lenders that are subject to both examination and supervision by an acceptable State or Federal regulatory agency may participate in the FSA Guaranteed Program. Examination will normally include a review of the lender's asset quality, management practices, financial condition, and compliance with applicable laws and regulations. Supervision gives the regulator the authority to require that the lender make changes to ensure safety and soundness.

46 Eligibility Requirements for SEL (7 CFR 762.105(b)) (Continued)

C Examination and Supervision (Continued)

Traditional and nontraditional lenders, that are audited and subject to oversight by a State agency, may or may not be examined and subject to supervision. Any questions about whether a lender meets this requirement should be addressed to DAFLP, Guaranteed Loan Making Branch.

Acceptable agencies and their web sites that in some cases identify enforcement actions as well as other activities associated with a lender, include, but are not limited to, the following:

- **--FDIC at <https://orders.fdic.gov/s/-->***
- Office of the Comptroller of the Currency at <http://apps.occ.gov/EASearch/>
- Federal Reserve Board at <https://www.federalreserve.gov/apps/enforcementactions/>
- FCA at <http://apps.fca.gov/FCSPublicDirectory/PubSearchInstitution.aspx>
- National Credit Union Administration at <http://www.ncua.gov/Legal/Regs/Pages/AdminOrders.aspx>
- U.S. Department of the Treasury's Community Development Financial Institutions Fund at <https://www.cdfifund.gov/programs-training/certification/cdfi/pages/default.aspx> for nontraditional lenders
- State banking commissions.

For traditional lenders, SED's shall check the appropriate regulatory agency web sites to determine whether the lender is subject to any enforcement action before engaging in a new lending relationship.

For nontraditional lenders, DAFLP shall check the appropriate regulatory agency to determine whether the lender is subject to any enforcement action before engaging in a new lending relationship. In addition, DAFLP may periodically complete a review of the financial capacity for nontraditional lenders whose financial statements are not readily available. SED's will be informed of any deficiencies noted.

A Application Requirements

The following is a summary of OL and FO application requirements.

| Items to submit to FSA: | EZ Guarantee | PLP | CLP | SEL | SEL |
|--|---|--|--|-----------------|----------------|
| Amount: | MLP to \$50,000 SEL, CLP, PLP to \$100,000 | | | Up to \$125K | Over \$125K |
| Application Form | Y | Y | Y | Y | Y |
| Narrative | Lenders will collect and maintain these items according to their normal lending practices | Y | Y | Y | Y |
| Location of farmed land | | Y | Y | Y | Y |
| Balance Sheet | | PLP Lenders will maintain these items according to the terms of their CMS | Y | Y | Y |
| *--Repayment Capacity (Cash Flow Budget)--* | | | Y | Y | Y |
| Credit Report | | | In File | Y | Y |
| Proposed Loan Agreements | | | CLP lenders will maintain these items in their file for *--loans over \$125,000--* | | Y |
| Verification of debts over *--\$1000--* | | | | | Y |
| Verification of non-farm income | | | | | Y |
| 3 year financial history | | | | | Y |
| 3 year production history | | | N/A | | Y |
| Entity Information (personal balance sheet from each member) | | | Y | Y | Y |
| Items Needed Infrequently | | | | | |
| Environmental – additional information (see note below) | Y | Y | Y | Y | Y |
| Construction, development plans | N | Per CMS | In file | N | Y |
| CL: Conservation plan | | Y | Y | Y | Y |
| CL: Transition plan for organic, sustainable agriculture | | Y | Y | Y | Y |

Summary of OL and FO Applications (Continued)**A Application Requirements (Continued)**

Note: The EZ Guarantee limits are based on the borrower's total outstanding guaranteed principal balance. The SEL limits are based on the total amount per loan request package. SEL, CLP, and PLP may use the regular application method if they do not wish to submit the application using the EZ Guarantee method.

The application will be considered complete once FSA has received all necessary information to conduct the environmental review. A guaranteed loan application cannot be approved before
--the appropriate environmental review is completed and approved. In the case of a PLP--
lender, if an approval/rejection decision is not made within 14 days of a complete application, FSA will consider feasibility requirements met and will conduct no further financial analysis after that point. However, the application will not be approved, funds will not be obligated,
--and the conditional commitment will not be issued until after the appropriate environmental--
review is completed and approved.

109 Specific Requirements for OL's (7 CFR 762.120(i)) (Continued)**A Operator Requirement (Continued)**

| Item | Factor | Consideration |
|-------------|---------------|--|
| 4 | Credit Needs | Congress established FSA's loan limits to assist family sized operations. The loan limits generally ensure that loans are made to family farm operations. It is also important that every effort be made to ensure that loans are made only when it is certain that other credit is not available. Loan participation arrangements are acceptable when FSA farm loans cannot meet the total needs; but, if maximum FSA farm loans are a small portion of the total credit requirements, this may be another indicator of a larger than family-size farm when considered with other factors, or that credit is available from another source. |

B Entity Borrower Requirements

In the case of an entity borrower:

- **the entity must be authorized to operate, and own if the entity is also an owner, a farm in the state or states in which the farm is located**
- **either of the following:**
 - **if the entity members holding a majority interest are related by marriage or blood, at least one member of the entity also must operate the family farm**
 - **if the entity members holding a majority interest are not related by marriage or blood, the entity members holding a majority interest must also operate the family farm.**

Note: The entity can be the operator for organizational or tax purposes in either case.

110 Specific Requirements for FO's (7 CFR 762.120(j))

A Owner and Operator Requirement

[7 CFR 762.120(j)(1)] The individual must be the operator of not larger than a family farm and the owner of a farm after the loan is closed. Ownership of the family farm operation or the farm real estate may be held either directly in the individual's name or indirectly through interest in a legal entity.

The applicant must own the farm to obtain FO. The factors in subparagraph 109 A will be considered when determining whether or not the farm meets the family farm definition.

*--Farmers also may lease farm land in addition to the land they own. Farmers are expected to be the primary operator of the farm(s) they own to meet the owner operator requirements for a FO; however, certain exceptions may be made when it is impractical to operate selected tracts.

In the case of an FO loan for construction, a tenant with a long term lease who meets the requirements of 7 CFR 762.122 and subparagraph 123 B will be considered to meet the owner and operator requirements. State Offices with questions about owner and operator requirements will contact the National Office for guidance as needed.--*

B Entity Requirements

[7 CFR 762.120(j)(2)] In the case of an entity borrower:

An ownership entity must be authorized to own a farm in the state or states in which the farm is located. An operating entity must be authorized to operate a farm in the state or states in which the farm is located; and

- either of the following:
 - **if the entity members holding a majority interest are related by marriage or blood, at least one member of the entity must operate the family farm and at least one member of the entity or the entity must own the farm**
 - **if the entity members holding a majority interest are not related by marriage or blood, the entity members holding a majority interest must operate the family farm and the entity members holding a majority interest or the entity must own the farm.**

[7 CFR 762.120(j)(3)] If the entity is an operator-only entity, the individuals that own the farm (real estate) must own at least 50 percent of the family farm (operating entity).

[7 CFR 762.120(j)(4)] All ownership may be held either directly in the individual's name or indirectly through interest in a legal entity.

122 OL Purposes (7 CFR 762.121(a)) (Continued)**E Refinancing**

OL notes may be used to refinance existing debts when the refinancing activity will benefit the farming entity and the original loans were for approved OL purposes.

When the guaranteed loan is to be used to refinance an unguaranteed debt that the lender has with the applicant, the authorized agency official must evaluate whether the terms of the proposed loan will improve the applicant's cash flow and likelihood of success.

F LOC Purposes

Loan funds under a line of credit may be advanced only for the following purposes:

- **payment of annual operating expenses, family subsistence, and purchase of feeder animals**

Note: Annual operating expenses include those expenses related to operations with normal production cycles exceeding 12 months, such as some aquaculture and tree crops.

- **payment of current annual operating debts advanced for the current operating cycle; under no circumstances can carry-over operating debts from a previous operating cycle be refinanced**
- **purchase of routine capital assets, such as replacement of livestock, that will be repaid within the operating cycle**

Note: Only routine, annually recurring capital purchases may be included under LOC. These purchases must be scheduled for repayment within the operating cycle.

Example: Operations that normally replace a certain portion of their breeding livestock each year may include these purchases under LOC.

- **payment of scheduled, non-delinquent term debt payments provided the debt is for authorized FO or OL purposes**
- **purchase of cooperative stock for credit, production, processing, or marketing purposes**
- **payment of loan closing costs.**

123 FO Purposes (7 CFR 762.121(b))**A General FO Purposes**

The authorized agency official shall review loan applications to ensure that FO funds are used for approved purposes.

B FO Purposes

[7 CFR 762.121(b)] Guaranteed FO's are authorized only to:

- **acquire or enlarge a farm**

Examples: Examples include, but are not limited to:

- **providing down payments**
- **purchasing easements for the applicant's portion of land being subdivided**
- **participating in the Downpayment Loan program under 7 CFR Part 764 of this chapter (3-FLP).**

Notes: Land acquired with FO funds must be intended for production of agricultural commodities, used as the headquarters of the farming operation, used as the primary residence of the farm owner or manager, or used to store, repair, or process farm equipment, commodities, or livestock.

FO funds must only finance purchases by FSA loan applicants; therefore, when FO funds are advanced to acquire or enlarge a farm, all individuals that will own the farm (real estate) being purchased must also be owners of the family farm (operating entity) or their spouses.

Acquiring farm assets by purchasing ownership interest in an entity is considered to be the same as purchasing the assets themselves. The following uses are authorized:

- Individual(s) purchasing ownership interest in an existing operating entity to become the new owner(s).
- Existing member(s) purchasing the shares of a withdrawing member(s).

123 FO Purposes (7 CFR 762.121(b)) (Continued)

B FO Purposes (Continued)

When considering these requests:

- *--in all cases, the entity must be the applicant and operator of the farm--*
- all entity members must sign the promissory note providing individual liability for the debt (unless waived as allowed for subparagraph 247 A)
- the assets purchased must be an authorized FO loan purpose.
- the loan amount must be consistent with the interests purchased.

State Offices shall contact the National Office for guidance if needed.

*--Purchases of undivided interests are authorized in limited circumstances when the following criteria can be satisfied:

- all owner(s) (including non-applicants) must pledge their property ownership interest as security
- all owners who are not FSA applicants must have been an existing owner(s) that held interest in the property before the transaction (with the exception of a spouse)
- the property being purchased and pledged as primary security will be operated by the FSA applicant(s).

Note: State Offices shall contact the National Office for case-specific guidance on all applications for purchases of undivided interests.--*

230 Servicing of Loans Covered by FSA-2221 (7 CFR 762.150(j), (k), (l), (n), (p))**A Consolidation of Loans**

Loans covered by interest assistance agreements cannot be consolidated.

B Transfer and Assumption

For loans covered by an IA agreement, such loans can be transferred only when the transferee was liable for the debt on the effective date of the interest assistance agreement. Loans covered by interest assistance can be transferred to an entity if the entity is eligible in accordance with § 762.120 (paragraph 108 and applicable paragraphs 109 and 110) and § 762.150(b) (paragraph 224) and at least one entity member was liable for the debt on the effective date of the interest assistance agreement.

C Debt Writedown

When consideration is given to using a debt writedown to service a delinquent account, the subsidy level will be recalculated before any writedown. If IA is available on the loan and a feasible plan can be obtained using IA, IA will be used instead of a writedown. Interest assistance will be discontinued as of the date of any writedown on a loan covered by an interest assistance agreement. No further IA will be available on any loan that has been written down.

D Rescheduling or Deferral of Loans and Additional Beginning Farmer IA Funding

When a borrower defaults on a loan with interest assistance or the loan otherwise requires rescheduling or deferral, the interest assistance agreement will remain in effect for that loan at its existing terms. The lender may reschedule the loan in accordance with § 762.145 (see also paragraphs 312-327). For Interest Assistance Agreements dated June 8, 2007, or later increases in the restructured loan amount above the amount originally obligated do not require additional funding; however, interest assistance is not available on that portion of the loan as interest assistance is limited to the original loan amount.

230 Servicing of Loans Covered by FSA-2221 (7 CFR 762.150(j), (k), (l), (n), (p)) (Continued)**D Rescheduling or Deferral of Loans and Additional Beginning Farmer IA Funding (Continued)**

If additional funding is required because of additional years of IA either for loans being rescheduled or for beginning farmers receiving additional years of IA, the authorized agency official must modify loan documents according to the following table.

| Loan Document | Action |
|---------------------------------------|--|
| Original FSA-1940-3 or FSA-2231 | <p>In item 5, ENTER “This loan has been restructured. The term of the IA is being modified from _ years to _ years.”</p> <p>Modify the Guarantee Obligation Request Screen to indicate the correct IA term.</p> <p>In GLS the Beg Farmer/Rancher dropdown menu must be checked in order to have the additional funding obligated, if IA is being extended beyond 5 years for a beginning farmer.</p> |
| FSA’s copy of FSA-1980-64 or FSA-2221 | Strike through the original expiration date and enter the new expiration date as applicable. The lender, borrower, and FSA shall initial the changes. |

Note: The effective ending date must be equal to or before the new loan maturity date but cannot be greater than 10 years from the effective date of the borrower’s first FmHA-1980-64, FSA-1980-64, or RD-1980-64 for loans made before June 8, 2007. For loans made after June 8, 2007, the ending date of the FSA-2221 must not exceed 5 years from the date of the first FSA-2221, unless the borrower was a beginning farmer at the time of rescheduling, reamortization, or deferral.

--Copies of the modified loan documents will be FAXed or sent to the RD Business Center, Guaranteed Commercial Branch, according to 1-FLP, paragraph 5.--

230 Servicing of Loans Covered by FSA-2221 (7 CFR 762.150(j), (k), (l), (n), (p)) (Continued)**E Capitalization of Interest on Loans with IA (Continued)**

Loans made after June 8, 2007, cannot receive IA on any capitalized amount above the original loan amount. For these loans whether or not capitalization of interest exceeds the original loan amount and the IA term is not being extended, restructuring will be accomplished according to paragraph 326. For these loans whether or not capitalization of interest exceeds the original loan amount and the IA term is being extended, the authorized agency official will complete the following:

| Loan Document | Action |
|------------------------|--|
| FSA-1940-3 or FSA-2231 | In item 5, ENTER "This loan has been restructured. The term of the IA is being modified from ____ years to ____ years." Modify the Guarantee Obligation Request Screen to indicate the correct IA term. |
| FSA's copy of FSA-2221 | Strike through the original expiration date and enter the new expiration date as applicable. Note: The lender, borrower, and FSA shall initial the changes. |

Copies of the original and new FSA-1940-3, FSA-2231, and FmHA-1980-64, FSA-1980-64, or RD-1980-64 and FSA-2221, as applicable, will be FAXed or sent to ~~the RD Business Center, Guaranteed Commercial Branch, according to 1-FLP,~~
--the RD Business Center, Guaranteed Commercial Branch, according to 1-FLP,-- paragraph 5.

The lender may submit either:

- one FSA-2222 at the annual review date if sufficient documentation is provided by the lender for the authorized agency official to verify the loan balances
- FSA-2222 for the period from the previous FSA-2222 to the date of the restructuring and submit a second FSA-2222 from the date of the restructuring to the annual review date.

Note: Both FSA-2222's will be submitted for payment at the annual review date.

230 Servicing of Loans Covered by FSA-2221 (7 CFR 762.150(j), (k), (l), (n), (p)) (Continued)**F Other Requirements**

The rescheduling of a loan with IA must meet all the conditions described in this paragraph and Part 12.

G Bankruptcy

In cases where the interest on a loan covered by an interest assistance agreement is reduced by court order in a reorganization plan under the bankruptcy code, interest assistance will be terminated effective on the date of the court order. The lender will file a claim due through the effective date of the court order. **Guaranteed loans which have had their interest reduced by bankruptcy court order are not eligible for interest assistance.**

H Adjustment of Assistance between Review Dates

After the initial or renewal request for IA is processed, no adjustments can be made until the next review or adjustment date, except to service loans made before June 8, 2007, with a rescheduling or deferral.

I Excessive IA

Upon written notice to the lender, borrower, and any holder, the Agency may amend or cancel the interest assistance agreement and collect from the lender any amount of interest assistance granted which resulted from incomplete or inaccurate information, an error in computation, or any other reason which resulted in payment that the lender was not entitled to receive.

247 Actions Before Issuing the Loan Guarantee (7 CFR 762.130) (Continued)

B FSA Actions

After FSA receives the information from the lender detailed in subparagraph A, the authorized agency official must take the following actions before executing the Loan Guarantee to guarantee the loan.

- Review the Conditional Commitment to ensure that the loan closed according to the agreed conditions.
- Review the executed loan agreement and promissory note and compare with the Conditional Commitment to ensure consistency with the agreed upon terms and personal liability of entity members.
- For SEL's, review the evaluation of collateral to ensure that it meets the requirements of paragraph 183. For CLP and PLP lenders, the agency official will review 20 percent of each lender's evaluations. This should be completed during the lender's file review required by subparagraph 267 B. If the loan was approved subject to an appraisal, the lender will certify an appraisal is in their files.

Note: For real estate evaluations, this review shall be completed on FSA-2234.

- *--Review FSA-2236, Part C if the lender is a corporation. Ensure that FSA-2236 is properly completed and review the responses to the questions and signatures. Anyone signing FSA-2211 is considered to have authority to sign FSA-2236. If lender is unable to certify to those items, the lender would be ineligible to receive a guarantee.--*
- Review the lender's proposed marketing plans to the secondary market. If the lender is proposing to sell the loan or a portion of the loan into the secondary market, documents should be checked to ensure consistency before sale. The authorized agency official should take additional care to review the Conditional Commitment, the Loan Guarantee, the loan agreement, and promissory notes to ensure the following:
 - principal amount and interest rate are consistent
 - closing date on the note and guarantee are consistent
 - borrower's name, lender's name, and FSA contact information are consistent on all documents.
- For loans involving construction, review the lender's proposed plans for construction inspections and how they intend to ensure that the project is completed according to agreed upon terms.

248 Issuing the Loan Guarantee

A Action

Once the requirements of paragraph 247 have been met, the authorized agency official may prepare and issue the Loan Guarantee.

- If the Lender submitted loan closing documentation by LINC, the authorized agency official shall review the data input by the lender along with the documents received directly from the lender and accept the loan closing in the GLS Add Loan Screen, if acceptable. If the data or other documentation needed is not correct, the agency official will work with appropriate parties to correct the data.
- If the lender completed and submitted hard copy of FSA-2236, the authorized FSA agency official must review and complete the closing in GLS.

The original Loan Guarantee should be provided to the lender to be attached to the original note. A conformed copy, or signed and dated photocopy, with copies of the note should be kept by FSA in the loan docket.

--B Documents To Be Transmitted To The RD Business Center, Guaranteed Commercial Branch--

The guarantee fee will be processed through the National Receipts and Receivable System using applicable collection type. See 64-FI for additional guidance. The authorized agency official shall make every attempt to review the closing documents before processing the guarantee fee. However, FSA shall adhere to the timeframes in 64-FI to process the fee even in situations when the authorized agency official is not able to review the closing documents timely. The Loan Closing Transaction shall be input through GLS Add Loan Screen.

C Refund of Guarantee Fee

The guarantee fee is not refundable once the Loan Guarantee has been issued and loan funds disbursed. However, if the fee was processed before reviewing closing documents and it is later determined that the guarantee cannot be issued, the fee may be refunded to the lender.

The authorized agency official will forward a memorandum to the State Office with the reasons FSA was not able to issue the Loan Guarantee and request that the fee be refunded.

--If approved, the State Office will FAX the memorandum to the RD Business Center, Guaranteed Commercial Branch, requesting that the fee be refunded.--

A request for a guarantee fee refund for any other reason shall be forwarded to the National Office for approval.

249 Deobligation of Loan Funds**A Deobligation of Funds**

Under certain circumstances, the authorized agency official may need to consider a deobligation of loan funds. If the conditions for the loan or LOC cannot be met after completing the appeal process, the authorized agency official must execute FSA-2072 to cancel the actual obligation.

B FAXing FSA-2072

FSA-2072 should be FAXed to the State Office that will process the cancellation or deobligation through GLS.

250 Replacing or Terminating the Loan Guarantee (7 CFR 762.101 and 762.130)**A Replacing the Loan Guarantee**

If the guarantee or assignment guarantee agreements are lost, stolen, destroyed, mutilated, or defaced, except where the evidence of debt was or is a bearer instrument, the Agency will issue a replacement to the lender or holder upon receipt of acceptable documentation, including a certificate of loss or an indemnity bond. It is the responsibility of the lender to coordinate the replacement activities with the holder and submit the required documents to SED for processing. SED shall contact the National Office for further guidance when replacing the Loan Guarantee.

B Terminating the Loan Guarantee

The Loan Guarantee will automatically terminate as follows:

- **upon full payment of the guaranteed loan**

Note: A zero balance within the period authorized for advances on a line of credit will not terminate the guarantee.

- **upon payment of a final loss claim**
- **upon written notice from the lender to the Agency that a guarantee is no longer desired provided the lender holds all of the guaranteed portion of the loan. The Loan Guarantee will be returned to the Agency office for cancellation within 30 days of the date of the notice by the lender.**

250 Replacing or Terminating the Loan Guarantee (7 CFR 762.101 and 762.130) (Continued)**B Terminating the Loan Guarantee (Continued)**

There are instances where the authorized agency official may need to consider terminating Loan Guarantees without the lender's written notification. Instances include lenders who refuse to provide FSA with either of the following:

- FSA-2241's
- FSA-2248's.

Note: This does not apply to occasional missed or late reports; but to a pattern of missing reports or reports that do not provide new information covering lengthy time periods.

Before terminating the Loan Guarantee, loan files must be documented to reflect attempts made to obtain required FSA-2241's or FSA-2248's from the lender or any other pertinent information on the status of loans.

Authorized agency officials will notify lenders, in writing, the specifics of the reporting problems and provide 30 calendar days to submit updated FSA-2241's, FSA-2248's, or other information.

| IF lenders fail to provide updated FSA-2241's, FSA-2248's, or there is no response from lenders... | THEN... |
|---|--|
| after the first 30 calendar days | a 2nd letter will be sent to the lender providing an additional 30 calendar days. |
| after the second 30 calendar days | a final letter will be sent to the lender informing them that because of their failure to follow the requirements of 7 CFR 762.141 (a) and/or (b), any loss claim would be denied according to 7 CFR 762.103(b)(2) and FSA is terminating the Loan Guarantee. Note: Appeal rights must be provided according to 1-APP. |
| or no appeal is filed | the Loan Guarantee will be terminated. Note: Loans may not be terminated simply because they have matured. |

251-261 (Reserved)

281 Transfers and Assumptions (7 CFR 762.142(d)) (Continued)**D FSA Response to Request for Transfer and Assumption**

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

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

The authorized agency official will execute FSA-2245 and provide it to the lender for attachment to the original Loan Guarantee.

The Agency will agree to releasing the transferor or any guarantor from liability only if the requirements of § 762.146(c) (paragraph 361) are met.

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

The authorized agency official will attach the assumption agreement to the Loan Guarantee *--or FmHA-449-34. To notify the RD Business Center, Guaranteed Commercial Branch of--* the assumption, complete and forward FSA-2246. Guaranteed loan fees are not required for transfer and assumption.

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

282 Additional Loans or Advances (7 CFR 762.146(a))

A Additional Loans or Advances

***--SEL and CLP lenders must not make additional loans or advances (non-guaranteed and guaranteed term loans) without prior written approval of the Agency, except as provided in the borrower's Loan or Line of Credit Agreement.**

The PLP lender may make additional (non-guaranteed) loans or advances in --* accordance with the lender's agreement with the Agency.

286 Consolidation of Debt (7 CFR 762.146(e)) (Continued)**B Request for Consolidation**

SEL's must submit a feasible plan to FSA for concurrence before consolidating loans. CLP and PLP lenders may consolidate loans as long as the requirements of this paragraph are met.

C Lender Actions to Consolidate Loans

A new note or line of credit agreement will be taken. The new note or line of credit agreement must describe the note or line of credit agreement being consolidated and must state that the indebtedness evidenced by the note or line of credit agreement is not satisfied. The original note or line of credit agreement must be retained.

The interest rate for a consolidated OL loan is the negotiated rate agreed upon by the lender and the borrower at the time of the action, subject to the loan limitations for each type of loan. The new interest rate may not exceed the maximums established in paragraph 135.

The Agency approves the consolidation by executing a modification of guarantee
--(FSA-2245). The modification will indicate the consolidated loan amount, new terms,--
and percentage of guarantee, and will be attached to the originals of the guarantees
being consolidated. If loans with a different guarantee percentage are consolidated, the
new guarantee will be at the lowest percentage of guarantee being consolidated.

Any holders must consent to the consolidation, or the guaranteed portion must be repurchased by the lender.

286 Consolidation of Debt (7 CFR 762.146(e)) (Continued)**D FSA Response to Consolidation Request**

The authorized agency official must approve of a SEL request for consolidation. When SEL submits a request for a loan consolidation, the authorized agency official should verify the following:

- only OL's and LOC's are being considered for consolidation
- the consolidation does not cause the loan principal to exceed program loan limitations
- the consolidation does not adversely affect the value of the security and the lender's security position.

The authorized agency official must complete FSA-2236 based on the information received *--from SEL and submit it to the RD Business Center, Guaranteed Commercial Branch, along--* with a memorandum describing which loans were consolidated.

If a PLP or CLP lender consolidates loans:

- copies of documents will be obtained
- compliance with regulations will be verified through annual file reviews
- *--FSA-2236 is completed and submitted to the RD Business Center, Guaranteed Commercial Branch, along with a memorandum describing which loans were--* consolidated.

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 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:**
 - **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 the RD Business Center, Guaranteed Commercial Branch of the substitution by completing and submitting FSA-2243, and changes to the rate of 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.

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

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 TIN, the authorized agency official shall make the change in GLS on the Lender Maintenance Screen.

--The lender's CLP, PLP, or MLP 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 subparagraphs 49 E or 52 E are still being met.

Note: The lender will execute a new lender's agreement when ownership changes.

287 Substitution of Lender (7 CFR 762.105) (Continued)**C Lender Name or Ownership Changes (Continued)**

The new lender must provide FSA with:

- its new TIN
- 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-2243 must be completed and submitted to the RD Business Center, Guaranteed Commercial Branch. One FSA-2243 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 Lender's Agreement 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.

288 Servicing SAA's (7 CFR 762.147) (Continued)

F Servicing Recapture Debt

If recapture is triggered under the Shared Appreciation Agreement and the borrower is unable to pay the recapture in a lump sum, the lender may do 1 of the following.

- **Reschedule the recapture debt with the consent of the Agency, provided the lender can document the borrower's ability to make amortized payments on the recapture debt plus pay all other obligations. In such case, the recapture debt will not be covered by the Guarantee.** The lender will send FSA its share of every payment when it's received.
- **Pay the Agency its pro rata share of the recapture due. In such case, the recapture debt of the borrower will be covered by the Guarantee.**

***--Note:** FSA-2247 will be completed and submitted to the RD Business Center, Guaranteed Commercial Branch to indicate the new maturity date, if applicable, including the amortization period of the recapture. If the guaranteed loan has matured, complete FSA-2244 and submit it to the RD Business Center, Guaranteed Commercial Branch indicating that the termination will be reversed and the--* loan reinstated.

- **Service the account in accordance with § 762.149.**

If recapture is triggered, and the borrower is able, but unwilling to pay the recapture in a lump sum, the lender will service the account in accordance with § 762.149.

Any shared appreciation recaptured by the lender will be shared on a pro-rata basis between the lender and the Agency.

All appraisal fees will be paid by the lender. The lender may pass the fee on to the borrower. The borrower has 30 calendar days to repay the debt in a lump sum after receiving a notice of the appreciation due to the lender.

The authorized agency official shall process recapture payments by completing FSA-2254
 --and forwarding it with payment to the RD Business Center, Guaranteed Commercial Branch.--

288 Servicing SAA's (7 CFR 762.147) (Continued)**G Basis for the Amount of Recapture**

Because of 2 consecutive years of drought that destroyed crops, a farmer and lender devised a restructuring plan where \$200,000 of remaining debt was written down to \$100,000 and FSA-2253 was executed. FO had been guaranteed by FSA at 90 percent. An appraisal at the time of the writedown valued the farmer's security at \$75,000.

One year later the farmer sells his farm for \$85,000. The Basis for the Amount of Recapture is equal to:

Value of real estate security (appraisal or sale price, whichever one is higher) at the time of a recapture triggering event minus value of real estate security when FSA-2253 was executed.

Basis for the Amount of Recapture: $\$85,000 - \$75,000 = \$10,000$.

Since Basis for the Amount of Recapture is positive, the borrower will be required to pay the lender a percentage of the recaptured monies. The percentage to be paid to the lender within the first 4 years of FSA-2253 execution is 75 percent (the percentage drops to 50 percent 4 years after FSA-2253 execution). Therefore, the farmer owes his lender the following:

$\$10,000 \times 75\% = \$7,500$ due the lender.

FSA is entitled to the portion of the shared appreciation equal to the rate of the guarantee on the loan. Therefore, in this case, FSA's pro-rata share is equal to:

$\$7,500 \times 90\% = \$6,750$ due FSA.

At least annually, the authorized agency official will contact all lenders with active FSA-2253's to determine whether any FSA-2253 monies have been collected. To help lenders in their FSA-2253 monitoring responsibilities, a copy of the letter in subparagraph H may be used by FSA employees when performing this annual lender contact.

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

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

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

- **Any holder agrees to any changes in the original loan terms.**

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

--If a new note is not taken, the existing note or line of credit agreement must be modified by attaching an allonge or other legally effective amendment.--

For CL, the lender must ensure that the borrower is maintaining the practice for which CL was made.

*** * ***

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

Standard eligible lenders must obtain prior written approval of the Agency for all restructuring actions. The request must include items listed in subparagraph 312 A.

After FSA has approved the restructure and SEL has restructured the loan, the lender must submit:

- FSA-2248 indicating that the loan is current
- copies of restructured notes, line of credit agreements, or allonges.

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

- review the documents for compliance
- input FSA-2248 into GLS
- execute FSA-2245 and provide a copy to the lender, if applicable
- *--complete and forward FSA-2249 to the RD Business Center, Guaranteed Commercial Branch.--*

327 Deferrals (7 CFR 762.145(d))

A General Description

A deferral postpones the payment of principal and interest on CL, 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.

*--A deferral may be particularly useful for borrowers who have lost contracts with their current contractor, but have obtained a contract with a new contractor that will **not** begin immediately. The authorized agency officials should immediately inform affected lenders that a 90-calendar-day forbearance, extension, or loan modification can be approved if the lender believes the problem (loss of contract or reduction of bird or hog placement) can be resolved in a timely manner. The 90-calendar-day forbearance will be considered only if all other servicing actions, such as rescheduling of debt, deferral, or writedown, will **not** resolve the problem. At the end of the 90-calendar-day period, the lender **must** resume their regular servicing actions.

If the:

- problem is **not** resolved and the loan account is delinquent, the lender will proceed with default servicing
- loss of contract puts the loan in nonmonetary default based on the promissory note or loan agreements, the lender will review the promissory note and determine whether they may proceed with default servicing
- lender is **not** pursuing liquidation for loans in nonmonetary default, the lender and borrower must be actively seeking other sources of income.

Most guaranteed loans impacted have lender's agreements that require interest accrual to cease 90 calendar days from the date of the decision to liquidate. The agreement to exercise forbearance allows for a liquidation decision to be made, if necessary, when the forbearance period is complete. However, in all cases, the loan guarantee will **not** cover interest beyond 210 calendar days from the payment due date.--*

327 Deferrals (7 CFR 762.145(d)) (Continued)

B Conditions

The following conditions apply to deferrals.

- Payments may be deferred up to 5 years, but the loan may not be extended beyond the final due date of the note.
- The principal portion of the payment may be deferred either in whole or in part.
- 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.
- 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 about 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 the borrower 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 RD Business Center, Guaranteed Commercial Branch.--

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 312. 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 the Lender's Agreement and provide post-restructuring documentation to FSA according to paragraph 313.

342 Lender's Claims for Expenses and Estimated Losses in Reorganization Bankruptcy Proceedings (7 CFR 762.148) (Continued)

B Claims for Estimated Losses of Principal and Interest in Reorganizations

Lenders may submit a claim for losses of principal and interest sustained as a result of a reorganization plan in a bankruptcy reorganization proceeding. Lenders may have had an estimated loss claim approved by FSA before the reorganization bankruptcy filing. These lenders may have to submit a revised loss claim (bankruptcy type 05) as a result of the reorganization plan.

- Claims should be submitted using FSA-2254 to the authorized agency official. The authorized agency official shall review the claim using FSA-2295 and either request modifications by the lender or forward the claim to SED with recommendations and supporting documents as necessary.
- **At confirmation, the lender may submit an estimated loss claim (bankruptcy type 05) upon confirmation of the reorganization plan in accordance with the following:** The initial estimated loss claim (bankruptcy type 05) must include a copy of the confirmed bankruptcy plan and a memorandum clearly indicating the plan's confirmation date, the date the plan is to go into effect, and any other relevant information concerning the loan and the loss claim. Supporting documentation must be supplied immediately following confirmation of the plan.
- ***--Note:** FSA will submit FSA-2249 and a copy of the confirmed bankruptcy plan to the RD Business Center, Guaranteed Commercial Branch, with any Type 05 loss--* claim to adjust to the new loan amount.
- When a confirmed plan extends the term of a guaranteed loan beyond the agency's maximum allowable terms, it does not extend the term of the guarantee. When preparing FSA-2249, agency officials will only extend the terms of the loan according to subparagraph 326 B.
- During the bankruptcy, interest accrual coverage begins with the filing date and continues through the plan confirmation date and will be paid as part of the estimated (bankruptcy type 05) loss.
- For subsequent bankruptcy reorganization filings, FSA will cover interest accrual on the portion of the debt determined to have become unsecured because of the multiple filings, but only if the initial bankruptcy was filed within 150 calendar days of default or the lender submitted an estimated loss claim within 150 calendar days of default.
- **The estimated loss claim (bankruptcy type 05) will cover the guaranteed percentage of the principal and accrued interest written off, plus any allowable costs incurred as of the effective date of the plan.**
- **The lender will submit supporting documentation for the loss claim.**
- **The estimated loss (bankruptcy type 05) payment may be revised as consistent with a court-approved reorganization plan.**

342 Lender's Claims for Expenses and Estimated Losses in Reorganization Bankruptcy Proceedings (7 CFR 762.148) (Continued)

- *--The estimated loss (bankruptcy type 05) claim may be revised after a court-approved partial liquidation of the collateral. When this occurs, the revised claim will be based upon the actual value received for the liquidated collateral as long as the lender made every effort to ensure that maximum proceeds were received. In these cases, FSA will pay the lender additional interest on that portion of debt that is determined to be unsecured on the bankruptcy (type 05) loss claim during and up to 45 calendar days after the court order for the chattel-secured portion of the debt and 90 calendar days for real estate.--*

C Claims for Estimated Interest-Only Losses in Reorganizations

Lenders may submit an estimated loss claim for interest only after confirmation of the reorganization plan in accordance with the following.

- Claims should be submitted using FSA-2254 to the authorized agency official.
- The interest-only estimated loss claim can be approved only after the confirmation date of the reorganization plan.
- The initial interest-only estimated loss claim may include a claim for interest accrued to the effective date of the reorganization plan (the date when the plan becomes effective). This date may be later than the date the plan is approved by the court (the confirmation date). This loss will be paid as of the plan's effective date with no additional interest accrual after that date.
- If the loan has a variable rate that remains at or below the court-ordered rate during the claim period, no loss claim may be submitted.
- Subsequent claims for interest-only estimated losses covering 1-year periods following the effective date of the reorganization plan may be submitted annually, and will be processed on the anniversary date of the effective date of the reorganization plan or immediately thereafter.
- **The loss claims may cover interest losses sustained as a result of court-ordered, permanent interest rate reduction.**
- **The loss claims will be processed annually on the anniversary date of the effective date of the reorganization plan.**

Note: Loss claims may also be processed immediately following the payment due date established in the reorganization plan and on that date annually thereafter.

- **If the borrower performs under the terms of the reorganization plan, annual interest reduction loss claims will be submitted on or near the same date, beyond the period of the reorganization plan.**

344 FSA Responsibilities in Bankruptcy Proceedings

A Monitoring Responsibilities

The authorized agency official must review the default status report, submitted by the lender and request updates to the bankruptcy proceedings. They should periodically monitor the lender's files to ensure that all necessary actions are taken by the lender concerning a bankruptcy case. This review should include verifying that the lender:

- files proof of claim and all necessary papers and pleadings concerning the case
- attends and where necessary participates in meetings of the creditors and all court proceedings
- seeks adequate protection of the collateral
- advises the authorized agency official of the status of the bankruptcy action
- requests modification or dismissal of any plan of reorganization if it appears that additional recoveries are likely or if the borrower fails to comply with the requirements of the plan.

During a bankruptcy proceeding, the authorized agency official must:

- determine the necessity of an independent appraisal or evaluation according to 7 CFR 762.127 (paragraphs 181 and 182) of collateral
- review documentation supporting loss claims, including expense claims, submitted by the lender
- *--upon confirmation of the reorganization bankruptcy plan, submit FSA-2249 and a copy of the confirmed bankruptcy plan to the RD Business Center, Guaranteed Commercial Branch, to adjust the loan to the new loan amount.--*

B Post Bankruptcy Plan Completion Actions

When a Chapter 11, 12, or 13 confirmed bankruptcy plan has been completed, unsecured debt will be discharged. Subparagraph 342 E requires the lender to provide documentation on the actual loss sustained. If there has been an additional loss incurred, an adjusted bankruptcy type 05 loss claim will be processed.

If the lender liquidates after a bankruptcy plan has been completed, but before the end of the term of the guarantee, the loss claim will be processed according to paragraphs 359 and 360 using the bankruptcy plan completion date as a beginning date for the new principal loan balance and the interest accrual for the loans.

If the loan pays in full, a loss claim is **not** required.

344 FSA Responsibilities in Bankruptcy Proceedings (Continued)**C Review of Bankruptcy Loss Claim**

The authorized agency official must:

- review FSA-2254 submitted by the lender, for accuracy, to ensure that FSA-2254 is coded correctly
- accept the loss claim or contact the lender to obtain revisions or additional information
- forward the claim to SED or its designee.

Note: The payment of any loss claim under a Chapter 7 or reorganization bankruptcy establishes a Federal debt. In the case of a Chapter 7, Regional OGC opinion is required to determine whether the borrower is or is not subject to offset. The payment of a claim under bankruptcy reorganization will not be subject to offset. See subparagraph 363 B for additional guidance.

All loss claims must be approved by SED. Following approval, SED shall forward approved
--loss claims to the RD Business Center, Guaranteed Commercial Branch.--

345-354 (Reserved)

359 Lender Submission of Estimated Loss Claim (7 CFR 762.149) (Continued)**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 the Lender's Agreement.

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-2295. The estimated loss claim is submitted on FSA-2254 to the authorized agency official. After reviewing FSA-2254, the authorized agency official shall forward FSA-2254 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 wants 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 FSA-2254 to the RD Business Center, Guaranteed Commercial Branch for payment of the estimated loss claim according to 1-FLP, paragraph 5.

The RD Business Center, Guaranteed Commercial Branch shall issue a check to the lender--* within 30 calendar days of receiving FSA-2254. The PLP estimated loss claim will be paid after a brief review for accuracy.

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

G Application of Estimated Loss Payment

* * *

The application of the loss claim payment to the account does not automatically release the borrower of liability for any portion of the borrower's debt to the lender. 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-2248.

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

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

Note: For loans made before February 12, 1999, denied lender's loss claims will be handled according to FmHA Instructions 1980-A and 1980-B in effect at the time the guarantee was issued. See Exhibit 16.

When the final FSA-2254 is accepted by the authorized agency official and approved by *--SED, SED shall FAX FSA-2254, including final loss claims with no losses to the RD Business Center, Guaranteed Commercial Branch for payment or processing. The final loss--* claim will be paid up to the maximum amount allowed, as provided in subparagraph 195 C. When a loan is a total loss, the loss payment may exceed the original guaranteed principal and accrued interest, if it includes emergency advances or protective advances.

G Overpayment

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

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

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

The ledger should not reflect that the FSA-estimated loss claim was applied as a regular payment. The amount of overpayment or underpayment will be calculated on FSA-2254.

--The interest due on any loss claim will be calculated by the RD Business Center, Guaranteed Commercial Branch based on the borrower's rate of interest and the date the estimated claim was paid. If the lender wants to submit a check with their request for a final loss claim, this amount may be obtained by contacting the RD Business Center, Guaranteed Commercial Branch technician before submitting FSA-2254.--

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.

Note: When the original Guarantee is not available, an electronic copy of the original or some other form of written verification from the lender stating the loan is paid is acceptable.

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

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

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

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

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

The lender will execute its own release of liability documents.

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

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

For loans made using FSA-1980-25, FSA-1980-28, Application for Guarantee, or Preferred Lender Application with the July 20, 2001, or later revision date, a lender's request to release the borrower of liability after liquidation of the collateral but before the payment of a final loss claim can only be approved by DAFLP. The payment of a final loss claim on these loans establishes a Federal debt that is subject to offset. (Collection of the Federal debt will be pursued according to 7 CFR 762.149(m). See paragraph 363.)

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

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

The application of the loss claim payment to the account does not automatically release the borrower of liability for any portion of the borrower's debt to the lender. The lender will continue to be responsible for collecting the full amount of the debt and sharing future recoveries with the Agency in accordance with paragraph (j) of this section.

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-2261, 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-2261 with instructions to lenders that have received a loss claim because of liquidation in the past 3 years. FSA-2261 must be completed and returned by November 30.

Note: FSA-2261 will not be completed for Chapter 7 liquidation bankruptcy cases that have received a discharge.

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

When FSA's share of an amount is received, the funds will be deposited according to 64-FI. The following items will be completed on FSA-2254:

- enter code 4 in item 5, "Report Type Code"
- enter the date funds were received in item 15, "Date of Settlement"
- enter the amount received in item 51, "Amount Due FSA by Lender".

--FSA-2254 will be FAXed or sent to the RD Business Center, Guaranteed Commercial Branch, according to 1-FLP, paragraph 5.--

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

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

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

B FSA Option to Liquidate

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

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

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

The lender will transfer to FSA all rights and interests necessary to allow the authorized agency official to liquidate the loan.

SED shall consult with OGC to answer questions relating to the assignment and transfer of the lender's loan documents to FSA. After the loan is transferred, the authorized agency official shall summarize the history of case, list all of the loan security and its estimated value, and address any other issues that SED or OGC have about the liquidation. SED shall refer the case to OGC to process the request for liquidation by the Government. SED shall

~~send FSA-2262 to the RD Business Center, Guaranteed Commercial Branch, and the~~ authorized agency official shall oversee the liquidation. If requested by the lender, FSA shall provide an update on the liquidation proceedings. Interest accrual will stop when FSA notifies the lender in writing that FSA is assuming responsibility of the liquidation process. The final loss payment to the lender will not include interest beyond the date FSA took responsibility to liquidate. In this event, the lender is not paid for any loss until the collateral is liquidated and the final loss is determined.

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

A Establishment of a Federal Debt

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

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

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

The authorized agency official shall ensure that all co-borrowers and co-signers are entered in GLS.

--Federal debts established as a result of a liability paid by the Agency will be reported to commercial credit bureaus on a monthly basis. See Exhibit 15.4.--

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

B Guaranteed Final Loss Claim Payments Not Subject to Offset

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

Loans approved using FSA-1980-25 or FSA-1980-28 with the July 20, 2001, or later revision date and Application for Guarantee or Preferred Lender Application that are discharged in bankruptcy, will establish a Federal debt, but generally are not subject to offset. Any case where a final loss claim was paid after a Chapter 7 discharge should be processed as follows:

- all pertinent information, such as loss claim and documentation on the bankruptcy including the discharge order, is to be provided to the Regional OGC, requesting their opinion as to whether or not offset can be pursued
- document the case file with OGC's recommendation:
 - if Regional OGC's opinion is that the loan is not subject to offset, the debtor shall be removed from referral to IAO and TOP through the GLS maintenance screens and debts discharged in bankruptcy will be written off upon receipt of the discharge order; SED shall FAX or mail a copy of the discharge order along with a memorandum *--requesting that the debt be written off to the RD Business Center, Guaranteed Commercial Branch--*
 - if Regional OGC's opinion is that the loan is subject to offset, then immediately follow the requirements of subparagraphs 363 D through G.

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

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

C Payments Not Subject to Offset

The following payments are not subject to offset:

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

Payments will not be offset when the authorized agency official determines that it is not in the best interest of the Government.

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

D Debtor Notification of FSA's Intent to Offset

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

Exhibit 17 must be sent to debtors by certified mail. If Exhibit 17 is returned, the authorized agency official shall use first class mail or personal delivery.

The date Exhibit 17 was received by the debtor and/or co-debtor will be entered in the "Notified Date" field using the GLS Debt Offset Maintenance Screen for:

- tracking
- referral of debt for offset.

Note: GLS will be updated for the debtor and/or co-debtor with the date of the electronic verification or return receipt of the debtor notification of FSA's intent to offset that is sent by certified mail to a debtor's last known address. This date shall be entered in the "Demand Letter" field using the GLS Debt Offset Maintenance Screen. A copy of the electronic verification will be placed in the case file.

The authorized agency official shall provide written notification to debtors a minimum of:

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

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

Exhibit 18 shall:

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

The debtor's pro rata share of entity payments will be offset according to 7 CFR Part 3 and *--7-FLP, paragraph 62 B, after the non-debtor entity members have been notified using--* Exhibit 19 or 20, as appropriate.

Note: The authorized agency official shall request written concurrence from SED before sending Exhibit 18 or 20.

**363 Collecting Final Loss Claim Payments From Guaranteed Loan Debtors
(7 CFR 762.149(m)) (Continued)****D Debtor Notification of FSA's Intent to Offset (Continued)**

Authorized agency officials shall follow 7-FLP, paragraph 63 B, to handle debtor requests received as a result of the receipt of Exhibits 17 through 20.

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

E Salary Offset

The authorized agency official shall determine whether collection by salary offset is feasible
--according to 7 CFR Part 3 and 7-FLP, Part 5.--

F Referral of Debt for IAO Offset

The authorized agency official shall refer debtors:

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

The authorized agency official must complete the debtor's and/or co-debtor's IAO referral information, in GLS on the Debt Offset Maintenance Screen, for the debt to be referred for offset.

Note: Debtors who are ineligible for IAO or who later become ineligible for IAO shall be removed from referral in GLS on the Debt Offset Maintenance Screen.

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

G Referral of Debt to TOP

The authorized agency official shall refer debtors to TOP 60 calendar days after:

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

The authorized agency official must complete the debtor's TOP referral information, in GLS on the Debt Offset Maintenance Screen, for the debt to be referred for offset. After the information is entered, debtors will be programmatically referred according to the established Treasury quarterly referral schedule.

--After the debt is referred for TOP, the RD Business Center, Guaranteed Commercial Branch-- will send Exhibit 21. The date of Exhibit 21 will be shown on the debtor's GLS maintenance screen.

Note: Debtors who are ineligible for TOP or who later become ineligible for TOP shall be removed from referral in GLS on the Debt Offset Maintenance Screen.

H State Office Responsibility

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

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

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

IAO and TOP collections taken by FSA will be discontinued when a guaranteed borrower and/or co-borrower are called to report for induction or military service. Co-borrowers associated with the debt must also be suspended from offset collections in GLS in an effort to reduce hardship on the family. Offsets should not be taken during the period of active duty and 3 months thereafter. Any collections received as a result of offset, **after** the date the borrower and/or co-borrower were called to active duty, will be refunded. State Offices shall *--make refund request to the RD Business Center, Guaranteed Commercial Branch.--*

Offsets shall be suspended by State Offices by accessing the GLS Debt Offsets Maintenance Screen and:

- selecting the Reason Deleting as "Other"
- inputting the Why Agency Deleting as "National Defense Act"
- inputting the delete date.

Note: This information should be entered for both IAO and TOP.

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

I Collections and Refunds

Amounts collected through administrative offset will be applied to the debtor's account according to 64-FI using the Guaranteed Collection Codes in this table.

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

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

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

Lender recoveries, voluntary, and other collections, except IAO, DOJ, and Debt Settlements, for loans subject to offset with a debt offset receivable established, must have FSA-2254 *--completed manually and FAXed to the RD Business Center, Guaranteed Commercial Branch for processing. The collection will be processed as an offset collection.

Refunds of amounts offset will be made within 45 calendar days if FSA determines that an amount should not have been offset or that the debtor has prevailed in an appeal. SED shall approve and submit refund requests to the RD Business Center, Guaranteed Commercial Branch.--*

J Notifying Lender of FSA Collections

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

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

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

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

K Debt Settlement

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

FSA shall process a compromise or adjustment offer according to 7-FLP, Part 12.

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

After all payments under the compromise or adjustment offer have been received, the remaining balance of the debt will be written off. SED shall FAX or mail a copy of *--FSA-2732 along with a memorandum requesting that the debt be written off to the RD Business Center, Guaranteed Commercial Branch.

Where it has been a minimum of 6 years since the last collection, FSA will cancel the debt without application according to 7-FLP, paragraph 404, as appropriate. For guaranteed loans the lender is the cross servicer. After 6 years with no collections, FSA's documentation that the lender anticipates no future collection satisfies the return from cross servicing requirement of subparagraph 404 C. Where it has been 6 years since the debt was established and collections are less than accruing interest, FSA will cancel the debt without application, following the guidance in 7-FLP, subparagraph 404 B, upon documentation that the lender and FSA anticipate no increase in collections. The SED shall FAX or mail a copy of FSA-2731 and FSA-2731A, if appropriate, along with a memorandum requesting that the debt be written off to the RD Business Center, Guaranteed Commercial Branch.--*

L Bankruptcy Effect

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

- FSA-2211, FSA-2212, Application for Guarantee, or Preferred Lender Application
- FSA-2235 or Loan Guarantee
- copy of promissory note
- documentation of FSA's final loss claim payment to the lender.

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

Debts discharged in bankruptcy will be written off upon receipt of the discharge order. SED shall FAX or mail a copy of FSA-2731 and the discharge order along with a memorandum *--requesting that the debt be written off to the RD Business Center, Guaranteed Commercial Branch. GLS will have been updated earlier upon FSA notification of the bankruptcy--* action.

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

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

Debtors released from liability under subparagraph 361 C will have their outstanding debt written off. SED shall FAX or mail a copy of DAFLP approval along with a memorandum *--requesting that the debt be written off to the RD Business Center, Guaranteed Commercial Branch.--*

364 Release From Liability and Unauthorized Assistance

A Full Faith and Credit

An FSA guaranteed loan is supported by the full faith and credit of the U.S. (see 7 CFR 762.103). As a result, FSA has an obligation to ensure that the Government has not been defrauded by a lender, holder, and/or borrower when obtaining an FSA guaranteed loan. Fraud and misrepresentation by the lender or holder are the only circumstances under which FSA can completely deny liability on a guaranteed loan. Negligent servicing, by contrast, may result in a reduction of liability to the extent of the loss. In addition, the lender and/or holder may face fines and imprisonment under U.S.C. Title 18, Section 1014. Fraud and misrepresentation by the borrower or lender may also lead to criminal penalties under U.S.C. Title 18, Section 1001 that allows fines and/or imprisonment.

B Definitions (7 CFR 761.2(b))

The following definitions are applicable to this paragraph.

False information is information provided by an applicant, borrower or other source to the Agency that the applicant or borrower knows to be incorrect.

Example: Intentional altering of UCC1 to obtain an FSA guaranteed loan.

Inaccurate information is incorrect information provided by an applicant, borrower, lender, or other source without the intent of fraudulently obtaining benefits.

Example: The transposition of numbers in a financing statement or inventory list.

Unauthorized assistance is any loan, loan servicing action, lower interest rate, loan guarantee, or subsidy received by a borrower, or lender, for which the borrower or lender was not eligible, which was not made in accordance with all Agency procedures and requirements, or which the Agency obligated from the wrong appropriation or fund. Unauthorized assistance may result from borrower, lender, or Agency error.

364 Release From Liability and Unauthorized Assistance (Continued)**C Initial Determination That Unauthorized Assistance Was Received**

Unauthorized assistance may be identified through audits conducted by OIG, USDA reviews conducted by FSA personnel, information provided by a private citizen, or discovered in processing a loss claim. If FSA employees have reason to believe unauthorized assistance was received, the case will be referred to OIG or the National Office, as appropriate, for review and advice. In every case where it is known or believed by FSA that the assistance was based on false information, investigation by OIG will be requested.

If an FSA official suspects that unauthorized assistance has been received the issues must be documented in the case file. The authorized agency official will specifically state whether the unauthorized assistance was because of any of the following:

- submission of inaccurate information by the borrower and/or lender
- submission of false information by the borrower and/or lender
- submission of inaccurate or false information by another party on the borrower or lender's behalf such as the holder, a seller, developer, real estate broker, attorney, or appraiser when the borrower and/or lender did know the other party had submitted inaccurate or false information
- error by FSA personnel, either in making computations or failure to follow published regulations or other FSA issuance.

D Secondary Market Considerations

According to 7 CFR 762.103, and contained in subparagraph 19 D of this handbook, FSA must purchase the loan from the holder upon request if the lender refuses even if fraud, misrepresentation, or negligent servicing by the lender is suspected.

E Voluntary Cancellation by Lender When Fraud or Misrepresentation Occurs

A lender may request that FSA cancel an FSA-1980-27 or Loan Guarantee in circumstances where FSA intends to seek a denial of liability provided that the lender has not assigned or transferred the loan to another party. A lender cannot cancel an FSA-1980-27 or Loan Guarantee for a loan sold in the secondary market without the concurrence of the holder.

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

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

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

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

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

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

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

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

C Repurchase of the Loan or Note by FSA (Continued)

Within 30 calendar days of the holder's demand for purchase, the authorized agency official shall:

- review the borrower's loan file

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

- verify the amounts owed to the lender and the holder
- *--complete FSA-2250 and forward it to the RD Business Center, Guaranteed Commercial Branch for processing.--*

At the time of purchase by the Agency, the original Assignment of Guarantee (FSA-1980-36 or FSA-2242) will be assigned by the holder to the Agency without recourse, including all rights, title, and interest in the loan.

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

D Repurchase Price of the Loan or Note

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

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

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

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 the RD Business Center, Guaranteed Commercial 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.

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

Forms (Continued)

| Number | Title | Display Reference | Reference |
|---------------|--|-------------------|---------------|
| FSA-2262 | Notice of Liquidation Responsibility | | 362 |
| FSA-2291 | Lender's Processing Checklist | | 65, 95 |
| FSA-2292 | Guaranteed Loan Processing Checklist | | 65 |
| FSA-2293 | Annual File Review Checklist for SEL and CLP Lenders | | 267 |
| FSA-2294 | Debt Writedown Review Checklist | | 329 |
| FSA-2295 | Guaranteed Estimated Loss Review Checklist for SEL and CLP Lenders | | 342, 359 |
| FSA-2296 | Guaranteed Loan Final Loss Review Checklist | | 360 |
| FSA-2701 | Notice of Intent to Collect by Administrative Offset | | 376 |
| FSA-2731 | Cancellation of Debt Without Application (RD-1956-1) | | 363 |
| FSA-2731A | Cancellation of Debt Without Application (Continuation) | | 363 |
| FSA-2732 | Debt Settlement Application (RD-1956-1 Application For Settlement of Indebtedness) | | 363 |
| IRS-1099-C | Cancellation of Debt | | 362 |
| IRS-8379 | Injured Spouse Claim and Allocation | | Ex. 17, 18 |
| NRCS CPA-1155 | Conservation Plan or Schedule of Operations | | 66 |
| RD-1980-64 | Interest Assistance Agreement | | 224, 228, 230 |
| UCC1 | Financing Statement | | 364 |
| W-2 | Wage and Tax Statement | | 152 |

Note: Agency officials may use digital signatures on all Guaranteed Loan Program forms. Lenders and loan applicants may use digital or other electronic signatures on all Guaranteed Loan Program forms.

Some secondary market holders may not accept digital signatures on FSA-2235 and FSA-2242. Lenders should verify with their secondary market holders and notify FSA if digital signatures will **not** be accepted.

Authorized agency officials shall reference the User Guide for Digital Signatures on FLP's Presentation intranet web site for instructions to create a digital signature with their employee LINCPASS.

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

Abbreviations Not Listed in 1-CM

The following abbreviations are not listed in 1-CM.

| Approved Abbreviation | Term | Reference |
|------------------------------|---|----------------------------|
| AASM | Application Authorization Security Management | 73, Ex. 5 |
| ACT | Consolidated Farm and Rural Development Act | 1, 108, 286 |
| ADPB | average daily principal balance | 228, Ex. 10 |
| CAFO | Concentrated Animal Feeding Operation | 181, 358, Ex. 15 |
| CL | conservation loan | Text, Ex. 2 |
| CMS | Credit Management System | Text |
| EL | emergency livestock loan | 108 |
| EO | economic opportunity loan | 108 |
| FmHA | Farmers Home Administration | 108, Part 9, Part 11, 360 |
| FTP | file transfer protocol | Ex. 15.4 |
| GFO | guaranteed farm ownership loan | 135 |
| GLOC | guaranteed line of credit | 108 |
| GLS | guaranteed loan system | Ex. 15.4 |
| GOL | guaranteed operation loan | 135 |
| IA | interest assistance | 18, Parts 9, 11-15, Ex. 10 |
| IAO | Internal Administrative Offset | 363, Ex. 2, 17, 18 |
| INA | Immigration and Nationality Act | Ex. 7 |
| LIBOR | London Interbank Offered Rate | 135 |
| LINC | Lender Interactive Network Connection | 73, 266, Ex. 5 |
| LOC | line of credit | Text |
| MLP | Micro Lender Program | Text |
| * * * | | |
| NPO | nonprofit organization | 111 |
| PLP | Preferred Lender Program | Text, Ex. 12 |
| PRWORA | Personal Responsibility and Work Opportunity Reconciliation Act of 1996 | Ex. 7 |
| SAA | Shared Appreciation Agreement | 286, 288, Ex. 2 |
| SDMS | State Directive Management System | 84 |
| SEL | Standard Eligible Lender | Text, Ex. 12 |
| USCIS | U.S. Citizenship and Immigration Services | Ex. 7, 8 |

Delegations of Authority

This table lists the delegations of authority in this handbook.

| Delegation | Reference |
|-----------------------------------|------------------|
| Administering handbook provisions | 20 |

Calculations and Formulas (Continued)

Average Daily Principal Balance and IA Payment Calculations

Calculate ADPB 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.

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

| Date | Number of Days | Principal Balance | Total |
|--------------------------|-----------------------|--------------------------|--------------------|
| January 1 – April 15 | 104 | \$25,000 | \$2,600,000 |
| April 16 – July 15 | 91 | \$20,000 | \$1,820,000 |
| July 16 – September 15 | 62 | \$15,000 | \$930,000 |
| September 16 – January 1 | 108 | \$10,000 | \$1,080,000 |
| Total | 365 | | \$6,430,000 |

$\$6,430,000 \div 365 = \$17,616.44$ ADPB for a full year.

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.

Note: For the purpose of calculating ADPB for payment of IA, for loans made after June 8, 2007, the principal balance for calculating interest assistance shall not exceed \$400,000 or the original loan amount, whichever is less, on any given day.

Calculations and Formulas (Continued)

Average Daily Principal Balance and IA Payment Calculations (Continued)

The following is an example of a loan, made under the rule limiting IA to 5 years and \$400,000 or the original loan amount, whichever is less, that is restructured on July 1st, with capitalized interest above the original loan amount. For purposes of this example, the original loan amount was \$300,000.

The lender's actual ledger may look like the following.

| Date | Number of Days | Principal Balance | Total |
|--------------------|-----------------------|--------------------------|----------------------|
| January 1 – July 1 | 181 | \$280,000 | \$50,680,000 |
| July 2 – January 1 | 184 | \$310,000 | \$57,040,000 |
| Total | 365 | | \$107,720,000 |

$\$107,720,000 \div 365 = \$295,068.49$ ADPB for a full year.

For purposes of calculating IA on this loan, ADPB should be calculated as follows.

| Date | Number of Days | Principal Balance | Total |
|--------------------|-----------------------|--------------------------|----------------------|
| January 1 – July 1 | 181 | \$280,000 | \$50,680,000 |
| July 2 – January 1 | 184 | \$300,000 | \$55,200,000 |
| Total | 365 | | \$105,880,000 |

$\$105,880,000 \div 365 = \$290,082.19$ ADPB for a full year.

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

***--Lender and FSA Reporting to Credit Reporting Bureaus**

A Background

The Debt Collection Improvement Act of 1996 and OMB Circular A-129, "Policies for Federal Credit Programs and Non-Tax Receivables," require information on guaranteed loans to be reported to commercial Credit Reporting Bureaus. In June 2005, FLP began referring guaranteed loan information received from lenders.

B Reporting Information

Guaranteed loan information is transmitted from the Guaranteed Loan System (GLS) for all liable parties (GLS Credit Bureau View Screen) and is reported on the first of each month as follows.

- On active loans, the unpaid principal plus accrued interest is reported as of the effective date of the last monetary update on the loan. For the majority, that would be the unpaid balances, as reported by the lender, on the most recent FSA-2241 as of March 31 and September 30. For active loans that have a bankruptcy reorganization loss and/or annual loss payment because of an interest rate reduction ordered by the bankruptcy court, the total loss amount is reported for three years from the most recent loss payment date, in addition to the unpaid principal and accrued interest on the loan.
- Loans in default could report different balances every 60 days, assuming the lender is submitting FSA-2248, as required.
- Loans which have been paid in full and terminated are reported with a zero balance on the report for the month following the termination. **Paid in full loans are reported only once.**

Exception: If a paid in full loan had a bankruptcy reorganization loss and/or annual loss payment because of an interest rate reduction ordered by the bankruptcy court, the total loss amount will be reported for three years from the most recent loss payment date even though the loan has been paid in full.

- Loans with final loss claims not subject to offset, according to subparagraph 363 B, are reported for three years from the effective date of the loss. The amount of the final loss claim (less any recoveries) is reported.
- Loans with final loss claims that are subject to offset are reported as long as the offset exists. The amount reported is the outstanding offset balance plus interest accrued through the date of the credit bureau report. If the debtor becomes ineligible for offset, loans with a terminated debt offset are reported three years from the date of the write off.--*

Lender and FSA Reporting to Credit Reporting Bureaus (Continued)

C Commercial Credit Reporting Bureaus

Two credit bureaus; Experian and Dun and Bradstreet, receive the GLS data. An internal FTP of FSA data from the mainframe to Rural Development's webfarm is completed. The webfarm encrypts the data using PGP encryption software and uses secure FTP to transmit to the credit bureaus. The process is fully automated and is in full compliance with current USDA Cyber Security policies and regulations issued by OCIO Cyber Security.

--The RD Business Center receives an e-mail confirming that FSA data was successfully-- transmitted.

D State and County Office Responsibility

State Offices shall:

- monitor the accurate and timely submission and input of the FSA-2241 and FSA-2248 data into GLS
- monitor eligibility for Administrative and TOP offset and update as necessary.

County Offices shall:

- review and update lender's name, address, and telephone information on the "Lender Maintenance" page in GLS to ensure that the lender information is accurate
- ensure that GLS is updated with borrower and co-borrower liability, including entity members.

Notice of Referral to the Department of Treasury to Collect Through the Treasury Offset
--Program (TOP) - Sent by the RD Business Center Only--

**Notice of Referral to the Department of Treasury to
Collect Through the Treasury Offset Program (TOP)**

Dear [Insert name of debtor]:

Our records indicate that the Farm Service Agency (FSA) paid a final loss claim to your lender on your guaranteed loan account and that amount is considered a Federal debt you now owe FSA. FSA previously demanded payment and notified you of intended debt collection actions and your rights in resolving the delinquency. As notified, FSA will use centralized administrative offset through the Treasury Offset Program (TOP) as required by the Debt Collection Improvement Act, 31 U.S.C. 3716, the Federal Claims Collection Standards, 31 C.F.R. parts 900-904, and the USDA administrative offset regulations at 7 C.F.R. Part 3 to collect your delinquent debt.

The time periods for resolving this matter have expired and your delinquent debt has been referred to TOP. Interest is accruing daily on this debt. The total amount due will continue to increase until the debt is paid or settled.

A representative of the Department of Treasury will contact you regarding offsets of Federal payments after they occur. To avoid offset of an Internal Revenue Service (IRS) tax refund where a joint Federal income tax return is filed and your spouse is not responsible for the debt, please contact your local IRS office before filing your return to learn how to protect your spouse's share of the refund.

For further information, call the toll-free number at 1-800-428-9643.

Sincerely,

