

**FSA**  
**HANDBOOK**

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## Special Programs

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To access the transmittal page click on the short reference.

### For State and County Offices

SHORT REFERENCE

**6-FLP**

UNITED STATES DEPARTMENT OF AGRICULTURE  
Farm Service Agency  
Washington, DC 20250



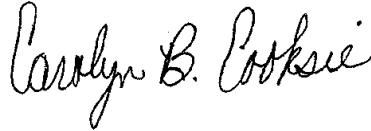
UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency  
Washington, DC 20250

Special Programs  
6-FLP

Amendment 12

Approved by: Deputy Administrator, Farm Loan Programs



Amendment Transmittal

A Reason for Amendment

Subparagraph 41 D has been amended to add back in subparagraph 41 D (iv) and (v) that were omitted in amendment 11.

**Note:** The provisions in this amendment are based on revisions to 7 CFR 770.10(e)(4)(iv) and (v).

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## Part 1 Introduction and Purpose

### 1 Purpose and Sources of Authority

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#### A

#### Handbook Purpose

This handbook is designed to assist FSA in understanding:

- regulations governing special loan programs implemented under DAFLP
- roles and responsibilities for processing loans under these programs.

The loan programs addressed in this handbook include the:

- ITLAP
  - SALP
  - Emergency Loan for Seed Producers Program
  - HBL Program
  - Beginning Farmer and Rancher Land Contract Guarantee Pilot Program
  - \*--Minor Program loans.
- 

#### B

#### Sources of Authority

The sources of authority for this handbook include:

- 7 CFR Part 770 for Indian Tribal Land Acquisition Loans
  - 7 CFR Part 772 for servicing Minor Programs--\*
  - 7 CFR Part 773 for SALP
  - 7 CFR Part 774 for Emergency Loans to Seed Producers Program
  - NOFA for HBL Program and the Beginning Farmer and Rancher Land Contract Guarantee Pilot Program
  - other Agency regulations that may be referenced throughout this handbook
  - various laws and statutes.
- 

Continued on the next page

**Part 1 Introduction and Purpose****1 Purpose and Sources of Authority (Continued)**

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**C****Regulation  
References**

Text in this handbook that is published in CFR is printed in **bold** text. The CFR citation is also printed in **bold** text. The references and text:

- are intended to highlight the requirement spelled out in CFR
- may be used to support FSA decisions in adverse decisions.

**Note:** NOFA is not incorporated into CFR. Therefore, the **bold** text in:

- Part 7 is from NOFA published in the Federal Register on July 5, 2002
  - \*--Part 8 is from NOFA published in the Federal Register on September 4, 2003.--\*
-

2 Related References

**A**  
**FmHA and RD**  
**Instructions**

Following are FmHA and RD Instructions about loan making and loan servicing.

Series	Title
440.1	Interest Rates, Amortization, Guarantee Fee, Annual Charge, and Fixed Period
1927-B	Real Estate Title Clearance and Loan Closing
1940-G	Environmental Programs
1941-B	Closing Loans Secured by Chattels
1951-A	Account Servicing Policies
1951-J	Management and Collection of Nonprogram (NP) Loans
1962-A	Servicing and Liquidation of Chattel Security

**B**  
**Related FSA**  
**Handbooks**

The following FSA handbooks address issues impacting the special loan programs covered by this handbook.

IF the area of concern is about...	THEN see...
canceling loan checks and processing payments	3-FI.
confidentiality	2-INFO.
appraisals or ECOA	1-FLP.
forms that cannot be accepted by FAX	1-CM.
maintenance of general and administrative files	25-AS.
Privacy Act	3-INFO.
reviews and appeals	1-APP.

Continued on the next page

**2 Related References (Continued)**

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**C**

**Websites**

The FSA website at <http://www.fsa.usda.gov> contains basic program information and program updates for Agency programs, including those covered by this handbook.

The FSA Intranet website at <http://intranet.fsa.usda.gov> provides electronic access to some FSA handbooks.

The FSA, NRCS, and Rural Development common Internet website at <http://www.sc.egov.usda.gov> contains downloadable Agency forms.

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**D**

**State  
Supplements**

Exhibit 4 lists State supplements required by this handbook.

SED's shall:

- issue required supplements, and any additional supplements, according to 1-AS, paragraph 216
  - obtain approval of State supplements according to 1-AS, paragraph 220.
- 

**3-10 (Reserved)**

**Part 2 Indian Tribal Land Acquisition Program****Section 1 Program Overview****11 Objective****A Scope**

**[7 CFR 770.1] This part contains the Agency's policies and procedures for making and servicing loans to assist a Native American Tribe or tribal corporation with the acquisition of land interests within tribal reservation or Alaskan community.**

**B Program Objective**

ITLAP:

- extends credit to Indian tribes or tribal corporations that do not qualify for standard commercial loans
- benefits Native American tribes by providing credit to acquire land interests within the Federally recognized tribal reservation or Alaskan community.

**12 Eligibility Requirements****A Eligibility**

**\*--Applicants must meet the requirements addressed in subparagraphs B through I to be--\***  
eligible for an ITLAP loan.

**B Submitting FSA-2620**

**[7 CFR 770.3 (a)] Submit a completed Agency application form;**

The application will be submitted on FSA-2620 and will be signed by the tribe's or tribal corporation's authorized representative.

**C Purchase Agreement**

**[7 CFR 770.3 (b)] Except for refinancing activities authorized in 770.4 (c) (subparagraph 21 A), obtain an option or other acceptable purchase agreement for land to be purchased with loan funds;**

Such an agreement shall be included with the application for loan funds.

**\*--12 Eligibility Requirements (Continued)****D Adequate Tribal Funds Not Available**

**[7 CFR 770.3 (c)] Be a Native American tribe or tribal corporation of a Native American tribe without adequate uncommitted funds based on Generally Accepted Accounting Principals, or another financial accounting method acceptable to the Secretary of Interior to acquire lands or interests therein within the Native American tribe's reservation for the use of the Native American tribe or tribal corporation or the members of either;**

The applicant must provide the Agency with the following:

- a financial statement that meets generally accepted accounting principles standards
- a cash flow statement that documents that all funds from all sources are committed
- the past 3 years of financial statements and cash flows budget.

**E Inability to Obtain Other Credit**

**[7 CFR 770.3 (d)] Be unable to obtain sufficient credit elsewhere at reasonable rates and terms for the purposes established in 770.4; (paragraph 21)**

The applicant must provide letters from at least 3 lenders, 1 of which will be BIA, that outlines the following:

- amount and terms requested by the tribe or tribal corporation
- reason for denying the request.

**Note:** Reasonable rates and terms are those normally offered in the lending area for similar purposes.

**F Ability to Repay Loan**

**[7 CFR 770.3 (e)] Demonstrate reasonable prospects of success in the proposed operation of the land to be purchased with funds provided under this part by providing;**

- (1) a feasibility plan for the use of the Native American tribe's land and other enterprises and funds from any other source from which payment will be made;**
- (2) a satisfactory management and repayment plan; and**
- (3) a satisfactory record for paying obligations.--\***

## 12 Eligibility Requirements (Continued)

### G Delinquency on Federal Debt

[7 CFR 770.3 (f)] Unless waived by the FSA Administrator, not have any outstanding debt with any Federal Agency (other than debt under the Internal Revenue Code of 1986) which is in a delinquent status.

### H Outstanding Recorded Judgements

[7 CFR 770.3 (g)] Not be subject to a judgement lien against the tribe's property arising out of a debt to the United States.

### \*--I Write-down

[7 CFR 770.3(h)] Have not received a write-down as provided in 770.10(e) (paragraph 41) within the preceding 5 years.--\*

## 13 Application Processing

### A Agency Official Responsibilities

Agency official must review the application for completeness and ensure that the applicant meets all eligibility requirements. Specific responsibilities are addressed in subparagraphs B through H.

### B Reviewing FSA-2620

Agency official shall review FSA-2620 for completeness. All information necessary for the type of application, such as loan making and loan servicing, must be provided to consider the application complete. FSA-2621, FSA-2622, and FSA-2623 do not have to be provided to consider an application for a loan complete but must be provided before any loan closing. An option or purchase according to subparagraph 12 C must be included with the application to consider it complete.

### C Verifying Tribal Status and Unavailability of Funds

Agency official must:

- contact the local BIA office to verify the Federal status of an applicant and document the contact in the case file running record

**Example:** Is the applicant on the list of Federally recognized tribes.

- review financial, budgetary, and cash flow information and document that the tribe has demonstrated that all income is being used for purposes other than real estate purchases.

**Example:** All funds generated by the tribe are used to meet the social and debt repayment needs of tribe or tribal corporation and not to the purchase of lands.

**\*--13 Application Processing (Continued)**

**D Reviewing Credit Denials**

Agency official must review the credit denials provided to ensure that:

- 1 of the 3 denials is from BIA, and 2 are from commercial lenders
- the denial letters adequately document the amount, terms requested, and reason for denial.

**E Determining Prospects of Success**

Agency official shall:

- ensure that loan application documentation contains a pro forma financial statement and cash flow budget for the current period that demonstrates that the proposed loan or loans can be repaid and that the most recent 3 years of audited financial statements and cash flows have been provided
- review and ensure that the application file:
  - is adequately documented with the tribe's record of payment on all payment obligations
  - includes a management plan of the tribal operations about the land to be purchased.

**Note:** The management plan should include all income producing activities to be derived off of the land to be purchased and the ability of the land to provide enough revenue to make the proposed loan payments.

**F Outstanding Judgements**

Agency officials shall ensure that loan applicants provide evidence that all Federal judgments have been released or paid in full. Loans will **not** be approved for applicants with unresolved Federal judgements. Loan funds shall not be used to pay Federal judgments. Direct questions about outstanding judgements to the Regional Attorney.--\*

**\*--13 Application Processing (Continued)**

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**G**

**Subsequent  
Loans**

A subsequent loan may be made to a borrower for the same purposes and under the same conditions as the initial loan made to the borrower under this part. In addition to the requirement of subparagraphs B through F, the Agency official must ensure the following:

- that the tribe has demonstrated it has complied with past requests for financial information
  - that the existing loans are current.
- 

**H**

**Delinquent  
Federal Debt**

Agency officials shall use the automated CAIVRS in determining whether the applicant is delinquent on any Federal debt.--\*

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**14-20 (Reserved)**



## Section 2 Loan Purposes, Terms, and Security Requirements

21 Loan Purposes and Limitations

---

## A

## Loan Purposes

[7 CFR 770.4] Loan funds may only be used to:

- (a) Acquire land and interests therein (including fractional interests, rights-of-way, water rights, easements, and other appurtenances (excluding improvements) that would normally pass with the land or are necessary for the proposed operation of the land) located within the Native American tribe's reservation which will be used for the benefit of the tribe or its members.
- (b) Pay costs incidental to land acquisition, including but not limited to, title clearance, legal services, land surveys, and loan closing.
- (c) Refinance non-United States Department of Agriculture preexisting debts the applicant incurred to purchase the land provided the following conditions exist:
  - (1) Prior to the acquisition of such land, the applicant filed a loan application regarding the purchase of such land and received the Agency's approval for the land purchase;
  - (2) The applicant could not acquire an option on such land;
  - (3) The debt for such land is a short term debt with a balloon payment that cannot be paid by the applicant and that cannot be extended or modified to enable the applicant to satisfy the obligation; and
  - (4) The purchase of such land is consistent with all other applicable requirements of this part.

[7 CFR 770.4 (d)] Pay for the costs of any appraisal conducted pursuant to this part.

\*--Appraisals must be completed according to 1-FLP, Part 6.--\*

**Note:** Although these costs may be included in a loan, the cost of the appraisal and land may not exceed the present market value of the property.

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Continued on the next page

**\*--21 Loan Purposes and Limitations (Continued)**

---

**B**

**Loan Limitations** [7 CFR 770.5 (a)] **Loan funds may not be used for any land improvement or development purposes, acquisition or repair of buildings or personal property, payment of operating costs, payment of finder's fees, or similar costs, or for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agriculture commodity as further established in exhibit M of subpart G of part 1940 of this title.**

[7 CFR 770.5 (b)] **The amount of loan funds used to acquire land may not exceed the market value of the land (excluding the value of any improvements) as determined by a current appraisal.**

[7 CFR 770.5 (c)] **Loan funds for a land purchase must be disbursed over a period not to exceed 24 months from the date of loan approval.**

**Note:** The 24-month period begins from the date of the loan or loans approval. Sixty days before the end of the 24-month period, a letter shall be mailed to the tribal office responsible for land purchases providing notification that if the funds are not used before the end of this period, the remaining obligation will be canceled.

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**22 Interest Rates and Terms**

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**A**

**Terms** [7 CFR 770.6(a)] **Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note.**

---

**B**

**Interest Rate** [7 CFR 770.6(b)] **The interest rate charged by the Agency will be the lower of the interest rate in effect at the time of the loan approval or loan closing, which is the current rate available in any FSA office. Except as provided in section 770.10(b) (paragraph 39), the interest rate will be fixed for the life of the loan.**

The interest rate is published in RD Instruction 440.1, Exhibit B.--\*

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**\*--23 Security Requirements**

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**A  
Applicant  
Responsibilities**

**[7 CFR 770.7 (a)] The applicant will take appropriate action to obtain and provide security for the loan.** However small the parcel purchased, the tribe or tribal corporation will provide the legal description of the parcel purchased for future loan servicing requests or actions.

**Note:** A legal description of the parcel purchased shall be included in the case file position relating to real estate

**Example:** A real estate mortgage and or assignment of income.

---

**B  
Mortgage/ Deed  
of Trust**

**[7 CFR 770.7 (b)] A mortgage or deed of trust on the land to be purchased by the applicant will be taken as security for a loan, except as provided in paragraph (c) of this section.**

- (1) If a mortgage or deed of trust is to be obtained on trust or restricted land and applicant’s constitution or charter does not specifically authorize mortgage of such land, the mortgage must be authorized by tribal referendum.**
- (2) All mortgages or deeds of trust on trust or restricted land must be approved by the Department of the Interior.**

Ordinarily, security will be a first lien on the real estate plus an assignment of income. However, the filing of a mortgage or deed of trust may be waived if the Agency determines that an assignment of income from the applicant provides as good or better security. The Agency shall first look to determine whether the filing of a real estate mortgage would be more advantageous to its security position and repayment of the loan.

If the purchase is for a fractionated interest, in addition to any real estate collateral, income assignments shall be used to secure the loan.--\*

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**\*--23 Security Requirements (Continued)**

---

**C**

**Assignment of Income**

**[7 CFR 770.7 (c)] The Agency may take an assignment of income in lieu of a mortgage or deed of trust provided:**

- (1) the Agency determines that an assignment of income provides as good or better security; and**
- (2) prior approval of the Administrator has been obtained.**

**Note:** See subparagraph 25 A for information about loan closing on assignments of income.

---

**24 Approval or Denial Decision**

---

**A**

**Evaluating Loan Requirements**

The loan request will be approved if:

- all eligibility requirements have been met
  - loan funds will be used for an authorized purpose
  - all security requirements have been met, or will be met at closing
  - DD has reviewed and signed FSA-2620
  - SED has reviewed and signed FSA-2620.
- 

**B**

**Loan Approval**

SED's are authorized to approve all loans of \$500,000 or less. Loans greater than \$500,000 will be approved by the Administrator. Information to be provided to the National Office includes the following:

- the completed loan docket
- a proposed letter of conditions to be met by the applicant
- a copy of any comments from OGC
- SED's recommendations.

After approval, SED will forward a copy of the executed FmHA 1940-1 to the St. Louis finance office for each loan approved.

**Note:** If approval was authorized by the National Office, SED shall sign FmHA 1940-1 and attach a copy of the memorandum authorizing approval to FmHA 1940-1.--\*

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**\*--24 Approval or Denial Decision (Continued)**

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**C****Loan Denial**

The Agency shall not approve a loan if it determines that:

- the applicant is not creditworthy, or that the applicant has knowingly provided incomplete, false, or misleading information
- the applicant, the applicant's operation, or other circumstances surrounding the loan are inconsistent with the authorizing statutes, other Federal laws, or Federal credit policies, except as modified by published regulations
- a feasible plan cannot be developed, except for loans of \$30,000 or less with adequate net worth, which do not require a plan; see subparagraph 92 B
- for loan requests greater than \$30,000, there is inadequate security for the loan requested.

Denial letters shall be sent according to 1-APP and any other applicable Agency directives. All letters shall include the nondiscrimination statement in 1-FLP, subparagraph 41 C.

The approval official must thoroughly document the reasons for denying the loan in the application file. If the approval official is not in the local office, the loan file shall be sent back to the authorized agency official for completing the loan denial process.

---

**D****Loan Funding**

Loan requests shall be funded based on the date the Agency approves the application. Loan approval is subject to the availability of funds.

The obligated loan fund shall be available to the applicant at loan closing either as a check or by electronic funds transfer.

If funds are not available to fund the loan request, the authorized agency official informs the applicant that funds are not currently available. If subsequent or additional loan funds are not available within 120 calendar days of the date of the funding shortfall, the loan application shall be withdrawn.--\*

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Continued on the next page

**24 Approval or Denial Decision (Continued)**

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**E**

**Appeals**

\* \* \*A loan applicant or borrower may request an appeal or review of an adverse decision made by the Agency according to 7 CFR Parts 11 and 780.

Agency Officials making adverse determinations shall:--\*

- inform the applicant of mediation, reconsideration, and appeal rights according to 1-APP
  - follow procedure in 1-APP to process and act on appeals.
- 

**25 Closing Requirements**

---

**A**

**Loan Closing**

The following are needed for loan closing.

- The Agency’s OGC must review the Tribal Constitution, Bylaws, and Tribal Resolutions authorizing the tribe to incur additional debt.
  - Agency officials will ensure that the tribe or tribal corporation has signed and provided all documentation required by FSA-2620, FSA-2621, FSA-2622 and FSA-2623, before loan closing.
  - The tribe must execute and deliver to the Agency a “General Assignment of Income” that is subordinated in favor of the Agency and acknowledged by BIA. The subordinated assignment agreement must be reviewed by the Agency’s OGC and determined to be legally sufficient. See FSA-2622 and FSA-2623.
  - Each assignment of income will be approved by BIA and recorded in the appropriate public records.
  - The tribe must provide a written agreement stipulating that they will not provide assignments or pledges to other parties of income, revenue, or other property assigned or pledged to FSA without written FSA consent.
  - The tribe must provide, in addition to the names already provided, the titles and addresses of all tribal officers.
  - In addition to properly securing the loan, Agency officials will ensure that RD 440-22 is executed at loan closing.
- 

Continued on the next page

**\*--25 Closing Requirements (Continued)**

**B  
Closing  
Requirements**

The following documentation is needed for closing requirements.

- The tribe must establish a Land Acquisition Account in which loan funds will be deposited. This shall be a “Supervised Bank Account.” If funds in this account exceed \$100,000, it will be secured by the financial institution in advance.
- Agency officials must ensure that a properly bonded official of the tribe will receive monies for each account and issue receipts therefor. The bonded official will deposit all such monies in the appropriate trust or counter-signature accounts. As a basis for withdrawals, the deposit agreement for each account will require the signatures of appropriate tribal official or officials and the Agency official or an official from DOI, BIA, depending on whether the account is a BIA trust account or an FSA supervised account in a commercial bank.

**C  
Real Estate Trust  
Property**

If real estate trust property is to be taken as security for the loan or loans, the following steps shall be taken as part of loan closing.

Step	Instructions for Loan Closing
1	The applicant will request BIA to provide Title Status Reports to Agency Officials.
2	If all administrative closing requirements can be met, BIA will prepare the deeds and obtain the needed signatures. The Agency will supply BIA with RD 1927-1 and RD 440-22. BIA will insert the appropriate land descriptions. The partly completed real estate mortgage and note will be returned to the Agency.
3	The loan check can then be ordered and the loan closed. The mortgage and note will be completed and signed, but no funds will be disbursed. A conformed copy of the note with the original mortgage and 2 copies will be forwarded to BIA. BIA will insert a certification on the mortgage and then return it to the Agency. BIA will also indicate that the deeds have been recorded and the priority of the Government’s lien in a continuation of the Title Status Report. However, the certification about the lien priority may be made on the old Status Report if BIA prefers.
4	The certified original mortgage will then be recorded by the Agency in the county where the land is located if OGC determines that such recording is necessary. Funds can be disbursed as soon as the mortgage is recorded or the determination is made that recording is not necessary.

--\*

Continued on the next page

**\*--25 Closing Requirements (Continued)**

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**D**

**Non Trust Land**

Title clearance will be obtained according to RD Instruction 1927-B.

---

**E**

**Rights-of-Way**

The applicant will be responsible for obtaining adequate, continuous, and valid rights-of-way for operating and maintaining the property. The following documentation will be provided by the tribe to FSA:

- a copy of the form of rights-of-way instrument to be used if it differs from RD 442-20

**Note:** Rights-of-way with restrictive provisions should be accepted only in very unusual circumstances.

- whenever the form of this instrument differs from RD 442-20 or contains special provisions that are required by either the applicant or the grantor, copies of these instruments will be submitted to FSA for review before accepting and recording
  - either specific rights-of-way or general rights-of-way containing only a description of the tract or parcel of land affected may be used.--\*
- 

**26-36 (Reserved)**

## \*--Section 3 Loan Servicing

**37 General Servicing**

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**A****General**

**[7 CFR 770.8(a)] Subject to section 770.5(d) (subparagraph 37 B) land acquired with loan funds, or other property serving as security for a loan under this part, may be leased, sold, exchanged, or subject to a subordination of the Agency's interests, provided:**

- (1) the Agency provides prior written approval of the action;**
- (2) the Agency determines that the borrower's loan obligations to the Agency are adequately secured; and**
- (3) the borrower's ability to repay the loan is not impaired.**

**[7 CFR 770.8(b)] Title to land acquired with a loan under this part may, with the approval of the Secretary of the Interior, be taken by the United States in trust for the tribe or tribal corporation.**

---

**B****Selling****Non-Renewable  
Assets**

**[7 CFR 770.5(d)] The sale of assets that are not renewable within the life of the loan will require a reduction in loan principal equal to the value of the asset sold.**

Any sale of non-renewable assets must receive prior consent from the Agency. This may include the sale of timber, mineral, or other assets that generally will not be renewable within the term of the loan. The Agency will review the security for the loan or loans to determine whether after the sale of the asset, the Agency will remain well secured. If the Agency remains fully secured, the sale may be approved. All sales require prior approval of the Administrator.--\*

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Continued on the next page

**\*--37 General Servicing (Continued)**

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**C**

**Land Exchanges** [ 7 CFR 770.10(d)] **In the cases where a borrower proposes to exchange any portion of land securing a loan for other land, title clearance and a new mortgage on the land received by the borrower in exchange, which adequately secures the unpaid principal balance of the loan, will be required unless the Agency determines any remaining land or other loan security is adequate security for the loan.**

Title clearance can be accomplished through the BIA office serving that particular tribe or tribal corporation's reservation.

If an assignment of income is determined to be adequate security for the loan, refer to subparagraph 25 A for using income assignment. If the exchange is for land that is less valuable than the land securing the indebtedness, the Agency will approve this action if the total land base securing the loans or on which an assignment of income from land purchased with ITLAP funds has been used for repayment is greater than the amount presently owed to the government.

To identify security for each loan, the tribe or tribal corporation must maintain a record of the tract or tracts purchased with loan funds and any transfers or exchanges that have been substituted for land originally purchased.

**D****Appraisals**

[ 7 CFR 770.9(a)] **The applicant or the borrower, as appropriate, will pay the cost of any appraisal required under this part.**

[7 CFR 770.9(b)] **Appraisals must be completed in accordance with section 761.7 of this chapter.--\***

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**\*--38 Reamortization**

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**A****Eligibility**

**[7 CFR 770.10(a)(1)] The Agency may consider reamortization of a loan provided:**

- (i) The borrower submits a completed Agency application form; and**
- (ii) The account is delinquent due to circumstances beyond the borrower's control and cannot be brought current within 1 year; or**
- (iii) The account is current, but due to circumstances beyond the borrower's control, the borrower will be unable to meet the annual loan payments.**

**Example:** Circumstances beyond the borrower's control are increased expenses resulting from unfunded or partially funded Federal or State mandates, or natural disasters.

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**B****Term of a Loan**

**[7 CFR 770.10(b)(2)] The term of a loan may not be extended beyond 40 years from the date of the original note.**

- (i) Reamortization within the remaining term of the loan will be predicated on a projection of the tribe's operating expenses indicating the ability to meet the new payment schedule; and**
- (ii) No intervening lien exists on the security for the loan which would jeopardize the Government's security position.**

The interest rate will be the loan rate or the current program rate (if lower) if the borrower meets the requirements of subparagraph 39 A.

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**C****Consolidation  
Authorized**

**[7 CFR 770.10(b)(3)] If one or more notes are to be reamortized, consolidation of the notes is authorized.**

The term of the consolidated note cannot exceed 40 years from the date of the most recently closed loan.

The interest rate will be the rate charged on the most recently closed loan or the current program rate (if lower) if the borrower meets the requirements of subparagraph 39 A.--\*

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**\*--39 Interest Rate Reduction**

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**A****Requirements**

**[7 CFR 770.10(b)] The Agency may consider a reduction of the interest rate for an existing loan to the current interest rate as available from any Agency office provided:**

- (1) the borrower submits a completed Agency application form;**
  - (2) the loan was made more than 5 years prior to the application for the interest reduction; and**
  - (3) the Department of the Interior and the borrower certify that the borrower meets at least one of the criteria contained in paragraph (e)(2) of this section (subparagraph 41 B).**
- 

**40 Deferral**

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**A****Requirements**

**[7 CFR 770.10(c)] The Agency may consider a full or partial deferral for a period not to exceed 5 years provided:**

- (1) the borrower submits a completed Agency application form;**
- (2) the borrower presents a plan which demonstrates that due to circumstances beyond their control, they will be unable to meet all financial commitments unless the Agency payment is deferred; and**
- (3) the borrower will be able to meet all financial commitments including the Agency payments, after the deferral period has ended.**

The tribe or tribal corporation must provide a cash flow projection that indicates that there will be enough income to meet all expense and payment obligations after the deferral period ends.--\*

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**41 Debt Write-down****A Application**

**[7 CFR 770.10(e)(1)] The Agency will consider debt write-down under either the land value option or rental value option, as requested by the borrower.**

- (i) The borrower must submit a completed Agency application form;**
- (ii) If the borrower applies and is determined eligible for a land value and a rental value write down, the borrower will receive a write-down based on the write-down option that provides the greatest debt reduction.**

**B Eligibility**

**[7 CFR 770.10(e)(2)] To be eligible for a debt write down, the borrower (in the case of a tribal corporation, the Native American Tribe of the borrower) must:**

- (i) be located in a county which is identified as a persistent poverty county by the United States Department of Agriculture, Economic Research Service pursuant to the most recent data from the Bureau of Census; and**
  - (ii) have a socio-economic condition over the immediately preceding 5-year period that meets the following two factors as certified by the Native American tribe and the Department of the Interior:**
    - (A) The Native American Tribe has a per capita income for individual enrolled tribal members which is less than 50 percent of the Federally established poverty income rate established by the Department of Health and Human Services;**
- \*--Note: If tribal income information is not available, State or county per capita income data may be used.--\***
- (B) The tribal unemployment rate exceeds 50 percent.**

**\* \* \***

## 41 Debt Write-down (Continued)

**C Land Value Write-down**

**[7 CFR 770.10(e)(3)] The Agency may reduce the unpaid principal and interest balance on any loan made to the current market value of the land that was purchased with loan funds provided;**

- (i) The market value of such land has declined by at least 25 percent since the land was purchased as established by a current appraisal;**

**Note:** The tribe must identify the lands purchased and account for any trade, substitution, or exchange made since the loan or loans were first made to complete an appraisal and document the loss in value.

The cost of the appraisal will be paid by the tribe or tribal corporation.

- (ii) Land value decrease is not attributed to the depletion of resources contained on or under the land;**

**Example:** The harvesting of timber, strip mining, or any other action that would reduce the value of land by removal of resources contributing to the value of the land.

- (iii) The loan was made more than 5 years prior to the application for land value writedown;**

- (iv) The loan has not previously been written down under paragraph (e)(4) (subparagraph D) of this section and has not been written down within the last 5 years under this paragraph; and**

- \*--(v) The borrower must meet the eligibility requirements of paragraphs (a)(1)(ii) or (iii) (subparagraph 38 A) of this section.--\***

The decrease in value must be attributable to outside economic forces; natural disaster, including flood and insect damage; or other factors beyond the borrower's control for which they are unable to mitigate the negative effects. Agency officials will document the reason attributable to the decrease in value before land value write-down approval.

## 41 Debt Write-Down (Continued)

**D Rental Value Write-Down**

**[7 CFR 770.10(e)(4)] The Agency may reduce the unpaid principal and interest on any loan, so the annual loan payment for the remaining term of each loan equals the average of annual rental value of the land purchased by each such loan for the**  
**\*--immediately preceding 5-year period provided:--\***

- (i) The loan was made more than 5 years prior to the rental value writedown;**
- (ii) The description of the land purchased with the loan funds and the rental values used to calculate the 5-year average annual rental value of the land have been certified by the Department of the Interior;**

**Note:** To support the determination of the 5-year average annual rental value, the tribe or tribal corporation must provide and identify the number of acres that were purchased with FSA loan funds. DOI's BIA must certify in writing as to the validity of the figures used by the tribe requesting the write-down.

- \*--(iii) The borrower provides a record of any actual rents received for the land for the preceding 5 years, which will be used to calculate the average rental value. This record must be certified by the Department of the Interior. For land that has not been leased or has not received any rental income, the borrower must provide a market value rent study report for the preceding 5 years, which identifies the average annual rental value based on the market data. The market value rent study report must be prepared by a certified general appraiser and meet the requirements of USPAP;**

**Note:** The rental value of improvements on a specific parcel is not considered in the calculation of the 5 year average rental value of the land.

For a parcel of land that does not have 5 years of rental history from which to determine the 5 year average rental value, a rental value will be assigned for the years of no rental history based on the rent received for leased land of like value and purpose.

**Example:** A parcel of pasture land has rented for years 1, 2, and 3 for \$18 per acre, but not for years 4 and 5. Similar adjacent pasture land with a 5 year rental history has received rent in the following amount:

- year 1, \$18 per acre
- year 2, \$19 per acre
- year 3, \$21 per acre
- year 4, \$21 per acre
- year 5, \$25 per acre.

The subject parcel will be assigned a rental rate of \$21 for year 4 and \$25 for year 5. The average 5 year rental value will be the average of the 3 years of rents received and the assigned values for year 4 and 5.  $\$18 + \$18 + \$18 + \$21 + \$25 = \$100 \div 5 =$  average rental rate of \$20.--\*

**41 Debt Write-Down (Continued)**

**D Rental Value Write-Down (Continued)**

- \*--(iv) The borrower has not previously received a write-down under this paragraph and has not had a loan written down within the last 5 years under paragraph (e)(3) (subparagraph C) of this section; and**

**Note:** If the loan has previously received a rental value write-down, it cannot receive another rental value write-down. If the loan received a land value write-down within the last 5 years, it cannot receive a rental value write-down.

- (v) The borrower must meet the eligibility requirements of paragraph (a)(1)(ii) or (iii) (subparagraph 38 A) of this section.--\***

**42 Reserve Accounts**

**A Releasing Reserve Account Funds**

**[7 CFR 770.10(e)] Existing reserve accounts may be released for the purpose of making ITLAP loan payments or to purchase additional lands, subject to the following;**

- (1) a written request is received providing detailed use of the funds;**
- (2) the loan is not delinquent;**
- (3) the loan is adequately secured by a general assignment of tribal income.**

**43 Graduation**

**A Graduation Requirement**

FSA-2621 and FSA-1927-1 contain requirements about graduation.

**B Borrower Action**

If at any time it appears to FSA officials that the tribe is able to refinance the loan, in whole or in part, by obtaining a loan for such purposes from responsible cooperative or private credit sources, at reasonable rates and terms for loans for similar purpose and periods of time, the tribe will, upon request of FSA, apply for and accept such loan in sufficient amount to repay FSA.

**44-54 (Reserved)**

**Part 3 (Reserved)**

**55-65 (Reserved)**

**\*--Part 4 Servicing Minor Program Loans****66 Overview****A Scope**

**[7 CFR 772.1(a)] This part contains the Agency's policies and procedures for servicing Minor Program loans which include Grazing Association loans, Irrigation and Drainage Association loans, and Non-Farm Enterprise and Recreation loans to individuals.**

**B Objectives**

The purpose is to assist borrowers of Minor Program loans to continue to meet the objectives of the loan programs, repay the loans on schedule, comply with all pertinent regulations and policies, and to protect the Agency's financial interest.

Supervision by FSA includes, but is not limited to, reviewing financial information, performing inspections, evaluating proposed actions by the borrower, and performing graduation and compliance reviews.

**C Appeals**

**[7 CFR 772.1(b)] The regulations at 7 CFR parts 11 and 780 apply to decisions made under this part.**

**D Equal Opportunity and Nondiscrimination Requirements**

**[7 CFR 772.17] With respect to any aspect of a credit transaction, the Agency will comply with the requirements of the Equal Credit Opportunity Act as implemented in 7 CFR section 1910.2, and the Department's civil rights policy in 7 CFR part 15d.--\***

**\*--67 Compliance Reviews****A Requirements**

**[7 CFR 772.3(a)] No Minor Program borrower shall directly, or through contractual or other arrangement, subject any person or cause any person to be subjected to discrimination on the basis of race, color, national origin, or disability. Borrowers must comply with all applicable Federal laws and regulations regarding equal opportunity in hiring, procurement, and related matters. AMP borrowers are subject to the nondiscrimination provisions applicable to Federally assisted programs contained in 7 CFR part 15, subparts A and C, and part 15b. IMP loans are subject to the nondiscrimination provisions applicable to Federally conducted programs contained in 7 CFR parts 15d and 15e.**

**B Conducting Reviews**

**[7 CFR 772.3(b)] In accordance with Title VI of the Civil Rights Act of 1964, the Agency will conduct a compliance review of all Minor Program borrowers, to determine if a borrower has directly, or through contractual or other arrangement, subjected any person or caused any person to be subjected to discrimination on the basis of race, color, or national origin. The borrower must allow the review official access to their premises and all records necessary to carry out the compliance review as determined by the review official.**

FLM's may conduct compliance reviews for IMP loans. Results will be recorded in the case file running record with a copy sent to DD. DD's or an Agency Review Official designated by SED, who has training or experience in completing compliance reviews, will complete reviews for AMP loans. Results will be recorded on FSA-2648.--\*

**\*--67 Compliance Reviews (Continued)**

**B Conducting Reviews (Continued)**

When all reviews are completed, the results of all reviews using the following format will be forwarded by DD to SED according to the following format.

**SUBJECT:** Civil Rights Compliance Reviews

**TO:** State Executive Director, FSA

Civil Rights compliance reviews have been conducted, and each recipient listed below was found **in compliance** with Title VI of the Civil Rights Act of 1964. Information which led to this finding and the determination that the recipient is in compliance is in the running record of the recipient's file for IMP borrowers and FSA-2648 for AMP borrowers.

<u>Recipient</u>	<u>Case Number</u>	<u>*Type of Assistance</u>	<u>Date of Review</u>
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**The following recipients were found to be in noncompliance.** Narrative explaining reasons for noncompliance determination and supporting documentation are attached to this report.

<u>Recipient</u>	<u>Case Number</u>	<u>*Type of Assistance</u>	<u>Date of Review</u>
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\_\_\_\_\_  
District Director

\*Indicate only loans which are subject to compliance reviews.

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\*--67 Compliance Reviews (Continued)

C Frequency and Timing

[7 CFR 772.3(c)] Compliance reviews will be conducted no later than October 31 of every third year until the Minor Program loan is paid in full or otherwise satisfied.

SED will forward the results of all reviews to DAFLP no later than November 30 of each year. A format similar to the following should be used.

**SUBJECT:** Summary Report of Civil Rights Compliance Reviews  
(Report FLP-5)

**TO:** Deputy Administrator, Farm Loan Programs, FSA

Civil Rights Compliance Reviews have been conducted and the following recipients were found **in compliance** with Title VI of the Civil Rights Act of 1964.

	<u>Name of Borrower</u>	<u>Loan Type</u>	<u>Case Number</u>
1.			
2.			
3.			

The following recipients were found **in noncompliance**:

	<u>Name of Borrower</u>	<u>Loan Type</u>	<u>Case Number</u>
1.			
2.			
3.			

\_\_\_\_\_  
State Executive Director

--\*

**\*--67 Compliance Reviews (Continued)**

**D Violations**

**[7 CFR 772.3(d)] If a borrower refuses to provide information or access to their premises as requested by a review official during a compliance review, or is determined by the Agency to be not in compliance in accordance with this section or Departmental regulations and procedures, the Agency will service the loan in accordance with the provisions of section 772.16 of this part (paragraph 80).**

**68 Environmental Requirements**

**A Review**

**[7 CFR 772.4] Servicing activities such as transfers, assumptions, subordinations, sale or exchange of security property, and leasing of security will be reviewed for compliance with 7 CFR part 1940, subpart G and the exhibits to that subpart and 7 CFR part 799.--\***

**\*--69 Security Maintenance****A General**

**[7 CFR 772.5(a)] Borrowers are responsible for maintaining the collateral that is serving as security for their Minor Program loan in accordance with their lien instruments, security agreement, and promissory note.**

**B Inspections**

**[7 CFR 772.5(b)] The Agency will inspect real estate that is security for a Minor Program loan at least once every three years, and chattel security at least annually. More frequent security inspections may be made as determined necessary by the Agency. Borrowers will allow representatives of the Agency, or any agency of the U.S. Government, in accordance with statutes and regulations, such access to the security property as the agency determines is necessary to document compliance with the requirements of this section.**

**C Violations**

**[7 CFR 772.5(c)] If the Agency determines that the borrower has failed to adequately maintain security, made unapproved dispositions of security, or otherwise has placed the repayment of the Minor Program loan in jeopardy, the Agency will:**

- (1) For chattel security, service the account according to 7 CFR part 1962, subpart A. If any normal income security as defined in that subpart secures a Minor Program loan, the reporting, approval, and release provisions in that subpart shall apply.**
- (2) For real estate security for AMP loans, contact the Regional Office of General Counsel for advice on the appropriate servicing including liquidation if warranted.**
- (3) For real estate security for IMP loans, service the account according to 7 CFR Part 1965, subpart A.**

If the violation results in a monetary or nonmonetary default, IMP loans will be serviced according to Instruction 1951-S. AMP loans will be serviced according to paragraph 77.--\*

**\*--70 Subordination****A Eligibility**

**[7 CFR 772.6(a)] The Agency shall grant a subordination of Minor Program loan security when the transaction will further the purposes for which the loan was made, and all of the following are met:**

- (1) The loan will still be adequately secured after the subordination, or the value of the loan security will be increased by the amount of advances to be made under the terms of the subordination.**
- (2) The borrower can document the ability to pay all debts including the new loan.**
- (3) The action does not change the nature of the borrower's activities to the extent that they would no longer be eligible for a Minor Program loan.**
- (4) The subordination is for a specific amount.**
- (5) The borrower is unable, as determined by the Agency, to refinance its loan and graduate in accordance with this subpart.**
- (6) The loan funds will not be used in such a way that will contribute to erosion of highly erodible land or conversion of wetlands for the production of an agricultural commodity according to 7 CFR part 1940, subpart G.**
- (7) The borrower has not been convicted of planting, cultivating, growing, producing, harvesting or storing a controlled substance under Federal or State law. "Borrower," for purposes of this subparagraph, specifically includes an individual or entity borrower and any member of an entity borrower. "Controlled substance," for the purpose of this subparagraph, is defined at 21 CFR part 1308. The borrower will be ineligible for a subordination for the crop year in which the conviction occurred and the four succeeding crop years. An applicant must attest on the Agency application form that it, and its members if an entity, have not been convicted of such a crime.--\***

**\*--70 Subordination (Continued)****B Application**

**[7 CFR 772.6(b)] To request a subordination, a Minor Program borrower must make the request in writing and provide the following:**

- (1) The specific amount of debt for which a subordination is needed;**
- (2) An appraisal prepared in accordance with section 761.7 (1-FLP, Part 6) of this chapter, if the request is for a subordination of more than \$10,000, unless a sufficient appraisal report, as determined by the Agency, that is less than one year old, is on file with the Agency; and**

**Note:** The cost of the appraisal is the responsibility of the borrower.

- (3) Consent and subordination, as necessary, of all other creditors' security interests.**

The borrower must:

- complete RD-465-1
- attest to the following statement which must be added to RD 465-1:

“The borrower has not been convicted of planting, cultivating, growing, producing, harvesting, or storing a controlled substance under Federal or State law.”

“Borrower”, for purposes of this application, specifically includes an individual or entity borrower and any member of an entity borrower.

**C Approval or Rejection**

SED is authorized to approve subordination requests. If a subordination request does not meet the requirements of this paragraph, SED may reject the request and offer appeal rights or recommend it to the Administrator, FSA for approval.

Rejection of the subordination request is appealable. The regulations at 7 CFR parts 11 and 780 apply to decisions made under this paragraph. SED decision not to recommend the action to the Administrator is not appealable.--\*

**\*--71 Leasing of Security**

**A Eligibility**

**[7 CFR 772.7(a)] The Agency may consent to the borrower leasing all or a portion of security property for Minor Program loans to a third party when:**

- (1) Leasing is the only feasible way to continue to operate the enterprise and is a customary practice;**
- (2) The lease will not interfere with the purpose for which the loan was made;**
- (3) The borrower retains ultimate responsibility for the operation, maintenance and management of the facility or service for its continued availability and use at reasonable rates and terms;**
- (4) The lease prohibits amendments to the lease or subleasing arrangements without prior written approval from the Agency;**
- (5) The lease terms provide that the Agency is a lienholder on the subject property and, as such, the lease is subordinate to the rights and claims of the Agency as lienholder; and**
- (6) The lease is for less than 3 years and does not constitute a lease/purchase arrangement, unless the transfer and assumption provisions of paragraph 74 are met.**

**B Application**

**[7 CFR 772.7(b)] The borrower must submit a written request for Agency consent to lease the property.** The borrower must provide a copy of the proposed lease document for Agency review and approval.

**C Approval**

SED is authorized to approve lease requests.--\*

**\*--72 Sale or Exchange of Security Property****A AMP Loans****[7 CFR 772.8 (a)] For AMP Loans:**

**(1) Sale of all or a portion of the security property may be approved when all of the following conditions are met:**

- (i) The property is sold for market value based on a current appraisal prepared in accordance with section 761.7 (1-FLP, Part 6) of this chapter.**

**Note:** The cost of the required appraisal is the responsibility of the borrower.

- (ii) The sale will not prevent carrying out the original purpose of the loan. The borrower must execute an Assurance Agreement as prescribed by the Agency. The covenant involved will remain in effect as long as the property continues to be used for the same or similar purposes for which the loan was made. The instrument of conveyance will contain the following nondiscrimination covenant:**

**The property described herein was obtained or improved with Federal financial assistance and is subject to the non-discrimination provisions of title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and other similarly worded Federal Statutes, and the regulations issued pursuant thereto that prohibit discrimination on the basis of race, color, national origin, handicap, religion, age, or sex in programs or activities receiving Federal financial assistance. Such provisions apply for as long as the property continues to be used for the same or similar purposes for which the Federal assistance was extended, for so long as the purchaser owns it, whichever is later.**

- (iii) The remaining security for the loan is adequate or will not change after the transaction.**

- (iv) Sale proceeds remaining after paying any reasonable and necessary selling expenses are applied to the Minor Program loan according to lien priority.**

**(2) Exchange of all or a portion of security property for an AMP loan may be approved when:**

- (i) The Agency will obtain a lien on the property acquired in the exchange;**
- (ii) Property more suited to the borrower's needs related to the purposes of the loan is to be acquired in the exchange;--\***

**\*--72 Sale or Exchange of Security Property (Continued)****A AMP Loans (Continued)**

(iii) **The AMP loan will be as adequately secured after the transaction as before; and**

(iv) **It is necessary to develop or enlarge the facility, improve the borrower's debt-paying ability, place the operation on a more sound financial basis or otherwise further the loan objectives and purposes, as determined by the Agency.**

RD 465-5 will be completed by the transferor and transferee for approval by FSA.

**B IMP Loans**

**[7 CFR 772.8(b)(1)] For IMP Loans:**

**(1) A sale or exchange of chattel that is serving as security is governed by 7 CFR part 1962, subpart A.**

**(2) A sale or exchange of real estate that is serving as security for an IMP loan is governed by 7 CFR part 1965, subpart A.**

**73 Releases****A Security**

**[7 CFR 772.9(a)] Security. Minor Program liens may be released when:**

**(1) The debt is paid in full;**

**(2) Security property is sold for market value and sale proceeds are received and applied to the borrower's creditors according to lien priority; or**

**(3) An exchange in accordance with section 772.8 (paragraph 72) has been concluded.**

SED is authorized to approve releases of Minor Program security.

**B Borrower Liability**

**[7 CFR 772.9(b)] The Agency may release a borrower from liability when the Minor Program loan, plus all administrative collection costs and charges are paid in full. IMP borrowers who have had previous debt forgiveness on a farm loan program loan as defined in 7 CFR 1951.906, however, cannot be released from liability by FSA until the previous loss to the Agency has been repaid with interest from the date of debt forgiveness. An AMP borrower may also be released in accordance with section 772.10 (paragraph 74) in conjunction with a transfer and assumption.--\***

**\*--74 Transfer and Assumption of AMP Loans****A Eligibility**

**[7 CFR 772.10(a)] The Agency may approve transfers and assumptions of AMP loans when:**

- (1) The present borrower is unable or unwilling to accomplish the objectives of the loan;**
- (2) The transfer will not harm the Government or adversely affect the Agency's security position;**
- (3) The transferee will continue with the original purpose of the loan;**
- (4) The transferee will assume an amount at least equal to the present market value of the loan security;**

**Note:** The market value will be determined by an appraisal according to 1-FLP, Part 6. The cost of the appraisal will be paid by the transferee or transferor.

- (5) The transferee documents the ability to pay the AMP loan debt as provided in the assumption agreement and has the legal capacity to enter into the contract;**
- (6) If there is a lien or judgment against the Agency security being transferred, the transferee is subject to such claims. The transferee must document the ability to repay the claims against the land; and**
- (7) If the transfer is to one or more members of the borrower's organization and there is no new member, there must not be a loss to the Government.**

FSA 1965-13 will be completed by FSA and signed by the assuming party.

**B Transfer of Withdrawing Member's Interest**

**[7 CFR 772.10(b)] Withdrawal of a member and transfer of the withdrawing member's interest in the Association to a new eligible member may be approved by the Agency if all of the following conditions are met:**

- (1) The entire unpaid balance of the withdrawing member's share of the AMP loan must be assumed by the new member;**
- (2) In accordance with the Association's governing articles, the required number of remaining members must agree to accept any new member; and**
- (3) The transfer will not adversely affect collection of the AMP loan.--\***

**\*--74 Transfer and Assumption of AMP Loans (Continued)**

**C Requesting Transfer and Assumption**

**[7 CFR 772.10(c)] Requesting a transfer and assumption. The transferor/borrower and transferee/applicant must submit:**

- (1) The written consent of any other lienholder, if applicable.**
- (2) A current balance sheet and cash flow statement.**

**D Terms**

**[7 CFR 772.10(d)] The interest rate and term of the assumed AMP loan will not be changed. Any delinquent principal and interest of the AMP loan must be paid current before the transfer and assumption will be approved by the Agency.**

**E Release of Liability**

**[7 CFR 772.10(e)] Transferors may be released from liability with respect to an AMP loan by the Agency when:**

- (1) The full amount of the loan is assumed; or**
- (2) Less than the full amount of the debt is assumed, and the balance remaining will be serviced in accordance with section 772.9(c) (paragraph 81).**

**F Approval**

**SED is authorized to approve transfers and assumptions of AMP loans.--\***

**\*--75 Transfer and Assumption of IMP Loans****A Conditions**

**[7 CFR 772.11] Transfers and assumptions for IMP loans are processed in accordance with 7 CFR part 1962, subpart A for chattel secured loans and 7 CFR part 1965, subpart A for real estate secured loans. Any remaining transferor liability will be serviced in accordance with section 772.9(c) (paragraph 81) of this subpart.**

**76 Graduation Requirements****A General**

**[7 CFR 772.12(a)] This section (paragraph 76) only applies to Minor Program borrowers with promissory notes which contain provisions requiring graduation.**

Agency loan programs do not supplant or compete with credit available to borrowers from non-Governmental credit sources.

Agency credit is intended to be available for a temporary period of time until the borrower has made sufficient progress to obtain credit from commercial lenders.

**B Review Period**

Graduation Reviews should be completed by July 1 of each year.

**C Frequency and Information Required for Graduation Review**

**[7 CFR 772.12(b)] Borrowers shall provide current financial information when requested by the Agency or its representatives to conduct graduation reviews.**

- (1) AMP loans shall be reviewed at least every two years. In the year to be reviewed, each borrower must submit, at a minimum, a year-end balance sheet and cash flow projection for the current year.**
- (2) All IMP borrowers classified as “commercial” or “standard” in accordance with 7 CFR part 1951, subpart F shall be reviewed at least every two years. In the year to be reviewed, each borrower must submit a year-end balance sheet, actual financial performance for the most recent year, and a projected budget for the current year.**

After screening out the noncommercial and nonstandard borrowers, the Agency will conduct a thorough review of the financial information provided by the borrower and request additional information as needed to determine whether borrower is able to graduate.--\*

**\*--76 Graduation Requirements (Continued)****D Graduation Criteria**

[7 CFR 772.12(c)] Borrowers must graduate from the Minor Programs as follows:

- (1) Borrowers with IMP loans that are classified as “commercial” or “standard” must apply for private financing within 30 days from the date the borrower is notified of lender interest, if an application is required by the lender. For good cause, the Agency may grant the borrower a reasonable amount of additional time to apply for refinancing.
- (2) Borrowers with AMP loans will be considered for graduation at least every two years or more frequently if the Agency determines that the borrower’s financial condition has significantly improved.

**E Enforcement**

The Agency will take action to enforce graduation, when the Agency has determined that commercial credit can be obtained at reasonable rates and terms.

- The Agency must inform the borrower in writing of the specific request which the borrower failed or refused to cooperate and provide appeal rights according to 7 CFR Parts 11 and 780.
- Following concurrence by OGC, the Agency will accelerate the loan of a Minor Program borrower who fails to provide requested documents, does not take positive steps to refinance the loan when commercial credit can be obtained at reasonable rates and terms, or refuses to cooperate in any way with the requirements of this subparagraph.

**Note:** IMP borrower’s appeal rights must be exhausted before acceleration and the notice of acceleration is not appealable.--\*

\*--77 Delinquent Account Servicing

A AMP Loans

**[7 CFR 772.13(a)] If the borrower does not make arrangements to cure the default after notice by the Agency and is not eligible for reamortization in accordance with section 772.14 (paragraph 78), the Agency will liquidate the account according to section 772.16 (paragraph 80).**

The Agency will take the following actions on delinquent AMP borrowers.

Step	Action
1	<p><b>First contact.</b> The Agency will:</p> <ul style="list-style-type: none"> <li>• attempt to contact the borrower 10 calendar days after the payment due date</li> <li>• advise the borrower of the amount past due</li> <li>• request that the payment be remitted immediately.</li> </ul>
2	<p><b>Second contact.</b> If, within 20 calendar days, the borrower has not responded to the initial contact, a delinquency letter will be sent notifying the borrower that, if the account is not brought current within 30 calendar days, the Agency will take action to protect the Government’s interest.</p>
3	<p><b>Third contact.</b> If, within 30 calendar days, the borrower has not responded to the second contact delinquency letter or the borrower will not or cannot make satisfactory arrangements to bring the account current, the borrower will be:</p> <ul style="list-style-type: none"> <li>• notified by letter of the option of selling their security property to recover any equity</li> <li>• advised that further collection action, including internal Agency offset and referral to the Department of Treasury Offset Program and Treasury Cross-Servicing, will be taken if payment is not received or satisfactory arrangements are not made to bring the account current within 15 calendar days, provided all appeals concerning the referral have been exhausted.</li> </ul>

B IMP Loans

**[7 CFR 772.13(b)] Delinquent IMP borrowers will be serviced according to 7 CFR part 1951, subpart S, and parts 3 and 1951, subpart C concerning internal agency offset and referral to the Department of Treasury Offset Program and Treasury Cross-Servicing (or successor regulations).--\***

**\*--78 Reamortization AMP Loans**

**A Requirements**

**[7 CFR 772.14] The Agency may approve reamortization of AMP loans provided:**

- (a) There is no extension of the final maturity date of the loan;**
- (b) No intervening lien exists on the security for the loan which would jeopardize the Government's security position;**
- (c) If the account is delinquent, it cannot be brought current within one year and the borrower has presented a cash flow budget which demonstrates the ability to meet the proposed new payment schedule; and**
- (d) If the account is current, the borrower will be unable to meet the annual loan payments due to circumstances beyond the borrower's control. The borrower has presented a cashflow budget that demonstrates the ability to meet the proposed new repayment schedule.**

**B Approval**

SED is authorized to approve reamortizations of AMP loans.--\*

**\*--79 Protective Advances**

**A Approval**

**[7 CFR 772.15(a)] The Agency may approve, without regard to any loan or total indebtedness limitation, vouchers to pay costs, including insurance and real estate taxes, to preserve and protect the security, the lien, or the priority of the lien securing the debt owed to the Agency if the debt instrument provides that the Agency may voucher the account to protect its lien or security.**

**(b) The Agency may pay protective advances only when it determines it to be in the Government's best financial interest.**

**(c) Protective advances are immediately due and payable.**

SED is authorized to approve protective advances for AMP loans.

**80 Liquidation**

**A Processing**

**[7 CFR 772.16] When the Agency determines that continued servicing will not accomplish the objectives of the loan and the delinquency or financial distress cannot be cured by the options in section 772.13 (paragraph 77), or the loan is in non-monetary default, the borrower will be encouraged to dispose of the Agency security voluntarily through sale or transfer and assumption in accordance with this part. If such a transfer or voluntary sale is not carried out, the loan will be liquidated according to 7 CFR part 1955, subpart A. For AMP loans, appeal rights under 7 CFR part 11 are provided in the notice of acceleration. For IMP loans, appeal rights must be exhausted before acceleration, and the notice of acceleration is not appealable.--\***

**\*--81 Offset**

**A Processing Remaining Federal Debt**

**[7 CFR 772.9(c)] Balances remaining after sale or liquidation of the security will be subject to administrative offset in accordance with 7 CFR part 3, Department of Treasury Offset Program (TOP) and Treasury Cross-Servicing regulations at 31 CFR part 285 and Federal Claims Collections Standards at 31 CFR parts 900-904. Thereafter the debt settlement provisions in 7 CFR part 1956, subpart B of chapter XVIII of the Code of Federal Regulations or successor regulation apply.**

**82 Exception Authority**

**A Approval**

**[7 CFR 772.18] Exceptions to any requirement in this subpart can be approved in individual cases by the Administrator if application of any requirement or failure to take action would adversely affect the Government's financial interest. Any exception must be consistent with the authorizing statute and other applicable laws.--\***

**83, 84 (Reserved)**



## Part 5 Special Apple Loan Program

## 85 Overview

## A

## Scope

**[7 CFR 773.1] This part contains the terms and conditions for loans made under the Special Apple Loan Program. These regulations are applicable to applicants, borrowers, and other parties involved in making, servicing, and liquidating loans.**

## B

Program  
Objective

**[7 CFR 773.1] The program objective is to assist producers of apples that are suffering from economic loss as a result of low apple prices.**

## 86 General Eligibility Requirements

## A

Eligibility  
Requirements

**[7 CFR 773.6] Loan applicants must meet all of the following requirements to be eligible for a Special Apple Loan Program loan. Eligibility requirements are addressed in subparagraphs B through H.**

## B

## Apple Producer

**[7 CFR 773.6(a)] The loan applicant must be an apple producer.**

**[7 CFR 773.2] Apple producer is a farmer in the United States or its territories that produced apples, on not less than 10 acres, for sale in 1999 or 2000.**

For lease arrangements, a producer, who is not the owner of the real estate, is eligible to apply for SALP. Land owners on a crop share lease are not considered the apple producer. The applicant is not required to continue growing apples during the term of the SALP loan.

Continued on the next page

**86 General Eligibility Requirements (Continued)**

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**C****United States  
Citizenship**

**[7 CFR 773.6(b)] The loan applicant must be a citizen of the United States or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationalization Act. For a business entity applicant, the majority of the business entity must be owned by members meeting the citizenship test or other entities that are domestically owned. Aliens must provide the appropriate Immigration and Naturalization Service forms to document their permanent residency.**

Aliens must provide I-151 or I-551 to show permanent residency status. If the Authorized Agency Official questions the authenticity of I-151 or I-551 or the information on the form, the Authorized Agency Official may complete G-845 to request that INS verify the information. G-845 can be obtained from and submitted to the nearest INS District Office. To waive the service fee, the Authorized Agency Official shall insert "INTERAGENCY LAW ENFORCEMENT REQUEST" in the upper right corner of G-845.

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**D****Legal Capacity  
to Incur Debt**

**[7 CFR 773.6(c)] The loan applicant and anyone who will execute the promissory note must possess the legal capacity to enter into contracts, including debt instruments.**

The loan applicant must be of legal age and mental capacity to enter into a legally binding agreement with FSA. An entity applicant, and the entity members who will execute the promissory note, must be able to enter into this contract.

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Continued on the next page

**86 General Eligibility Requirements (Continued)**

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**E****Delinquency on Federal Debt**

**[7 CFR 773.6(d)] At loan closing the loan applicant and anyone who will execute the promissory note must not be delinquent on any Federal debt, other than a debt under the Internal Revenue Code of 1986.**

Delinquencies will be verified by a review of a CAIVRS report for the applicant, including if the applicant is an entity, the members that will be executing the loan notes and agreements. The loan applicant may be considered eligible if the delinquency will be remedied by the date of loan closing. Loan applicants may use loan funds to cure delinquencies. Federal debt includes, but is not limited to, student loans, CCC loans, FSA loans, Veteran's Administration loans, and Small Business Association loans. FSA guaranteed loans are not considered Federal debts.

**Note:** An applicant who is current on or who has successfully completed a bankruptcy reorganization plan that covers a Federal debt will not be considered delinquent.

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**F****Outstanding Recorded Judgments**

**[7 CFR 773.6(e)] At loan closing the loan applicant and anyone who will execute the promissory note must not have any outstanding unpaid judgments obtained by the United States in any court. Such judgments do not include those filed as a result of action in the United States Tax Courts.**

Loan applicants must provide evidence that all Federal judgments have been released or paid in full. Loans will not be approved for applicants with unresolved Federal judgments. Loan funds shall not be used to pay Federal judgments. Direct questions about outstanding judgments to Regional Attorney.

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Continued on the next page

**86 General Eligibility Requirements (Continued)**

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**G****Providing False Information**

**[7 CFR 773.6(f)] The loan applicant, in past or present dealings with the Agency, must not have provided the Agency with false information.**

The applicant must not have knowingly provided false information, or misleading documents or statements, to affect a credit or program decision. Examples include inaccurate balance sheets or falsified production records.

See Exhibit 2 for the definition of "false information".

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**H****Credit History**

**[7 CFR 773.6(g)] The individual or business entity loan applicant and all entity members must have acceptable credit history demonstrated by debt repayment. A history of failure to repay past debts as they came due (including debts to the Internal Revenue Service) when the ability to repay was within their control will demonstrate unacceptable credit history. Unacceptable credit history will not include isolated instances of late payments which do not represent a pattern and were clearly beyond the applicant's control or lack of credit history.**

Applicants are expected to have paid debts when due without patterns of late payments, judgments, chargeoffs, or collection accounts. An unacceptable credit history will be demonstrated by a history of failures to repay past debts as they come due when the ability to repay was within the applicant's control. Any occurrences that are more than 36 months old will not be considered if more recent activity reflects a more acceptable performance.

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**I****Loans to FSA Employees**

Loans may be made to Agency employees.

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**87 Eligible Loan Purposes**

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**A****General Loan Purposes**

The Authorized Agency Official shall review applications to ensure that SALP funds are used for authorized purposes.

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**B****SALP Loan Purposes**

**[7 CFR 773.7] Loan funds may be used for any of the following purposes related to the production or marketing of apples:**

- (a) Payment of costs associated with reorganizing a farm to improve; profitability;**
- (b) Payment of annual farm operating expenses;**
- (c) Purchase of farm equipment or fixtures;**
- (d) Acquiring, enlarging, or leasing a farm;**
- (e) Making capital improvements to a farm;**

**Note:** SALP funds may be used for real estate purposes; however, the loan must be repaid within 3 years.

- (f) Refinancing indebtedness;**

**Note:** The debt must have been incurred for a purpose related to the production or marketing of apples.

- (g) Purchase of cooperative stock for credit, production, processing, or marketing purposes; or**
  - (h) Payment of loan closing costs.**
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**88 Loan Limitations**

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**A****Maximum Loan Amount**

**[7 CFR 773.8(a)] The maximum loan amount any individual or entity may receive under Special Apple Loan Program is \$500,000.**

**[7 CFR 773.8(b)] The maximum loan is further limited to \$300 per acre of apple trees in production in 1999 or 2000, whichever is greater.**

**Note:** The applicant will certify to actual acres in apple production in 1999 and 2000 on CCC-2651. The year with the greater acreage in production will be used to determine the base acreage used to calculate the maximum loan the applicant is eligible to receive. Immature trees, not of bearing age, may be considered.

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**B****Prohibited Use of Loan Funds**

**[7 CFR 773.8(c)] Loan funds may not be used to pay expenses incurred for lobbying or related activities.**

**[7 CFR 773.8(d)] Loans may not be made for any purpose which contributes to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity.**

**Note:** A decision by the Agency to reject an application for this reason is appealable. An appeal questioning the presence of a wetland, converted wetland, or highly erodible land on a particular property must be filed directly with the USDA agency making the determination according to the Agency's appeal procedures.

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**89 Environmental Requirements**

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**A****Environmental  
Evaluation**

**[7 CFR 773.9(a)] Except as otherwise specified in this section, prior to approval of any loan, an environmental evaluation will be completed by the Agency to determine if the proposed action will have any adverse impacts on the human environment and cultural resources. Loan applicants will provide all information necessary for the Agency to make its evaluation.**

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**B****NEPA and  
NHPA  
Compliance**

**[7 CFR 773.9(b)] The following loan actions were reviewed for the purpose of compliance with the National Environmental Policy Act (NEPA), 40 CFR Parts 1500 through 1508, and determined not to have a significant impact on the quality of the human environment, either individually or cumulatively. Therefore these loan actions are categorically excluded from the requirements of an environmental evaluation:**

- (1) Payment of legal costs associated with reorganizing a farm to improve its profitability as long as there are no changes in the land's use or character;**
- (2) Purchase of farm equipment which will not be affixed to a permanent mount or position;**
- (3) acquiring or leasing a farm;**

**Note:** Provided that no loan funds are used to expand the operation in a manner which may have the potential for environmental impacts

- (4) Refinancing an indebtedness not greater than \$30,000;**
  - (5) Purchase of stock in a credit association or in a cooperative which deals with the production, processing, or marketing of apples; and**
  - (6) Payment of loan closing costs.**
- 

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**89 Environmental Requirements (Continued)**

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**B****NEPA and  
NHPA  
Compliance  
(Continued)**

**[7 CFR 773.9(c)] The loan actions listed in paragraph (b) of this section were also reviewed in accordance with section 106 of National Historic Preservation Act (NHPA). It was determined that these loan actions are non-undertakings with no potential to effect or alter historic properties and therefore, will not require consultation with the State Historic Preservation Officer, Tribal Historic Preservation Officer, or other interested parties.**

For loan actions which are categorically excluded, the following statement should be included in the running record of the case file:

"This loan is categorically excluded from the requirements of an environmental evaluation and has been determined a non-undertaking under section 106."

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**C****Environmental  
Review**

For all other loan purposes, an environmental evaluation will be completed using FSA-850 according to 1-FSFL.

**[7 CFR 773.9(d)] If adverse environmental impacts, either direct or indirect, are identified, the Agency will complete an environmental assessment in accordance with the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA to the extent required by law.**

For example, if completion of FSA-850 identifies adverse environmental or cultural resource impacts and no alternative or mitigation measures exist, a Class II Environmental Assessment will be completed according to RD Instruction 1940-G, Section 1940.318 and Exhibit H.

If it is determined from completing the environmental assessment process that there are significant impacts and no alternatives or mitigation measures exist, the County Office shall do either of the following:

- deny the applicant's request for a loan
  - request that SED request assistance from the National Office for further assessment of the impacts of the project and any associated alternatives and mitigation measures.
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**89 Environmental Requirements (Continued)**

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**D****Emergencies**

When emergency circumstances arise that prevent implementing the provisions of this section, follow the provisions in RD Instruction 1940-G, Section 1940.332.

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**E****Monitoring**

FSA staff, who normally have responsibility for the post-approval inspection and monitoring of approved projects, shall ensure that mitigation measures that were identified in the approval stage and required to be undertaken to reduce adverse environmental impacts are effectively implemented.

FSA staff shall review the action's approval documents and consult with the preparer of the action's environmental review document before making site visits or requesting project status reports to determine whether there are environmental requirements to be monitored.

- The preparer will directly monitor actions containing difficult or complex environmental special conditions.
  - Before certifying that conditions within offers of financial assistance have been fully met, the responsible monitoring staff will obtain the opinion of the preparer for those conditions developed as a result of the environmental review. Satisfactory completion of required mitigation measures will be documented as an addendum to Exhibit 12 of FSA-850 on file with initials of the reviewing official on the addendum.
  - Whenever noncompliance with an environmental special condition is detected by FSA, SEC will be informed immediately and take appropriate steps, in consultation with the responsible program office, to bring the action into compliance.
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Continued on the next page

**89 Environmental Requirements (Continued)**

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**F  
Due Diligence**

**[7 CFR 773.9(e)] In order to minimize the financial risk associated with contamination of real property from hazardous waste and other environmental concerns, the Agency will complete an environmental risk evaluation of the environmental risks to the real estate collateral posed by the presence of hazardous substances and other environmental concerns.**

- (1) The Agency will not accept real estate as collateral which has significant environmental risks.**
- (2) If the real estate offered as collateral contains significant environmental risks, the Agency will provide the applicant with the option of properly correcting or removing the risk, or offering other non-contaminated property as collateral.**

The release or presence of a hazardous substance, hazardous waste, or leaking underground storage tank on a property could affect the value of the property that is offered as security for a loan. Furthermore, a borrower with substantial liability associated with hazardous waste contamination or a leaking underground storage tank may indicate a severely diminished ability to repay. Therefore, due diligence will be performed for all new loans involving real estate as security, including real estate offered as additional security. Due diligence will be completed by the County Office by completing the Transaction Screen Questionnaire, which is available from all SEC's.

If FSA determines that the property being offered as security contains possible hazardous waste contamination based on the completion of a Transaction Screen Questionnaire, FSA shall notify the applicant that no further processing of the loan application can take place until 1 of the following occurs:

- the applicant provides an environmental site assessment completed by a qualified environmental professional that shows the property offered for security is not contaminated
  - new non-contaminated property is offered as security for the loan or loans
  - the contaminated property being offered as security has been fully remediated according to a plan approved by the appropriate regulatory agency
  - the contaminated property can be subdivided, thus leaving a non-contaminated property to offer as security.
-

90 Other Requirements

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**A**  
**Other Federal,  
State, and Local  
Requirements**

**[7 CFR 773.10] Borrowers are required to comply with all applicable:**

- (a) Federal, State, or local laws;**
- (b) Regulatory commission rules; and**
- (c) Regulations which are presently in existence, or which may be later adopted including, but not limited to, those governing the following:**
  - (1) Borrowing money, pledging security, and raising revenues for repayment of debt;**
  - (2) accounting and financial reporting; and**
  - (3) Protection of the environment.**

**Notes:** Additional instruction as to applicable laws, rules, and regulations will be provided in State supplements.

Agencies that may have regulations or other guidance that the borrower will have to follow include State Historic Preservation Offices, State Environmental Boards, local zoning boards, and local Conservation Districts.

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**B**  
**Nondiscrimination  
Statement**

Include the nondiscrimination statement in 1-FLP, \* \* \* paragraph 41 \* \* \* in all materials produced for public information or distribution.

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## 91 Applying for Loan Funds

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### A

#### Application Package

[7 CFR 773.18(a)] A complete application will consist of the following:

- (1) A completed Agency application form;
- (2) If the applicant is a business entity, any legal documents evidencing the organization and any State recognition of the entity;
- (3) Documentation of compliance with the Agency's environmental regulations contained in 7 CFR part 1940, subpart G;
- (4) A balance sheet on the applicant;
- (5) Payment to the Agency for ordering a credit report;
- (6) Any additional information required by the Agency to determine the eligibility of the applicant, the feasibility of the operation, or the adequacy and availability of security.

**Note:** If the applicant is an existing FSA farm loan borrower, information from the existing case file may be used with appropriate adjustments for the loan request.

See subparagraph H for additional application requirements for loans:

- over \$30,000
- for applicants who do not demonstrate strong owner equity.

### B

#### Application Form

Applicants shall submit CCC-2651, completing all certifications, including apple acreage and loan purposes. FSA will not verify certifications unless there is reason to believe they are inaccurate.

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Continued on the next page

**91 Applying for Loan Funds (Continued)**

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**C****Entity Applicants**

A business entity applicant must provide legal documents evidencing the organization and any State recognition of the entity such as articles of incorporation or partnership agreements, must be submitted. The application must include the following information for each entity member:

- name
- address
- Social Security number, or IRS tax ID number for a member that is a business entity
- percent ownership interest in the entity
- in the case of a member that is itself a business entity, legal documents evidencing the organization and any State recognition of the entity.

This information is required for FSA to:

- identify the members
  - document that the entity meets eligibility requirements
  - determine which members are required to execute the promissory note.
- 

**D****Environmental Information**

Applicants must comply with the environmental requirements in RD Instruction 1940-G.

Borrowers are required to have a current AD-1026 on file with FSA. FSA can conduct its environmental review in most cases without additional information. In cases where additional information is required such as wetland determinations, potential historical or archaeological sites, etc., the loan application is not considered complete, and the loan processing timeframe does not start, until this information is received.

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**E****Balance Sheet**

The application package for all loans must include a balance sheet on the applicant that was prepared within 90 calendar days of the date the application was submitted.

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Continued on the next page

**91 Applying for Loan Funds (Continued)**

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**F****Credit Report**

Applicants are required to provide payment for ordering a credit report. The cost is \$28 for a single applicant, \$34 for joint applicants, and \$40 for an entity applicant. FSA will obtain and review a current credit report. Credit report fees will be submitted according to 3-FI and applicable FI notices.

If an applicant is applying for another farm loan at the same time, then only 1 report will be ordered and payment will be handled according to FLP procedures.

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**G****Additional Information**

Additional information may be required if necessary to determine the eligibility of the applicant, the feasibility of the operation, or the adequacy and availability of security. This information may include collateral documents such as depreciation schedules, deeds, county assessments, tax records, etc. Verification of debts with significant impact on repayment and/or collateral security will also be obtained. These verifications can be made with copies of the last statements, or by using FSA-440-32.

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**H****Loans Over \$30,000 or Without Strong Owner Equity**

For any loan request when the applicant's net worth is less than 3 times the loan amount **and** on all loan requests greater than \$30,000, a complete application will include the following, in addition to the items in subparagraph A:

- **[7 CFR 773.18(a)(5)] The farm's operating plan, including the projected cash flow budget reflecting production, income, expenses, and loan repayment plan;**
- **[7 CFR 773.18(a)(6)] The last 3 years of production and income and expense information.**

**Note:** The documentation may include income statements, income tax returns, and actual production records.

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**92 Ability to Repay Loan**

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**A****Purpose**

**[7 CFR 773.19(e)(1)] All loan applicants must demonstrate that the loan can be repaid.**

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**B**

**Loans of \$30,000 or Less When Applicant Has Strong Net Worth**

**[7 CFR 773.19(e)(2)] For loans that are for \$30,000 or less where the applicant's balance sheet shows a net worth of three times the loan amount or greater, repayment ability will be considered adequate without further documentation.**

For loan requests of \$30,000 or less, a cash flow budget will not be required, if the applicant's balance sheet shows a net worth of 3 times the loan amount or greater.

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**C**

**Loans Greater Than \$30,000 or Any Loan When Applicant Has Weak Net Worth**

**[7 CFR 773.19(e)(4)] For loans that are for more than \$30,000, repayment ability must be demonstrated using the farm's operating plan, including a projected cash flow budget based on historical performance.**

**[7 CFR 773.19(e)(3)] For loans that are for \$30,000 or less where the applicant's balance sheet shows a net worth of less than three times the loan amount, repayment ability must be demonstrated using the farm's operating plan, including a projected cash flow budget based on historical performance. Such operating plan is required notwithstanding Section 773.18 of this part.**

For those applicants with a net worth that is not at least 3 times the loan amount or requesting a loan greater than \$30,000, repayment ability must be demonstrated using the farm's operating plan, including a projected cash flow budget based on historical performance.

The operating plan must include documentation of the ability to repay the loan requested. Cash flow must include a projection listing all anticipated cash inflows (including all farm income, nonfarm income, and all loan advances) and all cash outflows (including all farm and nonfarm debt service and other expenses) to be incurred by the borrower during the period of the budget, based on prior history and be consistent with anticipated prices for similar goods and services. It must be documented in sufficient detail to adequately reflect the overall condition of the operation. A cash flow budget may be completed either for a 12 month period, a typical production cycle, or the life of the loan, as appropriate to determine repayment ability.

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**93 Interest Rates and Loan Terms**

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**A**

**Establishing Interest Rate**

**[7 CFR 773.19(a)] The interest rate will be fixed for the term of the loan. The rate will be established by the Agency and available in each Agency Office, based upon the cost of Government borrowing for loans of similar maturities.**

The rate will be published in RD Instruction 440.1, Exhibit B.

---

**B**

**Loan Term**

**[7 CFR 773.19(b)] The loan term will be for up to 3 years, based upon the useful life of the security offered.**

The final maturity date for each loan cannot exceed 3 years from the date of the promissory note. A lesser term will be used if the security offered is not adequate to secure the loan for 3 years. The installments will be equal with the loan to be paid in full in 3 years from the date of the note. Balloon installments are prohibited. The Approval Official will document in the case file that the payment schedule is consistent with the income generated by the operation and the collateral securing the loan.

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## 94 Security Requirements

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### A

#### Purpose

**[7 CFR 773.19(c)] The Agency will take a lien on the following security, if available, as necessary to adequately secure the loan:**

- (1) Real estate;**
- (2) Chattels;**
- (3) Crops;**
- (4) Other assets owned by the applicant;**

**Note:** Examples include non-farm real estate, certificates of deposit, personal guarantees, etc.

- (5) Assets owned and pledged by a third party.**

Security must be taken to protect the Government's interest and as protection against possible loss.

**Note:** The applicant must provide a detailed description and valuation of possible security with the loan application, such as legal description of all owned farm real estate and local property tax assessments or list of equipment and income tax depreciation schedule.

---

### B

#### Loans of \$30,000 or Less

**[7 CFR 773.19(d)(1)] For loans that are for \$30,000 or less, collateral value will be based on the best available, verifiable information.** These loans will be considered adequately secured by taking a best lien obtainable on the applicant's real estate. If the applicant does not own real estate, a lien will be taken on crops and available chattel security.

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Continued on the next page

**94 Security Requirements (Continued)**

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**C****Loans Greater Than \$30,000**

Loan requests greater than \$30,000 require greater Agency scrutiny and documentation of adequate security. The Approval Official must determine the amount and type of security required to adequately secure the loan. When the applicant owns real estate, FSA will normally file a lien on all real estate. If other security, such as chattels or non-farm assets, will offer better protection of the Government's interest, the Approval Official may take a lien on the alternate security. When available, the security value should be at least 150 percent of the loan amount. In all cases, at a minimum, the value of the security must be at least equal to the loan amount.

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**D****Identifiable Security**

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

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**E****Real Estate**

A survey is not required, if the property is adequately described. The applicant is responsible for obtaining and paying any costs for documentation that must be completed to properly identify the security property.

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Continued on the next page

**94 Security Requirements (Continued)**

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**F**

**Chattels**

Chattels consist of equipment or livestock. Equipment must be identified by manufacturer, model, year, and serial number, where available. If this information is not available, a written description of the equipment that is adequate to define the security will be kept in the case file.

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**G**

**Crops**

Security interest in crops will be perfected by a UCC-1 filing according to State law.

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**H**

**Other Collateral**

An applicant may provide other collateral to strengthen the value of the Agency's lien. Other collateral may be non-farm real estate, certificates of deposit, or collateral pledged by others. The applicant will need to provide satisfactory documentation as to the value of the collateral and availability for FSA to perfect a lien.

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**I**

**Insurance**

The applicant will obtain insurance policies covering FSA loan security, if they are available and cost effective.

---

## 95 Appraisals

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### A

#### Loans of \$30,000 or Less

FSA will take a lien on the applicant's farm property, if it is owned. If not owned, FSA will take a lien on crops and chattels.

Appraisals or other methods of collateral valuation are not required.

---

### B

#### Loans Greater Than \$30,000

**[7 CFR 773.19(d)(2)] For loans of greater than \$30,000 where the applicant's balance sheet shows a net worth of three times the loan amount or greater, collateral value will be based on tax assessment of real estate and depreciation schedules of chattels, as applicable, less any existing liens. An appraisal will not be required.**

**[7 CFR 773.19(d)(3)] For loans of greater than \$30,000, where the applicant's balance sheet shows a net worth of less than three times the loan amount, collateral value will be based on an appraisal. Such appraisals must be obtained by the applicant, at the applicant's expense, and be acceptable to the Agency. Appraisals of real estate must be completed in accordance with USPAP. These appraisals must comply with 1-FLP, Part 6. The applicant will be supplied a list of acceptable appraisers at the time of loan application and must select an appraiser from this list to complete the appraisal. In addition, the applicant will be provided a list of appraisal requirements to give to the appraiser. The applicant should request the appraiser submit the appraisal directly to FSA. A current appraisal in the applicant's direct or guaranteed loan file, if applicable, is also acceptable. See 1-FLP, subparagraph 141 F for guidance on using third-party appraisals.**

**Note:** Loans can be approved subject to obtaining an appraisal.

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**96 Summary of Documentation and Security Requirements**

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**A**

**Summary Chart**

Use the following table to determine security, appraisal, and repayment documentation requirements.

<b>Loan Characteristics</b>	<b>Security</b>	<b>Appraisal Required</b>	<b>Repayment Documentation</b>
<ul style="list-style-type: none"> <li>• less than \$30,000</li> <li>• net worth greater than 3 times the loan amount</li> </ul>	best lien obtainable on real estate or chattels	No	not required
<ul style="list-style-type: none"> <li>• less than \$30,000</li> <li>• net worth less than 3 times the loan amount</li> </ul>	best lien obtainable on real estate or chattels	No	projected cash flow budget
<ul style="list-style-type: none"> <li>• greater than \$30,000</li> <li>• net worth greater than 3 times the loan amount</li> </ul>	must at least equal loan amount	No Use tax assessment/ depreciation schedules.	projected cash flow budget
<ul style="list-style-type: none"> <li>• greater than \$30,000</li> <li>• net worth less than 3 times the loan amount</li> </ul>	must at least equal loan amount	Yes	projected cash flow budget

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**97 Loan Processing/Approval or Denial Decisions**

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**A  
Approval  
Authorities**

Use this table to determine approval authorities.

<b>FLO GS-7</b>	<b>FLO GS-9</b>	<b>FLO GS- 11</b>	<b>FLM</b>	<b>SED and delegated State Office</b>
\$50,000	\$100,000	\$150,000	\$200,000	\$500,000

An Agency employee must have been delegated FLP loan approval authority to exercise the approval authorities in this part.

County Office employees will not be given approval authority without authorization from DAFLP, and may not exceed the loan approval authority equivalent to that of the equivalent grade for FLO or FLM.

SED may delegate approval authority to qualified State Office employees.

---

**B  
Other FSA  
Loans**

SALP loans may be approved up to \$500,000. Outstanding loan balances from other FLP's, direct or guaranteed, will not affect the amount an applicant is eligible to receive or the amount an Agency employee with approval authority is able to approve within the appropriate authority. Likewise, outstanding SALP loans will not affect the amount an applicant is eligible to receive under any other FSA loan program.

---

**C  
Processing  
Timeframes**

The Approval Official must make the decision to approve or deny the loan and notify the applicant within 30 calendar days after the loan application is complete.

All applications will be entered into MAC. SED, DD, and FLM will monitor the processing of all loan applications to ensure that all applications are processed in a timely manner.

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Continued on the next page

**97 Loan Processing/Approval or Denial Decisions (Continued)**

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**D****Evaluating Loan Requirements**

**[7 CFR 773.21(a)(1)] The Agency will approve the loan if it determines that:**

- (i) The loan can be repaid;**
- (ii) The proposed use of loan funds is authorized;**
- (iii) The applicant has been determined eligible;**
- (iv) All security requirements have been, or will be met at closing;**
- (v) All other pertinent requirements have been, or will be met at closing.**

The Approval Official has the ultimate responsibility for evaluating the loan file to determine whether the proposed request complies with established FSA policies and all pertinent regulations.

At a minimum, the Approval Official shall verify the following items in the final review before making the loan decision and is responsible for determining that the:

- applicant is eligible
- funds are requested for authorized purposes
- loan is within the limits the applicant is eligible to receive
- environmental requirements have been met
- security is adequate
- applicant has the ability to repay the loan.

A loan requiring a real estate appraisal for the determination of adequate security may be approved subject to obtaining an appraisal in those cases where:

- available financial information indicates security will be adequate when the appraisal is completed
- the approval requirements include obtaining an acceptable appraisal before loan closing.

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Continued on the next page

**97 Loan Processing/Approval or Denial Decisions (Continued)**

**E**

**Loan Approval [7 CFR 773.21(a)(2)] The Agency will place conditions upon loan approval as necessary to protect its interest.**

The Authorized Agency Official will:

- document the loan approved by completing and executing FmHA 1940-1; the applicant will not be required to sign FmHA 1940-1
- notify the applicant of loan approval using the following guide letter.

\_\_\_\_\_ (Applicant)  
 \_\_\_\_\_ (Address)  
 \_\_\_\_\_ (City, State, ZIP Code)

Dear \_\_\_\_\_:

By this letter, the United States of America, acting through the Farm Service Agency (FSA), has approved your loan request under the Special Apple Loan Program (SALP) for \$\_\_\_\_\_. Subject to the enumerated conditions and available funding, this loan approval will become binding and effective upon your acceptance of all conditions at loan closing.

The basic terms and conditions of the loan are set forth in this letter. These terms are not intended to be exhaustive, as final documentation will be binding in the loan closing documents. A promissory note and security instrument incorporating these and other necessary, usual, and customary terms will be signed prior to release of funds to you. Subject to those qualifications, the loan will be made on the following terms and conditions:

1. Loan Amount - The loan will total \$ \_\_\_\_\_.
2. Use of Proceeds -The loan will be used only for the following loan purposes.  
  
(Enter loan purposes).

Any material changes from the uses outlined in the application must have the express prior consent of FSA.

3. Interest Rate - Interest rate on the loan will be \_\_\_\_\_%, (Enter interest rate for apple loans in effect at the time of loan approval). This rate will be fixed for the term of the loan.
4. Term - The term of the loan will be \_\_\_\_\_ years, from the date of loan closing.
5. Repayment Schedule - The repayment schedule, will be  
  
(Enter the proposed repayment schedule including, installment amounts and due dates).

Continued on the next page

**97 Loan Processing/Approval or Denial Decisions (Continued)**

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**E****Loan Approval  
(Continued)**

6. Collateral - The loan will be secured by the following:

(Enter the collateral to be taken).

7. Insurance - You must maintain liability insurance coverage for any collateral securing the loan funds advanced throughout the term of the loan.
8. Reporting - You must notify FSA of any adverse actions, including but not limited to, anticipated default on the loan.
9. Legal Authority - You will certify that you (a) are duly formed, incorporated, and in compliance with applicable laws to conduct and perform its programs and purposes, and (b) have satisfied all statutory and regulatory requirements for continuing operations.
10. Environmental Requirements - You will certify that all Federal and State statutory and regulatory environmental requirements have been complied with. Throughout the term of the loan the borrower will comply with all applicable environmental laws and regulations relative to its activities.
11. Expiration - This commitment letter remains effective until close of business on \_\_\_\_\_ (enter 60 calendar days from the date of the letter). The loan closing and release of loan funds are subject to you and FSA agreeing upon all terms and conditions to be contained in the documentation required for the loan, including promissory notes, loan agreements, and security instruments.

Your signature on all loan closing documents will indicate your acceptance of the conditions of this letter. The loan closing is scheduled for \_\_\_\_\_. If you have any questions concerning this proposal, please contact the FSA office at \_\_\_\_\_

Sincerely,

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Continued on the next page

**97 Loan Processing/Approval or Denial Decision (Continued)**

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**F  
Loan Denial**

The Agency will **not** approve a loan if it determines that:

- the applicant is not creditworthy, or that the applicant has knowingly provided incomplete, false, or misleading information
- the applicant, the applicant's operation, or other circumstances surrounding the loan are inconsistent with the authorizing statutes, other Federal laws, or Federal credit policies, except as modified by published regulations
- a feasible plan cannot be developed, except for loans of \$30,000 or less with adequate net worth, which do not require a plan; see subparagraph 92 B
- for loan requests greater than \$30,000, there is inadequate security for the loan requested.

Denial letters will be sent according to 1-APP and any other applicable Agency directives. All letters will include the nondiscrimination statement in 1-FLP, subparagraph 41 C.

The Approval Official must thoroughly document the reasons for denying the loan in the application file. If the Approval Official is not in the local office, the loan file will be sent back to the Authorized Agency Official for completing the loan denial process.

---

**G  
Appeals**

**[7 CFR 773.3] A loan applicant or borrower may request an appeal or review of an adverse decision made by the Agency in accordance with 7 CFR part 11.**

Approving authorities making adverse determinations will:

- inform the applicant of mediation, reconsideration, and appeal rights according to 1-APP
- follow procedure in 1-APP to process and act on appeals.

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Continued on the next page

**97 Loan Processing/Approval or Denial Decisions (Continued)**

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**H****Loan Funding**

**[7 CFR 773.20] Loan requests will be funded based on the date the Agency approves the application. Loan approval is subject to the availability of funds.**

The obligated loan funds will be available to the applicant at loan closing either as a check or by electronic funds transfer. Loan funds must be provided to the applicant within 15 calendar days after obligation, unless the applicant agrees to a longer timeframe.

If funds are not available to fund the loan request, the Authorized Agency Official informs the applicant that funds are not currently available. If subsequent or additional loan funds are not available within 120 calendar days of the date of the funding shortfall, the loan application will be withdrawn.

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**I****Loan Closing  
and Loan Fees**

The Approval Official, or designee, shall close the loan according to the following.

- **[7 CFR 773.21(b)(1)] The applicant must meet all conditions specified by the loan approval official in the notification of loan approval prior to loan closing.**
  - **[7 CFR 773.21(b)(2)] There must have been no significant changes in the plan of operation or the applicant's financial condition since the loan was approved.** A certification to this effect is included on CCC-2652.
  - **[7 CFR 773.21(b)(3)] The applicant will execute all loan instruments and legal documents required by the Agency to evidence the debt, perfect the required security interest in property securing the loan, and protect the Government's interests, in accordance with applicable State and Federal laws. In the case of an entity applicant, all officers or partners and any board members also will be required to execute the promissory notes as individuals.** CCC-2652 will be executed to provide evidence of repayment requirements and security pledged. No SALP loan funds will be transferred to the applicant until CCC-2652 has been executed.
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Continued on the next page

**97 Loan Processing/Approval or Denial Decisions (Continued)**

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**I  
Loan Closing  
and Loan Fees  
(Continued)**

**Notes:** For loans that require more than 2 signatures, the Approval Official will seek guidance from the appropriate Regional Attorney for assistance in properly executing an addendum or attachment for additional signatures.

SED will issue State supplements, with the advice of the Regional Attorney, on perfecting the liens, including preparing mortgages, for closing loans.

**[7 CFR 773.21(c)] The applicant will pay all loan closing fees including credit report fees, fees for appraisals, fees for recording any legal instruments determined to be necessary, and all notary, lien search, and similar fees incidental to loan transactions. No fees will be assessed for work performed by Agency employees.**

Payment of loan fees is an eligible loan purpose.

SALP loans, secured by real estate, will be closed according to RD Instruction 1927-B. Loans with real estate security will be closed by a closing agent, selected by and paid for by the applicant. When loans of \$30,000 or less are secured by real estate, they will be secured by a "best lien obtainable"; therefore title searches, certifications, or insurance will not be required. However, FSA may send the loan documents to an agent, selected and paid for by the applicant, for preparation, closing, and recording. SALP loans, with security other than real estate, will be closed according to FmHA Instruction 1941-B.

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**98 Loan Servicing**

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**A****Guidance**

**[7 CFR 773.22] Loans will be serviced in accordance with subpart J of part 1951, or its successor regulation, during the term of the loan. If the loan is not paid in full during this term, servicing will proceed in accordance with 1951.468.**

If any installment is not paid according to the terms of the loan agreement, the loan is not fully satisfied at expiration of the loan agreement, or the borrower is in default on the terms of the loan agreement or security instruments, the loan will be serviced according to FmHA Instruction 1951-J.

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**99 Exception to Security Requirement**

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**A****Exception**

**[7 CFR 773.23] The Agency may grant an exception to the security requirements of this section, if the proposed change is in the best financial interest of the Government and not inconsistent with the authorizing statute or other applicable law.**

DAFLP, or designee, is authorized to approve exceptions to:

- real estate security requirements
- requiring an appraisal or a title opinion.

If the applicant has an abundance of security available, DAFLP may approve an exception. The case file must contain documentation as to the basis for the determination and evidence that security and collectability for the loan are not adversely affected. DAFLP's decision to grant or deny exceptions is final, and appeal rights will not be given.

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**100-109 (Reserved)**



## Part 6 Emergency Loan for Seed Producers Program

### 110 Overview

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#### A

#### Scope

**[7 CFR 774.1] The regulations of this part contain the terms and conditions under which loans are made under the Emergency Loan for Seed Producers Program. These regulations are applicable to applicants, borrowers, and other parties involved in making, servicing, and liquidating these loans.**

---

#### B

#### Program Objective

**[7 CFR 774.1] The program objective is to assist certain seed producers adversely affected by the bankruptcy filing of AgriBiotech.**

---

### 111 General Eligibility Requirements

---

#### A

#### Eligibility Requirements

**[7 CFR 774.6] Loan applicants must meet all of the following requirements to be eligible under the Emergency Loan for Seed Producers Program.**

---

#### B

#### Seed Producer

**[7 CFR 774.6(a)] The applicant must be a seed producer.**

**[7 CFR 774.2] Seed producer is a farmer that produced a 1999 crop of grass, forage, vegetable or sorghum seed for sale to AgriBiotech under contract.**

A contract includes a sales contract with AgriBiotech or its predecessor organizations for the sale of 1999 grass, forage, vegetable, or sorghum seed. In addition, a written or oral extension of a previous years contract is also acceptable. The producer must not have received full payment for seed produced under contract to AgriBiotech as a result of the bankruptcy proceeding involving AgriBiotech. The documentation that the producer did not receive payment for seed production will be a bankruptcy proof of claim that is not contested and has not been assigned, sold, or transferred to another party in whole or in part.

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Continued on the next page

## 111 General Eligibility Requirements (Continued)

**B****Seed Producer  
(Continued)**

If there has been a change of business entity between the time that the 1999 seed crop was produced and loan closing, the Agency can make the loan to the successor organization provided that the individuals that owned a majority interest in the business entity that produced the 1999 crop are also members of the successor business entity, and the business entity that filed the proof of claim assigns their monetary interests to the Agency in consideration for the loan.

---

**C****Proof of Claim**

**[7 CFR 774.6(b)] The individual or entity loan applicant must have a timely filed proof of claim in the Chapter XI bankruptcy proceedings involving AgriBiotech and the claim must have arisen from a contract to grow seeds in the United States.**

**Note:** Proof of claims that are uncontested will be accepted as valid and assumed to be submitted in good faith for the purpose of obtaining an FSA loan. If claims are found to be false, these findings will be grounds for loan denial.

---

**D****United States  
Citizenship**

**[7 CFR 774.6(c)] The loan applicant must be a citizen of the United States or an alien lawfully admitted to the United States for permanent residence under the Immigration and Naturalization Act. For a business entity applicant, the majority of the business entity must be owned by members meeting the citizenship test or other entities that are domestically owned. Aliens must provide appropriate Immigration and Naturalization Service forms to document their permanent residency.**

Aliens must provide I-151 or I-551 to show permanent residency status. If the Authorized Agency Official questions the authenticity of I-151 or I-551 or the information on the form, the Authorized Agency Official may complete G-845 to request that INS verify the information. G-845 can be obtained from and submitted to the nearest INS District Office. To waive the service fee, the Authorized Agency Official shall insert "INTERAGENCY LAW ENFORCEMENT REQUEST" in the upper right corner of G-845.

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Continued on the next page

**111 General Eligibility Requirements (Continued)**

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**E****Legal Capacity to Incur Debt**

**[7 CFR 774.6(d)] The loan applicant and anyone who will execute the promissory note must possess the legal capacity to enter into contracts, including debt instruments.**

The loan applicant must be of legal age and mental capacity to enter into a legally binding agreement with FSA. An entity applicant, and the entity members who will execute the promissory note, must be able to enter into such a contract.

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**F****Delinquency on Federal Debt**

**[7 CFR 774.6(e)] At loan closing, the loan applicant, and anyone who will execute the promissory note must not be delinquent on any Federal debt, other than a debt under the Internal Revenue Code of 1986.**

Delinquencies will be verified by review of a CAIVRS report for the applicant, including if the applicant is an entity, the members that will be executing the loan notes and agreements. The loan applicant may be considered eligible if the delinquency will be remedied by the date of loan closing. Loan applicants may use loan funds to cure delinquencies. Federal debt includes, but is not limited to, student loans, CCC loans, FSA loans, Veteran's Administration loans, and Small Business Association loans. FSA guaranteed loans are not considered Federal debts.

**Note:** An applicant who is current on or who has successfully completed a bankruptcy reorganization plan that covers a Federal debt will not be considered delinquent.

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Continued on the next page

111 General Eligibility Requirements (Continued)

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**G**

**Outstanding  
Recorded  
Judgments**

**[ 7 CFR 774.6(f)] At loan closing, the loan applicant and anyone who will execute the promissory note must not have any outstanding unpaid judgments obtained by the United States in any court. Such judgments do not include those filed as a result of action in the United States Tax Courts.**

Loan applicants must provide evidence that all Federal judgments have been released or paid in full. Loans will not be approved for applicants with unresolved Federal judgments. Loan funds will not be used to pay Federal judgments. Direct questions about outstanding judgments to Regional Attorney.

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**H**

**Providing False  
Information**

**[7 CFR 774.6(g)] The loan applicant, in past or present dealings with the Agency, must not have provided the Agency with false information.**

The applicant must not have knowingly provided false information, or misleading documents or statements, to affect a credit or program decision. Examples include inaccurate balance sheets or falsified production records.

See Exhibit 2 for the definition of "false information".

---

**I**

**Loans to FSA  
Employees**

Loans may be made to FSA employees.

---

## 112 Eligible Loan Purposes

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### A

#### Reason for Program

The Emergency Loan for Seed Producers Program was designed to provide bridge loans to growers who were not paid for their 1999 crop of grass, forage, vegetable, or sorghum seed because of the AgriBiotech bankruptcy filing.

Borrowers may use loan funds for any typical expense that would have been funded with proceeds from the sale of their crop. Funds may not be used for any purpose prohibited according to paragraph 113.

---

## 113 Loan Limitations

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### A

#### Maximum Loan Amount

**[7 CFR 774.8(a)] The maximum loan amount any individual or business entity may receive will be 65 percent of the value of the timely filed proof of claim against AgriBiotech in the bankruptcy proceeding as determined by the Agency.**

The maximum loan amount any individual or business entity may receive under the Emergency Loan for Seed Producers Program may not exceed 65 percent of the value of the applicant's timely filed proof of claim in the AgriBiotech bankruptcy proceeding for 1999 seed produced or sold under contract.

The value of the applicant's timely filed proof of claim will be the amount of the applicant's uncontested claim for 1999 seed produced or sold under contract with AgriBiotech, less any payments or distributions which may have been made for the delivery or sale of 1999 seed inventory in the applicant's possession and included in the proof of claim amount at the time of filing.

The maximum loan amount will be rounded down to the nearest multiple of \$10.

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Continued on the next page

113 Loan Limitations (Continued)

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**B****Prohibited Use of  
Loan Funds**

- **[7 CFR 774.8(b)] Loan funds may not be used to pay expenses incurred for lobbying or related activities.**
- Loan funds may not be used to pay judgments obtained by the United States.
- **[7 CFR 774.8(c)] Loans may not be made for any purpose which contributes to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity.**

**Note:** A decision by the Agency to reject an application for this reason is appealable. An appeal questioning the presence of a wetland, converted wetland, or highly erodible land on a particular property must be filed directly with the USDA agency making the determination according to the agency's appeal procedures.

---

114 Other Requirements

---

**A**  
**Other Federal,  
 State, and Local  
 Requirements**

**[7 CFR 774.10] Borrowers are required to comply with all applicable:**

- (a) Federal, State, or local laws;**
- (b) Regulatory commission rules; and**
- (c) Regulations which are presently in existence, or which may be later adopted including, but not limited to, those governing the following:**
  - (1) Borrowing money, pledging security, and raising revenues for repayment of debt;**
  - (2) Accounting and financial reporting; and**
  - (3) Protection of the environment.**

Additional instructions as to applicable laws, rules, and regulations will be provided in State supplements.

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**B**  
**Nondiscrimination  
 Statement**

Include the nondiscrimination statement in 1-FLP, \* \* \* paragraph 41 \* \* \* in all materials produced for public information or \* \* \* distribution.

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**C**  
**Environmental  
 Requirements**

**[7 CFR 774.9] The loan actions in this part were reviewed for the purpose of compliance with the National Environmental Policy Act (NEPA), 40 CFR parts 1500 through 1508, and determined not to have a significant impact on the quality of the human environment, either individually or cumulatively. These loan actions are categorically excluded from the requirements of an environmental evaluation due to the fact that the loan funds would be utilized to replace operating capital the applicant would have had if AgriBiotech had not filed bankruptcy.**

The following statement should be included in the running record of the case file:

"This loan is categorically excluded from the requirements of an environmental evaluation."

---

115 Applying for Loan Funds

---

**A**

**Application Package**

[7 CFR 774.17] A complete application will consist of the following:

- (a) A completed Agency application form;
  - (b) Proof of a bankruptcy claim in the AgriBiotech bankruptcy proceedings;
  - (c) If the applicant is a business entity, any legal documents evidencing the organization and any State recognition of the entity;
  - (d) Documentation of compliance with the Agency’s environmental regulations in 7 CFR part 1940, subpart G;
  - (e) A balance sheet on the applicant; and
  - (f) Any other additional information the Agency needs to determine the eligibility of the applicant and the application of any Federal, State or local laws.
- 

**B**

**Application Form**

The applicant will submit FSA-2661, completing all certifications.

---

**C**

**Proof of Claim**

The applicant must have filed a timely \* \* \* proof of claim in the bankruptcy proceedings involving AgriBiotech that has not been transferred, assigned, or sold to another party, in whole or in part. An applicant will be required to provide proof of a valid claim. This may include a copy of the filed claim, written correspondence from the court affirming the claim, and any other legal documentation providing proof of the amount of, validity of, and holder of the claim. FSA may use public documents from the court to verify claims.

\*--Claims may also be verified using the Excel spreadsheet, Claimant List, posted to the Ag Credit File Library on BBS or available on request from the Loan Making Division at 202-720-3889. Such verification will not negate the need for the applicant to provide proof of a filed claim.--\*

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Continued on the next page

115 Applying for Loan Funds (Continued)

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**C**

**Proof of Claim  
(Continued)**

\*--Claims will not be considered eligible if filed after the July 5, 2000, bar date. The amount of the claim will be the "Claimed Amount" and eligible applicants will have a "Claim Number" as well as a "Creditor Number". Applicants will not be eligible for a loan greater than 65 percent of the claimed amount. However, agency officials will not deny loan requests based solely on such information initially submitted on or with the application, but will instead provide the applicant an opportunity to submit additional information as to the validity of the amount claimed and documentation of the proof of the claim. The Authorized Agency Official will notify the applicant in writing as to the items that need to be documented or clarified. The applicant must provide the needed items within 30 calendar days of the Agency's notification.--\*

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Continued on the next page



115 Applying for Loan Funds (Continued)

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**D**  
**Entity**  
**Applicants**

A business entity applicant must provide legal documents evidencing the organization and any State recognition of the entity such as articles of incorporation or partnership agreements, must be submitted. Entity applicants must submit additional information for each entity member. The application must contain the following information about each entity member:

- name
- address
- Social Security number or IRS tax identification number for a member that is a business entity
- percent ownership interest in the business entity
- in the case of a member that is itself a business entity, legal documents evidencing the organization and any State recognition of the entity.

This information is required for FSA to:

- identify the members
  - document that the entity meets eligibility requirements
  - determine which members are required to execute the promissory note.
- 

**E**  
**Environmental**  
**Information**

Borrowers are required to have a current AD-1026 on file with FSA.

**[7 CFR 774.9] The loan actions in this part were reviewed for the purpose of compliance with NEPA, 40 CFR Parts 1500 through 1508, and determined not to have a significant impact on the quality of the human environment, either individually or cumulatively. These loan actions are categorically excluded from the requirements of an environmental evaluation because the loan funds would be used to replace operating capital the applicant would have had if AgriBiotech had not filed bankruptcy.**

The loan actions listed in this part were also reviewed in accordance with section 106 of NHPA. It was determined that these loan actions are non-undertakings with no potential to effect or alter historic properties and therefore, will not require consultation with the State Historic Preservation Officer, Tribal Historic Preservation Officer, or other interested parties.

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Continued on the next page

**115 Applying for Loan Funds (Continued)**

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**F****Balance Sheet**

The application package for all loans must include a balance sheet on the applicant that was prepared within 90 calendar days of the date the application was submitted.

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**G****Additional Information**

Additional information required by the Agency to determine the eligibility of the applicant, the maximum loan amount, the availability of security, or the applicability of any Federal, State, or local laws may include information such as seed production contracts, contract numbers, seed varieties produced, amounts produced, seed test reports, seed lot numbers, bills of lading, and other similar documents or information.

Additional instructions as to applicable laws, rules, and regulations will be provided in State supplements.

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**116 Interest Rates and Loan Terms**

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**A****Interest Rate**

**[7 CFR 774.18(a)(1)] The interest rate on the loan will be zero percent for \*--36 months or until the date of settlement of, completion of, or final--\* distribution of assets in the bankruptcy proceeding involving AgriBiotech, whichever comes first.**

**[7 CFR 774.18(a)(2)] There after interest will begin to accrue at the regular rate for an Agency Farm operating-direct loan (available in any Agency office).**

The interest rate will be published in RD Instruction 440.1, Exhibit B.

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Continued on the next page

## 116 Interest Rates and Loan Terms (Continued)

**B****Loan Term and Amortization**

**[7 CFR 774.18(b)(1)] Loans shall be due and payable upon the earlier of the settlement of the bankruptcy claim or 36 months from the date of the note.**

**[7 CFR 774.18(b)(2)] However, any principal remaining thereafter will be amortized over a term of 7 years at the farm operating-direct loan interest rate.**

If not paid in full on or before the earlier of the settlement of the bankruptcy claim or 36 months from the date of the note, the unpaid balance of the note will be amortized in annual installments at the regular interest rate for farm operating-direct loans then in effect, over a loan term of 7 years from the date of \*--amortization. The effective date of the amortization will be the earlier of 36 months after the date of the original Promissory Note and Security Agreement, or the date of the settlement of the bankruptcy.

The first amortized installment should be scheduled in a manner consistent with when income is received by the operation, but in no case more than 12 months from the date of the amortization. The remaining amortized installments will be--\* scheduled annually from the date of the first amortized installment.

The loan will be amortized without additional review. The borrower will not be required to demonstrate creditworthiness or repayment or to pledge additional security. The borrower will be sent the following guide letter 36 months after the date of the original note or when instructed by the National Office.

\*--To process the amortization, County Offices will complete a 1M transaction, kind code 24.--\*

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Continued on the next page

116 Interest Rates and Loan Terms (Continued)

**B**  
**Loan Term and**  
**Amortization**  
**(Continued)**

\*--

\_\_\_\_\_(Borrower name)  
 \_\_\_\_\_(Address)  
 \_\_\_\_\_(City, State, ZIP Code)

Dear \_\_\_\_\_:

By this letter, the United States of America, acting through the Farm Service Agency (FSA), is providing notice of the beginning of interest accrual on your loan balance effective

(Enter the date 36 months after the date of the original note or the date provided by the National Office Farm Loan Programs for the settlement of, completion of, or final distribution of assets in the AgriBiotech bankruptcy) and the loan installments due.

The basic terms and conditions of the loan amortization are set forth in this letter. These are an addendum to your loan agreement signed \_\_\_\_\_:

1. Loan Amount - The current principal balance is:  
 \$ \_\_\_\_\_.
2. Interest Rate - The Interest rate on the loan will be \_\_\_\_\_%, the current Direct farm-operating rate. This rate will be fixed for the term of the loan.
3. Term - The term of the loan will be seven (7) years from the date of interest accrual, noted above.
4. Repayment Schedule - The repayment schedule will be  
 (Enter proposed repayment schedule, including installment amount, and date due).
5. Reporting - You must notify FSA of any adverse actions, including but not limited to, anticipated default on the loan.

If you have any questions concerning this proposal, please contact the FSA office at \_\_\_\_\_.

Sincerely,

--\*

Continued on the next page

**116 Interest Rates and Loan Terms (Continued)**

---

**C****Loan Payment  
and Payment  
Schedule**

All payments received as a result of distributions from the bankruptcy estate of AgriBiotech and as a result of the delivery or sale of stored 1999 seed in the borrower's possession produced or sold under contract with AgriBiotech, are considered proceeds generated from the sale of basic security as defined in FmHA Instruction 1962-A, section 1962.4 and will be applied to the unpaid balance as extra payments as defined in FmHA Instruction 1951-A, section 1951.8(b).

If an extra payment of 20 percent or more of the unpaid balance of the loan after initial amortization is received, the remaining unpaid balance will be reamortized at the original interest rate within the remaining term of the loan.

The Approval Official will notify the borrower of the reamortization and the resulting payments using the guide letter in subparagraph B modifying the language referring to amortization to reamortization.

---

117 Security Requirements

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**A**  
**Loan Security**  
**Requirements**

**[7 CFR 774.18(c)(1)] The Agency will require a first position pledge and assignment of the applicant's monetary claim in the AgriBiotech bankruptcy estate to secure the loan.**

**[7 CFR 774.18(c)(2)] If the applicant has seed remaining in their possession that was produced under contract to AgriBiotech, the applicant will also provide the Agency with a first lien position on this seed. It is the responsibility of the applicant to negotiate with any existing lienholders to secure the Agency's first lien position.**

A lien search will also be completed to determine whether any liens may impair the Agency's security position.

The collateral description in the Agency's security instruments will include a reference to or description of:

- 1999 seed, and proceeds from 1999 seed, produced or sold under contract with AgriBiotech or its predecessor or successor organizations

\* \* \*

- all monetary interests in and distributions resulting from the applicant's claim against the bankruptcy estate of AgriBiotech.

Any creditor that may claim a lien or security interest in the applicant's contract rights, general intangibles, accounts receivable, 1999 seed and seed proceeds produced under contract with AgriBiotech, any remaining 1999 seed inventory produced under contract with AgriBiotech, or the applicant's interest in the bankruptcy estate of AgriBiotech must subordinate that lien or security interest in favor of the Agency. FSA-2663 will be completed for this purpose.

---

118 Loan Processing/Approval or Denial Decisions

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**A**  
**Approval**  
**Authorities**

Use this table to determine approval authorities.

<b>FLO GS- 7</b>	<b>FLO GS-9</b>	<b>FLO GS-11</b>	<b>FLM</b>	<b>SED and delegated State Office</b>
\$50,000	\$100,000	\$150,000	\$200,000	over \$200,000

An Agency employee must have an existing FLP loan approval authority to exercise the approval authorities in this part.

County Office employees will not be given approval authority without authorization from DAFLP, and may not exceed the loan approval authority equivalent to that of the equivalent grade for FLO or FLM.

SED may delegate approval authority to qualified State Office employees.

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Continued on the next page

**118 Loan Processing/Approval or Denial Decisions (Continued)**

---

**B****Other FSA  
Loans**

Loans made under the Emergency Loan for Seed Producers Program may be approved for any amount that the applicant is eligible to receive. Outstanding loan balances from other FLP's, direct or guaranteed, will not affect the amount any applicant is eligible to receive or the Agency employee with approval authority for the loan request. Likewise, outstanding Emergency Loans for Seed Producers loans will not affect the amount an applicant is eligible to receive under any other FSA loan program.

---

**C****Processing  
Timeframes**

**[7 CFR 774.19] Applications will be processed until such time that funds are exhausted, or all claims have been paid and the bankruptcy involving AgriBiotech has been discharged. When all loan funds have been exhausted or the bankruptcy is discharged, no further applications will be accepted and any pending application will be considered withdrawn.**

Applicants will be notified by letter if loan funds have been exhausted and that, as a result, their application is being withdrawn.

The Approval Official must make the decision to approve or deny the loan and notify the applicant within 30 calendar days after the loan application is determined complete.

All applications will be entered into MAC. SED, DD, and FLM will monitor the processing of all loan applications to ensure that all applications are processed in a timely manner.

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Continued on the next page

118 Loan Processing/Approval or Denial Decisions (Continued)

---

**D**

**Evaluating Loan Requirements**

The Approval Official has the ultimate responsibility for evaluating the loan file to determine whether the proposed loan complies with established FSA policies and all pertinent regulations. The Approval Official should verify the following items before making a loan decision:

- that the applicant is eligible
- that the loan is no more than 65 percent of the value of the bankruptcy claim
- that the environmental requirements have been met
- that the security requirements have been met
- that the proceeds will not be used for prohibited purposes.

---

Continued on the next page

118 Loan Processing/Approval or Denial Decisions (Continued)

E

Loan Approval

The term on FmHA 1940-1 will be 2 years. At amortization, the term will be revised to 7 years. The Authorized Agency Official will document loan approval by completing and executing FmHA 1940-1. The applicant will not be required to sign FmHA 1940-1. The Authorized Agency Official will use the following guide letter to notify the applicant of approval.

\*--

\_\_\_\_\_(Applicant)  
 \_\_\_\_\_(Address)  
 \_\_\_\_\_(City, State, ZIP Code)

Dear \_\_\_\_\_:

By this letter, the United States of America, acting through the Farm Service Agency (FSA), has approved your loan request under the Emergency Loans to Seed Producers program for \$\_\_\_\_\_. Subject to the enumerated conditions and available funding, this loan approval will become binding and effective upon your acceptance of all conditions at loan closing.

The basic terms and conditions of the loan are set forth in this letter. These terms are not intended to be exhaustive, as final documentation will be binding in the loan closing documents. A promissory note and security agreement incorporating these and other necessary, usual, and customary terms will be signed prior to release of funds to you. Subject to those qualifications, the loan will be made on the following terms and conditions:

1. Loan Amount - The loan will total \$\_\_\_\_\_.
2. Use of Proceeds -The loan will be used only for following loan purposes.  
  
(Enter loan purposes)

Any material changes from the uses outlined in the application must have the express prior consent of FSA.

3. Interest Rate - The Interest rate on the loan will be zero percent for 36 months or until the date of settlement of, completion of, or final distribution of assets in the bankruptcy proceeding involving AgriBiotech, which ever comes first. Thereafter, the interest will begin to accrue at the regular rate for a CONACT Farm operating-direct loan (available in any County FSA Office). This rate will be fixed for the term of the loan.
4. Term - The term of the loan will not exceed one hundred twenty (120) months, from the date of loan closing.
5. Repayment Schedule - The repayment schedule, when implemented, will be in equal installments for the term of the loan.

--\*

Continued on the next page

118 Loan Processing, Review, Approval or Denial Decisions (Continued)

**E**  
**Loan Approval**  
**(Continued)**

\*--

6. Collateral - The loan will be secured by the following: (a) an assignment of and lien on proceeds of your claim in the AgriBiotech bankruptcy; and (b) a first lien on 1999 seed and seed proceeds produced or sold under contract with AgriBiotech, remaining in your possession. In the case of any security in which another lender holds a secured interest, the other lender must agree to a subordination of the security interest based upon the borrower's debt FSA will hold after the loan is closed and advanced.
7. Reporting - You will notify FSA of any adverse actions, including but not limited to, anticipated default on the loan.
8. Legal Authority - You will certify, that you (a) are duly formed, incorporated, and in compliance with applicable laws to conduct and perform its programs and purposes, and (b) have satisfied all statutory and regulatory requirements for continuing operations.
9. Environmental Requirements - You will certify that all Federal and State statutory and regulatory environmental requirements have been complied with. Throughout the term of the loan you must comply with all applicable environmental laws and regulations relative to its activities.
10. Expiration - This commitment letter remains effective until close of business on \_\_\_\_\_ (enter 60 calendar days from the date of the letter). The loan closing and release of loan funds are subject to you and FSA agreeing upon all terms and conditions to be contained in the documentation required for the loan, including promissory notes, loan agreements, and security instruments.

Your signature on all loan closing documents will indicate your acceptance of the conditions of this letter. The loan closing is scheduled for \_\_\_\_\_. If you have any questions concerning this proposal, please contact the FSA office at \_\_\_\_\_.

Sincerely,

--\*

The obligated loan funds will be available to the applicant at loan closing either as a check or by electronic funds transfer. Loan funds must be provided to the applicant within 15 calendar days of obligation, unless loan closing conditions require otherwise or the applicant agrees to a longer timeframe.

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Continued on the next page

**118 Loan Processing/Approval or Denial Decisions (Continued)**

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**F****Loan Denial**

The Agency will not approve a loan if it determines that the applicant:

- is not eligible
- has assigned, transferred, or sold the proof of claim, in whole or in part, to another party
- has not provided complete, truthful, and accurate information
- proof of claim or its amount is contested or unverifiable
- is unable to provide the Agency with the required security position
- will use loan funds for prohibited purposes
- or the operation, or other circumstances surrounding the loan are inconsistent with the authorizing statutes, other Federal laws, or Federal credit policies.

The Approval Official must indicate the reasons for denial in the loan file, and inform the loan applicant. If the Approval Official is not in the local office, the loan file will be sent back to the Authorized Agency Official for completing the loan denial process. All letters shall include the nondiscrimination statement in 1-FLP, subparagraph 41 C.

Denial letters will be sent according to 1-APP and any other applicable Agency directive.

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Continued on the next page

**118 Loan Processing/Approval or Denial Decision (Continued)**

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**G****Appeals**

**[7 CFR 774.3] A loan applicant or borrower may request an appeal or review of an adverse decision made by the Agency in accordance with 7 CFR part 11.**

Approving authorities making adverse determinations will:

- inform the applicant of their mediation, reconsideration, and appeal rights according to 1-APP
  - follow procedure in 1-APP to process and act on appeals.
- 

**H****Loan Funding**

**[7 CFR 774.20] Loan requests will be funded based on the date the Agency approves an application. Loan approval is subject to the availability of funds.**

---

**I****Loan Closing**

The Approval Official, or designee, shall close the loan according to the following.

- **[7 CFR 774.22(b)] The applicant will execute all loan instruments and legal documents required by the Agency to evidence the debt, perfect the required security interest in the bankruptcy claim and protect the Government's interest, in accordance with applicable State and Federal laws. In the case of an entity applicant, all officers or partners and any board members will be required to execute the promissory notes as individuals.**

As required by subparagraph 117 A, the applicant must also execute any legal documents required to perfect a lien on any seed produced under contract to AgriBiotech remaining in their possession.

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Continued on the next page

118 Loan Processing/Approval and Denial Decisions (Continued)

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**I**  
**Loan Closing**  
**(Continued)**

FSA-2662 will be executed to provide evidence of repayment requirements and security pledged. FSA-2664 will be executed to provide FSA with a lien and assignment of the applicant's interest in the bankruptcy estate of AgriBiotech for security purposes. Loan funds will not be transferred to the applicant until FSA-2662 and FSA-2664 have been executed.

**Note:** For loans that require more than 2 signatures, the Approval Official will seek guidance from the appropriate Regional Attorney for assistance in properly executing an addendum or attachment for additional signatures.

- **[7 CFR 774.22(c)] The applicant will pay all loan closing fees for recording any legal instruments determined to be necessary and all notary, lien search, and similar fees incidental to the loan transaction. No fees will be assessed for work performed by Agency employees.**
- The Approval Official will prepare UCC-1 with a description of the applicant's interest in the AgriBiotech bankruptcy estate and, if applicable, 1999 stored seed in the applicant's possession. UCC-1 will be filed or recorded according to State law.

Emergency Loans for Seed Producers will be closed according to FmHA Instruction 1941-B. All loan closing fees will be paid by the applicant. Closing fees are an authorized loan purpose.

**Note:** SED will issue State supplements with the advice of OGC on perfecting proper lien position in preparing to close seed loans.

---

**\*--J**  
**Processing**  
**FSA-2664**

Before disbursing any funds, the agency official shall secure the loan with properly executed closing documents. The claimant or borrower shall assign any future payments from the court in the AgriBiotech bankruptcy to FSA by executing FSA-2664. The Authorized Agency Official is responsible for filing the assignment as expeditiously as possible. Delays in filing may compromise the Agency's claim for payment.--\*

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Continued on the page

118 Loan Processing/Approval and Denial Decisions (Continued)

\*--J

**Processing  
FSA-2664  
(Continued)**

The original FSA-2664 will be filed by mailing the following cover letter with the assignments.

Robert L. Berger & Associates LLC  
Attn: Yvette  
16501 Ventura Blvd., Suite 440  
Encino, CA 91436

Re: AgriBioTech, Inc.  
Chapter 11 Case No. 00-10533 LBR  
District of Nevada

Dear Mr. Berger:

By this letter, the United States of America, acting through the Farm Service Agency (FSA), is seeking to secure its interest in the payments that may be made on the following claims in the AgriBioTech, Inc. Chapter 11 bankruptcy.

(For each FSA-2664 attached, enter the claim number, claimant name, and dollar amount of claim.)

As discussed in Mr. William P. Wientraub's December 17, 2000, letter, this letter and attached Notice of Claim Assignment serve as notice that you should amend your records and forward any payments to be received for each claim to the address on the face of each of the attached Notice of Claim Assignment.

Any questions or correspondence concerning this matter should be directed to me at **(enter contact office telephone number)**.

Sincerely,

The letter and attached FSA-2664 must be mailed "Certified Mail - Return Receipt Requested". Each FSA-2664 must include the correct address for any future payments to be sent. The agency official sending the letter shall receive a return notice of assignment from Robert L. Berger and Associates LLC that will document the filing of the assignment of proceeds. The Authorized Agency Official will verify that the return notice is received for each Assignment of Claim filed. The notice will be kept in the casefile to document the Agency's interest in the bankruptcy proceeds.--\*

Continued on the next page

118 Loan Processing/Approval and Denial Decisions (Continued)

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\*--K

**Other Issues**

Loan funds may be distributed upon proper execution of all required loan documents at loan closing.--\*

---

**119 Loan Servicing**

---

**A****Guidance**

**[7 CFR 774.23] Loans will be serviced in accordance with subpart J of part 1951 or its successor regulation. If the loan is not repaid as agreed and default occurs, servicing will proceed in accordance with section 1951.468.**

If any installment is not paid according to the terms of the loan agreement, the loan is not fully satisfied at expiration of the loan agreement, or the borrower is in default on the terms of the loan agreement or security instruments, the loan will be serviced according to FmHA Instruction 1951-J.

---

**120 Exceptions to Program Requirements**

---

**A****Exception**

**[7 CFR 774.24] The Agency may grant an exception to any of the requirements of this section if the proposed change is in the best financial interest of the Government and not inconsistent with the authorizing statute or other applicable law.**

DAFLP has the authority to make exceptions to the rules for the Emergency Loan for Seed Producers Program. Exceptions will only be made on a case-by-case basis where the proposed exception is in the best interest of FSA and the loan applicant.

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

---

**121-135 (Reserved)**



**\*--Part 7 HBL Program**

**136 Overview**

---

**A  
Scope**

This part:

- contains the terms and conditions for loans made under the HBL Program announced in the Federal Register as NOFA, Volume 67, Number 129, pages 44799 through 44804, dated July 5, 2002
  - is applicable to applicants, borrowers, and other parties involved in making, servicing, and liquidating loans.
- 

**B  
Program  
Objective**

These loans will mitigate the income loss and reduction in credit availability faced by HB's. Assistance is limited to only those HB's who:

- have suffered losses as a result of MRLS
  - cannot obtain sufficient credit elsewhere
  - meet all other requirements established in this part.--\*
-

**\*--137 General Eligibility Requirements**

---

**A  
Eligibility  
Requirements**

**[NOFA III.] Applicants must meet all of the following requirements to be eligible for a Horse Breeder loan.** Eligibility requirements are addressed in subparagraphs B through N.

Applicants not meeting the eligibility requirements in this paragraph, will be notified according to subparagraph 149 F.

---

**B  
Horse Breeder**

**[NOFA III. 2.] The applicant must be a horse breeder as defined by this notice.**

**[NOFA I.] Horse breeder is an individual or business entity who as of November 28, 2001, derives more than 70 percent of their gross income from the horse breeding business during the shorter of:**

- 1. the 5-year period ending on January 1, 2001; or**
  - 2. the period the individual or business entity has been engaged in the horse breeder business.**
- 

**C  
Timely  
Application**

**[NOFA III. 1.] The applicant must submit a signed Form FSA 410-1 completed to the best of the applicant's ability to the Agency no later than September 30, 2002.**

The County Office staff will date stamp FSA-410-1 on the date it is received in the County Office.--\*

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Continued on the next page

**\*--137 General Eligibility Requirements (Continued)**

---

**D**

**Qualifying Loss** [NOFA III. 3.] **During the period beginning January 1 and ending October 1 of any calendar year 2000, 2001 or 2002:**

- (a) **30 percent or more of the mares owned by the applicant failed to conceive, miscarried, aborted, or otherwise failed to produce a live healthy foal; or**
- (b) **30 percent or more of the mares boarded on a farm owned, operated or leased by the applicant failed to conceive, miscarried, aborted, or otherwise failed to produce a live healthy foal.**

Applicants must have suffered a qualifying loss in the number of mares owned **or** the number of mares boarded. The number of mares **owned** and the number of mares **boarded** are not to be added together when calculating the qualifying loss.

---

**E**

**Financial Need** [NOFA III. 4.] **The applicant is unable to meet financial obligations, or pay ordinary and necessary expenses incurred in connection with the horse breeder business.**

See Exhibit 2 for the definitions of “financial obligations” and “ordinary and necessary expenses”.--\*

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Continued on the next page

**\*--137 General Eligibility Requirements (Continued)**

---

**F****Test for Credit**

**[NOFA III. 5.] The applicant must be unable to obtain sufficient credit elsewhere at reasonable rates and terms.**

**(a) To establish this, the applicant must obtain written denials of credit from legally organized commercial lending institutions within reasonable proximity of the applicant that specify the reasons for the denial as follows:**

**(1) In the case of a loan request of \$300,000 or more, two written denials of credit are required.**

- **One of these lenders must be the applicant's normal lender.**
- **Both lenders must typically make horse breeder business loans.**

**(2) In the case of a loan request of less than \$300,000, one written denial of credit is required.**

- **The applicant's normal lender will be contacted unless the lender has already denied a request to continue with the applicant or extend additional credit.**
- **The applicant may contact another lender that makes horse breeder business loans.**

**(3) In the case of a loan request of \$100,000 or less, the Agency may waive the requirement for obtaining a written denial of credit if the Agency determines that requiring a written denial would pose an undue burden on the applicant and based on the applicant's circumstances credit is not likely to be available.**

The loan approval official may waive the requirement for written credit denial when a review of the financial statement, credit report, and other financial information clearly indicates that other credit is not available to the applicant.--\*

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Continued on the next page

**\*--137 General Eligibility Requirements (Continued)**

---

**F****Test for Credit  
(Continued)**

A waiver must be thoroughly documented in the case file and should address a comparison of the:

- credit standards of local lenders that make HBL's
- applicant's financial condition.

The fact that an applicant has obtained credit for HB business purposes through credit cards, finance companies, or other "sub-prime" lenders does not constitute failure to meet the test for credit unless the rates and terms for that credit are similar to the rates and terms offered on loans for the same purpose by other lenders in the community.

**[NOFA III. 5. (b)] Notwithstanding the applicant's submission of the required written denial of credit, the Agency may contact other commercial lending institutions within reasonable proximity of the applicant and make an independent determination of the applicant's ability to obtain credit elsewhere.**

If the loan approval official believes that based on a review of the applicant's financial statement, credit report, and other financial information, that other credit is available, the loan approval official may contact lenders to determine if they are willing to extend credit to the applicant.

The following will be used to verify and document the availability of credit:

- FSA-440-32
- FSA-1940-38
- letter from lenders containing all the information requested on FSA-1940-38.

**[NOFA III. 5. (c)] When the applicant is an entity, all individuals, members, stockholders, and partners must meet test for credit requirements.--\***

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Continued on the next page

**\*--137 General Eligibility Requirements (Continued)**

---

**G  
Citizenship**

**[NOFA III. 6.] The applicant must be a citizen of the United States, United States non-citizen national, or a qualified alien under applicable Federal immigration laws. For an entity applicant, the majority of the entity must be owned by members meeting the citizenship test or other entities that are domestically owned.**

Any applicant who is neither a U.S. citizen, U.S. noncitizen national, nor a qualified alien should be rejected. U.S. noncitizen and qualified aliens must provide acceptable evidence that they are U.S. noncitizens or qualified aliens, as listed below. The authorized agency official should review the original document and make legible photocopies of both the front and back. If there is a question about the authenticity of the information provided, the authorized agency official must contact INS for verification.

Any of the following is acceptable evidence of qualified aliens.

- I-551 or before 1979, I-151
- I-688B which must be annotated “Provision of Law” followed by 1 of the provisions listed below:
  - 274 a.12(c)(ii)
  - 274 a.12(a)(1)
  - 274 a.12(a)(3)
  - 274 a.12(a)(4)
  - 274 a.12(a)(5)
  - 274 a.12(a)(10)
- I-765 annotated as follows:
  - A3
  - A5
  - A10--\*

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Continued on the next page

**\*--137 General Eligibility Requirements (Continued)**

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**G  
Citizenship  
(Continued)**

- I-571:
- I-94 with 1 of the following annotations:
  - “Admitted as Refugee Pursuant to Section 207”
  - “Section 208” or “Asylum”
  - “Section 243(h)” or “Deportation stayed by Attorney General”
  - “Paroled Pursuant to Section 212(d)(5) of the Immigration and Nationality Act (INA)”
  - “Admitted under Section 203(a)(7) of the INA.”

**Note:** If I-94 is not annotated, then it should be accompanied by 1 of the following.

- Final court decision granting asylum.

**Note:** Only if no appeal is taken.

- Letter from an INS asylum officer granting asylum if application is filed **on or after** October 1, 1990, or from an INS DD granting asylum if application filed **before** October 1, 1990.
- Court decision granting withholding of deportation.
- Letter from an INS asylum officer granting withholding of deportation if application filed **on or after** October 1, 1990.
- Receipt issued by INS indicating that an application for issuing a replacement document in 1 of the above-listed categories has been made, and the applicant’s entitlement to the document has been verified.
- Other acceptable evidence.

**Note:** If other documents are determined by INS to constitute acceptable evidence of eligible immigration status, it will be announced in the Federal Register.--\*

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**\*--137 General Eligibility Requirements (Continued)**

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**H****Legal Capacity**

**[NOFA III. 7.] The loan applicant must be of legal age, mental capacity, and have the authority to enter into a legally binding agreement. An entity applicant, and all entity members who will execute the promissory note, must meet this requirement.**

---

**I****Federal Debt**

**[NOFA III. 8.] At loan closing, the applicant and anyone who will execute the promissory note must not be delinquent on any Federal debt, other than a debt under the Internal Revenue Code of 1986, nor be a federal judgment debtor on a non-tax debt.**

Delinquencies will be verified by a review of a Credit Alert Interactive Voice Response System (CAIVRS) report for the applicant, including if the applicant is an entity, the members that will be executing the loan notes and agreements. The applicant may be considered eligible if the delinquency is remedied by the date of loan closing. Federal debt includes, but is not limited to, student loans, CCC loans, FSA direct loans, Veterans Administration loans, and Small Business Administration loans. FSA guaranteed loans are not considered Federal debts.

**Note:** An applicant who is current on or who has successfully completed a bankruptcy reorganization plan that covers a Federal debt will not be considered delinquent. Debt discharged in bankruptcy is not considered Federal debt.

---

**J****Unpaid  
Judgments**

**[NOFA III. 9.] At loan closing the applicant and anyone who will execute the promissory note must not have any outstanding unpaid judgements obtained by the United States in any court.**

Such judgments do not include those filed as a result of action in the U.S. Tax Courts. Direct questions about outstanding judgments to the Regional Attorney.--\*

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Continued on the next page

**\*--137 General Eligibility Requirements (Continued)**

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**K  
False  
Information**

**[NOFA III. 10.] The applicant, in past or present dealings with the Agency, must not have knowingly provided the Agency with false information.**

Examples of false information include but are not limited to inaccurate balance sheets or falsified production records.

---

**L  
Credit History**

**[NOFA III. 11.] The individual or business entity applicant and all entity members must have acceptable credit history demonstrated by debt repayment. A history of failure to repay past debts as they came due (including debts to the Internal Revenue Service) when the ability to repay was within their control will demonstrate unacceptable credit history.**

The loan approval official will use the following documents and sources, as applicable, to verify the creditworthiness of the applicant and all individual entity members.

- Credit reports ordered according to RD Instruction 1910-B.
- Current and past debts inquiry screens from the ADPS system.
- CAIVRS reports.
- FSA-440-32 or similar document.

Unacceptable credit history does not include the following:

- isolated instances of late payments that do not represent a pattern and were clearly beyond the applicant's control
  - any occurrences that are more than 36 months old if more recent activity reflects an acceptable performance
  - lack of credit history.--\*
- 

Continued on the next page

**\*--137 General Eligibility Requirements (Continued)**

---

**M**

**Repayment**

**[NOFA III. 12.] The applicant must submit a feasible plan as defined in this notice.**

See Exhibit 2 for the definition of “feasible plan”.

---

**N**

**Loans to FSA  
Employees**

**[NOFA VII.] Loans may be made to Agency employees otherwise qualified for the loans.**

Applications received from:

- County Office employees will be reviewed and approved by the State Office
  - State Office employees will be reviewed and approved by the National Office.--\*
-

**\*--138 Loan Purposes**

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**A**

**General Loan Purposes**

The loan approval official shall review applications to ensure that funds will be used for authorized purposes.

---

**B**

**Loan Purposes**

**[NOFA IV.] Loan funds only may be used to:**

**1. Pay ordinary and necessary expenses for the horse breeding business.**

**2. Replace mares and foals lost or disabled due to MRLS.**

**Note:** See Exhibit 2 for the definition of “disabled”.

**3. Purchase or lease additional existing pasture to replace pasture where a veterinarian or other recognized expert has determined the potential for MRLS exists.**

**4. Pay or refinance financial obligations as defined by this notice, provided the applicant can demonstrate a need to do so.**

**Note:** See Exhibit 2 for the definition of “financial obligations”.

The loan approval official must document that the lender or creditor to be refinanced is unwilling to restructure the debt at rates and terms that would permit the applicant to develop a feasible plan.

**[NOFA IV.]**

**5. Pay loan closing costs.--\***

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**\*--139 Loan Limitations**

---

**A****Maximum Loan Amount**

[NOFA V.]

1. **The maximum cumulative loan amount any individual or business entity may receive under this notice is limited to \$500,000.**
  2. **The amount of the loan is further limited to the lesser of;**
    - (a) **the financial needs of the applicant; or**
    - (b) **the amount of loss suffered by the applicant as measured by Section XI of this notice (paragraph 144).**
  3. **Outstanding loan balances from Agency Farm Loan Programs, direct or guaranteed, will not affect the amount an applicant is eligible to receive under this section.**
- 

**B****Prohibited Uses of Loan Funds**

[NOFA VI.]

1. **Loan funds may not be used to pay expenses incurred for lobbying or related activities.**
2. **Loan funds may not be used for any purpose which contributes to excessive erosion of highly-erodible land or to the conversion of wetlands to produce an agricultural commodity.**

**Note:** A decision by FSA to reject an application for this reason is appealable. An appeal questioning the presence of a wetland, converted wetland, or highly erodible land on a particular property must be filed directly with the USDA Agency making the determination according to the Agency's appeal procedure.

3. **Loan funds may not be used to refinance consumer debt, such as home equity loans, automobile loans, or credit card debt unless such debt is directly attributable to the horse breeder business operation.**
  4. **Loan funds may not be used to pay Federal judgments.--\***
-

**\*--140 Environmental Requirements**

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**A**

**Environmental Compliance**

**[NOFA IX. 1.] The environmental and historic preservation requirements contained in 7 CFR part 1940, subpart G or its successor regulation must be met prior to approval of any loan.**

---

**B**

**Environmental Review**

The authorized agency official will complete FmHA 1940-22, FmHA 1940-21, or a Class II Environmental Assessment, as required by RD Instruction 1940-G.

---

**C**

**Due Diligence**

**[NOFA IX. 2.] In order to minimize the financial risk associated with contamination of real property from hazardous waste and other environmental concerns, the Agency will complete an environmental risk evaluation.**

- (a) The Agency will not accept as security any real estate which has significant environmental risks, such as, but not limited to the presence of known or suspected underground storage tanks or hazardous waste.**
  - (b) If the real estate offered as security contains significant environmental risks, the Agency will provide the applicant with the option of properly correcting or removing the risk, at the applicant's expense or offering other non-contaminated property as security for the loan.--\***
-

**\*--141 Other Requirements**

---

**A**

**Other Federal, State, and Local Requirements**

**[NOFA X.] Horse breeder loan borrowers are required to comply with all applicable:**

- 1. Federal, State, or local laws;**
- 2. Regulatory commission rules; and**
- 3. Regulations which are presently in existence, or which may be later adopted including, but not limited to, those governing the following:**
  - (a) Borrowing money, pledging security, and raising revenues for repayment of debt;**
  - (b) Accounting and financial reporting; and**
  - (c) Protection of the environment.**

**Note:** Additional instruction as to applicable laws, rules, and regulations will be provided in State supplements.

- 4. Any construction financed by the Agency must comply with applicable Federal, State, local, and industry building standards.**

A development plan will be maintained in the borrower's case file.

---

**B**

**Nondiscrimination Statement**

The nondiscrimination statement in 1-FLP, paragraph 41 shall be included in all materials produced for public information or distribution and any adverse decision letters.

---

**C**

**ECOA**

**[NOFA VIII] The Agency must comply with the provisions of ECOA and the implementing regulations of the Federal Reserve System published in 12 CFR part 202.**

The ECOA statement in 1-FLP, paragraph 41 must be included in all adverse decision letters.--\*

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**\*--142 Complete Applications**

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**A  
Receiving and  
Processing  
Applications**

**[NOFA XII.] An Agency application Form FSA 410-1, completed to the best of the applicant’s ability and submitted on or before September 30, 2002, will meet the application deadline. However, a loan decision will not be made until a complete application is received in accordance with this section. All forms listed are available at any Agency office. The Agency will not consider any application that is not complete as of June 30, 2003. A complete loan application includes all of the following items (subparagraphs B through L).**

---

**B  
Application Form**

**[NOFA XII. 1.] A completed FSA 410-1.**

Upon receiving a complete FSA-410-1, FSA personnel will date stamp the application form and record the date received and the date complete in the MAC system. The system will automatically generate WLS item 1025 for a 60 day loan decision follow-up.

**Notes:** MAC may automatically generate other WLS items that do not apply to HBL’s. These items should be deleted.

For MAC purposes only, use Emergency Designation Number “H002”.--\*

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Continued on the next page

**\*--142 Complete Applications (Continued)**

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**C  
Entity  
Applicants**

**[NOFA XII. 2.] If the applicant is a business entity, all legal documents evidencing the organization and any state recognition of the entity such as articles of incorporation or partnership agreements. The application must include the following information for each entity member:**

- (a) Name.**
- (b) Address.**
- (c) Social Security number, or IRS tax ID number for a member that is a business entity.**
- (d) Percent ownership interest in the entity.**
- (e) In the case of a member that is itself a business entity, legal documents evidencing the organization and any State recognition of the entity.**

This information is required for FSA to:

- identify business entity members
  - document that the entity meets eligibility requirements
  - determine which members are required to execute the promissory notes and security agreements.
- 

**D  
Test for Credit**

**[NOFA XII. 3.] Verification that the applicant or individual members of an entity applicant cannot obtain credit elsewhere including a loan guarantee by a State or other Federal agency.**

This will be documented according to requirements listed under subparagraph 137 F.--\*

---

Continued on the next page

**\*--142 Complete Applications (Continued)**

---

**E****Tax and Business  
Records**

**[NOFA XII. 4.] Income tax and business records for the lesser of the previous 3 years or the number of years in business.**

**Note:** Eligibility determinations require 5 years of tax and business records, if available. Feasibility determinations require only 3 years of tax and business records, if available. Records should be marked “**Confidential**” when kept in the case file.

---

**F****Balance Sheet**

**[NOFA XII. 5.] A current balance sheet that was prepared within 90 days of the date of application.**

---

**G****Operating  
Plan/Cashflow**

**[NOFA XII. 6.] Projected production, income and expenses, and loan repayment plan, which may be submitted on Form FSA 431-2 or other similar plan of operation acceptable to the Agency.**

---

**H****Off-farm/Other  
Nonfarm Income**

**[NOFA XII. 7.] Verification of off-farm employment, and other non-farm income, if any. This will be required only when the applicant is relying on off-farm income for a feasible plan.**

RD 1910-5 or other similar documentation may be used to verify nonfarm income.

---

**I****Legal  
Description for  
Real Estate**

**[NOFA XII. 8.] A legal description of farm, real estate property securing the loan, and a copy of any lease, contract, option or agreement, or a written statement setting forth terms or conditions of any agreement entered into by the applicant which may be pertinent to consideration of the application.--\***

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Continued on the next page

**\*--142 Complete Applications (Continued)**

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**J**

**Veterinary  
Certification**

**[NOFA XII. 9.] A written certification from a licensed veterinarian, see Exhibit 1 Sample, stating the number of mares:**

- (a) Owned or boarded that were bred.**
- (b) That failed to conceive or otherwise produce a live healthy foal.**

See Exhibit 16 for a sample Veterinary Certification.

---

**K**

**Credit Reports**

**[NOFA XII. 10.] A credit report fee of \$28.00 for individual applicants, \$34.00 for joint applicants, and \$40.00 for commercial business applicants.**

Credit report fees will be handled according to 3-FI.

---

**L**

**Other  
Documentation**

**[NOFA XII. 11.] Any other documents requested by the Agency and needed to process the application.**

Other documentation may include but is not limited to the following:

- construction plans and specifications
  - sales receipts
  - breeding records
  - boarding contracts.--\*
-

**\*--143 Incomplete Applications**

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**A  
Handling  
Incomplete  
Applications**

When an incomplete application is received, the authorized agency official shall:

- date stamp FSA-410-1 and record the date received in the MAC system
- no later than 10 days from the date of receiving the incomplete application send a letter to the applicant:
  - listing all information needed to complete the application
  - advising the applicant that the application cannot be processed until all required information is received
  - establishing June 30, 2003, as the deadline for submitting all required information.

**Note:** Use WLS item number 1015 to establish the 10 day incomplete application follow-up letter.

On January 30, 2003, the authorized agency official shall send a reminder letter to all applicants with incomplete applications:

- listing any required information from the initial letter that has not been received
- advising the applicant that the incomplete application will be automatically withdrawn without further notice on COB June 30, 2003.

**Note:** Use a field office created WLS item numbered 1500 or above for the reminder letter.--\*

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**\*--144 Loss Calculations**

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**A****Calculating Loss [NOFA XI. 1.]**

- (a) **The applicant's Federal income tax and business records will be the primary source of financial information for the loss calculation. Sales, receipts, invoices, or other official sale records will document the sales price of individual animals as referenced in paragraph (2) of this section.**
- (b) **If the applicant does not have 3 complete years of business records, the Agency will obtain the most reliable and reasonable information available from sources such as the Cooperative Extension Service, universities, and breed associations to document production and expenses for those years for which the applicant does not have a complete year of business records. To the extent such additional information is unavailable, the Agency will use the applicant's available business records to make realistic income and expense calculations.**
- 

**B****Calculating Losses Because of Foal Loss**

**[NOFA XI. 2.] To determine the value of foals lost or disabled as a result of MRLS:**

- (a) **The average sales price of horses sold by the applicant will be determined by adding the total proceeds from the sales of horses including only: weanlings, yearlings and 2-year old offspring for the previous 3 non-loss years, and dividing by the number of horses sold during those 3 years.**
- (b) **The average sales price will be multiplied by the number of mares shown on the veterinarian certification that failed to conceive or produce a live healthy foal due to MRLS.--\***
- 

Continued on the next page

**\*--144 Loss Calculations (Continued)**

---

**B**

**Calculating Losses Because of Foal Loss (Continued)**

<b>Example: Horse Sales</b>	<b>Number of Horses Sold</b>
<b>1998</b> \$15,000	3
<b>1999</b> \$10,000	2
<b>2000</b> <u>\$23,000</u>	<u>5</u>
\$48,000	10

$$\frac{\text{Total sales}}{\text{Total Horses Sold}} = \text{Average Sales Price} \quad \frac{\$48,000}{10} = \$4,800$$

Number of mares, indicated on the veterinarian certificate that failed to conceive or produce a live healthy foal (**Foals Lost**): 6

Average Sales Prices x Number of Foals Lost = Value of Foal Loss

$$\$4,800 \times 6 = \$28,800$$

To be eligible for a foal loss for the value of the foal, the mare and foal must have been owned by the applicant.

**Exception:** If a percentage of the foal sales price was to pay the boarding bill, a nonowner applicant would be eligible for a percentage of the foal loss.

The value of foal loss for applicants who have not had any weanlings, yearlings, and 2-year old offspring sales for the previous 3 nonloss years will be equal to the stud fee.--\*

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Continued on the next page

**\*--144 Loss Calculations (Continued)**

**C  
Calculating  
Other Losses**

[NOFA XI. 3.] To determine the value of all other losses:

- (a) Calculate the average annual net income for the horse breeder business for the previous 3 non-loss years, and subtract the horse breeder business net income for the loss year.
- (b) The annual net income for the horse breeder business will be determined by subtracting all cash business expenses from all business income reported on Schedule F and other related schedules of the applicant's Federal income tax return. Any depreciation shown on Schedule F is not a cash expense and must not be included as an expense in loss calculations.
- (c) The average annual net income for the horse breeder business shall be calculated by adding the applicant's horse breeder business annual net income from the previous 3 non-loss years and dividing by 3.

**Note:** Loss must be because of MRLS. See Exhibit 2 for the definition of "MRLS".

**Example:**

	1998	1999	2000
<b>Gross HB Business Income</b>	\$120,000	\$130,000	\$140,000
<b>Less Cash HB Business Exp.</b>	\$ 55,000	\$ 50,000	<u>\$ 57,000</u>
<b>Net Income from HB Business</b>	\$ 65,000	\$ 80,000	\$ 83,000

<b>Net Income from HB Business (Nonloss Years)</b>	1998	\$65,000
	1999	\$80,000
	2000	<u>\$83,000</u>
<b>Total Net HB Business Income</b>		\$228,000

**HB Business Net Income for the Loss Year**     \$40,000

Total Net HB Business Income = Average Net Income from HB Business  
3 years

$$\frac{\$228,000}{3} = \$76,000$$

<b>Average Net Income from HB Business</b>	\$76,000
<b>Less HB Business Net Income for the Loss Year</b>	<u>\$40,000</u>
<b>Value of Other Losses</b>	\$36,000--*

Continued on the next page

**\*--144 Loss Calculations (Continued)**

---

**D**

**Total Amount of Loss** [NOFA XI. 4.] **The results of the calculations from paragraphs 2 and 3 of this section shall be added together to determine the total amount of loss the applicant has suffered as a result of MRLS.**

<b>Example: Value of Foal Loss</b> (subparagraph B)	\$28,800
<b>Plus Other Losses</b> (subparagraph C)	<u>\$36,000</u>
<b>Total Loss</b>	\$64,800--*

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**\*--145 Rates and Terms**

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**A****Interest Rate**

**[NOFA XIII.] Loans closed in accordance with this notice will be charged interest at the rate established for Emergency loans in 7 CFR part 764. Current rates are available at any Agency office.**

The interest rate for HBL will be the lower of the interest rate at the time of either loan approval or loan closing and in no event shall exceed 8 percent annually. Interest rates are published in RD Instruction 440.1, Exhibit B.

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**B****Terms**

**[NOFA XIV.]**

- 1. The Agency schedules repayment of Horse Breeder loans based on the useful life of the loan security and the applicant's repayment ability, but not to exceed 20 years. Loans secured only by collateral other than real estate shall not exceed 7 years. If necessary to improve the repayment ability of the borrower and real estate security is available, the term of the loan may be extended up to a total length not to exceed 20 years from the date of the promissory note. Balloon installments are prohibited. Balloon installments are final installments that exceed twice the amount of the regular amortized installment.**
- 2. The repayment schedule must include at least one payment every year. Payments must be no less than the interest accrued on the principal balance at the time the installment is to be paid and may not result in a prohibited balloon installment.**

The specific term of the loan shall be determined by the applicant's projected ability to repay as shown on FSA 431-2 or other operating plan prepared for a typical year according to FmHA Instruction 1924-B.--\*

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**\*--146 Security**

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**A  
General Security  
Requirements**

[NOFA XV.]

1. The applicant shall have sufficient equity to provide adequate security for the loan. In addition, the applicant shall provide additional security, if available, not to exceed 150 percent of the loan amount.
  2. Loans shall be secured by collateral that can be adequately described in security instruments.
  3. The Agency will take the best lien obtainable on the following security, if available, as necessary to protect the Government’s interest. The security will be taken in the order of priority as follows: (subparagraphs B through G).
- 

**B  
Real Estate**

[NOFA XV. 3(a)] A survey is not required if the property is adequately described. The applicant is responsible for obtaining and paying any costs for documentation necessary to properly identify the security property.

[NOFA XVII.] The Agency may take a lien on Indian Trust lands as security provided that the requirements of 7 CFR part 1943, subpart A, or its successor regulations are satisfied.

---

**C  
Chattels and  
Crops, other  
than Horses**

[NOFA XV. 3(b)] Chattels consist of equipment or livestock, other than horses. Equipment must be identified by manufacturer, model, year, and serial number, where available.

---

**D  
Other Assets  
Owned by the  
Applicant**

[NOFA XV. 3(c)] Other assets owned by the applicant such as certificates of deposit may be taken as security. The applicant shall provide satisfactory documentation as to the value of the assets and their availability for Agency lien perfection.

**Note:** Entity members must pledge all assets, personal and business, as collateral, if necessary to adequately secure the loan.--\*

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Continued on the next page

## \*--146 Security (Continued)

**E****Third Party Pledges of Property Not Owned by the Applicant**

[NOFA XV. 3(d)] **Interests in property not owned by the applicant (such as, but not limited to: real estate, leases that provide a mortgageable value, water rights, easements, mineral rights, and royalties) can be offered as security for the loan.**

---

**F****Horses**

[NOFA XV. 3(e)] **Horses must be identified by color, sex, and distinguishing marks (i.e., socks, blaze, registration numbers).**

**Note:** Some registered horses have a registration number tattooed on their lip.

---

**G****Repayment Ability**

[NOFA XV. 3(f)] **The applicant's repayment ability may be accepted as adequate security provided that the applicant can meet all of the following requirements.**

- (1) The applicant has pledged as security for the loan all available personal and business collateral.**

**Note:** If the applicant is an entity, the entity and all individual members will pledge all assets, personal and business, as collateral.

- (2) The feasible plan, approved by the Agency, indicates the loan will be repaid based upon the applicant's production and income history and addresses applicable income risks to the extent practicable through the use of breeder's insurance, mortality insurance, or similar risk management practices.**

- (3) The applicant has had positive net income from the horse breeder business in at least 3 of the past 5 years. If the applicant has been in the horse breeder business for fewer than 5 years, the applicant must have had positive net income from the horse breeder business in at least 50 percent of the years the applicant has been in the horse breeder business.**

**Note:** Net income will be calculated according to subparagraph 144 C.

- (4) The applicant has given the Agency an assignment on any USDA program payments, unencumbered installment sales proceeds, or other contractually based income.--\***
-

**\*--147 Appraisals and Valuation Requirements**

---

**A**

**Appraisals**

**[NOFA XVI.] Appraisals generally are required for real estate and chattel property used to secure a Horse Breeder loan. Real estate appraisals, however, are not required when the amount of the loan does not exceed \$50,000 and the loan approval official clearly documents that the estimated value of security, less existing liens, exceeds the loan amount. Real estate and chattel appraisals shall be completed in accordance with 7 CFR § 761.7.**

Appraisals will be completed according to 1-FLP, Part 6.

The cost of a loanmaking appraisal will be handled according to 1-FLP, Part 7.

---

**148 Insurance for Loan Security**

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**A**

**General**

**[NOFA XVIII.] An applicant must obtain insurance, consistent with this section, equal to the lesser of the value of the security at the time of loan closing, or the principal of the loan.**

---

**B**

**Hazard Insurance**

**[NOFA XVIII. 1.] All security (except growing crops) must be covered by hazard insurance if it is readily available and economically feasible.**

---

**C**

**Flood or Mudslide Insurance**

**[NOFA XVIII. 2.] Real estate security located in a special Flood Hazard Area as determined by the Federal Emergency Management Agency, must be covered by flood or mudslide insurance.**

---

**D**

**Crop Insurance**

**[NOFA XVIII. 3.] Growing crops used to provide adequate security must be covered by crop insurance if such insurance is readily available and economically feasible.--\***

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Continued on the next page

**\*--148 Insurance for Loan Security (Continued)**

---

**E**

**Mortality  
Insurance**

**[NOFA XVIII. 4.] All horses used as security for the loan must be covered by mortality insurance if it is readily available and economically feasible.**

---

**F**

**Indemnities**

**[NOFA XVIII. 5.] An applicant must:**

- (a) List the Agency as loss payee for the insurance indemnity payment or as a beneficiary of a mortgagee loss payable clause; and**
  - (b) In the case of crop and mortality insurance, execute an assignment of indemnity in favor of the Agency.--\***
-

**\*--149 Loan Processing/Approval or Denial Decisions**

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**A  
Approval  
Authorities**

Use the following table to determine loan approval authorities.

FLO			FLM, DD, FLS, or FLC	SED
GS-7	GS-9	GS-11	GS-11/12/13	
\$50,000	\$100,000	\$150,000	\$300,000	\$500,000

An FSA employee must have been delegated FLP loan approval authority according to 1-FLP to exercise the approval authorities in this part.

County Office employees:

- will not be given approval authority without authorization from DAFLP
  - may not exceed the loan approval authority equivalent to that of the equivalent grade for FLO or FLM.
- 

**B  
Evaluating Loan  
Requirements**

The loan approval official is responsible for evaluating the application to determine whether the proposed request complies with established FSA policies, the HBL Program NOFA, and all pertinent regulations. Final disposition of the application will occur no later than 60 days from the date the application is determined to be complete. The loan approval official will prepare a loan narrative that will indicate:

- the basis for determination of the applicant’s eligibility
- Note:** FSA-440-2 is not required.
- the amount of the loan and any other FSA program assistance
  - if additional non-FSA credit is planned, the proposed amount, source, and intended use of those funds
  - the planned use of the loan funds, type of loss suffered, and term of the loan
  - the description of the loan security and value.

**Note:** If repayment ability is used as security, documentation of the requirements of subparagraph 146 G shall be included in the narrative.--\*

**\*--149 Loan Processing/Approval or Denial Decisions (Continued)**

---

**C**

**Loan Approval**

The Agency will place conditions upon loan approval as necessary to protect its interest. A loan requiring a real estate appraisal for the determination of adequate security may be approved subject to an appraisal. The authorized agency official will:

- document the loan approval by completing and executing FmHA 1940-1

**Note:** The applicant will not be required to sign FmHA 1940-1.

- notify the applicant of loan approval using the Notification of Loan Approval letter in subparagraph D.

The Agency will approve a loan if it determines that:

- the loan can be repaid
- the proposed use of loan funds is authorized
- the applicant is eligible
- all security requirements have been, or will be met at closing
- all other pertinent requirements have been, or will be met at closing.--\*

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Continued on the next page

**\*--149 Loan Processing/Approval or Denial Decisions (Continued)**

**D  
Notification of  
Loan Approval  
Letter Example**

The following is an example of the Notification of Loan Approval letter.

**Horse Breeder - Notification of Loan Approval**

\_\_\_\_\_ (Applicant's Name) (Date)  
 \_\_\_\_\_ (Applicant's Address)  
 \_\_\_\_\_ (Applicant's City, State, ZIP Code)

Dear \_\_\_\_\_ (Applicant's Name):

By this letter, the United States of America, acting through the Farm Service Agency (FSA), has approved your loan request under the authority of the Horse Breeder Loan Program. This approval is subject to available funding and the conditions listed below. This loan approval will become binding and effective upon your acceptance of all conditions at loan closing. The basic terms and conditions of the loan are set forth in this letter unless documents at the time of closing provide otherwise. These terms are not intended to be exhaustive, as final documentation will be binding in the loan closing documents. A promissory note and security instrument incorporating these and other necessary, usual, and customary terms will be signed prior to release of funds to you. Subject to those qualifications, the loan will be made on the following terms and conditions:

1. Loan Amount - The loan will total (Insert loan amount).
2. Use of Proceeds -The loan funds will be used only for the following loan purposes.

(Enter loan purposes).

Any material changes from the uses outlined in the application must have the express prior consent of FSA.

3. Interest Rate - As of the date of this approval the interest rate on the loan will be (Enter interest rate for emergency loans in effect at the time of loan approval). Should the interest rate for FSA's emergency loan program change prior to loan closing, you may elect to close the loan at the interest rate stated in this loan approval or the interest rate in effect on the date the loan is closed. The rate you elect will be fixed for the term of the loan.
4. Term - The term of the loan will be (Enter number of years) years, from the date of loan closing.
5. Repayment Schedule - The repayment schedule, will be (Enter the proposed repayment schedule including installment amounts and due dates).

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Continued on the next page

**\*--149 Loan Processing/Approval or Denial Decisions (Continued)**

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**D  
Notification of  
Loan Approval  
Letter Example  
(Continued)**

6. Collateral - The loan will be secured by the following:

(Enter the collateral to be taken)

7. Insurance - You must maintain hazard, crop, mortality, flood or mudslide insurance coverage, as applicable, for any collateral securing the loan funds advanced throughout the term of the loan.

8. Reporting - You must notify FSA of any adverse actions, including but not limited to, anticipated default on the loan.

9. Legal Authority - You will certify that you:

- are duly formed, incorporated, and in compliance with applicable laws to conduct and perform its programs and purposes
- have satisfied all statutory and regulatory requirements for continuing operations.

10. Environmental Requirements - You will certify that you have complied with all Federal and State statutory and regulatory environmental requirements. Throughout the term of the loan you will comply with all applicable environmental laws and regulations relative to its activities.

11. Expiration - This approval remains effective until close of business on (Enter 60 calendar days from the date of the letter). The loan closing and release of loan funds are subject to you and FSA agreeing upon all terms and conditions to be contained in the documentation required for the loan, including promissory notes, loan agreements, and security instruments.

If this loan does not close for any reason within 60 days from the date of approval on this document, you will be requested to update your financial and eligibility information.

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Continued on the next page

**\*--149 Loan Processing/Approval or Denial Decisions (Continued)**

**D  
Notification of  
Loan Approval  
Letter Example  
(Continued)**

Your signature on this letter will indicate your acceptance of the conditions of this letter. Please sign and return this letter to this office no later than 10 days from date of this letter. A copy is enclosed for your records. The loan closing is scheduled for (Enter date the loan is scheduled to close). If you have any questions concerning this proposal, please contact the FSA office at (Enter Service Center address and location).

Sincerely,

(Insert Authorized Agency Official's Name)  
(Insert Authorized Agency Official's Title)

\_\_\_\_\_(Signature of Applicant)                      \_\_\_\_\_(Date)

\_\_\_\_\_(Signature of Applicant)                      \_\_\_\_\_(Date)

--\*

Continued on the next page

**\*--149 Loan Processing/Approval or Denial Decisions (Continued)**

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**E****Loan Denial**

The loan will **not** be approved if the loan approval official determines that any of the following are applicable.

- The applicant is not creditworthy or has knowingly provided incomplete, false, or misleading information.
- The applicant, the applicant's operation, or other circumstances surrounding the loan are inconsistent with the authorizing statutes, other Federal laws, or Federal credit policies.
- A feasible plan cannot be developed.

The loan approval official must thoroughly document the reasons for denying the loan in the application file. The loan approval official cannot reject a loan request that exceeds their loan approval authority.

---

**F****Notification of Loan Denial**

The applicant will be notified of the loan denial in writing. The letter must:

- provide clear, specific reasons for the loan denial with citations of the NOFA and handbook sections that cannot be met
  - inform the applicant of mediation, reconsideration, and appeal rights according to 1-APP
  - include nondiscrimination and ECOA statements according to 1-FLP.--\*
- 

Continued on the next page

**\*--149 Loan Processing/Approval or Denial Decisions (Continued)**

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**G****Appeals**

**[NOFA II.] An applicant or borrower may request an appeal or review of an adverse decision made by the Agency in accordance with 7 CFR parts 11 and 780 or its successor regulation.**

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**H****Funding**

**[NOFA XIX.] Loan requests will be funded based on the date the Agency receives the complete application. Loan approval is subject to the availability of Emergency loan funds.**

Loan funds will be made available to the applicant by either loan check or EFT.

If funding is not available, the authorized agency official will hold the approved application for funding and inform the applicant in writing that if loan funds are not available by September 30, 2003, the loan application will be withdrawn. This letter will be a field office created WLS item numbered 1500 or above.

**Notes:** No loan funds shall be transferred to the applicant until the applicant signs all applicable loan instruments and legal documents.

Use type of assistance code "327" when obligating HBL's.--\*

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**\*--150 Loan Closing**

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**A  
General  
Requirements**

**[NOFA XX.] The loan approval official, or designee, shall close the loan according to the following.**

- 1. The applicant must meet all conditions specified in this notice prior to loan closing.**
- 2. There must have been no significant changes in the plan of operation or the applicant’s financial condition since the loan was approved and less than 90 days has passed since financial information has been updated.**
- 3. The applicant shall execute all loan instruments and legal documents required by the Agency to evidence the debt, perfect the required security position in property, and protect the Government’s interests in accordance with applicable State and Federal laws.**

SED shall issue a State supplement as necessary after consulting with the Regional Attorney about special HBL closing requirements.

Loan instruments and legal documents include but are not limited to:

- FSA-2670
- FSA-1927-1M, FSA-1927-ID, or RD 1927-1, as appropriate
- UCC documents
- FSA-0440-04, FSA-0440-04A, or RD 440-15, as applicable.

In the case of a business entity applicant, all officers or partners and any board members will be required to execute the promissory notes as an entity and as individuals.

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**B  
Closing  
Non-Real Estate  
Secured Loans**

**[NOFA XX. 4.] Horse Breeder loans with security other than real estate shall be closed in accordance with 7 CFR part 1941, subpart B, or its successor regulation.--\***

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Continued on the next page

**\*--150 Loan Closing (Continued)**

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**C****Closing Real  
Estate Secured  
Loans**

**[NOFA XX. 5.] Horse Breeder loans secured by real estate shall be closed in accordance with 7 CFR part 1927, subpart B, or its successor regulation. Loans with real estate security will be closed by a closing agent, selected by and paid for by the applicant.**

- (a) For loans over \$25,000, title clearance is required when real estate is taken as security.**
- (b) For loans of \$25,000 or less, when real estate is taken as security, a certification of ownership in real estate is required. Certification of ownership may be in the form of an affidavit which is signed by the applicant, naming the record owner of the real estate in question and listing the balances due on all known debts against the real estate. Whenever the loan approval official is uncertain of the record owner or debts against the real estate security, a title search is required.**
- 

**D****Fees**

**[NOFA XXI.] The applicant will pay all loan closing fees including but not limited to fees for title clearance, recording any legal instruments determined to be necessary, and all notary, lien search, attorney fees and similar fees incident to loan transactions. No fees will be assessed for work performed by Agency employees.--\***

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151 Loan Servicing

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**A**

**Borrower Reporting Requirement**

**[NOFA XXII.] The borrower must notify the Agency of any adverse actions related to the loan, including but not limited to, anticipated default on the loan.**

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**B**

**Servicing Loans**

**[NOFA XXIII.] If any installment is not paid according to the terms of the loan agreement, the loan is not fully satisfied at expiration of the loan agreement, or the borrower is in default on any term of the loan agreement or security instruments, the loan will be serviced in accordance with 7 CFR 1951.468 or its successor regulation, during the term of the loan.**

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152-170 (Reserved)

**\*--Part 8      Beginning Farmer and Rancher Land Contract Guarantee Pilot Program****171    Overview****A    Scope**

This part:

- contains the terms and conditions for guarantees issued under the Beginning Farmer and Rancher Land Contract Guarantee Pilot Program announced in the Federal Register as a NOFA, (Volume 68, No. 171, pages 52557-52562, dated September 4, 2003)
- is applicable to buyers, sellers, and other parties involved in making and servicing guarantees under the Beginning Farmer and Rancher Land Contract Guarantee Pilot Program.

**B    Program Objective**

The Beginning Farmer and Rancher Land Contract Guarantee Pilot Program will help determine whether land contract sales are a viable option for facilitating land transfers to beginning farmers and ranchers who would not otherwise have the financial resources to acquire farm or ranch land. Assistance is limited to land owners and beginning farmers and ranchers who meet the requirements established in this part.

**172    General Eligibility Requirements****A    Eligibility Requirements**

**[NOFA IV. a.] Buyers must meet the following requirements to be eligible:**

Eligibility requirements are addressed in subparagraphs B through L. Buyers not meeting the eligibility requirements in this paragraph will be notified according to subparagraph 181 F.

**B    Beginning Farmer**

**[NOFA IV. a. 1.] The buyer must be a beginning farmer or rancher and must be the owner and operator of a family farm after the contract is completed. See paragraph IV. b. (subparagraph L) for owner and operator requirements for entity buyers.--\***

**\*--172 General Eligibility Requirements (Continued)**

**B Beginning Farmer (Continued)**

When determining whether or not the farm meets the family farm definition, the Authorized Agency Official shall:

- analyze all factors contained in the definition of family farm and the items discussed in this table

Item	Factor	Consideration
1	Recognized in the community as a farm	Consider how the applicant’s farm operation compares to similar farm operations in the community. In most areas of the country and in most farming enterprises, the family will provide most of the day-to-day labor on a family farm. An exception may be made for enterprises that produce high-value, labor-intensive crops, such as fruit or vegetables.
2	Management and control of the farm business	All of the day-to-day management and operational decisions should be made by members of the farm family. The use of consultants, advisors, and similar experts is certainly acceptable provided someone in the farm family is the decision-maker.
3	Amount of labor	A substantial amount of the full-time labor required must be contributed by family or entity members to the operation. The use of seasonally hired labor should not be precluded. The borrower may not necessarily perform a majority of the labor, but the amount of labor provided by the borrower is significant. One distinguishing characteristic of a family farm is that the family members provide both physical labor and management for the farm. Consider the labor requirements that are necessary for the production of specific high-value, labor-intensive crops.
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 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.

- evaluate all aspects and the circumstances of the farm operation.

**Note:** See Exhibit 2 for the definition of “family farm”.--\*

**\*--172 General Eligibility Requirements (Continued)****C Participated in Business Operations**

**[NOFA IV. a. 2.] The buyer must have participated in the business operations of a farm or ranch for at least three years.**

See Exhibit 2 for the definition of “participated in the business operations of a farm or ranch.”

**D Agency Loss**

**[NOFA IV. a. 3.] The buyer and anyone who will execute the Loan Payment Guarantee Agreement and Contract Modification (Agreement) (FSA-2681) can not have caused the Agency a loss by receiving debt forgiveness on more than three occasions on or prior to April 4, 1996, or on any occasion after April 4, 1996, on all or a portion of any direct or guaranteed loan made under the authority of the CONACT as amended, by debt write-down or write-off; compromise, adjustment, reduction, or charge-off under the provisions of section 331 of the CONACT; discharge in bankruptcy; or through payment of a guaranteed loss claim.**

See subparagraph 181 D for more information on FSA-2681.

**E Federal Debt**

**[NOFA IV. a. 4.] When the guarantee is issued, the buyer, and anyone who will execute the Agreement (FSA-2681) as the buyer must not be delinquent on any Federal debt, other than a debt under the Internal Revenue Code of 1986, nor be a Federal judgment debtor on a non-tax debt.**

Delinquencies will be verified by a review of a CAIVRS report for the buyer. If the buyer is an entity, a CAIVRS report will be requested for each of the entity members. The buyer may be considered eligible if the delinquency will be remedied by the date FSA-2681 is executed. Federal debt includes, but is not limited to, student loans, CCC loans, FSA direct loans, VA loans, and SBA loans.

**Notes:** Guaranteed loan delinquency is not considered Federal debt prior to the payment of a final loss claim.

Debt discharged in bankruptcy is not considered Federal debt.

Buyers must provide evidence that all Federal judgments have been released or paid in full to be eligible.--\*

**\*--172 General Eligibility Requirements (Continued)****F Citizenship**

**[NOFA IV. A. 5.] The buyer must be a citizen of the United States, United States non-citizen national, or a qualified alien under applicable Federal immigration laws. If the buyer is an entity, the majority of the entity must be owned by members meeting the citizenship test.**

Refer to subparagraph 137 G for additional guidance.

**G Legal Capacity**

**[NOFA IV. a. 6.] The buyer and anyone who will execute the Agreement (FSA-2681) as the buyer must possess the legal capacity to enter into a legally binding agreement.**

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

**H Past Dealings**

**[NOFA IV. a. 7.] The buyer, in past or present dealings with the Agency, must not have provided the Agency with false or misleading documents or statements.**

**I Controlled Substances**

**[NOFA IV. a. 8.] The buyer and anyone who will execute the Agreement (FSA-2681) as the buyer must not have been convicted of planting, cultivating, growing, producing, harvesting, or storing a controlled substance under Federal or State law within the last five crop years. "Controlled substance" is defined at 21 CFR 1308. Buyers must certify on the application that the buyer has not been convicted of such a crime within the relevant period.**

By signing FSA-1980-25, buyers also certify they are not ineligible based on a conviction for distribution or possession of a controlled substance.

The buyer's signature on FSA-1980-25 is all that is required for self-certification for controlled substances.

**J Credit History**

**[NOFA IV. a. 9.] The buyer and anyone who will execute the Agreement (FSA-2681) as the buyer must have an acceptable credit history demonstrated by satisfactory debt repayment. A history of failures to repay past debts as they came due (including debts to the Internal Revenue Service) when the ability to repay was within their control will demonstrate an unacceptable credit history. Unacceptable credit history will not include isolated instances of late payments (which do not represent a pattern and were clearly beyond their control) or the lack of a credit history.--\***

**\*--172 General Eligibility Requirements (Continued)****K Test for Credit**

**[NOFA IV. a. 10.] The buyer must be unable to obtain sufficient credit elsewhere without a guarantee to finance actual needs at reasonable rates and terms.**

The buyer certifies to their inability to obtain other credit when they sign FSA-1980-25.

**L Entity Requirements**

**[NOFA IV. b.] For entity buyers, the following additional eligibility criteria apply:**

- (1) The collective ownership interest of all entity members may exceed the family farm definition limits only if all of the entity members are related by blood or marriage, all of the entity members are or will be operators of the farm, and the majority interest holders meet the above requirements relating to citizenship, false or misleading information, credit history, and operation and ownership of the farm or ranch.**
- (2) Each entity member's ownership interest may not exceed the family farm definition.**
- (3) The entity must be controlled by farmers or ranchers engaged primarily and directly in farming or ranching in the United States after the guarantee is issued.**
- (4) The entity members can not be entities themselves.**
- (5) The entity must be authorized to own and operate a farm in the State(s) in which the farm is located.**
- (6) If the entity members holding a majority interest are related by blood or marriage, at least one member of the entity also must operate the family farm and at least one member of the entity must own the family farm.**
- (7) If the entity members holding a majority interest are not related by blood or marriage, the entity members holding a majority interest must operate the family farm and entity members holding a majority interest or the entity must own the family farm.--\***

**\*--173 Loan Purposes****A General**

The Authorized Agency Official shall review applications to ensure that funds will be used for authorized purposes.

**B Loan Purposes**

**[NOFA VI.] The guarantee may only be used for financing the purchase of a farm or ranch on a land contract basis. The farm or ranch land to be purchased must be located in a pilot State. Guarantees will only be provided on new contracts. Existing contracts are not eligible for a guarantee under the pilot program.**

See Exhibit 2 for the definition of “pilot State.”

Guarantees will not be provided for improvements to land or buildings or for new construction.

Contracts signed by the buyer and seller before execution of FSA-2681 will not be eligible for a guarantee.

**174 Loan Limitations****A Maximum Purchase Price**

**[NOFA VII. a.] The purchase price of the farm or ranch to be acquired cannot exceed the lesser of:**

- (1) \$500,000 or**
- (2) its current market value as determined by Agency appraisal or estimate.**

**B Downpayment**

**[NOFA VII. b.] The buyer must provide a cash downpayment of at least five percent of the purchase price of the farm or ranch being acquired on land contract.**

A five percent downpayment is the minimum required. The downpayment can be borrowed funds. However, the buyer cannot use the contract as collateral and cannot borrow the downpayment from FSA.

If the seller requests more than a five percent downpayment from the buyer, FSA direct or guaranteed FO loan funds may be used to finance the additional amount.--\*

**\*--174 Loan Limitations (Continued)****C Maximum Payment and Term of Guarantee**

**[NOFA VIII.] The guarantee will be in effect for 10 years commencing with its stated effective date (on FSA-2681). The guarantee will cover two amortized annual installments, or an amount up to the total monetary amount of two amortized annual installments, on the land contract. The guarantee will also cover the amount of two years of taxes and insurance. Under no circumstance will the amount outstanding to the Agency be more than the amount of two amortized annual installments, plus two years of real estate taxes and hazard insurance.**

**D Interest Rates and Terms**

**[NOFA IX.] The interest rate charged by the seller for the 10-year term of the guarantee must be fixed at a rate not to exceed FSA's direct farm ownership (FO) loan interest rate in effect at the time the guarantee is issued, plus three percentage points. (Interest rates are available in any FSA office.) The seller and buyer may renegotiate the interest rate for the remaining term of the contract following expiration of the guarantee. The contract payments must be amortized for a minimum of 20 years. Balloon payments are prohibited during the 10-year term of the guarantee, and payments on the contract must be of equal amounts during the term of the guarantee.**

Sellers and buyers may establish interest rates for the remaining term of the contract before the contract is executed. RD Instruction 440.1, Exhibit B contains interest rates.

**175 Environmental Requirements****A Environmental Compliance**

**[NOFA XII.] The environmental and historic preservation requirements contained in 7 CFR part 1940, subpart G or its successor regulation must be met prior to approval of any guarantee request.**

**B Environmental Review**

The Authorized Agency Official will complete FmHA 1940-22, FmHA 1940-21, or a Class II Environmental Assessment, as required by RD Instruction 1940-G.

**176 Other Requirements****A Nondiscrimination Statement**

The nondiscrimination statement in 1-FLP, subparagraph 41 E shall be included in all materials produced for public information or distribution.--\*

**\*--176 Other Requirements (Continued)****B ECOA**

The Agency must comply with the provisions of ECOA and the implementing regulations of the Federal Reserve System published in 12 CFR part 202.

The ECOA statement contained in 1-FLP, subparagraph 41 C must be included on all adverse decision letters.

**177 Complete Applications****A Seller Application**

**[NOFA III. a.] Sellers who contact FSA with an interest in a guarantee under the pilot program will be sent a letter (FSA-2680) outlining specific program details and benefits. To formally request a guarantee on their proposed land contract, sellers must sign and date this letter and return it to FSA. The signed and dated letter will be considered the seller's application for guarantee. FSA may also require the seller to submit other information necessary to process the guarantee.**

**B Buyer Application**

**[NOFA III. b.] The prospective buyer must submit the following items to FSA (subparagraphs C through P):**

**C Application Form**

**[NOFA III. b. 1.] A completed form FSA-1980-25, "Application for Guarantee."**

The buyer will need to complete only the first two pages of FSA-1980-25.

**D Training and Experience**

**[NOFA III. b. 2.] A brief written description of the buyer's farm training and/or experience.**

**E Tax or Financial Records**

**[NOFA III. b. 3.] Income tax or other financial records acceptable to FSA from the past three years.--\***

**\*--177 Complete Applications (Continued)****F Production History**

**[NOFA III. b. 4.] Three years of production history immediately preceding the year of application, or the number of years available if the applicant has been farming less than three years.**

**G Description of Operation**

**[NOFA III. b. 5.] A brief written description of the proposed operation.**

A description of the type of operation (such as dairy, poultry, and row crop) should be provided.

**H Off-farm/Other Nonfarm Income**

**[NOFA III. b. 6.] Verification of off-farm employment and other non-farm income, if any. This will be required only when the buyer is relying on off-farm income to develop a feasible plan.**

A self-employed applicant may submit 3 years of income tax returns. An applicant employed outside of farm may submit:

- RD-1910-5
- 2 most recent earnings statements.

**I Operating Plan/Cash Flow**

**[NOFA III. b. 7.] Projected production, income and expenses, financial statement, and plan of operation, which may be submitted on Form FSA-431-2, "Farm and Home Plan," or other similar plan of operation acceptable to FSA. The buyer may request Agency assistance in completing the plan.**

The application package must contain a balance sheet that was prepared within 90 calendar days of the application submission.--\*

**\*--177 Complete Applications (Continued)****J Environmental Information**

**[NOFA III. b. 8.] Applicable items required in 7 CFR part 1940, subpart G or its successor regulation.**

Some applications will require additional information from other USDA agencies or organizations to fulfill National Environmental Policy Act or other special law requirements. Applications that involve highly erodible land, wetlands, historical, or archaeological issues require information from other organizations. In these cases, the Authorized Agency Official must notify the buyer and seller regarding the additional information required and request the information from the organization or agency. A copy of the request should be maintained in the file.

The need for this information will indicate an incomplete application.

**K Contract**

**[NOFA III. b. 9.] A copy of the proposed land contract to be entered into with the seller.**

**L Verification of Debts**

**[NOFA III. b. 10.] Form FSA-440-32, "Request for Statement of Debts and Collateral," or similar documentation, for all debts in excess of \$1000.00.**

All debts over \$1000.00 must be verified using:

- FSA-440-32
- most recent billing statement
- any other form of verification that provides the balance due, amount of payment, delinquency, and payment schedule.

**M Credit Report Fee**

**[NOFA III. b. 11.] A credit report fee.**

Credit report fees will be:

- collected according to RD Instruction 1910-B, 1910-C, or the applicable State supplement, as appropriate
- processed according to 3-FI.--\*

**\*--177 Complete Applications (Continued)****N Escrow Agent**

**[NOFA III. c.] If the buyer or seller propose to use a particular escrow agent for the land contract sale, they will provide the agent's name, address, and telephone number to the Agency.**

**O Other Documentation**

**[NOFA III. b. 13.] Any other documents required by the Agency and needed to process the application.**

Examples of additional information include:

- divorce or separation decree
- child support or alimony payments.

**P Entity Applicants**

**[NOFA III. b. 12] Entity applicants must submit additional information for each entity member. The application must contain each entity member's name, address, Social Security number, percent ownership interest in the entity, and a current balance sheet.**

This information is required for FSA to identify entity members, document that the entity meets the eligibility requirements, and determine which members are required to execute the contract and FSA-2681.

**178 Application Processing****A Adding Applications to GLS**

Pilot program applications will be entered into GLS as they are received.

**B Application Completeness Review**

**[NOFA III. d.] The Agency will not consider an application complete until all required information is received from both the seller and the prospective buyer. The Agency will assist the buyer, when necessary, in completing the required FSA forms.**

Each application shall be reviewed within 5 calendar days of receipt to determine whether it is complete. The date the application is complete:

- will be documented on FSA-1980-25 and entered into GLS
- sets the start date for the 30-calendar day period within which applications must be approved or denied by FSA.--\*

**\*--178 Application Processing (Continued)**

**C Notification of Complete Application Letter Example**

After determining that the application is complete, the Authorized Agency Official will send the following letter to the buyer with a courtesy copy to the seller:

Dear \_\_\_\_\_:

This letter is to notify you that your application for the Farm Service Agency’s Beginning Farmer and Rancher Land Contract Guarantee Pilot Program is complete as of (insert date all information necessary to complete the application was received). Your application will be processed as quickly as possible.

If changes occur in your operation or financial situation before final action is taken, or if we need clarification of items on the application, we may ask you to provide additional information.

If you have any questions, please contact this office.

Sincerely,

\_\_\_\_\_

Title

**179 Incomplete Applications**

**A First Notification of Incomplete Application**

If the application is incomplete, the Authorized Agency Official must notify the buyer in writing (with a courtesy copy to the seller) within 5 calendar days after receipt of the application. The notification must:

- identify the additional information required for a complete application
- state that the application cannot be processed until the additional information is received
- establish a deadline 20 calendar days from the date of the letter for the buyer to submit the information.--\*

**\*--179 Incomplete Applications (Continued)**

**B First Notification Letter Example**

The following is an example of a first notification letter for an incomplete application:

<p>Dear _____:</p> <p>Your application for the Farm Service Agency’s Beginning Farmer and Rancher Land Contract Guarantee Pilot Program was received on (insert date FSA-1980-25 was received). However, certain information is missing from the application. We must receive the following information before we can continue processing your application:</p> <p>(Insert list of items necessary to complete application.)</p> <p>Please provide these items by (insert date 20 calendar days after date of letter). If you have any questions about the application, please contact this office.</p> <p>Sincerely,</p> <p>_____</p> <p>Title</p>
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**C Second Notification of Incomplete Application**

If the buyer does not respond or does not supply all of the information requested within the 20-calendar-day period specified in the initial notification, the Authorized Agency Official shall immediately send a second notification letter addressing the information which was not provided. The deadline for submitting additional information will be 10 calendar days from the date of the second notification letter.

The second notification letter must also state that if the buyer does not contact the Authorized Agency Official or submit the additional materials within the 10-calendar-day period, the application will be withdrawn. If necessary, the buyer may receive an extension to submit the additional materials. If an extension is granted, a new deadline will be established and communicated to the buyer in writing. The extension letter should restate that the application will be considered withdrawn if the buyer does not contact the Authorized Agency Official or submit the additional materials by the extension deadline.--\*

**\*--179 Incomplete Applications (Continued)**

**D Second Notification Letter Example**

The following is an example of a second notification letter for an incomplete application:

Dear \_\_\_\_\_:

Your application for the Farm Service Agency’s Beginning Farmer and Rancher Land Contract Guarantee Pilot Program is still incomplete. We must receive the following information before we can continue processing your request:

(Insert list of items necessary to complete application.)

If you do not submit this information or contact this office by (insert date 10 calendar days from date of letter), your application will be withdrawn without further notice.

The Federal Credit Equal Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant’s income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

USDA regulations prohibit discrimination in USDA programs because of your race, color, religion, sex, age, national origin, marital status, familial status, sexual orientation, disability; or because all or part of your income is derived from any public assistance program; or because you have filed a program complaint, participated in any program complaint proceeding, or opposed a prohibited practice.

If you believe you have been discriminated against for any of the reasons stated above, you may file a complaint with the Director, Office of Civil Rights, United States Department of Agriculture, Room 326-W, Whitten Building, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410.

Please contact us if you have any questions.

Sincerely,

\_\_\_\_\_

Title

--\*

**\*--180 Financial Feasibility****A Feasible Plan**

**[NOFA V. a.] The proposed operation described on Form FSA-431-2 or similar plan acceptable to FSA must project a feasible plan. The projected income and expenses of the buyer and operation used to determine a feasible plan must be based on the buyer's proven record of production and financial management. For those farmers without a proven history, a combination of any actual history and any other reliable source of information which is agreeable to the buyer and the Agency will be used. The cash flow budget analyzed to determine a feasible plan must represent the projected cash flow of the operating cycle for the farm or ranch operation.**

See Exhibit 2 for the definition of "feasible plan."

Where available, the operation's actual production records must be used to estimate future production yields. The expenses used in the cash flow budget should be based on prior experience and be consistent with anticipated prices for similar goods and services. The projected production yields and financial performance should not be outside of the range of the buyer's previous performance, unless fully documented and justified.

**B Estimating Production**

**[NOFA V. b.] The buyer must use the best sources of information available for estimating production when developing cash flow budgets. Deviations from historical performance may be acceptable, if the deviations are the direct result of specific changes in the operation, are reasonable, adequately justified, and acceptable to the Agency. For existing farmers, actual production for the past three years will be utilized. For those farmers without a proven history, a combination of any actual history and any other reliable source of information that is agreeable to the buyer and the Agency will be used. When the production of a growing commodity can be estimated, it must be considered when projecting yields.**

**[NOFA V. c.] When the buyer's production history has been so severely affected by a declared disaster that an accurate projection cannot be made, the following applies:**

- (1) County average yields are used for the disaster year if the buyer's disaster year yields are less than the county average yields. If county average yields are not available, State average yields are used. Adjustments can be made, provided there is factual evidence to demonstrate that the yield used in the farm plan is the most probable to be realized.**
- (2) To calculate a historical yield, the crop year with the lowest actual or county average yield may be excluded, provided the buyer's yields were affected by disasters at least two of the previous five consecutive years.**

County or State average yields should be substituted only when other information is not available to make an accurate projection. The objective is to arrive at a projection of the most reliable estimate of the production level the buyer is expected to achieve.--\*

**\*--180 Financial Feasibility (Continued)****C Price Forecasts**

**[NOFA V. d.] Buyers must use price forecasts that are reasonable, defensible, and historically supportable. Sources must be documented by the buyer and be acceptable to the Agency. When a feasible plan depends on income from other sources in addition to income from owned land, the income must be dependable and likely to continue throughout the term of the guarantee.**

The buyer may use price forecasts from land grant universities, other published prices, forward contracted prices, futures, or price histories of specialty crops on other commodities. The buyer should use price forecasts that provide an accurate projection of commodity prices that the buyer will receive.

**181 Appraisals and Title Service****A Appraisal Requirements**

**[NOFA X.] The Agency may require an appraisal prior to, or as a condition of, approval of the guarantee. Any such appraisal will be obtained at the Agency's sole option and expense.**

The Authorized Agency Official will require an appraisal if he/she thinks the farm or ranch sale price exceeds its current market value. Appraisals will be obtained in accordance with 1-FLP, Part 6.

If the appraisal shows that the sale price for the farm or ranch exceeds market value, the request for guarantee will be denied.

**B Requesting Title Service**

**[NOFA XI.] The buyer will obtain title clearance as provided in 7 CFR part 1927, subpart B, or its successor regulation prior to contract settlement and issuance of the guarantee.--\***

**\*--182 Approval and Denial****A Approval Authority**

FLC or FLS who has been delegated loan approval authority according to 1-FLP, Exhibit 7, may be the Authorized Agency Official responsible for eligibility, approval, and denial decisions on applications submitted under the pilot program.

**B Approval**

**[NOFA XIII. a.] Requests for guarantee will be processed based on the date the Agency receives a complete application as defined above (see paragraph 177). Each pilot State may approve up to five loan guarantees each fiscal year of the pilot program. Approval is also subject to the availability of guaranteed FO loan funds and the participation of an approved escrow agent.**

**C Notification of Approval**

The Authorized Agency Official is responsible for evaluating the application to determine whether the proposed request complies with the pilot program NOFA. A final decision on the application will be made within 60 calendar days from the date the application is considered complete. The Authorized Agency Official will document application approval by sending a letter to the seller and buyer notifying them of the approval decision. A meeting should then be arranged for the Authorized Agency Official, the buyer, seller, and escrow agent to execute FSA-2681.

**D Executing the Guarantee**

**[NOFA XIII. b.] After a request for guarantee is approved, all parties to the guarantee (buyer, seller, escrow agent, and the Agency) will execute a Loan Payment Guarantee Agreement (FSA-2681). This Agreement will describe the conditions of the guarantee and the process for payment of claims. It will also outline the covenants and agreements of the buyer, seller, escrow agent, and the Agency.**

FLC will provide a copy of FSA-2681 to their Regional OGC for modifications to comply with State law. Modified versions of FSA-2681 will then be sent to DAFLP for issuance.

**E Denial**

The Authorized Agency Official will deny a guarantee request if any of the following conditions exist:

- seller has knowingly provided incomplete, false, or misleading information
- buyer is not creditworthy, has knowingly provided incomplete, false, or misleading information or does not otherwise meet the eligibility requirements specified in subparagraphs 172 B through L--\*

**\*--182 Approval and Denial (Continued)**

**E Denial (Continued)**

- buyer, the buyer's operation, or other circumstances surrounding the guarantee are inconsistent with the authorizing statutes, other Federal laws, or Federal credit policies
- feasible plan cannot be developed.

The Authorized Agency Official must thoroughly document the reasons for denying the guarantee request in the application file.

**F Notification of Denial**

The buyer and seller will be notified of the denial in writing. The notification must provide:

- clear, specific reasons for the denial with citations of the NOFA and handbook sections which cannot be met
- information on mediation, reconsideration, and appeal rights according to 1-APP
- non-discrimination and ECOA statements according to 1-FLP.

**G Appeals**

**[NOFA II.] Buyers and sellers can appeal adverse decisions made by the Agency in accordance with 7 CFR part 11.**

**183 Escrow Agents**

**A General**

Escrow agents may include title insurance companies, attorneys, financial institutions or any fiscally responsible institution approved by the Authorized Agency Official.--\*

**\*--183 Escrow Agents (Continued)****B Responsibilities**

**[NOFA XIV.] Use of a third party escrow agent approved by the Agency is required. The buyer or seller, as applicable, will provide the Agency a copy of any escrow agreement executed by the parties. The escrow agent will:**

- (a) handle transactions relating to the land contract between the buyer and seller;**
- (b) receive contract installments and remit them to the seller;**
- (c) notify FSA and the seller in the event of default by the buyer;**
- (d) remit to the seller any defaulted installment amount paid by the Agency under the guarantee;**
- (e) notify FSA and the seller semi-annually of the outstanding balance on the contract and the status of payment;**
- (f) send a notice of payment due to the buyer at least 30 days prior to the installment due date; and**
- (g) perform other duties as required by State law and as agreed to by the buyer and the seller.**

**184 Guarantee Servicing****A Routine Servicing**

**[NOFA XV. a.] At the Agency's request, the buyer will supply the Agency with a current balance sheet, income statement, cash flow budget, and any additional information needed to analyze the buyer's financial condition annually.**

The analysis should coincide with the buyer's farm budget planning period and will serve as an opportunity to assess financial performance. FSA may provide credit counseling to individuals by advising them of productive ways to use credit to increase profitability and achieve business goals.

**B Contract Modification**

**[NOFA XV. b.] With the Agency's prior written approval, the seller and buyer may modify the land contract provided that, in addition to a feasible plan for the upcoming operating cycle, a feasible plan can be reasonably projected throughout the remaining term of the guarantee. If a contract is modified, the seller must provide the Agency and escrow agent with a copy of the revised contract.--\***

**\*--184 Guarantee Servicing (Continued)****C Collection of Defaulted Installment Amounts**

**[NOFA XVI.] If the buyer fails to pay an annual amortized installment on the contract, or a portion of an installment on the contract, the escrow agent will notify the seller and the Agency in writing of the default. The seller must then take immediate action to enforce the terms of the contract and collect the defaulted amount from the buyer. At a minimum, the seller must make written demand on the buyer for payment of the defaulted amount, with a copy of the demand letter to the Agency. In the event that the buyer does not pay the defaulted amount within 30 days of the seller's written demand, the seller will make demand upon the Agency to pay the defaulted amount. The seller must make written demand upon the Agency within 90 days from the date the amount was due.**

If the buyer fails to pay taxes or insurance, the seller must make written demand on the buyer for payment of the defaulted amount, and provide FSA with a copy of the demand letter. If the buyer does not pay the defaulted amount within 30 calendar days, the seller has the option of making demand on the Agency for the defaulted amount. The seller must make demand on FSA within 90 calendar days from the date the taxes and insurance were due.

**D Delinquent Servicing**

**[NOFA XVII. a.] When FSA has made a payment under this guarantee on behalf of the buyer, the amount paid will become immediately due and payable by the buyer. The unpaid balance of the amount paid on behalf of the buyer will bear interest from the date of advance by the Agency at the established Farm Loan Programs Nonprogram Credit Sales Real Property loan rate (available in any FSA office) in effect at that time. The Agency will notify the buyer of the available options for repaying the debt. At the Agency's discretion, a missed or partially missed amortized contract installment, delinquent real estate taxes, or insurance payments may be structured to be repaid consistent with the buyer's repayment ability not to exceed 7 years, or the termination date of the guarantee, whichever occurs first. Before any repayment plan can be approved, the buyer must provide the Agency with the best lien obtainable on all of the buyer's assets, including the buyer's interest in the real estate under contract. When the buyer is an entity, the best lien obtainable will be taken on all of the entity's assets, and all assets owned by the members of the entity, including their interest in the real estate under contract.**

RD-440-9 will be used to document the repayment plan. Only one repayment plan can be outstanding at any given point in time. Borrowers who have an outstanding repayment plan and who require an additional payment for a partial installment and/or real estate taxes and/or insurance in their behalf will require an amended, Agency-approved repayment plan. This plan can only be entered into if the total debt is less than two annual installments on the contract. The new plan must include any delinquent installment and/or real estate taxes and/or insurance. All delinquencies will be combined into a single debt owed to the Agency. Agency officials will ensure that the repayment plan is feasible and is based on past history before entering into such an agreement.--\*

**\*--184 Guarantee Servicing (Continued)****D Delinquent Servicing (Continued)**

**[NOFA XVII. b.] Any amounts paid by the Agency on account of liabilities of the buyer will constitute a Federal debt owing to the Agency that is immediately due and payable by the buyer. If the debt is not restructured into a repayment plan or the delinquency otherwise cured, the Agency may use all remedies available to it, including offset under the Debt Collection Improvement Act of 1996, to collect the debt from the buyer.**

**[NOFA XVII. c.] Buyers with an Agency-approved repayment plan will supply the Agency, upon request, with a current balance sheet, income statement, cash flow budget, complete copy of their Federal income tax returns, and any additional information needed to analyze the buyer's financial condition annually.**

**[NOFA XVII. d.] If the buyer fails to perform under an Agency-approved repayment plan, the debt will be treated as a non-program loan debt, and servicing will proceed in accordance with 7 CFR 1951 section 1951.468, or its successor regulation. In such case, the Agency may use all remedies available to it, including offset under the Debt Collection Improvement Act of 1996, to collect the debt from the buyer.**

Failure to perform under a repayment plan means to not make the agreed upon Agency payment, land contract payment, and real estate tax and/or insurance installments. However, Agency officials have the discretion to enter into a new repayment agreement as long as it meets the requirements of this paragraph.

**E Terminating the Guarantee**

**[NOFA XVIII.] The guarantee and the Agency's obligations under it will terminate under the following circumstances:**

- (a) full payment of the land contract;**
- (b) payment by the Agency of two annual installments on the contract, or an amount equal to two annual installments, if not repaid in full by the buyer. (An Agency-approved repayment plan will not constitute payment in full until such time as the entire amount due under the Agency-approved repayment plan is paid in full);**
- (c) the seller fails to seek payment of a delinquent installment from the buyer or otherwise does not enforce the terms of the land contract; or**
- (d) the seller terminates the land contract.**

**If none of these events listed above occur, the guarantee will automatically terminate, without notice, 10 years from the effective date of the guarantee.--\***



Reports, Forms, Abbreviations, and Redelegations of Authority

Reports

This table lists the required report of this handbook.

Reports Control Number	Title	Reporting Period	Submission Date	Negative Reports	Reference
FLP-5R	Summary Report of Civil Rights Compliance Reviews	Annually	By November 30 each year	Not required	67

Forms

This table lists all forms referenced in this handbook.

Number	Title	Display Reference	Reference
AD-1026	Highly Erodible Land Conservation (HELIC) and Wetland Conservation (WC) Certification (Assembled as a component with AD-1026 Appendix)		91, 115
CCC-2651	Request for Special Apple Loan Program Assistance		88, 91, 97
CCC-2652	Special Apple Program Promissory Note and Security Agreement		97
FmHA 1940-1	Request for Obligation of Funds - Direct Loans		24, 97, 118, 149
FmHA 1940-21	Environmental Assessment for Class I Action		140, 175
FmHA 1940-22	Environmental Checklist for Categorical Exclusions		140, 175
FSA-0440-04	Security Agreement (Chattels and Crops)		150
FSA-0440-04A	Security Agreement (Chattels and Crops)		150
FSA-410-1	Request for Direct Loan Assistance		137, 142, 143
FSA 431-2	Farm and Home Plan		142, 145
FSA-440-2	Eligibility Certification or Recommendation		149
FSA-440-32	Verification of Debts and Assets		91, 137, 177
FSA-850	Environmental Evaluation Checklist		89
FSA-1927-1	Real Estate Mortgage for (State)		25, 43, 150
FSA-1927-1M	Mortgage for _____		150
FSA-1927-ID	Real Estate Deed of Trust for _____		150

## Reports, Forms, Abbreviations, and Redelegations of Authority (Continued)

## Forms (Continued)

Number	Title	Display Reference	Reference
FSA-1940-38	Request for Lender's Verification of Loan Application		137
FSA-1965-13	Assumption Agreement (Farm Loan Programs)		74
FSA-1980-25	Application for Guarantee		172, 178, 179
FSA-2620	Indian Tribal Land Acquisition Program Loan Application		12, 13, 24, 25
FSA-2621	Indian Tribal Land Acquisition Program Tribal Council Resolution and Certification		13, 25, 43
FSA-2622	Indian Tribal Land Acquisition Program Assignment of Tribal Income and Funds		13, 25
FSA-2623	Indian Tribal Land Acquisition Program Subordination Agreement		13, 25
FSA-2648	Civil Rights Compliance Review		67
FSA-2661	Request for Emergency Loan for Seed Producers Program		115, 118
FSA-2662	Emergency Loans for Seed Producers Promissory Note and Security Agreement		118
FSA-2663	Subordination Agreement in Favor of the Government Emergency Loans for Seed Producers		117
FSA-2664	Emergency Loans for Seed Producers Program Notice of Claim Assignment		118
FSA-2670	Horse Breeder Loan Program Promissory Note		150
FSA-2680	Letter of Interest		177
FSA-2681	Loan Payment Guarantee Agreement and Contract Modification		172, 173, 174, 177, 182
G-845	Verification Request		86, 111
I-94	Arrival - Departure Record		137
I-151	Alien Registration Receipt Card		86, 111, 137
I-551	Alien Registration Receipt Card		86, 111, 137
I-571	Refugee Travel Document		137
I-688B	Employment Authorization Card		137
I-765	Employment Authorization Document		137

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

## Forms (Continued)

Number	Title	Display Reference	Reference
RD-440-9	Supplementary Payment Agreement		184
RD 440-15	Security Agreement (Insured Loans to Individuals)		150
RD 440-22	Promissory Note (Association or Organization)		25
RD 442-20	Right-of-Way Easement		25
RD-465-1	Application for Partial Release, Subordination, or Consent		70
RD-465-5	Transfer of Real Estate Security		72
RD 1910-5	Request for Verification of Employment		142, 177
UCC-1	Financing Statement		94, 118

## Abbreviations Not Listed in 1-CM

The following abbreviations are not listed in 1-CM.

Approved Abbreviation	Term	Reference
ADPS	Automated Discrepancy Processing System	137
AMP	Association-type Minor Program	Part 4, Ex. 2
BIA	Bureau of Indian Affairs	12, 13, 25, 37, 41
CAIVRS	Credit Alert Interactive Voice Response System	13, 86, 94, 111, 117, 137
CFR	Code of Federal Regulations	Text, Ex. 2
DOI	Department of the Interior	2, 5, 25, 41
ECOA	Equal Credit Opportunity Act	2, 141, 149
EFT	electronic funds transfer	149
FLC	Farm Loan Chief	149
FLM	Farm Loan Manager	67, 97, 118, 149
FLO	Farm Loan Officer	97, 118, 149
FLS	Farm Loan Specialist	149
HB	Horse Breeder	136, 137, 144

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

## Abbreviations Not Listed in 1-CM

<b>Approved Abbreviation</b>	<b>Term</b>	<b>Reference</b>
HBL	Horse Breeder Loan	1, Part 7, Ex. 4
IMP	Individual-type Minor Program	Part 4, Ex. 2
INS	Immigration and Naturalization Service	86, 111, 137
ITLAP	Indian Tribal Land Acquisition Program	11, 41, 42
MAC	Management of Agricultural Credit System	2, 97, 118, 142, 143
MRLS	Mare Reproductive Loss Syndrome	136, 138, 144, Ex. 16
NEPA	National Environmental Policy Act	89, 114, 115
NHPA	National Historic Preservation Act	89, 114, 115
NOFA	Notice of Funds Availability	1, Part 7
SALP	Special Apple Loan Program	1, 2, 86-88, 97
SEC	State Environmental Coordinator	89
USPAP	Uniform Standards of Professional Appraisal Practice	41, 95
WLS	workload scheduling	142, 143, 149

## Redelegations of Authority

None

## Definition of Terms Used in This Handbook

### Additional Security

[NOFA I.] **Additional security** is property that provides security in excess of the amount of security value equal to the loan amount.

### Adequate Security

[NOFA I.] **Adequate security** is property that provides a security value at least equal to the amount of the loan.

### Administrator

[7 CFR 770.2 (b)] **Administrator** is the head of the Farm Service Agency.

### Agency

[7 CFR 770.2 (b)] **Agency** is Farm Service Agency (FSA).

[7 CFR 773.2, 7 CFR 774.2, and NOFA I] **Agency** is the Farm Service Agency, its employees, and any successor agency.

### AgriBiotech

AgriBiotech is AgriBiotech, Inc., a Nevada Corporation and large forage and cool-season turfgrass seed company that filed for relief under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the District of Nevada on January 25, 2000. (Bankruptcy Case No. BK-S-00-10533, jointly administered with Bankruptcy Case Nos. BK-S-00-10534 through BK-S-00-10537)

### Annual Installment

Annual installment is the total amortized amount of principal and interest due to the seller on a land contract every 12 months.

### Apple Producer

[7 CFR 773.2] **Apple producer** is a farmer in the United States or its territories that produced apples, on not less than 10 acres, for sale in 1999 or 2000.

### Applicant (Applies to Part 2)

[7 CFR 770.2 (b)] **Applicant** is a Native American tribe or tribal corporation established pursuant to the Indian Reorganization Act seeking a loan under this part.

## Definition of Terms Used in This Handbook (Continued)

### Applicant (Applies to Parts 5, 6, and 7)

[7 CFR 773.2, 7 CFR 774.2, and NOFA I.] **Applicant** is the individual or business entity applying for the loan.

### Appraisal

[7 CFR 770.2 (b)] **Appraisal** is an appraisal for the purposes of determining the market value of land (less the value of any existing improvements that pass with the land) that meets the requirements of part 761 of this chapter.

### Approval Official

[NOFA I.] **Approval official** is an Agency official who has been delegated approval authorities within applicable loan programs.

### \*--AMP Loans

[7 CFR 772.2(b)] **AMP loans** are loans to grazing associations and irrigation and drainage associations.--\*

### Authorized Agency Official

The authorized agency official is the FSA official that is authorized to perform specific tasks about loan making or servicing. The appropriate official is determined by inherent authorities or delegations applicable to a particular task.

### Beginning Farmer or Rancher

[NOFA I. (Part 8)] **Beginning farmer or rancher** is an individual or entity who:

- (a) has not operated a farm or ranch or who has operated a farm or ranch for not more than 10 years. This requirement also applies to all entity members
- (b) will materially and substantially participate in the operation of the farm or ranch
- (c) in the case of a loan made to an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located
- (d) in the case of a loan to an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that the members provide some amount of the management, or labor and management, necessary for day-to-day activities, such that if the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

## Definition of Terms Used in This Handbook (Continued)

**\*--Beginning Farmer or Rancher (Continued)**

- (e) agrees to participate in any loan assessment and financial management programs required by the Agency.
- (f) does not own real farm or ranch property or who, directly or through interests in family farm entities, own real farm or ranch property, the aggregate acreage of which does not exceed 30 percent of the average farm or ranch acreage of the farms or ranches in the county where the property is located. If the farm is located in more than one county, the average farm acreage of the county where the buyer's residence is located will be used in the calculation. If the buyer's residence is not located on the farm, or if the buyer is an entity, the average farm acreage of the county where the major portion of the farm is located will be used. The average county farm or ranch acreage will be determined from the most recent Census of Agriculture.
- (g) demonstrates that the available resources of the buyer and spouse (if any) are not sufficient to enable the buyer to enter or continue farming or ranching on a viable scale.
- (h) all the members are related by blood or marriage and all of the stockholders in a corporation are qualified beginning farmers or ranchers.--\*

**Bred**

[NOFA XII.] **Bred** is the attempt to produce offspring by sexual union or artificial insemination.

**Business Entity**

[7 CFR 773.2 and NOFA I.] A **business entity** is a corporation, partnership, joint operation, trust, limited liability company, or cooperative.

**\*--Buyer**

[NOFA I. (Part 8)] **Buyer** is an individual or entity who is participating in the Beginning Farmer and Rancher Land Contract Guarantee Pilot Program in order to purchase a farm or ranch on land contract.--\*

**Cash Flow Budget**

[7 CFR 773.2 and NOFA I.] **Cash flow budget** is a projection listing all anticipated cash inflows (including all farm income, nonfarm income and all loan advances) and all cash outflows (including all farm and nonfarm debt service and other expenses) to be incurred by the borrower during the period of the budget. A cash flow budget may be completed either for a 12-month period, a typical production cycle or the life of the loan, as appropriate.

**Definition of Terms Used in This Handbook (Continued)****Disabled**

Disabled is mares that have become infertile or difficult to breed, and mares and foals that have become unfit for sale, reproduction, training, and riding as a result of MRLS.

**Domestically-Owned Entity**

[7 CFR 773.2 and 7 CFR 774.2] Domestically-owned entity is an entity organized in the United States under the law of the state or states in which the entity operates and a majority of the entity is owned by members meeting the citizenship test.

**Entity**

\*-[7 CFR 772.2(b) and NOFA I. (Part 8)] Entity is a cooperative, corporation,--\* partnership, joint operation, trust, or limited liability company.

**Escrow Agent**

[NOFA I. (Part 8)] Escrow agent is a bonded commercial lending institution, registered and authorized to provide escrow collection services in the State in which the real estate is located, that handles financial transactions between the buyer and seller, e.g., a bank.

**False Information**

[7 CFR 773.2 and NOFA I.] False information is information provided by an applicant, borrower, or other source to the Agency which information is known by the provider to be incorrect and was provided to the Agency to obtain benefits for which the applicant or borrower would not otherwise have been eligible.

[7 CFR 774.2] False information is information provided by an applicant, borrower, or other source to the Agency that the borrower knows to be incorrect, and that the borrower or other source provided in order to obtain benefits for which the borrower would not otherwise have been eligible.

**Family Farm**

[NOFA I. (Part 8)] Family farm is a farm which produces agricultural commodities for sale in sufficient quantities so that it is recognized in the community as a farm rather than a rural residence; provides enough agricultural income by itself, including rented land, or together with any other dependable income, to enable the buyer to pay necessary family living and farm operating expenses, maintain essential chattel and real property, and pay debts; is managed by the buyer or the buyer's entity members; has a substantial amount of the labor requirement for the farm provided by the buyer and the buyer's immediate family or the entity members and their immediate families; and may use a reasonable amount of full-time hired labor and seasonal labor during peak load periods.

## Definition of Terms Used in This Handbook (Continued)

### Feasible Plan

[7 CFR 773.2] **Feasible plan** is a plan that demonstrates that the loan will be repaid as agreed, as determined by the Agency.

[NOFA I.] **Feasible plan** is a plan that demonstrates that the loan will be repaid as agreed, as determined by the Agency. The plan must demonstrate that the applicant will meet all other credit needs and obligations, including judgments, for which the applicant is legally responsible.

[NOFA I. (Part 8)] **Feasible plan** is a cash flow budget that indicates that there is sufficient cash inflow to pay all cash outflow each year during the term of the contract.

### Financial Needs

[NOFA I.] **Financial needs** are ordinary and necessary expenses, and financial obligations which are incurred, in connection with the horse breeder business.

### Financial Obligations

[NOFA I.] **Financial obligations** are the debts owed by the horse breeder that are directly related to the horse breeder business.

### \*--Graduation

[7 CFR 772.2(b)] **Graduation** is the requirement contained in loan documents that borrowers pay their FSA loan in full with funds received from a commercial lending source as a result of improvement in their financial condition.--\*

### Horse

[NOFA I.] **Horse** is any mammal in the genus Equus, to include but not limited to ass, mule, pony and donkey.

### Horse Breeder

[NOFA I.] **Horse breeder** is an individual or business entity who as of November 28, 2001, derives more than 70 percent of their gross income from the horse breeding business during the shorter of:

- the 5-year period ending on January 1, 2001; or
- the period the individual or business entity has been engaged in the horse breeder business.

## Definition of Terms Used in This Handbook (Continued)

### Horse Breeder Business

[NOFA I.] Horse breeder business is the business of breeding, boarding, raising, training, or selling horses.

### \*--IMP Loans

[7 CFR 772.2(b)] IMP loans are nonfarm enterprise or recreation loans to individuals.--\*

### Land Contract

[NOFA I. (Part 8)] Land contract is an installment contract drawn between a buyer and a seller for the sale of real property, in which complete fee title ownership of the property is not transferred until all payments under the contract have been made.

### Loan Funds

[7 CFR 770.2 (b)] Loan Funds refers to money loaned under this part. Loan funds include protective advances.

### Losses

[NOFA I.] Losses are the verifiable damages of the interrupted horse reproductive process resulting from MRLS.

### \*--Member

[7 CFR 772.2(b)] A member is any individual who has an ownership interest in the entity which has received the Minor Program loan.

### Minor Program

[7 CFR 772.2(b)] Minor Program is a nonfarm enterprise, individual recreation, grazing association, or irrigation and drainage loan program administered or to be administered by FSA.--\*

### MRLS

[NOFA I.] MRLS is, during the period beginning April 24, 2001, and ending June 30, 2001, the occurrence of any of the following equine medical conditions:

- early- and late- term equine fetal losses
- pericarditis
- epicarditis
- unilateral endophthalmitis
- panophthalmitis.

## Definition of Terms Used in This Handbook (Continued)

### Native American Tribe

[7 CFR 770.2 (b)] Native American tribe is:

- (1) An Indian tribe recognized by the Department of the Interior; or
- (2) A community in Alaska incorporated by the Department of the Interior pursuant to the Indian Reorganization Act.

### Ordinary and Necessary Expenses

[NOFA I.] Ordinary and necessary expenses are the operating expenses directly related to the horse breeder business, including, but not limited to taxes, feed, veterinary expenses, fixtures, and farm maintenance.

### Participated In the Business Operations of a Farm

[NOFA I. (Part 8)] Participated in the business operations of a farm or ranch means that the buyer has:

- (a) been the owner, manager or operator of a farm business for the year's complete production and marketing cycle as evidenced by tax returns, FSA farm records or similar documentation;
- (b) been employed as a farm manager or farm management consultant for the year's complete production and marketing cycle; or
- (c) participated in the operation of a farm by virtue of being raised on a farm or worked on a farm with significant responsibility for the day-to-day decisions for the year's complete production and marketing cycle.

### Pilot State

[NOFA I. (Part 8)] Pilot State is any of the 9 States participating in the Beginning Farmer and Rancher Land Contract Guarantee Pilot Program. Those States are California, Indiana, Iowa, Minnesota, Nebraska, North Dakota, Oregon, Pennsylvania, and--\* Wisconsin.

### Readily Available

[NOFA I.] Readily available is when the insurance is sold by insurance agents in the applicant's normal trade area.

### Rental Value

\*--[7 CFR 770.2(b)] Rental value for the purpose of rental value write-down's, equals the average actual rental proceeds received from the lease of land acquired under ITLAP. If there are no rental proceeds, then rental value will be based on market data according to Sec. 770.10(e)(4).--\*

## Definition of Terms Used in This Handbook (Continued)

**Reservation**

[7 CFR 770.2 (b)] **Reservation** is lands or interest within:

- (1) The Native American tribe's reservation as determined by the Department of the Interior; or
- (2) A community in Alaska incorporated by the Department of the Interior pursuant to the Indian Reorganization Act.

**Reserve**

[7 CFR 770.2 (b)] **Reserve** is an account established for loans approved in accordance with regulations in effect prior to February 8, 2001, which required that an amount equal to 10 percent of the annual payment be set aside each year until at least one full payment is available.

**Note:** Regulations in effect before February 8, 2001, were published in 7 CFR 1823, Subpart N. Further guidance was contained in FmHA Instruction 442.11.

**\*--Review Official**

[7 CFR 772.2(b)] **Review official** is an Agency employee, contractor, or designee who is authorized to conduct a compliance review of a Minor Program borrower under this part.--\*

**Security**

[7 CFR 773.2] **Security** is real estate or personal property pledged as collateral to assure repayment of a loan in the event there is a default on the loan.

**Security (Applies to Part 7)**

[NOFA I.] **Security** is property or right of any kind that is subject to a real or personal property lien. Any reference to "collateral" or "security property" will be considered a reference to the term "security."

**Seed Producer**

[7 CFR 774.2] **Seed producer** is a farmer who has produced a 1999 crop of grass, forage, vegetable or sorghum seed for sale to AgriBioTech under contract.

A contract includes a sales contract with AgriBioTech or its predecessor organizations for the sale of 1999 grass, forage, vegetable, or sorghum seed. In addition, written or oral extension of a previous year's contract is also acceptable.

Definition of Terms Used in This Handbook (Continued)

**Seller**

[NOFA I. (Part 8)] **Seller** is an individual or entity who applies for a guarantee under the Beginning Farmer and Rancher Land Contract Guarantee Pilot Program in order to sell a farm or ranch real estate on land contract in a pilot State.

**States or United States**

[NOFA I.] **States or United States** is the United States itself, any of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

**Tribal Corporation**

7 CFR 770.2 (b)] **Tribal Corporation** is a corporation established pursuant to the Indian Reorganization Act.

**United States Non-Citizen National**

[NOFA I.] **United States non-citizen national** is a person born in an outlying possession of the United States (American Samoa or Swain's Island) on or after the date the U.S. acquired the possession, or a person whose parents are U.S. non-citizen nationals (subject to certain residency requirements).

**USPAP**

[7 CFR 774.2] **USPAP** is Uniform Standards of Professional Appraisal Practice.



**State Supplements**

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<b>Subparagraph</b>	<b>State Supplement</b>
90 A, 114 A, *--and 141 A--*	<p>Additional instructions about laws, rules, and regulations which are presently in existence, or which may be later adopted including, but not limited to, those governing the following:</p> <ul style="list-style-type: none"> <li>• borrowing money</li> <li>• pledging security and raising revenues for repayment of debt</li> <li>• accounting and financial reporting</li> <li>• protection of the environment.</li> </ul>
97 I	Advice of OGC on perfecting proper lien position (preparation of mortgage) in preparing to close SALP loans.
115 F	Additional information needed to verify eligibility, maximum loan amount, availability of security, or the applicability of any Federal, State, or local laws.
118 I	Advice of OGC on perfecting proper lien position in preparing to close seed loans.
*--135 A	Advice on special HBL closing requirements.--*

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\*--Sample Veterinary Certificate

**Woodside Veterinary Clinic  
P.O. Box 29  
Alexandria, Virginia 45207**

William A. Doctor, D.V.M.  
Tanya J. Thoms, D.V.M.

Equine and Companion Animals  
Medicine and Surgery  
Telephone: 303-233-4455  
FAX 303-233-4456

**Name of Client:** Circle K Farms  
**Address of Client:** 123 Shade Tree Lane  
Alexandria, Virginia 45207

**Period covered by this Certification:** 2000 and 2001 Breeding and Foaling Seasons  
(Insert date/dates of foaling season covered by this certification.)

The number of mares owned that were bred is \_\_\_\_\_.

The number of mares boarded that were bred is \_\_\_\_\_.

As a result of MRLS:

The number of **mares** that were bred and failed to conceive or produce a live healthy foal. \_\_\_\_\_

The number of mares boarded that were bred and failed to conceive or produce a live healthy foal. \_\_\_\_\_

\_\_\_\_\_  
Signature of Veterinarian

