

Part 8 Loan Evaluation**Section 1 Eligibility (7 CFR 762.120)****108 General Eligibility Requirements for OL and FO (7 CFR 762.120)****A Summary of Eligibility Requirements**

A loan applicant and anyone who will execute the promissory note, including members of an entity applicant, must meet the following eligibility criteria to obtain a guaranteed loan. An eligible loan applicant is an applicant that:

- *--meets all requirements about prior debt forgiveness--*
- is not delinquent on any Federal debt
- does not have any outstanding recorded judgments obtained by the United States in a Federal court
- is a citizen of the United States, a U.S. non-citizen national, or a qualified alien under applicable Federal immigrations laws
- has the legal capacity to incur the obligations of the loan
- has an acceptable credit history
- is not able to obtain sufficient credit elsewhere without a guarantee
- has not been convicted of planting, cultivating, growing, producing, harvesting, or storing a controlled substance within the last 5 crop years.

The Authorized Agency Official will document in the FSA running record that the loan applicant meets all eligibility requirements.

B Clarification of Loan Applicant

In this part, the loan applicant includes any person who will execute the promissory note. In the case of an entity, the loan applicant includes all the members of the entity who will execute the promissory note.

108 General Eligibility Requirements for OL and FO (7 CFR 762.120) (Continued)

C No Agency Loss

***--The applicant, and anyone who will execute the promissory note, has not caused the Agency a loss by receiving debt forgiveness on all or a portion of any direct or guaranteed loan made under the authority of the CONACT 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 on more than three occasions on or prior to April 4, 1996 or on any occasion after April 4, 1996, except as noted below.**

The applicant may receive a guaranteed OL to pay annual farm and ranch operating and family living expenses, provided the applicant meets all other requirements for the loan, if the applicant and anyone who will execute the promissory note:

- **received a write-down under section 353 of the CONACT**
- **is current on payments under a confirmed reorganization plan under Chapter 11, 12, or 13 of Title 11 of the United States Code**
- **received debt forgiveness on not more than one occasion after April 4, 1996, resulting directly and primarily from a Presidentially-designated emergency for a county or contiguous county in which the applicant operates. Only applicants who were current on all existing direct and guaranteed FSA loans prior to the beginning date of the incidence period for a Presidentially-designated emergency and received debt forgiveness on that debt within three years after the designation of such emergency meet this exception.**

Notes: A CONACT loan is any of the following, whether direct or guaranteed, made by FSA or its predecessor agency (FmHA):

- FO
- OL
- SW
- EM
- EE
- EO
- RL
- RHF
- EL.

Debt forgiveness does not include any writedown provided as part of a resolution of a discrimination complaint.--*

108 General Eligibility Requirements for OL and FO (7 CFR 762.120) (Continued)

C No Agency Loss (Continued)

A borrower who has successfully completed a bankruptcy reorganization plan will be considered to be current on the plan.

All debt forgiveness actions that are part of 1 transaction and occur on or about the same date are normally considered 1 occasion of debt forgiveness, regardless of the number of loans involved. Since debt forgiveness on direct loans and guaranteed loans are always considered separate transactions, concurrent forgiveness on direct and guaranteed loans are separate occasions. A single loan may have debt forgiveness on more than 1 occasion, when, for example, a borrower received a writedown and the loan was later liquidated at a loss.

A lender should contact the local FSA office if it is unsure of a loan applicant's eligibility.

108 General Eligibility Requirements for OL and FO (7 CFR 762.120) (Continued)**D Delinquency on Federal Debt**

The loan applicant, and anyone who will execute the promissory note, is not delinquent on any Federal debt, other than a debt under the Internal Revenue Code of 1986. Any debt under the Internal Revenue code of 1986 may be considered by the lender in determining cash flow and credit worthiness.

The loan applicant may be considered eligible if the delinquency will be remedied by the date of loan closing. Unless otherwise prohibited, loan applicants may use loan funds to cure delinquencies. Federal debt includes, but is not limited to, student loans, CCC loans, FSA direct loans, VA loans, and SBA loans. FSA-guaranteed loans are not Federal debts.

--Loans made using FSA-1980-25 or FSA-1980-28 with the July 20, 2001, or later revision date become a delinquent Federal debt upon the payment of a final loss claim.--

E Outstanding Recorded Judgments

The loan applicant, and anyone who will execute the promissory note, has no 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 to be eligible for guaranteed loans. Loan funds will not be used to pay Federal judgments. Questions by FSA employees regarding outstanding judgments should be directed to OGC.

F United States Citizenship

The applicant must be a citizen of the United States, a United States non-citizen national, or a qualified alien under applicable Federal immigration laws. For an entity applicant, the majority interest of the entity must be held by members who are United States citizens, United States non-citizen nationals, or qualified aliens under applicable Federal immigration laws.

United States non-citizen nationals and qualified aliens must provide the appropriate documentation as to their immigration status as required by the United States Department of Homeland Security, Bureau of Citizenship and Immigration Services.

U.S. non-citizen nationals and qualified aliens must submit appropriate documentation to verify immigration status as provided in Exhibits 7 and 8, as applicable.

108 General Eligibility Requirements for OL and FO (7 CFR 762.120) (Continued)**G Legal Capacity to Incur Loan**

The loan applicant and all borrowers on the loan must possess the legal capacity to incur the obligations of the loan.

The loan applicant must be of legal age, mental capacity, and authority to enter into a legally binding agreement with the lender. An entity applicant and the entity members must be able to enter into such a contract.

H Past Dealings

The loan applicant, in past dealings with the Agency, must not have provided the Agency with false or misleading documents or statements.

I Credit History

The individual or entity loan applicant and all entity members must have acceptable credit history demonstrated by debt repayment. A history of failures to repay past debts as they came due when the ability to repay was within their control will demonstrate unacceptable credit history. Unacceptable credit history will not include either of the following:

- **isolated instances of late payments which do not represent a pattern and were clearly beyond their control**
- **lack of credit history.**

J Test for Credit

The loan applicant is unable to obtain sufficient credit elsewhere without a guarantee to finance actual needs at reasonable rates and terms. The potential for sale of any significant nonessential assets will be considered when evaluating the availability of other credit. Ownership interests in property and income received by an individual or entity loan applicant, or any entity members as individuals also will be considered when evaluating the availability of other credit to the loan applicant.

The loan applicant's inability to obtain credit will be demonstrated when the lender certifies that they would not make the loan without a guarantee. The lender certifies this by signing the application form.

108 General Eligibility Requirements for OL and FO (7 CFR 762.120) (Continued)**J Test for Credit (Continued)**

If the loan applicant has significant assets that are not essential to the farm operation, and the sale of those assets would remove the need for a guarantee, the loan applicant does not meet the test for credit requirement.

Assets and income of the entity members will also be considered when evaluating the availability of other credit to the entity applicant.

The Authorized Agency Official shall:

- review the financial information supplied by the lender in conjunction with information compiled under RD Instruction 1951-F
- document that the loan requested does not meet the lender's loan requirements without a guarantee.

K Controlled Substances

Neither the applicant nor any entity member has 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 part 1308. Applicants must certify on the Agency application form that it and its members, if an entity, have not been convicted of such a crime within the relevant period. If the lender uses the lender's Agency approved forms, the certification may be an attachment to the form.

--The applicant also certifies that he or she as an individual, or any member of an entity applicant, is not ineligible for Federal benefits based on a conviction for the distribution of controlled substances or any offense involving the possession of a controlled substance under 21 U.S.C. 862. Applicants must certify the above on the Agency application form or, if the lender uses the lender's Agency-approved forms, the certification may be an attachment to the form.--

109 Specific Requirements for OL’s (7 CFR 762.120(i))

A Operator Requirement

For Operating Loans, the individual or entity loan applicant must be an operator of not larger than a family farm after the loan is closed.

When determining whether or not the farm meets the family farm definition, the Authorized Agency Official shall:

- analyze all the factors that make up the regulatory definition of family farm and the items discussed in the following table
- look at all aspects and the circumstances of the farm operations.

Note: Consider and analyze these factors and how they relate to one another.

Application of judgment, combined with documentation of all the factors for the decision, should provide reasonable determinations of an applicant’s qualifications as a family farm.

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 decisionmaker.
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.

109 Specific Requirements for OL’s (7 CFR 762.120(i)) (Continued)

A Operator Requirement (Continued)

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

B Entity Borrower Requirements

In the case of an entity borrower:

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

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

110 Specific Requirements for FO's (7 CFR 762.120(j))**A Owner and Operator Requirement**

For Farm Ownership Loans, the individual must be the operator and owner of not larger than a family farm after the loan is closed.

The loan applicant must own the farm to obtain FO. The factors in subparagraph 109 A will be considered when determining whether or not the farm meets the family farm definition. Farmers also may lease farm land in addition to the land they own.

B Entity Requirements

In the case of an entity borrower:

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

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

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

C Life Estates

FO's may be guaranteed under some circumstances when life estates are involved.

A guaranteed FO can be made to:

- both the life estate holder and the remainderman, if:
 - both have a legal right to occupy and operate the farm
 - both are eligible for the loan independently
 - both parties sign the note and lien instrument
- just the remainderman, if:
 - the remainderman has a legal right to occupy and operate the farm
 - the lien instrument is signed by the remainderman, life estate holder, and any other party having any interest in the security
- just the life estate holder, if:
 - there is no restriction placed on a life estate holder who occupies and operates a farm
 - the lien instrument is signed by the life estate holder, remainderman, and any other party having any interest in the security.

111 Eligibility Requirements for Entity Loan Applicants (7 CFR 762.120(k))

A Individual Ownership Interest Requirement

Each entity member's ownership interest may not exceed the family farm definition limits.

B Entity Ownership of Large Farms

The collective ownership interest of all entity members may exceed the family farm definition limits only if the following conditions are met:

- **all of the entity members are related by blood or marriage**
- **all of the members are or will be operators of the entity**
- **the majority interest holders of the entity must meet the requirements of paragraphs 108 F, H, I, and 109 and 110 of this section.**

The majority interest holders of the entity must meet the following requirements:

- the entity member is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence
- the entity member, in past dealings with the Agency, must not have provided the Agency with false or misleading documents or statements
- the entity member has an acceptable credit history
- the entity members meet the requirements of paragraph 109 or 110.

C Domestic Farmer or Rancher

The entity must be controlled by farmers or ranchers engaged primarily and directly in farming or ranching in the United States after the loan is made.

D Entity Member Requirement

The entity members are not themselves entities.

112-121 (Reserved)

Section 2 Loan Purposes and Limitations

122 OL Purposes (7 CFR 762.121(a))

A**General OL Purposes**

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

B**Term OL Purposes**

Loan funds disbursed under an OL guarantee may only be used for the following purposes:

- **payment of costs associated with reorganizing a farm or ranch to improve its profitability**
 - **purchase of livestock, including poultry, and farm or ranch equipment or fixtures, quotas and bases, and cooperative stock for credit, production, processing or marketing purposes**
 - **payment of annual farm or ranch operating expenses, examples of which include feed, seed, fertilizer, pesticides, farm or ranch supplies, repairs and improvements which are to be expensed, cash rent and family subsistence**
 - **payment of scheduled principal and interest payments on term debt provided the debt is for authorized FO or OL purposes**
 - **other farm and ranch needs**
 - **payment of costs associated with land and water development for conservation or use purposes**
 - **refinancing indebtedness incurred for any authorized OL purpose, when the lender and loan applicant can demonstrate the need to refinance**
-

Continued on the next page

122 OL Purposes (7 CFR 762.121(a)) (Continued)

B**Term OL Purposes (Continued)**

- payment of loan closing costs
- payment of costs associated with complying with Federal or State-approved standards under the Occupational Safety and Health Act of 1970 (29 U.S.C. § 655 and 667); this purpose is limited to applicants who demonstrate that compliance with the standards will cause them substantial economic injury
- payment of training costs required or recommended by the Agency.

C**Real Estate Improvements**

Term OL funds may be used for limited real estate improvements, so long as the loan can be repaid within 7 years. These improvements can take the form of fixtures to existing farm buildings or new building construction. Improvements financed over periods longer than 7 years are assumed to be for real estate rather than operating purposes and will not be financed with OL funds.

D**Processing or Marketing Purposes**

Allowable marketing costs include the purchase of quotas and expenses related to the sale of farm products produced by the borrower. FSA funds cannot be used to finance the resale of agricultural commodities produced by other farm or ranch entities.

OL funds can also be used to finance the initial processing of agricultural commodities produced by the borrower's farm or ranch.

Examples: Examples of allowable processing activities include canning tomatoes and packaging maple syrup.

Generally, for the financing of a marketing activity to be eligible, the activity must be a natural extension of the farming operation. In determining allowable enterprises, Authorized Agency Officials should:

- compare the relative size of revenues and expenses for the farm and nonfarm operations
- consider the portion of goods marketed or processed that the farm or ranch raises versus the portion they obtain from other entities.

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122 OL Purposes (7 CFR 762.121(a)) (Continued)

E

Refinancing

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

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

F

LOC Purposes

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

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

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

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

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

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

Continued on the next page

122 OL Purposes (7 CFR 762.121(a)) (Continued)

F

**LOC Purposes
(Continued)**

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

123 FO Purposes (7 CFR 762.121(b))

A

**General FO
Purposes**

The Authorized Agency Official shall review loan applications to ensure that FO funds are used for approved purposes.

B

FO Purposes

Guaranteed FO's are authorized only to:

- **acquire or enlarge a farm or ranch**

Examples: Examples include, but are not limited to:

- **providing down payments**
- **purchasing easements for the loan applicant's portion of land being subdivided**
- **participating in the Beginning Farmer Downpayment Farm Ownership program under 7 CFR 1943, subpart A.**

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

Continued on the next page

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

B

FO Purposes
(Continued)

- **make capital improvements**

Examples: Examples include, but are not limited to, the construction, purchase, and improvement of farm dwellings, service buildings and facilities that can be made fixtures to the real estate. Capital improvements to leased land may be financed subject to the limitations in § 762.122.

Notes: FO funds can be used to purchase or build any type of structure, including personal dwellings, related to the farming or ranching enterprise.

*--When planning capital improvements, the lender shall ensure that:

- all project facilities are designed using accepted architectural and engineering practices and conform to applicable Federal, State, and local codes and requirements
- the project will be completed with available funds and, once completed, will be used for its intended purpose and produce products in the quality and quantity proposed in the application.

[7 CFR 762.122] When FO funds are used for improvements to--* leased land, the terms of the lease must provide either of the following:

- **reasonable assurance that the loan applicant will have use of the improvement over its useful life**
 - **compensation for any unexhausted value of the improvement if the lease is terminated.**
- **promote soil and water conservation and protection**

Examples: Examples include the correction of hazardous environmental conditions, and the construction or installation of tiles, terraces and waterways.

- **pay closing costs, including but not limited to, purchasing stock in a cooperative, appraisal and survey fees**
- **refinance indebtedness incurred for authorized FO or OL purposes, provided the lender and loan applicant demonstrate the need to refinance the debt.**

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

124 **Loan Limitations (7 CFR 762.122 and 762.121)**

A**General
Guaranteed
Loan Limitations**

Loan applicants are limited in the total amount of money they can borrow through FSA programs and in how they can use the funds they receive. The Authorized Agency Official must review loan applications to ensure that they comply with FSA limitation requirements.

B**Specific OL and
FO Limitations**

The total dollar amount of line of credit advances and income releases cannot exceed the total estimated expenses, less interest expense, as indicated on the borrower's cash flow budget, unless the cash flow budget is revised and continues to reflect a feasible plan.

The amount of loan proceeds that the lender advances plus the amount of income that the lender releases to the borrower normally cannot exceed the borrower's total planned expenses, excluding interest expense. However, additional amounts may be advanced or released if a revised feasible plan, as defined in Exhibit 2, is developed.

The Agency will not guarantee any loan made with the proceeds of any obligation the interest on which is excluded from income under Section 103 of the Internal Revenue Code of 1954, as amended. Funds generated through the issuance of tax-exempt obligations may not be used to purchase the guaranteed portion of any Agency guaranteed loan. An Agency guaranteed loan may not serve as collateral for a tax-exempt bond issue.

Many States have financing programs for, typically, beginning farmers using Tax Exempt Industrial Revenue Agricultural Bonds ("Aggie Bonds"). Because of their tax-exempt status, FSA cannot guarantee loans funded with Aggie Bonds.

The Agency will not guarantee any loan to purchase, build, or expand buildings located in a special 100 year floodplain as defined by FEMA flood hazard maps unless flood insurance is available and purchased.

If FEMA floodplain maps have not been completed, this restriction will not apply. However, if the floodplain maps have been completed for the area, but the community has chosen to not make flood insurance available, a guarantee cannot be approved for a loan to construct buildings on the floodplain or purchase farm property if buildings are located on the floodplain. A loan for refinancing or construction of buildings outside the floodplain would not be prohibited.

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124 **Loan Limitations (7 CFR 762.122 and 762.121) (Continued)**

B**Specific OL and
FO Limitations
(Continued)**

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. 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 in accordance with the Agency's appeal procedures.

Loans may not be used to satisfy judgments obtained in the United States District courts. However, Internal Revenue Service judgment liens may be paid with loan funds.

See Part 10 for maximum loan amount limitations.

[7 CFR 762.125] Guaranteed loan funds will not be used to finance a nonfarm enterprise. Nonfarm enterprises include, but are not limited to:

- **raising earthworms, exotic birds, tropical fish, dogs, or horses for nonfarm purposes**

Note: Raising horses for:

- nonfarm purposes would include racing, pleasure riding, or show
- farm purposes would include draft or cutting horses.
- **welding shops**
- **boarding horses or riding stables.**

*--Custom work is not a nonfarm enterprise if it is incidental to the farm enterprise.

Example: A loan for a combine may be guaranteed if the loan applicant has substantial need for the combine in the farming enterprise; however, the loan could not be guaranteed if the loan applicant grew no crop or the amount of crop would not justify the purchase of the combine.--*

125-134 (Reserved)

Section 3 Loan Terms, Insurance, Inspections, and Fees

135 Interest Rate Requirements (7 CFR 762.124(a))

A**Fixed and
Variable Rates**

The interest rate on a guaranteed loan or line of credit may be fixed or variable as agreed upon between the borrower and the lender. The lender may charge different rates on the guaranteed and the non-guaranteed portions of the note. The guaranteed portion may be fixed while the unguaranteed portion may be variable, or vice versa. If both portions are variable, different bases may be used.

If a variable rate is used, it must be tied to a rate specifically agreed to between the lender and borrower in the loan instruments. Variable rates may change according to the normal practices of the lender for its average farm customers, but the frequency of change must be specified in the loan or line of credit instrument.

B**Maximum
Interest Rates**

Neither the interest rate on the guaranteed portion nor the unguaranteed portion may exceed the rate the lender charges its average agricultural loan customer. At the request of the Agency, the lender must provide evidence of the rate charged the average agricultural loan customer. This evidence may consist of average yield data, or documented administrative differential rate schedule formulas used by the lender.

The FSA guarantee compensates a lender for much of the additional credit risk involved in guaranteed loans. If the lender's rates of interest are based on a standardized risk rating system, the rate charged an FSA-guaranteed borrower must be no higher than the rate charged a moderate risk borrower, regardless of the guaranteed borrower's equity, collateral, or repayment position.

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135 Interest Rate Requirements (7 CFR 762.124(a)) (Continued)

C

Interest Charges Interest must be charged only on the actual amount of funds advanced and for the actual time the funds are outstanding. Interest on protective advances made by the lender to protect the security will be charged at the note rate limited to subparagraph B.

Interest on protective and emergency advances, made by the lender to protect the security, must not exceed the rate specified in the loan instruments. The charge of interest on legal fees, broker's fees, and other expenses paid in conjunction with bankruptcy, liquidation, or other servicing is not covered by the guarantee.

136 Charges and Fees (7 CFR 762.124(e))

A**Loan Fees**

The lender may charge the loan applicant and borrower fees for the loan provided they are no greater than those charged to nonguaranteed customers for similar transactions. Similar transactions are those involving the same type of loan requested (for example, operating loans or farm real estate loans).

Lenders may not charge a loan origination and servicing fee greater than one percent of the loan amount for the life of the loan when a guaranteed loan is made in conjunction with a down payment FO for beginning farmers under 7 CFR Part 1943, Subpart A.

FSA may request that the lender provide evidence supporting the amount of their loan fees.

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136 Charges and Fees (7 CFR 762.124(e)) (Continued)

B**Late Payment Charges**

Late payment charges (including default interest charges) are not covered by the guarantee. These charges may not be added to the principal and interest due under any guaranteed note or line of credit. However, late payment charges may be made outside of the guarantee if they are routinely made by the lender in similar types of loan transactions.

Late payment fees and prepayment penalties may be charged on guaranteed loans, if they are routinely charged by the lender on similar loans. Late payment charges, including interest on late payments, may be charged and collected from borrowers in cases of default when the borrower pays the account current or the loan is paid in full. However, late payment charges and prepayment penalties are not covered by the guarantee and will not be paid by the government in the case of a loss. Ledgers that are provided to support the principal and interest included on RD-449-30 should not include default interest or late charges.

C**Guarantee Fee**

A guarantee fee will be charged on all loans unless otherwise stated in this paragraph. Guarantee fees are 1 percent and are calculated as follows:

$$\text{Fee} = \text{Loan Amount} \times \% \text{ Guaranteed} \times .01.$$

The nonrefundable fee is paid to FSA by the lender. The fee may be passed on to the borrower and included in loan funds.

The following guaranteed loan transactions are not charged a fee:

- loans involving interest assistance
- loans where a majority of the funds are used to refinance an FSA direct loan
- loans to * * * farmers or ranchers involved in the direct beginning farmer downpayment program

Note: The beginning farmer downpayment loan program refers only to a direct FO made under FmHA Instruction 1943-A. Simply being defined as a beginning farmer will not qualify for a waiver of the fee.

- *--loans made under a State beginning farmer program where a memorandum of understanding between the State and USDA has been signed.--*

137 **Loan Term and Payment Schedules (7 CFR 762.124(b) and (c))**

A

OL's Repayment Schedule

Loan funds or advances on a line of credit used to pay annual operating expenses will be repaid when the income from the year's operation is received, except when the borrower is establishing a new enterprise, developing a farm, purchasing feed while feed crops are being established, or recovering from disaster or economic reverses.

When repayment is scheduled over a longer period, the borrower's expected income is not sufficient security. The lender must secure the loan with additional chattel or real estate security for the period of repayment.

Advances for purposes other than for annual operating expenses will be scheduled for repayment over the minimum period necessary considering the loan applicant's ability to repay and the useful life of the security, but not in excess of 7 years.

B

OL/LOC Final Maturity Date

The final maturity date for each loan cannot exceed 7 years from the date of the promissory note or line of credit agreement.

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137 Loan Term and Payment Schedules (7 CFR 762.124(b) and (c)) (Continued)

C

LOC Advances All advances on a line of credit must be made within 5 years from the date of the Guarantee.

D

FO Final Maturity Date Each loan must be scheduled for repayment over a period not to exceed 40 years from the date of the note or a shorter period as may be necessary to assure that the loan will be adequately secured, taking into account the probable depreciation of the security.

E

Loan Note Guarantee Balloon payment terms are permitted on FO or OL subject to the following.

Balloon Payments

Extended repayment schedules may include equal, unequal, or balloon installments if needed to establish a new enterprise, develop a farm, or recover from a disaster or an economic reversal. Loans with balloon installments must have adequate collateral at the time the balloon installment comes due. Crops, livestock other than breeding livestock, or livestock products produced are not sufficient collateral for securing such a loan. The borrower must be projected to be able to refinance the remaining debt at the time the balloon payment comes due based on the expected financial condition of the operation, the depreciated value of the collateral, and the principal balance on the loan.

When conditions warrant, either FO or OL may have repayment schedules that *--may include equal, unequal, or balloon payments. The period of time between loan origination and a balloon installment must be no shorter than that provided to nonguaranteed customers for similar type transactions.--*

138 Insurance Requirements (7 CFR 762.123(a))

A**Lender
Responsibilities**

Lenders must require borrowers to maintain adequate property, public liability, and crop insurance to protect the lender and Government's interests.

Insurance is not required in every situation. When insurance is warranted, lenders should obtain an assignment, including crop insurance.

B**Crop Insurance**

By loan closing, loan applicants must either:

- **obtain at least the catastrophic risk protection (CAT) level of crop insurance coverage, if available, for each crop of economic significance, as defined by 7 CFR Part 402**
- **waive eligibility for emergency crop loss assistance in connection with the uninsured crop. EM loan assistance under 7 CFR § 1945, Subpart D is not considered emergency crop loss assistance for purposes of this waiver and execution of the waiver does not render the borrower ineligible for EM loans.**

Insurance, including crop insurance, also must be obtained as required by the lender or the Agency based on the strengths and weaknesses of the loan.

C**Flood Insurance**

Loan applicants must purchase flood insurance if buildings are or will be located in a special flood hazard area as defined by FEMA maps and if flood insurance is available.

Continued on the next page

138 Insurance Requirements (7 CFR 762.123(a)) (Continued)

C**Flood Insurance
(Continued)**

*--Lender regulatory agencies require use of FEMA-81-93 to determine whether a building or structure offered as security for a loan will be located in a special flood hazard area. The lender shall follow their regulator's guidance on documenting and escrowing for flood insurance.

FSA shall not approve a loan guarantee in which security offered for the loan contains a structure located in a special flood hazard area unless flood insurance is obtained under the National Flood Insurance Program. If a structure is located in a special flood hazard area and the community is not participating in the National Flood Insurance Program, the loan cannot be guaranteed. If there are no structures located in a special flood hazard area, the guarantee may be approved.--*

139 Inspection Requirements (7 CFR 762.123(b))

A**Inspection
Requirements**

Before submitting an application the lender must make an inspection of the farm to assess the suitability of the farm and to determine any development that is needed to make it a suitable farm.

During the inspection, the lender should determine whether the applicant has adequate property, buildings, and equipment to operate a viable farm. A summary of the farm inspection and the lender's assessment of the viability of the operation should be mentioned in the application narrative.

140-150 (Reserved)

Section 4 Credit Decision

Subsection 1 Financial Feasibility of Proposed Loan (7 CFR 762.125)

151 Determining Financial Feasibility of Loans (7 CFR 762.125)

A**Purpose**

This paragraph describes how SEL and CLP lenders must demonstrate that a loan applicant has sufficient financial resources to repay a guaranteed loan. PLP lenders use methods outlined in their CMS to determine the financial feasibility of a loan.

B***--Feasible Plan**

The loan applicant's proposed operation must project a feasible plan. The cash flow budget analyzed to determine feasible plan must represent the predicted cash flow of the operating cycle.

See Exhibit 2 for the definition of feasible plan.

A lender must determine whether a loan applicant has sufficient financial resources to repay a guaranteed loan. To make this determination, lenders work with the loan applicant to prepare a cash flow budget for the farm or ranch operation. As used in this part, the term "operation" includes all farm or ranch activities and income as well as all nonfarm or ranch income pledged by the loan applicant.

The cash flow budget used in the loan application must:--*

- reflect, as closely as possible, the predicted cash flow of the operating cycle
 - be documented in sufficient detail to adequately reflect the overall condition of the operation.
-

152 Calculating Projected Income and Expenses by SEL's (7 CFR 762.125)

A**Purpose**

SEL's must follow FSA methodology for calculating projected income and expenses. This paragraph explains the methodology SEL's must use.

B**Projected Income and Expenses**

For standard eligible lenders, the projected income and expenses of the *--borrower and operation used to determine a feasible plan must be--* based on the loan applicant's proven record of production and financial management.

SEL's also must use reliable or reasonable forecasted crop or livestock prices. 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. Projections of income from FSA Farm Programs should be prepared with assistance from FSA Farm Program staff.

The projected production yields and financial performance should not be outside of the range of the loan applicant's previous performance, unless fully documented and justified. The loan narrative must support the projected production, income, and expenses, explain any discrepancies, and support other major assumptions used in the cash flow budget.

Continued on the next page

152 Calculating Projected Income and Expenses by SEL's (7 CFR 762.125) (Continued)

C**Commodity Price
Forecasts**

Lenders must use price forecasts that are reasonable and defensible. Sources must be documented by the lender and acceptable to the Agency.

The lender may use price forecasts from land grant universities, other published prices, forward contracted prices, futures, or price histories of speciality crops on other commodities. The lender should use price forecasts that provide an accurate projection of commodity prices that the borrower will receive.

D**Estimating
Production**

Standard eligible lenders must use the best sources of information available for estimating production in accordance with this subsection when developing operating cash flow budgets.

Deviations from historical performance may be acceptable, if specific to changes in operation and adequately justified and acceptable to the Agency.

For existing farmers, actual production for the past 3 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 are agreeable with the lender, the loan applicant, and the Agency will be used.

When the production of a growing commodity can be estimated, it must be considered when projecting yields.

Continued on the next page

152 Calculating Projected Income and Expenses by SEL's (7 CFR 762.125) (Continued)

**E
Declared
Disaster**

When the loan applicant's production history has been so severely affected by a declared disaster that an accurate projection cannot be made, the following applies.

- County average yields are used for the disaster year if the loan applicant'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.
- To calculate a historical yield, the crop year with the lowest actual or county average yield may be excluded, provided the loan applicant's yields were affected by disasters at least 2 of the previous 5 consecutive years.

County or State average yields should be substituted only when the 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 operator is expected to achieve.

**F
Lender's
Documentation**

Lenders must maintain supporting documentation for their determination of cash flow budgets in their files. The following table summarizes the loan documentation that can be used to support the cash flow budget.

Cash Flow Element	Documentation to Support Elements
Income and Expense Projections	<ul style="list-style-type: none"> • Historical performance data • FSA records • Extension or county data • Thorough loan narrative
Nonfarm Income	<ul style="list-style-type: none"> • RD-1910-5 or lender verification of income form • W-2, pay stub, telephone record, or historical performance data
Loan Balances and Payment Schedules	<ul style="list-style-type: none"> • FSA-440-32 or lender verification of debt form • Loan statement, credit report, or telephone record

Continued on the next page

152 Calculating Projected Income and Expenses by SEL's (7 CFR 762.125) (Continued)

G**Consistency of Farm Operating Plans**

When the loan applicant has or will have a cash flow budget developed in conjunction with a proposed or existing Agency direct loan, the two cash flow budgets must be consistent.

To be consistent, the 2 plans must be of the same operation, with similar major assumptions, but they do not have to be identical.

Example: The lender and FSA may use slightly different projected prices and yields.

H**Refinancing Existing Debt**

Loan guarantee requests for refinancing must ensure that a reasonable chance for success still exists. The lender must demonstrate that problems with the loan applicant's operation have been identified, can be corrected, and the operation returned to a sound financial basis.

An allowed use of guaranteed loan funds is to refinance existing debt, including direct loans and other farm loans. In many cases, refinancing existing debt is required because the borrower is experiencing financial difficulties. In these cases, requests for use of guaranteed loan funds for refinancing debt must ensure that a reasonable chance for operational success exists.

The lender must indicate in the loan narrative what the loan applicant will do differently to ensure the success of the farming operation. The lender must explore different financial options that would allow the loan applicant to achieve a *--feasible plan. The lender should consider adjusting the loan terms or--* negotiating with other creditors to adjust their loan terms or rates as needed to make the loan feasible. See Section 2 for additional information on limitations to refinancing.

Continued on the next page

152 Calculating Projected Income and Expenses by SEL's (7 CFR 762.125) (Continued)

I

Alternate Income **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. The lender will analyze business ventures other than the farm operation to determine their soundness and contribution to the operation.**

Income from custom work and seasonal or temporary positions should not be included in the cash flow budget, unless there is a history of income from similar sources or other strong evidence of likelihood.

* * *

153 Calculating Projected Income and Expenses by CLP Lenders (7 CFR 762.125)

A

Purpose

CLP lenders are provided greater flexibility in estimating the projected income and expenses of an operation. They are not required to estimate production yields or price forecasts for crops, livestock, and livestock products.

The remainder of this paragraph explains the FSA guidelines for determining a loan applicant's income and expenses by CLP lenders.

B

Using Financial History

For CLP lenders, the projected income and expenses of the borrower and operation must be based on the loan applicant's financial history and proven record of financial management.

CLP lenders must use their judgment and evaluation of the individual circumstances to determine the best method for estimating the projected income and expenses of the loan applicant. CLP lenders have the option of using the operation's production yields, as described in paragraph 152 for SEL. CLP lenders will use the loan applicant's income and other financial records. As with the use of production yields, the lender should not merely average 3 years of income figures. An average is only appropriate when there have not been major *--changes in the operation. If there have been major changes in yields, prices, or production, this should be considered when estimating the projected income and expenses.--*

The lender should consider the range and trends as indicators of the capability and limitations of the operator, land, and equipment. The projection should:

- reflect what the current or proposed operation can reasonably and justifiably accomplish
- not be outside the range of historical performance unless fully justified.

The loan narrative should:

- document the method used to project income and expenses
 - provide an explanation of any deviations from historical production
 - *--address any major changes in yields or prices.--*
-

154 Determining Financial Feasibility of Loans by PLP Lenders (7 CFR 762.125)

A**Purpose**

PLP lenders are not required to use the financial feasibility methods in paragraph 151. These lenders will use the methods that FSA approved at the time of PLP certification.

This paragraph explains the guidelines FSA will use in evaluating PLP determination of the financial feasibility of loans.

B**Using Internal Procedures**

Notwithstanding any other provision of this section, PLP lenders will follow their internal procedures on financial feasibility as agreed to by the Agency during PLP certification.

To determine financial feasibility, PLP lenders must follow the procedures agreed to by FSA and the lender as described in the PLP FSA-1980-38. The loan narrative must contain justification for assumptions made during the determination of financial feasibility.

155-165 (Reserved)

Subsection 2 Security of the Loan

166 Amount and Quality of Security (7 CFR 762.126)

A

Purpose

The lender is responsible for ensuring that proper and adequate security for the guaranteed loan is obtained and maintained. Lenders must obtain the lien position proposed in the application for each security item and perfect each lien. This paragraph explains the guidelines FSA will use in evaluating whether the lender has proposed adequate security for the guaranteed loan.

B

Adequate Security

The lender is responsible for ensuring that proper and adequate security is obtained and maintained to fully secure the loan, protect the interest of the lender and the Agency, and assure repayment of the loan or line of credit.

The lender will obtain a lien on additional security when necessary to protect the Agency's interest.

The lender must determine the amount of security required to adequately secure a loan. At a minimum, FSA requires the value of the security to be at least equal to the loan amount. However, more security will be taken whenever it is available. A 1:1 loan to value ratio is not adequate when additional security is available. The adequacy of security will be judged in consideration of the total security available, prior liens, and the lender's normal practices. More security may be required if the quality of the security is low, cash flow is below average, production capability is suspect, management history is limited, or enterprise is not firmly established or is atypical for the area.

All security must secure the entire loan or line of credit. The lender may not take separate security to secure only that portion of the loan or line of credit not covered by the guarantee.

The lender may not require compensating balances or certificates of deposit as means of eliminating the lender's exposure on the unguaranteed portion of the loan or line of credit. However, compensating balances or certificates of deposit as otherwise used in the ordinary course of business are allowed for both the guaranteed and unguaranteed portions.

Continued on the next page

166 Amount and Quality of Security (7 CFR 762.126) (Continued)

B**Adequate
Security
(Continued)**

To evaluate the quality and overall adequacy of the proposed security, the Authorized Agency Official should evaluate the lender's analysis of the security and the loan applicant's financial position. The Authorized Agency Official may determine that more security is required to protect FSA's interests based on the answers to the following questions.

- Is the value of the primary security at least equal to the proposed loan amount?
 - Is additional security available?
 - Is this a specialized operation with limited sale opportunities?
 - What is the age, durability, probable depreciation rate, and life of the security and how does this compare to the term of the loan?
 - What is the proposed lien position on the primary security?
 - Is the applicant's net worth high or low compared with their total liabilities, including the proposed amount of the loan or LOC?
 - Does the loan applicant have a strong cash flow position and high profitability?
-

C**Security
Requirements
for SEL's and
CLP and PLP
Lenders**

The type of lender has no bearing on the type or amount of security required to adequately secure a loan. The Authorized Agency Official should evaluate the proposed security for loan applications from SEL's and CLP and PLP lenders using the same evaluation criteria.

Continued on the next page

D**Lien Position**

All guaranteed loans will be secured by the best lien obtainable provided:

- **when the loan is made for refinancing purposes, the guaranteed loan must hold a security position no lower than on the refinanced loan**

Note: The lender must obtain a lien on all of the collateral that secured the debt that was refinanced, and the lien position on that collateral must be no lower than that which secured the existing debt.

- **any chattel-secured guaranteed loan must have a higher lien priority (including purchase money interest) than an unguaranteed loan secured by the same chattels and held by the same lender**

Note: Any lender, who holds an unguaranteed loan with a first lien on the *--same collateral proposed as primary security for a guaranteed loan,--* must subordinate its lien position to the guaranteed loan.

- **[7 CFR 762.140] guaranteed loan installments will be paid before unguaranteed loans held by the same lender**
- *** * * junior lien positions are acceptable only if the equity position is strong**

Note: The strength of the equity position will be evaluated by examining the appraisal, balance sheet, cash flow, as appropriate, and proposed loan amount to determine the equity in the collateral to secure the guaranteed loan. In no case will a guarantee be approved, secured by a junior lien on collateral with a 1:1 loan to value ratio.

- *** * * junior liens on crops or livestock products will not be relied upon for security unless the lender is involved in multiple guaranteed loans to the same borrower, and also has first lien on the collateral**

Note: Junior liens on income security may be taken as security, but will be considered to have no collateral value unless the prior lien is securing an FSA-guaranteed loan to the same lender.

Continued on the next page

D**Lien Position
(Continued)**

- **additional security or any loan of \$10,000 or less may be secured by the best lien obtainable on real estate without title clearance or legal services normally required, provided the lender believes from a search of the county records that the loan applicant can give a mortgage on the farm and provided that the lender would, in the normal course of business, waive the title search**

Notes: This exception to title clearance will not apply when land is to be purchased.

Title clearance work can be expensive and cost-prohibitive in some cases. Title clearance is not required for loans of \$10,000 or less if the lender feels such a search is not necessary. In addition, FSA does not want to discourage taking additional security. Therefore, any amount of real estate to be taken as additional security that is clearly in excess of what is needed to fully secure the loan does not need title clearance. Both of these exceptions require that the lender conduct an informal check, be reasonably certain that a lien can be perfected, and otherwise follow internal lending policy on title clearance.

- **when taking a junior lien, prior lien instruments will not contain future advance clauses (except for taxes, insurance, or other reasonable costs to protect security), or cancellation, summary forfeiture, or other clauses that jeopardize the Government's or the lender's interest or the borrower's ability to pay the guaranteed loan, unless any such undesirable provisions are limited, modified, waived or subordinated by the lienholder for the benefit of the Agency and the lender.**

Note: Provisions on prior lien instruments, such as prepayment penalties, will be considered when evaluating the collateral value of the lender's security on the guaranteed loan.

167 Identifiable Collateral (7 CFR 762.126(c))

A**Purpose**

All of the collateral must be identifiable. This paragraph describes the guidelines for evaluating whether the security obtained for a guaranteed loan is identifiable.

B**Identifiable Security**

The guaranteed loan must be secured by identifiable collateral. To be identifiable, the lender must be able to distinguish the collateral item and adequately describe it in the security instrument.

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

Example: A tractor described by its make, model, year, and serial number is identifiable collateral, while a truck that is only described as “flat-bed truck” is not identifiable collateral.

C**Equipment**

Equipment should be identified by manufacturer, model, year, and serial number, where available. If this information is not available, the lender should provide a sufficient written description of the equipment so that it is easily identifiable.

D**Livestock**

Livestock taken as security will be fully described, including breed, age group, and type, and will indicate the numbers in each group. This provision allows the farmer to perform routine culling and replace livestock without obtaining a release of security. The lender is responsible for ensuring that the borrower maintains the livestock numbers by periodically monitoring the livestock on the farm and ensuring that liens have not been provided to other creditors.

Particularly high value livestock can be appraised as such if the animals are clearly identified, monitored, and accounted for.

Continued on the next page

167 **Identifiable Collateral (7 CFR 762.126(c)) (Continued)**

E

Real Estate

Real estate can be identified using tax lot and block numbers, full metes and bounds, or rectangular survey description or similar system. A survey is not required if the property is adequately described and determined unnecessary by the lender's internal lending policy.

168 **Type of Security Required by Type of Loan (7 CFR 762.126(d))**

A

Purpose

The type of security obtained for a loan must be appropriate to the type of loan, and the loan terms must be consistent with the useful life of the security. This paragraph describes the guidelines for evaluating whether the type of security is appropriate for the proposed loan.

B

Security

Requirements

Guaranteed loans may be secured by any property if the term of the loan and expected life of the property will not cause the loan to be undersecured.

Typically, annual operating loans will be secured by crops and livestock, loans to be repaid within 2 to 7 years by breeding livestock and equipment, and loans repaid over greater than 7 years by real estate.

For loans with terms greater than 7 years, a lien must be taken on real estate.

The guidelines for short-, intermediate-, and long-term loans are as follows.

Loans	Guidelines
Short-term	Annual OL's should be secured at least by crops and livestock that will generally be sold during the term of the loan.
Intermediate-term	OL's should be secured by collateral that has a life expectancy at least as long as the loan. Loans to be repaid over a 2- to 7-year period should be secured by breeding livestock and equipment. The lender should evaluate the equipment proposed to be used for security to ensure that it will not depreciate faster than the loan is repaid.
Long-term	Loans scheduled to be repaid over more than 7 years must be secured by real estate. Anticipated depreciation of the improvements must be considered when establishing terms.

Continued on the next page

168 Type of Security Required by Type of Loan (7 CFR 762.126(d)) (Continued)

C**Leasehold Properties**

Loans can be secured by a mortgage on leasehold properties if the lease has a negotiable value and is subject to being mortgaged.

If the Authorized Agency Official does not have experience in making loans secured by leaseholds, they should contact the State Office for assistance.

D**Additional Personal or Corporate Guarantees**

The lender or Agency may require additional personal or corporate guarantees to adequately secure the loan. These guarantees are separate from, and in addition to, the personal obligations arising from members of an entity signing the note as individuals.

If the farm operation does not have adequate security for the proposed loan, additional security, such as personal or corporate guarantees, may be used to secure the loan. Therefore, entity members may be required to pledge their personal property or other nonfarm assets. For individual loan applicants, an additional guarantee may be provided by a co-signer.

--For entities, the instruments are executed by the member who is authorized to sign for the entity, and by all members of the entity as individuals. Individual liability can be waived by FSA for members holding less than 10 percent ownership in the entity if collectibility of the loan will not be impaired.--

169 Multiple Security Owners and Exceptions to Security Requirements (7 CFR 762.126)

A

Multiple Security Owners **If security has multiple owners, all owners must execute the security documents for the loan.**

B

Exceptions to Security Requirements **The Deputy Administrator for Farm Loan Programs has the authority to grant an exception to any of the requirements involving security, if the proposed change is in the best interest of the Government and the collectability of the loan will not be impaired.**

DAFLP has the authority to make exceptions to the rules regarding security. Exceptions will only be made on a case-by-case basis where the proposed exception is in the best interest of FSA, the lender, and the loan applicant. The exception must not reduce either of the following:

- loan applicant's ability to make regular loan payments
- lender's ability to collect on the debt obligation through the sale of collateral.

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

170-180 (Reserved)

Subsection 3 Appraisals

181 General Requirements (7 CFR 762.127)

A Purpose

The Agency may require a lender to obtain an appraisal based on the type of security, loan size, and whether it is primary or additional security.

Appraisals are an integral part of the loan evaluation process. Additional security is collateral taken in excess of what is required to fully secure a loan.

This paragraph will discuss general appraisal requirements and the situations where appraisals are and are not required.

--See subparagraph 267 I for SED responsibilities regarding appraisals.--

B General Requirements

The requirements in this paragraph apply to all 3 types of lenders.

Appraisals are not part of a complete application and guarantees may be approved by FSA, subject to the lender obtaining an acceptable appraisal. The lender is responsible for obtaining an acceptable appraisal before loan closing and FSA issuing the loan guarantee. SEL's must provide FSA with a copy of the appraisal.

Each lender is responsible for using an appraiser who has qualifications for conducting the *--type of appraisals required for the transaction. Real estate appraisals must be completed according to USPAP and any supplemental standards set forth by FSA according to USPAP.

A current copy of USPAP may be obtained from <http://www.appraisalfoundation.org>.--*

C Situations Where Appraisals Are Required

A current appraisal (not more than 12 months old) of primary chattel security is generally required on all loans.

An appraisal for loans or lines of credit for annual production purposes that are secured by crops is only required when a guarantee is requested late in the current production year and actual yields can be reasonably estimated.

Late in the season, crop appraisals should include an inspection of the crop to estimate yield based on the actual conditions.

A current real estate appraisal is required when real estate will be primary security. Agency officials may accept an appraisal that is not current if there have been no significant changes in the market or on the subject real estate and the appraisal was either completed within the past 12 months or updated by a qualified appraiser if not completed within the past 12 months.

181 General Requirements (7 CFR 762.127) (Continued)**C Situations Where Appraisals Are Required (Continued)**

An appraisal of real estate or chattel property that reflects the value of primary security at the time the guarantee is requested is required. If the market values have been fairly consistent since the date of the appraisal, an existing appraisal up to 12 months old may be acceptable. Rapidly changing collateral values will require a more recent appraisal.

Real estate appraisals over 12 months old may be acceptable if updated and if the market and subject have seen no significant changes. USPAP requires that changes be made by the original appraiser or someone from the same appraisal firm.

D Loan Servicing

Appraisals are required under the following loan servicing actions:

- transfer of security and assumption of debt
- debt writedown
- servicing FSA-1980-89's
- liquidation
- partial releases of security if determined necessary by FSA.

E Situations Where Appraisals Are Not Required

Notwithstanding other provisions of this section, an appraisal is not required in the following cases:

- **for any additional security**
- **for loans of \$50,000 or less if a strong equity position exists.**

Appraisals are not required on property to be taken as additional security that is clearly in excess of what is needed to fully secure the loan. The lender shall provide an estimate of value on FSA-1980-25 or FSA-1980-28, as applicable.--*

Appraisals may not be needed for loans of \$50,000 or less if there is significant equity in the collateral being pledged. The lender shall provide at least an estimate of value. The Authorized Agency Official shall request that an appraisal be completed if the equity position is not strong enough. This determination will be based on a review and evaluation of the amount of equity, type of collateral, and the strength of the loan applicant's balance sheet.

181 General Requirements (7 CFR 762.127) (Continued)**F Appraisal Costs**

Except for authorized liquidation expenses, the lender is responsible for all appraisal costs, which may be passed on to the borrower, or a transferee in the case of a transfer and assumption.

Appraisal costs may be deducted from security proceeds when part of authorized liquidation expenses.

182 Chattel Appraisals (7 CFR 762.127(c))**A Techniques**

The appraised value of chattel property will be based on public sales of the same, or similar, property in the market area. In the absence of such public sales, reputable publications reflecting market values may be used.

Appraisals on machinery, farm equipment, and livestock will be based on recent auction sales in the local area, where possible. However, if the number and frequency of sales is limited, it may be necessary to consult published prices.

B Reports

Appraisal reports may be on the Agency's Appraisal of Chattel Property form or on any other appraisal form containing at least the same information.

182 Chattel Appraisals (7 CFR 762.127(c)) (Continued)**C Appraiser Qualifications**

Chattel appraisals will be performed by appraisers who possess sufficient experience or training to establish market (not retail) values as determined by the Agency.

The important qualification for chattel appraisers is the ability to establish the value of equipment as reflected at auction sales. An appraiser's qualifications can be demonstrated through their years of experience, number of appraisals performed, and any relevant education or training.

183 Real Estate Appraisals (7 CFR 762.127(d))**A Techniques**

Real estate appraisals must be completed in accordance with the Uniform Standards of Professional Appraisal Practices.

Appraisals, regardless of the size of the transaction, must be completed according to USPAP. This refers to the development of the appraisal as well as the report format.

B Reports

Appraisals may be either a complete or limited appraisal provided in a self-contained or summary format. Restricted reports as defined in the Uniform Standards of Professional Appraisal Practices are not acceptable.

Appraisal development can be either complete or limited. Limited appraisals permit limited departure from certain USPAP standards. An example might be not using 1 of the approaches to value, if deemed unnecessary or not representative. With a limited appraisal, the appraiser must disclose the departure and have determined that the departure will not tend to mislead or confuse.

The format of the appraisal report may be either a Self-Contained or Summary. The Self-Contained Report contains all of the information significant to the property. A Summary Report contains the same information as the Self-Contained Report, but it is presented in less detail. Restricted Reports are normally only for internal use, may be simply a letter of value, have a limited amount of information, and are not acceptable for guarantee requests.

183 Real Estate Appraisals (7 CFR 762.127(d)) (Continued)**C Appraiser Qualifications**

On loan transactions of \$250,000 or less, the lender must demonstrate to the Agency's satisfaction that the appraiser possesses sufficient experience or training to estimate the market values of agricultural property.

An appraiser's qualifications can be demonstrated through their years of experience, number of appraisals performed, and any relevant education or training. For appraisers not certified by a State licensing body, the lender must submit the appraiser's resume to the Authorized Agency Official for review and approval.

On loan transactions greater than \$250,000, which includes principal plus accrued interest through the closing date, the appraisal must be completed by a state certified general appraiser. A loan transaction is defined as any loan approval or servicing action.

184-194 (Reserved)

Subsection 4 Maximum Loss for Percent of Loan Guarantee

195 Percent of Guarantee (7 CFR 762.129 and 762.130)

A**Standard
Guarantee**

The percent of guarantee will not exceed 90 percent based on the credit risk to the lender and the Agency both before and after the transaction. The Agency will determine the percentage of guarantee.

All guarantees issued to CLP and PLP lenders will not be less than 80 percent.

B**PLP Lenders**

Most loans will be guaranteed at 90 percent of the loan amount and cannot exceed 90 percent except as described in paragraph 196. The proposed percent of guarantee will be included on FSA-1980-15.

Complete applications from PLP lenders will be approved or rejected not later than 14 calendar days after receipt. If this timeframe is not met, the application will automatically be approved, subject to funding, and receive an 80 or 95 percent guarantee, as appropriate.

After the automatic approval, a PLP lender that had requested a higher percent of guarantee may request that FSA continue to process the request. This would be noted by the lender when returning FSA-1980-15 or by letter.

C**Maximum Loss**

The maximum amount the Agency will pay the lender under the loan guarantee will be any loss sustained by such lender on the guaranteed portion, including:

- **the pro rata share of principal and interest indebtedness as evidenced by the note or by assumption agreement**
 - **any loan subsidy due and owing**
 - **the pro rata share of principal and interest indebtedness on secured protective and emergency advances**
 - **principal and interest indebtedness on recapture debt pursuant to a shared appreciation agreement. Provided that the lender has paid the Agency its pro rata share of the recapture amount due.**
-

196 Exception to Standard Guarantee Limits (7 CFR 762.129)A
Exceptions

The guarantee will be issued at 95 percent in any of the following circumstances:

- the sole purpose of a guaranteed FO or OL loan is to refinance an Agency direct farm loan

Notes: When only a portion of the loan is used to refinance a direct Agency farm credit program loan, a weighted percentage of a guarantee will be provided.

The guarantee will be issued at 95 percent, regardless of lender type. When only a portion of a guaranteed OL or FO will be used to refinance an FSA direct farm loan, the guarantee percent will be calculated based upon a weighted percentage of the refinanced loan to total loan, rounded up to the next whole percent. The following example demonstrates how the weighted percentage is calculated.

A farmer has a direct loan with an outstanding balance of \$90,000. The lender is applying for a \$300,000 FO.

The percent of guarantee on the new guaranteed loan without the refinancing is 90 percent.

The weighted average guarantee is:

$$\frac{\text{Outstanding direct loan}}{\text{guaranteed loan amount}} \times 95\% + \frac{\text{portion of guaranteed loan not refinancing direct loan}}{\text{guaranteed loan amount}} \times \text{percent of guarantee} =$$

$$\frac{90,000}{300,000} \times 95\% + \frac{300,000 - 90,000}{300,000} \times 90\% = 91.5\%$$

The weighted average guarantee must be rounded up to the next whole percent, so the guarantee in this example would be 92 percent.

Continued on the next page

196 Exception to Standard Guarantee Limits (7 CFR 762.129) (Continued)

**A
Exceptions
(Continued)**

- **when the purpose of an FO loan guarantee is to participate in the down payment loan program**
- **when a guaranteed OL is made to a farmer or rancher who is participating in the Agency's down payment loan program**

Notes: The guaranteed OL must be made during the period that a borrower has the down payment loan outstanding.

This down payment loan program refers only to a direct FO made according to FmHA Instruction 1943-A. Simply being defined as a beginning farmer will not qualify the applicant for a 95 percent guarantee.

- loans made under a State beginning farmer program where a memorandum of understanding between the State and USDA has been signed
 - **when a guaranteed OL is made to a farmer or rancher who farms land subject to the jurisdiction of an Indian tribe and whose loan is secured by 1 or more security instruments that are subject to the jurisdiction on an Indian tribe.**
-

197-207 (Reserved)

Section 5 Environmental and Special Laws

208 Environmental Requirements (7 CFR 762.128)

A**Overview**

Lenders must consider environmental issues when making guaranteed loans. Authorized Agency Officials should consult 7 CFR Part 1940, Subpart G, “Environmental Program” for guidance on what FSA must do to comply with the National Environmental Policy Act, on issues such as HEL, wetlands, floodplains, and hazardous waste.

All lenders will assist in the environmental review process by providing information requested by the Authorized Agency Official. In all cases, the lender must keep documentation of their investigation in the loan applicant’s case file. Lenders must certify that documentation is in their files and that all applicable laws have been considered before FSA will issue a guarantee.

B**Environmental Requirements**

The requirements found in 7 CFR part 1940, subpart G, must be met for guaranteed OL and FO. CLP and PLP lenders may certify that they have documentation in their file to demonstrate compliance with this section. Standard eligible lenders must submit evidence supporting compliance with this section.

The Agency determination of whether an environmental problem exists will be based on:

- **the information supplied with the application**
 - **the Agency official’s personal knowledge of the operation**
 - **environmental resources available to the Agency including, but not limited to, documents, third parties, and governmental agencies**
-

Continued on the next page

208 Environmental Requirements (7 CFR 762.128) (Continued)

B**Environmental Requirements (Continued)**

- a visit to the farm operation when the available information is insufficient to make a determination
- other information supplied by the lender or loan applicant upon Agency request. If necessary, information not supplied with the application will be requested by the Agency.

Lenders will assist in the environmental review process by providing environmental information. In all cases, the lender must retain documentation of their investigation in the loan applicant's case file.

It is the responsibility of the Authorized Agency Official to complete the proper level of environmental assessment for each loan application as required in 7 CFR Part 1940, Subpart G. The certification by the lender on FSA-1980-25 does not certify that the loan request is in full compliance with the environmental requirements. The certification only demonstrates that reasonable investigations have been completed for certain items.

C**Hazardous Substances**

All lenders are required to ensure that due diligence is performed in conjunction with a request for guarantee of a loan involving real estate. Due diligence is the process of evaluating real estate in the context of a real estate transaction to determine the presence of contamination from release of hazardous substances, petroleum products, or other environmental hazards and determining what effect, if any, the contamination has on the security value of the property. The Agency will accept as evidence of due diligence the most current version of the American Society of Testing Materials (ASTM) transaction screen questionnaire available from 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959, or similar documentation, supplemented as necessary by the ASTM Phase I environmental site assessments form.

Continued on the next page

208 Environmental Requirements (7 CFR 762.128) (Continued)

**C
Hazardous
Substances
(Continued)**

The presence of hazardous substances that have been released can reduce a property's value, because of the regulatory and cleanup costs associated with contaminated soils and groundwater. The lender is responsible for conducting a due diligence investigation on the subject property. Of concern is the presence of contamination from hazardous substances or petroleum products and their impact on the market value of the property.

The lender is expected to conduct a site visit with the loan applicant. If real estate will be taken as primary security, the lender must:

- complete the American Society of Testing and Materials' Standards e-1528, *--Transaction Screen Questionnaire, or FSA Environmental Risk Survey Form

Note: Similar questionnaires or screening tools reviewed and approved by the FSA State Environmental Coordinator may also be used.--*

- indicate on FSA-1980-25 and explain if the questionnaire indicates a problem may exist

Note: Lenders can attach a copy of the American Society of Testing and Materials questionnaire.

- indicate on FSA-1980-25 if the questionnaire indicates no problem was discovered
- keep the questionnaire in the borrower's case file.

The lender should submit enough information in the due diligence process so that the Authorized Agency Official, in most cases, can perform an adequate assessment without having to visit the farm.

Continued on the next page

**D
Wetlands and
HEL**

The loan applicant must certify that they will not violate the provisions of Section 363 of the Consolidated Farm and Rural Development Act, the Food Security Act of 1985, and Executive Order 11990 relating to Highly Erodible Land and Wetlands.

The Authorized Agency Official must:

- ensure that the loan applicant has certified they:
 - will not violate HEL and WC provisions
 - *--are not currently out of compliance with HEL or WC provisions--*
- determine that loan funds will not be used for a purpose that will contribute to a violation of HEL and WC provisions.

--According to 6-CP, loan applicants must certify that they will not violate-- HEL and WC provisions by completing and executing AD-1026 for each tract of land in which they have a farming interest. The Authorized Agency Official must determine that loan funds will not be used for a purpose that contributes to a violation of HEL and WC provisions.

*--

IF...	THEN...
any or all of questions 8a, 8b, 9a, 9b, or 10 are answered “yes” by the applicant	AD-1026 will be referred to NRCS for a certified wetland determination. For loan requests involving building construction or other major ground disturbing activities, question 10 should be answered “yes” unless NRCS has previously completed a certified wetland determination for the proposed construction site.
all of questions 8a, 8b, 9a, 9b, and 10 are answered “no” by the applicant	a certified wetland determination will not be necessary.

--*

A conservation plan may be required if the property contains HEL. If a conservation plan is required, NRCS should be contacted to:

- determine what the conservation plan will contain
- evaluate if the applicant has the resources to carry out the plan.

The Authorized Agency Official should consider the proposed use of loan funds, the contents of the conservation plan, if one exists, and changes in land use when determining whether a loan applicant is likely to violate HEL and WC provisions.

E Floodplains

A determination must be made as to whether there will be any potential impacts to a 100 year floodplain as defined by Federal Emergency Management Agency floodplain maps, Natural Resources Conservation Service data, or other appropriate documentation.

*--FSA must:

- avoid impacting floodplains, where practicable, by seeking and reviewing alternatives as part of the environmental assessment process
- mitigate potential adverse impacts to the floodplain when avoidance is not possible
- obtain all required floodplain development permits when it is necessary to perform construction within a floodplain.--*

Note: The lender shall keep a copy of the appropriate floodplain map in their files.

F Water Quality Standards

The lender will assist the borrower in securing any applicable permits or waste management plans. The lender may consult with the Agency for guidance on activities which require consultation with State regulatory agencies, special permitting or waste management plans.

The Authorized Agency Official and lender must ensure that loan applicants are in *--compliance with Federal and State Water Quality Standards, including Storm Water Discharge Permit requirements for certain construction activities. Although the permit requirements may vary from State to State, there are some types of--* operations that usually require special permits.

Example: Large confinement livestock operations frequently require special permits or waste management plans under State water quality laws.

Lenders are expected to:

- consult with FSA for guidance on those activities that require State agency consultation, special permitting, or waste management plans
- conduct a site visit to the loan applicant's farm

Continued on the next page

208 Environmental Requirements (7 CFR 762.128) (Continued)

F**Water Quality Standards (Continued)**

- indicate on FSA-1980-25 the need for special permits or plans or if potential problems exist

Note: If special permits or plans exist, the lender should describe them and indicate the status of the permits and plans in the application.

- indicate if no problem is evident and that the farmer is in compliance with permits and plans
 - record the farm visit in the loan applicant's case file and keep copies of waste management plans and permits as appropriate.
-

209 National Historic Preservation Act (7 CFR 762.128(c)(3))

A**Requirements**

The lender will examine the security property to determine if there are any structures or archeological sites which are listed or may be eligible for listing in the National Register of Historic Places. The lender may consult with the Agency for guidance on which situations will need further review in accordance with the National Historical Preservation Act and 7 CFR Part 1940, subpart G, and 7 CFR Part 1901, subpart F.

FSA is required to take into account the effects of its actions on historic property that is listed or may be eligible for listing on the National Register of Historic Places. FSA delegates this responsibility to the lender, but FSA is responsible for the final decision.

***--Exception:** FSA may not delegate the responsibility of consulting with the Tribal Historic Preservation Officer and any other interested Tribe.--*

Continued on the next page

A
Requirements
(Continued)

FSA expects the lender to:

- consult with the Authorized Agency Official for guidance on what situations will need historic property review and consultation

Note: If the proposed loan is for an activity that is:

- not an undertaking under Section 106 of the National Historic Preservation Act or it is an undertaking but has no potential to impact historic properties if these properties may be present, then no further Section 106 review is required. FSA personnel may refer to the EQ series for further information and guidance on undertakings
- for an activity that is an undertaking under Section 106 of the National Historic Preservation Act and has the potential to impact historic properties if these properties may be present, then further Section 106 review is required.

Examples: Historic properties include structures over 50 years old, sites of any age with significant historic or archaeological value, and burial grounds.

- examine the farm property and question the owner, if available
- consult with the State Historic Preservation Officer * * *
- check other sources of information, such as local historical societies or universities
- indicate on FSA-1980-25 and describe, include a picture if available, if property has structures or archaeological sites that may be eligible for listing in the National Register of Historic Places
- indicate on FSA-1980-25 if the property has no structures or archaeological sites that may be eligible
- *--document in the loan applicant's case file the site visit and consultation--* about the presence or absence of historic property
- provide information, as necessary, to the Authorized Agency Official for use in completing the environmental assessment.

210 Equal Opportunity and Nondiscrimination (7 CFR 762.128(d))

A**Equal Opportunity
and
Nondiscrimination**

With respect to any aspect of a credit transaction, the lender will not discriminate against any applicant on the basis of race, color, religion, national origin, sex, marital status, or age, provided the applicant can execute a legal contract. Nor will the lender discriminate on the basis of whether all or a part of the applicant's income derives from any public assistance program, or whether the applicant in good faith, exercises any rights under the Consumer Protection Act.

Determinations of whether a guaranteed lender or contractor has discriminated against a loan applicant or borrower, or otherwise violated ECOA, will not be made by FSA. If the Authorized Agency Official receives a complaint of discrimination from a guaranteed loan borrower or applicant, they will note the complaint and request that the borrower contact the lender directly to obtain information on how to file a complaint with the proper regulatory or enforcement authority. If requested by the borrower or loan applicant, the Authorized Agency Official will contact the lender for this information and provide it to the borrower.

If the guaranteed loan borrower or applicant wishes to file a discrimination complaint against FSA or an FSA employee in connection with a guaranteed loan or application, the Authorized Agency Official should inform the applicant of the procedures for filing a complaint. The lender should continue with loan making and servicing actions without regard for resolution of the complaint.

B**Construction
Contracts**

Where the guaranteed loan involves construction, the contractor or subcontractor must file all compliance reports, equal opportunity and nondiscrimination forms, and otherwise comply with all regulations prescribed by the Secretary of Labor pursuant to Executive Orders 11246 and 11375.

211 Other Federal, State, and Local Requirements (7 CFR 762.128(e))

A**Other
Requirements**

Lenders are required to coordinate with all appropriate Federal, State, and local agencies and comply with special laws and regulations applicable to the loan proposal.

212-222 (Reserved)