# FSA HANDBOOK

# Direct Loan Making

To access the transmittal page click on the short reference.

## For State and County Offices

SHORT REFERENCE

## 3-FLP

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

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

| Direct Loan Making 3-FLP | Amendment 3 |
|---|---|

**Approved by:** Acting Deputy Administrator, Farm Loan Programs

Almeda (Dee) Cole

## Amendment Transmittal

**A Reasons for Amendment**

Subparagraph 163 E has been amended to remove trusts from the list of entities not considered established farmers.

Subparagraph 163 G has been amended o clarify LLC and trust eligibility requirements.

Paragraphs 175 and 177 have been amended to update a forms reference.

Exhibit 2 has been amended as follows:

- to amend the definition of "disaster" to include quarantine as an event that could make emergency loans available
- to amend the definition of "entity" to include trusts and limited liability companies
- to amend the definition of "established farmer" to specify that a corporation, partnership, or joint operation with an ownership interest of 50 percent or more held by 1 or more limited liability companies is not an established farmer
- to add the definition of "quarantine".

**Page Control Chart**

| TC | Text | Exhibit |
|---|---|---|
| | 9-13 through 9-16<br>9-16.5, 9-16.6 (add)<br>9-47 through 9-50 | 1, pages 1, 2<br>2, pages 3-6<br>pages 9, 10 |

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# Part 1 Introduction and Purpose

## 1 Purpose and Sources of Authority

**A Handbook Purpose**

This handbook is designed to assist FSA in understanding:

- regulations governing the Emergency Loan (EM) Program
- roles and responsibilities in processing EM.

**B Sources of Authority**

The sources of authority for this handbook include:

- 7 CFR Part 764
- other Agency regulations that may be referenced throughout this handbook
- various laws and statutes, including CONACT.

**C Regulation References**

This handbook is designed to accompany 7 CFR Part 764. Text that is published in CFR is printed in **bold text**. The CFR citation is printed in brackets in front of the text. These references:

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

## 2 Related References

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

FmHA and RD Instructions about loan making are listed in 1-AS, Exhibit 7.

**B**
**Other Related Handbooks**

The following FSA handbooks also address issues impacting EM.

| IF the area of concern is about... | THEN see... |
|---|---|
| appraisals, ECOA, and loan approval authorities | 1-FLP. |
| canceling loan checks and payments | 3-FI. |
| confidentiality | 2-INFO. |
| 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. |

**C**
**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.

Continued on the next page

**2 Related References (Continued)**

**D Websites**

The FSA website at **http://www.fsa.usda.gov** contains basic program information and program updates for Agency programs, including EM.

The FSA Intranet website at **http://intranet.fsa.usda.gov** provides electronic access to FSA handbooks and forms.

The USDA eForms website at **http://www.sc.egov.usda.gov** contains downloadable Agency forms for use by the public.

**3-10 (Reserved)**

**Parts 2-8 (Reserved)**

**11-160 (Reserved)**

# Part 9 Emergency Loan Program

## 161 Program Overview

**A**
**Program Purpose**

**[7 CFR 764.1] The purpose of the Emergency Loan Program is to provide financial assistance to family farmers who have suffered losses as the result of a disaster so that they can return to normal farming operations as soon as possible after the disaster. Specifically, this part describes the policies and procedures of the Agency for making Emergency loans to operators of such farms.**

## 162 Loan Purposes

**A**
**Physical Loss Real Estate**

**[7 CFR 764.3(a)(1)] Emergency loans may be used to address the needs of the farming operation associated with physical losses of essential real estate that were the result of a disaster to:**

**(i) Acquire or enlarge the farm, as specified in §1943.16(a) of this title, as long as such acquisition or enlargement does not cause the farm to exceed the requirements for a family farm;**

Purchasing real estate is authorized only if:

- all or a portion of existing land has been destroyed or rendered unusable for agricultural purposes
- the parcel being purchased is comparable in size and utility
- the applicant owned the parcel that were rendered unusable
- the salvage value of the damaged parcel minus any prior liens will be applied to the FSA debt once the parcel is liquidated
- FSA takes a lien on all farm real estate that is determined to be unusable to ensure that the sales proceeds are disbursed for authorized purposes such as payment of prior liens, authorized selling expenses, and application to the FSA debt.

Continued on the next page

## 162 Loan Purposes (Continued)

**A**
**Physical Loss Real Estate (Continued)**

**(ii) Replace or repair buildings or other structures which are essential to the ongoing viability of the operation. The Agency will finance such replacement or repair only to the extent that the structures conform to industry standards and meet the needs of the operation and intended purposes of the structure;**

The amount loaned for repair or replacement purposes must be supported by written estimates from the supplier or contractor who will provide the services or perform the repair.

Loan funds may only be used to pay for contracted or hired labor and materials or supplies purchased. Labor, machinery, equipment, and materials contributed by the applicant may not be treated as part of the costs for repair or replacement.

Loan funds may not be used to repair or replace nonessential property.

**(iii) Pay for activities to promote soil and water conservation and protection on the family farm as specified in §1943.16(c) of this title;**

**(iv) Pay loan closing costs related to acquiring, enlarging, or improving the family farm as specified in §1943.16(d) of this title, that an applicant cannot pay from other sources;**

Continued on the next page

## 162 Loan Purposes (Continued)

**A Physical Loss Real Estate (Continued)**

**(v) Replace land or water resources on the family farm which resources cannot be restored;**

**(vi) Pay costs associated with land and water development for conservation or use purposes;**

**(vii) Establish a new site for farm dwelling and service buildings outside of a flood or mudslide area; and**

**(viii) Replace land from the family farm that was sold or conveyed as a direct result of the disaster, if such land is necessary for the farming operation to be effective.**

**Note:** Soil and water conservation, land and water resource replacement, and land and water development noted in items (iii), (v), and (vii) may be performed when existing measures were damaged or destroyed during the disaster or if needed as part of a conservation plan resulting from the purchase of land. Using FSA ECP funding, when available, will be considered in conjunction with loan funds.

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**B Physical Loss Chattels**

Chattel physical losses are divided into 2 categories. The categories, which determine the purposes the loan funds may be used for, include:

- **physical loss to basic security**, which consists of equipment, perennial crops, fruit and nut bearing trees, and foundation livestock, including replacements
- **physical loss to normal income security**, which includes * * * livestock, livestock products, * * * and harvested and stored crops that would be sold or fed during the normal operating cycle.

**Note:** Loan funds from the loss of harvested and stored crops held for sale may be used for any loan purpose in this paragraph including annual operating expenses. Loan funds that result from the loss of harvested and stored crops that were intended for feed may be used only to replace those feed crops.

**[7 CFR 764.3(a)(2)] Emergency loans may be used to address the needs of the farming operation associated with physical losses of essential chattels that were the result of a disaster to:**

**(i) Purchase livestock and farm equipment, including but not limited to quotas, and cooperative stock for credit, production, processing, or marketing purposes;**

Only loan funds from the loss of normal income security may be used to purchase quotas, and cooperative stock for credit, production, processing, or marketing purposes.

**(ii) Pay customary costs associated with obtaining, planning, and closing a loan that an applicant cannot pay from other sources (e.g. fees for legal, architectural, and other technical services, but not fees for agricultural management consultation and preparation of Agency forms);**

**(iii) Repair or replace essential household contents damaged in the disaster;**

The amount loaned for this purpose is subject to the limitations in subparagraph 165 C.

Continued on the next page

**B Physical Loss Chattels (Continued)**

**(iv) Pay the costs to restore perennials that produce an agricultural commodity, to the stage of development the damaged perennials had obtained prior to the disaster;**

Provisions for re-establishing fruit, nut bearing, and income producing trees and plants are in Exhibit 7.

**(v) In the case of a farming operation that has suffered livestock losses not from breeding stock, pay essential farm operating and family household expenses; and**

**Note:** In these cases the loan funds attributed to the loss of normal income security can be used to pay essential farm operating and family household expenses, while loan funds attributed to the loss of basic security can be used only to replace the property that was lost.

**Example:** A producer suffers a loss of 100 brood cows and 90 of their calves. The brood cows are basic security and the calves would have been sold this year to produce farm income that would have been used to pay expenses. The loan funds resulting from the loss of calves may be used for any authorized operating purpose, but the funds from the loss of the brood cows must be used only to purchase suitable replacements.

Continued on the next page

## 162 Loan Purposes (Continued)

**B**
**Physical Loss Chattels (Continued)**

**(vi) Refinance debt (in the case of Farm Loan Program loan debt, as long as the applicant has not refinanced the loan more than 4 times);**

**Note:** FSA employees are prohibited from and will not guarantee repayment of advances from other credit sources, either personally or on behalf of the applicant or FSA.

The following apply when refinancing debt.

- Only non-real estate debts incurred for farm purposes may be refinanced.

***--Note:** This does not preclude the payment of past due or current due payments on real estate debt.--*

- Loan funds must be the result of a loss to normal income security.
- It is not possible to develop a feasible plan without the refinancing.
- *--The full debt may not be refinanced if using loan funds to pay only the--* delinquent and/or current year installment(s) will result in a feasible plan.
- The applicant does not have the resources (for example cash, CD's, * * * stored crops to be sold) to cure any delinquency.
- 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.

  **Note:** This includes providing an FSA guarantee to a lender or creditor meeting the eligibility requirements in 2-FLP, Part 4.

Continued on the next page

## 162 Loan Purposes (Continued)

**B**
**Physical Loss Chattels (Continued)**

The following additional requirements apply when refinancing direct and guaranteed FLP loans.

- Only direct and guaranteed FLP loans made for authorized operating loan purposes may be refinanced.
- The need to refinance the guaranteed loan is the result of the disaster and it is in the Government's best financial interest to do so.

  **Note:** The loan approval official must document that the guaranteed lender to be refinanced will not restructure the guaranteed loan at rates and terms that would permit the applicant to develop a feasible plan.

- Servicing the direct loan according to FmHA Instruction 1951-S or 1951-T will not result in a feasible plan.
- The applicant is the sole obligor on the loan to be refinanced.
- The entire direct or guaranteed FLP loan may not be refinanced if using loan funds to pay only the delinquent and/or current year installment(s) will result in a feasible plan.

Compliance with these requirements shall be documented in the running record of the loan file.

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## 162 Loan Purposes (Continued)

**C Production Losses**

**[7 CFR 764.3(b)] Emergency loans may be used to address the losses of the farming operation associated with production of agricultural commodities (except the losses associated with the loss of livestock) of the farming operation that were the result of a disaster to:**

**(1) Pay costs associated with reorganizing the family farm to improve its profitability except that such costs shall not include the payment of bankruptcy expenses;**

The following requirements apply when reorganizing a farm.

- Reorganizing the farm means changing enterprises, production practices, marketing methods, or other parts of the farm business to promote recovery from the disaster, and reduce the potential impact of any future disasters.

- This provision shall not be used to justify expansion of an existing enterprise unless it can clearly be shown that the expansion will promote recovery from the disaster and reduce the potential impact of any future disasters.

Continued on the next page

## 162 Loan Purposes (Continued)

**C Production Losses (Continued)**

- Examples of acceptable use of loan funds under this provision include:
  - purchase of equipment to convert from conventional to no-till production
  - change from stocker to cow/calf production
  - shifting from row crop to vegetable production
  - purchasing grain drying and storage equipment to facilitate better marketing
  - purchase shares in value-added processing and marketing cooperatives.

**Note:** These situations are for illustrative purposes only; any similar operational changes are acceptable as long as a realistic farm plan indicates the changes will improve the financial viability of the farm.

**(2) Pay annual operating expenses, which include, but are not limited to, feed, seed, fertilizer, pesticides, farm or ranch supplies, cooperative stock, and cash rent;**

Annual operating expenses include the purchase of livestock used for normal income, including poultry and aquatic organisms.

**(3) Pay costs associated with Federal or State-approved standards under the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 667) if the applicant can show that compliance or non-compliance with the standards will cause substantial economic injury;**

**(4) Pay training costs required or recommended by the Agency;**

**(5) Pay essential family household expenses.**

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## 162 Loan Purposes (Continued)

**C Production Losses (Continued)**

**(6) Refinance debt (in the case of Farm Loan Program loan debt, as long as the applicant has not refinanced the loan more than 4 times); and**

**Note:** FSA employees are prohibited from and will not guarantee repayment of advances from other credit sources, either personally or on behalf of the applicant or FSA.

The following requirements apply when refinancing debt.

- Only non-real estate debts incurred for farm purposes may be refinanced.

***--Note:** This does not preclude the payment of past due or current due payments on real estate debt.

- The applicant does not have the resources (for example cash, CD's, stored--* crops to be sold) to cure any delinquency.
- It is not possible to develop a feasible plan without the refinancing.
- The full debt may not be refinanced if using loan funds to pay only the delinquent and/or current year installment(s) will result in a feasible plan.

  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.

  **Note:** This includes providing an FSA guarantee to a lender or creditor meeting the eligibility requirements in 2-FLP, Part 4.

The following additional requirements apply when refinancing direct and guaranteed FLP loans.

- Only direct and guaranteed FLP loans made for authorized operating loan purposes may be refinanced.

  The need to refinance the guaranteed loan is the result of the disaster and it is in the Government's best financial interest to do so.

  **Note:** The loan official must document that the guaranteed lender to be refinanced will not restructure the guaranteed loan at rates and terms that would permit the applicant to develop a feasible plan

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## 162 Loan Purposes (Continued)

**C Production Losses (Continued)**

- Servicing the direct loan according to FmHA Instruction 1951-S or 1951-T will not result in a feasible plan.
- The applicant is the sole obligor on the loan to be refinanced.
- The entire direct or guaranteed FLP loan may not be refinanced if using loan funds to pay only the delinquent and/or current year installment(s) will result in a feasible plan.

*--Compliance with these requirements shall be documented in the running record of the loan file.--*

**(7) Replace lost working capital.**

See Exhibit 2 for the definition of working capital.

(8) Loan funds may also be used to purchase livestock and farm equipment, including quotas, and cooperative stock for credit, production, processing, and marketing purposes.

## 163 Eligibility Requirements

**A General Eligibility Requirements**

**[7 CFR 764.4(a)] An applicant for an emergency loan must meet the following eligibility requirements:**

Eligibility requirements are addressed in subparagraphs B through T.

**B Legal Capacity**

**[7 CFR 764.4(a)(1)] The applicant must have the legal capacity to incur the obligation of the loan.**

The applicant must be of legal age, mental capacity, and have authority to enter into a legally binding agreement. If the applicant is an entity, all members, stockholders, partners, and joint operators must meet this requirement.

**C Citizenship**

**[7 CFR 764.4(a)(2)(i)] The individual applicant must be a citizen of the United States or an alien lawfully admitted to the United States for permanent residence as determined by the U.S. Immigration and Naturalization Service.**

**[7 CFR 764.4(a)(2)(ii)] If the applicant is an entity, the majority interest of the applicant must be held by individuals who are citizens of the United States or aliens lawfully admitted to the United States for permanent residence, as determined by the U.S. Immigration and Naturalization Service.**

Aliens must provide I-151 or I-551 to demonstrate their status of permanent residency. If the authorized agency official has concerns about the authenticity of I-151 or I-551 or the information contained on I-151 or I-551, the authorized agency official may request INS to verify the information by completing G-845. G-845 can be obtained from and submitted to the nearest INS District Office. To waive the service fee, the authorized agency official should insert "INTERAGENCY LAW ENFORCEMENT REQUEST" in the upper right corner of G-845.

Continued on the next page

## 163 Eligibility Requirements (Continued)

**D**
**Family Farm and Nonfarm Enterprise**

**[7 CFR 764.4(a)(3)] The applicant's farming operation must qualify as a family farm and must not be a nonfarm enterprise.**

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 table below

  See Exhibit 2 for the definition of family farm.

- consider all aspects and the circumstances of the farm operation.

**Note:** Consider and analyze these factors and how they relate to one another. All factors considered and information used to reach a decision must be fully documented in the running record of the loan file.

| 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 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 applicant may not necessarily perform a majority of the labor, but the amount of labor provided by the applicant 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 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.--* |

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**E**
**Established Farmer**

**[7 CFR 764.4 (a)(4)] An applicant must be an established farmer.**

See Exhibit 2 for the definition of established farmer.

*--Estates are not considered established farmers.

SED shall issue a State supplement addressing the following for LLC and trusts:

- special requirements when lending to LLC and trusts
- signature requirements on promissory notes and security instruments
- unique characteristics of State LLC and trust statutes.

In trusts cases SED shall consult with the Regional OGC to determine if:

- submitted trust documents demonstrate valid organization under State law

- trustee has authority to mortgage trust property for the planned farming purposes.--*

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**F**
**Owner and Operator Requirements**

**[7 CFR 764.4(a)(5)(i)] In the case of a loan for a purpose specified in § 764.3(a)(1)** (subparagraph 162 A)**, an applicant must be:**

**(A) the owner and operator of the farming operation; or**

**(B) an operator of the farming operation whose lease on the affected real estate would exceed the term of the loan and give the Agency prior notification of the termination of the lease during the term of the loan, and whose lessor would provide the Agency a mortgage on the real estate as security for the loan.**

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**F**
**Owner and Operator Requirements**

**[7 CFR 764.4(a)(5)(ii)] In the case of a loan for a purpose specified in § 764.3(a)(2)** (subparagraph 162 B)**, an applicant must be the operator of the farming operation.**

In addition to being the operator of the farming operation, applicants:

- must have an ownership interest in the chattel property.

  who are operating under a production contract where the integrator retains ownership in the livestock or commodity are not eligible for losses on the livestock or commodity that they did not own. Other chattel, livestock, and commodities that they did own would be eligible losses.

**[7 CFR 764.4(a)(5)(iii)] In the case of a loan for a purpose specified in § 764.3(b)** (subparagraph 162 C)**, an applicant must be the operator of the farming operation.**

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**G**
**Entity Applicants**

**[7 CFR 764.4(a)(6)] For entity applicants:**

**(i) If the owners holding a majority interest in the entity applicant are related by blood or marriage, at least one of such related owners must operate the family farm.**

**(ii) If the owners holding a majority interest in the entity applicant are not related by blood or marriage, the majority interest holders must all operate the family farm.**

**(iii) If the entity applicant has an operator interest in any other farming operation, that farming operation must not exceed the requirements of a family farm.**

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Continued on the next page

**163 Eligibility Requirements (Continued)**

**G Entity Applicants (Continued)**

*--LLC and trusts:

- must meet all eligibility requirements applicable to entities

  **Note:** Members holding a majority interest will be those beneficiaries holding over 50 percent interest in the trust property.

- all members must sign the debt instruments for the entity as well as individuals to evidence personal liability for the debt

  **Note:** Trust members include all trustors, trustees, and beneficiaries, except minors.

- must provide evidence that the organization is recognized as LLC or trust under the laws of the States in which the entity will operate the farm.--*

Continued on the next page

## 163 Eligibility Requirements (Continued)

**H**
**Intent to Continue Farming**

**[7 CFR 764.4(a)(7)] The applicant must demonstrate the intent to continue the farm operation after the disaster.**

**I**
**Credit History**

**[7 CFR 764.4(a)(8)] The applicant must demonstrate a credit history satisfactory to the Agency. As part of the credit history the Agency will determine whether the applicant has dealt with the Agency in good faith. This includes the applicant providing current, complete, and truthful information when applying for assistance and in all past dealings with the Agency. The Agency will also examine whether the applicant has properly fulfilled its obligations to other parties, including other Federal agencies. The Agency may use credit reports or any other available information to evaluate credit history.**

Loan approval officials will determine whether an applicant is creditworthy according to FmHA Instruction 1910-A, Section 1910.5(c). In addition, applicants will be determined **not** creditworthy if they:

- deliberately falsify information, including past dealings with FSA

  **Note:** Individuals who deliberately falsify information may also be subject to criminal prosecution and should be referred to OIG.

- intentionally omit information relevant to the loan decision

- have **not** made a reasonable effort to meet the conditions and terms of any previous FSA loan.

  **Note:** Failure to meet terms and conditions because of circumstances beyond the applicant's control are considered a reasonable effort.

Continued on the next page

## 163 Eligibility Requirements (Continued)

**I**
**Credit History (Continued)**

For entity applicants, the loan approval official will consider the creditworthiness of the entity as well as the individual entity members.

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 past debt inquiry screens from the ADPS system
- CAIVRS reports
- FSA 440-32 unless the:
  - debt is less than $1,000
  - lender is a commercial lender who will not complete FSA 440-32, such as GMAC, Ford Motor Credit, Discover Card, MasterCard, etc.

**Note:** In these cases it is acceptable for the applicant to submit a regular periodic statement from the creditor which is less than 30 calendar days old, with other supporting documentation that provides the unpaid balance, the interest rate, the installment amount, any delinquency, and the collateral used to secure the debt.

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**J**
**Availability of Credit Elsewhere**

**[7 CFR 764.4(a)(9)] The applicant must be unable to obtain sufficient credit elsewhere at reasonable rates and terms. To establish this, the applicant must obtain written declinations of credit from legally organized commercial lending institutions within reasonable proximity of the applicant that specify the reasons for the declination as follows:**

**(i) In the case of a loan for $300,000 or more, two written declinations of credit are required;**

When obtaining written declinations:

- 1 of these lenders must be the applicant's normal lender
- both lenders must typically make farm loans.

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Continued on the next page

## 163 Eligibility Requirements (Continued)

**J Availability of Credit Elsewhere (Continued)**

**(ii) In the case of a loan of less than $300,000, one written declination of credit is required; and**

The following also apply to loans of less than $300,000:

- the applicant's normal lender will be contacted unless the lender has already denied a request to continue with the applicant and/or extend additional credit with or without a guarantee
- the applicant may contact another lender that makes agricultural loans.

**(iii) In the case of a loan of $100,000 or less, the Agency may waive the requirement for obtaining a written declination of credit if the Agency determines that it would pose an undue burden on the applicant, the applicant certifies that they cannot get credit elsewhere, 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. This conclusion must be thoroughly documented in the loan file by comparing the credit standards of local lenders that make farm loans to the applicant's financial condition and showing how the applicant does not meet those standards.

The fact that an applicant has obtained credit for farm 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 farm lenders in the community.

Continued on the next page

## 163 Eligibility Requirements (Continued)

**J**
**Availability of Credit Elsewhere (Continued)**

**(iv) Notwithstanding the applicant's submission of the required written declinations 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 other credit:

*--FSA 1940-38--*

- FSA 440-32
- written letters from lenders provided that those letters contain all the information requested on FSA 1940-38.

When the applicant is an entity, all individuals, members, stockholders, partners, and joint operators must meet the requirements of this subparagraph.

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**K**
**Prior Debt Forgiveness**

**[7 CFR 764.4(a)(10)] The applicant must not have received debt forgiveness from the Agency on more than one occasion on or before April 4, 1996, or any time after April 4, 1996.**

See Exhibit 2 for the definition of debt forgiveness.

If an applicant repays the forgiven debt, this restriction does not apply.

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**163 Eligibility Requirements (Continued)**

**L Federal Judgment Lien**

**[7 CFR 764.4(a)(11)] The applicant's property must not be subject to a Federal judgment lien (other than a United States Tax Court lien).**

**M Managerial Ability**

**[7 CFR 764.4(a)(12)] The applicant must have sufficient managerial ability to assure reasonable prospects of loan repayment, as determined by the Agency. The applicant must demonstrate this managerial ability by education, on-the-job training, or farming experience within the last 5 years that covers an entire production cycle.**

Applicants must demonstrate that they have carried out their operation according to standard farming practices in the area. The following are some examples which do not meet the requirements of having followed standard farming practices:

- planting crops that are not typically grown in that area because of risks associated with the existing climatic conditions

  late planting not because of disaster and poor tillage practices

  poor breeding practices

- lack of good record keeping, including income and expense records, income tax records and breeding records.

Continued on the next page

## 163 Eligibility Requirements (Continued)

**N**
**Borrower Training**

**[7 CFR 764.4(a)(13)] The applicant must agree to meet the borrower training requirements in accordance with § 1924.74 of this title.**

**O**
**Prior Drug Convictions**

**[7 CFR 764.4(a)(14)] The applicant cannot have been convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance, as defined in 21 CFR part 1308, during the current crop year or the previous 4 crop years.**

***--**If the applicant is an entity, this requirement applies to all individuals,**--***
members, stockholders, partners, and joint operators.

**P**
**Recovery of Duplicative Benefits**

**[7 CFR 764.4(a)(15)] The applicant must agree to repay any duplicative Federal assistance to the agency providing such assistance. A person receiving Federal assistance for a major disaster or emergency is liable to the United States to the extent that the assistance duplicates benefits available to the person for the same purpose from another source.**

If additional disaster benefits are expected, but the amount is not known, the applicant must assign the benefits to FSA.

Programs enacted after loan approval will not affect the loan amount.

Continued on the next page

**Q**
**Timely Loan Application**

**[7 CFR 764.4(b)(1)] A loan application must be received by the Agency not later than 8 months after the date the disaster is declared or designated in the county of the applicant's farming operation.**

Loan approval officials shall verify that receipt of the loan application was within timeframes established in the State supplement to FmHA Instruction 1945-A.

*--If a county has been designated or named (either contiguous or primary) more than 1 time for the same disaster, applicants will have 8 months from the date of the most recent designation to submit an application.--*

**R**
**Qualifying Losses**

**[7 CFR 764.4(b)(2)(i)] The applicant may seek an Emergency loan only with respect to a family farm that had production or physical losses as a result of a disaster in a disaster area.**

Refer to the State supplements to FmHA Instruction 1945-A, which provide a list of current disaster designations determining if an applicant was operating in a disaster designated area.

**[7 CFR 764.4(b)(2)(ii)] For production loss loans, the applicant must have a disaster yield that is at least 30 percent below the normal production yield of any single crop, as determined by the Agency, that comprises a basic part of an applicant's total farming operation.**

See Exhibit 2 for the definition of "Basic Part of an Applicant's Total Farming Operation."

*--Calculate production losses according to subparagraph 165 C.--*

**Note:** If an applicant cannot plant their usual crop or plants the crop and it is destroyed as a result of the disaster, then the applicant plants a substitute crop in its place, the applicant will not be eligible for a production loss on the original crop. However, if the substitute crop suffers a qualifying loss, a loan may be made for the loss on that crop.

**[7 CFR 764.4(b)(2)(iii)] For physical loss loans, the applicant must have suffered disaster-related damage to chattel or real estate essential to the farming operation, to household items that must be repaired or replaced, to harvested or stored crops, or to perennial crops.**

Continued on the next page

**S**
**Changes in Ownership Structure**

**[7 CFR 764.4(b)(3)] The ownership structure of a family farm may change between the time of a qualifying loss and the time an Emergency loan is closed. In such case, all of the following requirements must be met:**

**(i) The applicant, in its new form, including all owners must meet all applicable eligibility requirements contained in this section.**

**(ii) The new individual applicant, or all owners of a new entity applicant must have had an ownership interest in the farming operation at the time of the disaster; and**

**(iii) The amount of the loan will be based on the percentage of the former operation transferred to the new applicant and in no event will the individual portions, aggregated, equal more than would have been authorized for the former farming operation.**

---

**T**
**Insurance Requirement**

**[7 CFR 764.4(b)(4)] Emergency loan funds may not be used for physical loss purposes (excluding losses to livestock) unless that physical property was covered by general hazard insurance at the time that the damage caused by the natural disaster occurred. The level of the coverage in effect at the time of the disaster must have been the tax or cost depreciated value, whichever is less. Chattel property must have been covered at the tax or cost depreciated value, whichever is less, when such insurance was readily available and the benefits of the coverage (i.e. the amount of coverage equaling the lesser of the property's tax or cost depreciated value) justify the cost of the insurance.**

***--**All chattel (excluding livestock) and all real estate must have been covered**--*** by hazard insurance at the time of the disaster, if it was available and cost effective.

For chattels only, if the applicant did not have an insurance policy in affect at the time of the disaster, the loan approval official shall determine whether it was readily available, and whether the benefit of the coverage would have justified the cost, had the applicant made efforts to obtain insurance.

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## 164 Limitations

**A**
**General Loan Limitations**

The following limitations will apply when processing EM applications.

**[7 CFR 764.5(a)(1)] The Agency will not make a loan under this part for any purpose that contributes to erosion of highly-erodible land or the conversion of wetlands to produce an agricultural commodity.**

**[7 CFR 764.5(a)(2)] Any construction financed by the Agency must comply with applicable Federal, State, local, and industry building standards and subpart A of part 1924 of this title.**

**[7 CFR 764.5(a)(3)] Emergency loan funds may not be used to refinance consumer debt, such as automobile loans, or credit card debt unless such credit card debt is directly attributable to the farming operation.**

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**B**
**Restriction on Loan Amount**

**[7 CFR 764.5(b)] An Emergency loan may not exceed the lesser of:**

**(1) The amount of credit necessary to restore the family farming operation to its pre-disaster condition;**

**(2) In the case of a physical loss loan, the total eligible physical losses caused by the disaster; or**

**(3) In the case of a production loss loan, 100 percent of the total actual production loss sustained by the applicant calculated pursuant to *--paragraph (d)** (subparagraph 165 C) **of this section.--***

---

**C**
**Maximum Cumulative Loan Principal**

**[7 CFR 764.5(c)] The maximum cumulative Emergency loan principal that any individual or entity may have outstanding is $500,000.**

**Note:** This applies to anyone who signs the promissory note.

---

## 165 Calculating Losses

**A**
**Forms for Reporting and Calculating Losses**

FSA 1945-22 will be used by the applicant to report all yields and acreage information as well as physical losses to FSA.

FSA 1945-26 will be used by FSA to determine the applicant's actual production and/or physical losses.

---

**B**
**Determining Normal Production Yield**

***--[7 CFR 764.2] Normal production yield means:--***

**(a) The per-acre actual production history of the crops produced by the farming operation used to determine Federal crop insurance payments or payment under the Non-Insured Assistance Program for the production year during which the disaster occurred;**

**Note:** For NAP insured crops, the NAP APH yield will be used the same as the RMA APH. NAP APH can be obtained from CCC-452 Manual in the producer's file.

When per-acre APH is not available, determine normal production yield according to the following:

**(b) When the actual production history is not available, the applicant's own production records for the previous three years will be used. If the applicant's production records are not available, the records of production on which FSA farm program payments are made that are contained in the applicant's farm program file, for the previous three years will be used;**

***--Note:** The farm program payment yield is a proven yield based on the applicant's production and not the established yield set by COC.**--***

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Continued on the next page

**165 Calculating Losses (Continued)**

**B Determining Normal Production Yield (Continued)**

**(c) When the production records outlined in (a) and (b) above are not available, the county average production yield will be used.**

**Note:** If county averages are not available, State averages will be used.

*--Calculate normal production yield according to the following table.

| If an applicant... | THEN... |
|---|---|
| had crop insurance in the disaster year, or their crops are covered under NAP and the Risk Management Crop Insurance Report or their CCC-452 lists APH | that APH will be used as the normal year yield for the entire commodity, regardless of whether or not the entire crop is insured. |
| did not insure their crops or individual commodities were not insured | the applicant's actual reliable records for the 3 years immediately before the disaster year will be averaged to determine the normal year yield. |
| does not have APH and their own reliable records for any or all of the 3 years are not available | the yield reported to FSA for receiving farm program payments will be used in each or any of the years that these records are not available. |
| does not have APH, or reliable records or they have not reported yields to FSA for any or all 3 years | county or State averages will be used in any or all of the years these records are not available. |

**Note:** If an applicant had crop insurance in past years but did not have crop insurance during the disaster year, APH for prior years will be ignored and have no bearing when calculating losses. Only the records listed above will be used.--*

Continued on the next page

**C Calculating Production Losses**

**[7 CFR 764.5(d)] The applicant's actual production loss with respect to a crop is calculated as follows:**

**Note:** Losses to growing crops will always be a production loss.

**(1) Subtract the applicant's disaster yield from the applicant's normal production yield to determine the applicant's per acre production loss;**

***--Note:** See subparagraph D for calculating quality loss adjustments. See subparagraph F for calculation examples.--*

**(2) Multiply the applicant's per acre production loss by the number of acres of the farming operation devoted to the crop to determine the volume of the production loss;**

**(3) Multiply the volume of the applicant's production loss by the market price for such crop as determined by the Agency to determine the dollar value for the production loss; and**

In December of each year, SED's will issue a State supplement with the unit prices for all commodities produced commercially in their State. The unit prices will be:

- based on the average monthly market prices for each commodity for the 12-month period as shown in the "Agricultural Price" report published by *--NASS and available on the Internet at http://usda.mannlib.cornell.edu. Type--* "prices" in the search box and select search, then select "Agricultural Prices Monthly".

  **Note:** For commodities for which NASS does not keep statistics and issue reports, the States will use other sources such as CSREES, commodity brokers, local markets, or other reliable sources.

- developed in consultation with other agricultural agency representatives, lenders, SED's and FLC's in neighboring States

- used in calculating all production losses for any disaster that happens in the following calendar year (January through December).

Continued on the next page

## 165 Calculating Losses (Continued)

**C Calculating Production Losses (Continued)**

**(4) Subtract any other disaster related compensation or insurance indemnities received or to be received by the applicant for the production loss.**

Disaster related compensation includes, but is not limited to:

- crop insurance payments
- CAT
- NAP
- other FSA disaster program payments, such as Emergency Feed Assistance Program, emergency conservation programs, and any other special disaster program payments
- any other disaster assistance provided through agencies such as FEMA *** * ***.

**Note:** Only compensation that was received specifically for the production loss for which the applicant is requesting assistance will be deducted from the loss amount.

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***--D**
**Quality Loss Adjustments**

Quality losses will be determined by comparing the average market price for the commodity at the grade the applicant would have normally sold their product, with the average price of the grade at actual sale.

**E**
**Losses to Native Pasture and Rangeland**

Production losses to native pastures, rangeland, and grazing permit lands will be calculated by determining the average per head cost of feed purchased for 3 years before the disaster, then comparing it to the average per head cost of feed in the disaster year. If the disaster year cost per head exceeds the average cost per head in the non-disaster year by 30 percent or more, the applicant's loss will be calculated by multiplying the number of head of livestock in the disaster year by the difference between the cost per head in the disaster year and the 3-year average cost.

**F**
**Examples of Production Loss Calculations**

The following are examples of loss calculations.

**Example 1:** The applicant provides reliable records to show that the cost per head for feed purchased in the previous 3 years was $210. In the disaster year, the average cost per head was $300.

$300 ÷ $210 = 1.43, or 43% higher feed costs.
$300 - $210 = $90. This is the production loss per head.
The applicant had 100 head of cattle during the disaster year.
Therefore, $90 X 100 = $9,000 feed loss. This is the amount of the production loss.

**Example 2:** The applicant normally produces fresh market apples, but because of the disaster, the apples had to be sold for processor, peeler or juice apples.

The average price offered for fresh market apples is $258/ton. The price the applicant received for processor apples is $60/ton. Calculate the quality loss as follows:

60 divided by 258 = .23% of the normal price.

To make the adjustment, the applicant's quality adjusted disaster year yield would be reduced by 77% of the actual disaster year yield.

To determine this, multiply the actual disaster year yield times .23 to get the quality adjusted disaster year yield.**--***

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## 165 Calculating Losses (Continued)

**G Calculating Physical Losses**

**[7 CFR 764.5(e)(1)] The applicant's total eligible physical loss is calculated as follows:**

**(i) Add the allowable costs associated with replacing or repairing chattel covered by hazard insurance (excluding labor, machinery, equipment, or materials contributed by the applicant to repair or replace chattel);**

**(ii) Add the allowable costs associated with repairing or replacing real estate, covered by hazard insurance;**

**(iii) Add the value of livestock and livestock products (such valuation will be based on a national or regional valuation of species or product classification, whichever the Agency determines is more accurate);**

The value of livestock:

- lost or destroyed as a result of the disaster will be the replacement cost minus any salvage value received
- products such as calves, pigs, lambs, eggs, milk, wool, etc., will be established using the prices published in the State commodity price list according to *--subparagraph 165 C.

  **Note:** For applicants who purchase feeder livestock and then finish it, the value will be determined by using the State commodity price list minus the purchase price of the feeder livestock.--*

**(iv) Add the allowable costs to restore perennials, which produce an agricultural commodity, to the stage of development the damaged perennials had obtained prior to the disaster;**

**(v) Add, in the case of an applicant that is an individual, the allowable costs associated with repairing or replacing essential household contents, not to exceed $20,000; and**

**(vi) Subtract any other disaster-related compensation or insurance indemnities received or to be received by the applicant for the loss or damage to the chattel or real estate.**

**Note:** Any salvage value received will also be subtracted.

Continued on the next page

## 165 Calculating Losses (Continued)

**H**
**Examples of Physical Loss Calculations**

The following are examples for calculating physical losses to livestock products.

**Example 1:** The applicant lost 50 bred cows in a flood. The normal 3-year average calving rate is 90% and the State-established price for calves weighing 300 to 500 lbs. is $275. The cost to replace bred cows is $1,000.

The applicant's physical loss would be calculated as:

50 X 90% = 45 calves
45 X $275 = $12,375
50 X $1,000 = $50,000
Total physical loss = $62,375.

**Example 2:** The applicant lost 20 dairy cows in a storm. The average milk production based on the 3-year average is 18,000 lbs. per cow or 1,500 lbs. per month. The State-established price for milk is $12.25 per cwt. The cost to replace the cows is $1,200 per cow. The *--applicant was not able to replace the cows for 3 months.--* Therefore, the loss would be calculated as follows:

20 X 1,500 lbs. = 30,000 lbs. X 3 months = 90,000 lbs. or 900 cwt
900 cwt. X $12.25/cwt .= $11,025
20 cows X $1,200 = $24,000
Total physical loss = $35,025.

**Note:** In both examples the loan funds resulting from the physical loss to cows may only be used to replace those cows, while the loan funds resulting *--from the loss of calves or milk production is considered loss of normal--* income and can be used for any authorized operating loan purpose.

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## 165 Calculating Losses (Continued)

**I**
**Documentation**

**[7 CFR 764.5(e)(2)] In the case of physical losses associated with livestock, the applicant must have written documentation of the inventory of livestock and records of livestock product sales sufficient to allow the Agency to value such livestock or livestock products just prior to the loss.**

## 166 Interest Rate

**A**
**Program Interest Rate**

**[7 CFR 764.6] The interest rate applicable for an Emergency loan 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.**

This interest rate is published in RD Instruction 440.1, Exhibit B.

## 167 Loan Terms

**A**
**Basis for Repayment**

**[7 CFR 764.7(a)] The Agency schedules repayment of Emergency loans based on the useful life of the loan security, the applicant's repayment ability, and the type of loss.**

The applicant's ability to repay the loan is a critical factor in determining the repayment term of the loan. See the requirements in subparagraphs D and E.

Continued on the next page

## 167 Loan Terms (Continued)

**B**
**Minimum Repayment Requirement**

**[7 CFR 764.7(b)] The repayment schedule must include at least one payment every year.**

This payment must be at a minimum the amount of interest accrued on the principal balance at the time the installment is scheduled to be paid.

If unequal or interest only installments are scheduled, the applicant must be able to show that they will have the resources available to pay the loan in full by the final maturity date. FSA 431-2 or other farm plan used to project repayment ability must be completed according to FmHA Instruction 1924-B.

**C**
**Repayment of Loans for Annual Operating Expenses**

**[7 CFR 764.7(c)] Emergency loans for annual operating expenses, except those expenses associated with establishing a perennial crop, must be repaid within 12 months. The Agency, however, may extend this term to not more than 18 months to accommodate the production cycle of the agricultural commodities of the farming operation.**

Annual operating loans must be scheduled for repayment at the time FSA 431-2 or other farm plan shows that income will be available to make the payment, but not later than 18 months from the date of the note.

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## 167 Loan Terms (Continued)

**D**
**Repayment of Loans for Production or Physical Losses to Chattels**

**[7 CFR 764.7(d)] The repayment schedule for loans for production losses or physical losses to chattel (including but not limited to assets with an expected life between 1 and 7 years) may not exceed 7 years. If necessary to improve the repayment ability of the loan and real estate security is available, the term of the loan may be extended up to a total length not to exceed 20 years.**

The usual repayment term for a loan secured by chattels is 1 to 7 years. The specific term of a loan shall be determined by the applicant's projected ability to repay the loan as shown by FSA 431-2 or other farm plan prepared for a typical year according to FmHA Instruction 1924-B.

When the applicant's projected repayment ability does not permit repayment within 7 years, a 10-year term may be considered. If repayment is not possible in 10 years, then a longer term may be considered in 2-year increments. At no time will the maximum term exceed 20 years.

Real estate security is required in addition to chattel security when the repayment term will exceed 7 years.

Repayment terms that include balloon installments are prohibited.

**Note:** Balloon installments result when scheduled payments are insufficient to pay the loan without requiring a final installment that exceeds twice the amount of a regularly amortized installment.

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## 167 Loan Terms (Continued)

**E**
**Repayment of Loans for Physical Losses to Real Estate**

**[7 CFR 764.7(e)] The repayment schedule for loans for physical losses to real estate is based on repayment ability of the applicant and the useful life of the security, but in no case will the term of repayment exceed 40 years.**

The specific term of a loan shall be determined by the applicant's projected ability to repay the loan as shown by FSA 431-2 or other farm plan developed according to FmHA Instruction 1924-B.

The loan term will be the minimum period of time that the projected ability to repay will allow. Loan terms will be considered in 5-year increments.

**Example:** If a 15-year term would not result in a feasible plan, then 20 years would be considered, then 25 years, and so on until the resulting installment will fit in a feasible plan.

Repayment terms that include balloon installments are prohibited.

**Note:** Balloon installments result when scheduled payments are insufficient to pay the loan without requiring a final installment that exceeds twice the amount of a regularly amortized installment.

## 168 General Repayment and Security Requirements

**A**
**Ability to Repay**

**[7 CFR 764.8(a)(1)] The applicant must submit a feasible plan that demonstrates the applicant's ability to repay the loan. The plan also must demonstrate that the applicant will meet all other credit needs and obligations, including judgments, for which the applicant is legally responsible.**

If the applicant's plan is dependent on the availability of additional credit, the applicant must also show that the additional credit has been approved.

**B**
**Adequate and Additional Security**

**[7 CFR 764.8(a)(2)] The applicant must have sufficient equity in the security pledged for an Emergency loan to provide adequate security for the loan except as permitted in paragraph (f) of this section** (subparagraph 168 F)**. The applicant must provide additional security, if available, not to exceed 150 percent of the loan amount.**

FSA may take the following as security.

- Personal assets held by individual members, partners, stockholders, or joint operators will be taken as security when all the security held by the entity does not meet the requirement for additional security up to 150 percent of the loan amount. The entity will select and notify FSA which assets will be offered as security for the loan.

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## 168 General Repayment and Security Requirements (Continued)

**B**
**Adequate or Additional Security (Continued)**

- A lien will be taken on all non-essential assets held by the applicant and any individual members, stockholders, partners, or joint operators, with an aggregate value exceeding $5,000, if the assets cannot be sold to reduce the amount of the loan request before loan closing.

  **Note:** The value of non-essential assets taken as security according to subparagraph 168 E will not be used to meet the 150 percent requirement of this section.

See Exhibit 2 for the definition of non-essential assets.

The security requirements for loans made for reestablishment of fruit, nut bearing, and income producing trees and plants are in Exhibit 7.

**C**
**Interests in Property Not Owned by the Applicant**

**[7 CFR 764.8(a)(3)] Interests in property not owned by the applicant (such as leases that provide a mortgageable value, water rights, easements, mineral rights, and royalties) can be offered as security for the loan and will be considered in determining whether adequate security is available.**

**D**
**Same Security for Multiple Loans**

**[7 CFR 764.8(e)] The same property may be pledged as security for more than one Farm Loan Program loan.**

Continued on the next page

**E Conditions for Taking Other Assets as Security**

**[7 CFR 764.8(g)(1)] In addition to the requirements for adequate and additional security, the Agency will take a security interest in other assets (other than assets listed under the exceptions in paragraph (h) of this section** (subparagraph 168 G)**), if available, when:**

**(i) an applicant has non-essential assets that are not being converted to cash to reduce the loan amount; or**

**(ii) the real estate security and chattel security do not provide adequate security for the loan.**

**[7 CFR 764.8(g)(2)] Other assets include:**

**(i) a pledge of real estate or chattel by a third party;**

**(ii) patents, copyrights, life insurance, stocks, other securities, and membership in cooperatives, owned by the applicant;**

**(iii) Assets owned by an applicant that cannot be converted to cash without jeopardizing the farm operation.**

**(iv) Non-essential assets owned by the applicant with an aggregate value in excess of $5,000.**

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## 168 General Repayment and Security Requirements (Continued)

**F Lack of Adequate Security**

**[7 CFR 764.8 (f)] When adequate security is not available because of the disaster, the loan application may be approved if the Agency determines, based on the plan required in paragraph (a)(1) of this section** (subparagraph 168 A)**, that there is a reasonable assurance that the applicant has the ability to repay the loan (based on an on-going operational basis, excluding special one-time sources of income or expenses) provided:**

**(1) The applicant has pledged as collateral for the loan, all available personal and business collateral, except those items listed in paragraphs (h)(1) and (h)(2) of this section** (subparagraph 168 G);

If the applicant is an entity, all members, stockholders, partners, and joint operators must also pledge all assets, both 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 pricing risks through the use of marketing contracts, hedging, options, revenue insurance or similar risk management practices;**

**(3) The applicant has had positive net cash farm income in at least 3 of the past 5 years; and**

This will be determined by an analysis of the applicant's tax records for the 5 years immediately proceeding the disaster year. If the applicant has been farming less than 5 years, a positive net cash farm income must have been achieved in 50 percent or more of the years farmed.

Net farm income will be determined by subtracting all cash farm expenses from all farm income reported on Schedule F and other related schedules of the applicant's Federal income tax returns.

**Note:** If depreciation is shown on Schedule F, this is not a cash expense and must not be included as an expense.

**(4) The applicant has given the Agency an assignment on any USDA program payments to be received.**

Continued on the next page

## 168 General Repayment and Security Requirements (Continued)

**G Exceptions to Security Requirements**

**[7 CFR 764.8(h)] The Agency will not take a security interest in certain property in the following situations:**

**(1) The property proposed as security has environmental contamination, restrictions, or historical impact that could impair the value or expose the Agency to potential liability;**

**(2) The Agency cannot obtain a valid lien on the security;**

**(3) The applicant's personal residence and appurtenances are on a parcel of land separate and apart from that real estate being used as adequate security for the loan; or**

**Note:** This exception does not apply when adequate security is not available.

**(4) The applicant's other assets are used for farming or for essential living expenses and are not needed for security purposes, including but not limited to, subsistence livestock, cash or special cash collateral accounts, retirement accounts, personal vehicles, household goods, and small tools and equipment such as hand tools, power lawn mowers.**

## 169 Real Estate Security Requirements

**A**
**Real Estate Loans**

**[7 CFR 764.8(b)] In the case of an Emergency loan for real estate losses, the loan shall be secured at a minimum by the real estate that is being purchased, repaired, replaced, or improved with the loan funds.**

**B**
**Agency Lien Position for Real Estate Security**

**[7 CFR 764.8(d)(1)] If real estate is pledged as security for a loan, the Agency must obtain a first lien, if available, on the real estate. When a first lien is not available, the Agency may take a junior lien under the following conditions:**

**(i) The prior lien does not contain any provision that may jeopardize the Agency's interest or the applicant's ability to repay the loan to the Agency;**

**(ii) Prior lienholders agree to notify the Agency of acceleration and foreclosure whenever State law or other arrangements do not require such notice; and**

**(iii) The applicant must agree to obtain permission from the Agency prior to granting any additional security interests in the real estate.**

**C**
**Taking Real Estate Held Under a Purchase Contract as Security**

**[7 CFR 764.8(d)(2)] If the real estate offered as security is held under a recorded purchase contract:**

**(i) The applicant must provide a security interest in the real estate;**

**(ii) The applicant and the purchase contract holder must agree in writing that any insurance proceeds received to compensate for real estate losses will be used only to replace or repair the damaged real estate;**

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**169 Real Estate Security Requirements (Continued)**

| | |
|---|---|
| **C Taking Real Estate Held Under a Purchase Contract as Security (Continued)** | **(iii) The applicant must refinance the existing purchase contract, or demonstrate that financing is not available, if an acceptable contract of sale cannot be negotiated or the purchase contract holder refuses to agree to apply all the insurance proceeds to repair or replace the damaged real estate and wants to retain some of the proceeds as an extra payment on the balance owed;**<br><br>**(iv) The purchase contract must not be subject to summary cancellation on default and must not contain any provisions that are contrary to the Agency's best interests; and**<br><br>**(v) The contract holder must agree in writing to notify the Agency of any breach by the purchaser, and give the Agency the option to rectify the conditions that amount to a breach within 30 days after the date the Agency receives written notice of the breach.** |
| **D Taking Indian Trust Lands as Security** | **[7 CFR 764.8(j)] The Agency may take a lien on Indian Trust lands as security provided that the requirements of §1943.19(a)(7) of this title are satisfied.** |
| **E Title Clearance Requirements** | **[7 CFR 764.8(i)(1)] For loans over $25,000, title clearance is required when real estate is taken as security.**<br><br>**[7 CFR 764.8(i)(2)] 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 approving official is uncertain of the record owner or debts against the real estate security, a title search is required.** |

## 170 Chattel Security Requirements

**A Chattel and Production Loans**

**[7 CFR 764.8(c)] In the case of an Emergency loan for chattel and production losses, the loan shall be secured, at a minimum, by the chattel that is being purchased, repaired, replaced, refinanced, or produced with the loan funds.**

**B Agency Lien Position on Chattel Security**

**[7 CFR 764.8(d)(3)] If chattel property is pledged as security for a loan the Agency must obtain a first lien on the chattel that is being purchased, repaired, replaced, refinanced, or produced with the loan funds.**

***--Note:** If chattel is being repaired only, a first lien is not required.**--***

## 171 Appraisal and Valuation Requirements

**A Establishing Values for Real Estate**

**[7 CFR 764.9(a)] Real estate appraisals conducted pursuant to this part may be completed by designated appraisers or contract appraisers and shall conform to the Uniform Standards of Professional Appraisal Practice guidelines and standards in accordance with §761.7 of this chapter** (1-FLP, Part 6)**.**

***--**SED may issue a State supplement waiving the real estate appraisal requirement for an applicant receiving **only** an EM loan. The State supplement shall:

- establish the conditions under which the requirement to obtain an appraisal may be waived

  **Note:** The waiver must apply to all applicants meeting the requirements.**--***

- require that the estimated value of security be established and documented in the running * * * record by someone, other than the loan approval official, who has been delegated this authority by SED based on adequate experience and knowledge of methods for evaluating security values

- establish procedures allowing an applicant to dispute the estimated value of security by having an appraisal completed, at their expense, by an appraiser meeting the qualification requirements in 1-FLP, paragraph 145.

Continued on the next page

## 171 Appraisal and Valuation Requirements (Continued)

**B Establishing Values for Agricultural Commodities and Equipment**

**[7 CFR 764.9(b)] Valuations of agricultural commodities and equipment shall be established as follows:**

**(1) The security value of the annual agricultural commodities production (excluding livestock) will be 100 percent of the amount loaned for annual operating and essential family household expenses, or the amount of expected crop revenue, excluding farm program and insurance payments, whichever is lower.**

**(2) The value of livestock and equipment will be the market value as determined by the Agency in accordance with § 761.7 of this chapter.**

See 1-FLP, Part 6 for chattel appraisal requirements.

**C Assets Damaged by the Disaster**

**[7 CFR 764.9(c)] In the case of farm assets damaged by the disaster, the value of such security shall be established as of the day before the disaster occurred.**

## 172 Insurance for Loan Security

**A**
**Adequacy of Insurance**

**[7 CFR 764.10(a)] 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**

**[7 CFR 764.10(b)] All security (except growing crops) must be covered by hazard insurance if it is readily available (i.e. sold by insurance agents in the applicants normal trade area) and economically feasible.**

**C**
**Flood or Mudslide Insurance**

**[7 CFR 764.10(c)] Real estate security located in flood or mudslide prone areas, as determined by the Agency, must be covered by flood or mudslide insurance.**

**D**
**Crop Insurance**

**[7 CFR 764.10(d)(1)] Except as provided in paragraph (d)(2) of this section, prior to closing the loan, the applicant must have obtained at least the catastrophic risk protection level of crop insurance coverage for the crop during the crop year for which the loan is sought for each crop which is a basic part of an applicant's total farming operation, if such insurance is available, unless the applicant executes a written waiver of any emergency crop loss assistance with respect to such crop.**

Loan approval officials may include as a loan closing condition a requirement that the applicant obtain crop insurance for all subsequent crop years in which the applicant has an obligation to FSA, if it is in the best interest of the applicant and FSA to obtain this insurance.

Continued on the next page

## 172 Insurance for Loan Security (Continued)

**D**
**Crop Insurance (Continued)**

**[7 CFR 764.10(d)(2)] Growing crops used to provide adequate security must be covered by crop insurance if such insurance is available.**

In the case of perennial crops used to secure loans with a term of more than 1 year, the applicant will be required to do either of the following:

- obtain the minimum CAT level of crop insurance during the next sign-up period

  obtain crop insurance if the loan approval official believes it is in the best interest of FSA and the applicant to do so.

**Note:** The requirement to obtain crop insurance coverage must be listed as a condition of loan approval in FmHA 1940-1, item 44.

---

**E**
**Indemnities**

**[7 CFR 764.10(e)] A borrower must:**

**(1) List the Agency as loss payee for the insurance indemnity payment or as a beneficiary of a mortgagee loss payable clause; and**

**(2) In the case of crop insurance, execute an assignment of indemnity in favor or the Agency**.

---

## 173 Charges and Fees

**A**
**Paying Charges and Fees**

**[7 CFR 764.11] The applicant must pay all filing, recording, notary, and lien search fees necessary to process and close a loan. The applicant may pay or be reimbursed for these fees from Emergency loan funds.**

## 174 Conflict of Interest

**A**
**Conflict of Interest Issues**

Conflict of interest issues for:

- Federal employees are addressed in 5 CFR 8301.103
- CO employees shall be handled according to guidance provided by HRD.

Additional guidance is available in 16-AO, paragraph:

- 56 for STC
- 137 for COC.

## 175 Loan Approval

**A**
**Loan Narrative**

Each approved EM loan file shall contain a loan narrative addressing at a minimum:

- basis for determination of applicant's eligibility
- the amount of the loan and any other FSA farm program assistance
- if additional non-FSA credit is planned, the proposed amount, source and intended use of those funds
- the planned use of loan funds is for an authorized purpose based on the type of loss suffered, and the term of the loan
- a description of the loan security and value.

**Note:** If repayment ability is used as security according to subparagraph 168 F, documentation of the requirements of that section shall be included in the narrative.

**B**
**Loan Approval Official Action**

Before approval of an EM loan, the loan approval official shall determine that the requirements of this handbook have been met, specifically that:

- *--the applicant's eligibility for the proposed loan is documented on FSA 440-2--*
- FSA 431-2 or other farm plan is realistic and indicates that the new loan with farm and family expenses and all other obligations, will be repaid
- security requirements have been met
- the loan meets all other FSA requirements.

Continued on the next page

## 175 Loan Approval (Continued)

**B**
**Loan Approval Official Action (Continued)**

The loan approval official will specify on all copies of FmHA 1940-1 in item 44 any conditions that the applicant must meet for loan closing including, but not limited to the following:

- all security requirements
- any agreements needed with prior lienholders, when appropriate
- any actions required of the applicant before loan closing, such as:
  - negotiating revised repayment terms with other creditors
  - using cash or sales of assets to reduce or retire debts according to FSA 431-2 or other farm plan
  - purchase of hazard or crop insurance
  - executing documents to assign milk sales, crop insurance indemnity *--payments, FSA farm program assistance, or similar payments according--* to FSA 431-2 or other farm plan or other requirements.

A signed copy of the completed FmHA 1940-1 will be provided to the applicant as notification of loan approval.

## 176 Actions After Loan Approval

**A**
**Funds Availability**

Loan funds will be made available to the applicant within 15 calendar days after loan approval, unless a longer period is agreed upon by the applicant and documented in the loan file.

**B**
**Supervise Bank Accounts**

SBA's may be used according to RD Instruction 1902-A. The reason SBA was established must be documented in the running * * * record.

Continued on the next page

## 176 Actions After Loan Approval (Continued)

**C**
**Cancellation of Funds**

Cancel advances, electronic funds transfers, checks, and/or obligations according to 3-FI, paragraph 90 and other appropriate FI directives.

**D**
**Change in Use of Funds**

Loan approval officials may approve changes in the proposed use of funds provided that:

- the loan is within the official's loan approval authority
- funds will be used for an authorized loan purpose
- the change will not adversely affect the feasibility of the operation or the Government's interest
- the request is received and approved before the funds are used for new purposes
- no revisions are made to the repayment schedule or the promissory note
- FSA 431-2, Table K is revised as necessary and the revisions initialed by the borrower and the loan approval official.

**E**
**Loan Closing**

Chattel secured loans will be closed according to FmHA Instruction 1941-B.

Real estate secured loans will be closed according to RD Instruction 1927-B.

## 177 Loan Denial

**A Reasons for Denial**

An application will be denied if any of the following are applicable:

- the applicant is not eligible for the proposed loan

*--**Note:** The loan approval official will also complete and sign FSA 440-2.--*

- a feasible plan cannot be developed

  **Note:** See Exhibit 2 for the definition of feasible plan.

- there is not adequate security for the loan

  **Note:** This includes applicants who do not meet the requirements to use repayment ability as security according to subparagraph 168 F.

- the intended use of loan funds is not an authorized purpose based on the type of loss suffered

- the limitations in paragraph 164 will not permit a loan to be made

- other FSA requirements cannot be met.

The loan approval official will thoroughly document the reasons for the denial.

**B Notification of Denial**

The applicant will be notified of the denial in writing. The letter must provide:

- clear, specific reasons for the denial
- citations of CFR and handbook sections which cannot be met by the applicant
- appeal rights according to 1-APP
- ECOA and nondiscrimination statement according to 1-FLP, paragraph 41.

**Reports** None

**Forms** This table lists all forms referenced in this handbook.

| Number | Title | Display Reference | Reference |
|---|---|---|---|
| CCC-452 Manual | NAP Actual Production History and Approved Yield Record | | 165 |
| FmHA 1940-1 | Request for Obligation of Funds | | 172, 175 |
| FSA 431-2 | Farm and Home Plan | | 167, 175, 176, Ex. 7 |
| FSA-440-2 | Eligibility Certification or Recommendation | | 175, 177 |
| FSA 440-32 | Verification of Debts and Assets | | 163 |
| FSA 1940-38 | Request for Lender's Verification of Loan Application | | 163 |
| FSA 1945-22 | Certification of Disaster Losses | | 165 |
| FSA 1945-26 | Calculation of Actual Losses | | 165 |
| G-845 | Verification Request | | 163 |
| I-151 | Alien Registration Receipt Card | | 163 |
| I-551 | Alien Registration Receipt Card | | 163 |

Continued on the next page

**Abbreviations Not Listed in 1-CM**

The following abbreviations are not listed in 1-CM.

| Approved Abbreviation | Term | Reference |
|---|---|---|
| ADPS | Automated Discrepancy Processing System | 163 |
| APH | actual production history | 165 |
| CAIVRS | Credit Alert Interactive Voice Response System | 163 |
| CONACT | Consolidated Farm and Rural Development Act | 1 |
| ECOA | Equal Credit Opportunity Act | 2, 176 |
| ECP | Emergency Conservation Funding | 162 |
| EM | emergency loans | 164, 171, 175<br>Ex. 7 |
| FLC | Farm Loan Chief | 165,<br>Ex. 7 |
| INS | Immigration and Naturalization Service | 163 |
| LLC | Limited Liability Company | 163 |
| SBA | supervised bank accounts | 176 |

**Redelegations of Authority**

None

**Definition of Terms Used in This Handbook (7 CFR 764.2)**

| | |
|---|---|
| **Act** | Act **means the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.).** |
| **Additional Security** | Additional security **means property that provides security in excess of the amount of security value equal to the loan amount, excluding security described in § 764.8(g).** |
| **Adequate Security** | Adequate security **means property that provides a security value at least equal to the loan amount.** |
| **Agency** | Agency **means the Farm Service Agency, including its employees, any predecessor agency, and any successor agency.** |
| **Agricultural Commodity** | Agricultural commodity **means livestock, grains, cotton, oilseeds, dry beans, tobacco, peanuts, sugar beets, sugar cane, fruit, vegetable, forage, tree farming, nursery crops, nuts, aquacultural species, and other plant or animal production as determined by the Agency.** |
| **Allowable Costs** | Allowable costs **means those costs for replacement or repair that are supported by acceptable documentation, including but not limited to written estimates, invoices, and bills.** |

Continued on the next page

**Definition of Terms Used in This Handbook (Continued)**

| | |
|---|---|
| **Applicant** | Applicant **means an individual or entity (including each owner of the entity unless specified otherwise) operating a farming operation at the time of the disaster, who is requesting assistance from the Agency under this part. All requirements of applicants apply to owners of the entity individually and collectively unless specified otherwise.** |
| **Aquacultural Species** | Aquacultural species **means aquatic organisms (including fish, mollusks, crustaceans or other invertebrates, amphibians, reptiles, or aquatic plants) raised in a controlled or selected environment which the applicant has exclusive rights to use.** |
| **Basic Part of An Applicant's Total Farming Operation** | Basic part of an applicant's total farming operation **means any single agricultural commodity or livestock production enterprise of an applicant's farming operation which normally generates sufficient income to be considered essential to the success of such farming operation.** |
| **Borrower** | Borrower **means an individual or entity which has an outstanding obligation to the Agency under any Farm Loan Program loan, without regard to whether the loan has been accelerated. A borrower includes all parties liable for such obligation owed to the Agency, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed, sold, or conveyed; or who have been discharged of all such obligations owed to the Agency.** |

Continued on the next page

| | |
|---|---|
| **Chattel** | Chattel **means any property that is not real estate.** |
| **Chattel or Real Estate Essential to the Farming Operation** | Chattel or real estate essential to the farming operation **means chattel or real estate that would be necessary for the applicant to continue operating the farm after the disaster in a manner similar to the manner in which the farm was operated immediately prior to the disaster, as determined by the Agency.** |
| **Corporation** | Corporation **means a private domestic entity recognized as a corporation and authorized as a corporation under the laws of the State or States in which the entity does business.** |
| **County** | County **means a local administrative subdivision of a State or similar political subdivision of the United States.** |
| **Debt Forgiveness** | Debt forgiveness **means reducing or terminating a debt under the Act in a manner that results in a loss to the Agency (excluding a consolidation, rescheduling, reamortization, or deferral), through:**<br><br>**(1) writing down or writing off a debt pursuant to 7 U.S.C. 2001;**<br><br>**(2) compromising, adjusting, reducing, or charging off a debt or claim pursuant to 7 U.S.C. 1981; or**<br><br>**(3) paying a loss pursuant to 7 U.S.C. 2005 on a Farm Loan Program loan guaranteed by the Agency.** |

Continued on the next page

**Definition of Terms Used in This Handbook (Continued)**

| | |
|---|---|
| **Disaster** | Disaster **means an event of unusual and adverse weather conditions or other *--natural phenomena** or quarantine **that has substantially affected--* producers of agricultural commodities by causing physical property or production losses in a county, or similar political subdivision, that triggered the inclusion of such county or political subdivision in the disaster area designated by the Agency.** |
| **Disaster Area** | Disaster area **means the county, declared or designated as a disaster area for Emergency loan assistance as a result of disaster related losses and counties contiguous to those counties declared or designated as disaster areas.** |
| **Disaster Yield** | Disaster yield **means the per-acre yield of an agricultural commodity for the farming operation during the production period when the disaster occurred.** |
| **Entity** | Entity **means a partnership, corporation, cooperative, joint operation, *--**trust, or limited liability company **that is an operator of an operation--* engaged in farming, ranching, or aquaculture activities at the time the disaster occurs.** |
| **Essential Family Household Expenses** | Essential family household expenses **means the expenses associated with providing food, clothing, and shelter necessary to maintain the borrower and the immediate family of the borrower.** |

Continued on the next page

**Established Farmer**

Established farmer **means a farmer who is an operator of the farming operation (in the case of a farming operation operated by an entity, its owners as a group) who:**

**(1) Actively participated in the operation and the management, including but not limited to, exercising control over, making decisions regarding, and establishing the direction of the farming operation at the time of the disaster;**

**(2) Spends a substantial portion of time in carrying out the farming operation;**

**(3) Planted the crop, or purchased or produced the livestock on the farming operation;**

**(4) In the case of an entity, is primarily engaged in farming and has over 50 percent of its gross income from all sources from its farming operation based on the farming operation's projected cash flow for the next crop year or the next 12 month period, as mutually determined; and**

**(5) Is not:**

**(i) A corporation with an ownership interest of 50 percent or more held by one or more estates, trusts, other corporations,** *--**partnerships, joint operations,** or limited liability companies;

**(ii) A partnership or joint operation with an ownership interest of 50 percent or more held by one of more estates, trusts, corporations, other partnerships, other joint operations,** or limited liability companies;--*

**(iii) An integrated livestock, poultry, or fish processor who operates primarily and directly as a commercial business through contracts or business arrangements with farmers, except a grower under contract with an integrator or processor may be considered an established farmer, provided the operation is not managed by an outside full-time manager or management service and such loans shall be based on the applicant's share of the agricultural production as contained in the contract; or**

**(iv) An operation that employs a full-time farm manager.**

Continued on the next page

**Family Farm**

Family farm **means a farm that:**

**(1) Produces agricultural commodities for sale in sufficient quantities so that it is recognized in the community as a farm rather than a rural residence.**

**(2) Provides enough agricultural income by itself, including rented land, or together with any other dependable income, to enable the borrower to:**

**(i) Pay necessary family and operating expenses;**

**(ii) Maintain essential chattel and real property; and**

**(iii) Pay debts.**

**(3) Is managed by:**

**(i) The borrower, when a loan is made to an individual.**

**(ii) The members, stockholders, partners, or joint operators responsible for operating the farm when a loan is made to a entity.**

**(4) Has a substantial amount of the labor requirements for the farm enterprise provided by:**

**(i) The borrower and family members for a loan made to an individual.**

**(ii) The members, stockholders, partners, or joint operators responsible for operating the farm, along with the families of these individuals, for a loan made to a entity.**

**(5) May use a reasonable amount of full-time hired labor and seasonal labor during peak load periods.**

Continued on the next page

**Farm Loan Program Loan**

Farm Loan Program loan **means a Farm Ownership loan, Operating loan, Emergency loan, Soil and Water loan, or Economic Emergency loan made or guaranteed by the Agency pursuant to the Act.**

**Farmer**

Farmer **means individuals, cooperatives, corporations, partnerships or joint operations who are farmers, ranchers, or aquaculture operators actively engaged in their operation at the time a disaster occurs.**

**Feasible Plan**

Feasible plan **means a plan based upon the applicant's records that show the farming operation's actual production and expenses. These records will be used along with realistic anticipated prices, including farm program payments when available, to determine that the income from the farming operation, along with any other reliable off-farm income, will provide the income necessary for an applicant to at least be able to:**

**(1) Pay all operating expenses and all taxes that are due during the projected farm budget period;**

**(2) Meet necessary payments on all debts; and**

**(3) Provide living expenses for family members of an individual borrower or a wage of the farm operator in the case of a entity borrower which is in accordance with the essential family needs. Family members include the individual borrower, or farm operator in the case of an entity, and the immediate members of the family who reside in the same household.**

Continued on the next page

| | |
|---|---|
| **Hazard Insurance** | Hazard insurance **means coverage against losses due to fire, windstorm, lightning, hail, explosion, business interruption, riot, civil commotion, aircraft, land vehicles, marine vehicles, smoke, builders risk, public liability, property damage, flood or mudslide, workman's compensation, or any similar insurance that is available and needed to protect the security, or that is required by law.** |
| **Household Contents** | Household contents **means the essential household items necessary to maintain viable living quarters such as: stove, refrigerator, furnace, couch, chairs, tables, beds, lamps, clothes, etc. The term excludes all luxury items including jewelry, furs, antiques, paintings, etc**. |
| **Livestock** | Livestock **means a member of the animal kingdom, or product thereof, as determined by the Agency.** |
| **Majority Interest** | Majority interest **means an ownership interest of more than 50 percent of the entity.** |
| **Non-Essential Asset** | Non-essential asset **means those assets in which the applicant has an ownership interest that do not contribute a net income to pay essential family living expenses or to maintain a sound farming operation and are not exempt from judgment creditors or in a bankruptcy action.** |

Continued on the next page

**Nonfarm Enterprise**

Nonfarm enterprise **means any nonfarm business enterprise, including recreation, that is closely associated with the farm operation and located on or adjacent to the farm and provides income to supplement farm income. This may include, but is not limited to, such enterprises as raising earthworms, exotic birds, tropical fish, dogs, and horses for nonfarm purposes, welding shops, roadside stands, boarding horses and riding stables.**

**Normal Production Yield**

Normal production yield **means:**

**(1) The per-acre actual production history of the crops produced by the farming operation used to determine Federal crop insurance payments or payment under the Non-Insured Assistance Program for the production year during which the disaster occurred;**

**(2) When the actual production history is not available, the applicant's own production records for the previous three years will be used. If the applicant's production records are not available, the records of production on which FSA farm program payments are made that are contained in the applicant's farm program file, for the previous three years will be used;**

**(3) When the production records outlined in (a) and (b) above are not available, the county average production yield will be used.**

**Owner**

Owner **means those persons with an interest in the entity as a stockholder, partner, member, or joint operator**.

Continued on the next page

**Definition of Terms Used in This Handbook (Continued)**

| | |
|---|---|
| **Physical Loss** | Physical loss **means verifiable damage or destruction with respect to real estate or chattel, excluding annual growing crops.** |
| **Production Loss** | Production loss **means verifiable damage or destruction with respect to annual growing crops.** |
| ***--Quarantine** | Quarantine means a quarantine imposed by the Secretary under the Plant Protection Act or the Animal Quarantine Laws (as defined in Section 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990).**--*** |
| **Security Value** | Security value **means the Agency-established market value of property (less the value of any prior liens) used as security for a loan under this part as of the date of the closing of the loan.** |
| **United States** | United States **means each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands**. |
| **Working Capital** | Working capital **means cash available to conduct normal daily farming or ranching operations including, but not limited to, feed, seed, fertilizer, pesticides, farm or ranch supplies, cooperative stock, and cash rent.** |

## State Supplements

| **Subparagraph** | **State Supplement** |
|---|---|
| 163 E | Guidance addressing the following for LLC's and trusts:<br><br>• security requirements<br>• signature requirements<br>• unique State statutes. |
| 165 C | Guidance on unit prices for all commodities produced commercially in the State. |
| 171 A | ***--**Guidance and procedure about waiving the real estate appraisal requirement**--*** for an applicant receiving **only** an EM loan. |

**Note:** SED's shall:

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

## Rehabilitation or Reestablishment of Fruit, Nut Bearing, and Income Producing Trees and Plants

**A Objectives**

EM may be made for rehabilitation and/or reestablishment of fruit, nut bearing, and income producing trees and plants subject to eligibility and general requirements of this handbook. The purpose of EM according to this exhibit is to enable the applicant to restore damaged orchards, groves, and income producing trees and plants to their normal production.

**B Policy**

Loans will be approved only if reestablishment or rehabilitation can be completed over a period not to exceed 5 years. If additional funds are needed and a longer recovery period is required, the applicant must demonstrate, from the outset, that they are able to obtain the additional financing or resources from either their own cash flow or from another lender. FSA has no authority to provide any subsequent EM funds based on the same disaster.

**C Eligible Enterprises**

*--Eligible enterprises are trees planted and cultivated for commercial--* production purposes, which have income producing potential for more than 5 years. This includes but is not limited to, citrus fruits such as oranges, grapefruit, lemons, and limes; fruits such as apples, pears, peaches, and cherries; nuts such as walnuts, pistachios, and pecans; and income producing trees such as Christmas trees, sap producing trees, and trees specifically planted, cultivated, and harvested.

Continued on the next page

**Rehabilitation or Reestablishment of Fruit, Nut Bearing, and Income Producing Trees and Plants (Continued)**

**D**
**Noneligible Enterprises**

*--Noneligible enterprises are trees and plants grown for commercial purposes--* which will be harvested and sold within 5 years from the date of establishment, or whose total production potential is less than 5 years. Examples of these include, but are not limited to, nursery stock, ornamental plants, bananas, plantains, raspberries, strawberries, etc.

**Note:** Fruit, nut bearing, and income producing trees and plants with commercial income potential or that will be harvested and sold within 5 years, will be processed according to the provisions established for all other EM and are not eligible for the provisions in this exhibit.

**E**
**Additional Eligibility Requirements**

In addition to the eligibility requirements established in paragraph 163, applicants must:

- be the owner-operator of a citrus grove, orchard, or commercial woodlot
- be able to develop a feasible plan according to FmHA Instruction 1924-B, for each year until the operation has been brought back to full production

  **Note:** See Exhibit 2 for the definition of feasible plan.

- provide verification of income from other farming enterprises or dependable off-farm income which is sufficient to meet all family living and farm operating expenses not related to the rehabilitation or reestablishment project being financed.

Continued on the next page

**Rehabilitation or Reestablishment of Fruit, Nut Bearing, and Income Producing Trees and Plants (Continued)**

**F**
**Losses**

All losses to fruit, nut bearing, or income producing trees and plants which result in destruction of, or major damage to trees and plants will be calculated as physical *--losses according to subparagraph 165 F.--*

**Note:** Advances for structures, real estate, and other chattels cannot be made under the provisions in this exhibit.

**G**
**Loan Purposes**

Funds resulting from losses to basic security according to paragraph 162 may be used for:

- hired labor, not including the applicant's labor
- removal of destroyed or damaged trees and related debris

  preparation of land for replanting
- purchase of replacement trees or plants
- expenses necessary to complete the 5-year plan for rehabilitation and reestablishment
- *--payment of costs associated with promoting soil and water conservation, replacement land or water resources, and costs for water and land development for conservation purposes according to subparagraph 162 B.

Continued on the next page

**Rehabilitation or Reestablishment of Fruit, Nut Bearing, and Income Producing Trees and Plants (Continued)**

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**G**
**Loan Purposes (Continued)**

Funds resulting from losses to normal income security may be used for:

- current due operating expenses
- hired labor, not including the applicant's labor
- actual costs for pruning and/or top grafting trees
- fertilizer, herbicides, and spray
- costs for preparing and cultivating the land
- equipment maintenance and repairs
- miscellaneous operating expenses including taxes, accrued interest, property insurance, etc.

---

**H**
**Loan Limitations**

Loan funds will not be approved or advanced for:

- amounts in excess of the costs to rehabilitate or reestablish the grove, orchard, or woodlot, or which would cause the borrower's total outstanding principal EM indebtedness to exceed $500,000

  construction of new buildings, repair of existing buildings, or repair, replacement, or improvement of chattels

- family living expenses
- operating or real estate expenses not directly related to the rehabilitation or reestablishment of damaged or destroyed trees and plants

  refinancing real estate or chattel debt.

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Continued on the next page

**Rehabilitation or Reestablishment of Fruit, Nut Bearing, and Income Producing Trees and Plants (Continued)**

---

**I**
**Loan Approval**

*--In addition to the actions required in paragraph 175, when a loan is being--* approved, the loan approval official shall:

- obligate the full amount needed to rehabilitate or reestablish the operation, as shown on FSA 431-2
- use assistance code "060" when completing the obligation
- *--advance only the amount shown on FSA 431-2 each year, unless FSA 431-2 is otherwise modified and agreed upon by the loan approval--* official and the borrower.

---

**J**
**Interest Rate**

This interest rate is published in RD Instruction 440.1, Exhibit B.

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**K**
**Terms**

The maximum repayment term for loans used to rehabilitate or reestablish an operation will not exceed 40 years. The applicant's ability to repay the loan once the operation is brought back to its normal production is the critical factor in determining the term of the loan.

Loan approval officials may schedule:

- equal and unequal installments based on the applicant's ability to pay.

  **Note:** FSA 431-2 must show the loan will be paid in full at the maturity date of the note. Balloon installments are prohibited.

- reduced annual payments of at least partial interest for the first 5 years.

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Continued on the next page

**Rehabilitation or Reestablishment of Fruit, Nut Bearing, and Income Producing Trees and Plants (Continued)**

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**L**
**Security Requirements**

Rehabilitation or reestablishment loans will be secured according to paragraph 168. However, subparagraph 168 F does not apply to loans made according to this exhibit.

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**M**
**Monitoring and Supervision**

Loan approval officials are responsible for supervising and monitoring the needs and progress of the borrower in their efforts to rehabilitate and reestablish their operations.

Loan approval officials shall:

make required visits to the operation to monitor progress

- monitor the project to ensure that the borrower is complying with all environmental regulations, conservation plans, and is following the recommendations of other Agencies about the methods for reestablishment or rehabilitation, methods for replanting, recommended varieties, and certification requirements

thoroughly review plans annually to document servicing efforts, progress, operational needs, revisions to the original plans, and the prospect for the continued feasibility of the operation

- cancel any undisbursed loan funds at any point that it is determined that the operation is no longer feasible

  **Note:** Before taking this action, discuss the operation and proposed action with DD and FLC. Loan approval officials should have the concurrence of the borrower before taking this action, if possible.

- * * * cancel any undisbursed loan funds when it is determined that the rehabilitation or reestablishment project has been completed and there is no longer a need for the additional funds.

***--Note:** Before taking this action, discuss the operation and proposed action with DD and FLC. Loan approval officials should have the concurrence of the borrower before taking this action, if possible.--*

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