

COVID-19 Temporary Updates

If a lender is not able to provide a complete application within the normal timeframes because of reasons outside of their control caused by the pandemic, FSA may grant an extension

FSA can grant Conditional Commitment extensions if lenders are unable to close loans timely due to restrictions by the pandemic



COVID-19 Temporary Updates

While FSA operates under this emergency guidance, agency approval will not be required for the following:

Advances on annual lines of credit for SEL

- Note: SEL lenders may elect to self-certify that all required items according to 2-FLP, Subparagraphs 265 B and 265 C are in place

Emergency advances on lines of credit for SEL and CLP

- SEL, and CLP lenders may elect to self-certify that all required conditions of 2-FLP, subparagraph 283 A are met

COVID-19 Temporary Updates

- SEL and CLP lenders may make non-guaranteed loans to existing guaranteed borrowers after certifying to FSA in writing that a feasible cash flow projection has been developed. A feasible cash flow is not a requirement of the SBA Paycheck Protection Program (PPP); therefore, all lenders may make PPP loans without FSA's consent.
- Lender reviews are waived until further notice

COVID-19 Temporary Updates

- FSA now offers the option of a full year payment deferral
 - eligibility requirements met
 - defer payments without a feasible plan projection
 - authorized to defer a payment temporarily (up to 180 days) or to defer a full annual payment (12 months if on a monthly payment schedule) and amortize it over the remaining term of the loan or have it all due at loan maturity

COVID-19 Temporary Updates

- Lenders who have foreclosure action scheduled and cannot complete it due to circumstances created by the COVID-19 emergency, will have their borrower's payment due date extended up to 90 days, by FSA, for purposes of calculating accruing interest on any potential loss.
- Lenders who request forbearance of pursuing a liquidation due to circumstances created by the COVID-19 emergency will be granted the forbearance. In these cases, for interest accrual calculation purposes in the event of a loss, FSA will extend the payment due date 90 days.

Guaranteed Loan Servicing

Lender's Annual Analysis



Guaranteed Loan Analysis

- **Degree of Analysis by FSA will vary based on lender type**
 - SEL's are held to underwriting criteria from 2-FLP
 - CLP's get more flexibility with underwriting
 - PLP's receive the maximum flexibility with underwriting

SEL and MLP Lender Annual Analysis Includes...

- **Real Estate only:**
 - Must include a Balance Sheet
- **Chattel secured:**
 - Review borrower progress: Business goals, trends, changes in financial progress
 - Compare actual to projected income and expenses for prior year
 - Account for whereabouts or disposition of all collateral
 - Discussion of observations about the farm business

Documents Required to be Submitted to FSA – SEL and MLP

- **Borrower's balance sheet and income and expense statement for the previous year (if applicable)**
- **For lines of credit, the cash flow for the borrower's operation that projects a feasible plan or better for the upcoming operating cycle**
 - Note: The standard eligible lender must receive approval from the Agency before advancing future years' funds
- **An annual farm visit report or collateral inspection**
- **Narrative summary of borrower's financial progress (if applicable)**

CLP Lender Annual Analysis of a Borrower

- **Real Estate Borrowers, CLP Lender Will Decide & Document**
- **Chattel Borrowers, CLP Lender Will:**
 - Review of financial progress, goals, progress, trends
 - Make a comparison of planned to actual income & expense
 - Complete an accounting for all security
 - Document discussion with the borrower

Documents Required to be Submitted to FSA - CLP

- **For all borrowers:**
 - A summary of lender's annual analysis
- **Certification for G-LOC's (if advances are planned):**
 - The upcoming year's cash flow is feasible
 - The borrower is in compliance with their Loan Agreement
 - The previous year's income, loan funds & security are all accounted for

PLP Lender Annual Analysis of a Borrower

Follow their Credit Management System

The lender generally does what the lender normally would do without a guarantee

Nothing submitted to FSA

Guaranteed Loan Servicing

General Servicing Responsibilities

- **Service the loan in a reasonable and prudent manner**
- **Service the loan as other loans in the portfolio are serviced**
- **Inspect the collateral as often as necessary**
 - Real estate should be a minimum of every 3 years
 - Chattels should be on an annual basis
- **Monitor the borrower with regards to security conversion**
- **When required, complete an annual analysis**
- **Monitor borrower's progress**



Guaranteed Loan Servicing

- **General Servicing Responsibilities**
 - Ensure sales proceeds or other collateral dispositions are accounted for
 - Ensure proceeds are applied in accordance with lien position or used to purchase replacement collateral
 - Ensure the loan and collateral are protected in the event of:
 - Foreclosure
 - Bankruptcy
 - Receivership
 - Insolvency
 - Condemnation
 - Other Litigation

Guaranteed Loan Servicing

- **When making a NON-GUARANTEED loan and a guaranteed loan is present**
 - SEL & CLP lenders must have FSA concurrence
 - PLP lenders follow their CMS
 - We do not give priority in a loss to non-guaranteed loans that were not concurred with



Guaranteed Loan Servicing

Reporting requirements to FSA

- **Semi-annual status reports effective March 31st, and September 30th**
 - Report with Form FSA-2241
- **Once account is 60 days past due, default status reports are provided every 60 days until the default is cured through restructure or liquidation**
 - Report with Form FSA-2248

Guaranteed Loan Servicing

Delinquent Loan Servicing Timeline (Monetary Default)--*	
Payment Due Date	Payment Missed
30 Calendar Days After Due Date	Borrower in Default
Within 45 Calendar Days After Due Date	Meeting Between Borrower and Lender
60 Calendar Days After IA Determination	Earliest Date that Lender Can Initiate Foreclosure Action
Within 120 Calendar Days After Due Date	Loan Restructuring Plan Implemented or Decision to Liquidate Made



Guaranteed Loan Default

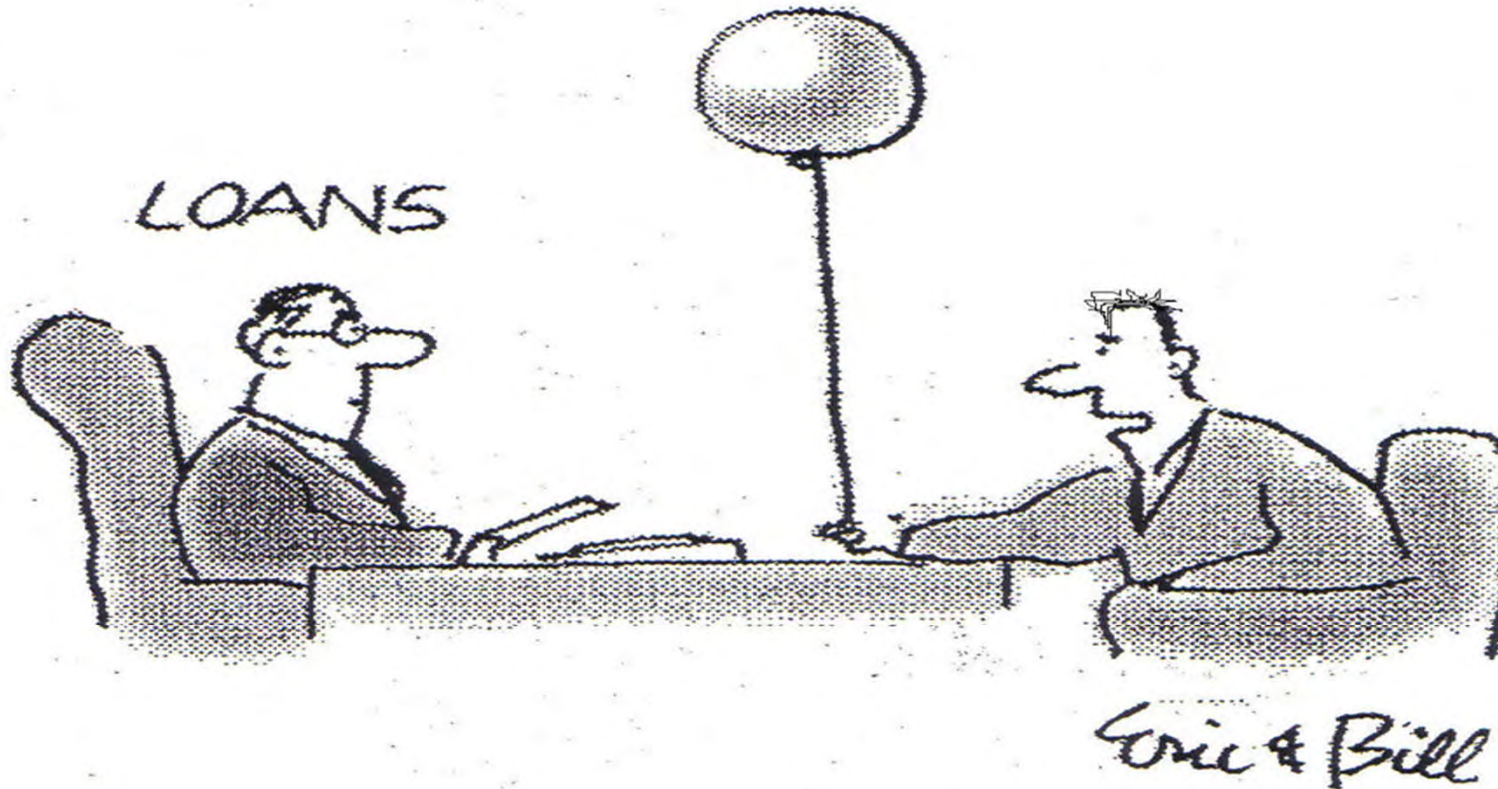
- **PAYMENT DUE DATE (PDD) = Tracking Date**
- **Within 30 days of PDD**
 - Notify FSA (FSA-2248) when the borrower is in default
- **Within 45 days of PDD**
 - Hold a joint meeting with the borrower and, if possible, the FSA servicing official
 - Lender NEEDS to document this meeting in writing
 - Record of Meeting
 - Who was in attendance
 - Summarize the problem and proposed solution
 - Copy to FSA

Guaranteed Loan **DEFAULT**

- **Possible solution to cure default**
 - Deferral
 - Temporary loan to bring loan current
 - Restructuring
 - Transfer and Assumption
 - Debt write-down
 - Liquidation

Guaranteed Loan **DEFAULT**

- **Within 120 days of PDD**
 - Lender needs to decide:
 - Restructure –OR–
 - Liquidate



"I just dropped by to make a balloon payment."

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Guaranteed Loan Restructures

- **FSA encourages Pro-Active loan servicing**
- **Applicant must meet eligibility requirements**
EXCEPT FOR DEBT FORGIVENESS (page 12-27)
- **Equal installments or unequal installments can be used on RE secured or equipment secured loans**
- **Capitalization of interest is ok**
- **Producer is current. Can the loan be restructured? – Yes, if the producer is unable to make the installment (page 12-28).**
- **Limited balloon payment options:**
 - **Projected to be secured &**
 - **Lien on all assets is required**

Guaranteed Loan Restructures

Security: The security position must not be adversely affected. If necessary, new security instruments will be filed. A loan does not need to be fully secured to be restructured **except for balloon payments.** If using balloon payments, the lender must take a lien on ALL assets and project the loan being fully secured at the time the balloon payment is due.

Guarantee Loan Restructures

- Any holder agrees to any changes
- All lenders will submit copies of any restructured notes or lines of credits (LOC) to the agency
- Please refer to 2-FLP Par. 313(A) – 313(C) for specific lender requirements for restructure (i.e. SEL, CLP, PLP) and 2-FLP Par. 314(A-B) for FSA response to requests for restructure

Guarantee Loan Restructure Terms (2-FLP Par. 326)

- **FO and SW:** amortized over remaining term of note OR rescheduled with uneven payments over a period not to exceed 40 years from the date of the note
- **OL:** not to exceed 15 years from the date of the rescheduling
- **LOC:** Not to exceed 7 years from date of rescheduling or 10 years from the date of the original note, whichever is less. Advances cannot be made against a LOC loan that has any portion of the loan rescheduled.

Other Servicing Beyond Restructures

- **Deferral (2-FLP Par. 327)**
 - Up to 5 years
 - Some interest must be paid
- **Debt Writedown (2-FLP Par. 328)**
 - Prior FSA concurrence is required
 - Shared Appreciation Agreement (SAA)
Required if real estate secured

Delinquent/Distress Borrower Restructuring Requires:

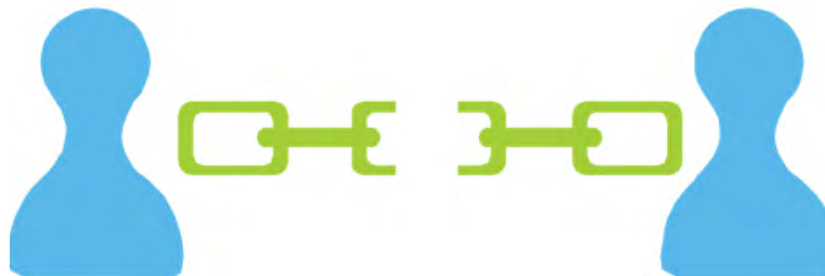
- **Most loan-making eligibility rules**
- **Feasible cash flow**
- **Current balance sheet(s)**
- **Verification of non-farm income**
- **Verification of debts**
- **Credit Reports(s)**
- **3 year's financial history**

FSA Restructuring Responses:

- **SEL lenders – prior concurrence in all cases**
- **CLP & PLP lenders – prior concurrence only for any “writedown”**

After Restructuring

- **Submit information including modified note or the allonge that changes the original note to FSA**
- **The new loan MUST reference the old one to keep the guarantee valid**
- **Submit one last Default Status Report (if earlier ones were sent)**
- **FSA sends an FSA-2245, “Modification of Guarantee” (if interest was capitalized)**



Summary of Liquidation Steps

- **Appraise Remaining Security**
- **Offer Mediation**
- **Liquidation Plan**
- **Estimated Loss Claim**
- **Accelerate Loan**
- **Liquidate Security**
- **Final Loss Claim**
- **Future Recovery**



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Loan Liquidation

- **PAYMENT DUE DATE (PDD) = Tracking Date**
- **Refer to Par. 355(A) for Liquidation Timetable**
- **Within 120 days of PDD**
 - Lender needs to accelerate the account and notify borrower

Loan Liquidation

- **150 days after PDD**
 - Lender will provide:
 - Written liquidation plan
 - Estimated loss claim
 - Liquidation Plan
 - MT Exhibit 140 – checklist of items to submit to FSA
 - Loss Claim
 - MT Exhibit 141-checklist for loss claim
- **FSA concurrence with the liquidation and any protective advances is required**

Loan Liquidation

- **180 days after PDD**
 - FSA should make a decision on loss claim
 - For guaranteed purposes, interest will cease when an estimated loss claim is paid
- **FSA will NOT pay interest beyond 210 days from PDD**
- **Within 260 days of PDD**
 - Liquidation should be complete
- **Within 290 days of PDD**
 - Final loss claim should be submitted to FSA

NOTE – A loss claim must be submitted even if no loss is going to occur

G-LOC Emergency Advances

- **An increase to a G-LOC when the G-LOC is at its ceiling**
- **Financial Benefit exceeds advance**
- **Loss of crop or livestock is imminent**
- **Prior written consent (SEL & CLP), PLP as per their Credit Management System**
- **Farming operation must be viable**



G-LOC Emergency Advances

Emergency Advance: Used with OL with 1-year term or any year in LOC. Used normally in situation when the loss of crops or livestock is imminent unless the advance is made. The financial benefit to the lender and government from the advance will exceed the amount of the advance and the loan funds to be advanced are for authorized purposes. (2-FLP Par. 283).

Protective Advances

- **Billed to an existing Promissory Note**
- **To protect or preserve collateral from loss or deterioration**
- **Used when borrower is in liquidation, liquidation is imminent, or title to real property has been taken**
- **Not made in lieu of additional loans**
- **Is secured**
- **Loan is immediately declared delinquent**

Protective Advances

Protective Advances: Expenses incurred by lender to protect or preserve collateral from loss or deterioration. Protective advances only used when in liquidation, liquidation is imminent, or when the lender has taken title to real property in a liquidation action. (2-FLP Par. 360(D)).

**PLEASE KEEP FSA
INFORMED ON ALL
DELINQUENCY,
LIQUIDATION
AND BANKRUPTCY
CASES!!!**



Loss Claims - Deductions

REMEMBER – Service the loan(s) in a reasonable and prudent manner

- **Common Deductions**
 - Applying proceeds to Non-guaranteed debt instead of guarantee (lien and payment priorities)
 - Taking excess time to liquidate (interest accrual)
 - Failure to perfect proper lien or obtain proper assignment
 - Not obtaining required appraisals before liquidating or during bankruptcy

Loss Claims - Deductions

- **Common Deductions**

- Accounting for Collateral
 - Term OL-G and LOC
 - Documentation of inspections (Make sure someone sees it!)
 - What was sold?
 - What was the quantity?
 - Cull cows or basic livestock herd
 - Not having the borrower obtain crop insurance
 - Releases
 - Allowing sale proceeds to be released to the borrower instead of applying to the LOC or OL-G
 - Protecting the loan and collateral in bankruptcy
 - Charging default interest
 - Charging late fees
 - Advances for unauthorized uses
 - Payments not applied as outlined in the payment priorities



Follow the Conditional Commitment

- **The FSA-2232 “Conditional Commitment” defines the loan approval conditions for a specific loan**
- **It is up to the Lender to monitor these conditions and payment priorities**
- **FSA will review a loss claim to verify the conditions have been met. Deductions may be applied if they are not.**
- **Advances above the loan ceiling amount**
 - Advances for specific line items will be monitored by the lender.



Steps for Lenders to Insure Guarantee

- **Do not advance for more than the loan amount or allow the loan to exceed the peak (LOC)**
- **Document!!!!!! Often loans are serviced by Special Assets Division and not be loan officer. Without documentation, details over the life of the loan are unknown.**
- **Do not use funds for unauthorized purposes**
- **Do not change loan types (LOC to OL, back to LOC)**
- **Do not delay borrower contact (2-FLP Par. 300(A))**
- **Do not delay in contacting FSA!**



When Do Guarantees Terminate?

- **Loan paid in full**
- **Cancelled by Lender**
(promissory note & security documents remain in force)
- **Final Loss Claim Paid**
(still subject to lender's future recovery requirements)



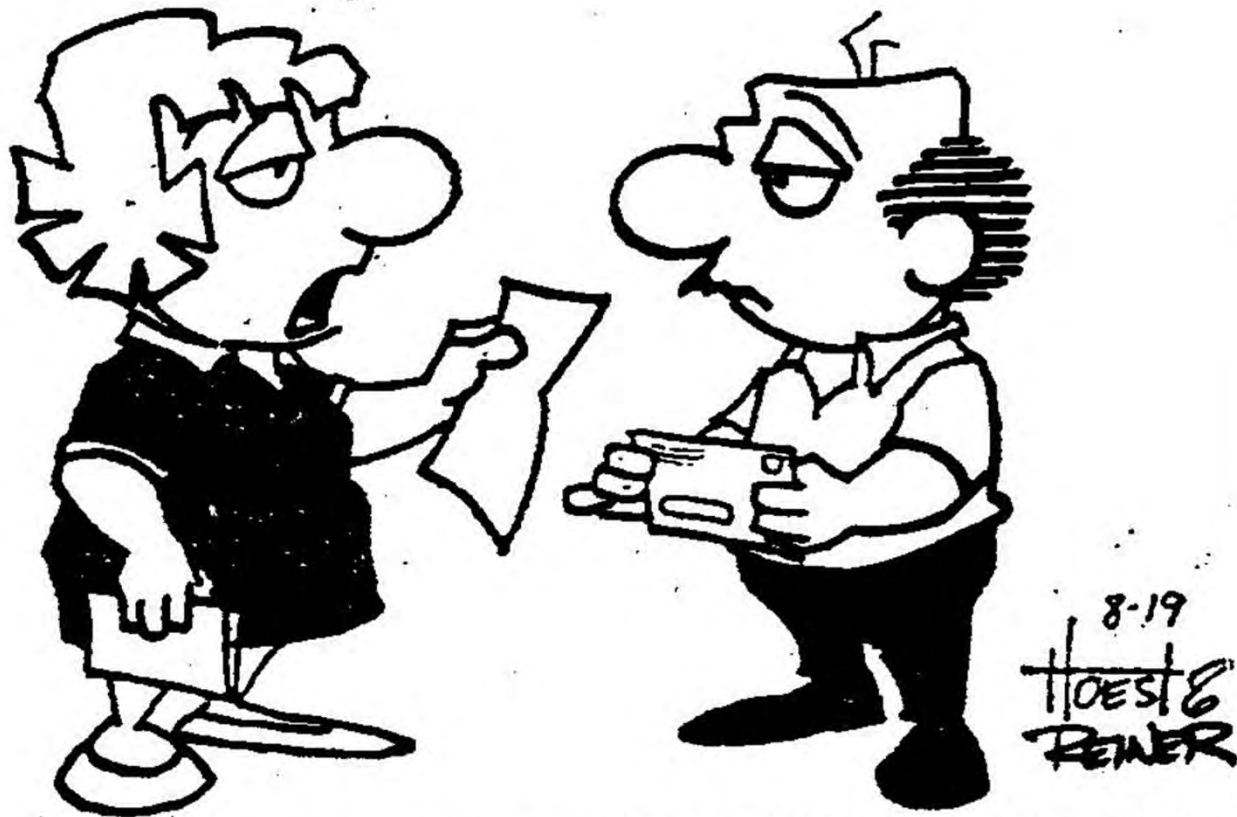
Is the Final Loss Claim the End? (No)

- **Final Loss Claim = Delinquent Federal Debt to FSA**
- **Lender still tries to collect on debt too. Lenders Agreement requires any future funds which may be recovered by the lender from the borrower will be pro-rated between FSA and the lender.**
 - Lender will report annually for 3 years of any collections on FSA form 2261



Federal Debt Collection Act

- **Lender CANNOT release the borrower from liability without FSA's consent**
- **Lenders will be encouraged to notify their borrower, as part of their liquidation process, should a loss be paid, a debt is then owing to FSA and will be subject to government offset**



**'HERE'S A NEW ONE. IT SAYS WE'VE BEEN PRE-
APPROVED FOR BANKRUPTCY.'**

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Bankruptcy

- **Lender is responsible for protecting debt & security as they would a non-guarantee**
- **Keep FSA informed & get concurrence when needed**
- **11, 12 or 13: FSA can pay modified estimated loss claims for:**
 - Lender costs (appraisals, attorney fees, etc.)
 - Court-ordered P & I "cram down"
 - Annual claim for "lost opportunity" interest if the interest rate is crammed down
- **Late fees and charges must be kept separate and cannot be ROLLED into the guarantee as they are not covered by the guarantee**

Bankruptcy

Guaranteed debts must be kept separate from non-guaranteed debts

If more than one Guaranteed loan, they should be kept separate in the bankruptcy plan

A Line of credit may be extended up to 15 years from the date of the confirmed plan, but only with real estate security

Interest may be capitalized, but not in an amount greater than allowed by the statute

Bankruptcy

**Report to FSA with Form FSA-2248
when:**

- **the bankruptcy filing occurred**
- **the confirmation date of the plan**
- **when the plan is complete**
- **If the borrower is not in compliance
with the reorganization plan**

Questions?

**Please contact your local FSA office if
you have questions**