FSA
HANDBOOK

Direct Loanmaking

To access the transmittal page click on the short reference.

For State and County Offices

SHORT REFERENCE

3-FLP
(Revision 1)

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

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

Direct Loanmaking 3-FLP (Revision 1)	Amendment 5

Approved by: Acting Deputy Administrator, Farm Loan Programs

Chris P. Beyerhelm

Amendment Transmittal

A Reasons for Amendment

Subparagraph 42 A has been amended to clarify using AD-1026.

Subparagraph 74 D has been amended to clarify that wetland issues are regulated by both NRCS and the Army Corp of Engineers.

Subparagraph 91 B has been amended to clarify the documents required for a pledge of security from a third party.

Subparagraph 112 A has been amended to update the minimum amount of coverage requirements.

Subparagraph 112 C has been amended to include using FCI-20.

Subparagraph 133 D has been amended to include the Army Corp of Engineers.

Subparagraph 134 A has been amended to provide that when the regular FO interest rate is less than the participation rate the loan will be made as a regular FO.

Subparagraph 137 B has been amended to clarify MOU approval.

Subparagraph 152 B has been amended to clarify how to calculate the median size farm.

Subparagraph 153 C has been amended to clarify the amount of a direct loan FSA can make as part of a downpayment loan.

Subparagraph 172 D has been amended to remove an obsolete timeline.

Subparagraph 172 G has been amended to clarify the OL term limit extension is for 2 calendar years.

A Reasons for Amendment (Continued)

Subparagraph 234 G has been amended to remove the reference to purchased feeder stock.

Subparagraph 261 E has been amended to add information about violating the Sodbuster, Swampbuster, and Clean Water Acts.

Subparagraph 262 B has been amended to provide about funds availability.

Subparagraph 265 E has been amended to provide that the annual SDA Loan Review Summary report be submitted to the National Office through SDMS.

Subparagraph 321 C has been amended to clarify using FSA-2028 and FSA-2318.

Subparagraph 341 A has been amended to modify instructions about the release of funds and timing of recoding security instruments.

Subparagraph 343 B has been amended to update FSA's responsibility for FLP documents.

Exhibit 4 has been amended to make minor changes to State supplements.

Exhibit 5 has been amended to clarify when a new AD-1026 is needed.

Page Control Chart		
TC	**Text**	**Exhibit**
	1-5, 1-6 3-1, 3-2 3-5, 3-6 3-6.5, 3-6.6 3-7, 3-8 4-21, 4-22 5-1 through 5-4 6-1 through 6-4 7-7 through 7-10 7-13 through 7-44 8-7 through 8-12 9-13, 9-14 9-21, 9-22 10-3, 10-4 10-13, 10-14 11-71, 11-72 11-97 through 11-100 12-1, 12-2 13-5 through 13-36	1, pages 1-6 4, pages 1, 2 5, page 3

Table of Contents

Page No.

Part 1 Introduction and Purpose

1 Purpose and Sources of Authority 1-1
2 Related References 1-2
3 FLP Forms 1-4
4 Introduction to Direct FLP's 1-7
5-20 (Reserved)

Part 2 (Reserved)

21-40 (Reserved)

Part 3 Loan Application

41 Obtaining and Filing a Loan Application 3-1
42 Complete Loan Applications 3-5
43 Lo-Doc Loan Requests 3-9
44 Youth Loan Requests 3-10
45 Processing Loan Applications 3-11
46-60 (Reserved)

Part 4 General Eligibility and Loan Limitations

Section 1 Eligibility Requirements

61 Overview 4-1
62 Controlled Substances 4-2
63 Legal Capacity 4-3
64 Citizenship 4-4
65 Credit History 4-5
66 Credit Elsewhere 4-9
67 Delinquent Federal Debt and Unpaid Federal Judgments 4-11
68 Federal Crop Insurance Violations 4-12
69 Managerial Ability 4-13
70 Borrower Training 4-15
71 Owner/Operator of a Family Farm 4-16
72 Entity Composition 4-18
73 Final Eligibility Determination 4-20
74 Limitations 4-22
75-90 (Reserved)

Table of Contents (Continued)

Page No.

Part 5 Loan Security

91 Security Requirements 5-1
92 Real Estate Security 5-4
93 Other Security Requirements 5-10
94 Exceptions to Security Requirements 5-11
95 Appraisals and Values 5-14
96-110 (Reserved)

Part 6 Insurance

111 Overview 6-1
112 Type of Insurance Required 6-2
113 Documentation 6-4
114 Indemnity 6-6
115-130 (Reserved)

Part 7 Farm Ownership Programs

Section 1 FO's

131 Uses 7-1
132 Eligibility 7-4
133 Limitations 7-7
134 Joint Financing Arrangements 7-9
135 Rates, Terms, Payments, and Security 7-10
136 Subsequent Loans 7-12
137 Program Outreach 7-13
138-150 (Reserved)

Section 2 Downpayment Program

151 Uses 7-41
152 Eligibility 7-42
153 Limitations 7-43
154 Rates, Terms, and Security 7-44
155-170 (Reserved)

Table of Contents (Continued)

Page No.

Part 8 Operating Loan Program

Section 1 OL's

171 Uses 8-1
172 Eligibility 8-6
173 Limitations 8-12
174 Rates, Terms, and Repayment 8-13
175 Security 8-16
176-190 (Reserved)

Section 2 Lo-Doc Loans

191 Lo-Doc Loan Process 8-45
192-210 (Reserved)

Section 3 Youth Loans

211 Youth Loan Application Process 8-73
212 Uses and Limitations 8-74
213 Eligibility 8-76
214 Rates, Terms, and Repayment 8-78
215 Security 8-79
216-230 (Reserved)

Part 9 Emergency Loan Program

231 Uses 9-1
232 Eligibility 9-8
233 Limitations 9-16
234 Calculating Losses 9-17
235 Rates, Terms, and Repayment 9-24
236 Security Requirements 9-27
237 Real Estate Security Requirements 9-29
238 Appraisal and Valuation Requirements 9-30
239-260 (Reserved)

Table of Contents (Continued)

Page No.

Part 10 Loan Decision

261 Reviewing and Evaluating Applications 10-1
262 Loan Approval 10-4
263 Funding Approved Loans 10-8
264 Changes After Loan Approval 10-10
265 Monitoring FSA Approval 10-12
266 Loan Denial 10-15
267-280 (Reserved)

Part 11 Loan Closing

Section 1 General

281 Overview 11-1
282 Using Closing Agents 11-6
283 Payment of Fees 11-7
284 State Supplement 11-8
285-300 (Reserved)

Section 2 Preparing for and Completing Loan Closing for Real Estate

301 Title Clearance Requirements 11-39
302 Preliminary Title Opinion/Title Commitment 11-40
303 Requesting Loan Closing 11-41
304 Closing Agent Responsibilities 11-42
305 Real Estate Secured Loans Closed by FSA 11-43
306-320 (Reserved)

Section 3 Preparing for and Completing Loan Closing for Chattels

321 Overview 11-71
322 Preparing for Loan Closing 11-72
323 Perfecting Liens 11-73
324 Closing Chattel Secured Loans 11-75
325-340 (Reserved)

Section 4 Actions After Loan Closing

341 Disbursing Funds 11-97
342 Reviewing Closing Documents 11-98
343 Distribution of Loan Documents After Closing 11-99
344-360 (Reserved)

Table of Contents (Continued)

Page No.

Part 12 Approving Closing Agents and Title Insurance Companies

361 Approving Closing Agents 12-1
362 Approval of Title Insurance Companies 12-4
363-400 (Reserved)

Part 13 Borrower Training

Section 1 Borrower Training Requirements

401 Overview 13-1
402 Assessing an Individual's Need for Training 13-2
403 Actions that Borrower Must Take When Training is Required 13-5
404 Training Progress 13-6
405-420 (Reserved)

Section 2 Vendor Requirements

421 Vendor Applications 13-37
422 Reviewing a Vendor's Application 13-39
423 Vendor Approval 13-43
424 Monitoring and Evaluation 13-45

Exhibits

1 Reports, Forms, Abbreviations, and Redelegations of Authority
2 Definition of Terms Used in This Handbook
3 (Reserved)
4 State Supplements
5 Information Needed to Submit an FSA Direct Loan Application
6, 7 (Reserved)
8 Interim Guidance for Documentary Evidence of Status as a Qualified Alien
9 Interim Guidance: Documentary Evidence of Status as a U.S. Noncitizen National
10 Direct Loans Fully Paid Codes
11-15 (Reserved)
16 Memorandum of Understanding Between FSA and [Enter Name of State Beginning Farmer Program]
17-20 (Reserved)
21 Rehabilitation or Reestablishment of Fruit, Nut Bearing, and Income Producing Trees and Plants
22, 23 (Reserved)
24 Notice of Funding Availability

Part 1 Introduction and Purpose

1 Purpose and Sources of Authority

A Handbook Purpose

This handbook is designed to assist FSA in understanding:

- direct loanmaking regulations governing FLP
- roles and responsibilities in implementing those regulations and other direct loanmaking responsibilities.

B Sources of Authority

The sources of authority for this handbook include:

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

C Regulation References

Text in this handbook that is published in CFR is printed in **bold** text. The CFR citation is printed in brackets in front of the text. The references and text:

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

***--Note:** Cross-references printed in **bold** are citing a CFR section. The handbook paragraph or subparagraph where the cross-referenced CFR text can be found is printed in the nonbold text in parenthesis within the bold text.

Example: Subparagraph 103 C provides "**[7 CFR 764.51(c)(4)] Submit items (1), (2), (7), (9), and (11) of paragraph (b) of this section** (paragraph 42)**. The Agency may require a Lo-Doc applicant to submit any other information listed in paragraph (b) of this section as needed to make a determination on the loan application**".

Note: The text "**items (1), (2), (7), (9), and (11) of paragraph (b) of this section**" refers to 7 CFR 764.51(b)(1), (2), (7), (9), and (11). The nonbold reference indicates that 7 CFR 764.51(b) is in included in paragraph 42.**--***

2 Related References

A Related FSA Handbooks

The following FSA handbooks concern FLP.

IF the area of concern is about…	THEN see…
State and county organization and administration policies, procedures, principles, and standards, such as work organization	16-AO.
civil rights compliance and administration for FSA programs	18-AO.
appeals and mediation	1-APP.
State and county records management	25-AS.
policies and procedures for the acquisition of supplies, equipment, and services	27-AS.
common management and operating provisions for program management activities, functions, and automated applications, such as forms that cannot be accepted by FAX	1-CM.
environmental requirements	1-EQ.
processing collections and canceling loan checks and payments	3-FI.
general and administrative regulations governing FLP	1-FLP.
guaranteed loan making and servicing	2-FLP.
direct loan regular or routine servicing	4-FLP.
direct loan special servicing and inventory property management	5-FLP.
the Emergency Loan Seed Producers Program, Horse Breeder Loan Program, Indian Tribal Land Acquisition Program, Special Apple Loan Program, and servicing of minor loan programs	6-FLP.
procedures for making records available to the public, other Federal agencies, and Congress	2-INFO.
procedures for collecting, maintaining, or disclosing data or information about an individual	3-INFO.
personnel management, such as employee conflict of interest	3-PM.
employee development and training	6-PM.

Notes: See FmHA Instruction 1945-A for information on the disaster designation process.

RD Instruction 1940-G must be used along with 1-EQ.

B Helpful Links

The Helpful Links web site at
https://indianocean.sc.egov.usda.gov/flp/InformationalLinks?Action=HelpfulLinks&caller=index
provides links to useful web sites.

2 Related References (Continued)

C State Supplements

See Exhibit 4 for State supplements required by this handbook. SED's shall:

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

3 FLP Forms

A Form References

Except as provided in this paragraph, this handbook refers to forms according to the new forms numbering system that becomes effective December 31, 2007. Forms executed before December 31, 2007, may have a number different from that referenced. See 1-FLP, Exhibit 5 for a comparison of form numbers before and after December 31, 2007.

Note: See Exhibit 1 for titles of forms referenced in this handbook.

With the exception of FSA-2510, FSA-2512, and FSA-2514, form numbers are not referenced in CFR (**bold**) text. CFR refers to forms by either:

- the common name of the form

  Example: CFR may state, "a promissory note", instead of stating, "FSA-2026".

- purpose or the information collected.

  Example: CFR may state, "a conservation contract", instead of stating, "FSA-2535".

B FSA-2029

All references to FSA-2029 within this handbook are intended as a reference to the applicable State-specific Mortgage or Deed of Trust. State-specific Mortgages or Deeds of Trust are available on the FFAS Employee Forms/Publications Online Website at **http://intra3.fsa.usda.gov/dam/ffasforms/forms.html** and are numbered FSA-2029 "ST".

Notes: "ST" represents the appropriate State acronym.

SED is not required to issue a State supplement for the State-specific version of FSA-2029.

3 FLP Forms (Continued)

C Notary Acknowledgement

Forms do not include preprinted text for the Notary Acknowledgement because numerous States have State-specific laws establishing required text. Therefore, a fillable text area is provided under the "Acknowledgement" heading. SED's shall issue State supplements providing the appropriate Notary Acknowledgement text to be inserted.

D Applicant Signatures

Forms completed by applicants include a signature box to accommodate multiple signatures. Separate signature lines are not provided because the number of signatures required for an entity applicant cannot be determined in advance. Instructions for completing forms will provide guidance to applicants on signature requirements.

Forms prepared by FSA for the applicant's signature include a fillable area instead of preprinted signature lines. County Offices shall insert a signature line and the name of each applicant, entity member, or other individual required to sign the form.

SED's shall issue a State supplement addressing State-specific signature requirements.

E State Office Modified National Forms

State and County Offices shall use national forms unless their use is prohibited by State law. If modification to a national form is required to comply with State law, the State Office shall submit a copy of the national form showing the necessary modifications, through SDMS.

Note: State-specific forms based on national forms will be made available on the FFAS Employee Forms/Publications Online Website at **http://intra3.fsa.usda.gov/dam/ffasforms/forms.html** with the same form number as the national form, followed by the State acronym.

3 FLP Forms (Continued)

F State-Created Forms

State Offices may create forms, as necessary, when a national form is not available. State-created forms shall be assigned a 5-digit number establishing linkage to the appropriate FLP handbook, followed by the State acronym, according to the following.

IF the form pertains to…	THEN the form number shall be…
more than one FLP handbook	FSA-2000-1 ST, FSA-2000-2 ST, FSA-2000-3 ST, etc.
1-FLP	FSA-2100-1 ST, FSA-2100-2 ST, FSA-2100-3 ST, etc.
2-FLP	FSA-2200-1 ST, FSA-2200-2 ST, FSA-2200-3 ST, etc.
3-FLP	FSA-2300-1 ST, FSA-2300-2 ST, FSA-2300-3 ST, etc.
4-FLP	FSA-2400-1 ST, FSA-2400-2 ST, FSA-2400-3 ST, etc.
5-FLP	FSA-2500-1 ST, FSA-2500-2 ST, FSA-2500-3 ST, etc.
6-FLP	FSA-2600-1 ST, FSA-2600-2 ST, FSA-2600-3 ST, etc.

Notes: "ST" represents the appropriate State acronym.

Before using State forms imposing information collections on 10 or more persons per year, State Offices shall work with the National Office to obtain OMB approval.

SED shall issue State supplements, as applicable, to address the use of all State-specific and State-created forms.

Exception: State-specific FSA-2029's do not require State supplement issuance

4 Introduction to Direct FLP's

A FSA Loan Programs

[7 CFR 764.1(a)] This part describes the Agency's policies for making direct FLP loans.

[7 CFR 764.1(b)] The Agency makes the following types of loans:

(1) FO, including Beginning Farmer Down Payment loans (Part 7)**;**

(2) OL, including Youth loans (Part 8)**; and**

(3) EM (Part 9)**.**

5-20 (Reserved)

Part 2 (Reserved)

21-40 (Reserved)

--

Part 3 Loan Application

41 Obtaining and Filing a Loan Application

A Obtaining a Loan Application

A loan application may be obtained from:

- any FSA office
- FSA's web site at **http://www.fsa.usda.gov**
- eGov's web site at **http://www.sc.egov.usda.gov**.

An agency official will:

- not refuse to provide a requested application to any person

- not discourage the prospective applicant to apply for a direct loan even when loan funds are limited or unavailable

- not make oral or written statements that would discourage any individual from applying for assistance based on any ECOA prohibited basis (race, color, religion, national origin, sex, marital status, age, applicants income deriving from public assistance, or because the applicant has in good faith exercised any right under the Consumer Protection Act)

- provide Exhibit 5 to all persons requesting an application

  Notes: Information that would create unapproved paperwork burden will not be requested. Specifically, anything that asks the applicant to provide information to FSA is not allowed by the State without approval from the National Office.

  Exhibit 5 will be available in a fillable format at **http://intranet.fsa.usda.gov** under form name "3-FLP Exhibit 5".

- provide assistance as necessary to help applicants complete the application.

  Note: Information about race, national origin, sex, and marital status is collected on a voluntarily basis on FSA-2001 and FSA-2301.

41 Obtaining and Filing a Loan Application (Continued)

B Filing a Loan Application

[7 CFR 764.51(a)] A loan application must be submitted in the name of the actual operator of the farm. Two or more applicants applying jointly will be considered an entity applicant. The Agency will consider tax filing status and other business dealings as indicators of the operator of the farm.

Upon receiving an application for direct loan assistance the authorized agency official shall ensure that the type of operation reflected on FSA-2001 is consistent with any representations previously made by the applicant for FP benefits.

If any difference in representations of the farming operation is identified, notify the applicant using FSA-2304 and insert the following for why the application is incomplete.

> "A review of your FSA records revealed inconsistent representations in how your farming operation is conducted. (Provide details of different representations identified by FSA records.) Documentation must be provided to resolve the inconsistencies identified prior to your application for assistance to be considered complete."

Note: See subparagraph 45 B for notification of incomplete application guidance.

Exception: An application will not be considered incomplete if the difference in representation is the result of either of the following:

- husband and wife representing themselves as a joint operation for FLP assistance but combined as a single person for FP
- producer participating in 2 separate and distinct operations.

When receiving an application from married persons, FSA cannot treat a married couple applying together the same way as 1 person applying individually. A married person may apply according to 1 of the following, depending on how the farm is operated.

- "As an individual" – A married person should apply as an individual when they are the operator of the farm, and the spouse has minimal involvement in the farm operation, particularly the day-to-day management and operations. In such cases, the nonfarming spouse will not be required to sign the application, except when required by State law to perfect a lien on marital or jointly owned property.

41 Obtaining and Filing a Loan Application (Continued)

B Filing a Loan Application (Continued)

- "As a joint operation" – Married persons should apply as a joint operation if they share the responsibilities of the farm including day-to-day management and operations, they wish to apply for the loan together, and they have not formed some other operating entity such as a partnership, LLC, trust, or corporation. When a married couple does apply as a joint operation, both parties must meet the eligibility requirements in Part 4.

- "As an entity" – If married persons have formed a legal entity (partnership, LLC, etc.), which operates the farm, the entity must apply for the loan.

Notes: Forming or changing the form of an entity can have significant tax and legal consequences. Loan officials should not advise applicants whether or not to form an entity, or what type of entity to form. It is appropriate to explain the impact of any proposed change to applicant structure on loan eligibility and on any existing FSA loans. Applicants considering entity formation or a change in operating structure should be strongly encouraged to seek guidance from qualified professionals such as a tax accountant or attorney.

An application from a husband and wife as a joint operation for FLP assistance, but who are combined as a single person for FP benefits, shall be considered as being the same type of operation, and therefore requires no corrective action.

All applicants, including an entity, should ordinarily file their loan application with the FSA FLP office serving the area where the headquarters of the farm operation is located. If the authorized agency official is not present in the office when the application is filed, the receiving office must immediately contact the office where the authorized agency official is located to determine whether the application needs to be forwarded to that office for processing.

Exceptions: For applications from:

- FSA employees and relatives of employees, see 3-PM

- applicants who have either filed a new discrimination complaint or have an outstanding discrimination complaint, contact DD and SED for direction on application processing.

In unclear cases, the authorized agency official should contact SED for a determination on where the applicant should file the loan application.

Electronic applications may be accepted from applicants who have Level 2 eAuth
*****--credentials. FAXed applications are acceptable; however, an original signature **must** be obtained on the application before loan approval.--*****

41 Obtaining and Filing a Loan Application (Continued)

*--C Notification of Targeted Funding and Limited Resource Interest Rates

To determine whether an applicant is a member of a socially disadvantaged group, the applicant must voluntarily provide the applicant's ethnicity, race, and gender on FSA-2001 or FSA-2301. If the applicant will not voluntarily provide the ethnicity, race, or gender information, targeted funding will not be available.

FSA-2001 and FSA-2301 provide applicants notification that a portion of FO and OL funds are targeted for socially disadvantaged and beginning farmer assistance. In addition, FSA-2001 provides notification of the availability of limited resource interest rates for FO's and OL's.

See Exhibit 2 for definitions of beginning farmer, limited resource interest rates, socially disadvantaged applicant or farmer, and socially disadvantaged group.

Note: Targeted socially disadvantaged farmer funding is available for youth loans, but targeted beginning farmer assistance and limited resource interest rates are not--* available for youth loans.

D Technical Assistance

Agency officials are required to:

- inform applicants that FSA will provide technical assistance, if needed, to complete FSA forms and gather information necessary for a complete application

- explain the application procedure and process, and the requirements for a complete application

- assist applicants in completing FSA forms and identifying sources of information needed for a complete application, if assistance is requested

- inform applicants of other technical assistance providers who may be of assistance at minimal or no charge; examples include, but are not limited to the Cooperative Extension Service, institutions and organizations providing assistance under Section 2501 or other USDA outreach grants, SCORE, and other similar organizations

- advise applicants of alternatives that would help overcome barriers to being determined eligible, but caution that significant changes may have tax, estate planning, or other legal implications that may require consultation with an accountant, legal counsel, or other qualified expert.

41 Obtaining and Filing a Loan Application (Continued)

E SED Action

SED's will prepare and publicize, at least semi-annually, through newspaper articles, radio announcements, and television broadcasts, that FSA targets direct and guaranteed loan funds to beginning and socially disadvantaged farmers. These required outreach efforts are in addition to information provided in State or Service Center newsletters.

Note: Outreach to assist these potential applicants will include maintaining and documenting close liaison and attending meetings with local, State, and national organizations serving beginning and socially disadvantaged farmers.

42 Complete Loan Application

A Requirements

[7 CFR 764.51(b)] A complete loan application, except as provided in paragraphs (c) through (e) of this section, (paragraphs 42 through 44) **will include:**

[7 CFR 764.51(b)(1)] The completed Agency application form;

***--**The application must be initialed, signed, and dated by the applicant. An unsigned FSA-2001 or FSA-2301 will be considered an incomplete application.

Notes: FSA-2001 with missing initials only will not be considered incomplete; however, initials shall be obtained before loan closing.**--***

Youth loan applications should be filed according to paragraph 44.

[7 CFR 764.51(b)(2)] If the applicant is an entity:

(i) A complete list of entity members showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or stock held in the entity by each member, or the percentage of interest in the entity held by each member;

(ii) A current personal financial statement from each member of the entity;

(iii) A current financial statement from the entity itself;

(iv) A copy of the entity's charter or any entity agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (good standing), and a resolution adopted by the Board of Directors or entity members authorizing specified officers of the entity to apply for and obtain the desired loan and execute required debt, security and other loan instruments and agreements;

Note: If entity documents require more than 1 member to apply, then all identified members must sign FSA-2001, Part E, item 18A.

42 Complete Loan Application (Continued)

A Requirements (Continued)

(v) In the form of married couples applying as a joint operation, items (i) and (iv) will not be required. The Agency may request copies of the marriage license, prenuptial agreement or similar documents as needed to verify loan eligibility and security. Items (ii) and (iii) are only required to the extent needed to show the individual and joint finances of the husband and wife without duplication.

For a married couple, FSA will accept any of the following to verify existence of a joint operation:

- ***--applicable CCC-502/CCC-902--***
- jointly filed tax return
- marriage license
- prenuptial agreement
- similar documentation.

Ordinarily, individual financial statements are not required from a married couple applying as a joint operation. However, in States without community property laws and in some other States, individual financial statements may be necessary to obtain a complete picture of the financial situation. A State supplement will be issued when applicable to provide additional guidance and related information requirements for a married couple applying as a joint operation.

[7 CFR 764.51(b)(3)] A written description of the applicant's farm training and experience, including each entity member who will be involved in managing or operating the farm;

This requirement applies to either new applications or when significant changes to an applicant's operation have occurred. The applicant will provide the information using FSA-2302.

[7 CFR 764.51(b)(4)] The last 3 years of farm financial records, including tax returns, unless the applicant has been farming less than 3 years;

Financial information will be primarily provided by the applicant on FSA-2002. Additional financial records, such as balance sheets, may be requested if necessary, for the last 3 years.

The authorized agency official may request up to 2 additional years of farm financial records in extenuating circumstances, such as natural disasters or adverse economic conditions.

Note: The applicant may submit alternate documents as long as they contain all information collected on FSA-2002.

42 Complete Loan Application (Continued)

A Requirements (Continued)

[7 CFR 764.51(b)(5)] The last 3 years of farm production records, unless the applicant has been farming less than 3 years;

Production information will be provided by the applicant on FSA-2003.

The authorized agency official may request up to 2 additional years of farm production records in extenuating circumstances, such as natural disasters or adverse economic conditions.

Note: Applicant may submit alternate documents if all information collected on FSA-2003 is provided.

[7 CFR 764.51(b)(6)] Documentation that the applicant and each member of an entity applicant cannot obtain sufficient credit elsewhere on reasonable rates and terms, including a loan guaranteed by the Agency;

--**Applicants who have reached OL term limits must provide documentation that they applied for, but were unable to obtain a commercial loan from at least 2 lenders, including a guaranteed loan.**--

[7 CFR 764.51(b)(7)] Documentation of compliance with the Agency's environmental regulations contained in subpart G of 7 CFR 1940;

An applicant must have *** * *** AD-1026 on file for all real estate owned or rented.

--Note:** A new AD-1026 is not required for each subsequent loan if there has been no change to the applicant's farming operation.**--

*** * ***

See RD Instruction 1940-G and 1-EQ for additional information on environmental regulations and requirements.

42 Complete Loan Application (Continued)

A Requirements (Continued)

[7 CFR 764.51(b)(8)] Verification of all non-farm income;

A self-employed applicant's income may be verified by 3 years of income tax returns.

An applicant employed outside of the farm will submit either of the following:

- FSA-2004 authorizing FSA to send FSA-2014 to the applicant's employer
- 2 most recent earning statements.

Notes: The amount and dependability of income from a cosigner, including a nonapplicant spouse, will be verified using the listed format. See subparagraph 281 C for information about cosigner signature and eligibility requirements.

If a nonapplicant will be providing information and will sign FSA-2026, the nonapplicant will complete FSA-2001, Part C. If a nonapplicant's income will only be used to cover family living/owner withdrawal, the nonapplicant must sign FSA-2004 and FSA-2007 but will not be required to sign FSA-2026.

If needed for an operation to cash flow, then the income of individual entity members can be verified as needed. The name of the individual's employer will be obtained as part of the individual credit report for entity members or included as a requirement on FSA-2304.

[7 CFR 764.51(b)(9)] A current financial statement and the operation's farm operating plan, including the projected cash flow budget reflecting production, income, expenses, and loan repayment plan;

The applicant will supply most of this information on FSA-2037 and FSA-2038.

[7 CFR 764.51(b)(10)] A legal description of the farm property owned or to be acquired and, if applicable, any leases, contracts, options, and other agreements with regard to the property;

Note: FSA-2006 will be provided by the applicant as part of the complete application.

This information will be used to determine:

- FSA security
- value of security
- eligibility
- potential income affecting cash flow.

[7 CFR 764.51(b)(11)] Payment to the Agency for ordering a credit report on the applicant;

The agency official will record the date the credit report fee is received in DLS.

42 Complete Loan Application (Continued)

A Requirements (Continued)

[7 CFR 764.51(b)(12)] Verification of all debts;

Applicants must complete FSA-2005 to provide a list of creditors and FSA-2004 to authorize those creditors to release information to FSA.

The authorized agency official:

- must verify the status of debts over $1,000
- must confirm the balance of the debt, the applicant's payment history on the debt including any delinquency, the security pledged for the debt, and the payment schedule including the amount and date of the next scheduled installment
- may obtain this information with any of the following as long as the required information is provided:
  - credit report
  - FSA-2310 (EM's)
  - CAIVRS
  - completed FSA-2015
  - most recent billing statement for the debt (e.g., credit card debt)
  - DLS Customer Profile (printer friendly version) verification of both current/past debts and any prior debt forgiveness
  - any other form of verification that provides the required information.

[7 CFR 764.51(b)(13)] Any additional information deemed necessary by the Agency to effectively evaluate the applicant's eligibility and farm operating plan; and

Examples of additional information include:

- divorce or separation decree
- child support or alimony payments
- 2 additional years for farm production or financial records (in extenuating circumstances).

[7 CFR 764.51(b)(14)] For EM loans, a statement of loss or damage on the appropriate Agency form (FSA-2309)**.**

42 Complete Loan Application (Continued)

B Existing Information in Applicant's File

[7 CFR 764.51(e)] The applicant need not submit any information under this section *--(subparagraph A) **that already exists in the applicant's Agency file and is still current**.--*

Generally, information less than 90 calendar days old, unless noted otherwise, is considered current.

43 Lo-Doc Loan Requests

A Complete Lo-Doc Application

[7 CFR 764.51(c)(4)] Submit items (1), (2), (7), (9), and (11) of paragraph (b) of this section (paragraph 42)**. The Agency may require a Lo-Doc applicant to submit any other information listed in paragraph (b) of this section as needed to make a determination on the loan application.**

A completed Lo-Doc application includes:

- completed FSA-2001
- entity information
- environmental information
- farm operating plan
- payment of credit report fee
- *--balance sheet.--*

Note: An applicant is qualified for loan processing under Lo-Doc provisions, when all of the Lo-Doc requirements of subparagraph 191 B are met.

44 Youth Loan Requests

A Complete Youth Loan Application

A youth loan application is submitted by using FSA-2301, which includes the majority of information for a youth loan application. See Part 8, Section 3 for more information on youth loans.

[7 CFR 764.51(d) For a youth loan request:

[7 CFR 764.51(d)(1)] The applicant must submit items (1), (7), and (9) of paragraph (b) of this section (paragraph 42)**.**

These items are the following:

- completed FSA-2301
- environmental information
- farm operating plan (when FSA-2301 is not considered sufficient).

[7 CFR 764.51(d)(2)] Applicants 18 years or older, must also provide items (11) and (12) of paragraph (b) of this section (paragraph 42)**.**

These items are the following:

- payment to FSA for ordering a credit report
- verification of all debts.

[7 CFR 764.51(d)(3)] The Agency may require a youth loan applicant to submit any other information listed in paragraph (b) of this section (paragraph 42) **as needed to make a determination on the loan application.**

45 Processing Loan Applications

A Application Review

Upon receiving a loan application, the agency official shall:

- insert date application was received on FSA-2001
- determine whether application is complete
- enter loan application information into DLS
- assemble loan application according to 25-AS
- obtain credit report
- obtain CAIVRS
- obtain DLS Customer Profile (printer friendly version) as verification of both current/past debts and any prior debt forgiveness

  Note: Copies of the DLS Customer Profile must be attached to the applicant's file.

- complete RD 1940-22, or Class I or Class II assessment, whichever is applicable.

If an application is received and the applicant has not completed the section that identifies race, ethnicity, or gender of the applicant or members of the entity, the application will be processed as a non-SDA.

Exception: An application from an existing SDA, who has previously provided the documentation needed to qualify as SDA, does not need to resubmit qualifying information.

Note: Race, ethnicity, and gender determinations completed as observed by a FSA employee will not be used to qualify an applicant for SDA funding.

B Notification of Incomplete Application

When an application is received, if it is incomplete or the employee receiving the application cannot determine whether it is complete, the applicant will be provided with FSA-2303. If the applicant hand delivers the application, FSA-2303 will be provided to the applicant before the applicant leaves the office. In all other situations, FSA-2303 will be mailed to the applicant within 2 workdays of receiving an incomplete application.

If the application is determined to be complete upon receipt, FSA-2303 will not be sent. The applicant will be immediately notified in writing according to subparagraph C.

45 Processing Loan Applications (Continued)

B Notification of Incomplete Application (Continued)

[7 CFR 764.52(a)] Within 10 days of receipt of an incomplete application, the Agency will provide the applicant written notice of any additional information which must be provided. The applicant must provide the additional information within 20 calendar days of the date of this notice.

The authorized agency official must notify the applicant in writing within 10 calendar days, after receiving the incomplete application, by using FSA-2304. FSA-2304 will:

- list the additional information needed
- state that the application cannot be processed until all required information is received
- offer assistance to the applicant if they do not understand what is required or are having difficulty obtaining the required information
- establish a due date for receiving the information of 20 calendar days from the date of FSA-2304.

***--Exception:** An EM application will not be withdrawn if the information required under 7 CFR 764.51(b)(14) (see subparagraph 42 A) is the only information that has not been received. Specifically, if accurate disaster year production information is not available, because of the producer having not completed harvest, the application will be held for a reasonable time to allow for the information to become available.

Note: FSA has determined that a reasonable time period is 3 months after the normal conclusion of harvest.

For EM's, insert the following on FSA-2304 for disaster year production information only.

"We must receive the following information by (add 20 days to the date the authorized agency official determines to be 3 months after the normal conclusion of harvest) so that we can continue processing your request for assistance."**--***

If information is needed from other USDA agencies, the agency official will inform those agencies and the applicant of the information needed, and note the date of the request in the running record. For operating loan applications, the agency official will request that the information be returned within 15 calendar days of receiving the request.

Note: If it is clear that the application will be rejected for obvious eligibility reasons, the authorized agency official shall provide an application rejection letter with appropriate appeal or review rights

45 Processing Loan Applications (Continued)

B Notification of Incomplete Application (Continued)

[7 CFR 764.52(b)] If the additional information is not received, the Agency will provide written notice that the application will be withdrawn if the information is not received within 10 calendar days of the date of this second notice.

If the applicant does not respond or does not supply all of the information requested within the 20 calendar day period specified on FSA-2304, the authorized agency official must immediately send FSA-2305. FSA-2305 will:

•***--**be sent certified mail or hand delivered

Note: If hand delivered, FSA must obtain a signed statement from the applicant acknowledging receiving FSA-2305 on the specific date.**--***

- list the additional information needed
- state that the application cannot be processed until all required information is received and unless the applicant supplies the required information, the application will be withdrawn
- establish a due date for receiving the information of 10 calendar days from the date of FSA-2305
- contain the ECOA statement according to 1-FLP, paragraph 41.

Note: A copy of FSA-2305 must be sent to DD at the same time it is sent to the applicant.

FSA will withdraw the application if the additional material is not provided.

Applicants will be sent FSA-2306 to inform them that their application has been withdrawn. ***--**FSA-2306 will be sent by certified mail or hand delivered.

Note: If hand delivered, FSA must obtain a signed statement from the applicant acknowledging receiving FSA-2306 on the specific date.**--***

The withdrawn application will be maintained according to 25-AS.

*** * ***

45 Processing Loan Applications (Continued)

C Processing of Complete Application

[7 CFR 764.53] Upon receiving a complete loan application, the Agency will:

[7 CFR 764.53(a)] Consider the loan application in the order received, based on the date the application was determined to be complete; and

[7 CFR 764.53(b)] Provide written notice to the applicant that the application is complete.

The authorized agency official must notify the applicant in writing within 10 calendar days after receiving the complete application using FSA-2307.

Note: Insert the date the application was determined to be complete on either FSA-2001 or FSA-2301.

D Applicant Withdraws Application

The applicant may request that a loan application be withdrawn at any time during the loanmaking process.

If the applicant makes the request:

- in writing, the authorized agency official will send FSA-2306 and withdraw the application
- by phone, the authorized agency official will send FSA-2306 to the applicant that, per their request, the loan application will be withdrawn unless the applicant contacts the County Office within 10 calendar days of the date of the letter.

Note: The authorized agency official shall maintain withdrawn applications according to 25-AS.

E Reactivating Withdrawn Application

A withdrawn application may not be reactivated. The applicant must file a new application.

Note: Any information in the withdrawn file that is still current may be included with the new application. Generally, information less than 90 calendar days old, unless noted otherwise, is considered current.

45 Processing Loan Applications (Continued)

F Loan Processing When Civil Rights Complaint Has Been Filed

The filing of a civil rights complaint does not stop loan processing activity. If an application for assistance has been filed, that request must be processed according to FSA instructions.

Because failure to advise an applicant of their ineligibility may be considered an adverse action in itself, the authorized agency official should timely process all applications, in those instances where a discrimination complaint is filed, and notify the applicant of the decision. The authorized agency official must fully explain to the applicant the basis for the unfavorable eligibility or feasibility decision according to paragraph 266.

*--G Priority Consideration for Prevailing Claimants

See current FLP notice for guidance on priority consideration.**--***

46-60 (Reserved)

Part 4 General Eligibility and Loan Limitations

Section 1 Eligibility Requirements

61 Overview

A General

[7 CFR 764.101] The following requirements must be met, unless otherwise provided in the eligibility requirements for the particular type of loan.

See:

- paragraphs 62 through 72 for eligibility requirements
- subparagraph 281 C for loan document signature requirements.

62 Controlled Substances

A Controlled Substance Convictions Except Possession and Trafficking

[7 CFR 764.101(a)] The applicant and anyone who will sign the promissory note must not be ineligible for loans as a result of a conviction for controlled substances according to 7 CFR 718 of this chapter.

Notwithstanding any other provision of law, any person convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance in any crop year shall be ineligible for any payment made under any Act, with respect to any commodity produced during the crop year of conviction and the 4 succeeding crop years, by such person.

B Convictions for Drug Trafficking and Possession

Applicants convicted of any Federal or State offense consisting of the distribution (trafficking) of a controlled substance shall, at the discretion of the court, be ineligible for any or all program payments and benefits:

- for up to 5 years after the 1st conviction
- for up to 10 years after the 2nd conviction
- permanently for a 3rd or subsequent conviction.

Applicants convicted of Federal or State offense for the possession of a controlled substance shall be ineligible, at the discretion of the court, for any or all program benefits, as follows:

- up to 1 year upon the 1st conviction
- up to 5 years after a 2nd or subsequent conviction.

Note: Consult with the Regional OGC Attorney before initiating any actions on cases involving controlled substance violations.

FSA-2001 and FSA-2301 both require applicants to certify that they are not ineligible for Federal benefits based on a conviction of any Federal or State controlled substance offense. Self-certifications on FSA-2001 and FSA-2301 will be the only documentation required involving convictions of controlled substances.

63 Legal Capacity

A General Requirements

[7 CFR 764.101(b)] The applicant, and anyone who will sign the promissory note, must possess the legal capacity to incur the obligation of the loan. A Youth loan applicant will incur full personal liability upon execution of the promissory note without regard to the applicant's minority status.

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 must meet this requirement.

The authorized agency official must review documentation provided by entity applicants to ***--**ensure that the entity members meet legal capacity requirements.

Note: An entity that has members who have not reached the age of majority is ineligible for assistance because of the requirement that all entity members must sign FSA-2026 as an individual.**--***

64 Citizenship

A General Requirement

[7 CFR 764.101(c)] The applicant and anyone who will sign the promissory note must be a citizen of the United States, United States non-citizen national, or a qualified alien under applicable Federal immigration laws.

See:

- Exhibit 2 for the definition of U.S. noncitizen national and qualified alien
- Exhibits 8 and 9 for guidance about documentary evidence of U.S. noncitizen national citizenship and qualified alien status.

Note: The loan term to a qualified alien may not exceed the number of years of residency which they have been formally granted by the documents described in Exhibit 8.

65 Credit History

A General Requirement

[7 CFR 764.101(d)] The applicant must have acceptable credit history demonstrated by debt repayment.

[7 CFR 764.101(d) (1)] As part of the credit history the Agency will determine whether the applicant will carry out the terms and conditions of the loan, and deal with the Agency in good faith. In making this determination, the Agency may examine whether the applicant has properly fulfilled its obligations to other parties, including other agencies of the Federal Government.

The authorized agency official may determine that an applicant is not creditworthy if the applicant:

- deliberately falsifies information
- intentionally omits information relevant to the loan decision
- does not make every reasonable effort to meet the conditions and terms of any previous FSA loan
- failed to make reasonable effort to resolve delinquencies with other lenders.

Note: Applicants who provide false information may also be subject to civil and/or criminal prosecution and should be referred by the authorized agency official to OIG.

65 Credit History (Continued)

A General Requirement (Continued)

[7 CFR 764.101(d) (2)] When the applicant caused the Agency a loss by receiving debt forgiveness, the applicant may be ineligible for assistance in accordance with eligibility requirements for the specific loan type. If the debt forgiveness is cured by repayment of the Agency's loss, the Agency may still consider the debt forgiveness in determining the applicant's creditworthiness.

FSA will not consider the following as debt forgiveness for loanmaking purposes:

- debt reduction through a conservation easement or contract

- any debt written off as part of the resolution of a discrimination complaint against FSA, including debt written off in conjunction with the *Pigford Consent Decree*

--Note:** See current FLP notice for guidance on priority consideration.**--

- prior debt forgiveness that has been repaid in its entirety.

Notes: In the majority of cases under Chapter 11 of the Bankruptcy Code, the debt is discharged when the plan is confirmed (see 11 U.S.C. § 1141 (d) for exceptions to automatic discharge). In Chapter 12 and 13 cases, the discharge normally occurs, in 3 to 5 years, by court order. Debt forgiveness occurs when an applicant has completed all payments according to the plan and the unsecured FLP claim is written off. At that point, the applicant will be ineligible for most additional loans according to paragraphs 132, 172, and 232. Specifically, according to paragraphs 132, 172, and 232, the applicant may be eligible for annual production loans, but no other type of assistance.

An applicant who has successfully completed a bankruptcy reorganization plan will be considered to be current on the plan. Therefore, as long as the applicant remains current on the plan they may be eligible to receive annual production loans as outlined above. However, this status changes if the applicant subsequently becomes delinquent on any loans covered by the plan, including non-FSA loans. The denial for failure to comply with an approved bankruptcy plan is appealable. See 1-APP for further instruction.

65 Credit History (Continued)

B Verifying Direct Loan Losses

An agency official shall use the customer profile in DLS to enter SSN or tax ID number for the applicant and each individual who will sign FSA-2026.

IF…	THEN…
the applicant's SSN or tax ID is not found in DLS	a screen print of the page will be placed in position 3 of the case file.
the applicant's SSN or tax ID shows a previous debt in DLS	refer to the list of paid codes provided in Exhibit 10.
the paid code indicates debt forgiveness	use the customer profile in DLS to determine the type, date, and amount of the debt forgiveness and if the debt forgiveness has been paid in full. History is available from 1989 to present. If the debt forgiveness was a write-down, determine the type, date, amount of the debt forgiveness, and if the debt forgiveness has been paid in full. If an equity record exists, the online history should be reviewed for partial write-downs. **Note:** A screen print of each page will be placed in position 3 of the case file.
it is determined that the applicant or any individual who will sign FSA-2026 has received debt forgiveness that has not been paid in full	review appropriate program regulations to determine if the type and date of the debt forgiveness makes the applicant ineligible for the type of assistance requested. **Note:** Exceptions for EM's still apply. The authorized agency official should document all findings in the case file.

C Verifying Guaranteed Loan Losses

The authorized agency official shall access the View Loan Screen in GLS to verify previous debt forgiveness for guaranteed loans. At the Loan List Screen, enter the tax ID number or name of the applicant and each individual who will sign FSA-2026. The Loan List Screen will display previous and current loan information for the individuals entered. Detail information for a specific loan can be accessed by selecting the View Loan Screen from the "Action" drop-down box and clicking on the loan number hyperlink.

Note: A screen print of the View Loan Screen should be placed in the case file.

65 Credit History (Continued)

D Assessing Past Repayment Problems

[7 CFR 764.101(d)(3)] A history of failures to repay past debts as they came due when the ability to repay was within the applicant's control will demonstrate unacceptable credit history. The following circumstances, for example, do not automatically indicate an unacceptable credit history.

(i) Foreclosures, judgments, delinquent payments of the applicant which occurred, more than 36 months before the application, if no recent similar situations have occurred, or Agency delinquencies that have been resolved through loan servicing programs available under 7 CFR Part 766 (5-FLP)**.**

(ii) Isolated incidents of delinquent payments which do not represent a general pattern of unsatisfactory or slow payment.

(iii) "No history" of credit transactions by the applicant.

(iv) Recent foreclosure, judgment, bankruptcy, or delinquent payment when the applicant can satisfactorily demonstrate that the adverse action or delinquency was caused by circumstances that were of a temporary nature and were beyond the applicant's control; or was the result of a refusal to make full payment because of defective goods or service or other justifiable dispute relating to the purchase or contract for goods or services.

Nonpayment of a debt because of circumstances within an applicant's control may be used as an indication of unacceptable credit history. The mere fact that an applicant filed bankruptcy will not be used as an indication of unacceptable credit history. The circumstances causing the nonpayment of debt must be considered.

When an applicant's credit history includes an adverse or delinquent account status, the authorized agency official shall meet with the applicant to discuss the questionable account. The objectives of the meeting are to gather information to determine whether the adverse account status was caused by circumstances beyond the applicant's control and to explain FSA creditworthiness requirements to the applicant. The meeting shall be documented in the running case record. If additional information is to be provided by the applicant as a result of the meeting, this will be confirmed with the applicant in writing.

66 Credit Elsewhere

A General Requirement

[7 CFR 764.101(e)] The applicant, and all entity members in the case of an entity, must be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms. The Agency will evaluate the ability to obtain credit based on factors including, but not limited to:

(1) Loan amounts, rates, and terms available in the marketplace; and

The applicant must certify in writing on FSA-2001 that the applicant is unable to obtain sufficient credit, with or without a guarantee, to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in, or near, where the applicant resides for loans for similar purposes and periods of time.

(2) Property interests, income, and significant non-essential assets.

B Documentation Requirements for FO and OL

If, based on evaluation of the application, the authorized agency official determines the applicant:

- may qualify for credit elsewhere the authorized agency official:
  - may request applicant apply for credit from commercial lender and obtain letter of declination
  - may request applicant apply to additional lenders outside of local community
  - may pursue market placement according to 2-FLP, paragraph 72
  - must document results
- will not qualify for credit elsewhere the authorized agency official must document the reasons in the applicant's file.

Note: Applicants will be encouraged to supplement FO's and OL's with credit from other credit sources to the extent economically feasible and according to sound financial management practices.

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.

66 Credit Elsewhere (Continued)

C Documentation Requirements for an EM

An applicant for EM has different credit elsewhere requirements. To meet the requirements applicants must supply documentation according to subparagraph 232 F.

67 Delinquent Federal Debt and Unpaid Federal Judgments

A General Requirement

[7 CFR 764.101(f)] As provided in 31 CFR Part 285, except for EM loan applicants, the applicant and anyone who will sign the Promissory Note must not be in delinquent status on any Federal debt, other than a debt under the Internal Revenue Code of 1986 at the time of loan closing. All delinquent debts, however, will be considered in determining credit history and ability to repay under this part.

The applicant must not be delinquent on any nontax Federal debt, not paid within 90 calendar days of the due date according to 31 CFR §285.13, or FSA guaranteed debt, a guaranteed loan will not be considered delinquent Federal debt until a final loss claim has been paid. Verification through the Department of Housing and Urban Development's CAIVRS, the credit report, ADPS Current/Past Debt and Borrower Cross Reference Inquiry screens, and GLS View Loan Screen is sufficient. However, if it becomes known, and verified, through other means that the applicant is delinquent on a Federal debt, this information must be considered when making an eligibility determination.

Note: Delinquent Federal tax debt only affects eligibility as it relates to credit history according to paragraph 65.

[7 CFR 764.101(g)] The applicant and anyone who signs the Promissory Note must have no outstanding unpaid judgments obtained by the United States in any court. Such judgments do not include those filed as a result of action in the United States Tax Courts.

The authorized agency official shall review debt verification obtained according to subparagraph 65 B.

B Resolving Delinquent Federal Debt and Judgments

Applicants who pay their delinquent Federal debt or judgment in full or otherwise resolve the ***--**delinquency or judgment before or at loan closing may be eligible.**--***

Note: FSA will consider such debts as part of the creditworthiness eligibility requirement and in determining cash flow during the loan evaluation process.

68 Federal Crop Insurance Violations

A General Requirement

[7 CFR 764.101(h)] The applicant, and all entity members in the case of an entity, must not be ineligible due to disqualification resulting from Federal Crop Insurance violation, according to 7 CFR Part 718.

Section 515(h) of FCIA provides that a person who willfully and intentionally provides any false or inaccurate information to FCIC or to an approved insurance provider with respect to a policy or plan of FCIC insurance after notice and an opportunity for a hearing on the record, will be subject to 1 or more sanctions, which may effect the applicants eligibility for all Federal assistance.

Applicants, as well as individual entity members, will self certify on FSA-2001 that they have not been disqualified. Additionally, RMA will notify the National Office of individuals and entities that have been disqualified as a result of crop insurance violations. The National Office will notify the State Office. State Offices shall notify the appropriate County Office.

Notes: See 7 CFR 718.11 for additional information on disqualifications.

Information on individuals and entities disqualified may be obtained from EPLS at http://www.epls.gov. Review of the EPLS web site is not mandatory.

69 Managerial Ability

A General Requirement

--For an entity to meet the requirements in this subparagraph, either the individual holding the majority interest in the entity or the individual responsible for the day-to-day operations of the entity must demonstrate sufficient managerial ability as described in this paragraph.--

[7 CFR 764.101(i)] 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:

[7 CFR 764.101(i)(1)] Education. For example, the applicant obtained a 4-year college degree in agricultural business, horticulture, animal science, agronomy, or other agricultural-related field.

To meet the managerial requirement through education alone, the applicant must document completing a comprehensive educational program in agriculture or an equivalent combination of hands-on experience and education. Acceptable educational programs include any of the following, as long as the programs are relevant to the planned operation:

- a 4-year college degree in agriculture business, horticulture, animal science, agronomy, or other agricultural related fields

- a 2-year degree from a technical college in agriculture business, horticulture, animal science, agronomy, or other agricultural related fields, provided that the applicant also has experience working on a farm

- vocational or general agriculture classes in high school, provided that the applicant also has experience working on a farm and participated in and successfully completed applicable projects in 4-H, FFA, or another agriculture affiliated group

- successful completion of farm management courses offered by the Cooperative Extension Service, a community college, adult vocational agricultural program, land grant university, or a similar program with academic integrity, provided that the applicant was raised and worked on a farm or is currently working on a farm.

[7 CFR 764.101(i)(2)] On-the-job training. For example, the applicant is currently working on a farm as part of an apprenticeship program.

To meet the managerial ability requirement through on-the-job training alone, the applicant must be currently working, or have recently worked, as hired farm labor with management responsibilities, as part of an apprenticeship program for at least 1 entire production and marketing cycle.

69 Managerial Ability (Continued)

A General Requirement (Continued)

[7 CFR 764.101(i)(3)] Farming experience. For example, the applicant has been an owner, manager, or operator of a farm business for at least one entire production cycle. The farming experience must have been obtained within the last five years.

To meet the managerial ability requirement through farming experience alone, the applicant must have been 1 of the following:

- an owner of a farm business with management and operator responsibilities for at least 1 entire production and marketing cycle
- employed as a farm manager or farm management consultant for at least 1 entire production and marketing cycle
- raised on a farm and held significant responsibility for day-to-day management decisions for at least one entire production and marketing cycle.

The applicant must document this experience through tax returns, FSA farm records, or similar documentation.

The applicant may satisfy the managerial ability requirement through any equivalent combination of education, on-the-job training, and farm experience. The authorized agency official must consider each application on a case-by-case basis.

Applicants must demonstrate that they have carried out their operation according to standard farming practices in the area. The following are some examples of practices, which do not meet the requirement 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
- poor tillage practices
- poor breeding practices
- lack of good record keeping, including income and expense records, income tax records, and breeding records.

70 Borrower Training

A General Requirement

[7 CFR 764.101(j)] The applicant must agree to meet the training requirements in subpart J of this part (Part 13, Section 1)**.**

71 Owner/Operator of a Family Farm

A General Requirement

[7 CFR 764.101(k)](1) The applicant must be the operator of a family farm after the loan is closed.

(2) For an entity applicant, if the entity members holding a majority interest are:

(i) Related by blood or marriage, at least one member must be the operator of a family farm;

(ii) Not related by blood or marriage, the entity members holding a majority interest must be the operators of a family farm.

(3) Except for EM loans, the collective interests of the members may be larger than a family farm only if:

(i) Each member's ownership interest is not larger than a family farm;

(ii) All of the members of the entity are related by blood or marriage; and

(iii) All of the members are or will become operators of the family farm; and

71 Owner/Operator of a Family Farm (Continued)

B Factors for Consideration

[7 CFR 764.101(k)(4)] If the entity applicant has an operator and ownership interest for farm ownership loans and emergency loans for farm ownership loan purposes, in any other farming operation, that farming operation must not exceed the requirements of a family farm.

See Exhibit 2 for the definition of what constitutes a family farm.

The authorized agency official must consider the following factors when making the family farm determination.

- Be recognized in the community as a farm. The applicant's farm operation must be large enough to be considered a working farm (as opposed to a "hobby farm," garden, or residence) and provide a significant financial return.

- Members of the farm family must make all the day-to-day farm management and operational decisions. The use of outside consultants or advisors is acceptable provided that someone in the farm family is the ultimate decision-maker.

- Family or entity members must supply a substantial amount of the full-time labor. This does not preclude using seasonally hired labor, but in most instances, the family should provide most of the day-to-day labor. Exceptions may be made for enterprises that produce high value, labor-intensive crops such as fruit or vegetables.

- 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.

- ***--**Loan participation arrangements are acceptable when FSA farm loans cannot meet the total credit needs of the applicant. However, if the FSA loan only represents a small portion of the total credit requirements, this may be an indication that the applicant is larger than a family-sized farm when all factors are considered. The authorized agency official must also fully consider if credit is available from another source, including a guaranteed loan.**--***

To make a determination about the family farm requirement, the authorized agency official must judge the factors individually and also weigh and consider how the factors relate to each other. If the authorized agency official determines that the applicant's farm does not satisfy the definition of a family farm, the reasoning behind the authorized agency official's decision must be documented in the loan file.

72 Entity Composition

A General Requirement

[7 CFR 764.101(l)] If the applicant is an entity, the entity members are not themselves entities. Entity applicants who are composed of other entities are not eligible applicants.

B Individual Members of Entity

Each member of the entity must meet the general and program-specific eligibility requirements. The 1 exception is the FO requirement for an owner-operator. See subparagraph 132 D.

C Married Persons

Married persons applying together shall be treated as a joint operation unless they form or have formed a legal entity before application for assistance. If they apply as a joint operation, both parties must meet the general and program specific eligibility requirements for the loan requested.

D Joint Operations

In the case of an informal joint operation, where no formal tax ID number has been assigned by a taxing authority, the persons requesting the assistance will designate which SSN will be used as primary to assign the case number.

72 Entity Composition (Continued)

E Treatment of Trusts

SED's, after consultation with the Regional OGC, shall issue a State supplement about the following for trusts:

- security requirements when lending to trusts
- signature requirements on FSA-2026's and security instruments
- unique characteristics of State trust statutes.

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

- nonparticipant beneficiaries, 3rd party trustees, beneficiaries of a revocable trust, and beneficiaries with only a future interest need to sign on behalf of the trust and as individuals

- submitted trust documents demonstrate valid organization under State law

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

F Life Estates

An FO involving a life estate may be made under certain circumstances to:

- both the life estate holder and the remainderman, if both:

  - have a legal right to occupy and operate the farm
  - are eligible for the loan independently
  - parties sign the note and lien instrument

- just the remainderman, if the remainderman has a legal right to operate the farm

- just the life estate holder, if:

  - there is no restriction placed on a life estate holder who occupies and operates a farm

  - the lien instrument is signed by the life estate holder, remainderman, and any other party having any interest in the security.

73 Final Eligibility Determination

A Eligible Applicants

Within 5 calendar days of a favorable eligibility determination, the authorized agency official will provide written notification to the applicant using FSA-2308. The notification should clearly explain that a decision of eligibility does not constitute loan approval. When notifying the applicant of a favorable eligibility decision, the authorized agency official, if necessary, will schedule a meeting with the applicant to proceed with developing the loan docket.

The authorized agency official must document in the FBP Credit Action whether the applicant meets:

- all eligibility requirements
- SDA requirements
- the beginning farmer definition.

If the applicant is determined eligible and additional information becomes available that indicates the original eligibility determination was in error, the authorized agency official will reconsider the eligibility determination. The authorized agency office will clearly document in the case file whether the applicant still meets eligibility requirements. Written notification of the action taken will be sent to the applicant within 5 calendar days of the determination.

73 Final Eligibility Determination (Continued)

B Ineligible Applicants

If the authorized agency official determines the applicant ineligible, the authorized agency official must:

- document in FBP and DLS the specific reasons for denial
- cite CFR references as applicable
- notify the applicant in writing, within 5 calendar days, of the determination providing appeal rights according to 1-APP and ECOA and nondiscrimination statements according to 1-FLP, paragraph 41.

Note: See paragraph 266 for further guidance on actions to be taken when an application is denied.

If the unfavorable decision is the result of a determination that the applicant is not creditworthy, the authorized agency official will meet with the applicant before sending a rejection letter to:

- discuss the credit report information in detail
- explain the reasons for the adverse decision
- provide the applicant with a copy of the credit report including the name and address of the credit reporting company and any other nonconfidential information used to make the creditworthiness decision
- inform the applicant that any dispute about the accuracy of the information in the credit report must be resolved between the credit reporting company and the applicant.

If the applicant fails to attend the meeting, a rejection letter will immediately be sent and the fact that the applicant failed to attend the meeting will be documented in the case file.

Note: If denial is based on information obtained from a source other than a credit reporting company, the applicant will be advised that the information can only be disclosed upon written request.

74 Limitations

A Program Limitations

[7 CFR 764.102(a)] Limitations specific to each loan program are contained in subparts D through H of this part (Parts 7, 8, and 9)**.**

B Maximum Loan Limits

[7 CFR 764.102 (b)] The total principal balance owed to the Agency at any one time by the applicant, or any one who will sign the promissory note, cannot exceed the limits established in § 761.8 of this chapter (1-FLP, paragraph 29)**.**

C Loan Funds Used in the United States

[7 CFR 764.102(c)] The funds from the FLP loan must be used for farming operations located in the United States.

D Highly Erodible Soil and Wetlands Conversion

[7 CFR 764.102(d)] The Agency will not make a loan if the proceeds will be used:

(1) For any purpose that contributes to excessive erosion of highly erodible land, or to the conversion of wetlands;

--Note:** This includes HEL and wetland provisions administered by either NRCS or the Army Corp of Engineers.**--

(2) To drain, dredge, fill, level, or otherwise manipulate a wetland; or

(3) To engage in any activity that results in impairing or reducing the flow, circulation, or reach of water, except in the case of activity related to the maintenance of previously converted wetlands as defined in the Food Security Act of 1985.

Note: If NRCS has determined that the applicant has committed any of the above violations, a loan cannot be made until the violation has been corrected.

E Construction

[7 CFR 764.102(e)] Any construction financed by the Agency must comply with the standards established in § 761.10 of this chapter (1-FLP, Part 5)**.**

F Non-eligible Enterprise

[7 CFR 764.102(f)] Loan funds will not be used to establish or support a non-eligible enterprise, even if the non-eligible enterprise contributes to the farm.

See Exhibit 2 for the definition of noneligible enterprise.

75-90 (Reserved)

Part 5 Loan Security

91 Security Requirements

A General

[7 CFR 764.103(a)] Security requirements specific to each loan program are outlined in subparts D through H of this part (Parts 7 through 9)**.**

For the specific requirements for each direct loan program, see:

- paragraph 135 for FO security
- *--paragraph 154 for downpayment loan security--*
- paragraph 175 for OL security
- paragraph 215 for youth loan security
- paragraph 236 for EM security.

Advice on obtaining security will be obtained from OGC when necessary, especially on obtaining security when a life estate is involved.

B Adequate Security

[7 CFR 764.103(b)] All loans must be secured by assets having a security value of at least 100 percent of the loan amount, except for EM loans as provided in subpart H of this part (Part 9)**. If the applicant's assets do not provide adequate security, the Agency may accept:**

[7 CFR 764.103(b)(1)] A pledge of security from a third party; or

--In cases where nonapplicants will pledge the full value of chattel security, the authorized-- agency official will obtain CCC-10 and FSA-2028 from the nonapplicant authorizing FSA to file the required instrument to perfect FSA's lien * * * .

* * *

In unique situations, such as areas where land is held in communal rather than fee simple title, or where DOJ lacks jurisdiction, it may be necessary for SED, with advice from OGC, to issue a State supplement.

--See subparagraph 321 C for further guidance on chattel security pledged by multiple owners.--

[7 CFR 764.103(b)(2)] Interests in property not owned by the applicant (such as leases that provide a mortgageable value, water rights, easements, mineral rights, and royalties).

The value of adequate security is established according to subparagraph 95 A.

91 Security Requirements (Continued)

C Additional Security

[7 CFR 764.103(c)] An additional amount of security up to 150 percent of the loan amount will be taken when available, except for * * * downpayment loans and youth loans.

In the case of an entity, when all the security held by the entity does not meet the requirement for additional security up to 150 percent of the loan amount, FSA will take liens on personal assets held by individual members, as security to the extent that the members have suitable personal assets. The entity will select and notify FSA which asset it prefers to offer as security for the loan.

The authorized agency official will take security with a value that exceeds 150 percent of the loan amount if it is not practical to separate the property.

The value of additional security is established according to subparagraph 95 B.

Note: If a loan is in conjunction with EQIP, the EQIP contract will be considered the additional security needed to meet the 150 percent requirement.

D Choice of Security

[7 CFR 764.103(d)] The Agency will choose the best security available when there are several alternatives that meet the Agency's security requirement.

When there are several alternatives available, any 1 of which will meet the security requirements for the loan, the authorized agency official has the discretion to select the best alternative for obtaining adequate security. The choice of security the will be included on FSA-2313 which shall be sent by certified mail or hand delivery.

Notes: If hand delivered, FSA must obtain a signed statement from the applicant acknowledging receiving FSA-2313 on the specific date.

FSA primarily chooses between like types of security. For example, FSA will not choose chattel over real estate if real estate is the appropriate security for the loan and other real estate is available. FSA will also consider lien position when choosing security.

91 Security Requirements (Continued)

E Requirement to Obtain Liens on all Non-essential Assets

[7 CFR 764.103(e)] The Agency will take a lien on all assets that are not essential to the farming operation and are not being converted to cash to reduce the loan amount when each such asset, or aggregate value of like assets (such as stocks), has a value in excess of $5,000. The value of this security is not included in the Agency's additional security
--requirement stated in paragraph (c) of this section** (subparagraph C)**. This--
requirement does not apply to beginning farmer down payment loans and youth loans.

This requirement is intended to provide FSA with a security interest in assets that are not essential to the farming operation, but which the applicant cannot or will not convert to cash to reduce credit needs or outstanding obligations. This requirement applies to individual applicants, entity applicants, as well as all individual members of the entity.

***--**The value of nonessential assets is:

- not included as part of the 150 percent additional security requirement

  Note: The value of the nonessential asset may be included in the adequate security value calculation if necessary, for the applicant to meet the 100 percent collateral requirement.**--***

- is established according to subparagraph 95 B.

F Securing Multiple Loans

[7 CFR 764.104(d)] The same real estate may be pledged as security for more than one direct or guaranteed loan.

[7 CFR 764.105] The same chattel may be pledged as security for more than one direct or guaranteed loan.

92 Real Estate Security

A Overview

Real estate security includes land and permanent structures, including fixtures that can be described on the security instrument, such as bins, silos, and gutter cleaners. It also includes items that are considered part of the farm and ordinarily pass with the title to the farm. These items include assignments of leases and leasehold interests having mortgageable value, water rights, easements, rights-of-way, revenues, mineral rights, and royalties from mineral rights.

Different lien positions on real estate are considered separate and identifiable security.

B Agency Lien Position

[7 CFR 764.104(a)] If real estate is pledged as security for a loan, the Agency must obtain a first lien, if available. When a first lien is not available, the Agency may take a junior lien under the following conditions:

[7 CFR 764.104(a)(1)] The prior lien does not contain any provisions that may jeopardize the Agency's interest or the applicant's ability to repay the FLP loan;

--**Each prior lienholder must sign FSA-2319 before loan closing.**--

[7 CFR 764.104(a)(2)] Prior lienholders agree to notify the Agency prior to foreclosure;

In some States, a prior lienholder may be able to foreclose the security instrument without providing junior lienholders notice of the foreclosure proceedings. In that case, any prior lienholder must agree in writing on FSA-2319 to:

- give FSA advance notice of foreclosure
- offer to assign the mortgage to FSA for the amount of the outstanding debt owed to the prior lienholder.

[7 CFR 764.104(a)(3)] The applicant must agree not to increase an existing prior lien without the written consent of the Agency; and

The applicant agrees on FSA-2029 to obtain permission from FSA before granting any additional security interest in the real estate.

[7 CFR 764.104(a)(4)] Equity in the collateral exists.

92 Real Estate Security (Continued)

C Liens on Real Estate Held Under a Purchase Contract

[7 CFR 764.104(b)] If the real estate offered as security is held under a recorded purchase contract:

In a land purchase contract, the seller of the land, or contract holder, acts as a lender and continues to hold the title for the land. The purchaser of the land is essentially obtaining financing of a portion of the purchase price of the land from the seller. The property may be used for adequate or additional security for all types of direct loans.

[7 CFR 764.104(b)(1)] The applicant must provide a security interest in the real estate.

[7 CFR 764.104(b)(2)] The applicant and the purchase contract holder must agree in writing that any insurance proceeds received for real estate losses will be used only for one or more of the following purposes:

(i) To replace or repair the damaged real estate improvements which are essential to the farming operation;

(ii) To make other essential real estate improvements; or

(iii) To pay any prior real estate lien, including the purchase contract.

[7 CFR 764.104(b)(3)] The purchase contract must provide the applicant with possession, control and beneficial use of the property, and entitle the applicant to marketable title upon fulfillment of the contract terms.

[7 CFR 764.104(b)(4)] The purchase contract must not:

(i) Be subject to summary cancellation upon default;

(ii) Contain provisions which jeopardize the Agency's security position, or the applicant's ability to repay the loan.

[7 CFR 764.104(b)(5)] The purchase contract holder must agree in writing to:

The authorized agency official must ensure that conditions are met before closing a loan secured by a land purchase contract. The contract holder must agree to these conditions on a form obtained from OGC titled "Agreement of Vendor for the Benefit of the Lender".

92 Real Estate Security (Continued)

C Liens on Real Estate Held Under a Purchase Contract (Continued)

(i) Not sell or voluntarily transfer their interest without prior written consent of the Agency;

(ii) Not encumber or cause any liens to be levied against the property;

(iii) Not take any action to accelerate, forfeit, or foreclose the applicant's interest in the security property until a specified period of time after notifying the Agency of the intent to do so;

(iv) Consent to the Agency making the loan and taking a security interest in the applicant's interest under the purchase contract as security for the FLP loan;

(v) Not take any action to foreclose or forfeit the interest of the applicant under the purchase contract because the Agency has acquired the applicant's interest by foreclosure or voluntary conveyance, or because the Agency has subsequently sold or assigned the applicant's interest to a third party who will assume the applicant's obligations under the purchase contract;

(vi) Notify the Agency in writing of any breach by the applicant; and

(vii) 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.

[7 CFR 764.104(b)(6)] If the Agency acquires the applicant's interest under the purchase contract by foreclosure or voluntary conveyance, the Agency will not be deemed to have assumed any of the applicant's obligations under the contract, provided that if the Agency fails to perform the applicant's obligations while it holds the applicant's interest is grounds for terminating the purchase contract.

92 Real Estate Security (Continued)

D Fixtures and Equipment

Sometimes FSA must obtain a security interest in fixtures such as buildings that can be moved, including silos, modular buildings, and grain bins, or certain equipment. An item is generally considered a fixture if it is attached to:

- a building or other structure in such a way that it cannot be removed without defacing or dismantling the structure, or substantially damaging the fixture
- land, in such a way that it cannot be removed without substantially damaging the fixture.

Note: When determined necessary by OGC, a State supplement will be issued to further explain taking a security interest in fixtures.

Generally, a security interest taken in goods:

- before they become fixtures has priority over real estate interest holders
- after they become fixtures is valid against all person subsequently acquiring an interest in the real estate. However, it is not valid against persons who had an interest in the real estate when the goods became fixtures, unless they execute FSA-2317.

Liens on fixtures can be obtained in the following 2 ways, and some States require that both be done:

- the fixture may be described on the mortgage, which FSA prefers
- the lien may be filed on UCC1.

FSA requires a 1st lien on equipment or fixtures purchased or refinanced with direct OL funds.

A 1st lien is preferred, but a junior lien is acceptable if the equipment or fixtures are purchased with FO funds and secured by a mortgage on the land on which the fixtures reside. However, FSA requires a 1st lien on equipment or fixtures purchased by FO funds and secured by UCC1. This lien is needed only when the fixture cannot be included in the real estate lien, and when the best lien obtainable on all real estate does not provide adequate security for the loan.

92 Real Estate Security (Continued)

E Tribal Lands Held in Trust or Restricted

[7 CFR 764.104(c)] The Agency may take a lien on Indian Trust lands as security provided the applicant requests the Bureau of Indian Affairs to furnish Title Status Reports to the agency and the Bureau of Indian Affairs provides the report and approves the lien.

USDA and DOI have agreed that FSA loans may be made to American Indians and secured by real estate when title is held in trust or restricted status. When security is taken on real estate held in trust or restricted status, the applicant will request that BIA furnish the Title Status reports to the authorized agency official. The BIA's approval will be obtained on FSA-2029 after the applicant and any other party whose signature is required have signed FSA-2029.

F Leasehold Estates in Hawaii, Puerto Rico, and American Samoa

[7 CFR 764.104(e)] A loan may be secured by a mortgage on a leasehold, if the leasehold has negotiable value and can be mortgaged.

FSA can secure a loan with a leasehold property if the lease has a negotiable value and can be mortgaged, subject to the following conditions.

- The term of the lease extends beyond the repayment period of the loan for a period sufficient to ensure the objectives of the loan are achieved. If the loan repayment period is equal to or greater than the period of the lease, the applicant must provide other security or the lessor must agree in writing to compensate the applicant for the value of the improvements not depreciated when the lease expires or is terminated.

- The lessor must have clear and marketable title to the real estate or the lessor must have signed a contract to purchase the real estate. The contract and the lien instruments must not contain covenants, such as short redemption periods or rights to cancel, which may jeopardize FSA's security. Any provisions that may jeopardize FSA's security must be limited, modified, waived, or subordinated in favor of FSA.

- FSA, as holder of a mortgage upon a lease or leasehold interest, must hold a position on the security equivalent to or better than a 2nd mortgage. Besides the lessor's consent to the mortgage on the leasehold interest, FSA should consider whether:

  - there is reasonable security of tenure to ensure that the applicant's interest is not subject to summary forfeiture or cancellation

  - the right to foreclose the mortgage and sell without restrictions would adversely affect the salability or market value of the security

92 Real Estate Security (Continued)

F Leasehold Estates in Hawaii, Puerto Rico, and the American Samoa (Continued)

- FSA has a right to bid at a foreclosure sale or to accept voluntary conveyance instead of foreclosure

- FSA has the right, after acquiring the leasehold through foreclosure or voluntary conveyance instead of foreclosure, or in event of abandonment by the applicant, to occupy the property or sublet it, and to sell it for cash or credit

  Note: In case of a credit sale, FSA should take a vendor's mortgage with rights similar to those under the original mortgage.

- the applicant has the right, in the event of default or inability to continue with the lease and the loan, to transfer the leasehold, subject to the mortgage, to an eligible transferee who assumes the debt

- advance notice will be given to FSA of the lessor's intention to cancel, terminate, or foreclose upon the lease

  Note: The advance notice should be long enough to permit FSA to ascertain the amount of delinquencies, the total amount of the lessor's and any other prior interest, and the market value of the leasehold interest and, if litigation is involved, to refer the case with a report of the facts to the U.S. Attorney for appropriate action. At a minimum, the lessor should provide 30 days notice of intent to cancel, terminate, or foreclose on the lease.

- there are express provisions covering FSA's obligation to pay unpaid rental or other charges accrued at the time it acquires possession of the property or title to the leasehold, and that become due during FSA's occupancy or ownership, pending further servicing or liquidation

- there are any provisions to assure fair compensation to the lessee for any part of the premises taken by condemnation

- any other provisions are necessary to obtain an interest that can be mortgaged.

SED will issue a State supplement providing the necessary requirements, including forms for obtaining the required security. The State supplement, forms, and any revisions must have prior National Office approval before being issued.

G Assignment of Income from Real Estate to be Mortgaged

FSA may secure a loan with an assignment of income, such as selling off timber, selling off minerals, or income received from the sale of a right-of-way. The assignment will be perfected by using FSA-2044.

93 Other Security Requirements

A Special Security Requirements

When OL's are made to eligible entities that consist of members who are presently indebted for OL's as individuals, or when OL's are made to eligible individuals who are members of an entity presently indebted for an OL, security must consist of chattel and/or real estate security that is separate and identifiable from the security pledged to FSA for any other direct or guaranteed loans.

Note: Different lien positions on real estate are considered separate and identifiable collateral.

The outstanding amount of loans made may not exceed the value of the collateral used.

B Assignment on Income in UCC States

The authorized agency official will determine whether or not an assignment will be obtained. In UCC States, an assignment of livestock or crop income constitutes a security instrument on income. The share lease, share agreement, or contract will be described specifically as "Contract Rights" or "Contract Rights in Livestock or Crops" on UCC1.

C How to Secure Income from Products and Program Payments

Assignments, consents, and security interest relating to income from products and program payments will be used when necessary to protect the Government's interest according to the following.

- FSA-2041 to assign products or income in which FSA does not have a security interest under UCC. Other forms approved by OGC may be used when FSA-2041 is not adequate.

- FSA-2042 for contract products or income, except dairy products in which FSA has a security interest under UCC.

- FSA-2043 to assign dairy products in which FSA has a security interest under UCC.

- Forms provided by the FSA FP's will be used for assigning incentive and other agricultural program payments.

94 Exceptions to Security Requirements

A Overview

[7 CFR 764.106] Notwithstanding any other provision of this part, the Agency will not take a security interest:

See subparagraphs B through G for when FSA will not take a security interest on property.

B Jeopardizing Operating Credit

[7 CFR 764.106(a)] When adequate security is otherwise available and the lien will prevent the applicant from obtaining credit from other sources;

FSA will not take a lien on chattel property if it will prevent the applicant or members of an entity applicant from obtaining operating credit from other sources.

In some situations FSA will not take a security interest on an asset, either because of liabilities associated with the security itself, or because the financial position of the applicant would be jeopardized. FSA may take a security interest in these situations only if real estate and chattel security have not provided adequate security.

C Environmental and Historical Impact

[7 CFR 764.106(b)] When the property could have significant environmental problems or costs as described subpart G of 7 CFR Part 1940;

A lien will not be taken on property that could have significant environmental problems or costs, for example, any known or suspected:

- underground storage tanks
- hazardous wastes
- contingent liabilities
- wetlands
- endangered species
- historic properties.

See 1-EQ and FmHA Instruction 1940-G for more information on environmental assessments and requirements.

94 Exceptions to Security Requirements (Continued)

D Lien Position Cannot Be Perfected

[7 CFR 764.106(c)] When the Agency cannot obtain a valid lien;

SED shall issue a State supplement about areas where DOJ has no jurisdiction or has advised FSA that because of the lack of a Federal District Court, they will not litigate civil cases.

E Personal Residence of Applicant

[7 CFR 764.106(d)] When the property is the applicant's personal residence and appurtenances and:

(1) They are located on a separate parcel; and

(2) The real estate that serves as security for the FLP loan plus crops and chattels are greater than or equal to 150 percent of the unpaid balance due on the loan;

Note: The 150 percent should be the equity value, after taking prior liens into consideration.

F Other Assets of Applicant

[7 CFR 764.106(e)] When the property is subsistence livestock, cash, working capital accounts the applicants uses for the farming operation, retirement accounts, personal vehicles necessary for family living, household contents, or small equipment such as hand tools and lawn mowers; or

94 Exceptions to Security Requirements (Continued)

G Softwood Timber

[7 CFR 764.106(f)] On marginal land and timber that secures an outstanding ST loan.

FSA is statutorily prohibited from taking additional liens on property securing a softwood timber loan.

H Title Held by Contractor

When the title to a livestock or crop enterprise is held by a contractor under a written contract or the enterprise is to be managed by the applicant under a share lease or share agreement, an assignment of all or part of the applicant's share of the income will be taken. A form approved by the Regional OGC will be used to obtain the assignment.

I Documenting Exceptions

When security is not taken for any of the mentioned reasons, the authorized agency official must document the decision in the running record.

95 Appraisals and Values

A Adequate Security

[7 CFR 764.107(a)] The value of real estate will be established by an appraisal completed in accordance with §761.7 (1-FLP) **of this chapter.**

A real estate appraisal is required when real estate is taken as primary security and the amount of the loan to be secured by the real estate exceeds $50,000.

A new real estate appraisal is not required if the latest appraisal report available is not over 1 year old, unless significant changes in the market value of real estate have occurred in the area within the 1 year period.

[7 CFR 764.107(b)] The value of chattels will be established as follows:

An appraisal will be completed to determine market value and applicant equity when:

- an initial loan is made on all chattel property owned by the applicant, and on chattel property to be acquired when the item can be specifically identified
- a subsequent loan is made to refinance chattel debt
- a subsequent loan is made and the existing chattel appraisal is more than 2 years old.

(1) The security value of annual livestock and crop production is presumed to be 100 percent of the amount loaned for annual operating and family living expenses, as outlined in the approved farm operating plan.

(2) The value of livestock and equipment will be established by an appraisal completed in accordance with §761.7 (1-FLP) **of this chapter.**

B Additional Security and Nonessential Assets

***--**A real estate appraisal is not required when real estate or chattels are taken as additional security.

The loan approval or other authorized agency official, to whom SED delegated authority under 1-FLP, will estimate the market value of additional security, real estate or chattel security, and nonessential assets.**--***

The authorized agency official must document the value in the running record, along with the basis for the estimate. If the applicant disagrees with the estimated values, FSA may accept an appraisal from the applicant, obtained at the applicant's expense, if the appraisal meets all FSA requirements.

96–110 (Reserved)

Part 6 Insurance

111 Overview

A Adequate Insurance

[7 CFR 764.108] The applicant must obtain and maintain insurance equal to the lesser of the value of the security at the time of loan closing or the principal of all FLP and non-FLP loans secured by the property, subject to the following:

(a) All security, except growing crops, must be covered by hazard insurance if it is readily available (sold by insurance agents in the applicant's normal trade area) and insurance premiums do not exceed the benefit. The Agency must be listed as loss payee for the insurance indemnity payment or as a beneficiary of the mortgagee loss payable clause.

The insurance obtained by the applicant, at a minimum, should be the standard insurance policy for the locality in which the property is located. The policy must include the terms and coverage commonly available in the locality.

B Qualifications of Insurance Agents and Companies

The applicant is responsible for selecting the agent for property insurance coverage. The applicant should obtain insurance, if possible, from an insurance agent in the locality where the property is located.

The insurance agent must be licensed to sell insurance within the State.

The company supplying the policy should be licensed or otherwise authorized by law to transact the business in the State or other jurisdiction where the property is located. State insurance regulators can provide information about the licensing status of companies.

If the required insurance is not available at comparable rates from an insurance company licensed or otherwise authorized to do business, the authorized agency official may accept insurance from another company if:

- OGC advises that policies issued by the company will be enforceable in the State
- SED determines that the company is reputable and financially sound.

112 Type of Insurance Required

A Hazard Insurance

*****--Subparagraphs A through C contain general insurance requirements.--*****

Insurance is required if the security is the applicant's dwelling, other buildings, and chattels that are necessary for the farm operation or that provide income to ensure the orderly repayment of the loan.

The authorized agency official may waive the insurance requirement if 1 or more of the following conditions apply:

- cost of insurance is very high in comparison with the value of the building
- building is subject to very slight hazards because of its construction
- building has a depreciated value of $2,500 or less.

The minimum amount of coverage for:

- buildings and improvements shall be equal to the lesser of the value of security or the *****--cumulative principal owed on all FLP and non-FLP loans at the time of loan closing--*****

- chattels shall be the lesser of the tax value or depreciated value.

B Flood Insurance

[7 CFR 764.108(b)] Real estate security located in flood or mudslide prone areas must be covered by flood or mudslide insurance. The Agency must be listed as a beneficiary of the mortgagee loss payable clause.

The contents of a building must be insured separately from the building itself.

112 Type of Insurance Required (Continued)

C Crop Insurance

[7 CFR 764.108(c)] Growing crops used to provide adequate security must be covered by crop insurance if such insurance is available. The Agency must be listed as loss payee for the insurance indemnity payment.

Note: This reference applies when FSA is actually financing the crop with loan funds. In ***--**these cases, the requirement for crop insurance cannot be waived. The assignment is obtained on FCI-20.**--***

If perennial crops are used to secure loans with a term of more than 1 year, the applicant will be required to obtain crop insurance in all subsequent years until the loan is paid in full.

[7 CFR 764.108(d)] Prior to closing the loan, the applicant must have obtained at least the catastrophic risk protection level of crop insurance coverage for each crop which is a basic part of the applicant's total operation, if such insurance is available, unless the applicant executes a written waiver of any emergency crop loss assistance with respect to such crop. The applicant must execute an assignment of indemnity in favor of the Agency for this coverage.

--Note:** This reference applies when FSA is not financing the crop with loan funds. The assignment is obtained on FCI-20.**--

113 Documentation

A General

Before loan closing, applicants must provide the applicable documentation required according to subparagraphs B and C.

B Documentation of Hazard and Flood Insurance

An applicant should demonstrate hazard or flood insurance coverage by 1 or more of the following documents:

- an insurance policy showing the effective date
- an endorsement to a policy showing the effective date
- a written binder showing the effective date
- a "declaration" page furnished by the insurance company, clearly stating that it is an original declaration page, and showing the effective date
- a receipt for insurance premiums, if the receipt shows the period covered.

An applicant relying on a written binder or receipt for premiums must submit an acceptable insurance policy or endorsement to the authorized agency official within 60 calendar days after the effective date of the policy and before the expiration date of the binder.

The applicant must demonstrate, either through receipts for insurance premiums or another way, that the insurance is effective for at least 12 months following loan closing.

Coverage for a building under construction should be demonstrated by either coverage under a builder's risk:

- policy naming the applicant as the insured
- endorsement for a policy issued to the applicant.

A policy or endorsement used to cover a building while the building is under construction must convert automatically to full coverage once the building is completed or the applicant must obtain other acceptable coverage.

The authorized agency official shall not rely upon a builder's risk policy issued to the contractor who is constructing the building.

113 Documentation (Continued)

C Documentation of Crop Insurance

An applicant should demonstrate crop insurance by evidence of 1 of the following, as applicable:

- CAT
- crop insurance policy
- FSA-570.

114 Indemnity

A General

The insurance provider must complete FSA-2320, attach to the insurance policy, endorsement, or binder, and provide to the authorized agency official before closing. The mandatory mortgage clause in FSA-2320 provides that loss or damage under the policy shall be payable to the FSA as mortgagee.

If the standard mortgage clause in FSA-2320 has been incorporated into the language and is printed in the terms of the policy adopted for use in a State, a separate FSA-2320 is not required.

If using a mortgage clause other than the standard mortgage clause on FSA-2320 has been made mandatory by State law or insurance regulation, SED should issue a State supplement about using that mortgage clause.

115-130 (Reserved)

Part 7 Farm Ownership Programs

Section 1 FO's

131 Uses

A General

[7 CFR 764.151] FO loan funds may only be used to:

See subparagraphs B through F for FO uses.

B Farm Purchases

FO funds may only be used to:

[7 CFR 764.151(a)] Acquire or enlarge a farm or make a down payment on a farm;

Examples include, but are not limited to, the purchase of easements, the applicant's portion of land being subdivided, purchase of cooperative stock, appraisal and survey fees, and participation in special FO programs. Downpayments are authorized as a loan purpose subject to the following.

- A deed is obtained and the transaction is properly documented by debt and security instruments.
- Any prior liens meet the FO security requirements for FSA's junior lien position.
- For contract purchases, purchase contracts must properly obligate the buyer and seller to fulfill the terms of the contract, provide the buyer with possession, control, and beneficial use of the property, and entitle the buyer to marketable title upon fulfillment of the contract terms. The deed must be held in trust by a bonded agent until transferred to the buyer. Upon a buyer's default, the seller must give FSA written notice of the default and a reasonable opportunity to cure the default. The applicant must repay any sums advanced by FSA.

131 Uses (Continued)

B Farm Purchases (Continued)

The authorized agency official should advise the applicant to have an understanding with the seller on such items as:

- land description and number of acres
- buildings and fixtures included in the transaction

  Note: The applicant should determine the condition of property attached to the land and the working condition of any fixtures with movable parts.

- minerals and the effect any mineral reservation has on the land value and operating it as a farm
- access to the land or any part of it
- the party responsible for taxes and insurance
- the party who will receive the income from the land during the crop year of the transaction.

C Capital Improvements

FO funds may only be used to:

[7 CFR 764.151(b)] Make capital improvements to a farm owned by the applicant, for construction, purchase or improvement of farm dwellings, service buildings or other facilities and improvements essential to the farming operation. In the case of leased property, the applicant must have a lease to ensure use of the improvement over its useful life or to ensure that the applicant receives compensation for any remaining economic life upon termination of the lease;

FO funds can be used to purchase, improve, or build any type of structure, including a dwelling that either adequately meets family needs or is modest in size, cost, and design, provided the structure is related to the farming enterprise. The dwelling shall be located on ***--**the farm when FO funds are used to purchase the dwelling. However, the applicant already owns a dwelling located close to the farm, FO funds may be used to repair or improve the dwelling.**--***

An applicant must be the owner of the property, or hold a lease interest for the property, which has a term at least equal to the term of the proposed loan on the property, which the improvement is to be made. In the case of Indian tribal lands, trust properties, and Hawaiian homelands, the applicant's leasehold must show an ownership interest as specified by a State supplement.

131 Uses (Continued)

D Soil and Water Conservation and Protection

FO funds may only be used to:

[7 CFR 764.151(c)] Promote soil and water conservation and protection;

Examples include the correction of hazardous environmental conditions and the construction or installation of tiles, terraces, and waterways. All soil and water conservation projects are subject to the limitations in subparagraph 74 D.

E Loan Closing Costs

FO funds may only be used to:

[7 CFR 764.151(d)] Pay loan closing costs;

FO funds may not be used to pay loan packaging or consultant fees associated with applying for or obtaining a FSA loan.

F Refinance Bridge Loan

FO funds may only be used to:

[7 CFR 764.151(e)] Refinance a bridge loan if the following conditions are met:

(1) The applicant obtained the loan to be refinanced to purchase a farm after a direct FO was approved;

(2) Direct FO funds were not available to fund the loan at the time of approval;

(3) The loan to be refinanced is temporary financing; and

(4) The loan was made by a commercial or cooperative lender.

Note: Refinancing of a bridge loan is not guaranteed. The applicant and the lender must understand that the anticipated FO is subject to all conditions of loan approval and availability of funds. FSA personnel shall not make any commitments or imply that a bridge loan will be refinanced.

132 Eligibility

A General Eligibility

[7 CFR 764.152] The applicant:

[7 CFR 764.152(a)] Must comply with the general eligibility requirements established at § 764.101 (paragraphs 62 through 72)**;**

FO program specific eligibility is addressed in this paragraph. If different from the general eligibility in paragraphs 62 through 72, the information in this paragraph 132 is to be substituted for those portions.

B No Prior Debt Forgiveness

The applicant:

[7 CFR 764.152(b)] And anyone who will sign the promissory note, must not have received debt forgiveness from the Agency on any direct or guaranteed loan;

The authorized agency official shall review debt verification obtained under subparagraph 65 B to determine whether there is any prior loss by the Government.

C FO Individual and Entity Owner and Operator Requirement

The applicant:

[7 CFR 764.152(c)] Must be the owner-operator of the farm financed with Agency funds after the loan is closed. In the case of an entity:

(1) The entity is controlled by farmers engaged primarily and directly in farming in the United States, after the loan is made;

(2) The entity must be authorized to own and operate the farm in the State in which the farm is located;

(3) If the entity members holding a majority interest are:

(i) Related by blood or marriage, at least one member of the entity must operate the farm; * * *

(ii) Not related by blood or marriage, the entity members holding a majority interest must * * * operate the farm.

132 Eligibility (Continued)

D FO Owner and Operator Past Farm Responsibility

--**The applicant:**--

[7 CFR 764.152(d)] And in the case of an entity, one or more members constituting a majority interest, must have participated in the business operations of a farm for at least 3 years out of the 10 years prior to the date the application is submitted.

Factors to determine participation in the business operations of a farm are similar to those for determining adequate farming experience necessary to ensure a reasonable prospect of success in the operation.

Note: The applicant need not have been the primary operator.

Significant responsibilities include, but are not limited to:

- decisions to cull livestock
- selection of seed varieties and weed control programs
- determination of whether equipment should be repaired or replaced
- selection of input suppliers
- selection of feeding programs or strategies.

Applicants must thoroughly document participation in the business operation of a farm and verify that participation was not solely as a laborer. Documentation includes but is not limited to:

- copies of farm business operation related bills or statements with applicant's name

- copies of checks with applicant's signature for payment of farm business operation related goods or services

- written statements from other parties with knowledge of applicant's role and responsibilities in the business operation of a farm.

For an individual applicant to be an operator, the applicant must have materially and substantially participated and provided day-to-day labor and management of the farm for at least 3 years, such that if the individual did not provide these inputs, operation of the farm would have been seriously impaired.

For an entity applicant to be an operator, 1 or more members constituting a majority interest must have materially and substantially participated in the operation of the farm for at least 3 years. Material and substantial participation requires that the members provided a significant amount of management or management and labor necessary for day-to-day activities, such that if the members did not provide these inputs, operation of the farm would have been seriously impaired.

132 Eligibility (Continued)

D FO Owner and Operator Past Farm Responsibility (Continued)

Example 1: Jane Doe applies for an FO to purchase a hog farm in Illinois. She is currently practicing law in Seattle. She indicates on her application that she was raised on a family farm in Illinois, where it was her job to feed and tend to the hogs. It turns out the entire family moved to the city of Seattle when she was 12 years old. She is ineligible since she has not operated or participated in the business operations of a farm.

Example 2: Jane Smith applies for an FO to purchase a hog farm adjacent to the 1 currently owned by her mother. She recently graduated from veterinary school. In between college and veterinary school, she spent 4 years working on the family hog farm. Her father had died while she was in college and she assumed responsibility for the farm, and continued to oversee the day-to-day operation of the farm while she attended veterinary school. She is deemed to have complied with this eligibility requirement since she has had significant responsibility for the day-to-day business operations of a farm for more than 3 years.

E Term Limits

The applicant;

[7 CFR 764.152(e)] And anyone who signs the promissory note must satisfy at least one of the following conditions:

[7 CFR 764.152(e)(1)] Meet the definition of a beginning farmer;

[7 CFR 764.152(e)(2)] Have not had a direct FO loan outstanding for more than a total of 10 years prior to the date the new FO loan is closed.

[7 CFR 764.152(e)(3)] Have never received a direct FO loan.

133 Limitations

A General

[7 CFR 764.153] The applicant must:

[7 CFR 764.153(a)] Comply with the general limitations established at § 764.102 (paragraph 74)**;**

[7 CFR 164.153(b)] Have dwellings and other buildings necessary for the planned operation of the farm available for use after the loan is made.

The necessary buildings must be located on the applicant's farm, except when the:

- applicant already owns an adequate, decent, safe, and sanitary dwelling suitable for the family's needs that is located close enough to the farm so the farm may be operated successfully
- applicant has a long-term lease on acceptable rented buildings that are adjacent to or near the farm
- applicant occupies suitable buildings that the applicant will eventually inherit or be permitted to purchase from a relative
- farm does not have an adequate dwelling and the applicant owns a suitable mobile home that will be used as the applicant's home.

  Note: FSA does not consider a mobile home to add value to the farm; however, FO funds may be used to finance anchoring the home and water and sanitary requirements.

B Loan Limits

See 1-FLP, paragraph 29 for FO limits.

C Refinancing

Refinancing of real estate debt is prohibited except for bridge loans according to subparagraph 131 F.

133 Limitations (Continued)

D Compliance with Special Laws and Regulations

Applicants will be required to comply with applicable Federal, State, and local laws and regulations governing building construction; diverting, appropriating, and using water including use for domestic purposes; installing facilities for draining land; and making changes in the use of the land affected by zoning regulations.

--**SED and FLP staff will consult with NRCS, U.S. Geological Survey, Army Corp of Engineers, State Geologist or Engineer, or any board having official functions relating to**--
water use or farm drainage requirements and restrictions for water and drainage development. SED shall issue State supplements to provide guidelines which:

- state all requirements to be met, including the acquisition of water rights
- define areas where development of ground water for irrigation is not recommended
- define areas where land drainage is restricted.

134 Joint Financing Arrangements

A General

[7 CFR 764.154(a)(3)] If the FO loan is part of a joint financing arrangement and the amount of the Agency's loan does not exceed 50 percent of the total amount financed, the Agency will use the Farm Ownership participation rate, available in each Agency office.

FSA encourages using joint financing arrangements. In such arrangements, an applicant obtains financing from another lender, which can be a commercial lender, a State program, or the seller of a farm. The applicant will use this financing along with FSA financing for any authorized FO purpose.

See 1-FLP, Exhibit 17 for interest rates.

--Note:** If the regular FO interest rate is lower than the participation rate, the loan will be made as a regular FO.**--

Other lender's loans may be guaranteed by FSA. See 2-FLP.

B FSA Loan Made at Same Time as Other Lenders

When an FO is made at the same time as a loan from another lender, that lender's lien will have priority over the FSA lien unless otherwise agreed. The lender's lien priority can cover payment of taxes, property insurance, reasonable maintenance to protect the security, and reasonable foreclosure cost including attorney's fees in addition to principal and interest.

135 Rates, Terms, Payments, and Security

A Rates

[7 CFR 764.154(a)(1)] The interest rate is the Agency's Direct Farm Ownership rate, available in each Agency office.

See 1-FLP, Exhibit 17 for interest rates.

[7 CFR 764.154(a)(2)] The limited resource Farm Ownership interest rate is available to applicants who are unable to develop a feasible plan at regular interest rates.

See subparagraph 261 C for more information on limited resource loans when the farm operating plan shows that installments at the higher rate, along with other debts, cannot be paid during the period of the plan.

[7 CFR 764.154(a)(4)] The interest rate charged will be the lower of the rate in effect at the time of loan approval or loan closing.

B Terms

[7 CFR 764.154(b)] The Agency schedules repayment of an FO loan based on the applicant's ability to repay and the useful life of the security. In no event will the term be more than 40 years from the date of the note.

The FO term may not exceed the useful life of the security or 40 years, whichever is less.

When setting the term, the authorized agency official must review:

- FBP or other similar plans of operation to establish repayment ability
- the appraisal to establish the useful life of the security.

The specific term of a loan is determined by the applicant's projected ability to repay the loan as shown by FBP or other farm plan developed according to 1-FLP, Part 8.

135 Rates, Terms, Payments, and Security (Continued)

B Terms (Continued)

The loan term must be the minimum period of time that the projected ability to repay will allow. Loan terms are 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.

C Payment Frequency

All notes are scheduled with annual payments. Assignments or FSA-2027 can be put in place to collect payments that correspond with the income stream of the applicant's operation.

The minimum scheduled annual payment for the first 5 years must be the interest accrued on the principal balance. The applicant must be informed that no reduction will be made in principal when an interest only payment is scheduled. FSA typically considers such payments when a farming operation is new and not fully developed, but will have a future income stream. One example of such an operation is establishing a new orchard.

D Security

[7 CFR 764.155] An FO loan must be secured:

[7 CFR 764.155(a)] In accordance with §§ 764.103 through 764.106 (paragraphs 91 *****--through 94)**;--***

[7 CFR 764.155(b)] At a minimum, by the real estate being purchased or improved.

136 Subsequent Loans

A General

A subsequent FO is a loan made to an applicant who is currently in debt for an FO.

A subsequent loan may be made for the same purpose, under the same conditions, and processed in the same manner as an initial loan.

A new real estate mortgage will not be necessary provided:

- a new mortgage is not required by State law
- that all the land which will serve as security for the subsequent loan is described on the present real estate mortgage
- the real estate mortgage has a future advance clause and a State supplement provides authority for using such a clause
- the required lien priority is obtained with the existing mortgage and future advance clause.

SED shall issue a State supplement about when to obtain a new mortgage for a subsequent loan.

137 Program Outreach

A General

In addition to outreach requirements in subparagraph 41 E, SED shall be responsible for publicizing the Direct FO program, including the Down Payment FO Loan program, to the maximum extent practical by:

- maintaining efforts to inform potential applicants and retiring farmers of the program
- coordinating with State Beginning Farmer programs and other organizations that assist beginning farmers.

B Relationship between FSA and a State Beginning Farmer Program

SED's are delegated authority to execute MOU with any State Beginning Farmer program expressing an interest in coordinating financial assistance to beginning farmers. MOU must be executed within 60 days of the State notifying SED in writing of such interest, and will be developed according to Exhibit 16.

Under MOU, FSA will agree to provide qualified beginning farmers with a downpayment loan under Section 2 and/or a guarantee of the balance of the purchase price provided by the State program.

This agreement will be subject to applicable law, loan approval requirements, and the availability of funds. FSA will not charge a fee to obtain or retain a guarantee in connection with any joint funding under MOU.

--**If any changes are made to MOU, the Regional OGC will be consulted. SED's will send a copy of OGC-cleared MOU's to LMD for approval before SED's signature:**--

Director
USDA FSA DAFLP LMD
STOP 0522
1400 Independence Ave SW
Washington DC 20250-0522.

138-150 (Reserved)

--

Section 2 * * * Downpayment Program

151 Uses

A General

[7 CFR 764.201] * * * Downpayment loan funds may be used to partially finance the *--purchase of a family farm by an eligible beginning farmer or socially disadvantaged farmer.--*

152 Eligibility

A Requirements

[7 CFR 764.202] The applicant must:

[7 CFR 764.202(a)] Comply with the general eligibility requirements established at § 764.101 (paragraphs 62 through 72) **and the FO eligibility requirements of § 764.152** (paragraph 132)**; and**

[7 CFR 764.202(b)] Be a beginning farmer or socially disadvantaged farmer.

See Exhibit 2 for the definition of a beginning farmer and socially disadvantaged farmer.

B Farm Size for Beginning Farmers

***--**The applicant's operation must not exceed 30 percent of the median size farm as established under the beginning farmer definition.

The median farm acreage and 30 percent of the median acreage shall be published in a State supplement. The 30 percent of the median acreage will be rounded to the closest tenth of a percent.

Example: The median size farm for the county is 94 acres. 30 percent of the median, rounded to the nearest tenth, is 28.2 acres. Therefore to meet the beginning farmer requirements, the applicant must own no more than 28.2 acres.**--***

If the farm is located in more than 1 county, FSA uses the median farm acreage of the county where the applicant's residence is located.

If the applicant's residence is not located on the farm or if the applicant is an entity, FSA uses the median farm acreage of the county where the largest portion of the farm is located.

*** * ***

Note: Farm size does **not** apply to socially disadvantaged applicants. However, the family-size farm requirement under § 764.101 does apply.

153 Limitations

A General

[7 CFR 764.203(a)(1)] The applicant must:

(1) Comply with the general limitations established at § 764.102 (paragraph 73)**; and**

B Minimum Downpayment

The applicant must:

[7 CFR 764.203(a)(2)] Provide a minimum downpayment of 5 percent of the purchase price of the farm.

The applicant must provide the minimum down payment in cash.

C Maximum FSA Loan Amount

[7 CFR 764.203(b)] Downpayment loans will not exceed 45 percent of the lesser of:

(1) The purchase price,
(2) The appraised value of the farm to be acquired, or
(3) $500,000.

--Note:** FSA may make a direct FO for the portion of the purchase price not covered by the downpayment and the commercial lender's loan. FSA's total loan must not exceed the direct FO limit.**--

D Maximum Combined Loans

[**7 CFR 764.203(c)] Financing provided by the Agency and all other creditors must not exceed 95 percent of the purchase price. Financing provided by eligible lenders may be guaranteed by the Agency under part 762 of this chapter** (2-FLP)**.**

154 Rates, Terms, and Security

A Rate

*--**[7 CFR 764.204(a)] The interest rate for Downpayment loans will be the regular direct FO rate minus 4 percent, but in no case less than 1.5 percent.** See 1-FLP, Exhibit 17 for current rates.

B FSA Terms

[7 CFR 764.204(b)(1)] The Agency schedules repayment of Downpayment loans in equal, annual installments over a term not to exceed 20 years.

The authorized agency official may schedule repayment over a period of less than 20 years if requested by the applicant and the farm operating plan (see 1-FLP, Part 8, Section 3) indicates that the loan can be repaid within the period requested.

C Other Lender Terms

[7 CFR 764.204(b)(2)] The non-Agency financing must have an amortization period of at least 30 years and cannot have a balloon payment due within the first 20 years of--* the loan.

D Minimum Security Requirements

[7 CFR 764.205] A * * * Downpayment loan must:

[7 CFR 764.205(a)] Be secured in accordance with §§ 764.103 through 764.106 (paragraphs 91 through 93)**;**

[7 CFR 764.205(b)] Be secured by a lien on the property being acquired with the loan funds and junior only to the party financing the balance of the purchase price.

FSA:

- requires adequate security on a *** * *** downpayment loan as it does for an FO
- does not require additional security
- does not require a lien on nonessential assets.

See Part 5 for detailed information on security interests.

155-170 (Reserved)

Part 8 Operating Loan Program

Section 1 OL's

171 Uses

A General

See subparagraphs B through L for OL uses.

B Reorganizing a Farm

OL funds may only be used for:

[7 CFR 764.251(a)(1)] Costs associated with reorganizing a farm to improve its profitability;

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 enhance the viability of the farm.

- Examples of acceptable use of loan funds under this provision include but are not limited to:

  - 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.

171 Uses (Continued)

C Chattel and Other Purchases

OL funds may only be used for:

[7 CFR 764.251(a)(2)] Purchase of livestock, including poultry, farm equipment, quotas and bases, and cooperative stock for credit, production, processing or marketing purposes;

Funds may be used only for purchases essential to the success of the farming operation.

Farm vehicles used for farm operating purposes may be purchased, repaired, or refinanced only when the following conditions apply.

- The applicant provides verification that the vehicle will be used exclusively for farm operating purposes. Examples of vehicles used for farm operating purposes include, but are not limited to, grain or livestock hauling trucks, vehicles needed to pull wagons or livestock trailers, and pick-up trucks.
    - A pick-up truck used primarily as a personal vehicle shall not be financed.
    - The income tax treatment of a vehicle is a good indication of its use. If the farm vehicle is or will be depreciated as a farm asset, FSA financing may be authorized.
- The applicant documents need for purchasing, repairing, or refinancing.
- Other credit is not available from usual sources, including dealers and banks. When a farm vehicle is being purchased, dealer and bank financing is usually readily available, often at low rates.
- The vehicle being purchased, repaired, or refinanced is modest in size, utility, and cost and meets the needs of the operation.

171 Uses (Continued)

D Annual Farm Operating Expenses

OL funds may only be used for:

[7 CFR 764.251(a)(3)] Farm operating expenses, including but not limited to, feed, seed, fertilizer, pesticides, farm supplies, repairs and improvements which are to be expensed, cash rent and family living expenses;

See Exhibit 2 for the definition of family living expenses.

E Principal and Interest Payments

OL funds may only be used for:

[7 CFR 764.251(a)(4)] Scheduled principal and interest payments on term debt provided the debt is for authorized FO or OL purposes;

The payment must be the current year's installment and cannot be delinquent.

F Other Farm Needs

OL funds may only be used for:

[7 CFR 764.251(a)(5)] Other farm needs;

Funds can be used to finance the initial processing of agricultural commodities provided that a majority of the agricultural commodities processed are produced by the applicant's farm.

Example: Allowable processing activities include but are not limited to canning tomatoes and packaging maple syrup.

G Land and Water Development

OL funds may only be used for:

[7 CFR 764.251(a)(6)] Costs associated with land and water development, use, or conservation;

171 Uses (Continued)

H Loan Closing Costs

OL funds may only be used for:

[7 CFR 764.251(a)(7)] Loan closing costs;

An applicant may use OL funds to pay only for those loan closing costs that are reasonable and customary.

OL funds may not be used to pay loan packaging or consultant fees associated with applying for or obtaining a FSA loan.

I Occupational Safety and Health Act of 1970 Compliance

OL funds may only be used for:

[7 CFR 764.251(a)(8)] 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;

J Training Costs

OL funds may only be used for:

[7 CFR 764.251(a)(9)] Borrower training costs when required or recommended by the Agency;

K Refinancing Farm Related Debts

OL funds may only be used for:

[7CFR 764.251(a)(10)] Refinancing farm-related debts other than real estate to improve the farm's profitability, provided the applicant has refinanced direct or guaranteed OL loans four times or fewer and one of the following conditions is met:

(1) A designated or declared disaster caused the need for refinancing; or

(2) The debts to be refinanced are owed to a creditor other than the USDA.

Note: Loans made for authorized direct or guaranteed OL purposes, regardless of the type of security, may be refinanced.

171 Uses (Continued)

K Refinancing Farm Related Debts (Continued)

A direct OL may be made to refinance a guaranteed OL when the following conditions are met.

- The circumstances resulting in the need to refinance were beyond the applicant's control.
- Refinancing is in the best interest of the Government and the applicant.
- The guaranteed OL must be paid in full at the time the direct OL is closed.

L Minor Real Estate Repairs or Improvements

OL funds may only be used for:

[7 CFR 764.251(a)(11)] Costs for minor real estate repairs or improvements, provided the loan can be repaid within 7 years.

OL funds may be used for limited real estate improvements, provided the loan can be repaid within 7 years, according to the following guidelines.

- Repairs and improvements to existing structures that are treated as expenses, rather than capital improvements, shall be considered an annual operating expense.

- Fixtures to a farm building may be considered farm equipment and thus financed with OL funds.

- Loans may be approved for building construction.

Note: Construction or improvements amortized over periods longer than 7 years are assumed to be real estate rather than operating purposes and will not be financed with OL funds.

Example: An $8,000 loan for a pole barn to be repaid over 7 years could be authorized. However, a $100,000 building financed with a 21-year amortization and a 7-year balloon payment is not permitted. The 21-year amortization period indicates this loan is for real estate rather than operating purposes.

- Any purchase of real estate is not authorized.

172 Eligibility

A General

[7 CFR 764.252(a)] The applicant must comply with the general eligibility requirements established at § 764.101 (paragraphs 62 through 72)**.**

See subparagraphs B through G for OL program specific eligibility. If different from the general eligibility according to paragraphs 62 through 72, the information in this paragraph is to be substituted for those portions.

B Prior FSA Losses

The applicant:

[7 CFR 764.252(b)] And anyone who will sign the promissory note, except as provided in paragraph (c) of this section, must not have received debt forgiveness from the Agency on any direct or guaranteed loan.

[7CFR 764.252(c)] And anyone who will sign the promissory note may receive direct OL loans to pay annual farm operating and family living expenses, provided that the applicant meets all other eligibility requirements under this part, if the applicant:

(1) Received a write-down under section 353 of the Act;

(2) Is current on payments under a confirmed reorganization plan under Chapter 11, 12, or 13 of Title 11 of the United States Code; or

(3) Received debt forgiveness on not more than one occasion after April 4, 1996, resulting directly and primarily from a Presidentially-designated emergency for the county or contiguous county in which the applicant operates. Only applicants who were current on all existing direct and guaranteed FLP loans prior to the beginning date of the incidence period of a Presidentially-designated emergency and received debt forgiveness on that debt within three years after the designation of such emergency meet this exception.

172 Eligibility (Continued)

B Prior FSA Losses (Continued)

If the applicant for an OL has caused FSA or its predecessor agency, FmHA, a loss on any direct or guaranteed loan, the applicant is ineligible, except in the following 2 scenarios.

- If the applicant caused FSA a loss by receiving a write-down, the applicant may receive an OL to pay annual operating and family living expenses. See 5-FLP, Part 4 for an explanation of the write-down process.

- If the applicant caused FSA a loss, as part of a confirmed bankruptcy plan, and the applicant is now current on payments to all creditors, the applicant may receive an OL to pay annual operating and family living expenses.

The applicant may become eligible for an OL, for uses other than annual farm operating and family living expenses, only after the total amount of debt forgiveness is cured by repayment.

Note: FSA should under no circumstances inform a discharged debtor that they must repay their "loss" to regain full eligibility. If the applicant asks they may be informed that if the debt was repaid in full their eligibility would be reconsidered, however, there is no guarantee that a loan will be approved as all loan approval factors will be reviewed as part of the application process.

The authorized agency official will consider losses to other Federal agencies and the circumstances for such losses under the credit history requirement (paragraph 65).

The authorized agency official will review items obtained according to subparagraph 65 B.

C Operator of Farm

[7 CFR 764.252(d)] In the case of an entity, the entity must be:

(1) Controlled by farmers engaged primarily and directly in farming in the United States; and

(2) Authorized to operate the farm in the State in which the farm is located.

172 Eligibility (Continued)

D OL Term Limits

The applicant:

[7 CFR 764.252(e)] And anyone who will sign the promissory note, may close an OL loan in no more than seven calendar years, either as an individual or as a member of an entity, except as provided in paragraph (e)(1) through (4) of this section. The years may be consecutive or non-consecutive, and there is no limit on the number of loans closed in a year. Youth loans are not counted toward this limitation. The following exceptions are applicable.

The following requirements apply to anyone who signs FSA-2026 *** * *** .

- The applicant and anyone who signs FSA-2026 is eligible to close direct OL's in 7 calendar years. This does not mean that the applicant or cosigner has necessarily had loans outstanding for 7 years, but that the applicant or cosigner has closed new loans in 7 different years.

- Guaranteed OL's do not count against the direct OL eligibility limitation.

- Rescheduling a loan does not count against the direct OL eligibility limitation.

- Cosigning for a direct OL does count against the direct OL eligibility limitation.

- An entity applicant is eligible for a direct OL only if all of its individual members have not exceeded the term limits.

172 Eligibility (Continued)

D OL Term Limits (Continued)

[7 CFR 764.252(e)(1)] This limitation does not apply if the applicant and anyone who will sign the promissory note is a beginning farmer.

See Exhibit 2 for the definition of a beginning farmer.

The maximum number of years a beginning farmer may receive OL assistance is 10 years.

Example 1: If a beginning farmer receives a direct OL in their 1st year of farming, this applicant has 9 additional years in which they may receive direct OL assistance as a beginning farmer applicant. This applicant is not eligible for the 2-year waiver or any future direct OL assistance if loans were received in all 10 years as a beginning farmer.

Example 2: If a beginning farmer receives a direct OL in their 5th year of farming, this applicant has 5 additional years in which they may receive direct OL assistance as a beginning farmer applicant, but only 1 year remaining as a nonbeginning farmer applicant. This applicant may be considered to receive the 2-year waiver to extend eligibility as a nonbeginning farmer.

E Indian Tribe Jurisdiction

[7 CFR 764.252(e) (2)] This limitation does not apply if the applicant's land is subject to the jurisdiction of an Indian tribe, the loan is secured by one or more security instruments subject to the jurisdiction of an Indian tribe, and commercial credit is generally not available to such farm operations.

On an annual basis the authorized agency official should contact lenders in the area to determine if commercial credit would be available on land subject to the jurisdiction of an Indian tribe. Results of these contacts will be documented in the Service Center operational files.

The authorized agency official will verify with BIA if the land or security instrument is subject to the jurisdiction of an Indian tribe.

172 Eligibility (Continued)

F OL Transition Rule

[7 CFR 764.252(e)(3)] If the applicant and anyone who will sign the promissory note, has closed direct OL loans in four or more previous calendar years as of April 4, 1996, the applicant is eligible to close direct OL loans in any three additional years after that date.

The 3 additional years will begin with the 1st loan closed after April 4, 1996. The 3 additional years of eligibility are independent of each other and do not have to be consecutive.

If the applicant or any cosigner had closed direct OL's in fewer than 4 calendar years before April 4, 1996, the 7-year eligibility requirement applies.

G Waivers

***--**The applicant:

- does not need to request the waiver
- will be considered automatically for the 2-calendar year waiver.**--***

[7 CFR 764.252(e)(4)] On a case-by-case basis, the applicant may be granted a one-time waiver of OL term limits for a period of 2 years, not subject to administrative appeal, if the applicant:

[7 CFR 764.252(e)(4)(i)] Has a financially viable operation;

See Exhibit 2 for the definition of a financially viable operation.

[7 CFR 764.252(e)(4)(ii)] And in the case of an entity, the members holding the majority interest, applied for commercial credit from at least two lenders and were unable to obtain a commercial loan, including an Agency-guaranteed loan; and

[7 CFR 764.252(e)(4)(iii)] Has successfully completed, or will complete within one year, borrower training. Previous waivers to the borrower training requirements are not applicable under this paragraph.

***--**If the required borrower training is not completed, the applicant will not be eligible for a loan the second year. Subparagraph 65 A provides that the applicant may be determined not creditworthy if the applicant has not met the terms and conditions of a previous FSA loan.

See Part 13 for information on borrower training requirements.

Notes: After approval of a term limit waiver, the information is entered into DLS, which will allow the system to process OL's during the waiver period.

The maximum number of years in which a nonbeginning farmer may receive assistance is 9 years (7 years plus the 2-year waiver).**--***

172 Eligibility (Continued)

G Waivers (Continued)

Example 1: A nonbeginning farmer applicant who received a direct OL beginning farmer loan in 1994 can receive direct OL assistance during 6 additional years and be granted a 1 time, 2-year waiver if certain conditions are met.

Example 2: A nonbeginning farmer applicant who received direct annual OL beginning farmer loans in 1990, 1994 and 1997 can receive direct OL assistance during 4 additional years and be granted a 1 time, 2-year waiver if certain conditions are met.

Example 3: A nonbeginning farmer applicant who received direct OL beginning farmer assistance in each year of the 10 year period may not receive additional direct OL assistance under term limitations. This applicant would not be eligible for a 1 time, 2-year waiver.

* * *

H State Office Responsibilities

State Offices will reissue any existing State supplements on term limit requirements to comply with the term limit provisions.

* * *

173 Limitations

A General Limitations

[7 CFR 764.253] The applicant must comply with the general limitations established at § 764.102 (paragraph 74)**.**

B Loan Limits

See 1-FLP, paragraph 29 for OL limits.

C Real Estate Debt

OL funds shall not be used for:

- purchasing real estate
- refinancing real estate debt.

174 Rates, Terms, and Repayment

A Rates

[7 CFR 764.254(a)(1)] The interest rate is the Agency's Direct Operating Loan rate, available in each Agency office;

See 1-FLP, Exhibit 17 for interest rates.

[7 CFR 764.254(a)(2)] The limited resource Operating Loan interest rate is available to applicants who are unable to develop a feasible plan at regular interest rates.

See subparagraph 261 C for more information on limited resource loans when the farm operating plan shows that installments at the higher rate, along with other debts, cannot be paid during the period of the plan.

Note: When the regular OL interest rate is equal to or less than the limited resource rate, the limited resource rate will not be used.

[7CFR 764.254(a)(3)] The interest rate charged will be the lower rate in effect at the time of loan approval or loan closing.

B Annual OL Term

[7 CFR 764.254(b)(1)] The Agency schedules repayment of annual OL loans made for family living and farm operating expenses when planned income is projected to be available.

(i) The term of the loan may not exceed 18 months from the date of the note.

(ii) The term of the loan may exceed 18 months in unusual situations such as establishing a new enterprise, developing a farm, purchasing feed while crops are being established, marketing plans, or recovery from a disaster or economic reverse. In no event will the term of the loan exceed 7 years from the date of the note. Crops and livestock produced for sale will not be considered adequate security for such loans.

The applicant repays an annual OL when income becomes available. The repayment period will normally be within 12 months, or no more than 18 months after the date of loan closing, if necessary, when marketing plans extend beyond 12 months; for example, when crops or livestock take longer than 12 months to mature. The authorized agency official, by using FSA-2027, may approve a supplemental payment agreement for applicants who receive substantial income from which payments are to be made before their installment due date.

174 Rates, Terms, and Repayment (Continued)

C Other OL Terms

[7 CFR 764.254(b)(2)] The Agency schedules the repayment of all other OL loans based on the applicant's ability to repay and the useful life of the security. In no event will the term of the loan exceed 7 years from the date of the note. Repayment schedules may include equal, unequal, or balloon installments if needed to establish a new enterprise, develop a farm, or recover from a disaster or economic reversal. Loans with balloon installments:

(i) Must have adequate security, at the time the balloon installment comes due. Crops, livestock other than breeding stock, or livestock products produced are not adequate collateral for such loans.

(ii) Are only authorized when the applicant can project the ability to refinance the remaining debt at the time the balloon payment comes due based on the expected financial condition of the operation, the depreciated value of the collateral, and the principal balance on the loan.

When the applicant's projected repayment ability will not allow normal repayment within 7 years, a 7-year loan with a 21-year balloon amortized installment schedule may be offered.

There must be adequate collateral for the loan at the time the balloon payment is due. Circumstances that warrant balloon installments include establishing a new enterprise, developing a farm, purchasing feed while feed crops are being established or during recovery from a disaster, or economic reverses. In no case will annual crops be used as the sole collateral securing balloon installment. A loan with a balloon installment must be adequately secured by basic security, which may include foundation stock, farm equipment, and/or real estate. The amount of the balloon installment should not exceed that amount which the applicant could reasonably expect to pay during a maximum additional 15-year period.

Note: The 21-year balloon amortized installment factor represents the minimum amount the payments would be based upon restructuring the remaining balloon payment over the maximum 15-year period.

(iii) Are not authorized when loan funds are used for real estate repairs or improvements.

174 Rates, Terms, and Repayment (Continued)

D Repayment

The farm operating plan used to project repayment ability must be completed according to 1-FLP, Part 8.

The OL repayment schedule may include equal, unequal, or balloon payments.

- The first payment is due when income is received or within 18 months.
- After the initial payment, payments are scheduled annually unless the loan is repaid in a single payment.
- The repayment term for OL is 1 to 7 years, as determined by the applicant's projected repayment ability.
- Annual installments must cover, at a minimum, the accrued interest.
- Annual installments may be collected by assignments and supplemental payments.
- If unequal or interest only installments are scheduled, the applicant must be able to show that there will sufficient resources available to pay the loan in full by the final maturity date.

175 Security

A General

[7 CFR 764.255] An OL loan must be secured:

--(a) In accordance with §§ 764.103 through 764.106** (paragraphs 91 through 94)**.--

(b) By a:

(1) First lien on all property or products acquired or produced with loan funds;

(2) Lien of equal or higher position of that held by the creditor being refinanced with loan funds.

176-190 (Reserved)

Section 2 Lo-Doc Loans

191 Lo-Doc Loan Process

A Overview

See paragraph 43 for complete Lo-Doc application requirements.

B Requirements

[7 CFR 764.51(c)] For a Lo-Doc OL request, the applicant must:

[7 CFR 764.51(c)(1)] Be current on all payments to all creditors including the Agency (if an Agency borrower);

[7 CFR 764.51(c)(2)] Have not received primary loan servicing on any Agency debt within the past 5 years; and

Note: Servicing under 5-FLP, Part 3 is not considered primary loan servicing.

[7 CFR 764.51(c)(3)] Meet one of the following sets of criteria:

(i) The loan requested is $50,000 or less and the total outstanding Agency OL loan debt at the time of loan closing will be less than $100,000; or

(ii) The loan requested is to pay annual operating expenses and the applicant is an existing Agency borrower who has received and timely repaid at least two previous annual OL loans from the Agency.

192-210 (Reserved)

--

Section 3 Youth Loans

211 Youth Loan Application Process

A Application Requirements

See paragraph 44 for complete youth loan application requirements.

B Youth Loan Exceptions to Operating Loan Requirements

The following requirements from 1-FLP, Part 8 do not apply to the Youth Loan program.

- Farm assessments are not required for youth loans.

- ***--**All new youth loans are automatically classified as a "3".

  Note: If a youth loan borrower reaches the age of majority and subsequently gets a direct OL and/or FO, all loans including any outstanding youth loans will be entered into FBP and classified based upon data collected.**--***

- FSA-2037 and FSA-2038 will not be required except in complex cases where information provided on FSA-2301 is inadequate.

C Initial Meeting with Youth Loan Applicant

The authorized agency official should offer a preliminary meeting with the youth to discuss:

- the Youth Loan program, including authorized use of funds and eligibility requirements
- whether the youth has appropriate supervision
- the proposed plan.

212 Uses and Limitations

A Uses

[7 CFR 764.301] Youth loan funds may only be used to finance a modest, income-producing, agriculture-related, educational project while participating in 4-H, FFA, or a similar organization.

A youth loan provides an opportunity for a rural youth to acquire experience and education in agriculture-related skills. The approved project must be related to the business of agriculture and must not be a noneligible enterprise. See Exhibit 2. Each project must be part of an organized and supervised program of work and must produce sufficient income to repay the loan.

The applicant must use youth loan funds only to pay the expenses associated with the approved project.

Note: The youth must be participating in an established organization that supports agricultural projects, such as 4-H, FFA, or a similar organization. The organization provides the structure, the adult supervision, and the expertise to help the youth plan and complete the project.

B Limitations

[7 CFR 764.303(a)] The applicant must comply with the general limitations established at § 764.101 (a) through (g) (paragraph 74)**.**

Loan funds may not be used to:

- purchase real estate or make real estate improvements
- refinance debts
- pay family living expenses, except as they relate directly to the approved educational project
- finance a personal vehicle.

Note: The applicant may use loan funds to make only very minor repairs to real estate, for example to fix a window or repair a shed, when the repair is directly related to the approved project.

212 Uses and Limitations (Continued)

C Maximum Loan Limit

[7 CFR 764.303(b)] The total principal balance owed by the applicant to the Agency on all Youth loans at any one time cannot exceed $5,000.

The authorized agency official should not loan more than is necessary to successfully carry out the project or more than the projections show can be repaid.

213 Eligibility

A General

[7 CFR 764.302] The applicant:

[7 CFR 764.302(a)] Must comply with the general eligibility requirements established at §764.101(a) through (g) (paragraphs 62 through 72);

See subparagraphs B through F for OL Youth Loan program specific information. If different from the general eligibility in paragraphs 62 through 72, the information in this paragraph to be substituted for those portions.

A youth loan applicant:

- does not need to demonstrate managerial ability
- is not subject to borrower training requirements
- does not need to operate a farm
- is not limited in the number of years in which loans may be closed.

B Debt Foregiveness

The applicant:

[7 CFR 764.302(b)] And anyone who will sign the promissory note, must not have received debt forgiveness from the Agency on any direct or guaranteed loan.

C Age

The applicant:

[7 CFR 764.302(c)] Must be at least 10 but not yet 21 years of age at the time the loan is closed.

D Population

The applicant:

[7 CFR 764.302(d)] Must reside in a rural area, city or town with a population of 50,000 or fewer people;

213 Eligibility (Continued)

E Project Advisor

The applicant:

[7 CFR 764.302(e)] Must be recommended and continuously supervised by a project advisor, such as a 4-H Club advisor, a vocational teacher, a county extension agent, or other agriculture-related organizational sponsor; and

The application for a youth loan must contain a recommendation from the project advisor and verify that:

- the project advisor:
  - will sponsor the youth
  - has training and/or experience to supervise youth
  - is available to help the youth plan the project, to review the youth's books and records, and to answer questions
- the youth is a member of an organization.

While the project advisor should supervise the youth applicant to an extent acceptable to the authorized agency official, the authorized agency official still has the primary responsibility for supervising the loan.

F Parental Consent

The applicant:

[7 CFR 764.302(f)] Must obtain a written recommendation and consent from a parent or guardian if the applicant has not reached the age of majority under state law.

G Requiring Cosigners

A cosigner will be required only if it is determined that the applicant cannot possibly meet the repayment or security requirements for the loan request.

Note: When a plan is feasible using realistic figures, a cosigner will not be required.

214 Rates, Terms, and Repayment

A Rate

[7 CFR 764.304(a)](1) The interest rate is the Agency's Direct Operating Loan rate, available in each Agency office.

(2) The limited resource Operating Loan interest rate is not available for Youth loans.

(3) The interest rate charged will be the lower rate in effect at the time of loan approval or loan closing.

See 1-FLP, Exhibit 17 for interest rates.

B Terms

[7 CFR 764.304(b)] Youth loan terms are the same as for an OL established at § 764.254(b), (paragraph 174)**.**

Payments will be tailored to the type of project for which the loan is made.

Exception: Balloon payments are prohibited.

C Repayment Frequency

Youth loan repayment schedules may include equal or unequal payments:

- the first payment is due when income is received or within 18 months
- after the initial payment, payments are scheduled annually unless the loan is repaid in a single payment
- annual installments must cover, at a minimum, the accrued interest.

215 Security

A Adequate Security

[7 CFR 764.305] A first lien will be obtained on property or products acquired or produced with loan funds.

B Additional Security

The requirement that FSA take additional security, so that the total amount of security is equal to 150 percent of the loan amount, does not apply to the youth loan. FSA will take additional security only when it is not practical to separate the security. For example, if a youth owned 2 cows and was purchasing another with the youth loan, FSA would take a lien on all the cattle owned by the applicant, not just the animal acquired with the youth loan.

C Nonessential Assets

FSA does not require that nonessential assets be taken as security for a youth loan.

216-230 (Reserved)

--

Part 9 Emergency Loan Program

231 Uses

A Real Estate Physical Loss

[7 CFR 764.351(a)(1)] EM loan funds for real estate physical losses may only be used to repair or replace essential property damaged or destroyed as a result of a disaster as follows:

[7 CFR 764.351(a)(1)(i)] For any FO purpose, as specified in § 764.151 (paragraph 131), except subparagraph (e) of that section (subparagraph 131 F)**;**

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 was 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.

[7 CFR 764.351(a)(1)(ii)] To establish a new site for farm dwelling and service buildings outside of a flood or mudslide area; and

The amount loaned must be supported by written estimates from the supplier or contractor who will provide the services.

Loan funds may be used only 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 replacement.

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

[7 CFR 764.351(a)(1)(iii)] To replace land from the farm that was sold or conveyed, 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 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.

231 Uses (Continued)

B Chattel Physical Loss

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

- basic security, which consists of equipment, perennial crops, fruit and nut bearing trees, and foundation livestock, including replacements

- normal income security, which includes livestock, livestock products, nursery stock, 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 764.351(a)(2)] EM loan funds for chattel physical losses may only be used to repair or replace essential property damaged or destroyed as a result of a disaster as follows:

[7 CFR 764.351(a)(2)(i)] Purchase livestock, farm equipment, quotas and bases, 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.

[7 CFR 764.351(a)(2)(ii)] Pay customary costs associated with obtaining 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, or preparation of Agency forms);

[7 CFR 764.351(a)(2)(iii)] Repair or replace household contents damaged in the disaster;

The amount loaned for this purpose is subject to the limitations in subparagraph 234 G.

[7 CFR 764.351(a)(2)(iv)] Pay the costs to restore perennials, which produce an agricultural commodity, to the stage of development the damaged perennials had obtained prior to the disaster;

See Exhibit 21 for provisions for reestablishing fruit, nut bearing, and income producing trees and plants.

231 Uses (Continued)

B Chattel Physical Loss (Continued)

[7 CFR 764.351(a)(2)(v)] Pay essential family living and farm operating expenses, in the case of an operation that has suffered livestock losses not from breeding stock or losses to stored crops held for sale; 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 living expenses, while loan funds attributed to the loss of basic security can be used only to replace the property that was lost.

Example: An applicant 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.

[7 CFR 764.351(a)(2)(vi)] Refinance farm-related debts other than real estate to improve farm profitability, if the applicant has refinanced direct or guaranteed loans four times or fewer and one of the following conditions is met:

(A) A designated or declared disaster caused the need for refinancing: or

(B) The debts to be refinanced are owed to a creditor other than the USDA.

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 nonreal 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.

231 Uses (Continued)

B Chattel Physical Loss (Continued)

- Loan funds must be needed as a result of a loss to normal income security.
- It is not possible to develop a feasible plan without the refinancing.
- The entire debt may not be refinanced if using loan funds to pay only the delinquent installments, current year installments, or both will result in a feasible plan.
- The applicant does not have the resources, such as cash, certificates of deposits, 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.

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 authorized agency 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 with Primary Loan Servicing or DSA 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 installments, current year installments, or both will result in a feasible plan.

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

231 Uses (Continued)

C Production Losses

[7 CFR 764.351(b)] EM loan funds for production losses to agricultural commodities (except the losses associated with the loss of livestock) may be used to:

[7 CFR 764.351(b)(1)] Pay costs associated with reorganizing the farm to improve its profitability, except that such costs must 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 expanding 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.

- Examples of acceptable use of loan funds under this provision include:

  - purchasing equipment to convert from conventional to no-till production
  - changing from stocker to cow/calf production
  - shifting from row crop to vegetable production
  - purchasing grain drying and storage equipment to facilitate better marketing
  - purchasing shares in value-added processing and marketing cooperatives.

  Note: These situations are illustrations only. Any similar operational changes are acceptable as long as a realistic farm operating plan (see 1-FLP, Part 8, Section 3) indicates the changes will improve the financial viability of the farm.

[7 CFR 764.351(b)(2)] Pay annual operating expenses, which include, but are not limited to, feed, seed, fertilizer, pesticides, farm supplies, and cash rent;

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

[7 CFR 764.351(b)(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;

[7 CFR 764.351(b)(4)] Pay borrower training costs required or recommended by the Agency;

231 Uses (Continued)

C Production Losses (Continued)

[7 CFR 764.351(b)(5)] Pay essential family living expenses;

[7 CFR 764.351(b)(6)] Refinance farm-related debts other than real estate to improve farm profitability, if the applicant has refinanced direct or guaranteed loans four times or fewer and one of the following conditions is met:

(i) A designated or declared disaster caused the need for refinancing; or

(ii) The debts to be refinanced are owed to a creditor other than the USDA; 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 nonreal 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, such as cash, certificates of deposit, stored crops to be sold, to cure any delinquency.

- It is not possible to develop a feasible plan without the refinancing.

- The entire debt may not be refinanced if using loan funds to pay only the delinquent installment, current year installments, or both 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.

231 Uses (Continued)

C Production Losses (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 authorized agency 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 with Primary Loan Servicing or DSA 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 installments, current year installments, or both will result in a feasible plan.

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

[7 CFR 764.351(b)(7)] Replace lost working capital.

See Exhibit 2 for the definition of working capital.

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

232 Eligibility

A General

[7 CFR 764.352(a)] The applicant must comply with the general eligibility requirements established at § 764.101 (paragraphs 62 through 72)**;**

See subparagraphs B through M for EM program specific eligibility. If different from the general eligibility according to paragraphs 62 through 72, the information in this paragraph will be substituted for those portions.

B Family Farm and Nonfarm Enterprise

See subparagraph 71 A, and the definition of family farm in Exhibit 2, for more information on determining whether the applicant's farm meets the family farm definition.

C Established Farmer

The applicant:

[7 CFR 764.352(b)] Must be an established farmer;

See Exhibit 2 for the definition of established farmer.

Note: Estates are not considered established farmers and are therefore not eligible.

232 Eligibility (Continued)

D Owner and Operator Requirements

The applicant:

[7 CFR 764.352(c)] Must be the owner-operator or tenant operator as follows:

[7 CFR 764.352(c)(1)] For a loan made under § 764.351(a)(1) (subparagraph 231 A)**, must have been:**

(i) The owner-operator of the farm at the time of the disaster; or

(ii) The tenant-operator of the farm at the time of the disaster whose lease on the affected real estate exceeds the term of the loan. The operator will provide prior notification to the Agency if the lease is proposed to terminate during the term of the loan. The lessor will provide the Agency a mortgage on the real estate as security for the loan;

[7 CFR 764.352(c)(2)] For a loan made under § 764.351(a)(2) or (b) (subparagraphs 231 B and C)**, must have been the operator of the farm at the time of the disaster; and**

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.

  Note: Other chattel, livestock, and commodities that the applicant did own would be eligible losses.

[7CFR 764.352(c)(3)] In the case of an entity, the entity must be:

(i) Engaged primarily and directly in farming in the United States;

(ii) Authorized to operate and own the farm, if the funds are used for farm ownership loan purposes, in the State in which the farm is located.

232 Eligibility (Continued)

E Intent to Continue Farming

The applicant:

[7 CFR 764.352(d)] Must demonstrate the intent to continue the farming operation after the designated or declared disaster;

F Availability of Credit Elsewhere

The applicant:

[7 CFR 764.352(e)] And all entity members must be unable to obtain sufficient credit elsewhere at reasonable rates and terms. To establish this, the applicant must obtain written declinations of credit, specifying the reasons for declination, from legally organized commercial lending institutions within reasonable proximity of the applicant as follows:

[7 CFR 764.352(e)(1)] In the case of a loan in excess of $300,000, 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.

[7 CFR 764.352(e)(2)] In the case of a loan of $300,000 or less, one written declination of credit is required; and

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

- the applicant's normal lender is contacted unless the lender has already denied a request to continue with the applicant, extend additional credit with or without a guarantee, or both

- the applicant may contact another lender that makes agricultural loans.

232 Eligibility (Continued)

F Availability of Credit Elsewhere (Continued)

[7 CFR 764.352(e)(3)] 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 authorized agency 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

- must thoroughly document this conclusion 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.

[7 CFR 764.352(e)(4)] 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 authorized agency official believes, based on a review of the applicant's financial statement, credit report, and other financial information, that other credit is available, the authorized agency official may contact lenders to determine if they are willing to extend credit to the applicant.

The following are used to verify and document the availability of other credit:

- FSA-2310
- FSA-2015
- written letters from lenders that contain all the information requested on FSA-2310.

When the applicant is an entity, all individual members must meet the requirements of this subparagraph.

232 Eligibility (Continued)

G Prior Debt Forgiveness

The applicant:

[7 CFR 764.352(f)] And all entity members in the case of an entity 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.

H Timely Loan Application

The applicant:

[7 CFR 764.352(g)] Must submit an application to be received by the Agency no later than eight months after the date the disaster is declared or designated in the county of the applicant's operation.

If a county has been designated or declared a disaster area, either a 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.

The applicant may seek EM only with respect to a family farm that had production or physical losses as a result of a disaster in a designated or declared disaster area, either a contiguous or primary.

Note: See State supplements, which provide a list of current disaster designations and establish the timeframe during which applicants may apply for assistance. The State supplement shall provide the authorized agency official with sufficient information to determine if an applicant was operating in a designated disaster area, either a contiguous or primary, and that the application was received during the eligible period.

232 Eligibility (Continued)

I Qualifying Losses

The applicant:

[7 CFR 764.352(h)] For production loss loans, must have a disaster yield that is at least 30 percent below the normal production yield of the 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.

Production losses are calculated according to subparagraph 234 C.

Note: If an applicant cannot plant the usual crop or plants the crop and it is destroyed as a result of the disaster and the applicant plants a substitute crop in its place, then the applicant is not 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.

The applicant:

[7 CFR 764.352(i)] For physical loss loans, must have suffered disaster-related damage to chattel or real estate essential to the farming operation, or to household contents that must be repaired or replaced, to harvested or stored crops, or to perennial crops.

***--Note:** Farmers whose primary enterprise is to breed, raise, and sell horses may be eligible for EM loans for qualifying physical losses to structures essential to the operation and feed losses. The following are **not** considered qualifying losses at this time:

- losses associated with horses used for racing, showing, recreation, or pleasure
- losses of income derived from racing, showing, recreation, boarding, or pleasure
- losses associated with the death or injury of horses **not** typically associated with human consumption, fiber, or draft use.**--***

232 Eligibility (Continued)

J Changes in Ownership Structure

The applicant:

[7 CFR 764.352(j)] Must meet all of the following requirements if the ownership structure of the family farm changes between the time of a qualifying loss and the time an EM loan is closed:

(1) The applicant, including all owners must meet all of the eligibility requirements;

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

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

K Duplicative Federal Assistance

The applicant:

[7 CFR 764.352(k)] Must agree to repay any duplicative Federal assistance to the agency providing such assistance. An applicant 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 applicant for the same purpose from another source.

If additional disaster benefits are expected from existing programs, but the amount is not known at loan approval, the applicant must assign the benefits to FSA.

*** * ***

Programs enacted after loan approval will not effect EM calculations and are not considered duplicative benefits. In such cases, however, FSA may require an assignment to ensure loan repayment according to subparagraphs 93 B and C on any subsequent payment made to the applicant after the time of loan approval.

232 Eligibility (Continued)

L Insurance Requirement

[7 CFR 764.353(e)] EM loan funds may not be used for physical loss purposes unless:

(1) The 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 benefit of the coverage was greater than the cost of the insurance; or

(2) The loan is to a poultry farmer to cover the loss of a chicken house for which the applicant did not have hazard insurance at the time of the loss and the applicant:

(i) Applied for, but was unable to obtain hazard insurance for the chicken house;

(ii) Uses the loan to rebuild the chicken house in accordance with industry standards in effect on the date the applicant submits an application for the loan;

(iii) Obtains, for the term of the loan, hazard insurance for the full market value of the chicken house; and

(iv) Meets all other requirements for the loan.

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.

The level of hazard coverage in effect at the time of the disaster must be the tax assessed value for real estate property. The level of coverage for chattel property is the established market value (most recent appraisal/value) before the disaster.

For chattels only, if the applicant did not have an insurance policy in affect at the time of the disaster, the authorized agency 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.

233 Limitations

A General

The following limitations apply to EM.

[7 CFR 764.353(a)] EM loans must comply with the general limitations established at §764.102 (paragraph 74)**.**

B Restriction on Loan Amount

[7 CFR 764.353(b)] EM loans may not exceed the lesser of:

(1) The amount of credit necessary to restore the 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 as calculated in paragraph (c) of this section (subparagraph 234 C)**.**

See 1-FLP, paragraph 29 for EM limits.

C Refinancing Debt

[7 CFR 764.353(f)] EM 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.

234 Calculating Losses

A Forms for Reporting and Calculating Losses

The applicant will use FSA-2309 to report all yields and acreage information as well as physical losses to FSA.

FSA will use FSA-2311 or the automated FSA-2311 to determine the applicant's actual production, physical losses, or both.

234 Calculating Losses (Continued)

B Determining Normal Production Yield

Normal production yield is defined in Exhibit 2.

- 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 APH cannot be pulled from the RMA web site, or if the APH web site is not available, or if the information on the RMA web site does not reflect the current crop year APH, the production/worksheet prepared by the insurance company (insurance adjuster) can be used to obtain APH. When this method for obtaining APH is used, the running case record of the docket file or FBP must be documented accordingly.

- The FP payment yield is a proven yield based on the applicant’s production and not the established yield set by COC.

If county averages are not available, State averages will be used. Normal production yield is calculated according to the following.

IF an applicant...	THEN...
had crop insurance in the disaster year, or the crops are covered under NAP and the Risk Management Crop Insurance Report or CCC-452 lists APH	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 ensure its 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 FP payments will be used in each or any of the years that these records are not available.
does not have APH, reliable records, or has 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 will be used.

234 Calculating Losses (Continued)

C Calculating Production Losses

[7 CFR 764.353(c)] For production loss loans, the applicant's actual crop production loss will be calculated as follows:

Losses to growing crops in designated and/or contiguous counties are used to calculate a production loss.

[7 CFR 764.353(c)(1)] Subtract the disaster yield from the normal yield to determine the per acre production loss;

See subparagraph D for calculating quality loss adjustments. See subparagraph F for calculation examples.

[7 CFR 764.353(c)(2)] Multiply the 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;

[7 CFR 764.353(c)(3)] Multiply the volume of the 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 July of each year, or sooner if information is available, SED shall:

- establish benchmark prices using the average monthly market prices for each commodity for the previous calendar year as shown in the "Agricultural Price" report published by NASS and available on the Internet at **http://usda.mannlib.cornell.edu**, ENTER "Prices" in the search box, CLICK "Search", and CLICK "Agricultural Prices Summary"

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

- make appropriate adjustments after consulting with other agricultural agency representatives, lenders, SED's, and FLC's in neighboring States

- issue a State supplement with the unit prices for all commodities produced commercially in the State to be used in calculating all production losses for any disaster that happens in the present calendar year, January through December.

  Example: 2007 prices will be used for disasters occurring between January 1, 2008, through December 31, 2008, and so forth for each subsequent year.

234 Calculating Losses (Continued)

C Calculating Production Losses (Continued)

[7 CFR 764.353(c)(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 received specifically for the production loss for which the applicant is requesting assistance is deducted from the loss amount.

D Quality Loss Adjustments

Quality losses are determined by comparing the average market price for the commodity at the grade the applicant would have normally sold the 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 are 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 nondisaster year by 30 percent or more, the applicant's loss is 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.

234 Calculating Losses (Continued)

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 $230. In the disaster year, the average cost per head was $300.

- $300 ÷ $230 = 1.30 or 30 percent higher feed costs.
- $300 - $230 = $70 is the production loss per head.
- The applicant had 100 head of cattle during the disaster year. Therefore, $70 x 100 = $7,000 feed loss is the amount of the production loss.

Example 2: The applicant normally produces fresh market apples, but because of the disaster, the apples were 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. The quality loss is calculated as follows.

- $60 ÷ $258 = 23 percent of the normal price.
- To make the adjustment, the applicant's quality adjusted disaster year yield would be reduced by 77 percent of the actual disaster year yield.
- To determine this adjustment, the actual disaster year yield is multiplied by .23 to get the quality adjusted disaster year yield.

234 Calculating Losses (Continued)

G Calculating Physical Losses

[7 CFR 764.353(d)] For a physical loss loan, the applicant's total eligible physical losses will be calculated as follows:

[7 CFR 764.353(d)(1)] 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);

[7 CFR 764.353(d)(2)] Add the allowable costs associated with repairing or replacing real estate, covered by hazard insurance;

[7 CFR 764.353(d)(3)] Add the value of replacement livestock and livestock products for which the applicant provided:

(i) Written documentation of inventory on hand immediately preceding the loss;

(ii) Records of livestock product sales sufficient to allow the Agency to establish a value;

The value of livestock:

- lost or destroyed as a result of the disaster is the replacement cost minus any salvage value received

- products such as calves, pigs, lambs, eggs, milk, and wool, is established using the prices published in the State commodity price list according to subparagraph C.

*** * ***

[7 CFR 764.353(d)(4)] Add the allowable costs to restore perennials to the stage of development the damaged perennials had obtained prior to the disaster;

Note: This is the cost of replanting the nursery stock plus all associated operating expenses to bring it back to the stage it was before being destroyed.

[7 CFR 764.353(d)(5)] Add, in the case of an individual applicant, the allowable costs associated with repairing or replacing household contents, not to exceed $20,000; and

[7 CFR 764.353(d)(6)] 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.

234 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 percent 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 follows.

- 50 x 90 percent = 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.

The loss will 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.

235 Rates, Terms, and Repayment

A Rate

[7 CFR 764.354(a)(1)] The interest rate is the Agency's Emergency Loan Actual Loss rate, available in each Agency office.

[7CFR 764.354(a)(2)] The interest rate charged will be the lower rate in effect at the time of loan approval or loan closing.

See 1-FLP, Exhibit 17 for interest rates.

B Basis for Repayment

[7 CFR 764.354(b)(1)] The Agency schedules repayment of EM loans based on the useful life of the 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.

C Minimum Repayment Requirement

[7 CFR 764.354(b)(2)] The repayment schedule must include at least one payment every year.

The 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 the availability of resources to pay the loan in full by the final maturity date.

D Repayment of Loans for Annual Operating Expenses

[7 CFR 764.354(b)(3)] EM loans for annual operating expenses, except expenses associated with establishing a perennial crop that are subject to paragraph (b)(4), must be repaid within 12 months. The Agency may extend this term to not more than 18 months to accommodate the production cycle of the agricultural commodities.

Annual operating loans must be scheduled for repayment at the time income will be available to make the payment, but not later than 18 months from the date of the note.

235 Rates, Terms, and Repayment (Continued)

E Repayment of Loans for Production or Physical Losses to Chattels

[7 CFR 764.354(b)(4)] EM loans for production losses or physical losses to chattel (including but not limited to assets with an expected life between one and seven years) may not exceed seven years. The Agency may extend this term up to a total length not to exceed 20 years, if necessary to improve the applicant's repayment ability and real estate security is available.

The usual repayment term for a loan secured by chattel is 1 to 7 years. The specific term of a loan shall be determined by the applicant's projected ability to repay the loan based on the farm operating plan.

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 with 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.

235 Rates, Terms, and Repayment (Continued)

F Repayment of Loans for Physical Losses to Real Estate

[7 CFR 764.354(b)(5)] The repayment schedule for EM loans for physical losses to real estate is based on the applicant's repayment ability and the useful life of the security, but in no case will the term exceed 40 years.

The specific term of a loan is determined by the applicant's projected ability to repay based on the farm operating plan.

The loan term is the minimum period of time that the projected ability to repay will allow. Loan terms are 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 projected installment results 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.

236 Security Requirements

A General

[7 CFR 764.355(a)] EM loans made under § 764.351(a)(1) (subparagraph 231 A) **must comply with the general security requirements established at §§ 764.103** (paragraph 91)**, 764.104** (paragraph 92) **and 764.155(b)** (subparagraph 135 D)**.**

[7 CFR 764.355(b)] EM loans made under §§ 764.351(a)(2) (subparagraph 231 B) **and (b)** (subparagraph 231 C) **must comply with the general security requirements established at §§ 764.103** (paragraph 91)**, 764.104** (paragraph 92) **and 764.255(b)** (subparagraph 175 A)**.**

FSA may take the following as security.

- In the case of an entity, personal assets held by individual members 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.

- A lien on all nonessential assets held by the applicant and any individual entity members, 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 nonessential assets taken as security according to subparagraph 91 E cannot be used to meet the 150 percent requirement of this section.

See Exhibit 2 for the definition of nonessential assets.

See Exhibit 21 for security requirements for loans made for reestablishing fruit, nut bearing, and income producing trees and plants.

236 Security Requirements (Continued)

B Lack of Adequate Security

[7 CFR 764.355(c)] Notwithstanding the requirements of paragraph (a) and (b) of this section, when adequate security is not available because of the disaster, the loan may be approved if the Agency determines, based on an otherwise feasible plan, there is a reasonable assurance that the applicant has the ability to repay the loan provided:

[7 CFR 764.355(c)(1)] The applicant has pledged as security for the loan all available personal and business security, except as provided in § 764.106 (paragraph 94)**;**

If the applicant is an entity, all members also must pledge all assets, both personal and business, as collateral.

[7 CFR 764.355(c)(2)] The farm operating plan, approved by the Agency, indicates the loan will be repaid based upon the applicant's production and income history; addresses applicable pricing risks through the use of marketing contracts, hedging, options, or other revenue protection mechanisms, and includes a marketing plan or similar risk management practice;

[7 CFR 764.355(c)(3)] The applicant has had positive net cash farm income in at least 3 of the past 5 years, and

Net farm income is 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.

Positive net cash farm income is determined by 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.

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

[7CFR 764.355(c)(4)] The applicant has given the Agency an assignment on any USDA program payments to be received.

237 Real Estate Security Requirements

A Title Clearance Requirements

[7 CFR 764.355(d)] For loans over $25,000, title clearance is required when real estate is taken as security.

[7 CFR 764.355(e)] 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, names the record owner of the real estate in question and lists the balances due on all known debts against the real estate. Whenever the Agency is uncertain of the record owner or debts against the real estate security, a title search is required.

238 Appraisal and Valuation Requirements

A Establishing Values for Real Estate

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

- establish the conditions under which the requirement to obtain an appraisal may be waived, which must apply to all applicants
- require that the estimated value of security be established and documented in the running record by someone, other than the authorized agency 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.

B Establishing Values for Assets Damaged by Disaster

[7 CFR 764.356(a)] 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.

[7 CFR 764.356(b)] 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.

239-260 (Reserved)

Part 10 Loan Decision

261 Reviewing and Evaluating Applications

A Timeframe

[7 CFR 764.53(c)] Within 60 calendar days after receiving a complete loan application, the Agency will complete the processing of the loan request and notify the applicant of the decision reached, and the reason for any disapproval.

The authorized agency official must make the decision to approve or deny the loan so that the applicant can be notified in writing within 60 calendar days after the loan application is determined complete.

To ensure that a loan application is expeditiously reviewed, the State or County Office must enter a reason and, if necessary, an explanation into DLS when the loan decision has not been made within 45 calendar days after receiving a complete loan application.

SED, FLC, and DD will monitor the processing of all loan applications to ensure that loan applications are processed in a timely manner.

B Eligibility

[7 CFR 764.53(d)] If, based on the Agency's review of the application, it appears the applicant's credit needs could be met through the guaranteed loan program, the Agency will assist the applicant in securing guaranteed loan assistance under the market placement program in accordance with § 762.110(g) (2-FLP, Part 5, paragraph 72) **of this chapter.**

--**To evaluate the applicant's eligibility, the following should be considered during preparation of the FBP's Credit Presentation.**--

- Does the applicant meet the general eligibility and specific eligibility requirements for the type of loan requested?
- Does the applicant meet the definition of beginning farmer or SDA to qualify for targeted funds?
- Are funds requested for authorized purposes?
- Will the requested loan, plus the principal balance on other FLP loans, be within the loan limits contained in 1-FLP?
- Is a plan in place or has a waiver been granted to meet applicant training needs?
- Is the applicant unable to obtain sufficient credit elsewhere?
- If the request is for EM, did the applicant have a qualifying loss?

261 Reviewing and Evaluating Applications (Continued)

C Feasibility

--To evaluate the applicant's operating plan feasibility, the following should be considered during the preparation of the FBP Credit Presentation.--

- Does the farm operating plan show that the new loan, farm operating and family living expenses, and all other obligations will be repaid? The plan should first be prepared using regular rates and terms. If the plan shows repayment at regular rates, the regular rates will be used for the loan. However, if the plan does not show repayment at regular rates, limited resource rates should be substituted and the plan recalculated to see if repayment is possible.

- Are the operating and family living expenses, nonfarm income, and farm and other income included in the farm operating plan realistic?

- Is projected production realistic based on the applicant's or operation's history and the planned improvement practices?

- If non-FSA credit is planned, has documentation been obtained that the loan has been approved?

- Is the farm suitable for any planned specialized operations?

- Is the land, buildings and facilities, and water supply adequate for the planned operation?

- Is there reasonable assurance that any rented land which the applicant depends on will continue to be available?

- Is any off farm employment the applicant depends on likely to continue?

D Security

The authorized agency official must ensure that the security requirements have been met and the total debt including loans being made against the security will not exceed the market value of the security.

A loan requiring real estate for adequate security may be approved subject to obtaining an appraisal in those cases where the following conditions are met.

- The available information demonstrates that the security requirements can be met when the appraisal is completed.

- FSA will obtain an acceptable appraisal before loan closing.

261 Reviewing and Evaluating Applications (Continued)

E Environmental

The applicant has complied with or has plans in place for the proposed operation, which *--cover all the environmental requirements of 1-EQ and RD Instruction 1940-G and is not in violation of the Sodbuster, Swampbuster, and Clean Water Acts.--*

F Loan Narrative

The authorized agency official shall document each item considered under subparagraphs B through E to support the final loan decision. The documentation shall be added to the FBP's Credit Presentation to document the decision making process.

Note: If repayment ability is used as security according to subparagraph 236 B, documentation of the requirements of that section shall be included in the narrative.

262 Loan Approval

A Assessment

The authorized agency official must confirm and document in the case file that the loan assessment is complete or updated, when required, and necessary supervision is planned.

B Establishing Loan Approval Conditions

[7 CFR 764.401(a)(2)] The Agency will place conditions upon loan approval it determines necessary to protect its interest and maximize the applicant's potential for success.

The authorized agency official must specify on FSA-2313, or an attachment if necessary, any conditions that must be met including, but not limited to, the following:

- borrower training requirements as established in subparagraph 402 C
- all security requirements, including required lien position
- any agreements needed with prior lienholders
- supervised bank account according to 1-FLP, Part 4
- obtaining an appraisal that demonstrates that the security requirements can be met if the loan was approved subject to obtaining an appraisal
- any actions required of the applicant before loan closing, such as:
  - insurance and indemnity requirements
  - assignments from sale proceeds or income
  - reduction of outstanding indebtedness to meet maximum loan limits.

--**When a loan is approved for which funds are available and a title search is necessary,**-- check (✓) the following statement on FSA-2313:

> "Loan funds will be made available to you within 15 business days of loan approval. However, you agree that in certain circumstances the 15 days may be exceeded when additional information, such as a lien and/or title search, an appraisal, subordination, etc. is needed prior to loan closing."

Note: FSA-2313 shall be either sent certified mail or hand delivered to the applicant. If hand delivered, FSA must obtain a signed statement from the applicant acknowledging receiving FSA-2313 on the specific date.

262 Loan Approval (Continued)

C Approval

[7 CFR 764.401(a)(1)] The Agency will approve a loan only if it determines that:

[7 CFR 764.401(a)(1)(i)] The applicant's farm operating plan reflects a feasible plan, which includes repayment of the proposed loan and demonstrates that all other credit needs can be met;

When FSA determines that an FO or OL applicant's financial condition justifies a reduced annual interest rate, FSA charges the applicant the limited resource rate.

FSA uses this reduced interest rate only to assist applicants who otherwise meet all requirements for a FSA direct loan, but whose farm operating plan indicates that a feasible plan cannot be achieved at the regular interest rate.

Note: The authorized agency official shall not approve loans at the limited resource rate when the regular interest rate is less than or equal to the limited resource rate.

[7 CFR 764.401(a)(1)(ii)] The proposed use of loan funds is authorized for the type of loan requested;

[7 CFR 764.401(a)(1)(iii)] The applicant has been determined eligible for the type of loan requested;

[7 CFR 764.401(a)(1)(iv)] All security requirements for the type of loan requested have been, or will be met before the loan is closed;

[7 CFR 764.401(a)(1)(v)] The applicant's total indebtedness to the Agency, including the proposed loan, will not exceed the maximum limits established in § 761.8 (1-FLP, paragraph 29) **of this chapter;**

Note: When the indebtedness of the applicant, or anyone who will sign the note, exceeds the maximum loan limits established in 1-FLP, paragraph 29, at the time of loan approval, the applicant's operating plan must reflect that funds will be available to reduce the indebtedness before loan closing.

[7 CFR 764.401(a)(1)(vi)] There have been no significant changes in the farm operating plan or the applicant's financial condition since the time the Agency received a complete application; and

262 Loan Approval (Continued)

C Approval (Continued)

[7 CFR 764.401(a)(1)(vii)] All other pertinent requirements have been, or will be met before the loan is closed.

The authorized agency official must determine that the appropriate environmental reviews and determinations have been completed and the loan will not violate any portion of 1-EQ, RD Instruction 1940-G, State Environmental requirements, and any other relevant requirements.

Note: An applicant will be advised that compliance with all applicable local, State, and Federal special laws and regulations will be required.

The authorized agency official will approve the loan by executing the electronic signature command in the credit presentation section of FBP. FSA-2313 will be provided to the applicant as notification of loan approval and conditions and must be signed and returned by ***--**the applicant within 15 workdays. If FSA-2313 is not returned within 15 workdays, the application will be withdrawn.

Note: See 4-FLP, Part 9 for approving assumptions.**--***

262 Loan Approval (Continued)

D Actions After Loan Approval

Once the loan application is approved, the authorized agency official will:

- input data into DLS
- notify applicant of approval and any conditions using FSA-2313

--Note:** FSA-2313 shall be either sent certified mail or hand delivered to the applicant. If hand delivered, FSA must obtain a signed statement from the applicant acknowledging receiving FSA-2313 on the specific date.**--

- prepare for loan closing.

[7 CFR 764.402(e)(1)] Loan funds will be made available to the applicant within 15 days of loan approval, subject to the availability of funding.

Funds must be provided to the applicant within 15 workdays of when they become available unless the applicant agrees to a longer period.

--**Loan applications will be processed through approval subject to the availability of funds. FSA-2313 will be executed at the time of approval.**--

E Failure to Meet or Accept Loan Approval Conditions

If an applicant informs the authorized agency official that the loan approval conditions established under subparagraph B are unacceptable or cannot be met:

- the authorized agency official will meet with the applicant to discuss the condition or conditions which are unacceptable or cannot be met
- explore alternatives which are different from the condition in question but would result in compliance with the program requirements the condition addresses
- the application will be withdrawn, and the applicant notified with appropriate review rights for nonappealable decisions according to 1-APP, if an agreement cannot be reached and the applicant cannot or will not meet the conditions in question.

Note: The loan obligation shall not be cancelled until the withdrawal decision is administratively final, as defined in 1-APP.

263 Funding Approved Loans

A Lack of Program Funds

[7 CFR 764.53(e)] In the absence of funds for a direct loan, the Agency will keep an approved loan application on file until funding is available. At least annually, the Agency will contact the applicant to determine if the Agency should retain the application or if the applicant wants the application withdrawn.

The authorized agency official will notify the applicant in writing that funds are not currently available and place the approved loan on a waiting list based on the date the loan application was received.

The authorized agency official will contact the approved loan applicant at least once a year to determine whether the applicant is still interested in receiving a FSA loan. If the applicant wants the loan application to remain active, the applicant must provide FSA with a written request within 30 calendar days and must also provide updated financial information. If the applicant does not want the loan application to remain active, it will be withdrawn.

B Preferences When There is Limited Funding

[7 CFR 764.54(a)] When there is a shortage of loan funds, approved applications will be funded in the order of the date the application was received, whether or not complete.

[7 CFR 764.54(b)] If two or more applications were received on the same date, the Agency will give preference to:

[7 CFR 764.54(b)(1)] First, an applicant who is a veteran of any war;

See Exhibit 2 for the definition of veteran.

Note: Period of war means that it was officially declared a war, with a defined beginning date, by Congress and was officially ended, with a prescribed date, by either Presidential proclamation or concurrent resolution of the Congress.

263 Funding Approved Loans (Continued)

B Preferences When There is Limited Funding (Continued)

[7 CFR 764.54(b)(2)] Second, an applicant who is not a veteran, but:

(i) Has a dependent family;

(ii) Is able to make a downpayment; or

(iii) Owns livestock and farm implements necessary to farm successfully.

[7 CFR 764.54(b)(3)] Third, to other eligible applicants.

FSA uses the secondary priorities only when funding is limited and more than 1 loan application was received on the same date.

C When Loan Funds Become Available

[7 CFR 764.53(f)] If funding becomes available, the Agency will resume processing of approved loans in accordance with this part.

When funds become available, the applicant will be notified immediately by letter
--**(Exhibit 24), sent certified mail with return receipt requested or hand delivered with signed receipt. The letter will advise the applicant to contact the FSA Office within 15 workdays from the date the certified letter was received. The letter will also contain a statement that if the applicant does not contact the authorized agency official within 15 workdays from the date the letter was received, the applicant's application will be withdrawn.**--

264 Changes After Loan Approval

A Changes in Loan Amount

If it becomes necessary to increase or decrease the amount of the loan before loan closing, the authorized agency official requests that all distributed loan forms be returned to FSA and reprocessed. If the change is minor and replacement forms can readily be completed and submitted, a memorandum justifying the change is attached to the revised forms and sent to the State Office.

B Cancellation of Funds

The authorized agency official cancels obligations, advances, checks, and electronic fund disbursements according to 3-FI, paragraph 90 and other appropriate FI directives.

When necessary, the authorized agency official prepares and executes FSA-2026 reflecting the revised total of the loan and the revised repayment schedule.

C Cancellation of Loan

When a loan is canceled:

- the authorized agency official notifies the State Office and FSC, FLOO of loan cancellation by using FSA-2072

- the authorized agency official notifies the designated closing agent that the loan has been canceled

  Note: If the loan, based upon updated information after initial approval, is rejected because of problems with eligibility or feasibility, see paragraph 261.

- at the request of the applicant, the application will be withdrawn. See subparagraph 45 D for more information.

264 Changes After Loan Approval (Continued)

D Change in Use of Funds

An authorized agency official may approve changes in the proposed use of funds provided that:

- the loan is within the authorized agency 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 FSA-2026
- FBP is revised as necessary and the revisions initialed by the applicant and the authorized agency official.

265 Monitoring FSA Approval

A Authorized Agency Official Responsibilities

The authorized agency official will:

- process loan applications according to statutory and regulatory timeframes and established performance goals
- adhere to timeframes in subparagraph 45 B for notifying all applicants of any additional information required for a complete loan application
- notify all applicants of eligibility and ineligibility in a timely manner
- approve or disapprove all loan applications in a timely manner
- enter the reason, if a decision has not been made within 45 calendar days of receiving a complete application, and if necessary, an explanation in DLS
- use DLS as the official loan application data record for all direct applications.

B DD Responsibilities

DD:

- is responsible for:
  - overseeing the approval process
  - monitoring unprocessed applications
- shall take all steps necessary to ensure that applications are processed timely.

Note: Some steps DD can take include the following:

- prioritizing workloads
- providing additional training
- providing clerical help
- temporary shifting staff assignments.

265 Monitoring FSA Approval (Continued)

C Designated Review Officials Action

Officials designated by SED to review applications will:

- review at least 50 percent of the rejected or withdrawn SDA loan applications for each quarter in each office of their jurisdiction
- if any improper rejections or withdrawals are found, review all rejected and withdrawn SDA loan applications in the approval official's coverage area
- notify SED of any problems detected
- with the advice of FLC, take action on improperly rejected or withdrawn SDA loan applications to correct any errors
- recommend appropriate personnel actions to SED, such as training or revocation of loan approval authority, for the approval officials responsible for rejections and withdrawals that appear to reflect a pattern or practice of discrimination against SDA
- review the reasons and explanations why decisions have not been made in a timely manner on complete loan applications.

D FLC Action

FLC will:

- monitor loan application processing timeframes, DLS, and performance goal accomplishments using Intranet application reports

  Note: Offices will access reports "Direct Applications Disposition by Race and Gender" and "Direct Application Processing – Race and Gender" through the Intranet applications reporting site at **http://www.flp.fsa.usda.gov:4019**. These reports include data on processing times and final disposition of loan applications.

- provide reports on loan application processing timeframes to SED
- provide technical advice and direction for corrective actions on improperly rejected or withdrawn loan applications.

265 Monitoring FSA Approval (Continued)

E SED Action

SED will:

- designate DD or other qualified State Office personnel as review officials
- be accountable for SDA loan application processing in the State, including ensuring that designated review officials:
  - conduct reviews of rejected SDA loan applications
  - take corrective action in a timely manner
- emphasize the importance of timely loan application processing for all applicants
- ensure that loan application processing data is monitored through DLS or Intranet application reports, so that applications are being processed in a timely and equitable manner in the State
- manage staff resources appropriately to minimize loan application processing delays
- when necessary, initiate or monitor appropriate personnel actions recommended by the designated review official
- review the:
  - reports on loan application processing problems submitted by the designated review officials
  - FLC reports on both SDA and non-SDA average loan application processing timeframes
- provide DD's with report findings and ensure that DD's monitor County Office SDA activity
- *****--submit the SDA Loan Review Summary Report for affected cases, findings, corrective action, and results, by October 31 of each year through SDMS.

  Note: See 1-AS, Exhibit B for guidance on using SDMS. ENTER "SDA Loan Review Summary" as the directive's title.--*****

266 Loan Denial

A Denial

[7 CFR 764.401(b)] The Agency will not approve a loan if it determines that:

(1) The applicant's farm operating plan does not reflect a feasible plan;

(2) The proposed use of loan funds is not authorized for the type of loan requested;

(3) The applicant does not meet the eligibility requirements for the type of loan requested;

(4) There is inadequate security for the type of loan requested;

(5) Approval of the loan would cause the applicant's total indebtedness to the Agency to exceed the maximum limits established in § 761.8 of this chapter (1-FLP)**;**

(6) The applicant's circumstances may not permit continuous operation and management of the farm; or

(7) The applicant, the farming operation, or other circumstances surrounding the loan are inconsistent with the authorizing statutes, other Federal laws, or Federal credit policies.

Note: This includes determinations by NRCS, or other Federal agencies, that the applicant is not in compliance with applicable environmental regulations.

B Notification of Loan Denial

The authorized agency official notifies the applicant of loan denial by letter according to 1-APP. The letter must provide:

- clear, specific reasons for the denial
- citations of requirements from CFR and handbook sections that are not met by the applicant
- appeal rights according to 1-APP
- ECOA and nondiscrimination statement according to 1-FLP, paragraph 41.

266 Loan Denial (Continued)

C Actions After Denial

Once the loan application is denied, the authorized agency official will:

- input data into DLS
- close the loan application process.

FSA must maintain applications that have been rejected. See 25-AS for maintaining loan files.

See 1-APP for information on reconsideration if the applicant requests FSA reconsider the loan application for approval.

D Counseling

When discussing a denial decision, the authorized agency official will advise the applicant of potential actions or alternatives that might resolve or help resolve the issues that resulted in the denial of the loan request. Examples include, but are not limited to, obtaining necessary experience or training, restructuring debts, liquidating assets and paying down debts, repaying debt forgiveness, and changing the size or scope of the farm operation.

The authorized agency official should not tell the applicant what actions to take, and make it clear that what is being discussed are options; it is up to the applicant to decide what course of action to take.

Authorized agency officials shall not guarantee that loan approval is certain, especially when that guarantee is based upon an applicant taking a specific action.

266 Loan Denial (Continued)

E Actions If Denial Overturned On Administrative Appeal

[7 CFR 764.401(c)] If an Agency loan denial is overturned on administrative appeal, the Agency will not automatically approve the loan. Unless prohibited by the final appeal determination or otherwise advised by the Office of General Counsel, the Agency will:

[7 CFR 764.401(c)(1)] Request current financial information from the applicant as necessary to determine whether any changes in the applicant's financial condition or agricultural conditions which occurred after the Agency's adverse decision was made will adversely affect the applicant's farming operation;

Note: Adversely affected means that a change unrelated to the issue resolved through appeal will result in an FBP that would not be feasible, or in the proposed security being inadequate for the type of loan requested.

When a final administrative decision, as defined in 1-APP, paragraph 231, has been reached in an appeal, and the decision is in the applicant's favor, the authorized agency official will contact the applicant in writing within 10 business days of the final administrative decision. The applicant will be advised of the next steps in application processing. The notification will include the following:

- a request for any updated information which may be necessary to continue processing the applicant's request, when the most recent information in the applicant's file is over 90 days old
- an explanation of why it is not possible to approve an annual operating loan, if applicable
- notification to the applicant that FSA will use any requested information to consider the loan request for the next production cycle.

[7 CFR 764.401(c)(2)] Approve a loan for crop production:

(i) Only if the Agency can determine that the applicant will be able to produce a crop in the production cycle for which the loan is requested; or

(ii) For the next production cycle, upon review of current financial data and a farm operating plan for the next production cycle, if the agency determines the loan can be repaid. The new farm operating plan shall reflect any financial issues resolved in the appeal.

266 Loan Denial (Continued)

E Actions If Denial Overturned On Administrative Appeal (Continued)

[7 CFR 764.401(c)(3)] Determine whether the applicant's farm operating plan, as modified based on the appeal decision, reflects a feasible plan, which includes repayment of the proposed loan and demonstrates that all other credit needs can be met.

A loan for any authorized purpose may be approved if, when the results of the appeal and any nonappeal related changes to financial, security, or production factors have been considered, the loan is now feasible as a result of the appeal determination.

The authorized agency official shall determine that approval requirements of paragraph 262 have been met.

See 1-APP for information on appeal rights.

See the DLS manual for further actions about processing timeframes in appeal situations.

267-280 (Reserved)

Part 11 Loan Closing

Section 1 General

281 Overview

A Closing Different Kinds of Loans

See:

- paragraphs 301 through 305 for loan closing requirements for real estate
- paragraphs 321 through 324 for loan closing requirements for chattel.

All other paragraphs in this section apply to loan closings for both kinds of security.

A loan is closed either by FSA or a closing agent based on:

- type of loan
- type of security:
  - real estate
  - chattel
- adequate security
- additional security
- nonessential assets
- amount of loan.

Note: In most cases, authorized agency officials typically will close operating loans and will use either an attorney or a title company for all loans involving real estate.

B Reconfirming Loan Requirements

[7 CFR 764.402(e)(2)] If the loan is not closed within 90 days of loan approval or if the applicant's financial condition changes significantly, the Agency must reconfirm the requirements for loan approval prior to loan closing. The applicant may be required to provide updated information for the Agency to reconfirm approval and proceed with loan closing.

281 Overview (Continued)

B Reconfirming Loan Requirements (Continued)

The authorized agency official will review with the applicant the financial statement which was prepared at the time the docket was developed. If there have been significant changes in the applicant's financial condition, the financial statement will be revised and initialed by the applicant and the authorized agency official. When an applicant's financial condition has changed to the extent that it appears that the loan would be unsound or improper, the loan will not be closed. If a revised loan docket is needed to meet loan requirements or determine loan soundness, it will be developed and submitted to the authorized agency official.

When real estate will be taken as security, a review should be made to determine that no significant changes have been made in the development plan considered by the appraiser.

If the authorized agency official determines that the applicant is no longer eligible for the loan or that the farm operating plan is no longer feasible, the authorized agency official will decline to close the loan and the applicant will be notified according to paragraph 266.

C Loan Document Signatures

[7 CFR 764.402(a)] Signatures on loan documents are required as follows:

[7CFR 764.402(a)(1)] For individual applicants, only the applicant is required to sign the promissory note.

In the case of an individual applicant, only the applicant will be required to sign FSA-2026 unless State law requires otherwise. SED shall issue a State supplement outlining signature requirements.

In the case of an FO involving a life estate to:

- both the life estate holder and the remainderman, the note and lien instrument is signed by both
- just the remainderman, the lien instrument is signed by the remainderman, life estate holder, and any other party having an interest in the security
- just the life estate holder, the lien instrument is signed by the life estate holder, remainderman, and any other party having any interest in the security.

[7 CFR 764.402(a)(2)] For entity applicants, the promissory note will be executed to evidence the liability of the entity and the individual liability of all members of the entity.

281 Overview (Continued)

C Loan Document Signatures (Continued)

Required signatures:

- in the case of an entity applicant will include:
  - each individual required to obligate the entity
  - each individual member of the entity
  - cosigner if required
  - other signatures as required in State supplements
- in the case of a partnership or joint operation will include:
  - both the partner or joint operator authorized to sign for the entity
  - all partners in the partnership or joint operators in the joint operation, as individuals

  --Note:** Husband and wife informal joint operations will only sign FSA-2026 as individuals.**--

- in the case of a cooperative or corporation will include:
  - both the individual authorized to sign for the entity
  - all members or stockholders, as individuals

- ***--**in the case of a trust, SED will, after consultation with the Regional OGC, issue a State supplement for trusts outlining:**--***
  - security requirements when lending to trusts
  - signature requirements on FSA-2026's and security instruments
  - unique characteristics of State trust statutes, such as trustee authority to mortgage trust property for the planned farming purposes, signature requirements for third party trustees, alternate trustees, beneficiaries of a revocable trust, and beneficiaries with only a future interest

[7 CFR 764.402(a)(3)] Despite minority status, a youth executing a promissory note for a Youth Loan will incur full personal liability for the debt.

- in the case of a youth applicant will include:
  - youth applicant individually
  - cosigner, if required.

  Note: A cosigner will be required only if it is determined that the applicant cannot possibly meet the repayment or security requirements for the loan request. When a plan is feasible using realistic figures, a cosigner will not be required.

281 Overview (Continued)

C Loan Document Signatures (Continued)

[7 CFR 764.402(a)(4)] A cosigner will be required to sign the promissory note if they assist the applicant in meeting the repayment requirements for the loan requested.

--Note:** A cosigner is required to complete FSA-2001, Part C of the applicant's current application to provide necessary information, including self certifications.**--

Exception: In the case of a married couple, when 1 spouse of the couple applies individually, if the spouse that is not party to the application has off farm income that:

- pays only family living expenses and does not contribute to the farm operation, then neither the off farm income nor the family living expenses will be included in FBP and the spouse will not be required to sign FSA-2026

- is needed to contribute to a feasible farm operating plan, then both the off farm income and family living expenses will be included in FBP and the spouse will be required to sign FSA-2026 as a cosigner and would therefore, be required to be eligible under certain requirements according to paragraphs 62 through 72.

Example 1: Tom has applied for a term operating loan. Mary's salary for her job as a teacher is $35,000. FBP indicates that owner withdrawals would total $35,000 and would all be paid from Mary's salary. After removing Mary's income and the family living from FBP, the ending cash on hand remains positive. In this case, Mary will not be required to sign FSA-2026 and will not be considered a cosigner.

Example 2: Bruce has applied for a term operating loan. Camille's salary as a nurse at the local hospital is $60,000. FBP indicates that family living would total $40,000. The ending cash on hand is -$10,000 if Camille's salary is not included. In this case, it is clear that Camille's income must be included to show positive ending cash on hand. Camille would be required to sign FSA-2026 as a cosigner and would therefore, be required to be eligible under certain requirements under paragraphs 62 through 72.

281 Overview (Continued)

C Loan Document Signatures (Continued)

[7 CFR 764.402(a)(5)] All signatures needed for the Agency to acquire the required security interests will be obtained according to State law.

Signature requirements on the mortgage or deed of trust will be sufficient to obtain the required lien, and to make the property being offered as security available to satisfy the debt in the event of default.

SED shall issue a State supplement to provide requirements according to State real property law. SED will obtain the advice of the Regional OGC before issuing the State supplement.

D Waiver of Title Clearance and Legal Services

[7 CFR 764.402(d)(1)] The Agency will close a real estate loan only when it determines that the Agency requirements for the loan have been satisfied and the closing agent can issue a policy of title insurance or final title opinion as of the date of closing. The title insurance or final title opinion requirement may be waived:

(i) For loans of $10,000 or less;

FSA may accept the best lien obtainable without title clearance or legal service provided the authorized agency official believes from a search of the county records that the applicant can give a mortgage on the property. This exception to title clearance will not apply when:

- the loan is made simultaneously with that of another lender
- land is being purchased
- this provision conflicts with program regulations of any other FSA loan being made simultaneously with the loan.

(ii) As provided in § 764.355 (paragraph 237) **for EM loans;**

(iii) When the real estate is considered additional security by the Agency; or

(iv) When the real estate is a non-essential asset.

E Additional Security and Nonessential Assets Requirements

FSA does not require a search of public records to verify the available lien position or insurance for additional security or nonessential assets.

282 Using a Closing Agent

A Applicant's Selection of Closing Agent

If a closing agent is required, the applicant will select the closing agent, which may be a title insurance company or an attorney. The applicant will select the closing agent by using FSA-2340.

The closing agent must be approved according to Part 12, by using FSA-2341 or FSA-2342.

The authorized agency official may provide the applicant with the names of agents who can be contacted to conduct the closing. Any such list must include the names of all FSA-approved agents in the relevant jurisdiction. FSA employees will not recommend using any particular closing agent or title insurance company. In addition, the authorized agency official must inform the applicant that they may not select someone with whom the applicant has a business or family relationship.

B Closing Agent Responsibilities

FSA relies on a closing agent to prepare, complete, or approve documents, including deeds, necessary for title clearance and closing of a loan secured by real estate. The authorized agency official must be assured that the applicant has, or will have, clear title to any real estate taken as security. FSA also must have the lien position necessary to adequately secure the loan. The closing agent must provide FSA with the title insurance policy or title opinion that provides the lien priority required by FSA.

283 Payment of Fees

A Fees for Filing and Recording

[7 CFR 764.402(b)] The applicant, or in the case of a real estate purchase, the applicant and seller, must pay all filing, recording, notary, lien search, and any other fees necessary to process and close a loan.

The applicant generally pays all fees for filing or recording UCC1's, mortgages, and lien search fees.

The applicant, the seller, or both, in compliance with the terms of the sales contract or option, are responsible for paying all costs of title clearance and closing of the transaction and must arrange for payment before the transaction is closed. These costs include:

- abstracts of title
- land surveys
- attorney's fees
- owner's and lender's title insurance
- notary fees
- documentary stamps
- recording costs
- tax monitoring service
- other expenses necessary to complete the transaction.

284 State Supplement

A Liens

SED shall issue a State supplement about State requirements about filing liens for:

- chattels of all types, including owned or to be purchased equipment, livestock, farm products, goods, etc., as provided in UCC Article 9
- land under a purchase contract
- fixtures
- tribal lands held in trust or restricted
- leasehold estates
- chattel closings by FSA or closing agent.

285-300 (Reserved)

301 Title Clearance Requirements

A Use of Closing Agent or FSA

Title clearance will be obtained when required by FSA.

See:

- paragraphs 302 through 304 when a closing agent is being used
- paragraph 305 if FSA will close the loan.

302 Preliminary Title Opinion/Title Commitment

A Requesting Preliminary Title Opinion

The authorized agency official will send either:

- ***--**FSA-2341 to the closing attorney
- FSA-2342 to the closing agent.

FSA-2341 or FSA-2342 will be sent along with the following documents and information:**--***

- real estate contract
- legal description of the property
- FSA-2343
- FSA-2344
- ***--**any other relevant forms that the closing agent must complete for the preliminary title opinion.**--***

B Reviewing Preliminary Title Opinion

The closing agent must provide the authorized agency official the preliminary title opinion on FSA-2344 or provide the preliminary insurance binder on the agent's standard form. After receiving the preliminary title opinion or preliminary title insurance binder, the authorized agency official will:

- check the legal description to ensure that it covers all property taken as security
- review all exceptions to the title to determine which must be modified, eliminated, or waived. In doing this, the authorized agency official will work with the title company, the applicant, and, in the event of a land purchase, the seller to fully understand and resolve any exceptions.

SED shall issue a State supplement about securing loans with:

- land held under a purchase contract
- fixtures.

302 Preliminary Title Opinion/Title Commitment (Continued)

B Reviewing Preliminary Title Opinion (Continued)

If the loan cannot be closed because of failure to obtain correct lien position, the applicant will be notified according to 1-APP of their review rights. The notification will include:

- clear, specific reasons the loan cannot be closed
- citations of requirements from CFR and handbook sections that are not met by the applicant
- review rights according to 1-APP.

303 Requesting Loan Closing

A Loan Closing

If the preliminary title opinion reflects that FSA can obtain the required lien, the authorized agency official shall:

- order the funds for closing

Note: EFT is to be used, unless circumstances warrant an exception.

- send a closing package to the closing agent with the following forms and documents, as needed:
  - FSA-2026
  - FSA-2029

  *** * ***
  - *** * *** assignment of income documents, as appropriate
  - FSA-2350
  - FSA-2351
  - FSA-2352
  - HUD 1
  - UCC1, if applicable
  - supervised bank account documents
  - loan check, if funds not provided by EFT.

If exceptions or newly recorded items arise between the date of the preliminary title opinion and date of closing, the transaction will not be closed until these entries can be cleared or approved by FSA. The closing agent will advise the authorized agency official of the nature of such intervening instruments and the effect on obtaining a valid mortgage of the priority required or the title insurance policy to be issued.

304 Closing Agent Responsibilities

A Scheduling Loan Closing

The closing agent should schedule the loan closing within 3 workdays of receiving notification from FSA that the loan should be closed. FO's are considered closed when the mortgage is filed for record.

B Execution of Documents

The closing agent must ensure that all closing forms are properly executed and must file and record all documents as required by law.

SED shall issue a State supplement, subject to the Regional OGC's approval, providing guidance in correcting errors in recorded security instruments.

C Documents

The authorized agency official must:

- document that the loan file contains satisfactory evidence that all applicable requirements have been met or will be met before loan closing

- confirm and document that the applicant has obtained or will obtain any required insurance before loan closing.

D Disbursing Loan Funds

Loan funds will be disbursed according to paragraph 341.

E Taxes and Assessments

The closing agent must ensure that all taxes and assessments are paid.

305 Real Estate Secured Loans Closed by FSA

A Title Clearance

Title clearance is not required for:

- additional security
- nonessential assets.

B Preparing and Filing Lien Instruments

The authorized agency official must:

- prepare the lien instrument
- obtain the necessary signatures
- file the lien instrument.

Note: See paragraph 94 for when a lien should not be obtained.

306-320 (Reserved)

--

Section 3 Preparing for and Completing Loan Closing for Chattels

321 Overview

A General

A lien search is required on all chattels taken to adequately secure the loan. A lien search is not required on:

- additional security
- nonessential assets
- youth loans, unless the applicant has reached the age of majority, there is evidence that the applicant obtained other credit, or they have assets which may be subject to a lien.

See:

- paragraphs 322 through 324 for obtaining lien searches and filing liens on adequate security
- paragraph 324 for filing a lien on additional security or nonessential assets.

B Performing Lien Searches and Closings

Lien searches and closings may be completed by the authorized agency official or approved closing agent as required by State law.

C Security Pledged by Multiple Owners

***--**FSA obtains a lien on the full value of the security, when the chattel security is held by more than 1 owner as follows.

- If all owners are applicants, the authorized agency official must ensure that all owners execute FSA-2028.
- If all owners are not applicants, the authorized agency official will obtain CCC-10 and FSA-2028 from the owners who did not sign FSA-2001.**--***

321 Overview (Continued)

C Security Pledged by Multiple Owners (Continued)

*--When chattel security is jointly held by the applicant and nonapplicant who will not pledge their interest in the property, the authorized agency official will obtain FSA-2318.

Note: FSA-2318:

- acknowledges that the nonapplicant is joint owner of the property being offered as security for the loan
- provides nonapplicant certain rights about partial ownership on the property
- is not a security agreement or an obligation to pay the applicant's loan should the applicant default.--*

322 Preparing for Loan Closing

A Conducting and Reviewing Lien Search

The authorized agency official or closing agent will file UCC1 and complete a lien search to show that FSA has the required lien position on:

- all chattel property taken to adequately secure a loan
- property to be acquired when the item can be specifically identified, unless the item is to be purchased from a manufacturer or dealer.

The following records shall be searched:

- Federal and State tax liens
- judgments
- UCC1 records.

Use FSA-2360 to complete a report of the results of the lien search.

B Establish Loan Closing Conditions

The authorized agency official or closing agent may have to:

- terminate satisfied liens
- satisfy judgments
- terminate liens to be paid off with loan funds
- subordinate other lender's liens by using FSA-2361 or other acceptable lender's forms.

323 Perfecting Liens

A Perfecting a Lien on an Undivided Interest

An applicant obtaining a loan to finance an undivided interest in security or to refinance debts on an undivided interest in such property must secure the loan with a lien on the undivided interest. All individuals having an undivided interest in the security shall execute FSA-2318 unless a written agreement to the same effect is signed.

B Perfecting a Lien on Income from Products or Program Payments

The authorized agency official shall obtain assignments, consents, and security interests relating to income from products and program payments whenever possible to protect FSA's interest.

The following FSA forms are used for taking assignments:

- FSA-2041 to obtain assignment of proceeds from the sale of products when FSA does not have perfected lien under UCC
- FSA-2042 to obtain consent to payment of proceeds from the sale of products when FSA has a perfected lien on the products
- FSA-2043 to obtain assignment of proceeds from the sale of dairy products and release of security interest
- CCC-36 and CCC-37 to assign incentive and other agricultural program payments.

C Perfecting a Lien on Milkbase and Grazing Permits

SED shall issue a State supplement about perfecting a security interest when milkbase or grazing permits are financed or taken as security.

D Perfecting a Lien on Stock in Cooperative Associations

FSA may take a security interest, in the form of an assignment pledge or other instrument, in stock or other evidence of association membership if it has value. FSA also may take a security interest in dividends to be paid on stock, memberships, or patronage or in undivided profits and other retainages.

SED shall issue a State supplement about perfecting liens on stock in cooperative associations.

323 Perfecting Liens (Continued)

E Perfecting a Lien on Motor Vehicles

SED shall issue a State supplement about perfecting liens on motor vehicles.

F Perfecting a Lien on Fixtures and Equipment

SED shall issue a State supplement about perfecting liens on equipment or fixtures *--purchased, refinanced, or taken as security with loan funds for real estate purposes,--* whenever such property is not included in the real estate lien.

324 Closing Chattel Secured Loans

A General

[7 CFR 764.402(c)] The following requirements apply to loans secured by chattel:

[7 CFR 764.402(c)(1)] The Agency will close a chattel loan only when it determines the Agency requirements for the loan have been satisfied;

The authorized agency official or closing agent shall take the following steps:

- check the security description to ensure it covers all property taken as security and includes the legal description if so required by State supplement

- review all prior liens and encumbrances on the security to determine which must be modified, eliminated, or waived. In doing so, the authorized agency official will work with the applicant to fully understand and resolve any exceptions

- prepare FSA-2040 according to 4-FLP, paragraph 162.

[7 CFR 764.402(c)(2)] A financing statement is required for every loan except when a filed financing statement covering the applicant's property is still effective, covers all types of chattel property that will serve as security for the loan, describes the land on which crops and fixtures are or will be located, and complies with the law of the jurisdiction where filed;

324 Closing Chattel Secured Loans (Continued)

B Use of FSA-2028

[7 CFR 764.402(c)(3)] A new security agreement is required for new loans, as necessary to secure the loan under State law, prior to the disbursement of loan funds.

FSA requires a new FSA-2028 whenever filing UCC1.

The authorized agency official should describe on FSA-2028 all of the chattel property that will serve as security. The authorized agency official will identify security specifically as follows:

- crop production by describing the real estate on which the crops are grown and by the landowner's name
- livestock by type and exact number
- equipment by manufacturer, model, year, and serial number, where possible

  Note: If this information is not available, a written description of the equipment should be provided.

- all accounts, goods, supplies, and inventory by an appropriate description by item or type of property.

When security is held by more than 1 owner who wishes to pledge the full value of the property as security, the authorized agency official must ensure that all owners execute FSA-2028's pledging the security.

325-340 (Reserved)

Section 4 Actions After Loan Closing

341 Disbursing Funds

A When and How Loan Funds are Disbursed

[7 CFR 764.402(e)(3)] The Agency or closing agent will be responsible for disbursing loan funds. The electronic funds transfer process, followed by Treasury checks, are the Agency's preferred methods of loan funds disbursement. The Agency will use these processes on behalf of borrowers to disburse loan proceeds directly to creditors being refinanced with loan funds or to sellers of chattel property that is being acquired with loan funds. A supervised bank account will be used according to Subpart B of part 761 of this chapter (1-FLP, Part 4) **when these processes are not practicable.**

The authorized agency official or closing agent may disburse loan funds in a lump sum or in multiple disbursements.

***--**The authorized agency official or closing agent normally will not disburse loan funds before filing and recording the security instruments. The authorized official or closing agent may disburse loan funds for real estate loans after all documents are signed but before actual recording of the mortgage.

Loan funds may be placed in escrow until necessary instruments are recorded; however, development funds may be placed in escrow only with the approval of the authorized agency official.**--***

Loan funds for payment of a lien may be disbursed only upon the recording of a discharge, satisfaction, or releasing prior lien interests or assignment where necessary to protect FSA's interests.

B Handling Loan Funds

If loan funds are received and the loan cannot be closed within 20 workdays from the date the funds were received, the authorized agency official will return or cancel the funds according to 3-FI. The authorized agency official will document the new closing date to which the applicant has agreed in the running record.

342 Review Closing Documents

A General

The authorized agency official must review the closing documents to ensure accuracy and completeness, and if necessary, to take corrective action.

Note: This does not relieve the closing agent from their legal responsibilities.

B DLS

Once the loan is closed, the authorized agency official will enter the final information about the loanmaking process into DLS.

See 1-FLP for general information on DLS.

C Loan Classification

The authorized agency official must classify a new loan within 10 calendar days of loan closing.

See 1-FLP, Part 8 for instructions on loan classification.

343 Distribution of Loan Documents after Closing

A Closing Agent Responsibilities for Documents

Within 1 day after loan closing, the closing agent must return completed and executed copies of the loan closing instructions, the executed original FSA-2026, and all other documents required for loan closing, except the recorded instruments, to the authorized agency official. If the recorded instruments are customarily returned to the closing agent after recording, those instruments must be forwarded to the authorized agency official immediately.

[7 CFR 764.402(d)(2)] The title insurance or final title opinion must show title vested as required by the Agency, the lien of the Agency's security instrument in the priority required by the Agency, and title to the security property, subject only to those exceptions approved in writing by the Agency.

The final title opinion or title insurance policy will be provided to the authorized agency official as soon as possible after loan closing. Issuing the final title opinion or title insurance should not be held up pending the return of recorded instruments. If the final title opinion does not show the book and page of recording of the FSA security instrument, the words "and is recorded" on FSA-2352 may be deleted and the blank space completed to show the filing office and the filing instrument number, if available. The closing agent will attach the available documents, including any that the authorized agency official has furnished to the closing agent that were not previously returned, to the final title opinion.

343 Distribution of Loan Documents after Closing (Continued)

B FSA Responsibilities for Documents

The authorized agency official should review the forms and closing actions and take *--corrective action when necessary. FLP documents will be handled according to the--* following.

* * *

- Retain essential documents in the safe and place a copy in the applicant's loan file.

  Note: See 25-AS, subparagraph 82 E for a list of essential documents.

- Place UCC1's * * * and any other lien documents in FSA-2008.

- Place all other loan documents in the applicant's loan file.

See the State supplement for specific guidance. See 25-AS for instructions on assembling and maintaining the loan file.

344–360 (Reserved)

Part 12 Approving Closing Agents and Title Insurance Companies

361 Approving Closing Agents

A FSA Approval of the Closing Agent

[7 CFR 764.402(d)(3)] The Agency must approve agents who will close FLP loans. Closing agents must meet all of the following requirements to the Agency's satisfaction:

--**The approval official has the authority to approve the closing agent, which may be either an attorney or title insurance agent selected by the applicant. If a loan must be approved at a higher approval authority level, the initiating office may still approve the closing agent.**--

See subparagraphs B through I for requirements for a closing agent.

B Licensing Requirements

A closing agent must:

[7 CFR 764.402(d)(3)(i)] Be licensed in the state where the loan will be closed;

An attorney must be duly licensed to practice law in the State in which the real estate security is located.

A title insurance company must be licensed to do business in the State, if a license is required.

C Not Debarred or Suspended

A closing agent must:

[7 CFR 764.402(d)(3)(ii)] Not be debarred or suspended from participating in any Federal programs;

--**No attorney, title insurance company, or title company closing agent, currently debarred or**-- suspended from participating in Federal programs may participate in any aspect of FSA loan closing and title clearance process. The "List of Parties Excluded from Federal Procurement and Nonprocurement Programs" is a monthly listing of all suspended and debarred individuals and is available on the Internet at **http://epls.arnet.gov**.

361 Approving Closing Agents (Continued)

D Liability Insurance

A closing agent must:

[7 CFR 764.402(d)(3)(iii)] Maintain liability insurance;

All closing agents must carry liability insurance that protects FSA against damage, loss, fraud, theft, or injury as a result of negligence by the closing agent, approved attorney, or title company when title clearance is done by means of a policy of title insurance.

If the closing agent is a title company, FSA will require a closing protection letter issued by an approved title insurance company to cover the closing agent. A closing protection letter is often an American Land Title Association form closing protection letter. Depending upon the area, closing protection letters may also be known as "Insured Closing Letters," "Indemnification Agreements," "Insured Closing Service Agreements," or "Statements of Settlement Service Responsibilities." This protection letter must include a certification that the company has the ability to cover losses. A title company can submit a list of attorneys in their firm to FSA and these attorneys will be approved if covered by the company's closing protection letters.

An attorney who will be providing title clearance where the certificate of title will be an attorney's opinion must certify to professional liability insurance coverage on FSA-2341.
--**The minimum amount of coverage required for the attorney is $300,000 per occurrence.**--
The insurance coverage may include a deductible, but this may not be more than $5,000.

E Fidelity Bond

The closing agent must:

[7 CFR 764.402(d)(3)(iv)] Have a fidelity bond that covers all employees with access to loan funds;

FSA-2341 and FSA-2342 provide certification that the closing agent meets the fidelity bond requirement.

Note: When covered by a protection letter, closing agents will not be required to obtain liability insurance or a fidelity bond.

361 Approving Closing Agents (Continued)

G Conflict of Interest

The closing agent must:

[7 CFR 764.402(d)(3)(vi)] Not represent both the buyer and seller in the transaction;

[7 CFR 764.402(d)(3)(vii)] Not be related as a family member or business associate with the applicant; and

A closing agent who has, or whose spouse, child, or business associate, a financial interest in the real estate that will secure the FSA debt shall not be involved in the title clearance or loan closing process.

Financial interest includes having an equity, creditor, or debtor interest in any corporation, trust, or partnership with a financial interest in the real estate that will secure the FSA debt.

H Prompt Services

The closing agent must:

[7 CFR 764.402(d)(3)(viii)] Act promptly to provide required services.

A closing agent's delay in providing services without justification may be a basis for not approving the closing agent in future cases.

I Declining the Closing Agent

If the authorized agency official cannot approve the closing agent, the authorized agency official, within 5 workdays from receiving FSA-2341 or FSA-2342, will send the agent a letter explaining the reasons for disapproval. FSA does not provide appeal rights to the agent.

*** * *** The authorized agency official will send a copy of the letter notifying the agent of the agent's disapproval to the applicant, along with a letter asking the applicant to identify a different closing agent. The applicant may identify the same agent if that agent can meet the requirements that they had previously not met.

362 Approval of Title Insurance Companies

A Approval Conditions

--The approval official will approve any title insurance company that issues policies of title-- insurance in the State where the security property is located if all of the following conditions are met.

- The form of the lender's policies of title insurance, including required endorsements to be used in closing FSA loans, are acceptable to FSA and contain only standard types of *--exceptions and exclusions approved in advance by FSA with the advice of the Regional OGC.--*

- The title insurance company is licensed to do business in the State, if a license is required.

- The title insurance company is regulated by a State insurance commission or similar regulator or, if not, the title insurance company will submit copies of audited financial statements or other approved financial statements satisfactory to FSA that show that the company has the financial ability to cover losses both:

  - arising out of its activities as a title insurance company
  - under any closing protection letters issued by the title insurance company
  - *--caused by fraud, dishonesty, or failure to comply with FSA closing instructions.

  Note: If the title insurance company is not regulated by the State, the approval process will be repeated at least every 5 years, or more often if adverse information becomes available.--*

- The company has not delayed in providing services without justification in prior loan closings with FSA.

If the title insurance company is not approved, it will be notified in writing of the specific reasons.

363-400 (Reserved)

Part 13 Borrower Training

Section 1 Borrower Training Requirements

401 Overview

A Purpose and Scope

FSA requires direct loan applicants to complete training in production, financial management, or both unless FSA waives the training requirement.

[7 CFR 764.451] The purpose of production and financial management training is to help an applicant develop and improve skills necessary to:

[7 CFR 764.451(a)] Successfully operate a farm;

[7 CFR 764.451(b)] Build equity in the operation; and

[7 CFR 764.451(c)] Become financially successful and prepared to graduate from Agency financing to commercial sources of credit.

402 Assessing an Individual's Need for Training

A Individuals Required to Complete Training

[7 CFR 764.452(a)] The applicant must agree to complete production and financial management training, unless the Agency provides a waiver in accordance with § 764.453 (subparagraph 402 B)**, or the applicant has previously satisfied the training requirements. In the case of an entity:**

(1) Any individual member holding a majority interest in the entity or who is operating the farm must complete training on behalf of the entity, except as provided in paragraph (a)(2) of this section;

(2) If one entity member is solely responsible for production or financial management, then only that member will be required to complete training.

[7 CFR 764.452(d)] An applicant who applies for a loan to finance a new enterprise, such as a new crop or a new type of livestock, must agree to complete production training with regard to that enterprise, even if production training requirements were waived or satisfied under a previous loan request, unless the Agency provides a waiver in accordance with § 764.453 (subparagraph 402 B)**.**

402 Assessing an Individual's Need for Training (Continued)

B Determining Whether to Waive Training Requirements

[7 CFR 764.453(a)] The applicant must request the waiver in writing.

--**Use FSA-2370 to request a waiver.**--

[7 CFR 764.453(b)] The Agency will grant a waiver for training in production, financial management, or both, under the following conditions:

(1) The applicant submits evidence of successful completion of a course similar to a course approved under section § 764.457 (paragraph 422) **and the Agency determines that additional training is not needed; or**

(2) The applicant submits evidence, which demonstrates to the Agency's satisfaction the applicant's experience and training necessary for a successful and efficient operation.

After the applicant has been determined eligible, and before loan closing, the authorized agency official will determine whether to waive training.

If an applicant is applying for additional FSA assistance or benefits, such as a subsequent loan, the authorized agency official must reassess whether to waive a borrower's training requirements even if FSA waived training for the applicant's initial loan.

The authorized agency official will:

- determine whether to waive financial management training based on the applicant's:

  - ***--**FSA-2002 and FSA-2302**--***
  - practical experience
  - demonstrated ability to keep records
  - education and training

- consider the complexity of the applicant's operation

- ***--**determine whether to waive the production training requirement based on a review of FSA-2003 and FSA-2302.**--***

If the applicant does not have a 3-year production history, the authorized agency official will consider any similar practical experience the applicant might have.

402 Assessing an Individual's Need for Training (Continued)

B Determining Whether to Waive Training Requirements (Continued)

[7 CFR 764.453(c)] If the production and financial functions of the operation are shared among individual entity members, the Agency will consider the collective knowledge and skills of the individuals when determining whether to waive training requirements.

[7 CFR 764.452(f)] The Agency cannot reject a request for a direct loan based solely on an applicant's need for training.

However, as described in paragraph 69, an applicant must demonstrate managerial ability through *** * *** education, training, or experience to be eligible to receive a direct loan.

C Notifying a Applicant of the Training Decision

[7 CFR 764.452(g)] The Agency will provide written notification of required training or waiver of training.

***--**The authorized agency official will provide the following information on FSA-2313 as part of additional requirements and comments.

Note: FSA-2313 shall be either sent certified mail or hand delivered to the applicant. If hand delivered, FSA must obtain a signed statement from the applicant acknowledging receiving FSA-2313 on the specific date.

If the authorized agency official decides to require training, this notification will include an attachment including the following:**--***

- the names of approved vendors in the applicant's area
- the specific courses required.

[7 CFR 764.452(e)] Even if a waiver is granted, the borrower must complete borrower training as a condition for future loans if and when Agency supervision provided in 7 CFR 761 subpart C (1-FLP, Part 8) **reflects that such training is needed.**

D Production Training Requirements

[7 CFR 764.452(b)] When the Agency determines that production training is required, the applicant must agree to complete course work covering production management in each crop or livestock enterprise the Agency determines necessary.

FSA will require an applicant to complete production management training only in crop or livestock enterprises that are relevant to the applicant's operation.

--**Items to be included in the training are those production management requirements found in subparagraph 422 C.**--

402 Assessing an Individual's Need for Training (Continued)

E Financial Management Training Requirements

[7 CFR 764.452(c)] When the Agency determines that financial management training is required, the applicant must agree to complete course work covering all aspects of farm accounting and integrating accounting elements into a financial management system.

Items to be included in the training are those financial management requirements found in *****--subparagraph 422 C.--*****

403 Actions That Borrower Must Take When Training is Required

A Deadline for Completion of Training

[7 CFR 764.454(a)(1)] If the Agency requires an applicant to complete training, at loan closing the applicant must agree in writing (FSA-2371) **to complete all required training within two years.**

--Note:** Applicants required to take training as a result of a 2-year OL term limit waiver**-- must complete the required training within 1 year according to subparagraph 172 G.

[7 CFR 764.454(a)(2)] The Agency will grant a one-year extension to complete training if the applicant is unable to complete training within the 2-year period due to circumstances beyond the applicant's control.

[7 CFR 764.454(a)(3)] The Agency will grant an extension longer than one year for extraordinary circumstances as determined by the Agency.

FLC or designee must approve extensions in excess of 1 year in writing.

The authorized agency official may waive an applicant's previously required training requirements if the applicant has received multiple extensions for unusual circumstances. To waive the requirements, the authorized agency official must determine, based on the criteria outlined in subparagraph 402 B, that the applicant has acquired sufficient financial management or production experience since the training was 1st required.

B Arranging Training With a Vendor

[7 CFR 764.454(b)] The borrower must select and contact an Agency approved vendor and make all arrangements to begin training.

SED's shall compile a list of all approved vendors.

C Payment of Training Fees

[7 CFR 764.454(c)(1)] The applicant is responsible for the cost of training and must include training fees in the farm operating plan as a farm operating expense.

(2) The payment of training fees is an authorized use of OL funds.

(3) The Agency is not a party to fee or other agreements between the applicant and the vendor.

404 Training Progress

A Monitoring Training Progress

During farm visits and analysis, FSA will monitor applicant progress in understanding and applying the knowledge to be gained from the training. FSA will contact the applicant to follow up on unsatisfactory training progress reports from the training vendor.

The applicant must include the training requirements in FBP as planned improvements.

B Requests for Additional FSA Assistance

An applicant that has been required to meet training requirements is eligible for additional FLP assistance or benefits, such as a subsequent loan, according to the following.

IF the applicant...	And...	THEN, to be eligible for assistance, the applicant:
requests assistance within the 2-year period allowed to complete the borrower training requirement		must be enrolled in and attending an approved training course or be able to complete an approved training course within the 2-year period.
agrees to complete training and has enrolled in approved classes or makes an honest effort to enroll	the applicant was unable to actually attend training because of cancellation, postponement, or other unforeseen circumstances	has met the "enrolled in and attending" rule. However, the applicant must still complete the required training as soon as possible.
is unable to complete the required training courses within the 2-year period because of circumstances beyond the applicant's control		must receive an approved extension of the time period to complete training.
requests assistance after the 2-year period has expired	FSA has not granted the applicant an extension	must have successfully completed an approved training course.

C Failure to Complete Training in Specific Time Period

[7 CFR 764.454(a)(4)] An applicant who does not complete the required training within the specified time-period will be ineligible for additional direct FLP loans until the training is completed.

405-420 (Reserved)

Section 2 Vendor Requirements

421 Vendor Applications

A Identifying Potential Training Vendors

[7 CFR 764.455] The Agency will contract for training services with State or private providers of production and financial management training services.

These services may include correspondence or web courses.

FSA will contract vendors to provide services to a specific State. A vendor may be approved in more than 1 state on a State-by-State basis.

B Submitting Vendor's Applications

[7 CFR 764.456(a)] A vendor for borrower training services must apply to the Agency for approval.

The vendor must submit their application to SED.

421 Vendor Applications (Continued)

C Vendor Application Requirements

[7 CFR 764.456(b)] The vendor application must include:

(1) A sample of the course materials and a description of the vendor's training methods;

(2) Specific training objectives for each section of the course;

(3) A detailed course agenda specifying the topics to be covered, the time devoted to each topic, and the number of sessions to be attended;

(4) A list of instructors and their qualifications;

(5) The criteria by which additional instructors will be selected;

(6) The proposed locations where training will take place;

(7) The cost per participant, including cost for additional members of a farm operation;

(8) The minimum and maximum class size;

(9) The vendor's experience in developing and administering training to farmers;

(10) The monitoring and quality control methods the vendor will use;

(11) The policy on allowing Agency employees to attend the course for monitoring purposes;

(12) A plan of how the needs of applicants with physical, mental or learning disabilities will be met; and

(13) A plan of how the needs of applicants who do not speak English as their primary language will be met.

422 Reviewing a Vendor's Application

A Required Experience

[7 CFR 764.457(a)] The vendor must demonstrate a minimum of 3 years of experience in conducting training courses or teaching the subject matter.

See subparagraphs B and C for requirements for reviewing a vendor application.

B Required Training Objectives

[7 CFR 764.457(b)] The courses provided by a vendor must enable the applicant to accomplish one or more of the following objectives:

(1) Describe the specific goals of the farming operation, any changes required to attain the goals, and outline how these changes will occur using present and projected cash flow budgets;

(2) Maintain and use a financial management information system to make financial decisions;

The information system must include:

- financial and production records
- household budget
- statement of financial condition
- accrual adjusted income statement.

[7 CFR 764.457(b)(3)] Understand and use an income statement;

The applicant must:

- understand the structure and major components of an income statement and its role in analyzing the performance of a business

- be familiar with the cash and accrual methods of determining net farm income

- understand the relationship between a balance sheet and an income statement.

422 Reviewing a Vendor's Application (Continued)

B Required Training Objectives (Continued)

[7 CFR 764.457(b)(4)] Understand and use a balance sheet;

The applicant must:

- understand the major components of a balance sheet and its role in analyzing a business
- be familiar with the categories of assets and liabilities and be able to provide examples of entries under each
- be familiar with the cost and market methods of valuing assets and liabilities and the advantages of each method.

[7 CFR 764.457(b)(5)] Understand and use a cash flow budget; and

The applicant must be able to:

- explain and justify estimates for production and expenses
- analyze the cash flow to identify potential problems.

[7 CFR 764.457(b)(6)] Use production records and other production information to identify problems, evaluate alternatives, and correct current production practices to improve efficiency and profitability.

422 Reviewing a Vendor's Application (Continued)

C Required Curriculum

[7 CFR 764.457(c)] At least one of the following subjects must be covered:

(1) Business planning courses, covering general goal setting, risk management, and planning.

Goal setting includes identifying:

- personal and family goals
- business goals
- short- and long-term goals.

Risk management concepts include:

- sources of risk
- magnitude and frequency of risk
- risk tolerance
- risk-taking ability of the business
- strategies for managing risk.

The course must guide the applicant through the formulation of a long-term business plan for the farm and presentation of this plan to a lender.

[7 CFR 764.457(c)(2)] Financial management courses, covering all aspects of farm accounting and focusing on integrating accounting elements into a financial management system.

The course must cover:

- instruction in financial recordkeeping
- preparing a household budget
- developing and analyzing:
    - accrual adjusted income statements
    - balance sheets
    - cash flow budgets.

422 Reviewing a Vendor's Application (Continued)

C Required Curriculum (Continued)

[7 CFR 764.457(c)(3)] Crop and livestock production courses focusing on improving the profitability of the farm.

Crop and production courses must address:

- keeping and analyzing production records
- identifying problems in current production practices
- identifying sources of production information and assistance
- using production information to analyze alternatives and identify the most profitable solution.

D Instructor Requirements

[7 CFR 764.457(d)] All instructors must have:

(1) Sufficient knowledge of the material and experience in adult education;

(2) A bachelor's degree or comparable experience in the subject area to be taught; and

(3) A minimum of 3 years experience in conducting training courses or teaching.

423 Vendor Approval

A Approving a Vendor

After reviewing a vendor application, SED may approve the vendor. However, SED must submit a recommended vendor application to DAFLP for concurrence before final approval when the vendor is not an accredited college, including community colleges, or university.

B Cases of Delayed Instructor Selection

If the vendor has not selected all of the instructors at the time FSA intends to approve the vendor, the vendor may be approved with the condition that the instructors must meet the criteria of subparagraph 422 D.

C Agreement to Conduct Training

[7 CFR 764.458(a)(1)] Upon approval, the vendor must sign an agreement to conduct training for the Agency's borrowers.

(2) The agreement to conduct training is valid for 3 years.

(3) Any changes in curriculum, instructor, or cost require prior approval by the Agency.

(4) The vendor may revoke the agreement by giving the Agency a written 30-day notice.

(5) The Agency may revoke the agreement if the vendor does not comply with the responsibilities listed in the agreement by giving the vendor a written 30-day notice.

The vendor and SED must sign FSA-2375.

423 Vendor Approval (Continued)

D Renewing an Agreement to Conduct Training

[7 CFR 764.458(b)(1)] To renew the agreement to conduct training, the vendor must submit in writing to the Agency:

(i) A request to renew the agreement,

(ii) Any changes in curricula, instructor, or cost; and

(iii) Documentation that the vendor is providing effective training.

Documentation may include:

- course evaluations
- test scores
- statistics on the improvement of applicants who have completed the course.

[7 CFR 764.458(b)(2)] The Agency will review renewal requests in accordance with § 764.457 (paragraph 422)**.**

Vendors must submit renewal requests to SED of each State in which the vendor is approved.

E Updating Vendor Lists

SED shall update the approved vendor list annually. The list shall include:

- approved State vendors
- contact person for each vendor
- terms of the vendor agreements
- subject matter in which vendor is approved to conduct training.

State and County Offices must make this list available to applicants, such as by posting it in the office or including a list of recently added vendors in the newsletter.

424 Monitoring and Evaluation

A Vendor Monitoring of Borrower Progress

[7 CFR 764.459](a) The vendor must provide the Agency with a periodic progress report for each borrower enrolled in training in accordance with the agreement to complete training. The reports will indicate whether the borrower is attending sessions, completing the training program, and demonstrating an understanding of the course material.

(b) Upon borrower completion of the training, the vendor must provide the Agency with an evaluation of the borrower's knowledge of the course material and assign a score. The following table lists the possible scores, the criteria used to assign each score, and Agency consideration of each score:

Score	Criteria used to determine score	Agency consideration
1	If the applicant: • Attended sessions as agreed, • Satisfactorily completed all assignments, and • Demonstrated an understanding of the course material.	Training requirement associated with course is complete.
2	If the applicant: • Attended sessions as agreed, and • Attempted to complete all assignments, but • Does not demonstrate an understanding of the course material.	Training requirement associated with course is complete. Additional Agency supervision may be necessary.
3	If the applicant did not: • Attend sessions as agreed, or • Attempt to complete assignments, or • Otherwise make a good faith effort to complete the training.	Training requirement associated with course is not complete. The borrower is ineligible for future direct loans until training is completed.

B Borrower Evaluation of a Vendor

[7 CFR 764.454(d)] Upon completion of the required training, the applicant will complete an evaluation of the course and submit it to the vendor. The vendor will forward the completed evaluation forms to the Agency.

The instructor will provide each applicant with FSA-2376 upon completing a course. A vendor must forward the completed FSA-2376 to SED for review.

424 Monitoring and Evaluation (Continued)

C FSA Monitoring of a Vendor

To ensure that the vendor is correctly and effectively implementing the training, SED or designee will monitor the vendor. At a minimum, FSA's monitoring will include the following.

- Attending selected training sessions for each vendor and verify that the agreed-upon subject matter is being covered in sufficient detail and assess the effectiveness of the training.

- Reviewing each FSA-2376 that is completed by a trained applicant, summarize FSA-2376, and place the summary in the operational file of the vendor.

- Monitoring applicants' improvement upon completing a course. SED or the National Office will analyze statistics about applicant performance, such as the graduation and delinquency of applicants who have completed the required training course.

Each State Office will maintain an operational file for each approved vendor in that State. This file must include:

- vendor application
- National Office concurrence, if required
- signed FSA-2375
- documentation of FSA's monitoring of the vendor
- any further documentation to determine the success of the vendor's program.

Reports, Forms, Abbreviations, and Redelegations of Authority

Reports

Reports Control Number	Title	Reporting Period	Submission Date	Negative Reports	Reference
RPT-1-00-FLP 09-2	SDA Loan Review Summary	Annually	By October 31 each year	Required	265

Forms

This table lists all forms referenced in this handbook.

Number	Title	Display Reference	Reference
AD-1026	Appendix to Form for AD-1026 Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification		42
CCC-10	Representations for Commodity Credit Corporation or Farm Service Agency Loans and Authorization to File a Financing Statement and Related Documents		91, 321
CCC-36	Assignment of Payment		323
CCC-37	Joint Payment Authorization		323
CCC-452	NAP Production and Yield Report		234
CCC-452 Manual	NAP Actual Production History and Approved Yield Record		234
CCC-502A	Farm Operating Plan for Payment Eligibility Review for an Individual		42
CCC-502B	Farm Operating Plan for Payment Eligibility Review for a Joint Venture or General Partnership		42
CCC-502C	Farm Operating Plan for Payment Eligibility Review for Corporations, Limited Partnerships or Other Similar Entities		42
CCC-502D	Farm Operating Plan for Payment Eligibility Review for an Estate or Trust		42
CCC-502EZ	Farm Operating Plan for Payment Eligibility Review for an Individual		42
CCC-902E	Farm Operating Plan for an Entity 2009 and Subsequent Program Year		42
CCC-902I	Farm Operating Plan for an Individual 2009 and Subsequent Program Years		42
DS-1350	Certification of Report of Birth		Ex. 9
FCI-20	Application for Assignment of Indemnity		112
FS-240	Consular Report of Birth		Ex. 9
FS-545	Certificate of Birth		Ex. 9

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

Forms (Continued)

Number	Title	Display Reference	Reference
FSA-570	Waiver of Eligibility for Emergency Assistance		113
FSA-2001	Request for Direct Loan Assistance		41, 42, 45, 62, 66, 281, 321
FSA-2002	Three-Year Financial History		42, 402
FSA-2003	Three-Year Production History		42, 402
FSA-2004	Authorization to Release Information		42
FSA-2005	Creditor List		42
FSA-2006	Property Owned and Leased		42
FSA-2007	Statement Required by the Privacy Act for Non-Applicants		42
FSA-2008	Recorded Security Instruments (Chattel)		343
FSA-2014	Verification of Income		42
FSA-2015	Verification of Debts and Assets		42, 232
FSA-2026	Promissory Note		Text
FSA-2027	Supplemental Payment Agreement		135, 174
FSA-2028	Security Agreement		321, 324
FSA-2029	Deed of Trust/Deed of Mortgage		92, 303, Ex. 4
FSA-2037	Farm Business Plan Worksheet (Balance Sheet)		42, 211
FSA-2038	Farm Business Plan Worksheet (Projected/Actual Income and Expense)		42, 211
FSA-2040	Agreement and Record of the Disposition of FSA Security/Release of Proceeds		324
FSA-2041	Assignment of Proceeds from the Sale of Products		93, 323
FSA-2042	Consent to Payment of Proceeds from the Sale of Products		93, 323
FSA-2043	Assignment of Proceeds from the Sale of Dairy Products and Release of Security Interest		93, 323
FSA-2044	Assignment of Income From Real Estate Security		92
FSA-2072	Cancellation of U.S. Treasury Check and/or Obligation		264
FSA-2301	Request for Youth Loan		41, 42, 44, 45, 62, 211
FSA-2302	Description of Farm Training and Experience		42, 402
FSA-2303	Notice of Farm Loan Programs Application Received		45
FSA-2304	Notice of Incomplete Application		41, 42, 45
FSA-2305	Second Notice of Incomplete Application		45
FSA-2306	Notice of Application Withdrawal/Pending Withdrawal		45
FSA-2307	Notice of Complete Application		45
FSA-2308	Notice of Eligibility for FSA Assistance		73

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

Forms (Continued)

Number	Title	Display Reference	Reference
FSA-2309	Certification of Disaster Losses		42, 234
FSA-2310	Request for Lender's Verification of Loan Application		42, 232
FSA-2311	Calculation of Actual Losses Worksheet		234
FSA-2313	Notification of Loan Approval and Borrower Responsibilities		91, 262, 402
FSA-2317	Consent and Subordination Agreement		92
FSA-2318	Agreement for the Disposition of Jointly Owned Property		91, 321, 323
FSA-2319	Agreement with Prior Lien Holder		92
FSA-2320	Property Insurance Mortgage Clause (Without Contribution)		114, Ex. 4
FSA-2340	Selection of Attorney/Title Agent		282
FSA-2341	Certification of Attorney		282, 302, 361
FSA-2342	Certification of Title Agent		282, 302, 361
FSA-2343	Transmittal of Title Information		302
FSA-2344	Preliminary Title Opinion		302
FSA-2350	Loan Closing Instructions		303
FSA-2351	Certification of Improvement of Property		303
FSA-2352	Final Title Opinion		303, 343
FSA-2360	Report of Lien Search		322
FSA-2361	Lender Subordination Agreement		92
FSA-2370	Request for Waiver of Borrower Training Requirements		402
FSA-2371	Agreement to Complete Training		403
FSA-2375	Agreement to Conduct Production or Financial Management Training		423, 424, 425
FSA-2376	Borrower Training Course Evaluation		424
G-845	Document Verification Request		Ex. 8
HUD 1	Uniform Settlement Statement		303
I-94	Arrival/Departure Record		Ex. 8
I-179	Certificate of Birth Abroad		Ex. 9
I-197	United States Citizen Identification Card		Ex. 9
I-551	Alien Registration Receipt Card		Ex. 8
I-571	Refugee Travel Document		Ex. 8
I-688B	Employment Authorization Card		Ex. 8
I-766	Employment Authorization Document		Ex. 8

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

Forms (Continued)

Number	Title	Display Reference	Reference
N-550	Certificate of Naturalization		Ex. 9
N-560	Certificate of U.S. Citizenship		Ex. 9
N-561	Certificate of U.S. Citizenship		Ex. 9
N-570	Certificate of Naturalization		Ex. 9
RD 1940-22	Environmental Checklist for Categorical Exclusions		45
Schedule F	Profit or Loss from Farming		236
UCC1	National Financing Statement		92, 93, 283, 303, 324, 343

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

Abbreviations Not Listed in 1-CM

The following abbreviations are not listed in 1-CM.

Approved Abbreviation	Term	Reference
ADPS	Automated Discrepancy Processing System	67
APH	actual production history	234
BCIS	Bureau of Citizenship and Immigration Services	Ex. 8, 9
CAIVRS	Credit Alert Interactive Voice Response System	42, 45, 67
CONACT	Consolidated Farm and Rural Development Act	1
CAT	Catastrophic Risk Protection Endorsement	113, 234
DLS	Direct Loan System	Text
DSA	disaster set-aside	231
ECOA	Equal Credit Opportunity Act	41, 45, 73, 266
EE	economic emergency loan	Ex. 2
EFT	electronic funds transfer	303
EM	emergency loan	Text, Ex. 2, 4
EPLS	Excluded Parties List System	68
FBP	Farm Business Plan	Text
FCIA	Federal Crop Insurance Act	68
FFA	Future Farmers of America	69, 212
FLC	Farm Loan Chief	234, 261, 265, 403
FO	farm ownership loan	Text, Ex. 2
FP	Farm Program	41, 93, 234
FSC, FLOO	Financial Services Center, Farm Loan Operations Office	264
GLS	Guaranteed Loan System	65
INA	Immigration and Nationality Act	Ex. 8
ITLAP	Indian Tribal Land Acquisition Program	2
LLC	Limited Liability Company	41
Lo-Doc	low documentation operating loan	43, 191
MOU	memorandum of understanding	137
OL	operating loan	Text, Ex. 2
PRWORA	Personal Responsibility and Work Opportunity Reconciliation Act of 1996	Ex. 2
RHF	rural housing loan for farm service buildings	Ex. 2
RL	recreation loan	Ex. 2
SALP	Special Apple Loan Program	2

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

Abbreviations Not Listed in 1-CM (Continued)

Approved Abbreviation	Term	Reference
SCORE	Service Corp of Retired Executives	41
SDMS	State Directive Management System	3, 265
SSA	Social Security Administration	Ex. 9
ST	softwood timber loan	Ex. 2
SW	soil and water loan	Ex. 2
UCC	Uniform Commercial Code	93, 343

Redelegations of Authority

None

Definition of Terms Used in This Handbook (7 CFR 761.2(b))

Act

Act **is the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.).**

Additional Security

Additional security **is property that provides security in excess of the amount of security value equal to the loan amount.**

Adequate Security

Adequate security **is property which is required to provide a security value at least equal to the loan amount.**

Agency

Agency **is the FSA.**

Agreement for the Use of Proceeds

Agreement for the use of proceeds **is an agreement between the borrower and the Agency that reflects how, when, and to whom the borrower will sell, exchange, or consume chattel security and the planned use of any proceeds during a specific production cycle.**

Agricultural Commodity

Agricultural commodity **is livestock, livestock product, 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 **are those costs for replacement or repair that are supported by acceptable documentation, including but not limited to written estimates, invoices, and bills.**

Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

Applicant

Applicant **is the individual or entity applying for a direct loan or direct loan servicing under either the direct or guaranteed loan program.**

Aquaculture

Aquaculture **is the husbandry of any aquatic organisms, including fish, mollusks, crustaceans or other invertebrates, amphibians, reptiles, or aquatic plants, raised in a controlled or selected environment of 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 **is 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.**

Basic Security

Basic security **is all farm machinery, equipment, vehicles, foundation and breeding livestock herds and flocks, including replacements, and real estate that serves as security for a loan made or guaranteed by the Agency.**

Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

Beginning Farmer

Beginning farmer **is an individual or entity who:**
(1) Meets the loan eligibility requirements for a direct or guaranteed OL or FO loan, as applicable;
(2) Has not operated a farm for more than 10 years. This requirement applies to all members of an entity;
(3) Will materially and substantially participate in the operation of the farm:
(i) In the case of a loan made to an individual, individually or with the family members, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm, consistent with the practices in the county or State where the farm is located.
(ii) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm. Material and substantial participation requires that the member provide some amount of the management, or labor and management necessary for day-to-day activities, such that if the individual did not provide these inputs, operation of the farm would be seriously impaired;
(4) Agrees to participate in any loan assessment and borrower training required by Agency regulations;
(5) Except for an OL applicant, does not own real farm property or who, directly or through interests in family farm entities owns real farm property, the aggregate acreage of *--which does not exceed 30 percent of the median acreage of the farms in the county where--* the property is located. If the farm is located in more than one county, the median farm acreage of the county where the applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm or if the applicant is an entity, the median farm acreage of the county where the major portion of the farm is located will be used. The median county farm acreage will be determined from the most recent Census of Agriculture;
(6) Demonstrates that the available resources of the applicant and spouse (if any) are not sufficient to enable the applicant to enter or continue farming on a viable scale; and
(7) In the case of an entity:
(i) All the members are related by blood or marriage; and
(ii) All the members are beginning farmers.

*** * ***

Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

Cash Flow Budget

Cash flow budget **is a projection listing of all anticipated cash inflows (including all farm income, nonfarm income and all loan advances) and all cash outflows (including all farm and nonfarm debt service and other expenses) to be incurred during the period of the budget. Advances and principal repayments of lines of credit may be excluded from a cash flow budget. Cash flow budgets for guaranteed loans under $125,000 do not require income and expenses itemized by categories. A cash flow budget may be completed either for a 12-month period, a typical production cycle, or the life of the loan, as appropriate. It may also be prepared with a breakdown of cash inflows and outflows for each month of the review period and include the expected outstanding operating credit balance for the end of each month. The latter type is referred to as a "monthly cash flow budget."**

Chattel or Real Estate Essential to the Farming Operation

Chattel or real estate essential to the farming operation **is 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.**

Chattel Security

Chattel security **is property that may consist of, but is not limited to: crops; livestock; aquacultural species; farm business and recreational equipment; inventory; accounts; contract rights; general intangibles; and supplies that are covered by financing statements and security agreements, chattel mortgages, and other security instruments.**

Closing Agent

Closing agent **is the attorney or title insurance company selected by the applicant and approved by the Agency to provide closing services for the proposed loan or servicing action. Unless a title insurance company provides loan closing services, the term "title company" does not include "title insurance company."**

Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

Construction

Construction **is work such as erecting, repairing, remodeling, relocating, adding to, or salvaging any building or structure, and the installing, repairing, or adding to heating and electrical systems, water systems, sewage disposal systems, walks, steps, and driveways.**

Controlled

Controlled **is when a director or an employee has more than a 50 percent ownership in an entity or, the director or employee, together with relatives of the director or employee, have more than a 50 percent ownership.**

Controlled Substance

Controlled substance **is the term as defined in 21 U.S.C. 812.**

Cooperative

Cooperative **is an entity that has farming as its purpose, whose members have agreed to share the profits of the farming enterprise, and is recognized as a farm cooperative by the laws of the state in which the entity will operate a farm.**

Corporation

Corporation **is a private domestic corporation created and organized under the laws of the State in which it will operate a farm.**

Cosigner

Cosigner **is a party, other than the applicant, who joins in the execution of a promissory note to assure its repayment. The cosigner becomes jointly and severally liable to comply with the repayment terms of the note, but is not authorized to severally receive loan servicing available under 7 CFR parts 765 and 766. In the case of an entity applicant, the cosigner cannot be a member of the entity.**

County

County **is a local administrative subdivision of a State or similar political subdivision of the United States.**

County Average Yield

County average yield **is the historical average yield for an agricultural commodity in a particular political subdivision, as determined or published by a government entity or other recognized source.**

Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

Debt Forgiveness

Debt forgiveness **is a reduction or termination of a debt under the Act in a manner that results in a loss to the Agency, through:**
(1) Writing down or writing off a debt pursuant to 7 U.S.C. 2001;
(2) Compromising, adjusting, reducing, or charging off a debt or claim pursuant to 7 U.S.C. 1981; or
(3) Paying a loss pursuant to 7 U.S.C. 2005 on a FLP loan guaranteed by the Agency.
Debt forgiveness does not include:
(1) Debt reduction through a conservation contract;
(2) Any write down provided as part of the resolution of a discrimination complaint against the Agency;
(3) Prior debt forgiveness that has been repaid in its entirety; and
(4) Consolidation, rescheduling, reamortization, or deferral of a loan.

Debt Service Margin

Debt service margin **is the difference between all of the borrower's expected expenditures in a planning period (including farm operating expenses, capital expenses, essential family living expenses, and debt payments) and the borrower's projected funds available to pay all expenses and payments.**

Direct Loan

Direct loan **is a loan funded and serviced by the Agency as the lender.**

Disaster

Disaster **is an event of unusual and adverse weather conditions or other natural phenomena or quarantine, that has substantially affected the production 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 as designated by the Agency.**

Disaster Area

Disaster area **is the county or counties declared or designated as a disaster area for EM loan assistance as a result of disaster related losses. This area includes counties contiguous to those counties declared or designated as disaster areas.**

Disaster Yield

Disaster yield **is the per-acre yield of an agricultural commodity for the farming operation during the production period when the disaster occurred.**

Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

***--Downpayment Loan**

Downpayment loan **is a type of FO loan made to beginning farmers and socially disadvantaged farmers to finance a portion of a real estate purchase under Part 764, Subpart E of this chapter** (Part 7, Section 2).**--***

Emergency Loan

Emergency loan **is a loan made to eligible applicants who have incurred substantial financial losses from a disaster.**

Entity

Entity **is a corporation, partnership, joint operation, cooperative, limited liability company or trust.**

Essential Family Living and Farm Operating Expenses

Essential family living and farm operating expenses:
(1) Are those that are basic, crucial or indispensable.
(2) Are determined by the Agency based on the following considerations:
(i) The specific borrower's operation;
(ii) What is typical for that type of operation in the area; and
(iii) What is an efficient method of production considering the borrower's resources.
(3) Include, but are not limited to essential: household operating expenses; food, including lunches; clothing and personal care; health and medical expenses, including medical insurance; house repair and sanitation; school and religious expenses; transportation; hired labor; machinery repair; farm building and fence repair; interest on loans and credit or purchase agreement; rent on equipment, land, and buildings; feed for animals; seed, fertilizer, pesticides, herbicides, spray materials and other necessary farm supplies; livestock expenses, including medical supplies, artificial insemination, and veterinarian bills; machinery hire; fuel and oil; taxes; water charges; personal, property and crop insurance; auto and truck expenses; and utility payments.

Established Farmer

Established farmer **is a farmer who operates the farm (in the case of an entity, its members 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 operation's projected cash flow for the next crop year or the next 12-month period, as mutually determined; and
(5) Is not:
(i) An entity whose members are themselves entities; or
(ii) 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 farming operation is not managed by an outside full-time manager or management service and Agency loans shall be based on the applicant's share of the agricultural production as set forth in the contract;
(iii) An operation which employs a full time farm manager.

False Information

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

Family Farm

A Family Farm **is a farm that:**
(1) Produces agricultural commodities for sale in sufficient quantities so that it is recognized as a farm rather than a rural residence;
(2) Has both physical labor and management provided as follows:
(i) The majority of day-to-day, operational decisions, and all strategic management decisions are made by:
(A) The borrower and persons who are either related to the borrower by blood or marriage, or are a relative, for an individual borrower; or
(B) The members responsible for operating the farm, in the case of an entity.
(ii) A substantial amount of labor to operate the farm is provided by:
(A) The borrower and persons who are either related to the borrower by blood or marriage, or are a relative, for an individual borrower; or
(B) The members responsible for operating the farm, in the case of an entity.
(3) May use full-time hired labor in amounts only to supplement family labor.
(4) May use reasonable amounts of temporary labor for seasonal peak workload periods or intermittently for labor intensive activities.

Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

Family Living Expenses

Family living expenses **are the costs of providing for the needs of family members and those for whom the borrower has a financial obligation, such as alimony, child support, and care expenses of an elderly parent.**

Family Members

Family members **are the immediate members of the family residing in the same household with the individual borrower.**

Farm

Farm **is a tract or tracts of land, improvements, and other appurtenances that are used or will be used in the production of crops, livestock, or aquaculture products for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term "farm" also includes the term "ranch." It may also include land and improvements and facilities used in a non-eligible enterprise or the residence which, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.**

Farm Income

Farm income **is the proceeds from the sale of agricultural commodities that are normally sold annually during the regular course of business, such as crops, feeder livestock, and other farm products.**

Farm Loan Programs

Farm Loan Programs **are Agency programs to make, guarantee, and service loans to family farmers authorized under the Act or Agency regulations.**

Farm Program Payments

Farm Program payments **are benefits received from FSA for any commodity, disaster, or cost share programs.**

Farm Ownership Loan

Farm ownership loan **is a loan made to eligible applicants to purchase, enlarge, or make capital improvements to family farms, or to promote soil and water conservation and protection. It also includes * * * Downpayment loans.**

Farmer

Farmer **is an individual, corporation, partnership, joint operation, cooperative, trust, or limited liability company that is the operator of a farm.**

Feasible Plan

Feasible plan **is when an applicant or borrower's cash flow budget or farm operation plan indicates that there is sufficient cash inflow to pay all cash outflow. If a loan approval or servicing action exceeds one production cycle and the planned cash flow budget or farm operation plan is atypical due to cash or inventory on hand, new enterprises, carryover debt, atypical planned purchases, important operating changes, or other reasons, a cash flow budget or farm operation plan must be prepared that reflects a typical cycle. If the request is for only one cycle, a feasible plan for only one cycle is required for approval.**

Situations may arise in which an applicant/borrower cannot develop a feasible plan because of open accounts or judgment debts that are considered fully due and payable.

In such cases, when the applicant/borrower indicates that a creditor is willing to extend terms which would enable a feasible plan to be developed, the approval official must obtain written documentation that an agreement has been reached.

Acceptable documentation will be any of the following:

- promissory note reflecting the rates and terms of the agreement
- dated and signed allonge or attachment to existing promissory note or judgment, which states the new rate and terms

  Note: Any revision of terms in a court-ordered judgment must be approved by the court with guidance from OGC.

- written agreement between the creditor and the applicant/borrower clearly stating the rates and terms and signed by the borrower and the creditor.

Financially Viable Operation

Financially viable operation**, for the purposes of considering a waiver of OL term limits under §764.252 of this chapter, is a farming operation that, with Agency assistance, is projected to improve its financial condition over a period of time to the point that the operator can obtain commercial credit without further Agency assistance. Such an operation must generate sufficient income to:**
(1) Meet annual operating expenses and debt payments as they become due;
(2) Meet essential family living expenses to the extent they are not met by dependable non-farm income;
(3) Provide for replacement of capital items; and
(4) Provide for long-term financial growth.

Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

Fixture

Fixture **is an item of personal property attached to real estate in such a way that it cannot be removed without defacing or dismantling the structure, or damaging the item itself.**

Floodplains

Floodplains **are lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year. The base floodplain shall be used to designate the 100-year floodplain (one percent chance floodplain). The critical floodplain is defined as the 500-year floodplain (0.2 percent chance floodplain).**

Good Faith

Good faith **is when an applicant or borrower provides current, complete, and truthful information when applying for assistance and in all past dealings with the Agency, and adheres to all written agreements with the Agency including, but not limited to, loan agreement, security instruments, farm operating plans, and agreements for use of proceeds. The Agency considers a borrower to act in good faith, however, if the borrower's inability to adhere to all agreements is due to circumstances beyond the borrower's control. In addition, the Agency will consider fraud, waste, or conversion actions, when substantiated by a legal opinion from OGC, when determining if an applicant or borrower has acted in good faith.**

Hazard Insurance

Hazard insurance **is insurance covering fire, windstorm, lightning, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, builders risk, public liability, property damage, flood or mudslide, workers' compensation, or any similar insurance that is available and needed to protect the security, or that is required by law.**

Household Contents

Household contents **are essential household items necessary to maintain viable living quarters. Household contents exclude all luxury items such as jewelry, furs, antiques, paintings, etc.**

Inaccurate Information

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

Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

Indian Reservation

Indian reservation **is all land located within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; trust or restricted land located within the boundaries of a former reservation of a Federally recognized Indian Tribe in the State of Oklahoma; or all Indian allotments the Indian titles to which have not been extinguished if such allotments are subject to the jurisdiction of a Federally recognized Indian Tribe.**

Joint Operation

Joint operation **is an operation run by individuals who have agreed to operate a farm or farms together as an entity, sharing equally or unequally land, labor, equipment, expenses, or income, or some combination of these items. The real and personal property is owned separately or jointly by the individuals.**

Leasehold

Leasehold **is a right to use farm property for a specific period of time under conditions provided for in a lease agreement.**

Lien

Lien **is a legally enforceable hold or claim on the property of another obtained as security for the repayment of indebtedness or an encumbrance on property to enforce payment of an obligation.**

Limited Resource Interest Rate

Limited resource interest rate **is an interest rate below the Agency's regular interest rate available to farmers who are unable to develop a feasible plan at regular rates and are requesting:**
(1) FO or OL loan assistance under part 764 of this title; or
(2) Primary loan servicing on an FO, OL, or SW loan under part 766 of this title.

Livestock

Livestock **is a member of the animal kingdom, or product thereof, as determined by the Agency.**

Low-Documentation Operating Loan

Low-Documentation Operating loan **is an OL loan made to eligible applicants based on reduced documentation.**

Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

Majority Interest

Majority interest **is more than a 50 percent interest in an entity held by an individual or group of individuals.**

Market Value

Market value **is the amount that an informed and willing buyer would pay an informed and willing, but not forced, seller in a completely voluntary sale.**

Mortgage

Mortgage **is a legal instrument giving the lender a security interest or lien on real or personal property of any kind. The term "mortgage" also includes the terms "deed of trust" and "security agreement."**

Natural Disaster

Natural disaster **is unusual and adverse weather conditions or natural phenomena that has substantially affected farmers by causing severe physical or production, or both, losses.**

Non-Eligible Enterprise

Non-eligible enterprise **is a business that meets the criteria in any one of the following categories:**
(1) Produces exotic animals, birds, or aquatic organisms or their products which may be agricultural in nature, but are not normally associated with agricultural production, e.g. there is no established or stable market for them or production is speculative in nature.
(2) Produces non-farm animals, birds, or aquatic organisms ordinarily used for pets, companionship, or pleasure and not typically associated with human consumption, fiber, or draft use.
(3) Markets non-farm goods or provides services which might be agriculturally related, but are not produced by the farming operation.
(4) Processes or markets farm products when the majority of the commodities processed or marketed are not produced by the farming operation.

Non-Essential Asset

Non-essential asset **are assets in which the borrower has an ownership interest, that:**
(1) Do not contribute to:
(i) Income to pay essential family living expenses, or
(ii) The farming operation; and
(2) Are not exempt from judgment creditors or in a bankruptcy action.

Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

Normal Income Security

Normal income security **is all security not considered basic security, including crops, livestock, poultry products, other property covered by Agency liens that is sold in conjunction with the operation of a farm or other business, and FSA Farm Program payments.**

Normal Production Yield

Normal production yield **as used in 7 CFR Part 764 for EM loans, is:**
(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 Noninsured Crop Disaster Assistance Program for the production year during which the disaster occurred;
(2) The applicant's own production records or the records of production on which FSA farm program payments are made contained in the applicant's farm program file for the previous three years, when the actual production history is not available;
(3) The county average production yield, when the production records outlined in (1) and (2) above are not available.

Operating Loan

Operating loan **is a loan made to an eligible applicant to assist with the financial costs of operating a farm. The term also includes a Youth loan.**

Operator

Operator **is the individual or entity that provides the labor, management, and capital to operate the farm. The operator can be either an owner-operator or tenant-operator. Under applicable State law, an entity may have to receive authorization from the State in which the farm is located to be the owner and/or operator of the farm.**

Owner-Operator

Owner-operator is the individual or entity that owns the land on which a farm is located and provides the labor, management, and capital to operate the farm. An entity may have to receive authorization from the State in which the farm is located to be the owner-operator of the farm.

Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

Participated in the Business Operations of a Farm

Participated in the business operations of a farm **requires that an applicant has:**
(1) Been the owner, manager or operator of a farming operation for the year's complete production cycle as evidenced by tax returns, FSA farm records or similar documentation;
(2) Been employed as a farm manager or farm management consultant for the year's complete production cycle; or
(3) Participated in the operation of a farm by virtue of being raised on a farm or having worked on a farm with significant responsibility for the day-to-day decisions for the year's complete production cycle, which may include selection of seed varieties, weed control programs, input suppliers, or livestock feeding programs or decisions to replace or repair equipment.

Partnership

Partnership **is any entity consisting of two or more individuals who have agreed to operate a farm as one business unit. The entity must be recognized as a partnership by the laws of the State in which the partnership will operate a farm. It also must be authorized to own both real and personal property and to incur debt in its own name.**

Physical Loss

Physical loss **is verifiable damage or destruction with respect to real estate or chattel, excluding annual growing crops.**

Presidentially-Designated Emergency

Presidentially-designated emergency **is a major disaster or emergency designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).**

Primary Loan Servicing

Primary loan servicing programs **include: (1) loan consolidation and rescheduling, or reamortization; (2) interest rate reduction, including use of the limited resource rate program; (3) deferral; (4) write-down of the principle or accumulated interest; or (5) any combination of the above.**

Production Cycle

Production cycle **is the time it takes to produce an agricultural commodity from the beginning of the production process until it is normally disposed of or sold.**

Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

Production Loss

Production loss **is verifiable damage or destruction with respect to annual growing crops.**

Program Loans

Program loans **include FO, OL, and EM. In addition, for loan servicing purposes the term includes existing loans for the following programs no longer funded: SW, RL, EE, ST, and RHF.**

Promissory Note

Promissory note **is a written agreement to pay a specified sum on demand or at a specified time to the party designated. The terms "promissory note" and "note" are interchangeable.**

Qualified Alien

Qualified Alien, as defined under PRWORA (8 U.S.C. 1641), is:

- An alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act.
- An alien who is granted asylum under section 208 of PRWORA.
- A refugee who is admitted to the United States under section 207 of PRWORA.
- An alien who is paroled into the United States under section 212(d)(5) of PROWRA for a period of at least 1 year.
- An alien whose deportation is being withheld under section 243(h) of PROWRA.
- An alien who is granted conditional entry according to section 203(a)(7) of PROWRA as in effect before April 1, 1980.
- An alien who is a Cuban/Haitian Entrant as defined by section 501(e) of the Refugee Education and Assistance Act of 1980.
- An alien who has been battered or subjected to extreme cruelty under section 431 of the Immigration and Nationality Act.

Note: See Exhibit 8 for documentary evidence necessary to satisfy this definition.

Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

***--Quarantine**

Quarantine **is a quarantine imposed by the Secretary under the Plant Protection Act or animal quarantine laws (as defined in Section 2509 of the Food Agriculture, Conservation, and Trade Act of 1990).--***

Reasonable Rates and Terms

Reasonable rates and terms **are those commercial rates and terms that other farmers are expected to meet when borrowing from a commercial lender or private source for a similar purpose and similar period of time. The "similar period of time" of available commercial loans will be measured against, but need not be the same as, the remaining or original term of the loan.**

Related by Blood or Marriage

Related by blood or marriage **is being connected to one another as husband, wife, parent, child, brother, sister, uncle, aunt, or grandparent.**

Relative

Relative **is the spouse and anyone having one of the following relationships to an applicant or borrower: parent, son, daughter, sibling, stepparent, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, uncle, aunt, nephew, niece, cousin, grandparent, grandson, granddaughter, or the spouses of the foregoing.**

Rural Youth

Rural youth **is a person who has reached the age of 10 but has not reached the age of 21 and resides in a rural area or any city or town with a population of 50,000 or fewer people.**

Security

Security **is property or right of any kind that is subject to a real or personal property lien. Any reference to "collateral" or "security property" will be considered a reference to the term "security."**

Security Instrument

Security instrument **includes any document giving the Agency a security interest on real or personal property.**

Security Value

Security value **is the value of real estate or chattel property (less the value of any prior liens) used as security for an Agency loan.**

Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

***--Socially Disadvantaged Applicant or Farmer**

Socially disadvantaged applicant or farmer **is an individual or entity who is a member of a--* socially disadvantaged group. For entity applicants, the majority interest must be held by socially disadvantaged individuals. For married couples, the socially disadvantaged individual must have at least 50 percent ownership in the farm business and make most of the management decisions, contribute a significant amount of labor, and generally be recognized as the operator of the farm.**

Socially Disadvantaged Group

Socially disadvantaged group **is a group whose members have been subject to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. These groups consist of: American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, Hispanics, and women.**

Softwood Timber Program Loan

Softwood Timber Program loan **was available to eligible financially distressed borrowers who would take marginal land, including highly erodible land, out of production of agricultural commodities other than the production of softwood timber. ST loans are no longer available, however, such outstanding loans are serviced by the Agency.**

Supervised Bank Account

Supervised bank account **is an account with a financial institution established through a deposit agreement entered into between the borrower, the Agency, and the financial institution.**

United States

United States **is any of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, Republic of Palau, Federated States of Micronesia, and the Republic of the Marshall Islands.**

Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

U.S. Noncitizen National

A U.S. noncitizen national is a person born in American Samoa or Swains Island on or after the date the U.S. acquired American Samoa or Swains Island, or a person whose parents are U.S. non-citizen nationals. Typical evidence of the relatively uncommon status as a non-citizen national includes a birth certificate or passport with a document bearing a photograph of the person.

Note: See Exhibit 9 for further documentary requirements to meet this definition.

Veteran

Veteran **is any person who served in the military, naval, or air service during any war as defined in section 101(12) of title 38, United States Code.**

Working Capital

Working capital **is cash available to conduct normal daily farming operations including but not limited to feed, seed, fertilizer, pesticides, farm supplies, cooperative stock, and cash rent.**

Youth Loan

Youth loan **is an operating type loan made to an eligible rural youth applicant to finance a modest income-producing agricultural project.**

State Supplements

--**The following lists required State supplements.**--

Subparagraph	State Supplements
3 C	**Notary Acknowledgement** • To provide the appropriate State required text.
3 E	**State Specific Forms** • Address the use of all State created forms, except the State specific FSA-2029, which does not need to be included.
3 D and 281 C	**Signature Requirements** • As required by State law for individuals, entities, and trusts.
42 A	**Married Couples Applying as a Joint Operation** • Issued when applicable to provide guidance on married couples applying as a joint operation.
72 E and 232 C	**LLC and Trust Issues** • Security requirements. • Signature requirements. • Unique State statutes.
91 B	**Adequate Security - 3rd Party Pledge** • In States where property is not held in fee simple or where DOJ lacks jurisdiction a State supplement may be necessary upon the advice of OGC.
92 D	**Real Estate Security - Fixtures and Equipment** • A State supplement may be necessary upon the advice of OGC, to further explain taking a security interest in fixtures.
92 F and 131 C	Leasehold Estates in Hawaii, Puerto Rico, and American Samoa • Unique State/territory statutes.
94 D	**DOJ Jurisdiction Issues: When FSA Cannot Obtain a Valid Lien** • Where DOJ has no jurisdiction or has advised FSA that because of the lack of a Federal District Court, DOJ will not litigate civil cases.
114 A	**Mortgage Clause, for Required States Only** • If using a mortgage clause other than the standard mortgage clause on FSA-2320 has been made mandatory by State law or insurance regulation.

State Supplements (Continued)

Subparagraph	State Supplements
133 D	**State Water Rights, Irrigation Issues, and Restrictions on Land Drainage** • State all requirements to be met, including the acquisition of water rights. • Define areas where development of ground water for irrigation is not recommended. • Define areas where land drainage is restricted.
136 A	**Mortgage Requirements for Subsequent Loans** • A State supplement shall be issued about when to obtain a new mortgage for a subsequent loan.
152 B	***--Median Size Farm** • Guidance addressing what constitutes a median size farm.**--***
172 H	**Term Limit Requirements** • If needed to reissue any existing State supplements on term limit requirements to comply with the term limit provisions.
234 C	**Unit Price on Commodities** • Guidance on unit prices for all commodities produced commercially in the State.
238 A	**Waiver of Real Estate Appraisal Requirements for EM** • Guidance about waiving the real estate appraisal requirements for an applicant receiving **only** EM.
284 A	**State Requirements for Filing Liens** • Forms to use, directions for completion, and correct way to make the ***--**lien a matter of public record.
302 B and 303 A	**Purchase Contracts and Fixtures** • Forms to use, directions for completion, and correct way to make the lien a matter of public record.**--***

State Supplements (Continued)

Subparagraph	State Supplements
304 B	**Correcting Errors in Recorded Security Instruments** • SED shall issue a State supplement, subject to OGC's review and approval, providing guidance in correcting errors in recorded security instruments.
323 C	**Milkbase or Grazing Permits Financed or Taken as Security** • Forms to use, directions for completion, acknowledgement by the payor, and correct way to make the form a matter of public record.
323 D	**Perfecting Liens on Stock in Coop Associations** • Forms to use, directions for completion, and correct way to make the form a matter of public record.
323 E	**Perfecting Liens on Motor Vehicles** • Forms to use, directions for completion, and correct way to make the form a matter of public record.
323 F	**Liens on Fixtures and Equipment** • Forms to use, directions for completion, and correct way to make the form a matter of public record.
343 B	**FSA Responsibilities for Documents** • States shall issue directions on how documents are to be handled in their respective State.

Note: SED's shall:

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

--

Information Needed to Submit an FSA Direct Loan Application

***--Note:** Exhibit 5 will be available in a fillable format at **http://intranet.fsa.usda.gov**. CLICK "FFAS Employee Forms/Publications Site" and CLICK "Find Current Forms Using Our Form Number Search". For "Form Number", ENTER "3-FLP Exhibit 5".

3-FLP, Exhibit 5

(Use Agency Letterhead format with local return address.)

[Name and Address]

INFORMATION NEEDED TO SUBMIT
AN FSA DIRECT LOAN APPLICATION

Dear [Name]: Date [MM-DD-YYYY]

Please provide the items marked with an "X" in the box so that your request for loan assistance can be considered. Any required forms are enclosed. Additional copies of forms, if needed, can be obtained at http://forms.sc.egov.usda.gov/eforms/mainservlet.

☐ 1) FSA-2001, "Request for Direct Loan Assistance".

☐ 2) FSA-2301, "Request for Youth Loan".

☐ 3) For entity applicants only:

☐ a. Copies of any Organizational and Operation Documents (e.g., Charter, Articles of Incorporation, Bylaws, Partnership or Joint Operation Agreement, etc.).

☐ b. Any evidence of current registration with relevant state regulatory agencies (good standing).

☐ c. A duly adopted resolution to apply for and obtain financing.

☐ d. A balance sheet not more than 90 days old for the entity.

☐ e. A balance sheet not more than 90 days old for each individual entity member.

Note: If there are no individually owned assets then husband and wife joint operations may submit a consolidated balance sheet.

☐ 4) Notification of Exercise of Priority Consideration under Consent Decree, or similar written request, if you are exercising your right to priority consideration. If FSA does not receive your written notice, your application will be processed in the normal manner.

☐ 5) Evidence that you have recently applied with a commercial lender for a loan at their rates and terms for similar purposes, and have been denied.

Note: EM loans have different credit elsewhere requirements. **(See Item 22)**

If FSA believes you or the members of the entity can obtain commercial credit based on the financial information provided, you may be asked to apply with another lender or FSA may contact lenders interested in assisting you under FSA's Guaranteed Loan Program.

--*

Information Needed to Submit an FSA Direct Loan Application (Continued)

*--

☐ 6) FSA-2002, "Three-Year Financial History", or similar form acceptable to the Agency. Also provide tax returns, including Schedule F, for the past three years, or each year you have been in business, whichever is less. You may be asked to provide supporting documentation if you provide financial summaries. If the financial history has been previously provided, complete only for those years not previously provided.

Note: Provide 3 years balance sheets, if available.

☐ 7) FSA-2003, "Three-Year Production History", or similar form acceptable to the Agency, for the past three years, or each year you have been in business, whichever is less. If production history has been previously provided, complete only for those years not previously provided.

☐ 8) FSA-2004, "Authorization to Release Information".

Note: If you are relying on non-farm income or other assets of a non-applicant spouse to generate positive cashflow or pay family living expenses he/she must execute an FSA-2004 or provide their 2 most recent earning statements.

☐ 9) FSA-2005, "Creditor List".

☐ 10) FSA-2006, "Property Owned and Leased". Attach a copy of the legal descriptions of any farm property owned, or to be acquired, and if applicable, any lease, contracts, options and other agreements with regard to the property.

☐ 11) FSA-2007, "Statement Required by the Privacy Act", required from anyone who will sign loan or security documents, but is not the applicant or an entity member.

☐ 12) Projected farm operating plan which includes a balance sheet and cash flow for the next 12 months. You may use the Farm Business Plan Worksheets: the FSA-2037, "Balance Sheet" and FSA-2038, "Income and Expenses", or similar forms acceptable to the Agency.

☐ 13) Most recent account statement for credit cards, loans, and all other bank accounts. Any original documents you submit will be returned to you.

☐ 14) Credit Report Fee made payable to the Farm Service Agency for the type of applicant:

Individual $ _____ Joint $ _____ or Commercial $ _____

☐ 15) SF-3881, "ACH Vendor/Miscellaneous Payment Enrollment Form", or Form SF-1199A, "Direct Deposit Sign-Up", for electronic funds transfer.

☐ 16) FSA-2302, "Description of Farm Training and Experience," For entity applicants, provide for each individual member involved in managing or operating the farm.

☐ 17) FSA-2370, "Request for Waiver of Borrower Training Requirements".

☐ 18) Verification of any other non-farm income (i.e., social security, rental income, pension).

--*

Information Needed to Submit an FSA Direct Loan Application (Continued)

*--

☐ 19) RD-1940-20, "Request for Environmental Information".

☐ 20) AD-1026, "Highly Erodible Land Conservation and Wetland Conservation Certification". (Initial Application and Subsequent Application when there have been changes to the real estate farmed.)

☐ 21) For construction loans only:

☐ a. A copy of any plans and specifications for the improvements you intend to make.

☐ b. A description of any planned development, the proposed schedule and cost estimate.

☐ 22) For emergency loans only:

☐ FSA-2309, "Certification of Disaster Losses".

☐ FSA-2310, "Lender's Verification of Loan Application".

☐ 23) Other

A DECISION CANNOT BE MADE ON A LOAN REQUEST WITHOUT ALL INFORMATION REQUESTED IN THIS LETTER

Please contact this office if you need help. We can help you complete the requested forms, explain what information we need, and answer any questions about the information requested in this letter. If we cannot assist you by phone, we will schedule an appointment to meet with you.

Sincerely,

Enclosures

--*

Interim Guidance: Documentary Evidence of Status as Qualified Alien

Qualified Alien as defined under PRWORA (8 U.S.C. 1641):
1. *An alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act;*
2. *An alien who is granted asylum under section 208 of such Act;*
3. *A refugee who is admitted to the United States under section 207 of such Act;*
4. *An alien who is paroled into the United States under section 212(d)(5) of such Act for a period of at least 1 year;*
5. *An alien whose deportation is being withheld under section 243(h) of such Act;*
6. *An alien who is granted conditional entry pursuant to section 203(a)(7) of such Act as in effect prior to April 1, 1980;*
7. *An alien who is a Cuban/Haitian Entrant as defined by section 501(e) of the Refugee Education Assistance Act of 1980;*
8. *An alien who has been battered or subjected to extreme cruelty under section 431 of the Immigration and Nationality Act. 8 U.S.C. 1641 contains more on aliens battered or subjected to extreme cruelty.*

The following documents will, when combined with satisfactory proof of identity (which will come from the document itself if it bears a photograph of the person to whom it relates), establish that an applicant falls within 1 of the categories of "qualified alien" for purposes of title IV of PRWOR, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

Under INA, all aliens over the age of 14 who remain in the U.S. for longer than 30 days are required to register with the United States Department of Homeland Security, BCIS and obtain an alien registration document.

All aliens over the age of 18 who receive a registration document are required to carry it with them at all times. With certain exceptions (e.g., Canadian visitors), aliens entering the U.S. are normally issued a registration document (e.g., BCIS Form I-94) at the time of entry. The following documents that are registration documents are indicated with an asterisk ("*"). Each of the following documents will demonstrate lawful status, and should not require presentation of a registration document if the applicant presents 1 of the other legally acceptable documents that reasonably appears on its face to be genuine and to relate to the person presenting it. However, if the document presented is not a registration document and does not on its face reasonably appear to be genuine or to relate to the person presenting it, it is appropriate to ask the applicant to produce his or her registration document as additional evidence of immigration status, so long as the request is not made for a discriminatory reason. Presentation of a listed registration document that reasonably appears on its face to be genuine and to relate to the person presenting it (or to satisfy a higher applicable standard) will often obviate the need to verify the applicant's immigration status with BCIS; if the applicant presents a registration document that does not meet this standard, sending BCIS a copy of the document will assist it in verifying the applicant's status quickly and accurately.

Interim Guidance: Documentary Evidence of Status as Qualified Alien (Continued)

A Alien Lawfully Admitted for Permanent Residence

- *BCIS Form I-551(commonly known as a "green card")
- Unexpired Temporary I-551 stamp in foreign passport or on *BCIS Form I-94.

B Asylee

- *BCIS Form I-94 annotated with stamp showing grant of asylum under section 208 of INA
- *BCIS Form I-688B annotated "274a.12(a)(5)"
- *BCIS Form I-766 (Employment Authorization Document) annotated "A5"
- Grant letter from the Asylum Office of BCIS
- Order of an immigration judge, granting asylum.

C Refugee

- *BCIS Form I-94 annotated with stamp showing admission under Sec. 207 of INA
- *BCIS Form I-688B annotated "274a.12(a)(3)"
- *BCIS Form I-766 annotated "A3"
- BCIS Form I-571.

D Alien Paroled Into the U.S. for a Least 1 Year

- *BCIS Form I-94 with stamp showing admission for at least 1 year under Section 212(d)(5) of INA. (Applicant cannot aggregate periods of admission for less than 1 year to meet the 1 year requirement.)

E Alien Whose Deportation or Removal Was Withheld

- *BCIS Form I-688B annotated "274a.12(a)(10)"

- *BCIS Form I-766 annotated "A10"

- Order from an immigration judge showing deportation withheld under Section 243(h) of INA as in effect prior to April 1, 1997, or removal withheld under Section 241(b)(3) of INA.

F Alien Granted Conditional Entry

- *BCIS Form I-94 with stamp showing admission under Section 203(a)(7) of INA
- *BCIS Form I-688B annotated "274a.12(a)(3)"
- *BCIS Form I-766 annotated "A3".

Interim Guidance: Documentary Evidence of Status as Qualified Alien (Continued)

G Cuban/Haitian Entrant

- *BCIS Form I-551 (commonly known as a "green card") with code "CU6", "CU7", or "CH6"
- Unexpired temporary BCIS I-551 stamp in foreign passport or on *BCIS Form I-94 with code "CU6" or "CU7"
- BCIS Form I-94 with stamp showing parole as "Cuba/Haitian Entrant" under Section 212(d)(5) of INA.

H Alien Who Has Been Battered or Subjected to Extreme Cruelty

Guidance as to the requirements that must be met for an alien to fall within this category of qualified alien is set forth in DOJ's Notice of Interim Guidance. Note that Title IV, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, contains provisions requiring that, upon the effective date of the new affidavit of support (required under section 213A of the Act), when determining eligibility for federal means-tested public benefits and the amount of such benefits to which an alien is entitled, the income and resources of the alien be deemed to include those of any person executing an affidavit of support on behalf of the alien and that person's spouse. Certain exceptions are made for indigent qualified aliens and for qualified aliens who (or whose children) have been battered or subjected to extreme cruelty in the U.S. by a spouse, parent or member of the spouse or parent's family and for qualified alien children whose parents have been subjected to such abuse.

I Expired or Absent Documentation

If an applicant presents expired documents or is unable to present any documentation evidencing his or her immigration status, refer the applicant to the local BCIS office to obtain documentation of status. In unusual cases involving applicants who are hospitalized or medically disabled, or who can otherwise show good cause for their inability to present documentation, and for whom securing such documentation would constitute an undue hardship, if the applicant can provide an alien registration number, you may file BCIS Form G-845 and Supplement, along with the alien registration number and a copy of any expired BCIS document presented, with the local BCIS office to verify status. As with any documentation of immigration status, you should confirm that the status information you receive back from BCIS pertains to the applicant whose identity you have verified.

J Receipt for Replacement Document

If an applicant presents a receipt indicating that he or she has applied to BCIS for a replacement document for one of the documents identified above, file BCIS Form G-845 and Supplement along with a copy of the receipt with the local BCIS office to verify status. Upon return receipt of information from BCIS, confirm that it pertains to the applicant whose identity you have verified. You should ask to see the replacement document at a later date.

Interim Guidance: Documentary Evidence of Status as Qualified Alien (Continued)

K Applicants With Disabilities and Nondiscrimination

If an applicant has a disability that limits the applicant's ability to provide the required evidence of immigration status (e.g. mental retardation, amnesia, or other cognitive, mental or physical impairment), you should make every effort to assist the individual to obtain the required evidence. In addition, you should not discriminate against applicants on the basis of race, national origin, gender, religion, age or disability.

Interim Guidance: Documentary Evidence of Status as a U.S. Noncitizen National

A person born in America Samoa or Swains Island on or after the date the U.S. acquired America Samoa or Swains Island, or a person whose parents are U.S. non-citizen nationals. Typical evidence of the relatively uncommon status as a non-citizen national includes a birth certificate or passport with a document bearing a photograph of the person.

Copies of the following documents will, when combined with satisfactory proof of identity (which will come from the document itself if it bears a photograph of the person to whom it relates), demonstrate that a person is a U.S. citizen or noncitizen national for purposes of Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. To the extent citizenship or nationality of a child is relevant to a benefit eligibility determination, the documents should demonstrate the child's status rather than that of the parent.

The lists in "A" and "B" are drawn from existing guidance published by SSA and regulations issued by the U.S. Department of Homeland Security, BCIS, about determination of U.S. citizenship and nationality; the lists in "C" through "F" are drawn solely from the SSA guidance. These lists are not exhaustive; refer to guidance issued by the agency or department overseeing the program to determine if it accepts documents or other evidence of citizenship not listed.

A Primary Evidence

(1) A birth certificate showing birth in 1 of the 50 States, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, Swain's Island or the Northern Mariana Islands, unless the person was born to foreign diplomats residing in the U.S.

Note: If the document shows that the individual was born in Puerto Rico, the U.S. Virgin Islands or the Northern Mariana Islands before these areas became part of the U.S., the individual may be a collectively naturalized citizen. See "C".

(2) U.S. passport except limited passports, which are issued for periods of less than 5 years.

(3) Report of birth abroad of a U.S. citizen (FS-240) issued by the Department of State to U.S. citizens.

(4) Certificate of birth (FS-545) issued by a foreign service post or Certification of Report of Birth (DS-1350) issued by the Department of State, copies of which are available from the Department of State.

(5) Certificate of Naturalization (N-550 or N-570) issued by BCIS through a Federal or State court, or through administrative naturalization after December 1990 to individuals who are individually naturalized. N-570 is a replacement certificate issued when N-550 has been lost or mutilated or the individual's name has been changed.

Interim Guidance: Documentary Evidence of Status as a U.S. Noncitizen National (Continued)

A Primary Evidence (Continued)

(6) Certificate of Citizenship (N-560 or N-561) issued by BCIS to individuals who derive U.S. citizenship through a parent. N- 561 is a replacement certificate issued when N-560 has been lost or mutilated or the individual's name has been changed.

(7) United States Citizen Identification Card (I-197) issued by BCIS until April 7, 1983, to U.S. citizens living near the Canadian or Mexican border who needed it for frequent border crossings, formerly Form I-179, last issued in February 1974.

(8) Northern Mariana Identification Card issued by BCIS to a collectively naturalized citizen of U.S. who was born in the Northern Mariana Islands before November 3, 1986.

(9) Statement provided by a U.S. consular officer certifying that the individual is a U.S. citizen. This is given to an individual born outside U.S. who derives citizenship through a parent but does not have FS-240, FS-545 or DS-1350.

(10) American Indian Card with a classification code "KIC" and a statement on the back identifying U.S. citizen members of the Texas Band of Kickapoos living near the U.S./Mexican border.

B Secondary Evidence

If the applicant cannot present 1 of the documents listed in "A", the following may be relied upon to establish U.S. citizenship or nationality.

(1) Religious record recorded in 1 of the 50 States, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, Swain's Island or the Northern Mariana Islands (unless the person was born to foreign diplomats residing in such a jurisdiction) within 3 months after birth showing that the birth occurred in such jurisdiction and the date of birth or the individual's age at the time the record was made.

(2) Evidence of civil service employment by the U.S. Government before June 1, 1976.

(3) Early school records (preferably from the 1st school) showing the date of admission to the school, the child's date and place of birth, and the name(s) and place(s) of birth of the parent(s).

(4) Census record showing name, U.S. citizenship or a U.S. place of birth, and date of birth or age of applicant.

B Secondary Evidence (Continued)

(5) Adoption Finalization Papers showing the child's name and place of birth in 1 of the 50 States, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, Swain's Island or the Northern Mariana Islands (unless the person was born to foreign diplomats residing in such a jurisdiction) or, where or adoption is not finalized and the State or other jurisdiction listed in which the child was born will not release a birth certificate before final adoption, a statement from a State-approved adoption agency showing the child's name and place of birth in one of such jurisdictions. The source of the information must be an original birth certificate and must be indicated in the statement.

(6) Any other document that establishes a U.S. place of birth or in some way indicates U.S. citizenship (e.g. a contemporaneous hospital record of birth in that hospital in 1 of the 50 States, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, Swain's Island, or the Northern Mariana Islands (unless the person was born to foreign diplomats residing in such a jurisdiction).

C Collective Naturalization

If the applicant cannot present 1 of the documents listed in "A" or "B", the following will establish U.S. citizenship for collectively naturalized individuals.

(1) **Puerto Rico.** Evidence of birth in Puerto Rico on or after April 11, 1899, and the applicant's statement that he or she was residing in U.S., a U.S. possession or Puerto Rico on January 13, 1941; or evidence that the applicant was a Puerto Rican citizen and the applicant's statement that he or she was residing in Puerto Rico on March 1, 1917, and that he or she did not take an oath of allegiance to Spain.

(2) **U.S. Virgin Islands.** Evidence of birth in the U.S. Virgin Islands, and the applicant's statement of residence in U.S., a U.S. possession or the U.S. Virgin Islands on February 25, 1927; the applicant's statement indicating resident in the U.S. Virgin Islands as a Danish citizen on January 17, 1917, and residence in U.S., a U.S. possession or the U.S. Virgin Islands on February 25, 1927, and that he or she did not make a declaration to maintain Danish citizenship; or evidence of birth in the U.S. Virgin Islands and the applicant's statement indicating residence in U.S., U.S. possession or territory or the Canal Zone on June 28, 1932.

C Collective Naturalization (Continued)

(3) Northern Mariana Islands (NMI) (formerly part of the Trust Territory of the Pacific Islands (TTPI). Evidence of birth in NMI, TTPI citizenship, and residence in NMI, U.S., or a U.S. territory or possession on November 3, 1986, (NMI local time) and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986, (NMI local time); evidence of TTPI citizenship, continuous residence in NMI since before November 3, 1981, (NMI local time), voter registration before January 1, 1975, and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986, (NMI local time); or evidence of continuous domicile in NMI since before January 1, 1974, and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986, (NMI local time). If a person entered NMI as a nonimmigrant and lived in NMI since January 1, 1974, this does not constitute continuous domicile and the individual is not a U.S. citizen.

D Derivative Citizenship

If the applicant cannot present 1 of the documents listed in "A" or "B", make a determination of derivative U.S. citizenship in the following situations.

(1) Applicant born abroad to two U.S. citizen parents. Evidence of the U.S. citizenship of the parents and the relationship of the applicant to the parents, and evidence that at least 1 parent resided in U.S. or an outlying possession before the applicant's birth.

(2) Applicant born abroad to a U.S. citizen parent and a U.S. noncitizen national parent. Evidence that 1 parent is a U.S. citizen and that the other is a U.S. noncitizen national, evidence of the relationship of the applicant to the U.S. citizen parent, and evidence that the U.S. citizen parent resided in U.S., a U.S. possession, American Samoa, or Swain's Island for a period of at least 1 year before the applicant's birth.

(3) Applicant born out of wedlock abroad to a U.S. citizen mother. Evidence of the U.S. citizenship of the mother, evidence of the relationship to the applicant and, for births on or before December 24, 1952, evidence that the mother resided in U.S. before the applicant's birth or, for births after December 24, 1952, evidence that the mother had resided, before the child's birth, in U.S. or a U.S. possession for a period of 1 year.

(4) Applicant born in the Canal Zone or the Republic of Panama. A birth certificate showing birth in the Canal Zone on or after February 26, 1904, and before October 1, 1979, and evidence that 1 parent was a U.S. citizen at the time of the applicant's birth; or a birth certificate showing birth in the Republic of Panama on or after February 26, 1904, and before October 1, 1979, and evidence that at least 1 parent was a U.S. citizen and employed by the U.S. Government or the Panama Railroad Company or its successor in title.

E All other situations where an applicant claims to have a U.S. citizen parent and an alien parent, or claims to fall within 1 of the listed categories but is unable to present the listed documentation:

(1) If the applicant is in U.S., refer him or her to the local BCIS office for determination of U.S. citizenship.

(2) If the applicant is outside U.S., refer him or her to the State Department for a U.S. citizenship determination.

(3) **Adoption of Foreign-Born Child by U.S. Citizen.** If the birth certificate shows a foreign place of birth and the applicant cannot be determined to be a naturalized citizen under any of the listed criteria, obtain other evidence of U.S. citizenship. Since foreign-born adopted children do not automatically acquire U.S. citizenship by virtue of adoption by U.S. citizens, refer the applicant to the local BCIS district office for a determination of U.S. citizenship if the applicant provides no evidence of U.S. citizenship.

(4) **U.S. Citizenship By Marriage.** A woman acquired U.S. citizenship through marriage to a U.S. citizen before September 22, 1922. Ask for evidence of U.S. citizenship of the husband, and evidence showing the marriage occurred before September 22, 1922. If the husband was an alien at the time of the marriage, and became naturalized before September 22, 1922, the wife also acquired naturalized citizenship. If the marriage terminated, the wife maintained her U.S. citizenship if she was residing in U.S. at that time and continued to reside in U.S.

(5) **Applicants With Disabilities and Nondiscrimination. I**f an applicant has a disability that limits the applicant's ability to provide the required evidence of citizenship or nationality (e.g., mental retardation, amnesia, or other cognitive, mental or physical impairment), make every effort to assist the individual to obtain the required evidence. In addition, do not discriminate against applicants on the basis of race, national origin, gender, religion, age or disability. See Nondiscrimination Advisory, Attachment 2 to Interim Guidance.

--

Direct Loans Fully Paid Codes

The following table describes the fully paid codes.

Code	Description
A00	Judgment – Operating Loans
A03	Judgment – Farm Ownership Loans or Recreation Loans
A07	Judgment – Soil and Water Loans
C00	Acquired Property – Operating Loans
C03	Acquired Property – Farm Ownership Loans or Recreation Loans
C07	Acquired Property – Soil and Water Loans
D00	Defalcation – Operating Loans
D03	Defalcation – Farm Ownership Loans
D07	Defalcation – Soil and Water Loans
E00	Conservation Contract – Operating Loans
E03	Conservation Contract – Farm Ownership Loans or Recreations Loans
E07	Conservation Contract – Soil and Water Loans
F05	Suspension
G00	Other Reason (Extra Payment) – Operating Loans
G04	Sale of Farm Outside Program – Farm Ownership Loans
G07	Other Reason (Extra Payment) – Soil and Water Loans and Farm Ownership Loans
H07	Refinancing – Farm Ownership Loans and Soil and Water Loans
I00	Lost Remittance – Operating Loans
I07	Lost Remittance – Farm Ownership Loans and Soil and Water Loans
M00	3M Cancellations – Operating Loans
Q00	Net Recovery Buyout/Shared Appreciation Writedown – Operating Loans
Q03	Net Recovery Buyout/Shared Appreciation Writedown – Farm Ownership Loans
Q07	Net Recovery Buyout/Shared Appreciation Writedown – Soil and Water Loans
R00	Any Other Reason (Regular Payment)
R07	Income and Any Other Reason (Regular Payment) – Farm Ownership Loans and Soil and Water Loans
R10	Paid in Full – All Loans
S00	Writeoff (Other than PL 878) – Operating Loans (**See Note**)
S03	Writeoff – Recreation Loans
S07	Writeoff – Farm Ownership Loans and Soil and Water Loans (**See Note**)
T04	Credit Sale Reversal
T05	Assumption Agreement – Soil and Water Loans and Recreation Loans
T05	Sale of Farm Inside Program or Assumption Agreement – Farm Ownership Loans
T15	Suspension Amortization
W00	Writeoff (PL 878)

Direct Loans Fully Paid Codes (Continued)

Code	Description
Y01	Refinanced – Farm Ownership Loans, Operating Loans, and Soil and Water Loans
Y02	Subsequent Loan (Not currently used except for reporting purposes) – Farm Ownership Loans
Y06	Refinanced with Direct FP Loan (Not currently used except for reporting purposes) – Farm Ownership Loans
Z97	Case Number Change – All Loans
Z98	Assumption Agreement, Same Rates and Terms – All Loans
Z99	Paid in Full or Returned Check

Note: Debt writedown or writeoff provided as part of the resolution of a discrimination complaint against FSA is coded "S00" and "S07" depending on the type of loans involved. However, these codes are not used exclusively for this purpose. Therefore, loan approval officials must determine if the writedown or writeoff was received as the result of a discrimination complaint.

Memorandum of Understanding Between FSA and [Enter Name of State Beginning Farmer Program]

*--

Memorandum of Understanding Between FSA and [Enter Name of State Beginning Farmer Program]

1. SUBJECT:

Implementation of Section 309(i) of the Consolidated Farm and Rural Development Act (CONACT), as added by Section 5 of the Agricultural Credit Improvement Act of 1992 (Pub. L. 102-554, October 28, 1992).

2. PURPOSE:

The purpose of this Memorandum of Understanding (MOU) is to provide cooperation and participation in joint funding between FSA and (enter name of State Beginning Farm Program).

3. BACKGROUND:

Section 309(i) of the CONACT requires that an MOU between FSA and any State Beginning Farmer Program be entered into when the State expresses interest, in writing, to coordinate financial assistance to beginning farmers. The CONACT describes a State Beginning Farmer program as any program that is "(A) carried out by, or under contract with, a State; and (B) designed to assist persons in obtaining the financial assistance necessary to enter agriculture and establish viable farming operations."

4. AGREEMENT:

It is mutually agreed by the parties to this MOU that they will cooperate and participate in joint funding as specified below:

A. If (enter name of State Beginning Farmer Program) makes a commitment to provide a qualified beginning farmer with financing to establish or maintain a viable farming operation, FSA will provide financial assistance through the use of the Downpayment Loan Program and/or the guaranteed loan programs subject to all of the following:

   1. applicable law and regulations

   2. normal loan approval criteria, and

   3. availability of funds.

B. FSA will not provide guaranteed assistance when the funds have been derived from tax-exempt bonds.

C. FSA will not charge a fee to obtain or retain a guarantee in connection with any joint funding under this MOU.

--*

Memorandum of Understanding Between FSA and [Enter Name of State Beginning Farmer Program] (Continued)

Memorandum of Understanding Between FSA and [Enter Name of State Beginning Farmer Program]

5. IMPLEMENATION

This MOU is effective immediately upon the last signature dated below and will continue in effect until modified or revoked by agreement of both parties, or revoked by either party alone upon thirty (30) days written notice. Modification to this document may be made by mutual agreement and such modifications will be in effect upon the signing of the modified document.

_____	_____
(NAME) State Executive Director Farm Service Agency (City, State)	(NAME) (Name of State Beginning Farmer Program) (City, State)
_____	_____
DATE	DATE

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.

D Nonqualifying 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.

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

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 1-FLP, for

  1. each year until the operation has been brought back to full production
  2. 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.

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

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.

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
- repair or replacement of damaged structures and dwellings that house nursery stock, bedding plants, and other types of 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

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

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.

I Loan Approval

In addition to the actions required in Part 9, 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 the credit analysis of the Farm Business Plan
- use assistance code "060" when completing the obligation
- advance only the amount shown on Farm Business Plan each year, unless the Farm Business Plan is otherwise modified and agreed upon by the loan approval official and the borrower.

J Interest Rate

This interest rate is published in 1-FLP, Exhibit 17.

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

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

Note: The Farm Business Plan must show the loan will be paid in full at the maturity date of the note. Balloon installments are prohibited.

L Security Requirements

Rehabilitation or reestablishment loans will be secured according to paragraph 236. However, subparagraph 236 B does not apply to loans made according to this exhibit.

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 re-establishment 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
- 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.

*--Notice of Funding Availability

Note: Exhibit 24 will be available in a fillable format at **http://intranet.fsa.usda.gov**. CLICK "FFAS Employee Forms/Publications Site" and CLICK "Find Current Forms Using Our Form Number Search". For "Form Number", ENTER "3-FLP Exhibit 24".

3-FLP, Exhibit 24

(Use Agency Letterhead format with local return address.)

NOTICE OF FUNDING AVAILABILITY

[Borrower Name/Address]	CERTIFIED MAIL
[Borrower Address]	RETURN RECEIPT REQUESTED
[City, State, Zip Code]	[Return Receipt Number]

<Applicant's Name>

This notice is to inform you that funds may now be available for the Farm Service Agency (FSA) to resume processing your approved loan(s). As stated in your FSA-2313, "Notification of Loan Approval and Borrower Responsibilities", dated _____, FSA may request updated financial and eligibility information.

Please contact this office to schedule an appointment, so that the processing of your approved loan may continue. If you fail to contact this office within 15 business days from the date you received this certified letter your application and loan approval will be withdrawn. No review, mediation, or appeal rights will be provided.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

For more information or if you have any questions, please contact [this office or the specific office name] at [County Office Address] or telephone [phone number].

Sincerely,

--*