# FSA
## HANDBOOK

# Guaranteed Loan Making and Servicing

To access the transmittal page click on the short reference.

## For State and County Offices

SHORT REFERENCE

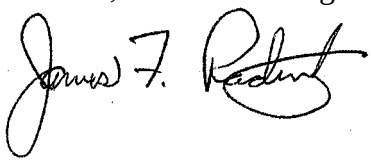
2-FLP
(Revision 1)

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

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

| Guaranteed Loan Making and Servicing<br>2-FLP (Revision 1) | Amendment 11 |
|---|---|

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



## Amendment Transmittal

### A Reasons for Amendment

Subparagraph 244 A has been amended to update the statutory loan limits for guaranteed loans.

| Page Control Chart | | |
|---|---|---|
| **TC** | **Text** | **Exhibit** |
| | 10-1, 10-2 | |

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# Part 1 Introduction and Purpose

## 1 Purpose and Sources of Authority

### A Handbook Purpose

This handbook is designed to assist FSA and lenders in understanding:

- regulations governing the Guaranteed Farm Loan Program
- roles and responsibilities in processing and servicing FSA-guaranteed loans.

### B Sources of Authority

The sources of authority for this handbook include:

- 7 CFR Part 762 and other regulations that may be referenced throughout this handbook
- various laws and statutes passed by Congress, including “ACT”.

### C Regulation References

Text in this handbook that is published in CFR is printed in **bold** text. 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 FSA adverse decisions.

## 2 Related References

### A Other Related FSA Handbooks

The following FSA handbooks concern FLP guaranteed loan programs.

| IF the area of concern is about... | THEN see... |
|---|---|
| appraisal reviews and FLP authorities | 1-FLP. |
| confidentiality | 2-INFO. |
| employee conflict of interest | 3-PM. |
| environmental requirements | 1-EQ. |
| forms that cannot be accepted by FAX | 1-CM. |
| maintenance of general and administrative files | 25-AS. |
| Privacy Act | 3-INFO. |
| processing collections | 3-FI. |
| reports | 20-AS. |
| reviews and appeals | 1-APP. |

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

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

See RD Instructions 1951-C and 1956-B for information on administrative offset and debt settlements, respectively.

### B Helpful Links

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

## 2 Related References (Continued)

### C State Supplements

Exhibit 4 lists State supplements required by this handbook.

SED's shall:

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

## 3-14 (Reserved)

# Part 2 Guaranteed FLP

## 15 Program Purpose and Eligible Lenders

### A Program Purpose

FSA's Guaranteed FLP:

- enables lenders to extend credit to family farm owners or operators who do not qualify for standard commercial loans

- benefits beginning farmers and family farmers experiencing financial distress, as well as lending institutions and the local community as a whole

  **Note:** Farmers receive credit at reasonable terms to finance their current operations or to expand their business. Financial institutions receive additional loan business and servicing fees, as well as other benefits from the program.

- serves the local community by protecting family farmers and farm-related businesses

- ***--**enables lenders to extend conservation credit to some farmers who are **not** eligible for guaranteed FO's or OL's.**--***

### B Requirements

Regulated lenders who have experience in agricultural lending are eligible to participate in the FSA Guaranteed Farm Loan Program. Lenders who have little or no experience with FSA-guaranteed loans are considered SEL's and must originate and service loans under SEL requirements.

Lenders who have a positive track record of participation in the program may participate in 1 of FSA's status lender programs. CLP and PLP are the 2 status lender programs. Once lenders are approved by FSA as a CLP or PLP lender, they may process loans under the reduced paperwork and supervision requirements afforded to the respective status lender program.

For more information on the different lender types, see Part 4.

## 15 Program Purpose and Eligible Lenders (Continued)

### C Lenders Agreement

The purpose of the Lender's Agreement is to:

- establish the lender as an approved participant in the FSA Guaranteed Farm Loan Program

- outline the terms and conditions for originating and servicing FSA-guaranteed loans.

The lender is responsible for originating and servicing all guaranteed loans in their portfolio according to Lenders Agreement that is valid at the time.

**Example:** If a lender has an approved SEL Lenders Agreement, they will originate and service loans under SEL requirements spelled out in 7 CFR Part 762 and this handbook.

If the same lender later applies for PLP status and is approved, a new PLP Lenders Agreement will be executed. As long as the PLP Lenders Agreement remains in effect, the lender will originate and service all FSA-guaranteed loans in their portfolio, including loans originated while the lender was SEL, under the conditions agreed to in the PLP Lenders Agreement.

For CLP and PLP lenders, Lenders Agreement is valid for 5 years from the date of execution by SED or DAFLP. For SEL's, Lenders Agreement is valid indefinitely from the time of execution by the authorized agency official, unless otherwise terminated or replaced by FSA.

For each State covered by the approved Lenders Agreement, the State Office is responsible for entering the details of the approved Lenders Agreement in GLS. State Offices may seek assistance from FSC, FLOO for particularly complex situations.

## 16 Eligible Borrowers

### A Specific Information

For specific information on borrower eligibility, see Part 8, Section 1.

### B General Requirements

In general, to qualify for an FSA guarantee, an applicant must be actively involved in the day-to-day management of a farm operation and must:

- be a citizen of the United States, a non-citizen national, or qualified alien under applicable Federal immigration laws
- have the legal capacity to incur the obligations of the loan
- be unable to obtain sufficient credit without a guarantee at reasonable rates and terms to finance the farming operation.

  ***--Note:** This requirement does **not** apply to CL.--**

In addition to meeting the eligibility criteria, the applicant must:

- have a satisfactory credit history
- demonstrate repayment ability

  ***--Note:** This requirement does **not** apply to Streamlined CL.--**

- provide sufficient security for the loan.

## 17 Types of Guaranteed Loans

### A OL's

OL's may be used to finance items needed for a successful farm operation. These items include the following:

- livestock
- farm equipment
- annual operating expenses
- family living expenses
- refinancing debts under certain conditions.

For more information on OL's, see Part 8, Sections 2 through 4 and Part 9.

## 17 Types of Guaranteed Loans (Continued)

### B LOC's

LOC's are OL's for annual operating purposes. Loan funds may be advanced and repaid repeatedly (revolve) throughout the year.

For more information on LOC's, see Part 8, Sections 2 through 4 and Part 9.

### C FO's

FO's may be used to:

- purchase farmland
- construct or repair buildings and other fixtures
- develop farmland to promote soil and water conservation
- refinance debt.

For more information on FO's, see Part 8, Sections 2 through 4.

### *--D CL's

CL's may be used to:

- install structures to address soil, water, and related resources conservation
- establish forest cover for sustainable yield timber management, erosion control, or shelter belt purposes
- install water conservation measures
- install waste management systems
- adapt any other emerging or existing conservation practices, techniques, or technologies
- refinance debt incurred for any authorized CL purpose when financing will result in additional conservation benefits.

For more information on CL's, see Part 8, Sections 2 through 4.--*

## 18 IA Program

### A Requirements

In certain situations, lenders may use the IA Program to assist a borrower in qualifying for an FSA-guaranteed loan. Under the IA Program, FSA will subsidize 4 percent of the interest rate on loans to qualifying borrowers.

### B Additional Information

For additional information on the IA Program, see Part 9.

## 19 Full Faith and Credit Applicability and Exceptions (7 CFR 762.103)

### A Full Faith and Credit Applicability

**The loan guarantee constitutes an obligation supported by the full faith and credit of the United States**.

### B Exceptions for Fraud and Misrepresentation

**The Agency may contest the guarantee only in cases of fraud or misrepresentation by a lender or holder, in which the lender or holder:**

- **had actual knowledge of the fraud or misrepresentation at the time it became the lender or holder**
- **participated in or condoned the fraud or misrepresentation.**

### C Exceptions for Lender Violations

**The loan guarantee cannot be enforced by the lender, regardless of when the Agency discovers the violation, to the extent that the loss is a result of** any of the following:

- **violation of usury laws**
- **negligent servicing**
- **failure to obtain the required security**
- **failure to use loan funds for purposes specifically approved by the Agency.**

### D Effects of Full Faith and Credit With Holders

**The guarantee and right to require purchase will be directly enforceable by the holder even if** either of the following occurred:

- **the loan guarantee is contestable based on the lender's fraud or misrepresentation**
- **the loan note guarantee is unenforceable by the lender based on a lender violation.**

## 20 Responsibilities

### A Authorized Agency Official Responsibilities

The authorized agency official is responsible for:

- serving as the primary contact and decision maker for the FSA Guaranteed Farm Loan Program
- approving loans, up to thresholds specified in 1-FLP, paragraph 29
- providing training for lenders and prospective lenders
- monitoring lender's servicing actions
- processing loss claims for SED approval.

**Note:** Authorities that must be delegated are listed in 1-FLP, paragraph 25.

### B DD's Responsibilities

DD is responsible for:

- overseeing the authorized agency official
- approving loan requests as outlined in 1-FLP, paragraph 29
- providing management and technical assistance to local servicing offices.

**20 Responsibilities (Continued)**

**C SED's Responsibilities**

SED is responsible for:

- determining the most effective and efficient method of program delivery for making and servicing guaranteed loans
- overseeing the operations of all FSA offices within the State
- providing technical assistance as needed
- providing annual training for lenders and prospective lenders
- approving loan requests as outlined in 1-FLP, paragraph 29
- approving all loss claims before payment
- ensuring equitable treatment in processing loan applications as outlined in Part 6.

Funding allocations are made by SED, and at his or her discretion, funding allocations may be delegated to lower levels within the organization. SED approves CLP lenders and maintains files on their activity within the State. For PLP lenders, SED's must submit a recommendation to DAFLP about approval of PLP status. Once PLP status is approved, SED is responsible for ensuring that lender monitoring visits are conducted.

**D DAFLP's Responsibilities**

DAFLP is responsible for:

- managing FLP's on a national level
- developing policy
- monitoring the financial condition of status lenders
- approving lender requests for PLP status
- determining funding allocations
- ensuring consistent application of regulations and policies.

**21-30 (Reserved)**

## Part 3 General Program Requirements

### 31 ECOA (12 CFR 202.9(b)(1))

#### A Purpose

FLP must comply with the provisions of ECOA and the implementing regulations of the Federal Reserve System published in 12 CFR Part 202.

**[12 CFR 202.9(b)(1) 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 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, DC 20580.

ECOA prohibits discrimination against recipients of Federal financial assistance in the delivery of services to the public. FSA is required to comply with nondiscriminatory and equal opportunity practices in guaranteed loanmaking and servicing actions.

#### B Further Explanations

See 1-FLP, paragraph 41 for explanations of ECOA, USDA Nondiscrimination Policy, and USDA Nondiscrimination Statements.

## 32 Conflict of Interest (7 CFR 762.110(f))

### A Definition and Reporting

**When a lender submits the application for a guaranteed loan, the lender will inform the Agency in writing of any relationship which may cause an actual or potential conflict of interest**.

**Relationships include:**

- **the lender or its officers, directors, principal stockholders (except stockholders in a Farm Credit System institution that have stock requirements to obtain a loan), or other principal owners having a financial interest (other than lending relationships in the normal course of business) in the applicant or borrower**

- **the applicant or borrower, a relative of the applicant or borrower, anyone residing in the household of the applicant or borrower, any officer, director, stockholder or other owner of the applicant or borrower holds any stock or other evidence of ownership in the lender** (except stockholders in a Farm Credit System institution that have stock requirements to obtain a loan)

- **the applicant or borrower, a relative of the applicant or borrower, or anyone residing in the household of the applicant or borrower is an Agency employee**

- **the officers, directors, principal stockholders (except stockholders in a Farm Credit System institution that have stock requirements to obtain a loan), or other principal owners of the lender have substantial business dealings (other than in the normal course of business) with the applicant or borrower**

- **the lender or its officers, directors, principal stockholders, or other principal owners have substantial business dealings with an Agency employee**.

**The lender must furnish additional information to the Agency upon request.**

**The Agency will not approve the application until the lender develops acceptable safeguards to control any actual or potential conflicts of interest.**

## 32 Conflict of Interest (7 CFR 762.110(f)) (Continued)

### B FSA Employees

An FSA employee shall not participate, directly or indirectly, in deliberations on, or determination of, any matter affecting the application or servicing of guaranteed (or direct) loan to any relative of the employee, any person residing in the employee's household, anyone with continuing business dealings with the employee, or any entity controlled by the employee.

Any processing or servicing activity conducted according to this subparagraph is subject to 3-PM provisions.

## 33 Review and Appeals (7 CFR 762.104)

### A Appeal Rights

7 CFR Part 11 (the National Appeals Division regulation) stipulates that an adverse guaranteed loan approval or loan servicing decision directly affects the applicant/borrower and grants appeal rights to the applicant/borrower. The lender is defined as an "interested party", without appeal rights.

Because an adverse decision of a liquidation plan, interest assistance claim, or loss claim directly affects the lender, the lender will be provided with appeal rights when making an adverse decision in these situations.

**A decision made by the lender adverse to the borrower is not a decision by the Agency, whether or not concurred in by the Agency, and may not be appealed.**

**The lender or Agency may request updated information from the borrower to implement an appeal decision.**

### B Handling Appeals

FSA appeals will be handled **in accordance with parts 11 and 780 of this title** (1-APP).

**34 Lender List and Classification (7 CFR 762.101(b))**

**A Lender List**

**The Agency maintains a current list of lenders who express a desire to participate in the guaranteed loan program. This list is made available to farmers upon request.**

**B Classification**

**Lenders who participate in the Agency guaranteed loan program will be classified into one of the following categories:**

- **Standard Eligible Lender** (paragraph 46)
- **Certified Lender** (paragraph 50)
- **Preferred Lender** (paragraph 52)**.**

*** * ***

**35-45 (Reserved)**

## Part 4 Lender Eligibility

### 46 Eligibility Requirements for SEL (7 CFR 762.105(b))

#### A Overview

The basic level of participation in the FSA Guaranteed Farm Loan Program is SEL. SEL must meet the eligibility criteria in this section to submit an application for a guarantee. If the lender does not meet the eligibility criteria to the satisfaction of FSA, the application will be denied.

#### B Capacity

**A lender must have experience in making and servicing agricultural loans and have the capability to make and service the loan for which a guarantee is requested.**

In reviewing the SEL request, the authorized agency official shall consider FSA's prior experience with the lender in assessing whether or not they have the capability to make and service the loan. An important factor in reviewing the lender's capacity is their experience in agricultural lending. Experience in agricultural lending must be demonstrated for either the lender or the lender's personnel.

**The lenders must not have losses or deficiencies in processing and servicing guaranteed loans above a level which would indicate an inability to properly process and service a guaranteed agricultural loan.**

Previous problems with a lender, as evidenced in monitoring reports, excessive loss claims, or denial of loss claims, should be considered in this determination.

**46 Eligibility Requirements for SEL (7 CFR 762.105(b)) (Continued)**

**C Examination and Supervision**

**A lender must be subject to credit examination and supervision by an acceptable State or Federal regulatory agency**.

Only regulated lenders that are subject to both examination and supervision may participate in the FSA Guaranteed Program. Examination will normally include a review of the lenders' asset quality, management practices, financial condition, and compliance with applicable laws and regulations. Supervision gives the regulator the authority to require that the lender make changes to ensure safety and soundness.

Lenders that are audited and subject to oversight by a State agency may or may not be examined and subject to supervision. Any questions concerning whether a lender meets this requirement should be addressed to DAFLP, Guaranteed Loan Making Branch.

Acceptable agencies and their web sites that in some cases identify enforcement actions as well as other activities associated with a lender, include, but are not limited to, the following:

- FDIC at **http://www.fdic.gov/bank/individual/enforcement/index.html**
- Office of Comptroller of the Currency at **http://www.occ.treas.gov/enforce/enf_search.htm**
- Office of Thrift Supervision at **http://www.ots.treas.gov/enforcement/default.cfm?catNumber=41**
- Federal Reserve Board at **http://www.federalreserve.gov/boarddocs/enforcement/**
- FCA at **http://www.fca.gov/FCA-HomePage.htm**
- National Credit Union Administration at **http://www.ncua.gov/administrative_orders/Index.htm**
- State banking commissions.

SED's shall check the appropriate regulatory agency web sites to determine if a lender is subject to any enforcement action before engaging in or renewing a lending relationship.

## 46 Eligibility Requirements for SEL (7 CFR 762.105(b)) (Continued)

### D Local Lender

**The lender must maintain an office near enough to the collateral's location so it can properly and efficiently discharge its loan making and loan servicing responsibilities or use Agency approved agents, correspondents, branches, or other institutions or persons to provide expertise to assist in carrying out its responsibilities. The lender must be a local lender unless it** does either of the following:

- **normally makes loans in the region or geographic location in which the applicant's operation being financed is located**

- **demonstrates specific expertise in making and servicing loans for the proposed operation.**

It is expected that the lender's business office will be located near the loans that it services. If the lender is lending out of its normal service area, FSA shall determine whether or not the loan can be appropriately serviced by the lender. Depending on the type of loan and the type of farming operation, it is important the lender have:

- local knowledge
- the ability to conduct inspections of collateral
- regular contact with the borrower.

### E Participation

**The lender, its officers, or agents must not be debarred or suspended from participation in Government contracts or programs and the lender must not be delinquent on a Government debt.**

Refer to 1-FLP, paragraph 43 for additional guidance about debarment and suspension.

## 47 Approval Process for SEL

### A FSA Application for Guarantee Review

The authorized agency official shall review the Application for Guarantee in conjunction with the eligibility criteria in paragraph 46 to determine whether the lender is eligible to process the requested guarantee. This review will be done with the review of the proposed guaranteed loan.

### B Approval

SEL approval is granted for the purpose of originating and servicing a guaranteed loan. SEL eligibility is evaluated with each guarantee application. If the lender continues to meet the requirements of paragraph 46, guarantee requests may continue to be processed. A new Lenders Agreement is not required unless the most recent version of Lenders Agreement has not been executed. See subparagraph 48 B.

To develop expertise in guaranteed lending, SEL's are encouraged to designate 1 or more staff members to:

- process and service FSA guaranteed loans
- attend FSA-sponsored training.

## 48 Monitoring SEL

### A Review of Lender Performance

SED shall determine how the file review requirement will be carried out. FSA shall review 40 percent of the lender's guaranteed loan files over the course of each year. Subparagraph 267 B lists the loans that will be given priority in the review and the items that should be inspected during the review process.

To the extent that deficiencies are discovered during the FSA monitoring review, the authorized agency official shall inform the lender in writing and, if necessary, propose a timeframe for a reinspection of the deficiencies. Copies of any reviews and monitoring correspondence must be sent to DD and SED for major deficiencies.

## 48 Monitoring SEL (Continued)

### B Operational File

The authorized agency official shall develop and maintain an operational file on each lender. This file will contain the following:

- information on the loans originated and serviced by the lender
- copies of the monitoring reviews conducted by FSA
- resolution of findings
- any correspondence between the lender and FSA
- copy of a current Lenders Agreement.

All SEL's must have a current Lenders Agreement on file before issuing the guarantee.

**Note:** If a revised version of Lenders Agreement has been issued, the lender must execute a new Lenders Agreement before any new loan guarantees can be issued.

### C Imposing Sanctions

In situations where the authorized agency official is unable to resolve deficiencies with the lender, enforcement actions may be taken. Before the implementation of any enforcement action by FSA, the lender must be:

- notified in writing of the deficiencies
- given a specific timeframe in which to resolve the deficiencies
- warned of the sanctions that may be taken by FSA if the deficiencies are not resolved.

Examples of unresolved deficiencies may include the following:

- failure on the part of the lender to obtain an adequate appraisal
- failure to perfect a lien
- failure to adequately monitor the borrower or the collateral.

While any of these deficiencies may result in the denial or reduction of a loss claim to the lender, it is important to FSA that these issues be resolved as early as possible.

## 48 Monitoring SEL (Continued)

### C Imposing Sanctions (Continued)

The sanction imposed on the lender should be the most effective in resolving the deficiency. Examples of sanctions include the following:

- adjustment of loss claims
- increased monitoring visits
- increased reporting on corrective actions taken
- increased documentation for guarantee processing
- determination that the lender does not meet SEL standards and, therefore, is not eligible for future guaranteed loans.

In extreme cases, recommendations should be made to the National Office for suspension or debarment.

## 49 Eligibility Requirements for CLP (7 CFR 762.106)

### A Overview

CLP is a program that permits lenders with a proven track record in making and servicing guaranteed loans to operate under a streamlined origination and servicing process. While the CLP lender is still bound by FSA regulations and must use and maintain on file FSA-approved forms, information submitted to FSA for approval is minimized. SED is responsible for approving all CLP's in the State, based on information from the local offices and prior performance of the lender.

### B Threshold Eligibility

The lender must **qualify as a Standard Eligible Lender under 7 CFR 762.105.**

To be eligible to apply for certified lender status, the lender must meet the eligibility requirements of SEL as detailed in paragraph 46.

## 49 Eligibility Requirements for CLP (7 CFR 762.106) (Continued)

### C Loan Production and Performance

The lender must **have a lender loss rate not in excess of the maximum CLP Loss Rate established by the Agency and published periodically in a Federal Register Notice.**

This rate is set at 7.00 percent.

To be eligible for CLP, the lender must have a loss rate that does not exceed 7 percent.

**The Agency may waive the loss rate criteria for those lenders whose loss rate was *--substantially affected by a disaster as defined in 7 CFR Part 1945, subpart A of this title** (3-FLP)**.**

SED is granted the authority to waive this criteria on a bank-by-bank basis. The performance of other lenders under similar conditions should be considered before granting such a waiver.

**[7 CFR 761.2(b)] Loss rate is the net amount of loan loss claims paid on FSA guaranteed loans made in the previous 7 years divided by the total loan amount of all such loans guaranteed during the same period.** See Exhibit 10.**--***

**If a lender applying for CLP status is or has recently been involved in a merger or acquisition, all loans and losses attributed to both lenders will be considered in the eligibility calculations.**

The lender must continue to meet this requirement to hold CLP status. As part of the annual CLP review, the authorized agency official shall ensure that the lender's losses remain below the maximum loss rate.

## 49 Eligibility Requirements for CLP (7 CFR 762.106) (Continued)

### D Experience

The lender must **have proven an ability to process and service Agency guaranteed loans by showing that the lender:**

- **submitted substantially complete and correct guaranteed loan applications**
- **serviced all guaranteed loans according to Agency regulations.**

In evaluating whether or not a lender meets these requirements, the State Office shall review historical monitoring reports on the lender. Recurring and/or unresolved issues about origination or servicing should be considered in the approval of CLP status for the lender. If CLP status is denied because of failure to meet this requirement, SED should recommend changes that the lender would need to implement to qualify for CLP status at a later date.

### E Minimum Guaranteed Loans

***--**The lender must **have made the minimum number of guaranteed OL, FO, CL, or SW--* loans established by the Agency and published periodically in a Federal Register Notice.**

This is set at a minimum of 10 Agency guaranteed loans ever and five such loans in the past 2 years.

The lender must continue to meet this requirement to hold CLP status. As part of the CLP review, the authorized agency official shall ensure that the lender has closed the required number of loans to retain CLP status.

***--Notes:** The volume requirements are published in a separate FR document.**--***

Multiple loans for 1 borrower will be counted separately. However, advances on LOC's do not count as separate loans.

**49 Eligibility Requirements for CLP (7 CFR 762.106) (Continued)**

**F Acceptable Level of Soundness**

The lender must **not be under any regulatory enforcement action such as a cease and desist order, written agreement, or an appointment of conservator or receiver, based on financial condition.**

In addition, the National Office monitors the bank rating services and other sources to determine the financial soundness of each lender participating in the Guaranteed Farm Loan Program. When a lender requests CLP status, SED shall contact LMD, Guaranteed Loan Branch to determine the lender's financial strength rating.

**G Qualified Person**

The lender must **designate a qualified person or persons to process and service Agency guaranteed loans for each of the lender offices which will process CLP loans. To be qualified, the person must meet the following conditions:**

- **have attended Agency sponsored training in the past 12 months or will attend training in the next 12 months**

- **agree to attend Agency sponsored training each year.**

The CLP application should include the resume or resumes of the person or persons qualified to process and service FSA-guaranteed loans. For a CLP lender, it is expected that this person will have experience in agricultural lending and experience in originating and servicing FSA-guaranteed loans.

**H Acceptable Forms**

The lender must **use forms acceptable to the Agency for processing, analyzing, securing, and servicing Agency guaranteed loans and lines of credit.**

## 50 Approval of Certified Lenders (7 CFR 762.106)

### A Request for CLP Status

**Lenders who desire CLP status must prepare a written request addressing:**

- **the States in which they desire to receive CLP status and their branch offices which they desire to be considered by the Agency for approval**

- **each item of the eligibility criteria for CLP approval in this section** (paragraph 49)**, as appropriate.**

See subparagraph B for eligibility criteria to be addressed in the request.

**The lender may include any additional supporting evidence or other information the lender believes would be helpful to the Agency in making its determination.**

**The lender must send its request to the Agency State Office for the State in which the lender's headquarters is located.**

**The lender must provide any additional information requested by the Agency to process a CLP request, if the lender continues with the approval process.**

## 50 Approval of Certified Lenders (7 CFR 762.106) (Continued)

### B Eligibility Criteria

Before a lender is approved for CLP status, the lender must demonstrate compliance with the following eligibility criteria:

- provide evidence of being an eligible lender
- provide information to show that loan losses (net of recovery) do not exceed 7 percent
- have the capacity to process and service FSA-guaranteed loans
- certify that the person designated to process and service FSA-guaranteed loans has attended FSA loan processing and servicing training within the previous 12 months or will attend training within the next 12 months
- agree to send for annual training the designated person from each of the lender's offices responsible for processing and servicing guaranteed loans
- agree to use forms acceptable to FSA for processing, analyzing, securing, and servicing FSA-guaranteed loans/LOC's
- if not previously submitted, copies of financial statements, cash flow plans, loan agreements, analysis sheets, security agreements, and promissory notes should be submitted with the request for CLP status

- ***--**have closed a minimum of 10 FSA-guaranteed FO, SW, CL, and OL loans/LOC's and**--*** 5 loans within the past 2 years.

### C FSA Approval

The CLP-eligible lender will have a track record in FSA programs. SED may request that authorized agency officials that the lender has worked with provide a recommendation for CLP status and any issues or concerns that should be considered by SED before granting CLP status. SED shall make a decision on CLP status within 30 calendar days of receipt of the lender's complete application.

**50 Approval of Certified Lenders (7 CFR 762.106) (Continued)**

**C FSA Approval (Continued)**

CLP status is granted on a statewide basis by SED. A separate Lenders Agreement is required for each State. A lender may request CLP status for all branches within a State, or only the specific branches that are using the guaranteed program. **The Agency will determine which branches of the lender have the necessary experience and ability to participate in the CLP program based on the information submitted in the lender application and on Agency experience.** The branch offices for which CLP status is granted are listed on Lenders Agreement.

**Lenders who meet the criteria will be granted CLP status for a period not to exceed 5 years.** Once a Lenders Agreement is executed by the CLP lender and SED, the original will be kept in the State Office and copies will be sent to the lender, along with as many FSA-2202's as needed, and County Offices where the lender is expected to submit applications. In addition, the FSA-approved lender forms and the names of the lender's designated representatives will be sent to the affected County Offices. FSA-2202 can be ordered from Kansas City Warehouse supply.

**D Renewal**

**CLP status will expire within a period not to exceed 5 years from the date the lender's agreement is executed, unless a new lender's agreement is executed.**

**Renewal of CLP status is not automatic. A lender must submit a written request for renewal of a lender's agreement with CLP status which includes information:**

- **updating the material submitted in the initial application**
- **addressing any new criteria established by the Agency since the initial application.**

A request for renewal of CLP status must be submitted to FSA at least 60 calendar days before the expiration of the current Lenders Agreement.

**CLP status will be renewed if the applicable eligibility criteria under this section are met, and no cause exists for denying renewal under paragraph (g) of this section** (subparagraph 51 C).

## 51 Monitoring CLP (7 CFR 762.106)

### A Monitoring Reviews

**CLP lenders will provide information and access to records upon Agency request to permit the Agency to audit the lender for compliance with these regulations.**

The authorized agency official shall conduct a monitoring review on each CLP lender. This review shall be conducted according to Part 11. The authorized agency official shall review at least 20 percent of CLP's files over the course of a year, according to the priorities in subparagraph 267 B.

### B Operational File

Each County Office specified on the Lenders Agreement shall maintain an operational file for each CLP lender as in the SEL Program. For CLP, SED shall also maintain a file for their SED Internal Annual Review.

At least annually, SED shall collect and review information about the performance of each CLP lender, including monitoring reviews from all County Offices that monitor the lender. These monitoring reviews shall be used to determine whether CLP status should continue.

### C Revoking CLP Status

In addition to the sanctions that may be imposed in subparagraph 48 C**, the Agency may revoke the lender's CLP status at any time during the 5 year term for cause.**

SED is granted this authority.

**51 Monitoring CLP (7 CFR 762.106) (Continued)**

**C Revoking CLP Status (Continued)**

**Any of the following instances constitute cause:**

- **violation of the terms of the lender's agreement**
- **failure to maintain CLP eligibility criteria**
- **knowingly submitting false or misleading information to the Agency**
- **basing a request on information known to be false**
- **deficiencies that indicate an inability to process or service Agency guaranteed farm loans**
- **failure to correct cited deficiencies in loan documents upon notification by the Agency**
- **failure to submit status reports in a timely manner**
- **failure to use forms accepted by the Agency**
- **failure to comply with the reimbursement requirements of §762.144(c)(7) *--and (c)(8)** (subparagraph 376 A)**.--***

**D Reinstatement of CLP Status**

**A lender which has lost CLP status must be reconsidered for eligibility to continue as a Standard Eligible Lender in submitting loan guarantee requests. They may reapply for CLP status when the problem causing them to lose their status has been resolved.**

If the reason for revoking CLP status was because of the deliberate submission of false information, the National Office must approve the request for reinstatement.

## 52 Eligibility Requirements for PLP (7 CFR 762.106)

### A Overview

PLP is the top status that a lender can hold in the FSA Guaranteed Farm Loan Program. PLP was developed to recognize experienced lenders, who have demonstrated expertise in and understanding of agricultural lending and the FSA Guaranteed Farm Loan Program, by:

- streamlining submission requirements
- decreasing turnaround time on FSA actions
- allowing lenders to originate and service guaranteed loans as they would other loans in their portfolio.

To apply for PLP, lenders must outline the manner in which they intend to process and service FSA loan guarantees, based on their own underwriting and servicing policies. This CMS becomes the basis for approval decisions on guarantee applications. To request a guarantee, lenders need only to submit a Preferred Lender Application and a loan narrative discussing the 5 "C's" of credit; that is, character, capacity, capital, conditions, and collateral. The streamlined requirements of PLP result in a program that is nearly invisible to the lender.

PLP is beneficial to both lenders and FSA. The streamlined loanmaking and servicing processes allow lenders to reduce administrative costs and provide a quick turnaround time and a higher level of service to their customers. For FSA, the streamlined process allows DAFLP to devote more time to other critical areas of the loan programs.

PLP status is granted by DAFLP in the FSA National Office.

### B Meeting CLP Eligibility Criteria

The lender **must meet the CLP eligibility criteria.**

The PLP lender must be a lender who has a track record with FSA-guaranteed loans. While the lender does not have to hold or have held CLP status, they must qualify for CLP status.

## 52 Eligibility Requirements for PLP (7 CFR 762.106) (Continued)

### C CMS

The lender must **have a credit management system, satisfactory to the Agency, based on the following:**

- **the lender's written credit policies and underwriting standards**
- **loan documentation requirements**
- **exceptions to policies**
- **analysis of new loan requests**
- **credit file management**
- **loan funds and collateral management system**
- **portfolio management**
- **loan reviews**
- **internal credit review process**
- **loan monitoring system**
- **the board of director's responsibilities.**

Unlike SEL's and CLP lenders who originate and service guaranteed loans under FSA standards and guidance, PLP lenders will use their own CMS for originating and servicing FLP-guaranteed loans. The items that will be considered when reviewing CMS are in subparagraph D.

DAFLP shall determine what changes must be made to CMS to ensure that statutory and regulatory program requirements are met.

Once CMS is approved by FSA, it becomes the operational plan and a part of Lenders Agreement between the lender and FSA for originating and servicing guaranteed loans. FSA shall monitor the lender by determining whether or not they are in compliance with the terms and conditions agreed to in CMS.

## 52 Eligibility Requirements for PLP (7 CFR 762.106) (Continued)

### D PLP CMS Guidelines

The following are the guidelines for PLP CMS.

The lender should address each of the following issues, either with copies of documents such as board policies, procedures, or guidance memorandum, or, if no documented guidance exists, with an explanation of how the lender handles the issue. The lender should include copies of any forms and documents routinely used in loan application, underwriting, closing, monitoring, and servicing.

**Note:** An example CMS can be found on FSA's web site at **http://www.fsa.usda.gov/Internet/FSA_File/example_cms.doc** (case sensitive). Lenders may draw on language in the example, but each section must be amended based on the institution's commercial lending policy, organizational structure, and loan management practices.

I. General Operations.

A. Normal trade area, conditions under which the lender would lend outside of its trade area.

B. Internal credit review system. Who does it? How are the results reported? How often is it done? What is the scope? How are deficiencies followed up?

C. Use of Agents, Consultants and Packagers. When are outside parties used?

D. Who will process and service FSA guaranteed loans, and who will monitor compliance with FSA reporting requirements?

II. Loan Analysis / Underwriting.

A. Management Ability/Credit History Analysis.

- What credit references does the lender require?
- Does the lender have different standards for new customers or beginning farmers?
- What factors in an applicant's credit history would determine whether or not credit is granted?

B. Capacity Analysis.

- What data is gathered and what ratios are calculated to determine repayment capacity?
- What are the lender's minimum capacity requirements for guaranteed and nonguaranteed loans?
- When and how are income statements evaluated?

## 52 Eligibility Requirements for PLP (7 CFR 762.106) (Continued)

### D PLP CMS Guidelines (Continued)

C. Capital Analysis.

- What data is gathered and what ratios are calculated to analyze the borrower's capital position?
- What are the lender's minimum capital requirements for guaranteed and nonguaranteed loans?
- How current must the financial statement be? How many historical statements are required at loan origination? What supporting schedules are required?
- What is the consolidation and/or combination process for entities and when is it required?
- What debts are verified and how is the verification documented?

D. Collateral Analysis.

- How does the lender determine the loan is properly secured?
- What are the lender's minimum collateral requirements for guaranteed and nonguaranteed loans?

E. Conditions.

- When does the lender place special conditions (such as reporting requirements) on the loan?
- What controls are used to assure loan proceeds are utilized as planned? How are loan proceeds disbursed? Are there limitations on the amount advanced in relation to the value of the collateral?

## 52 Eligibility Requirements for PLP (7 CFR 762.106) (Continued)

### D PLP CMS Guidelines (Continued)

III. Loan Servicing and Administration.

A. General Servicing.

- Describe your portfolio oversight. Discuss how risk is monitored on an ongoing basis and how often and what type of financial information is obtained based on borrower or loan type.
- Describe your procedure for advancing for loan or line of credit purposes, monitoring the use of loan funds, and verification of existence or acquisition of collateral.
- Describe your security monitoring, maintenance, inspection, and reassessment procedures. Describe your insurance requirements. Describe your policy regarding releasing collateral for trade, replacement, and sale.

B. Delinquencies.

- Describe any increased servicing procedures for distressed or "watch list" loans.
- Describe your procedures for reminder notices, default notification, personal contact, and preparation of servicing plans. Describe actions taken at various past due timeframes.
- Describe your policies on extensions, abeyance, deferral, and rescheduling and how the decision is documented.

C. Liquidation.

- Describe your procedures on acceleration, referral to legal counsel, foreclosure, replevin, and reporting to bank management.
- Describe your policies and procedures regarding protective advances, deeds in lieu of foreclosure, judgments, and release from liability.

D. Other.

- Describe your policies regarding release of security without consideration and release of co-signers, co-borrowers, or guarantors from liability.
- Describe any exceptions to loan policies or procedures and other information that is relevant to FSA-guaranteed loans.

## 52 Eligibility Requirements for PLP (7 CFR 762.106) (Continued)

### E FSA Experience

***--**The lender must **have made the minimum number of guaranteed OL, FO, CL, or SW--* loans established by the Agency and published periodically in a Federal Register Notice.**

This is set at a minimum of 20 Agency guaranteed farm loans in the past 5 years.

**Note:** The volume requirement is published in a separate FR document.

### F Loss Rate

**The lender must have a lender loss rate not in excess of the rate of the maximum PLP loss rate established by the Agency and published periodically in a Federal Register Notice.**

This rate is set at 3 percent.

***--[7 CFR 761.2(b)] Loss rate is the net amount of loan loss claims paid on FSA guaranteed loans made in the previous 7 years divided by the total loan amount of all such loans guaranteed during the same period.** See Exhibit 10.**--***

**If a lender applying for PLP status is or has recently been involved in a merger or acquisition, all loans and losses attributed to both lenders will be considered in the eligibility calculations.**

**The Agency may waive the loss rate criteria for those lenders whose loss rate was substantially affected by a disaster as defined in 7 CFR 1945, subpart A.**

This waiver may be granted only by DAFLP.

### G Sound Loan Proposals

The lender must **show a consistent practice of submitting applications for guaranteed loans containing accurate information supporting a sound loan proposal.**

PLP lenders are expected to be experienced agricultural lenders who can demonstrate a history of consistently developing complete and accurate applications with minimal FSA involvement.

## 52 Eligibility Requirements for PLP (7 CFR 762.106) (Continued)

### H Recurring Deficiencies

The lender must **show a consistent practice of processing Agency guaranteed loans without recurring major or minor deficiencies**.

In reviewing this requirement, DAFLP shall check previous monitoring reviews for major and minor recurring deficiencies**. [7 CFR 761.2] A major deficiency is one that directly affects the soundness of the loan.** Examples of major deficiencies may include the following:

- failure to obtain a complete appraisal report
- failure to perfect a lien
- failure to verify debts
- failure to obtain a credit report
- using unsound lending practices, such as unsupportable projections, inadequate collateral, or unsound assumptions.

**[7 CFR 761.2] A minor deficiency violates Agency procedure, but does not affect the soundness of the loan.** Minor deficiencies may include the following:

- nonsubstantive math errors
- missing forms
- delays in responding to FSA inquiries.

## 52 Eligibility Requirements for PLP (7 CFR 762.106) (Continued)

### I Ability to Service Guaranteed Loans

The lender must **demonstrate a consistent, above average ability to service guaranteed loans based on the following:**

- **borrower supervision and assistance**
- **timely and effective servicing**
- **communication with the Agency.**

This criterion should be reviewed in the light of the lender's relationship to FSA and its borrowers. Three specific criteria are addressed.

- **Borrower Supervision and Assistance.** For PLP lenders, FSA expects that lenders will routinely work with borrowers to set goals and resolve deficiencies. For troubled borrowers, FSA would look for lender actions to:

  - communicate with the borrower about their complete credit and debt situation
  - resolve financial difficulties with a view of the big picture.

- **Timely and Effective Servicing.** In assessing the PLP request, FSA shall look at how the lender has serviced its existing portfolio. Have problem loans been monitored closely and action taken promptly? Have loans been adequately protected in bankruptcy, litigation, or liquidation? Has the lender used good judgment in servicing actions, maintained control, and minimized losses to FSA?

- **Communication With FSA.** Because of the nature of PLP, good communication with FSA is critical. DAFLP shall look to SED and the authorized agency official for information about FSA's past and current relationship with the lender. Is FSA informed of issues and potential losses at the early warning stage? Does the lender submit required reports on time? Are issues discovered in monitoring reviews quickly resolved and communicated to FSA?

## 52 Eligibility Requirements for PLP (7 CFR 762.106) (Continued)

### J Qualified Person

The lender must **designate a person or persons, either by name, title, or position within the organization, to process and service PLP loans for the Agency.**

The lender should detail the minimum educational and experience requirements of loan officials or include the resume or resumes of the person or persons who are qualified to process and service FSA-guaranteed loans. For a PLP lender, it is expected that this person will have significant experience in agricultural lending and significant experience in originating and servicing FSA-guaranteed loans. To satisfy this requirement, the lender's application should address the experience the designated person has about the items in subparagraphs G and I.

Once PLP status is approved, the lender is responsible for maintaining staff that are adequately trained in originating and servicing guaranteed loans.

## 53 Approval Requirements (7 CFR 762.106)

### A Request for Approval

Both the lender and SED should develop the lender's request for approval. The lender should contact the State Office and inform SED of its intent to submit a PLP request. SED may provide additional guidance to the lender in developing its application. The request should be in the following 3 parts.

- Part I. The Lender's Application Letter demonstrating the lender meets the PLP criteria, excluding CMS.

- Part II. SED Comments and Recommendation. This part of the package will be developed from information gathered from the following sources:

  - County Offices where the lender proposes to do business and has done business in the past

  - in a multi-State request, the other FSA State Offices located in the lender's region

## 53 Approval Requirements (7 CFR 762.106) (Continued)

### A Request for Approval (Continued)

- State, County, and District Office operational files, containing information on the lender's past performance

- the lender's PLP application package

  **Note:** SED shall review the lender's proposed CMS to make a recommendation to DAFLP. However, SED will **not** set minimal underwriting, servicing, or liquidation standards, processes, or procedures for the lender. This is the lender's proposal and it need not, and probably will not, comply with requirements set for SEL and CLP lenders. Any areas considered inadequate by SED will be identified in the recommendation to DAFLP, but will not be communicated to the lender.

- reports indicating volume, loss, delinquencies, timeliness of lender reporting, etc.

- National Office for information on the lender's financial strength.

- Part III. A copy of the lender's proposed CMS. See subparagraph 52 D for CMS requirements.

Parts I and III of the application should be submitted to SED, who shall:

- check the application for completeness
- review its contents
- make an approval recommendation
- forward the application to DAFLP for approval.

### B DAFLP Review

DAFLP shall review the PLP request, contacting the lender if necessary, and make the approval decision.

**53 Approval Requirements (7 CFR 762.106) (Continued)**

**C Conditions of Approval**

**Lenders who meet the criteria will be granted PLP status for a period not to exceed 5 years.**

**PLP status will be conditioned on the lender carrying out its credit management system as proposed in its PLP status and any additional loan making or servicing requirements agreed to and documented in the PLP lender's agreement.**

**If the PLP lender's agreement does not specify any agreed upon process for a particular action, the PLP lender will act according to regulations governing CLP lenders.**

**Example:** If the PLP lender does not state in its CMS what historical financial information will be collected when developing applicant cash flow budgets, CLP requirements in paragraph 153 will be followed.

**D Renewal**

**PLP status will expire within a period not to exceed 5 years from the date the lender's agreement is executed, unless a new lender's agreement is executed.**

**Renewal of PLP status is not automatic. A lender must submit a written request for renewal of a lender's agreement with PLP status which includes information:**

- **updating the material submitted in the initial application**
- **addressing any new criteria established by the Agency since the initial application.**

**PLP status will be renewed if the applicable eligibility criteria under this section are met, and no due cause exists for denying renewal under subparagraph** 54 C.

**E Transfer of PLP Information to the Local Office**

SED shall provide a copy of PLP Lenders Agreement, including all attachments, to the authorized agency official in each local office that will process loans for the specific PLP lender.

## 54 Monitoring the PLP Lender (7 CFR 762.106)

### A Monitoring Reviews

**PLP lenders will provide information and access to records upon Agency request to permit the Agency to audit the lender for compliance with these regulations.**

SED is responsible for ensuring that monitoring reviews are conducted on each PLP lender. This review shall be conducted according to Part 11 and shall examine the lender's approved CMS. The designated reviewer shall review the lender's files according to the priorities in subparagraph 267 B.

### B Maintaining an Operational File

Each FSA office authorized by the Lenders Agreement to accept applications must develop and maintain an operational file as in the SEL Program. SED and DD shall also maintain a file developed as part of their Internal Annual Review.

At least annually, SED shall collect and review information on each PLP lender. SED shall examine monitoring reviews from the local office to determine whether:

- PLP status should continue
- the status should be terminated
- the renewal is denied for failure to comply with program requirements.

The SED operational file shall also contain a copy of the original Lenders Agreement and the lender's corresponding CMS.

**54 Monitoring the PLP Lender (7 CFR 762.106) (Continued)**

**C Revoking PLP Status**

In addition to the sanctions that may be imposed in subparagraph 48 C, a PLP lender may, at the discretion of DAFLP, have their status revoked **at any time during the 5 year term for cause. Any of the following instances constitute cause for revoking or not renewing PLP status:**

- **violation of the terms of the lender's agreement**
- **failure to maintain PLP eligibility criteria**
- **knowingly submitting false or misleading information to the Agency**
- **basing a request on information known to be false**
- **deficiencies that indicate an inability to process or service Agency guaranteed farm loans**
- **failure to correct cited deficiencies in loan documents upon notification by the Agency**
- **failure to submit status reports in a timely manner**
- **failure to use forms, or follow credit management systems accepted by the Agency**
- **failure to comply with the reimbursement requirements of §762.144(c)(7) *--and (c)(8)** (subparagraph 376 A)**.--***

**The Agency may allow a PLP lender with a loss rate which exceeds the maximum PLP loss rate to retain its PLP status for a two-year period, if the:**

- **lender documents in writing why the excessive loss rate is beyond their control**
- **lender provides a written plan that will reduce the loss rate to the PLP maximum rate within two years from the date of the plan**
- **Agency determines that exceeding the maximum PLP loss rate standard was beyond the control of the lender. Examples include but are not limited to** the following**:**
  - **a freeze with only local impact**
  - **economic downturn in a local area**
  - **drop in local land values**
  - **industries moving into or out of an area**
  - **loss of access to a market**
  - **biological or chemical damage.**

**54 Monitoring the PLP Lender (7 CFR 762.106) (Continued)**

**C Revoking PLP Status (Continued)**

**The Agency will revoke PLP status if the maximum PLP loss rate is not met at the end of the two-year period, unless a second two year extension is granted under this subsection.**

PLP lenders who exceed the maximum loss ratio and want to retain their status will contact their FSA State Office and explain why they believe their excessive losses are beyond their control. They will be required to develop a plan to reduce their losses below the 3 percent loss ratio, the current maximum allowed by regulations to retain PLP status.

| **IF the State Office determines there is...** | **THEN the State Office will...** |
|---|---|
| adequate justification for allowing the lender to retain PLP status | make their recommendation and send an exception request to DAFLP, who will make the final decision on granting the exception.<br><br>**Notes:** If granted, the exception may be renewed at the end of the 2-year period for another 2-year period if the lender is making satisfactory progress toward reducing their loss ratio below the standard, currently set at three percent. No further renewals or extensions would be granted.<br><br>A waiver may be granted only by DAFLP. |
| inadequate justification for allowing the lender to retain PLP status | decline to send a request for an exception. |

**D Reinstatement of PLP Status**

**A lender which has lost PLP status must be reconsidered for eligibility to continue as a Standard Eligible Lender or as a CLP lender in submitting loan guarantee requests. They may reapply for PLP status when the problem causing them to lose their status has been resolved.**

**55-64 (Reserved)**

# Part 5 Loan Application Requirements (7 CFR 762.110)

## Section 1 Application Requirements for SEL's and CLP Lenders

### 65 General Application Requirements

#### A Application Requirements

SEL's and CLP lenders must perform at least the same level of evaluation and documentation for guaranteed loans as for nonguaranteed loans of a similar type and amount.

Good communication with lenders will minimize problems and help ensure a rapid review of applications. The authorized agency official should communicate with lenders throughout the application preparation and submission process. Lenders should be encouraged to:

- contact authorized agency officials for assistance with the application
- address any issues or deficiencies before they become problems.

Lenders may use FSA-2291 as an application processing checklist. FSA may use FSA-2292 to review an application for completeness.

#### B Maintaining Complete Loan File

**All lenders must compile and maintain in their files a complete application for each guaranteed loan. CLP lenders must certify that the required items, not submitted, are in their files.**

The lender's file must contain the applicable items in paragraphs 66 and 67 and all correspondence with the borrower about servicing actions and other loan-related documentation generated after loan approval.

**The Agency may request additional information from any lender or review the lender's loan file as needed to make eligibility and approval decisions.**

## 66 Requirements for Loans of $125,000 or Less (7 CFR 762.110)

### A Application Package

**A complete application for loans of $125,000 or less** from SEL and CLP lenders **must, at least, consist of:**

- **the application form** (Application for Guarantee) (subparagraph B)
- **loan narrative** (subparagraph C)
- **balance sheet** (subparagraph D)
- ***--cash flow budget** unless waived (subparagraph E)**--***
- description of farmed land (subparagraph F)
- **credit report** (subparagraph G)
- environmental information (if needed, see subparagraph H)
- information related to entity applicants (if needed, see subparagraph I)
- ***--for CL guarantees, a copy of the conservation plan** (subparagraph J)
- **plans to transition to organic or sustainable agriculture** (if needed for CL, see subparagraph K).--*

**In addition to the minimum requirements, the lender will perform at least the same level of evaluation and documentation for a guaranteed loan that the lender typically performs for non-guaranteed loans of a similar type and amount.**

**The $125,000 threshold includes any single loan, or package of loans submitted for consideration at any one time. A lender must not split a loan into two or more parts to meet the threshold thereby avoiding additional documentation.**

Separate $125,000 thresholds apply to FO and OL/LOC. An application requesting guarantees of loans of different types (FO or OL/LOC), each of which is $125,000 or less, will be processed under the requirements of this paragraph. The maximum loan package that can be processed under this paragraph is $250,000.

**The Agency may require lenders with a lender loss rate in excess of the rate for CLP lenders to assemble additional documentation from** (paragraph 67).

On an individual lender basis, FSA may request additional information to make eligibility and approval decisions.

## 66 Requirements for Loans of $125,000 or Less (7 CFR 762.110) (Continued)

### B Application Form

Lenders may use Application for Guarantee or their own loan application form if it contains the same information. If a lender uses its own application form, the lender must attach an executed Application for Guarantee containing the applicant's name and address and any information not on the lender's form.

**Note:** Applications submitted electronically will be processed according to subparagraph 73 B.

### C Loan Narrative

The application package must include a narrative description of the lender's underwriting of the loan. The narrative must contain information and analysis of any loan application data that are out of the ordinary, or at variance with normal practices for the type of operation and region. The narrative must be an evaluation and not just a summary of the data. It may be ***--**less detailed for a borrower who already has a guaranteed loan or an FSA direct loan.**--***

The narrative should address the following, as applicable:

- describe the farming operation, such as types of enterprises, key personnel and management structure, their roles and background, proposed changes to the operation and adequacy of real estate, equipment, and other facilities

- an assessment of the adequacy of the collateral being offered to secure the proposed loan

- a discussion of the applicant's financial condition and projected repayment ability

  **Notes:** The lender should discuss any significant assumptions or deviations from historical performance in the proposed cash flow budget.

  ***--**If the application is for CL and the applicant meets the requirements to waive the cash flow requirement, the lender should discuss the applicant's financial conditions that qualify the applicant for the waiver.**--***

## 66 Requirements for Loans of $125,000 or Less (7 CFR 762.110) (Continued)

### C Loan Narrative (Continued)

- the name, Social Security number, and current address of any co-borrowers or co-signers required to execute the note at loan closing
- the short-term and long-term business goals of the operation
- the borrower's reporting requirements, limitations, and other conditions based on the lender's analysis of the proposal
- lender servicing plan describing the borrower's financial reporting requirements, limitations and conditions, plans for visiting the borrower, and any other borrower supervision
- if the loan contains balloon payments, the conditions related to the renewal of loan
- a discussion of how the applicant meets the loan eligibility requirements
- ***--**if the application is for CL, a discussion of the conservation plan and need for the qualifying conservation practices including a discussion of the transition plan, if applicable.**--***

### D Balance Sheet

The application package must contain a balance sheet for the applicant that was prepared within 90 calendar days of the application submission.

### E Cash Flow Budget

The lender should submit a cash flow budget as described in Exhibit 2. If significant changes are expected in the operation during the life of the loan, more than 1 cash flow budget may need to be developed.

***--**For Streamlined CL according to subparagraph 70.5 B, the lender should follow their internal procedure to determine financial feasibility. It is **not** required that these cash flow budgets be submitted to FSA.**--***

### F Description of Farmed Land

A description of the location of each tract of land to be farmed by the applicant should be provided. This may be by FSA farm number, legal description, plat map, or other identifying method. This may be included as part of the loan narrative.

## 66 Requirements for Loans of $125,000 or Less (7 CFR 762.110) (Continued)

### G Credit Report

A credit report on the applicant's credit history must be provided. In addition, lenders should consider any other pertinent information concerning the applicant's credit history. CLP lenders are not required to submit the credit report to FSA.

### H Environmental Information

Borrowers are required to have a current AD-1026 on file with FSA. Lenders should remind borrowers that AD-1026 must be executed with FSA, if AD-1026 is **not** already on file.

FSA can conduct its environmental review in most cases without additional information from the lender. However, occasionally additional information is needed, and until this information is received, the application is not complete, and the loan processing timeframe does not start. Situations needing additional information often involve wetland determinations, potential historical or archaeological sites, or construction of major confinement livestock facilities. The review is FSA's responsibility to conduct. However, the information to complete this review is part of a complete application.

### I Additional Requirements for Entity Applicants

Entity applicants must submit additional information for each entity member. The application must contain the following information about each entity member:

- full legal name
- address
- Social Security number
- percent ownership interest in the entity
- current balance sheet.

### *--J Conservation Plans

CL applicants must submit a copy of their current conservation plan. The plan must address conservation practices that will be financed by the CL request.

### K Transition Plan

To request consideration for priority funding when the loan funds will be used to facilitate a transition to organic or sustainable agriculture, an applicant must submit a plan discussing how they will carry out the transition. This plan can be:

- part of the conservation plan, as described in subparagraph J, or an organic plan that has been approved by a certified agent and the State Organic Certification Program

- a grant that was awarded by the Sustainable Agriculture Research and Education Program of the National Institute of Food and Agriculture, USDA.--*

## 67 Requirements for Loans Over $125,000 (7 CFR 762.110)

### A Application Package

**A complete application package for a guaranteed loan over $125,000 will consist of the *--items** in paragraph 66, plus subparagraphs B through G, **unless waived when conditions in** subparagraph 70.5 B are met.**--***

### B Verification of Income

Nonfarm and “other farm” income should be documented using the same documentation the lender uses for its nonguaranteed loans.

### C Verification of Debts Over $1,000

Verification can be documented using the same documentation the lender uses for its nonguaranteed loans.

### D Financial History

The financial history should support cash flow projections and include 3 years of income and *--expenses and 3 years of balance sheets, unless waived by subparagraph 70.5 B.

### E Production History

The application should include **3 years of production history (SEL only)**, unless waived by subparagraph 70.5 B.**--***

### F Proposed Loan Agreements

Any proposed nontypical agreements between the lender and the borrower should be explained in the narrative.

### G Development Plans

**If construction or development is planned, a copy of the plans, a copy of the specifications, and a development schedule** is needed.

## 68 Submission Requirements for SEL's and CLP Lenders

### A Submission Requirements

The following table summarizes the submission requirements for SEL's and CLP lenders. In addition to the items submitted to FSA, lenders are expected to maintain in their files all applicable items that do not need to be submitted. See subparagraph B.

| Submission Requirement | For Loans $125,000 or Less | | For Loans More Than $125,000 | |
|---|---|---|---|---|
| | SEL | CLP Lender | SEL | CLP Lender |
| Application Form | Y | Y | Y | Y |
| Loan Narrative | Y | Y | Y | Y |
| Balance Sheet | Y | Y | Y | Y |
| ***--Cash Flow Budget (if applicable)--*** | Y | Y | Y | Y |
| Description of Farmed Land | Y | Y | Y | Y |
| Entity Information (if applicable) | Y | Y | Y | Y |
| Credit Report | Y | F | Y | F |
| Environmental Information (if applicable) | Y | Y | Y | Y |
| ***--Conservation Plan (for CL only) | Y | Y | Y | Y |
| Transition Plan (for CL if applicable) | Y | Y | Y | Y***--*** |
| Proposed Loan Agreement | | | Y | F |
| Verification of Debts Over $1,000 | | | Y | F |
| ***--Verification of Income (if applicable) | | | Y | F |
| 3 Years of Production History (if applicable) | | | Y | N/A |
| 3 Years of Financial History (if applicable)***--*** | | | Y | F |
| Development Plans (if applicable) | | | Y | F |

**Note:** Items marked with an "F" are items that do not have to be submitted, but must be maintained in the lender's file.

### B Lender Certification

Lenders certify that they have the required documentation in their files by signing the Application for Guarantee.

## 69 (Reserved)

## Section 2 Preferred Lender Applications

### 70 Application Requirements for PLP Lenders (7 CFR 762.110)

#### A Application Requirements

**A complete application for PLP lenders will consist of:**

- **an application form** (Preferred Lender Application)

  **Note:** Applications submitted electronically will be processed according to subparagraph 73 B.

- **a loan narrative**

- **any other items agreed to during the approval of the PLP lender's status and contained in the PLP lender agreement**

- ***--for CL guarantees, a copy of the conservation plan** (subparagraph 66 J)

- **plan to transition to organic or sustainable agriculture** (if needed for CL, see subparagraph 66 K)**.--***

**PLP lenders must certify that the required items, not submitted, are in their files.** On a case-by-case basis, **the Agency may request additional information from any lender or review the lender's files as needed to make eligibility and approval decisions.** These requests shall be made only in situations when, because of the unique characteristics of the loan request, an eligibility or approval decision cannot be made without additional information.

FSA can conduct its environmental review in most cases without additional information from the lender. However, occasionally additional information is needed, and until this information is received, the application is not complete, and the 14-calendar-day timeframe does not start. Situations needing additional information often involve wetland determinations, potential historical or archaeological sites, or construction of major confinement livestock facilities. The review is FSA's responsibility to conduct. However, the information to complete this review is part of a complete application.

## 70 Application Requirements for PLP Lenders (7 CFR 762.110) (Continued)

### B Loan Narrative

FSA expects PLP lenders to include, in the narrative, a discussion of the 5 “C’s” of credit; that is, character, capacity, capital, conditions, and collateral.

For many PLP lenders, the narrative will often contain the same information submitted to the lender’s loan committee. Since the authorized agency official will rely on the narrative and application form for making the loan approval decision, it is important that the narrative covers any issues or questions that may arise during the evaluation process.

### C Submitting Applications Outside Normal Trade Area

PLP status will be approved for the lender’s normal trade area as defined in CMS. If a lender wants to make a guaranteed loan outside of this area, the lender should contact the State Office responsible for that area for guidance on where to submit the request for guarantee. On a case-by-case basis, SED may authorize the approval of guarantees outside the lender’s normal trade area if SED determines that the lender can adequately make and service the loan. If the lender wants to permanently expand its approved normal trade area, it will request an expansion through SED to DAFLP.

## Section 3 Other Guaranteed Application Options

### *--70.5 Application Requirements for CL's (7 CFR 762.110(d))

#### A CL Program

The objective of the CL Program is to facilitate implementing conservation practices rather than be a safety net for family farmers. Because of the emphasis on the environment, the CL Program can provide funds to individuals and entities that normally would **not** qualify for FSA assistance.

CL's:

- are **not** limited to family farmers and CL applicants can operate noneligible enterprises as defined in Exhibit 2
- will **not** need to pass the test for credit, and the graduation requirements of OL and FO loans do **not** apply.

All CL applications will consist of the applicable items as outlined in paragraphs 66, 67, 68, and 70.

#### B Streamlined CL's

Applicants who qualify for Streamlined CL's have already developed a higher level of management skills and financial security. For applicants with exceptionally strong financial positions, the lender will **not** be required to perform as intensive a cash flow analysis as is necessary for other applicants. The lender will only be required to follow their internal process that they would use for nonguaranteed applicants for cash flow analysis.

**[7 CFR 762.110(d)] For CL guarantee applicants meeting all the following criteria, the cash flow budget requirement in this section will be waived:**

- **be current on all payments to all creditors including the Agency (if currently an Agency borrower)**
- **debt to asset ratio is 40 percent or less**
- **balance sheet indicates a net worth of 3 times the requested loan amount or greater**
- **have a FICO credit score from the Agency obtained credit report of at least 700. For entity applicants, the individual members of the entity must be at least 700.--***

## 71 Application Requirements for Subsequent OL's

### A Application Requirements

Subsequent OL's within the same operating cycle do not require the complete application submission in paragraphs 65, 66, 67, 68, and 70. See subparagraph B.

### B Submission Requirement

Only items that have changed from the original application must be submitted, such as the cash flow projection.

## 72 Market Placement Program (7 CFR 762.110(g))

### A Purpose

The Market Placement Program:

- is designed to assist qualified existing direct loan borrowers and new direct loan applicants in obtaining a guaranteed farm loan from a commercial lender
- reduces the number of direct loans FSA makes, which reduces FSA costs while still meeting the credit needs of the farmer
- helps new lenders become familiar with FSA lending standards and, therefore, serves a marketing function for the Guaranteed Farm Loan Program.

***--Note:** The Market Placement Program does **not** apply to CL's because there is no test for credit requirement.**--***

### B Lender Participation

Each County Office shall identify lenders who are interested in participating in the Market Placement Program. To identify lenders, the County Office shall contact lenders:

- currently participating in the Guaranteed Farm Loan Program
- who are **not** participating in the Guaranteed Farm Loan Program.

Lenders should advise FSA of their interest.

## 72 Market Placement Program (7 CFR 762.110(g)) (Continued)

### C FSA Preparation of Loan Application

**When the Agency determines that a direct loan applicant or borrower may qualify for guaranteed credit, the Agency may submit the applicant or borrower's financial information to one or more guaranteed lenders. If a lender indicates interest in providing financing to the applicant or borrower through the guaranteed loan program, the Agency will assist in completing the application for guarantee.**

FSA shall complete and provide the following to lenders:

- Application for Guarantee
- farm business plan
- a narrative
- a suggested plan for servicing
- an appraisal.

To complete the guaranteed loan application, the authorized agency official shall use estimated interest rates and terms. If more than 1 lender is interested in the guaranteed loan, the applicant shall select 1 of the lenders. The lender must prepare the loan or LOC agreement. SEL's must submit the loan or LOC agreement to FSA before FSA issues the Conditional Commitment. The Conditional Commitment shall be issued upon the lender's acceptance of the loan application and confirmation that funds are available.

## 73 Filing Applications Electronically

### A Registering to Submit Applications

Lenders may submit applications electronically through USDA's Online Services web site. Lenders interested in filing electronically must first register. An explanation of the registration process, along with the necessary form, can be found by either of the following:

- at **http://www.sc.egov.usda.gov**, CLICK "Register"
- contacting any USDA Service Center.

Currently, registration is limited to individuals; lenders cannot be registered as organizations. However, persons representing lenders may register as an individual, and then may electronically sign and submit applications on behalf of the lender.

## 73 Filing Applications Electronically (Continued)

### B Submitting Applications

Once a lender's representative has registered and received a user ID and password, the representative may submit applications electronically. Go to **http://www.sc.egov.usda.gov**, CLICK "eForms", sign in, and follow the instructions to find, complete, and submit forms. Other electronic documents needed for a complete application may be attached to the application form and submitted to FSA.

If the lender submits the application electronically and all the required electronic signatures are not obtained, the application will be processed. However, the original, completed Application for Guarantee or Preferred Lender Application, with appropriate applicant signatures, must be provided to FSA before FSA will issue the guarantee.

### C Lender Requirements for Electronic Reporting

Information supplied by lenders through the USDA LINC web site meets the submission requirements. Lenders are not required to submit hard copies of information, such as loan closing reports or status reports.

Lenders must complete the following requirements to participate in electronic reporting through the USDA LINC web site.

- Each lender employee who participates in electronic reporting must create a Level 2 eAuthentication ID and password at **www.eauth.egov.usda.gov**.

- Level 2 security provides users with the ability to conduct official electronic business transactions with USDA agencies through the Internet. If a lender's employee presently has a Level 2 eAuthentication ID/account with any USDA agency, then a second account is not needed.

- Lenders are responsible for ensuring that all employees who will have access to electronic reporting adhere to the requirements in FSA-2201.

- Each lender must designate an employee as their Security Administrator who will have the authority and responsibility of granting access to other employees designated by the lender to use FSA's electronic reporting applications. The Security Administrator can have authority over all of the lender's portfolio as a Lender Administrator or can be limited to a single branch as a Branch Administrator. The Security Administrator will be the point of contact for FSA for maintaining the lender employees' eAuthentication ID's in AASM. A lender can choose to designate additional Security Administrators to act as a backup for the primary Security Administrator.

## 73 Filing Applications Electronically (Continued)

### C Lender Requirements for Electronic Reporting (Continued)

After the Security Administrators are designated and the requirements have been fulfilled, the lender shall have the Security Administrator contact FSA with his/her eAuthentication ID and lender information to be validated and entered into AASM.

Once Security Administrators are validated in the system, they will receive an e-mail confirmation validating their authorization and authority to add additional lender employees to AASM. Additional lender employees may be added by logging into the USDA LINC web site at **https://usdalinc.sc.egov.usda.gov**.

**Note:** The e-mail confirmation is sent to the e-mail address the Security Administrator entered when creating the eAuthentication account.

The following types of roles can be assigned to lender employees in AASM by the Security Administrator.

- "Representative" is an employee that the lender designates and authorizes to input electronic data through the USDA LINC website. The Security Administrator can authorize access for the entire portfolio as a Lender Representative or limit access to a specific branch as a Branch Representative.

- "Viewer" is an employee that the lender authorizes to view loan data and has view only capabilities of all transactions in the USDA LINC site. The Security Administrator can authorize access for the entire portfolio as a Lender Viewer or limit access to a specific branch as a Branch Viewer.

**Note:** FSA does **not** add or maintain any roles for lenders' employees.

## 74-82 (Reserved)

## Part 6 Application Processing Timeframes (7 CFR 762.130)

### 83 Application Processing Timeframes by Lender Type (7 CFR 762.130)

#### A Processing Timeframes for SEL's

**Complete applications from Standard Eligible Lenders will be approved or rejected, and the lender notified in writing, no later than 30 calendar days after receipt.**

The counting of the 30 calendar days begins when FSA determines that the application is complete, as defined in paragraphs 65, 66, 67, and 68.

#### B Processing Timeframes for CLP and PLP Lenders

**Complete applications from CLP or PLP lenders will be approved or rejected not later than 14 calendar days after receipt. For PLP lenders, if this time frame is not met, the application will automatically be approved, subject to funding, and receive an 80 or *--95 percent guarantee for FO or OL loans, and 75 percent guarantee for CL, as--* appropriate.**

The counting of the 14 calendar days begins when FSA determines that the application is complete, as provided in paragraphs 65, 66, 67, 68, and 70.

If PLP lenders are not notified of FSA's decision within 14 calendar days of submitting a *--complete application, the submitted application will be approved at a 75, 80, or 95 percent guarantee, as applicable.--*

If a PLP application is automatically approved, the lender must not close the loan or disburse funds until funds are obligated by FSA and Conditional Commitment is issued.

#### C Summary of Processing Timeframes

This table summarizes processing timeframes for SEL's and CLP and PLP lenders.

| Lender Type | Processing Timeframe in Calendar Days From the Date the Application Is Complete |
|---|---|
| SEL | 30 calendar days |
| CLP | 14 calendar days |
| PLP | 14 calendar days |

## 84 Monitoring FSA Approvals (7 CFR 762.130)

### A Authorized Agency Official Responsibilities

The authorized agency official is responsible for:

- processing applications within the allotted timeframes
- maintaining a tracking system to ensure that:
  - CLP and PLP lender applications are processed within 14 calendar days
  - SEL applications are processed within 30 calendar days
- entering a reason code and, if necessary, an explanation in GLS when a decision has not been made within 45 calendar days of receiving a complete application.

### B DD Responsibilities

DD is responsible for:

- overseeing the approval process
- monitoring unprocessed applications.

DD shall take all steps necessary to ensure that applications are processed as quickly as possible. Some steps DD can take include the following:

- prioritizing workloads
- providing additional training
- providing clerical help
- temporarily shifting staff assignments.

## 84 Monitoring FSA Approvals (7 CFR 762.130) (Continued)

### C Designated Review Official Responsibilities

Officials designated by SED to review rejected SDA applications shall:

- in each office of their jurisdiction review at least 50 percent of the rejected loan applications from SDA applicants who were rejected in each quarter
- if any improper rejections are found, review all rejected SDA loan applications in the approval official's coverage area
- notify SED of any problems detected
- ***--**with the FLC's advice, take action on the incorrectly rejected loan applications to**--*** correct any errors
- recommend appropriate personnel actions, such as training or revocation of loan approval authority, for the approval official responsible for rejections that appear to reflect a pattern or practice of discrimination against SDA applicants
- review the reasons and explanations why decisions have not been made on complete loan applications in a timely manner.

## 84 Monitoring FSA Approvals (7 CFR 762.130) (Continued)

### D FLC Responsibilities

FLC's shall:

- monitor loan application processing timeframes, GLS data entry, and performance goal accomplishments using GLS reports, as follows

| Step | Action |
|---|---|
| 1 | ***--**Go to **https://arcticocean.sc.egov.usda.gov/flp/IndexServlet** and CLICK--**** "LOGON", CLICK "Continue", sign into eAuthentication, and CLICK "Guaranteed Loan System". |
| 2 | Log into GLS and CLICK:<br><br>• "Reports"<br>• "FSA Reports"<br>• "Application Reports"<br>• "GLS2208 Report - Guaranteed Loan Average Processing Times". |
| 3 | In the Search Criteria section, on the Process Date box drop-down menu, select "Applications Received" and input the date range for the query.<br><br>**Note:** Drill down capability is available by County or Servicing Office. To drill down by:<br><br>• County Office, in the:<br><br>• Sort Options section, on the Major Sort box drop-down menu, select "Geographic State"<br><br>• Report Options section, in the Report Format, select "Details"<br><br>• Servicing Office, in the:<br><br>• Sort Options section, on the Major Sort box drop-down menu, select "Servicing State"<br><br>• Report Options section, in the Report Format, select "Details". |

- ***--**provide technical advice and direction for corrective actions on incorrect rejection of--**** applications.

## 84 Monitoring FSA Approvals (7 CFR 762.130) (Continued)

### E SED Responsibilities

SED's shall:

- be accountable for SDA loan application processing in the State, including ensuring that designated review officials conduct reviews and take corrective action on a timely basis
- emphasize the importance of timely loan application processing for all applicants
- ensure that loan application processing data is monitored through the Executive Information System, FOCUS, or other systems so that applications are being processed timely and equitably in the State
- manage staff resources appropriately to minimize loan application processing delays
- when necessary, initiate or monitor appropriate personnel actions resulting from incorrect rejection of applications to see if a pattern or practice is shown
- review the reports on loan application processing problems submitted by the designated review officials and Farm Loan Chief
- review reports on both SDA and non-SDA average loan application processing timeframes
- submit, by October 31 of each year, a copy of summary report of affected cases, findings, *****--corrective action, and results through SDMS.

**Notes:** See 1-AS, Exhibit 8 for guidance using SDMS.

ENTER "SDA Loan Review Summary" as the directive's title.**--***

**85-94 (Reserved)**

## Part 7 Loan Application Completeness Review (7 CFR 762.110)

### 95 Initial Review

#### A Adding Applications to GLS

New applications will be entered into GLS as they are received.

#### B Application Completeness Review

Each application shall be reviewed within 5 calendar days of receipt to determine whether the application is complete. Use Part 5 or FSA-2291 to determine whether an application is complete.

Use the following letter to notify the lender, with a copy to the applicant, when an application is complete.

Date: _____

Dear _____:

This letter is to certify that your application on behalf of (*insert name of borrower/applicant*) for Farm Service Agency loan guarantee assistance was received complete on (*insert date all information necessary to complete application was received*). Your request will be processed as quickly as possible.

If changes occur in you applicant's operation or financial situation before final action is taken, or if we need clarification of items on the application, we may ask you to provide additional information.

If you have any questions about the application, please contact this office.

Sincerely,

_____
(Title)

## 95 Initial Review (Continued)

### C Obvious Eligibility Issues

Each application shall be reviewed to determine whether there are any obvious reasons the loan cannot be guaranteed, such as an ineligible applicant or loan purpose. If it is clear that the loan cannot be guaranteed, the request should be rejected at that time.

### D Requesting Environmental Information From Other Organizations

Some applications will require additional information from other USDA agencies or organizations to fulfill National Environmental Policy Act or other special law requirements. To determine whether information is required from other organizations or Federal or State agencies, the authorized agency official should review applications for the type of loan, loan purposes, and the type of security.

Typically, loan applications that involve HEL, wetlands, historical, or archaeological issues or major construction require information from other organizations. In these cases, the authorized agency official must notify the lender about the additional information required and request the needed information from the organization or agency. A copy of the request should be maintained in the loan file.

The need for this information will indicate an incomplete application and will stop the loan processing timeframes, including PLP automatic approval.

## 96 Complete Application (7 CFR 762.130)

### A When Application Is Complete

**For purposes of determining application processing timeframes, an application will not be considered complete until all information required to make an approval decision, including the information for an environmental review, is received by the Agency.**

FSA can conduct its environmental review in most cases without additional information from the lender. However, occasionally additional information is needed, and until this information is received, the application is not complete, and the timeframes do not start. Situations needing additional information often involve wetland determinations, potential historical or archaeological sites, or construction of major confinement livestock facilities. The review is FSA's responsibility to conduct. However, the information to complete this review is part of a complete application.

### B Documenting Completeness

The date the application is complete:

- will be documented on the Application for Guarantee or Preferred Lender Application and entered into GLS

- sets the start date for the 14- or 30-calendar-day period within which applications must be approved or rejected by FSA. The automatic approval for PLP applications is initiated 14 calendar days after an application is complete.

## 96 Complete Application (7 CFR 762.130) (Continued)

### C Lender Notification

**The Agency will confirm the date an application is received with a written notification to the lender.**

The authorized agency official should evaluate the complete application according to subparagraph D. If an approval or rejection decision cannot be made within 5 calendar days, the authorized agency official must notify the lender in writing, with a copy to the applicant, that the application is complete and the date on which that occurred. This requirement applies to all 3 types of lenders.

**Note:** If a PLP lender is not notified in writing, upon receipt of the application, of any additional information needed, the 14-calendar-day timeframe for automatic approval will begin on the day the application is received.

### D Application Evaluation

Complete applications should be evaluated according to Parts 8 and 9. These parts describe in detail the steps to take when evaluating an application. The loan evaluation process does not have to be completed sequentially.

For applicants that do not meet loan requirements, such as cash flow, the authorized agency official should work with the lender and suggest ways to assist the applicant to become eligible. To ensure good service, the authorized agency official shall make a good faith effort to discuss with the lender, in person or by telephone, the application's shortcomings and possible alternatives. These discussions will be documented in the application file.

The decision to accept or reject an application will be made when the application has been completely reviewed and all reasonable options for making the applicant eligible for a guaranteed loan have been considered.

## 97 Incomplete Application (7 CFR 762.110(e))

### A Initial Notification of Lender

If the application is incomplete, the authorized agency official must notify the lender in writing, with a copy to the applicant, within 5 calendar days after receipt of the application. The letter (subparagraph B) must:

- identify the additional information required from the lender
- state that the application cannot be processed until the additional information is received
- establish a deadline for the lender to submit the materials 20 calendar days from the date of the letter.

Additional information should not be requested if it is clear that the application will be rejected for obvious eligibility issues.

### B Example of First Notification Letter

The following is an example of a first notification letter.

Date: _____

Dear _____:

Your application on behalf of (*insert name of borrower/applicant*) for Farm Service Agency loan guarantee assistance was received on (*insert date Application for Guarantee was received*). However, certain details are missing from the application. We must receive the following information before we can continue processing the request:

(*Insert list of items necessary to complete application.*)

Please provide these items by (*insert date 20 calendar days after date of letter*). If you have any questions about the application, please contact this office.

Sincerely,

_____
(Title)

## 97 Incomplete Application (7 CFR 762.110(e)) (Continued)

### C Second Notification

If the lender does not respond or does not supply all of the information requested within the 20-calendar-day period specified in the initial notification, the authorized agency official shall immediately send another letter (subparagraph D), with a copy to the applicant. The second notification shall address the same items specified in the initial letter, except that the deadline for submitting additional information will be 10 calendar days from the date of the letter.

The second notification letter must also state that if the lender does not contact the authorized agency official or submit the additional materials within the 10-calendar-day period, the application will be considered withdrawn. If necessary, the lender may receive an extension to submit the additional materials. If an extension is granted, a new deadline will be established and communicated to the lender in writing. The extension letter should restate that the application will be considered withdrawn if the lender does not contact the authorized agency official or submit the additional materials by the extension deadline.

## 97 Incomplete Application (7 CFR 762.110(e)) (Continued)

### D Example of Second Notification Letter

The following is an example of a second notification letter.

Date: _____

Dear _____:

Your application on behalf of (*insert name of borrower/applicant*) for Farm Service Agency loan guarantee assistance is still incomplete. We must receive the following information before we can finish processing this request:

(*Insert list of items necessary to complete application*.)

If you do not submit this information or contact this office by (*insert date 10 calendar days from date of letter*), your application will be withdrawn without further notice.

The Federal 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 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.

*The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.*

Sincerely,

_____
(Title)

**97 Incomplete Application (7 CFR 762.110(e)) (Continued)**

**E Automatic Withdrawal of Application**

**If the lender does not provide the information needed to complete its application by the deadline established in an Agency request for the information, the application will be considered withdrawn by the lender.**

**98-107 (Reserved)**

# Part 8 Loan Evaluation

## Section 1 Applicant Eligibility (7 CFR 762.120)

### *--108 General Eligibility Requirements for OL, FO, and CL (7 CFR 762.120)--*

#### A Summary of Eligibility Requirements

An applicant, including members of an entity applicant, must meet the following eligibility criteria to obtain a guaranteed loan. An eligible applicant is an applicant that:

- meets all requirements about prior debt forgiveness
- is not delinquent on any Federal debt
- does not have any outstanding recorded judgments obtained by the United States in a Federal court
- is a citizen of the United States, a U.S. non-citizen national, or a qualified alien under applicable Federal immigrations laws
- has the legal capacity to incur the obligations of the loan
- has an acceptable credit history
- is unable to obtain sufficient credit elsewhere without a guarantee

  ***--Note:** This does **not** apply to CL.

- has not been convicted of planting, cultivating, growing, producing, harvesting, storing, trafficking, or possessing a controlled substance within the last 5 crop years.--*

The authorized agency official will document in the FSA running record that the applicant meets all eligibility requirements.

#### B Clarification of Applicant

In the case of an entity, the applicant includes all the members of the entity who will execute the promissory note.

***--108 General Eligibility Requirements for OL, FO, and CL (7 CFR 762.120) (Continued)--***

**C No Agency Loss**

**The applicant, and anyone who will execute the promissory note, has not caused the Agency a loss by receiving debt forgiveness on all or a portion of any direct or guaranteed loan made under the authority of the "ACT" by debt write-down or write-off; compromise, adjustment, reduction, or charge-off under the provisions of section 331 of the "ACT"; discharge in bankruptcy; or through payment of a guaranteed loss claim on: more than three occasions on or prior to April 4, 1996; or any occasion after April 4, 1996,** except as noted below.

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

- **received a write-down under section 353 of the "ACT"**

- **is current on payments under a confirmed reorganization plan under Chapter 11, 12, or 13 of Title 11 of the United States Code**

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

**Notes:** An "ACT" loan is any of the following, whether direct or guaranteed, made by FSA or its predecessor agency, FmHA:

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

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

***--108 General Eligibility Requirements for OL, FO, and CL (7 CFR 762.120) (Continued)--***

**C No Agency Loss (Continued)**

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

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

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

**Note:** The authorized agency official shall verify and document previous loss to the government, or debt forgiveness, for each applicant and all individuals who will sign the promissory note. SSN or tax ID number for each will be entered into the following databases to document eligibility. Screen prints of the information used as the basis for the eligibility determination will be placed in the case file.

- DLS Customer Profile (printer friendly version) verification of both current/past debts and any prior debt forgiveness.

- The View Loan Screen in GLS will be used 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 the promissory note. The Loan List Screen will be displayed with 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.

***--108 General Eligibility Requirements for OL, FO, and CL (7 CFR 762.120) (Continued)--***

**D Delinquency on Federal Debt**

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

Federal debt not paid within 90 calendar days of the due date is considered delinquent.

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

Loans that are made, using the following, become a delinquent Federal debt upon the payment of a final loss claim:

- FSA-1980-25 or FSA-1980-28 with the July 20, 2001, or later revision date
- Application for Guarantee or Preferred Lender Application.

**E Outstanding Recorded Judgments**

**The applicant, and anyone who will execute the promissory note, has no outstanding unpaid judgments obtained by the United States in any court. Such judgments do not include those filed as a result of action in the United States Tax Courts.**

Applicants must provide evidence that all Federal judgments have been released or paid in full to be eligible for guaranteed loans. Loan funds will not be used to pay Federal judgments. Questions by FSA employees about outstanding judgments should be directed to OGC.

***--108 General Eligibility Requirements for OL, FO, and CL (7 CFR 762.120) (Continued)--***

**F United States Citizenship**

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

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

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

**G Legal Capacity to Incur Loan**

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

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

**H Past Dealings**

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

***--108 General Eligibility Requirements for OL, FO, and CL (7 CFR 762.120) (Continued)--***

**I Credit History**

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

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

**J Test for Credit**

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

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

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

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

The authorized agency official shall:

- review the financial information supplied by the lender along with graduation
- document that the loan requested does **not** meet the lender's loan requirements without a guarantee.

***--108 General Eligibility Requirements for OL, FO, and CL (7 CFR 762.120) (Continued)--***

**K Controlled Substances**

**[7 CFR 762.120] 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.

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.

Application for Guarantee or Preferred Lender Application 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 Application for Guarantee and Preferred Lender Application will be the only documentation required involving convictions of controlled substances.

***--108 General Eligibility Requirements for OL, FO, and CL (7 CFR 762.120) (Continued)--***

**L 15-Year OL Time Limit**

**Note:** Enforcement of this subparagraph is suspended until December 31, 2010.

**[7 CFR 762.122] No guaranteed OL shall be made to any applicant after the 15th year that an applicant, or any individual signing the promissory note, received a direct or guaranteed OL.**

**If a borrower had any combination of direct or guaranteed OL closed in 10 or more prior calendar years, before October 28, 1992, eligibility to receive new guaranteed OL is extended for 5 additional years from October 28, 1992, and the years need not run consecutively. However, in the case of a line of credit, each year in which an advance is made after October 28, 1992, counts toward the 5 additional years.**

**Once determined eligible, a loan or line of credit may be approved for any authorized term.**

**Example:** A 5-year LOC may be approved on the last year an applicant is eligible and advances may be made for 5 years.

***--108 General Eligibility Requirements for OL, FO, and CL (7 CFR 762.120) (Continued)--***

**M Determining Years of Eligibility for Guaranteed OL's**

**Note:** Enforcement of this subparagraph is suspended until December 31, 2010.

Applicants are eligible to close guaranteed or direct OL's in 15 nonconsecutive years. The following table summarizes the eligibility requirement based on the applicant's status on October 28, 1992, and the number of years the applicant has received direct or guaranteed loans.

| IF the applicant had… | THEN they are eligible for… |
|---|---|
| direct or guaranteed OL's closed in 10 or more years on or before October 28, 1992 | 5 years of guaranteed OL closing after October 28, 1992.<br><br>5 years - _____ = _____<br>(# years loan closed after 10/28/92 or advances made on LOC)  (# years remaining) |
| fewer than 10 years of direct or guaranteed OL's closed on or before October 28, 1992 | 15 years of guaranteed OL.<br><br>15 years - _____ = _____<br>(# years loan closed or advances made on LOC)  (# years remaining) |

**Note:** Before October 28, 1992, only the year in which the loan was closed is counted. Subsequent year advances on LOC's closed before October 28, 1992, do **not** count as an additional year of eligibility. However, after October 28, 1992, subsequent advances on LOC's are counted as a year of eligibility used.

**N Operator Requirement**

A loan application should be submitted in the name of the actual operator of the farm. This should be consistent with any representations previously made by the applicant for farm program benefits.

If inconsistencies in the structure of the farming operation are identified, the application will be considered incomplete and the lender will be informed according to paragraph 97. The inconsistencies must be resolved before the application being considered complete.

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

### A Operator Requirement

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

When determining whether or not the farm meets the family farm definition, the authorized agency official shall:

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

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

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

| Item | Factor | Consideration |
|---|---|---|
| 1 | Recognized in the community as a farm | Consider how the applicant's farm operation compares to similar farm operations in the community. In most areas of the country and in most farming enterprises, the family will provide most of the day-to-day labor on a family farm. An exception may be made for enterprises that produce high-value, labor-intensive crops, such as fruit or vegetables. |
| 2 | Management and control of the farm business | All of the day-to-day management and operational decisions should be made by members of the farm family. The use of consultants, advisors, and similar experts is certainly acceptable provided someone in the farm family is the decision maker. |
| 3 | Amount of labor | A substantial amount of the full-time labor required must be contributed by family or entity members to the operation. The use of seasonally hired labor should not be precluded. The borrower may not necessarily perform a majority of the labor, but the amount of labor provided by the borrower is significant. One distinguishing characteristic of a family farm is that the family members provide both physical labor and management for the farm. Consider the labor requirements that are necessary for the production of specific high-value, labor-intensive crops. |

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

### A Operator Requirement (Continued)

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

### B Entity Borrower Requirements

**In the case of an entity borrower:**

- **the entity must be authorized to operate, and own if the entity is also an owner, a farm in the state or states in which the farm is located**

- either of the following:

  - **if the entity members holding a majority interest are related by marriage or blood, at least one member of the entity also must operate the family farm**

  - **if the entity members holding a majority interest are not related by marriage or blood, the entity members holding a majority interest must also operate the family farm.**

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

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

### A Owner and Operator Requirement

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

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

### B Entity Requirements

**In the case of an entity borrower:**

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

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

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

### C Life Estates

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

A guaranteed FO can be made to:

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

***--111 Eligibility Requirements for OL and FO Entity Applicants (7 CFR 762.120(k))--***

**A Individual Ownership Interest Requirement**

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

**B Entity Ownership of Large Farms**

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

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

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

- ***--**the entity member is a citizen of the United States, United States non-citizen national, or qualified alien**--***
- the entity member, in past dealings with FSA, must not have provided FSA with false or misleading documents or statements
- the entity member has an acceptable credit history
- the entity members meet the requirements of paragraph 109 or 110.

**C Domestic Farmer**

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

**D Entity Member Requirement**

**The entity members are not themselves entities.**

***--112 Specific Requirements for CL's (7 CFR 762.120)**

**A Applicant Requirements**

CL applicants do **not** have to meet the following:

- "family farm" definition
- test for credit requirement.

**Note:** Because of this, some CL applicants will be very strong financially, with high debt service capacities and significantly more than adequate equity to secure the loan request. See paragraph 70.5.

**B Eligibility Criteria**

**Entity applicants for CL guarantees must meet the following eligibility criteria:**

- **the majority interest holders of the entity must meet the requirements of** subparagraphs 108 F, H, and I **of this section**

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

- **the entity members are not themselves entities**

- **the entity must be authorized to operate a farm in the State or States in which the farm is located.**

**Individual applicants for CL guarantees must be farmers or ranchers in the United States.--***

**113-121 (Reserved)**

## Section 2 Loan Purposes and Limitations

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

#### A General OL Purposes

The authorized agency official shall review loan applications to ensure that OL funds are used for authorized purposes.

#### B Term OL Purposes

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

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

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

### B Term OL Purposes (Continued)

- **payment of loan closing costs**

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

- **payment of training costs required or recommended by the Agency.**

### C Real Estate Improvements

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

### D Processing or Marketing Purposes

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

OL funds can also be used to finance the initial processing of agricultural commodities produced by the applicant's farm.**--***

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

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

- compare the relative size of revenues and expenses for the farm and nonfarm operations

- consider the portion of goods marketed or processed that the farm raises versus the ***--**portion obtained from other entities. If the applicant produces more than 50 percent of the commodity being processed, the enterprise may be allowable.**--***

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

### E Refinancing

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

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

### F LOC Purposes

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

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

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

- **payment of current annual operating debts advanced for the current operating cycle; under no circumstances can carry-over operating debts from a previous operating cycle be refinanced**

- **purchase of routine capital assets, such as replacement of livestock, that will be repaid within the operating cycle**

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

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

- **payment of scheduled, non-delinquent term debt payments provided the debt is for authorized FO or OL purposes**

- **purchase of cooperative stock for credit, production, processing, or marketing purposes**

- **payment of loan closing costs.**

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

### A General FO Purposes

The authorized agency official shall review loan applications to ensure that FO funds are used for approved purposes.

### B FO Purposes

**Guaranteed FO's are authorized only to:**

- **acquire or enlarge a farm**

  **Examples: Examples include, but are not limited to:**

  - **providing down payments**
  - **purchasing easements for the applicant's portion of land being subdivided**
  - ***--participating in the Downpayment Loan program under--* 7 CFR Part 764 of this chapter** (3-FLP)**.**

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

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

**B FO Purposes (Continued)**

- **make capital improvements**

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

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

  When planning capital improvements, the lender shall ensure that:

  - all project facilities are designed using accepted architectural and engineering practices and conform to applicable Federal, State, and local codes and requirements

  - the project will be completed with available funds and, once completed, will be used for its intended purpose and produce products in the quality and quantity proposed in the application.

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

  - **reasonable assurance that the applicant will have use of the improvement over its useful life**

  - **compensation for any unexhausted value of the improvement if the lease is terminated.**

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

**B FO Purposes (Continued)**

- **promote soil and water conservation and protection**

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

- **pay closing costs, including but not limited to, purchasing stock in a cooperative, appraisal and survey fees**

- **refinance indebtedness incurred for authorized FO or OL purposes, provided the lender and applicant demonstrate the need to refinance the debt.**

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

***--123.5 CL Purposes (7 CFR 762.121(c))**

**A General CL Purposes**

The authorized agency official shall review loan applications to ensure that CL funds are used for authorized purposes.

**B CL Purposes**

**Loan funds disbursed under a CL guarantee may be used for any conservation activities included in a conservation plan including, but not limited to:**

- **the installation of conservation structures to address soil, water and related resources**

- **the establishment of forest cover for sustained yield timber management, erosion control or shelter belt purposes**

- **the installation of water conservation measures**

- **the establishment or improvement of permanent pasture**

- **other purposes including the adoption of any other emerging or existing conservation practices, techniques or technologies**

- **refinancing indebtedness incurred for any authorized CL purpose.**

**Note:** The lender shall ensure that the project can be completed with available funds.**--***

***--123.5 CL Purposes (7 CFR 762.121(c)) (Continued)**

**B CL Purposes (Continued)**

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

- **reasonable assurance that the applicant will have use of the improvement over its useful life**

- **compensation for any unexhausted value of the improvement if the lease is terminated.--***

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

**A General Guaranteed Loan Limitations**

Applicants are limited in the total amount of money they can borrow through FSA programs and in how they can use the funds they receive. The authorized agency official must review loan applications to ensure that they comply with FSA limitation requirements.

***--B Specific OL, FO, and CL Limitations--***

**[7 CFR 761.8(c)] The total dollar amount of line of credit advances and income releases cannot exceed the total estimated expenses, less interest expense, as indicated on the borrower's cash flow budget, unless the cash flow budget is revised and continues to reflect a feasible plan.**

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

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

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

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

***--B Specific OL, FO, and CL Limitations (Continued)--***

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

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

**Loans may not be made for any purpose which contributes to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural *--commodity. A decision by the Agency to reject an application for this reason may be--* appealable. An appeal questioning the presence of a wetland, converted wetland, or highly erodible land on a particular property must be filed directly with the USDA agency making the determination in accordance with the agency's appeal procedures.**

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

See Part 10 for maximum loan amount limitations.

***--[7 CFR 762.125(a)(9)] Except for CL, guaranteed loan funds will not be used to** establish or support a noneligible enterprise as defined in Exhibit 2, even if the noneligible enterprise contributes to the farm.

The purpose of the CL Program is to provide funding that results in a net benefit to the environment regardless of the type of enterprise, including noneligible enterprises as defined in Exhibit 2.**--***

**125-134 (Reserved)**

## Section 3 Loan Terms, Insurance, Inspections, and Fees

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

**A Fixed and Variable Rates**

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

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

**B Maximum Interest Rates**

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

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

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

### C Interest Charges

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

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

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

### A Loan Fees

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

**Lenders may not charge a loan origination and servicing fee greater than one percent of the loan amount for the life of the loan when a guaranteed loan is made in conjunction *--with a down payment FO under 7 CFR Part 764 of this chapter** (3-FLP, Part 7, Section 2)**.--***

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

### B Late Payment Charges

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

Late payment fees and prepayment penalties may be charged on guaranteed loans, if they are routinely charged by the lender on similar loans. Late payment charges, including interest on late payments, may be charged and collected from borrowers in cases of default when the borrower pays the account current or the loan is paid in full. However, late payment charges and prepayment penalties are not covered by the guarantee and will not be paid by the government in the case of a loss. Ledgers that are provided to support the principal and interest included on FSA-2254 should not include default interest or late charges.

### C Guarantee Fee

***--**A guarantee fee will be charged on all loans according to subparagraph 247 A.**--***

*** * ***

***--137 Loan Term and Payment Schedules (7 CFR 762.124(b), (c), (d), and (e))--***

**A OL's Repayment Schedule**

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

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

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

**B OL/LOC Final Maturity Date**

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

***--137 Loan Term and Payment Schedules (7 CFR 762.124(b), (c), (d), and (e)) (Continued)**

**C LOC Advances**

**All advances on a line of credit must be made within 5 years from the date of the loan--* Guarantee.**

**D FO Final Maturity Date**

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

***--E CL Terms**

**Each loan must be scheduled for repayment over a period not to exceed 20 years from the date of the note or such shorter period as may be necessary to assure that the loan will be adequately secured, taking into account the probable depreciation of the security.**

**F Loan Note Guarantee Balloon Payments**

**Balloon payment terms are permitted on FO, OL or CL subject to the following.--***

- **Extended repayment schedules may include equal, unequal, or balloon installments if needed to establish a new enterprise, develop a farm, or recover from a disaster or an economic reversal.**

- **Loans with balloon installments must have adequate collateral at the time the balloon installment comes due. Crops, livestock other than breeding livestock, or livestock products produced are not sufficient collateral for securing such a loan.**

- **The borrower must be projected to be able to refinance the remaining debt at the time the balloon payment comes due based on the expected financial condition of the operation, the depreciated value of the collateral, and the principal balance on the loan.**

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

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

### A Lender Responsibilities

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

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

### B Crop Insurance

**By loan closing, applicants must either:**

- **obtain at least the catastrophic risk protection (CAT) level of crop insurance coverage, if available, for each crop of economic significance, as defined by 7 CFR Part 402**

- **waive eligibility for emergency crop loss assistance in connection with the uninsured crop. EM loan assistance under 7 CFR Part 764 of this chapter** (3-FLP) **is not considered emergency crop loss assistance for purposes of this waiver and execution of the waiver does not render the borrower ineligible for EM loans.**

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

### C Flood Insurance

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

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

### C Flood Insurance (Continued)

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

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

## 139 Inspection Requirements (7 CFR 762.123(b))

### A Inspection Requirements

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

During the inspection, the lender should determine whether the applicant has adequate property, buildings, and equipment to operate a viable farm.

### B Inspection and Assessment Documentation

A summary of the farm inspection and the lender's assessment of the viability of the operation should be mentioned in the application narrative.

**140-150 (Reserved)**

## Section 4 Credit Decision

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

### 151 Determining Financial Feasibility of Loans (7 CFR 762.125)

#### A Purpose

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

#### B Feasible Plan

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

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

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

The cash flow budget used in the loan application must:

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

***--**The lender's projected cash flow budget should include all cash inflows and outflows. If the authorized agency official determines that cash inflows have been overestimated or cash outflows have been underestimated or omitted from the plan, the authorized agency official will recalculate the debt coverage. If the recalculation shows adequate cash flow, the authorized agency official will document the findings and proceed with processing the request.

If, after re-evaluation, the cash flow budget is no longer feasible, the lender will be notified and given up to 10 calendar days to revise the plan. The lender will justify any changes made to the cash flow budget.

**Note:** For Streamlined CL requests, a cash flow budget is **not** required. The lender should follow their internal procedures to determine financial feasibility.**--***

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

### A Purpose

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

### B Projected Income and Expenses

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

SEL's also must use reliable or reasonable forecasted crop or livestock prices. Where available, the operation's actual production records must be used to estimate future production yields. The expenses used in the cash flow budget should be based on prior experience and be consistent with anticipated prices for similar goods and services. Projections of income from FSA farm programs should be prepared with assistance from FSA farm program staff.

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

***--Note:** For Streamlined CL requests, SEL's will follow their internal procedures for determining financial feasibility.**--***

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

**C Commodity Price Forecasts**

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

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

**D Estimating Production**

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

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

**For existing farmers, actual production for the past 3 years will be utilized.**

**For those farmers without a proven history, a combination of any actual history and any other reliable source of information that are agreeable with the lender, the applicant, and the Agency will be used.**

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

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

**E Declared Disaster**

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

- **County average yields are used for the disaster year if the applicant's disaster year yields are less than the county average yields. If county average yields are not available, State average yields are used. Adjustments can be made provided there is factual evidence to demonstrate that the yield used in the farm plan is the most probable to be realized.**

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

County or State average yields should be substituted only when the other information is not available to make an accurate projection. The objective is to arrive at a projection of the most reliable estimate of the production level the operator is expected to achieve.

**F Lender's Documentation**

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

| Cash Flow Element | Documentation to Support Elements |
|---|---|
| Income and Expense Projections | • Historical performance data.<br>• FSA records.<br>• Extension or county data.<br>• Thorough loan narrative. |
| Nonfarm Income | • FSA-2014 or lender verification of income form.<br>• W-2, pay stub, telephone record, or historical performance data. |
| Loan Balances and Payment Schedules | • FSA-2015 or lender verification of debt form.<br>• Loan statement, credit report, or telephone record. |

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

### G Consistency of Farm Operating Plans

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

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

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

### H Refinancing Existing Debt

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

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

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

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

### I Alternate Income

**When a feasible plan depends on income from other sources in addition to income from owned land, the income must be dependable and likely to continue. The lender will analyze business ventures other than the farm operation to determine their soundness and contribution to the operation.**

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

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

### A Purpose

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

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

### B Using Financial History

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

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

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

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

The loan narrative should:

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

***--Note:** For Streamlined CL requests, CLP lenders will follow their internal procedures for determining financial feasibility.**--***

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

### A Purpose

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

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

### B Using Internal Procedures

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

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

**155-165 (Reserved)**

## Subsection 2 Security of the Loan

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

#### A Purpose

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

#### B Adequate Security

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

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

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

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

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

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

### B Adequate Security (Continued)

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

•***--**Is the value of the basic security at least equal to the proposed loan amount?**--***

- Is additional security available?
- Is this a specialized operation with limited sale opportunities?
- What is the age, durability, probable depreciation rate, and life of the security and how does this compare to the term of the loan?

•***--**What is the proposed lien position on the basic security?**--***

- Is the applicant's net worth high or low compared with their total liabilities, including the proposed amount of the loan or LOC?
- Does the applicant have a strong cash flow position and high profitability?

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

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

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

**D Lien Position**

**All guaranteed loans will be secured by the best lien obtainable. Provided that:**

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

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

- **Junior lien positions are acceptable only if the total amount of debt with liens on the security, including the debt in junior lien position, is less than or equal to 85 percent of the value of the security.**

  **Notes:** Liens junior to the guaranteed position will not be considered in this limitation.

  Subsequent guaranteed loans made by the same lender with the same security will not be considered junior in this limitation and will be treated as having an equal lien position with existing outstanding loans.

  When guaranteed and unguaranteed loans share equal lien position, neither loan will be considered junior. In these situations, the lender will provide a written agreement, agreeable to FSA, outlining how proceeds will be distributed if security is liquidated. If an agreement is not provided, then when any equally shared security is liquidated, the net proceeds shall be divided pro rata based on the amounts loaned.

  **Example:** When the net proceeds are divided pro rata, if the lender makes a $700,000 guaranteed loan in conjunction with a $300,000 unguaranteed loan and the security is subsequently liquidated resulting in $800,000 net proceeds, $560,000 would be applied to the guaranteed loan and $240,000 to the unguaranteed loan.

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

**D Lien Position (Continued)**

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

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

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

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

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

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

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

## 167 Identifiable Collateral (7 CFR 762.126(c))

### A Purpose

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

### B Identifiable Security

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

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

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

### C Equipment

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

### D Livestock

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

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

### E Real Estate

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

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

### A Purpose

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

### B Security Requirements

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

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

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

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

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

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

### C Leasehold Properties

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

If the authorized agency official does not have experience in making loans secured by leaseholds, they should contact the State Office for assistance.

### D Additional Personal or Corporate Guarantees

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

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

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

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

### A Multiple Security Owners

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

### B Exceptions to Security Requirements

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

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

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

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

**170-180 (Reserved)**

## Subsection 3 Appraisals

### 181 General Requirements (7 CFR 762.127)

#### A Purpose

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

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

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

See subparagraph 267 I for SED responsibilities about appraisals.

#### B General Requirements

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

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

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

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

## 181 General Requirements (7 CFR 762.127) (Continued)

### C Situations Where Appraisals Are Required

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

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

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

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

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

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

## 181 General Requirements (7 CFR 762.127) (Continued)

### D Loan Servicing

Appraisals are required under the following loan servicing actions:

- transfer of security and assumption of debt
- debt writedown
- servicing FSA-2253's
- liquidation
- partial releases of security if determined necessary by FSA.

### E Situations Where Appraisals Are Not Required

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

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

Appraisals are not required on property to be taken as additional security that is clearly in excess of what is needed to fully secure the loan. The lender shall provide an estimate of value on the Application for Guarantee or Preferred Lender Application, as applicable.

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

### F Appraisal Costs

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

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

## 182 Chattel Appraisals (7 CFR 762.127(c))

### A Techniques

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

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

### B Reports

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

### C Appraiser Qualifications

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

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

## 183 Real Estate Appraisals (7 CFR 762.127(d))

### A Techniques

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

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

### B Reports

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

***--**Generally, the 3 approaches to value are required when all are necessary to produce credible assignment results. Appraisal development may however be limited in nature as established in the scope of work. An appraisal that has been limited in scope might result in an exclusion of 1 or more of the approaches to value, if deemed unnecessary or not representative. An example of this might be the exclusion of the cost approach to value when appraising cropland where there are no improvements or when the improvements are functionally obsolete and have no remaining contributory value.

The appraisal report may be either a self-contained or summary format. The self-contained report contains all of the information significant to the property. A summary report contains the same information as a self-contained report, but it is presented in less detail, with detailed supportive information maintained within the appraisers work file. Restricted reports are normally only for internal use, may be simply a letter of value, have limited information, and are not acceptable for guarantee requests.**--***

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

**C Appraiser Qualifications**

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

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

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

**184-194 (Reserved)**

## Subsection 4 Maximum Loss for Percent of Loan Guarantee

### 195 Percent of Guarantee (7 CFR 762.129 and 762.130)

**A Standard Guarantee**

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

**Except for CLs, all guarantees issued to CLP and PLP lenders will not be less than 80 percent.**

**For CLs, the percent of guarantee will be 75 percent** regardless of the lender's status or timeframes.**--***

**B PLP Lenders**

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

**Complete applications from PLP lenders will be approved or rejected not later than 14 calendar days after receipt. If this timeframe is not met, the application will automatically be approved, subject to funding, and receive an 80 or 95 percent *--guarantee for FO or OL and 75 percent guarantee for CL, as appropriate.--***

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

***--C Maximum Loss for FO and OL--***

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

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

**195 Percent of Guarantee (7 CFR 762.129 and 762.130) (Continued)**

***--D Guaranteed CL**

**For CL, the percent of guarantee will be 75 percent of the principal amount of the loan. The maximum loss under the guarantee will be any loss sustained by the lender on the guaranteed portion including:**

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

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

**A Exceptions**

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

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

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

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

  - A farmer has a direct loan with an outstanding balance of $90,000.
  - The lender is applying for a $300,000 FO.
  - The percent of guarantee on the new guaranteed loan without the refinancing is 90 percent.

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

**A Exceptions (Continued)**

The weighted average guarantee is calculated as follows.

$$\frac{\text{Outstanding direct loan}}{\text{Guaranteed loan amount.}} \times 95\% + \frac{\text{Portion of guaranteed loan not refinancing direct loan}}{\text{Guaranteed loan amount.}} \times \text{Percent of guarantee.} =$$

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

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

- **when the purpose of an FO loan guarantee is to participate in the down payment loan program**

- **when a guaranteed OL is made to a farmer who is participating in the Agency's down payment loan program**

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

  The downpayment loan program refers only to FO made under 3-FLP, Part 7, Section 2. Applicants meeting only the definition of beginning or socially disadvantaged farmer will not qualify for a 95 percent guarantee.

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

- **when a guaranteed OL is made to a farmer who farms land subject to the jurisdiction of an Indian tribe and whose loan is secured by 1 or more security instruments that are subject to the jurisdiction on an Indian tribe.**

**197-207 (Reserved)**

## Section 5 Environmental and Special Laws

### 208 Environmental Requirements (7 CFR 762.128)

#### A Overview

Lenders must consider environmental issues when making guaranteed loans. authorized agency officials should consult 7 CFR Part 1940, subpart G, *** * *** for guidance on what FSA must do to comply with the National Environmental Policy Act, on issues such as HEL, wetlands, floodplains, and hazardous waste.

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

#### B Environmental Requirements

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

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

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

**208 Environmental Requirements (7 CFR 762.128) (Continued)**

**B Environmental Requirements (Continued)**

- **a visit to the farm operation when the available information is insufficient to make a determination**

- **other information supplied by the lender or applicant upon Agency request. If necessary, information not supplied with the application will be requested by the Agency.**

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

It is the responsibility of the authorized agency official to complete the proper level of environmental assessment for each loan application as required in 7 CFR Part 1940, subpart G. The certification by the lender on Application for Guarantee or Preferred Lender Application does not certify that the loan request is in full compliance with the environmental requirements. The certification only demonstrates that reasonable investigations have been completed for certain items.

**C Hazardous Substances**

**All lenders are required to ensure that due diligence is performed in conjunction with a request for guarantee of a loan involving real estate. The Agency will accept as evidence of due diligence the most current version of the American Society of Testing Materials (ASTM) transaction screen questionnaire available from 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959, or similar documentation, supplemented as necessary by the ASTM Phase I environmental site assessments form.**

## 208 Environmental Requirements (7 CFR 762.128) (Continued)

### C Hazardous Substances (Continued)

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

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

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

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

- indicate on the Application for Guarantee or Preferred Lender Application and explain if the questionnaire indicates a problem may exist

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

- indicate on the Application for Guarantee or Preferred Lender Application if the questionnaire indicates no problem was discovered

- keep the questionnaire in the borrower's case file.

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

## 208 Environmental Requirements (7 CFR 762.128) (Continued)

### D Wetlands and HEL

**The applicant must certify that they will not violate the provisions of Section 363 of the "ACT", the Food Security Act of 1985, and Executive Order 11990 relating to Highly Erodible Land and Wetlands.**

The authorized agency official must:

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

According to 6-CP, applicants must certify that they will not violate HEL and WC provisions by completing and executing AD-1026 for each tract of land in which they have a farming interest.

| IF... | THEN... |
|---|---|
| any or all of questions 5, 9, or 10 are answered "yes" by the applicant | AD-1026 will be referred to NRCS for a certified wetland determination. For loan requests involving building construction or other major ground disturbing activities, question 10 A should be answered "yes" unless NRCS has previously completed a certified wetland determination for the proposed construction site. |
| all of questions 5, 9, and 10 are answered "no" by the applicant | a certified wetland determination will not be necessary. |

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

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

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

## 208 Environmental Requirements (7 CFR 762.128) (Continued)

### E Floodplains

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

FSA must:

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

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

### F Water Quality Standards

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

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

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

## 208 Environmental Requirements (7 CFR 762.128) (Continued)

### F Water Quality Standards (Continued)

Lenders are expected to:

- consult with FSA for guidance on those activities that require State agency consultation, special permitting, or waste management plans
- conduct a site visit to the applicant's farm
- indicate on the Application for Guarantee or Preferred Lender Application the need for special permits or plans or if potential problems exist

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

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

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

### A Requirements

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

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

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

FSA expects the lender to:

- consult with the authorized agency official for guidance on what situations will need historic property review and consultation

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

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

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

### A Requirements (Continued)

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

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

### A Equal Opportunity and Nondiscrimination

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

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

If the guaranteed loan borrower or applicant wants to file a discrimination complaint against FSA or an FSA employee in connection with a guaranteed loan or application, the authorized agency official should inform the applicant of the procedures for filing a complaint. The lender should continue with loanmaking and servicing actions without regard for resolution of the complaint.

### B Construction Contracts

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

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

### A Other Requirements

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

**212-222 (Reserved)**

# Part 9 IA Program (7 CFR 762.150)

## 223 Purpose of IA Program

### A Purpose

The IA Program enables lenders to provide credit to operators of family farms who lack financial resources to meet standard repayment terms, as compared to other operators of similar type operations. IA is intended to assist farmers who have low production or suffered the effects of a natural disaster or adverse economic conditions. Beginning farmers are also specifically targeted by FSA for increased assistance because of their inability to access private credit programs. The IA program could provide such applicants with the assistance needed to get them through the difficult early years as they accumulate farm assets and become financially viable.

### B Ensuring Applicant's Eligibility

Under this program, FSA enters into an agreement with the lender to reimburse the lender 4 percentage points on the Guaranteed OL, in exchange for the lender reducing the interest rate charged to the borrower by that amount. If a lender is unsure of the applicant's eligibility, the local FSA office should be contacted.

## 224 General Rules (7 CFR 762.150(b))

### A Summary of Eligibility Requirements

In addition to the eligibility requirements to receive a Guaranteed OL, outlined in paragraphs 108 and 109, an eligible applicant for IA, must meet the following requirements:

- a feasible plan cannot be achieved without IA, but can be achieved with IA

  **Note:** Additionally, a typical plan must demonstrate that the borrower will have a feasible plan throughout the term of the loan, even after the IA subsidy payment ceases, if applicable.

- must not have received IA for 5 or more years (see exceptions for beginning farmers and others outlined in subparagraphs 224 I and J)

- must not have received IA on guaranteed loans of $400,000 or more

- must not have a Debt to Asset ratio of less than 50 percent

  **Note:** This does not apply to beginning farmers.

- must consider any significant non-essential assets.

**Interest Assistance is available only on new guaranteed Operating Loans (OL).** FSA-2221 will not be executed on any guaranteed loan that was obligated without IA.

## 224 General Rules (7 CFR 762.150(b)) (Continued)

### B Feasible Plan

To be eligible for IA, **the lender's cash flow budget for the guaranteed loan applicant must reflect the need for interest assistance and the ability to cash flow with the subsidy.**

**The lender must document that the following conditions have been met for the applicant to be eligible for interest assistance:**

- **A feasible plan** (as defined in Exhibit 2) **cannot be achieved without interest assistance, but can be achieved with interest assistance.** The lender will conduct a "needs test" and document it in either Application for Guarantee, Part G or in the loan narrative, submitted to FSA.

- **If significant changes in the borrower's cash flow budget are anticipated after the initial 12 months, then the typical cash flow budget must demonstrate that the borrower will still have a feasible plan following the anticipated changes, with or without interest assistance.**

- A borrower may qualify for IA with either an initial or typical cash flow budget where cash inflows are less than outflows. The borrower may receive an IA payment the first year, even if the budget shows it is not needed in the first year of the agreement.

- **The typical cash flow budget must demonstrate that the borrower will have a feasible plan throughout the term of the loan.** If the maturity date of the loan exceeds the maturity date of the IA Agreement, the borrower must demonstrate the ability to make the scheduled payments without the subsidy after the IA agreement matures. The lender must demonstrate that the producer has long term viability, but it is not necessary to complete another cash flow budget. This viability may be documented by the lender in the narrative submitted to FSA.

Investment in capital expenditures may be made to maintain existing operations, improve efficiencies, or expand the business. These expenditures often come in increments and typically require funding from sources other than those generated internally from operations. Lenders will ensure that excess cash has not been used to purchase capital assets in order to reduce the cash flow to qualify for IA. If excess cash was used in the purchase of capital assets, the lender will document why.

## 224 General Rules (7 CFR 762.150(b)) (Continued)

### C Nonessential Assets

The lender must determine that **the borrower, including members of an entity, does not own any significant assets that do not contribute directly to essential family living or farm operations. The lender must determine the market value of any such non-essential assets and prepare a cash flow budget and interest assistance calculations based on the assumption that these assets will be sold and the market value proceeds used for debt reduction. If a feasible plan can then be achieved, the borrower is not eligible for interest assistance.**

Significant nonessential assets, as defined in Exhibit 2, such as vacation homes, hunting lodges, certificates of deposit, stocks, bonds, etc., which do not contribute directly to essential family living or farm operations, are considered to be nonessential assets, and must be considered in preparing the cash flow budget. The lender must prepare a cash flow budget based on the assumption that the value of these assets will be used for debt reduction. If a feasible plan can then be achieved, the borrower is not eligible for IA.

Lenders should obtain a balance sheet on all entity members and consider the assets of all members.

Reasonable, qualified IRS retirement accounts are not considered to be nonessential and therefore, will not be considered in this limitation.

### D Debt to Asset Ratio

**A borrower may only receive interest assistance if their total debts (including personal debts) prior to the new loan exceed 50 percent of their total assets (including personal assets). An entity's debt to asset ratio will be based upon a financial statement that consolidates business and personal debts and assets of the entity and its members. Beginning farmers, as defined in** Exhibit 2, **are excluded from this requirement.**

Applicants who have a debt to asset ratio of less than 50 percent before the new loan being made are not eligible for IA. Lenders will ensure that assets are valued in a consistent manner over time, ensuring that they are not misstated in quantity, quality, or value, to qualify for IA. The Lender will use reasonable, supportable values for all assets. Liabilities will be verified according to their lender status.

Lenders should include discussion of IA eligibility issues, including debt to asset ratios in their loan narrative. On a case-by-case basis, FSA may request additional information from any lender or review the lender's files as needed to make eligibility and approval decisions.

**Note:** Intentional misrepresentation of asset values will not be permitted. Such abuse, of which the lender is aware or condones, may be considered fraud or misrepresentation and may be grounds for FSA not to honor the guarantee as outlined in Lenders Agreement, Part B.

## 224 General Rules (7 CFR 762.150(b)) (Continued)

### E Terms

**The typical term of scheduled loan repayment will not be reduced solely for the purpose of maximizing eligibility for interest assistance. A loan must be scheduled over the maximum term typically used by lenders for similar type loans within the limits in** paragraph 137. Guaranteed OL's will be scheduled for repayment according to the terms listed below:

- **An OL for the purpose of providing annual operating and family living expenses will be scheduled for repayment when the income is scheduled to be received from the sale of crops, livestock, and/or livestock products which will serve as security for the loan.**

- **An OL for purposes other than annual operating and family living expenses (i.e. purchase of equipment or livestock, or refinancing existing debt) will be scheduled over 7 years from the effective date of the proposed interest assistance agreement, or the life of the security, whichever is less.**

- An OL should not be requested if an FO would be more appropriate, based on loan purposes and collateral.

Balloon installments are permitted if longer terms are needed.

## 224 General Rules (7 CFR 762.150(b)) (Continued)

### F Maximum Amount of Assistance

**The maximum total guaranteed OL debt on which a borrower can receive interest assistance is $400,000, regardless of the number of guaranteed loans outstanding. This is a lifetime limit.**

**In the case of a borrower with multiple guaranteed loans with one lender, interest assistance can be applied to each loan, only to one loan or any distribution the lender selects, as necessary to achieve a feasible plan, subject to** subparagraph 224 C.

As of June 8, 2007, applicants, including entity members, are limited to a total of $400,000 in loans receiving IA over their lifetime. However, IA loans governed by FmHA-1980-64's, FSA-1980-64's, or RD-1980-64's that are executed before June 8, 2007, are not included in this limitation.

Once an FSA-2221 is executed on a loan, the loan amount is subtracted from the $400,000 lifetime limit. Repayment of an IA loan in part or in full will not permit that amount to be obligated again. Subsequent advances on lines of credit are not counted as additional obligations.

Requests are subject to the overall guaranteed loan limits as published in subparagraph 244 A. Lenders may request a combination of subsidized and non-subsidized funds if the borrower's credit needs exceed $400,000. If this occurs, FSA will split the request into 2 obligations and issue two Conditional Commitments. The lender will close the loans using 2 promissory notes and FSA will issue a Loan Guarantee for each note.

The terms of both loans should be consistent and in compliance with the limitations outlined in subparagraph E. The lender may choose to apply payments pro-rata between the 2 loans or according to the lender's normal banking practices.

## 224 General Rules (7 CFR 762.150(b)) (Continued)

### G Rate of Interest

**The lender may charge a fixed or variable interest rate, but not in excess of what the lender charges its average agricultural loan customer.**

As outlined in paragraph 135, if a variable rate is used, it must be tied to a rate specifically agreed to between the lender and borrower in the loan instruments. Variable rates may change according to the normal practices for the lender, but the frequency of change must be specified in the loan or line of credit instrument.

The lender will reduce the interest rate charged the borrower's account by at least the amount of IA.

### H Maximum Time for Which IA is Available for Non-Beginning Farmers

**A borrower may only receive interest assistance for one 5-year period. The term of the interest assistance agreement executed under this section shall not exceed 5 consecutive years from the date of the initial agreement signed by the applicant, including any entity members, or the outstanding term of the loan, whichever is less. This is a lifetime limit.**

As of June 8, 2007, all new FSA-2221's (including those for beginning farmers) will expire no more than 5 years from the date of the first IA agreement signed by the applicant. Agreements on subsequent IA loans, executed within that 5-year period will also expire no more than 5 years from the date of the first FSA-2221 signed by the applicant. FmHA-1980-64's, FSA-1980-64's, or RD-1980-64's in effect before June 8, 2007, are not impacted by this 5-year limitation.

FSA will document the effective date of the first FSA-2221 in GLS Loan View Screen for each party that will sign the notes. The 5-year period starts on the date of the first FSA-2221, executed by the applicant (including entity members) and does not stop, even if the loan is paid in full. A review of the borrower's agency history will be used to determine which entity members, if applicable, have previously received IA.

## 224 General Rules (7 CFR 762.150(b)) (Continued)

### I Maximum Time Available for Beginning Farmers

**Beginning farmers, as defined in** Exhibit 2, **may be considered for two 5-year periods. The applicant must meet the definition of a beginning farmer and meet the other eligibility requirements outlined in** subparagraphs 224 B and C **at the onset of each 5-year period. A needs test will be completed in the 5th year of IA eligibility for beginning farmers, to determine the continued eligibility for a second 5-year period.**

To be eligible for the second 5-year period, the applicant must meet the definition of a beginning farmer, meet the feasible plan and non-essential assets requirements, and not have received $400,000 in IA loans, at the beginning of the second 5-year period.

When determining whether or not the borrower continues to meet the definition of a beginning farmer, all the factors that make up the regulatory definition of a beginning farmer will be considered. The year the applicant, or any member of an entity applicant, first reported farm income to IRS, whether as an individual or entity member, should be used to determine the number of years farming.

For existing IA loans, a needs test, as outlined in subparagraph B, will be completed and documented by the lender for beginning farmers in the fifth year after the effective date of the first FSA-2221 to determine eligibility for an additional 5 year period. This is discussed further in subparagraph 228 B.

## 224 General Rules (7 CFR 762.150(b)) (Continued)

### J Transition Rule

**Notwithstanding the limitation of** subparagraph H**, a new interest assistance agreement may be approved for eligible borrowers to provide interest assistance through June 8, 2009, provided the total period does not exceed 10 years from the effective date of the original interest assistance agreement.**

The objective of this transition rule is to provide a borrower with at least 2 years notice of this regulation change which reduces the years of eligibility from 10 years to 5 years, to give them time to prepare for the reduced period of eligibility.

- New FSA-2221's, for applicants with an effective date on their first IA agreement after June 8, 2004, will mature 5 years after the effective date of their first IA agreement or the maturity date of the loan, whichever is earlier.

- New FSA-2221's, for applicants with an effective date on their first IA agreement between June 8, 1999, and June 8, 2004, will mature on June 8, 2009, or the maturity date of the loan, whichever is earlier.

- New FSA-2221's, for borrowers with an effective date on their first IA agreement between June 8, 1997, and June 8, 1999, will mature 10 years from the effective date of their first IA agreement.

- Borrowers with an effective date on their first IA agreement before June 8, 1997, are not eligible for IA.

## 225 Application Requirements (7 CFR 762.150(a))

### A Applying for IA

In addition to the loan application items required by Part 5, to apply for IA, requests from all lender types must include:

- a current balance sheet (including entity members), with supporting schedules
- a completed cash flow budget, according to subparagraph 224 B
- an IA "needs test" according to subparagraph 224 B (included in Application for Guarantee, Part G or the loan narrative).

**Notes:** See subparagraph 224 B for more details of the feasible plan requirements. All applications for IA where FSA-1980-64's were not effective (loan closed and FSA-1980-64's executed by the lender) before June 8, 2007, will need to meet the requirements as set forth in this handbook. Applications not meeting the new criteria will be denied according to paragraph 229.

IA can be applied to each loan, only to 1 loan, or any distribution the lender selects; however, IA is only available on as many loans as necessary to achieve a feasible plan.

### B Lender Procedures

Lenders will follow their own internal procedures concerning the completion of monthly cash flow budgets for lines of credit.

## 226 Evaluating and Approving or Denying IA Requests

### A Evaluating IA requests

***--**Applications for IA will be evaluated according to Part 8. Additionally, FSA shall**--*** determine whether or not all applicable requirements of this Part have been met. The approval official shall check that:

- all mathematical computations are accurate
- the loan and applicant are eligible (paragraph 224).

### B Approving IA Requests

***--**IA may be approved only on new guaranteed OL's. FSA-2221 will not be executed on**--*** any guaranteed loan that was not originally obligated with IA.

If the approval official determines that IA can be approved, the approval official shall do the following.

| Step | Action |
|---|---|
| 1 | Prepare FSA-2231. FSA-2231 is used to obligate FSA funds including IA:<br><br>• for new loans<br>• when the term of IA is to be extended. |
| 2 | Execute FSA-2231. |
| 3 | Verify that the obligation of funds has been completed on GLS. Place a printout of the GLS screen in the case file.<br><br>*** * *** |
| 4 | For requests to extend the term of IA on existing guaranteed loans, the approval official will notify the lender in writing, using the following guide letter, that the request has been approved. |

## 226 Evaluating and Approving or Denying IA Requests (Continued)

### B Approving IA Requests (Continued)

Date: _____

Dear _____:

This letter extends the Interest Assistance Agreement for *(insert name of borrower),* on loan number *(insert loan number from FSA-2221, Part A, item 7)* in the original principal amount of *(insert principal amount from FSA-2221, Part A, item 6).* The Interest Assistance Agreement, scheduled to expire on *(insert date from FSA-2221, Part B, item 1b),* is hereby extended until *(insert expiration date).* This extension is made in accordance with Part B, item 1, of that Interest Assistance Agreement, and all conditions contained in the Interest Assistance Agreement remain in effect.

If you have any questions, please contact this office.

Sincerely,

_____
*(title)*

### C Denying IA Requests

If the applicant is found ineligible or the request cannot be approved for other reasons, the approval official shall notify the applicant, with a copy to the lender, according to paragraph 229.

## 227 IA Closing (7 CFR 762.150(h), (i))

### A Closing Requirements

Guaranteed loans will be closed according to paragraph 247.

**Note:** If the lender indicates 360/365 accrual method on the promissory note on FSA-2236, item 28, ENTER "365".

- **The lender and borrower must execute an interest assistance agreement as prescribed by the Agency.**

**The lender may select at the time of loan closing the date they * * * wish to receive an interest assistance payment. That date will be included in the interest assistance agreement.**

### B Executing FSA-2221

FSA, lender, and borrower shall execute FSA-2221 and provide the original to the lender.

***--Note:** In no case will FSA-2221 be executed by FSA before verification of the obligation of OL funds with IA.**--***

## 228 Request for IA Payment or Continuation (7 CFR 762.150(i)) (Continued)

### A Rules for IA Claims and Agreements

Borrowers with IA Agreements signed before June 8, 2007, will continue to receive IA under the terms and conditions of those agreements, not to exceed 10 years from the date they entered into their first IA agreement.

**The initial and final claims submitted under an agreement may be for a period less than 12 months. All other claims will be submitted for a 12 month period, unless there is a lender substitution during the 12 month period in accordance with this section.**

Claim period coverage will be as follows:

- the initial claim will cover the entire period between the effective date of the agreement and the end of the claim period

- subsequent requests must cover 12-month periods of IA, and must be prepared by the lender.

**A claim should be filed within 60 days of its due date. Claims not filed within 1 year from the due date will not be paid, and the amount due the lender will be permanently forfeited.** FSA-2222 should be submitted even if the claim amount is 0.

For FmHA-1980-64's, FSA-1980-64's, or RD-1980-64's signed before June 8, 2007, if a claim is submitted without an analysis of the operation and documentation of the need for continuation of IA, the claim will not be processed until it is submitted by the lender. Claims based on FSA-2221's, signed after June 8, 2007, do not require documentation of need for the continuation of IA.

**228 Request for IA Payment or Continuation (7 CFR 762.150(i)) (Continued)**

**B Rules for Continuation of IA Agreements**

**Requests for continuation of interest assistance for agreements dated prior to June 8, 2007 will be supported by the lender's analysis of the applicant's farming operation and need for continued interest assistance as set out in their Interest Assistance Agreements. The following information will be submitted to the Agency:**

- **A summary of the operation's actual financial performance in the previous year, including a detailed income and expense statement.**

- **A narrative description of the causes of any major differences between the previous year's projections and actual performance, including a detailed income and expense statement.**

- **A current balance sheet.**

- **A cash flow budget for the period being planned.** To continue IA, the cash flow budget must project that a feasible plan is not possible without subsidy, but at least a feasible plan can be achieved with 4 percent subsidy

- **A copy of the interest assistance needs analysis portion of the application form which has been completed based on the planned period's cash flow budget.**

**Note: A monthly cash flow budget is required for all lines of credit and operating loans made for annual operating purposes. All other loans may include either an annual or monthly cash flow budget.**

**Interest Assistance Agreements dated June 8, 2007, or later do not require a request for continuation of interest assistance. The lender will only be required to submit an Agency IA payment form and the average daily principal balance for the claim period with supporting documentation.**

## 228 Request for IA Payment or Continuation (7 CFR 762.150(i))

### C Request for IA Payment

**To receive an interest assistance payment, the lender must prepare and submit a claim on the appropriate Agency form. Lenders may not charge or cause a borrower with an interest assistance agreement to be charged a fee for preparation and submission of the items required for an annual interest assistance claim.** Within 60 calendar days of the annual review date, all lenders should submit the following to FSA:

- FSA-2222

  **Notes:** FSA-2222 shall be used to request payment for the previous year. A separate FSA-2222 is required for each IA loan.

  The lender shall provide FSA with an EFT account number so IA payment may be transmitted to them electronically.

- a detailed statement of activity, including all disbursements and payments applied to the loan or LOC account

- detailed calculations of ADPB's for the claim period; see Exhibit 10.

**Note: All claims will be supported by detailed calculations of average daily principal balance during the claim period.** (For all payment claims borrowers must have met the general eligibility requirements of paragraph 108 and the applicable requirements of paragraphs 109 and 110) at the beginning of the payment period. If the borrower ceased to be eligible during the payment period, IA will only be available to the date the borrower was determined ineligible.

**228 Request for IA Payment or Continuation (7 CFR 762.150(i)) (Continued)**

**D Interest Assistance Loans with Interest Rates Below 4 Percent**

**Interest assistance payments will be four (4) percent of the average daily principal loan balance prorated over the number of days the loan has been outstanding during the payment period. For loans with a note rate less than four (4) percent, interest assistance payments will be the weighted average interest rate multiplied by the average daily principal balance.**

The "ADD Interest Asst Claim" transaction in GLS programmatically calculates the IA payable by multiplying ADPB entered times 4 percent. However, FSA cannot pay an IA claim in excess of the interest that has accrued at the full note rate during the claim period.

To process an IA payment when the interest rate has averaged below 4 percent, authorized agency officials must determine ADPB by completing the following:

- total the interest that accrued at the note rate
- divide the total accrued interest by 4 percent to calculate an adjusted ADPB.

The authorized agency official shall then enter FSA-adjusted ADPB in the "Avg. Prin Balance" field to process the IA claim.

**E Final Request for Payment**

Upon full payment of the note or line of credit, the lender will immediately prepare the request for IA payment and submit FSA-2222 to FSA.

The final claim period may be less than 12 months.

**F Final IA Request from Liquidated Accounts**

**In the event of liquidation, the final interest assistance claim will be submitted with the estimated loss claim or the final loss claim if an estimated loss claim was not submitted. Interest will not be paid beyond the interest accrual cutoff dates established in the loss claims according to 762.149(d)(2)** and paragraphs 359 through 360.

## 228 Request for IA Payment or Continuation (7 CFR 762.150(i)) (Continued)

### G Continuation of Beginning Farmer Agreements Beyond Original 5-Year Period

See subparagraph:

- 224 I for continuing eligibility requirements for beginning farmers
- 230 D for specific actions necessary to obligate additional funds when additional years of IA is authorized.

If a beginning farmer receives multiple IA loans in subsequent years the lender will submit the needs test for all loans in the fifth year of the first loan closed.

To request continuation of an additional 5 years of IA for beginning farmers, lenders will submit the applicable portion of Application for Guarantee. Borrowers must meet the requirements of subparagraph 224 A and lenders will meet the requirements of subparagraph 225 A.

**Note:** Only the portion of the Application for Guarantee applicable to IA will need to be completed. All requests should be provided to FSA within 60 calendar days before expiration of the FSA-2221. Failure to request continuation will result in termination of the FSA-2221 upon its expiration.

IA requests for continuation will be evaluated to determine if the eligibility and application requirements of subparagraphs 224 A and 225 A have been met.

If the request for continuation of IA is denied, applicants and lenders will be notified according to subparagraph 229 A.

## 228 Request for IA Payment or Continuation (7 CFR 762.150(i)) (Continued)

### H FSA Review of Request for IA Payment

Review IA payment requests according to the following.

| Step | Action |
|---|---|
| 1 | FSA will review the claim and the supporting documentation within 3 workdays of receipt. If the information and the supporting documentation is not complete and correct, the reviewing official will notify the lender in writing of the actions needed to correct the request. |
| 2 | For IA agreements dated before June 8, 2007, the reviewing official shall document a comparison of actual and projected income and expenses. Any major differences from previous projections to actual performance as well as major changes from the previous year's balance sheet should be noted and discussed with the lender before a determination is made whether IA can be approved for the upcoming year. For IA agreements signed on or after June 8, 2007, proceed to step 3. |
| 3 | The authorized agency official shall complete the appropriate portion of FSA-2222 to reflect the amount of IA approved for the coming year. |
| 4 | A copy of FSA-2222 will be returned to the lender for attachment to the original FSA-2221 or FmHA-1980-64, FSA-1980-64, or RD-1980-64 for loans made before June 8, 2007. |

## 229 Notification of Adverse Action

### A Notification of FSA Action

The applicant will be notified in writing, with a copy to the lender, of all FSA decisions in ***--**which a request for IA or a request for continuation of IA is denied. The lender will be notified in writing, with a copy to the applicant, when a lender's claim for an IA payment is denied. The notification letter will provide specific reasons for the decision and appeals**--*** will be handled according to 1-APP.

## 230 Servicing of Loans Covered by FSA-2221 (7 CFR 762.150(j), (k), (l), (n), (p))

### A Consolidation of Loans

**Loans covered by interest assistance agreements cannot be consolidated.**

### B Transfer and Assumption

For loans covered by an IA agreement, **such loans can be transferred only when the transferee was liable for the debt on the effective date of the interest assistance agreement. Loans covered by interest assistance can be transferred to an entity if the entity is eligible in accordance with § 762.120** (paragraph 108 and applicable paragraphs 109 and 110) **and § 762.150(b)** (paragraph 224) **and at least one entity member was liable for the debt on the effective date of the interest assistance agreement.**

### C Debt Writedown

When consideration is given to using a debt writedown to service a delinquent account, the subsidy level will be recalculated before any writedown. If IA is available on the loan and a feasible plan can be obtained using IA, IA will be used instead of a writedown. **Interest assistance will be discontinued as of the date of any writedown on a loan covered by an interest assistance agreement.** No further IA will be available on any loan that has been written down.

### D Rescheduling or Deferral of Loans and Additional Beginning Farmer IA Funding

**When a borrower defaults on a loan with interest assistance or the loan otherwise requires rescheduling or deferral, the interest assistance agreement will remain in effect for that loan at its existing terms. The lender may reschedule the loan in accordance with § 762.145** (see also paragraphs 312-327)**. For Interest Assistance Agreements dated June 8, 2007, or later increases in the restructured loan amount above the amount originally obligated do not require additional funding; however, interest assistance is not available on that portion of the loan as interest assistance is limited to the original loan amount.**

## 230 Servicing of Loans Covered by FSA-2221 (7 CFR 762.150(j), (k), (l), (n), (p)) (Continued)

### D Rescheduling or Deferral of Loans and Additional Beginning Farmer IA Funding (Continued)

If additional funding is required because of additional years of IA either for loans being rescheduled or for beginning farmers receiving additional years of IA, the authorized agency official must modify loan documents according to the following table.

| Loan Document | Action |
|---|---|
| Original FSA-1940-3 or FSA-2231 | In item 5, ENTER "This loan has been restructured. The term of the IA is being modified from _ years to _ years."<br><br>Modify the Guarantee Obligation Request Screen to indicate the correct IA term.<br><br>In GLS the Beg Farmer/Rancher dropdown menu must be checked in order to have the additional funding obligated, if IA is being extended beyond 5 years for a beginning farmer. |
| FSA's copy of FSA-1980-64 or FSA-2221 | Strike through the original expiration date and enter the new expiration date as applicable. The lender, borrower, and FSA shall initial the changes. |

**Note**: The effective ending date must be equal to or before the new loan maturity date but cannot be greater than 10 years from the effective date of the borrower's first FmHA-1980-64, FSA-1980-64, or RD-1980-64 for loans made before June 8, 2007. For loans made after June 8, 2007, the ending date of the FSA-2221 must not exceed 5 years from the date of the first FSA-2221, unless the borrower was a beginning farmer at the time of rescheduling, reamortization, or deferral.

Copies of the modified loan documents will be FAXed or sent to FCS as follows:

- FAXed to:
  - 314-539-3111 for States 01 through 32
  - 314-539-6447 for States 33 through 64
- sent to:

  USDA-FSA-FSC-FLOO
  PO Box 200003
  St Louis MO 63120-0003.

## 230 Servicing of Loans Covered by FSA-2221 (7 CFR 762.150(j), (k), (l), (n), (p)) (Continued)

### E Capitalization of Interest on Loans with IA

For loans closed before June 8, 2007, if the loan amount after capitalization of interest exceeds the original IA loan amount and the term of the original IA is not being extended, the authorized agency official will complete the following.

| Loan Document | Action |
|---|---|
| New FSA-2231 | Enter the following:<br><br>• in item 4, Enter the amount that exceeds the original IA loan amount<br><br>• in item 5, ENTER "This loan has been restructured and interest has been capitalized. The amount in item 4 exceeds the original IA loan amount. The requested term of IA is _ years."<br><br>**Note:** The number of years will correspond with the effective beginning and ending dates shown on the new FSA-2221, Part B, items 1(a) and 1(b). |
| FSA-2221 | Enter the following:<br><br>• in Part A, item 5, date the loan was restructured<br>• in Part A, item 6, amount that exceeds the original IA loan amount<br>• in Part B, items 1(a) and 1(b), new effective beginning and ending dates. |

**Notes:** The effective:

- beginning date must be equal to or subsequent to the date the loan was restructured

- ending date must be equal to or before the ending date of the original IA term.

## 230 Servicing of Loans Covered by FSA-2221 (7 CFR 762.150(j), (k), (l), (n), (p)) (Continued)

### E Capitalization of Interest on Loans with IA (Continued)

For loans closed before June 8, 2007, if the loan amount after capitalization of interest exceeds the original IA loan amount and the term of the original IA agreement is being extended, the authorized agency official will complete the following.

| Loan Document | Action |
|---|---|
| New FSA-2231 | Enter the following:<br><br>• in item 4, amount that exceeds the original IA loan amount<br><br>• in item 5, ENTER "This loan has been restructured and interest has been capitalized. The amount in item 4 exceeds the original IA loan amount. The requested term of IA is _ years."<br><br>**Note:** The number of years will correspond with the effective beginning and ending dates shown in the new FSA-2221, Part B, items 1(a) and 1(b). |
| Original FSA-1940-3 | In item 4, ENTER "This loan has been restructured. The term of the IA is being modified from _ years to _ years."<br><br>Modify the Guarantee Obligation Request Screen to indicate the correct IA term. |
| FSA-2221 | Enter the following:<br><br>• in Part A, item 5, date the loan was restructured<br><br>• in Part A, item 6, amount that exceeds the original IA loan amount<br><br>• in Part B, items 1(a) and 1(b), new effective beginning and ending dates. |
| FSA's copy of original FmHA-1980-64's, FSA-1980-64's, or RD-1980-64's | Strike through the original ending date and enter the new effective date as applicable.<br><br>**Note:** The lender, borrower, and FSA shall initial the changes. |

**Notes:** The effective beginning date on the original FSA-1980-64 will not be changed. The effective ending date must reflect the "corrected" ending date as indicated on the new FSA-2221. The effective ending date must be equal to or before the restructured loan maturity date and cannot be greater than 10 years from the effective date of the borrower's first FmHA-1980-64, FSA-1980-64, or RD-1980-64 unless exception authority has been granted according to subparagraph 232 A.

## 230 Servicing of Loans Covered by FSA-2221 (7 CFR 762.150(j), (k), (l), (n), (p)) (Continued)

### E Capitalization of Interest on Loans with IA (Continued)

Loans made after June 8, 2007, cannot receive IA on any capitalized amount above the original loan amount. For these loans whether or not capitalization of interest exceeds the original loan amount and the IA term is not being extended, restructuring will be accomplished according to paragraph 326. For these loans whether or not capitalization of interest exceeds the original loan amount and the IA term is being extended, the authorized agency official will complete the following:

| Loan Document | Action |
|---|---|
| FSA-1940-3 or FSA-2231 | In item 5, ENTER "This loan has been restructured. The term of the IA is being modified from ____ years to _____ years."<br><br>Modify the Guarantee Obligation Request Screen to indicate the correct IA term. |
| FSA's copy of FSA-2221 | Strike through the original expiration date and enter the new expiration date as applicable.<br><br>**Note:** The lender, borrower, and FSA shall initial the changes. |

Copies of the original and new FSA-1940-3, FSA-2231, and FmHA-1980-64, FSA-1980-64, or RD-1980-64 and FSA-2221, as applicable, will be FAXed or sent to FCS as follows:

- FAXed to:
  - 314-539-3111 for States 01 through 32
  - 314-539-6447 for States 33 through 64
- sent to:

  USDA-FSA-FSC-FLOO
  PO Box 200003
  St Louis MO 63120-0003.

The lender may submit either:

- one FSA-2222 at the annual review date if sufficient documentation is provided by the lender for the authorized agency official to verify the loan balances
- FSA-2222 for the period from the previous FSA-2222 to the date of the restructuring and submit a second FSA-2222 from the date of the restructuring to the annual review date.

**Note:** Both FSA-2222's will be submitted for payment at the annual review date.

**230 Servicing of Loans Covered by FSA-2221 (7 CFR 762.150(j), (k), (l), (n), (p)) (Continued)**

**F Other Requirements**

The rescheduling of a loan with IA must meet all the conditions described in this paragraph and Part 12.

**G Bankruptcy**

**In cases where the interest on a loan covered by an interest assistance agreement is reduced by court order in a reorganization plan under the bankruptcy code, interest assistance will be terminated effective on the date of the court order.** The lender will file a claim due through the effective date of the court order. **Guaranteed loans which have had their interest reduced by bankruptcy court order are not eligible for interest assistance.**

**H Adjustment of Assistance between Review Dates**

After the initial or renewal request for IA is processed, no adjustments can be made until the next review or adjustment date, except to service loans made before June 8, 2007, with a rescheduling or deferral.

**I Excessive IA**

**Upon written notice to the lender, borrower, and any holder, the Agency may amend or cancel the interest assistance agreement and collect from the lender any amount of interest assistance granted which resulted from incomplete or inaccurate information, an error in computation, or any other reason which resulted in payment that the lender was not entitled to receive.**

## 230 Servicing of Loans Covered by FSA-2221 (7 CFR 762.150(j), (k), (l), (n), (p)) (Continued)

### J Substitution of Lenders

**If there is a substitution of lender, the original lender will prepare and submit to the Agency a claim for its final interest assistance payment calculated through the effective date of the substitution. This final claim will be submitted for processing at the time of the substitution.**

- **Interest assistance will continue automatically with the new lender**

- **The new lender must follow paragraph (i) of this section** (§ 762.150(i) found in paragraph 228) **to receive their initial and subsequent interest assistance payments.**

### K Liquidation

When liquidation occurs on a loan with IA, and there are other loans not receiving IA, FSA expects the lender to give the guaranteed loan with IA equitable treatment. If the loans have different lien positions, payments from liquidation will be made according to lien priority. If the loans are sharing a lien position, payment should be made on a pro rata basis, based on the remaining principal balances of the loans.

## 231 Cancellation of FSA-2221 (7 CFR 762.150(m), (o))

### A Termination of IA Payments

**Interest assistance payments will cease upon termination of the loan guarantee, upon reaching the expiration date contained in the agreement, or upon cancellation by the Agency under the terms of the interest assistance agreement. In addition, for loan guarantees sold into the secondary market, Agency purchase of the guaranteed portion of a loan will terminate the interest assistance.**

### B Condition for Cancellation

**The Interest Assistance Agreement is incontestable except for fraud or misrepresentation, of which the lender or borrower have actual knowledge at the time that the interest assistance agreement is executed, or which the lender or borrower participates in or condones.**

If FSA determines that the lender or borrower fraudulently completed FSA-2221 or misrepresented information on FSA-2221 or supporting documentation, FSA shall cancel FSA-2221 and collect any subsidy that has been paid up to the point this fraud was discovered.

## 232 Exception Authority (762.150(q))

### A Exceptions

**The Deputy Administrator for Farm Loan Programs has the authority to grant an exception to any requirement involving interest assistance if it is in the best interest of the Government, and is not inconsistent with other applicable law.**

DAFLP has the authority to make exceptions to the rules about IA. Exceptions will only be made on a case-by-case basis where the proposed exception is in the best interest of the Government.

DAFLP's decision on granting exceptions is final and not appealable. SED's should evaluate all requests for exceptions, and forward them to DAFLP along with their analysis only if they recommend approval. No exception will be granted without an analysis and documentation of why such an exception is in the Government's best interest.

## 233-243 (Reserved)

## Part 10 Processing Approvals and Issuing the Guarantee

### 244 Loan Approval (7 CFR 762.122)

#### A Loan Limits

**The agency will not guarantee any loan that would result in the applicant's total indebtedness exceeding the limits established in § 761.8 of this chapter** (1-FLP, paragraph 29)**.**

The maximum FO, CL, or OL levels outlined in this subparagraph include the guaranteed loan being made plus any outstanding direct or guaranteed principal balances, as indicated, owed by anyone who will sign the promissory note.

The total outstanding combined guaranteed FO, CL, SW, and OL principal balance cannot ***--**exceed $1,119,000.

The total outstanding direct and guaranteed FO, CL, and SW principal balance cannot exceed $1,119,000.

The total outstanding direct and guaranteed OL principal balance cannot exceed $1,119,000.

The total combined outstanding direct and guaranteed FO, CL, SW, and OL balance cannot exceed $1,419,000.

The total combined outstanding direct and guaranteed FO, CL, SW, OL, and EM balance cannot exceed $1,919,000.**--***

**Note:** The dollar limit of guaranteed loans is adjusted annually based on the percentage change in the Prices Paid by Farmers Index, as compiled by USDA.

FSA personnel should see 1-FLP for information on loan approval authorities.

**244 Loan Approval (7 CFR 762.122) (Continued)**

**B Submitting FSA-2231 to the * * * Approval Official**

When the loan exceeds the authorized agency official's approval authority, the authorized ***--**agency official should send the approval official all information the approval official**--*** needs to evaluate the loan request, including the following:

- a completed FSA-2231
- GLS Loan Approval Screens
- Application for Guarantee for SEL and CLP applicants or Preferred Lender Application for PLP applicants
- Conditional Commitment with recommended changes
- the balance sheet and cash flow statement (for SEL applicants)
- the loan narrative
- any other information the approval official requests.

***--**The authorized agency official should verify the lender has a Lender's Agreement in effect.**--***

Once the loan approval official executes FSA-2231, the authorized agency official may then proceed to execute all other loan-related documents, unless otherwise specified by the loan approval official.

**C Lender Notification of Authorized Agency Official Decision**

The lender and applicant should be informed of the approval decision in writing.

- If the application is approved and funds are available, the authorized agency official shall prepare a letter to the lender (subparagraph D), with a copy to the applicant, and a Conditional Commitment, and proceed to paragraph 245.
- If the application is approved and funds are not available, the authorized agency official shall prepare a letter (subparagraph E) to the lender with a copy to the applicant, informing them the loan is approved, subject to the allocation of funding. This letter should inform the lender that funding is being requested and the loan should not be closed until they receive the Conditional Commitment, agree to the conditions, and execute the document.

## 244 Loan Approval (7 CFR 762.122) (Continued)

### C Lender Notification of Authorized Agency Official Decision (Continued)

•***--**If it appears the application cannot be approved, the authorized agency official shall contact the lender to discuss the reasons for rejection. To ensure good service, the authorized agency official shall make a good faith effort to discuss with the lender, in person or by telephone, the reasons the application cannot be approved and possible alternatives. If necessary, the applicant should also be involved in these discussions. Any discussions will be documented in the application file.

- If the application is rejected, the authorized agency official shall prepare a letter to the applicant with a copy to the lender informing them the loan is rejected, the reasons for rejection, and their right to appeal the decision as outlined in 1-APP. The letter should:
  - clearly and concisely describe the reason or reasons the application cannot be approved
  - include only the most relevant CFR citations and handbook paragraphs
  - **not** contain acronyms and accusatory wording.

**Note:** If requested by the lender, FSA may participate in mediation to provide guidance on FSA regulations and guidelines.**--***

### D Example of Approval Letter When Funds Are Available

The following is an example of an approval letter when funds are available.

Date: _____

Dear _____:

This letter is to certify that your application on behalf of (insert name of borrower/applicant) for Farm Service Agency loan guarantee assistance has been approved and funds have been obligated.

Enclosed is for FSA-2232 (Conditional Commitment) specifying the conditions you must meet to secure the guarantee. Please review these conditions, complete Part D of the form (Acceptance or Rejection of Conditions), and return it to this office by (insert date).

If you have any questions, please contact this office.

Sincerely,

_____

(Title)

## 244 Loan Approval (7 CFR 762.122) (Continued)

### E Example of Approval Letter When Funds Are Not Available

The following is an example of an approval letter when funds are **not** available.

Date: _____

Dear _____:

This letter is to certify that your application on behalf of (*insert name of borrower/applicant*) for Farm Service Agency (FSA) loan guarantee assistance has been approved. However, funds are not available at this time to obligate the loan.

The loan will be placed on a waiting list based on the date the application was complete. If a substantial amount of time elapses before the loan is obligated, we may ask you to provide updated information. You should not close the loan until you receive an FSA-2232 (Conditional Commitment) indicating that the loan has been funded.

We appreciate your patience and understanding. If you have any questions, please contact this office.

Sincerely,

_____
(Title)

## 245 Agency Obligation of the Loan (7 CFR 762.130)

### A Loan Obligation

**Loans are approved subject to the availability of funding. When it appears that there are not adequate funds to meet the needs of all approved applicants, applications that have been approved will be placed on a preference list according to the date of receipt of a complete application.**

After the loan approval official executes FSA-2231, FSA-2231 must be transmitted to SED for consideration of funding. SED may obligate funds or authorize the authorized agency official to obligate funds. The authorized agency official must review GLS the following workday to determine whether the loan received a funding obligation.

| IF GLS indicates that… | THEN the authorized agency official… |
|---|---|
| funds have been obligated for the loan | may proceed under subparagraph C and issue the Conditional Commitment. |
| sufficient funds are not available | must proceed under subparagraph B and place the loan on the waiting list until sufficient funds are available for obligation. |

The Conditional Commitment must never be executed until verification is received that funds have been obligated.

**Note:** If a PLP lender receives an automatic approval of a loan because of FSA's failure to meet the 14-calendar-day response deadline, the lender may not close the loan until funds are obligated and the lender receives the Conditional Commitment.

### B Funding Priorities

If GLS indicates that funds are not available to obligate a loan, the authorized agency official shall:

- not execute the Conditional Commitment
- inform the lender and applicant that funds are not currently available
- place the loan on a waiting list based on the date the application was considered complete.

## 245 Agency Obligation of the Loan (7 CFR 762.130) (Continued)

### B Funding Priorities (Continued)

**If approved applications have been received on the same day, the following will be given priority:**

- **an application from a veteran**
- **an application from an Agency direct loan borrower**
- **an application from an applicant who** is described by 1 of the following:
  - **has a dependent family**
  - **is an owner of livestock and farm implements necessary to successfully carry out farming operations**
  - **is able to make down payments**
- **any other approved application.**

The priority list will be maintained at the level where the funds have been allocated or suballocated.

When funds become available, applications will be funded in priority list order. If a substantial amount of time has elapsed between loan approval and obligation, the authorized agency official may request updated information on the applicant.

## 245 Agency Obligation of the Loan (7 CFR 762.130) (Continued)

### C Issuing the Conditional Commitment

After receiving confirmation from GLS that funds have been obligated for the loan, the authorized agency official may execute the Conditional Commitment. Since the Conditional Commitment will be used by FSA in the event of a loss claim to determine the responsibilities of the lender, the authorized agency official should give careful attention to the Conditional Commitment's completion.

- **Loan Purposes.** The authorized agency official should ensure that the specific purposes for which the loan funds will be used are detailed on the Conditional Commitment. These purposes must be consistent with the purposes shown on Application for Guarantee or Preferred Lender Application and any agreed modifications.

- **Security for the Loan.** The authorized agency official should ensure that additional security items not listed on Application for Guarantee and Preferred Lender Application, but required by FSA, are included on the Conditional Commitment.

- **Electronic Applications.** If the lender submitted Application for Guarantee or Preferred Lender Application electronically and all of the required electronic signatures are not obtained, then Conditional Commitment, item 17 should specify that the original, signed copy of the application be submitted with the loan closing documents.

- ***--Lender's Agreement.** The lender will be required to execute FSA's Lender's Agreement if the lender does **not** have one in effect.**--***

In developing the Conditional Commitment, the authorized agency official shall tailor the Conditional Commitment to the specific borrower. Long lists of standard conditions developed for all borrowers should not be used. Each condition placed on the loan must be appropriate to the specific lending situation and produce a higher quality loan.

Issuing the Conditional Commitment with conditions is preferred to rejection of the request.

**Example:** If the security proposed by the lender will result in an inadequately secured loan, rather than deny the guarantee request, the Conditional Commitment may be executed, subject to the lender obtaining a lien on specified additional collateral.

Once the Conditional Commitment has been developed using the guidelines in this paragraph, the authorized agency official shall submit the Conditional Commitment to the lender for execution according to paragraph 246.

## 246 Lender's Response to the Conditional Commitment (7 CFR 762.130(c))

### A Accepting or Rejecting Conditions

**The lender must meet all of the conditions specified in the Conditional Commitment to secure final Agency approval of the guarantee. The lender, after reviewing the conditions listed on the Conditional Commitment, will complete, execute, and return the form to the Agency. If the conditions are not acceptable to the lender, the Agency may agree to alternatives or inform the lender and the applicant of their appeal rights.**

When the lender receives the Conditional Commitment, the lender should carefully review all the conditions. If the lender accepts all of the conditions, the lender should complete, sign, and return the Conditional Commitment to the authorized agency official.

If the lender rejects the conditions, the lender may propose new conditions, along with justification for them. The authorized agency official should review the new conditions and the lender's justification to determine whether they are acceptable to FSA. If the conditions cannot be accepted, the authorized agency official should contact the lender to see if an agreement can be reached that is acceptable to both parties. If the new conditions are accepted or an agreement is reached, the conditions must then be reviewed and approved by the loan approval official before their incorporation in the Conditional Commitment.

If, after all reasonable efforts have been made, an agreement cannot be reached; the authorized agency official shall issue a rejection letter and inform the applicant, with a copy to the lender, of the appeal rights according to 1-APP. Only after completion of the appeal may the authorized agency official proceed with deobligation of funding in paragraph 250.

If a PLP lender rejects an 80 percent guarantee, received as a result of FSA not acting on a request within 14 calendar days, the authorized agency official shall continue to process the request and issue a revised Conditional Commitment. If warranted, the revised Conditional Commitment may contain conditions. The lender will have the option of accepting the 80 percent guarantee without conditions or come to an agreement with FSA on any conditions in the revised Conditional Commitment, and receive the requested level of guarantee.

## 246 Lender's Response to the Conditional Commitment (7 CFR 762.130(c)) (Continued)

### B Executing and Extending the Conditional Commitment

Once the lender executes the Conditional Commitment, it must be returned to FSA for final processing. Once both parties execute the document, the lender may proceed to close the loan within the timeframe allotted in the Conditional Commitment. If an extension is needed, the authorized agency official may grant an extension in writing to the lender. Before issuing an extension, the authorized agency official should consider whether enough time has passed that would justify updated financial information or an updated application.

The authorized agency official should track the expiration date of the Conditional Commitment. If the lender fails to contact the authorized agency official before the expiration of the Conditional Commitment, the authorized agency official should contact the lender about the status of the loan.

## 247 Actions Before Issuing the Loan Guarantee (7 CFR 762.130)

### A Lender's Actions

After loan closing, the lender must submit the following to FSA before issuing the Loan Guarantee:

- FSA-2233

  **Note: The lender will certify as to the following on the form:**

  - **no major changes have been made in the lender's loan or line of credit conditions and requirements since submission of the application (except those approved in the interim by the Agency in writing)**

  - **required hazard, flood, crop, worker's compensation, and personal life insurance (when required) are in effect**

  - **truth in lending requirements have been met**

  - **all equal employment and equal credit opportunity and nondiscrimination requirements have been or will be met at the appropriate time**

  - **the loan or line of credit has been properly closed, and the required security instruments have been obtained, or will be obtained, on any acquired property that cannot be covered initially under State law**

  - **the borrower has marketable title to the collateral owned by the borrower, subject to the instrument securing the loan or line of credit to be guaranteed and subject to any other exceptions approved in writing by the Agency**

    **Note: When required, an assignment on all USDA crop and livestock program payments has been obtained.**

**247 Actions Before Issuing the Loan Guarantee (7 CFR 762.130) (Continued)**

**A Lender's Actions (Continued)**

- **when required, personal, joint operation, partnership, or corporate guarantees have been obtained**

- **liens have been perfected and priorities are consistent with requirements of the conditional commitment**

- **loan proceeds have been, or will be disbursed for purposes and in amounts consistent with the conditional commitment and as specified on the loan application**

  **Note: In line of credit cases, if any advances have occurred, advances have been disbursed for purposes and in amounts consistent with the conditional commitment and line of credit agreements.**

- **there has been no material adverse change in the borrower's condition, financial or otherwise, since submission of the application**

- **all other requirements specified in the conditional commitment have been met.**

- FSA-2236

  **Note: The lender must complete an Agency closing report form and return it to the Agency.**

- a completed Application for Guarantee or Preferred Lender Application with appropriate signatures if the lender submitted the application electronically without all required signatures

## 247 Actions Before Issuing the Loan Guarantee (7 CFR 762.130) (Continued)

### A Lender's Actions (Continued)

- an acceptable appraisal from SEL's, if the guarantee was approved, subject to an appraisal

  **Note:** SEL's should be encouraged to submit this appraisal to FSA before loan closing to ensure compliance with FSA requirements.

- Lenders Agreement

  **Note: The lender must execute the Agency's lender's agreement and deliver it to the Agency.** If a current Lenders Agreement is not on file with FSA, then 1 must be executed before issuing the Loan Guarantee.

- guarantee fee

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

  **Fee = Loan Amount x % Guaranteed x .01.**

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

  **The following guaranteed loan transactions are not charged a fee:**

  - **loans involving interest assistance**

  - **loans where a majority of the funds are used to refinance an Agency direct loan**

  - **loans to * * * farmers involved in the direct * * * downpayment program**

  ***--Note:** Only applicants who meet the requirements of the beginning or socially disadvantaged farmer, and are participating in the direct downpayment loan program under 3-FLP, Part 7, Section 2, will qualify for a waiver of the fee. Applicants meeting only the definition of beginning or socially disadvantaged farmer will not qualify for the waiver.**--***

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

**247 Actions Before Issuing the Loan Guarantee (7 CFR 762.130) (Continued)**

**A Lender's Actions (Continued)**

- a copy of the executed promissory note or loan agreement.

  **Note: The lender will use its own promissory notes, line of credit agreements, real estate mortgages (including deeds of trust and similar instruments), and security agreements (including chattel mortgages), provided:**

  - **the forms meet Agency requirements**

  - **documents comply with State law and regulation**

  - **the principal and interest repayment schedules are stated clearly in the notes and are consistent with the conditional commitment**

    **Note:** A lender may use notes with short-term maturities for intermediate and long-term loans provided:

    - the lender has indicated the intended term of the loan

      **Note:** This may be done by entering the total number of years in the repayment period block of the application form.

    - the subsequent note is a continuation of the original intended repayment plan and not a restructuring of a past due account

    - there is a clear link between the Loan Guarantee and all the notes intended to be covered by the Loan Guarantee. The Loan Guarantee references only the debt instrument used at loan closing. The necessary linkage may be established with a master note, a loan agreement, or by referring in the subsequent notes to the original debt instrument referenced on the Loan Guarantee.

## 247 Actions Before Issuing the Loan Guarantee (7 CFR 762.130) (Continued)

### A Lender's Actions (Continued)

- **the note is executed by the individual liable for the loan**

  **Note: For entities, the note is executed by the member who is authorized to sign for the entity, and by all members of the entity as individuals.** Personal guarantees, or other forms, will not be used to address the individual liability requirement. **Individual liability can be waived by the Agency for members holding less than 10 percent ownership in the entity if the collectability of the loan will not be impaired.**

- **when the loan purpose is to refinance or restructure the lender's own debt, the lender may continue to use the existing debt instrument and attach an allonge that modifies the terms of the original note.**

In addition, the lender should take the following actions.

- Inform FSA of the lender's plans to market the loan to the secondary market. These plans must be consistent with Part 15. LOC's may be funded in participation with other lenders, but may not be sold into the secondary market.

- **The lender must notify the Agency of any scheduled inspections during construction and after the guarantee has been issued. The Agency may attend these field inspections. Any inspections or review performed by the Agency, including those with the lender, are for the benefit of the Agency only. Agency inspections do not relieve any other parties of their inspection responsibilities, nor can these parties rely on Agency inspections in any manner.**

## 247 Actions Before Issuing the Loan Guarantee (7 CFR 762.130) (Continued)

### B FSA Actions

Once FSA receives the information from the lender detailed in subparagraph A, the authorized agency official must take the following actions before executing the Loan Guarantee to guarantee the loan.

- Review the Conditional Commitment to ensure that the loan closed according to the agreed conditions.

- Review the executed loan agreement and promissory note and compare with the Conditional Commitment to ensure consistency with the agreed upon terms and personal liability of entity members.

- Review the lender's proposed marketing plans to the secondary market. If the lender is proposing to sell the loan or a portion of the loan into the secondary market, documents should be checked to ensure consistency before sale. The authorized agency official should take additional care to review the Conditional Commitment, the Loan Guarantee, the loan agreement, and promissory notes to ensure the following:

  - principal amount and interest rate are consistent

  - closing date on the note and guarantee are consistent

  - borrower's name, lender's name, and FSA contact information are consistent on all documents.

- For loans involving construction, review the lender's proposed plans for construction inspections and how they intend to ensure that the project is completed according to agreed upon terms.

## 248 Issuing the Loan Guarantee

### A Action

Once the requirements of paragraph 247 have been met, the authorized agency official may prepare and issue the Loan Guarantee. The original Loan Guarantee should be provided to the lender to be attached to the original note. A conformed copy, or signed and dated photocopy, with copies of the note should be kept by FSA in the loan docket.

### B Documents To Be Transmitted to FSC, FLOO

***--**The guarantee fee will be processed through the National Receipts and Receivable System using applicable collection type. See 3-FI for additional guidance. The authorized agency**--*** official shall make every attempt to review the closing documents before processing the guarantee fee. However, FSA shall adhere to the timeframes in 3-FI to process the fee even in situations when the authorized agency official is not able to review the closing documents timely. The Loan Closing Transaction shall be input through GLS Add Loan Screen.

### C Refund of Guarantee Fee

The guarantee fee is not refundable once the Loan Guarantee has been issued and loan funds disbursed. However, if the fee was processed before reviewing closing documents and it is later determined that the guarantee cannot be issued, the fee may be refunded to the lender.

The authorized agency official will forward a memorandum to the State Office with the reasons FSA was not able to issue the Loan Guarantee and request that the fee be refunded. If approved, the State Office will FAX the memorandum to FSC, FLOO, requesting that the fee be refunded.

A request for a guarantee fee refund for any other reason shall be forwarded to the National Office for approval.

## 249 Deobligation of Loan Funds

### A Deobligation of Funds

Under certain circumstances, the authorized agency official may need to consider a deobligation of loan funds. If the conditions for the loan or LOC cannot be met after completing the appeal process, the authorized agency official must execute FSA-2072 to cancel the actual obligation.

### B FAXing FSA-2072

FSA-2072 should be FAXed to the State Office that will process the cancellation or deobligation through GLS.

## 250 Replacing or Terminating the Loan Guarantee (7 CFR 762.101 and 762.130)

### A Replacing the Loan Guarantee

**If the guarantee or assignment guarantee agreements are lost, stolen, destroyed, mutilated, or defaced, except where the evidence of debt was or is a bearer instrument, the Agency will issue a replacement to the lender or holder upon receipt of acceptable documentation, including a certificate of loss or an indemnity bond.** It is the responsibility of the lender to coordinate the replacement activities with the holder and submit the required documents to SED for processing. SED shall contact the National Office for further guidance when replacing the Loan Guarantee.

### B Terminating the Loan Guarantee

**The Loan Guarantee will automatically terminate as follows:**

- **upon full payment of the guaranteed loan**

  **Note: A zero balance within the period authorized for advances on a line of credit will not terminate the guarantee.**

- **upon payment of a final loss claim**

- **upon written notice from the lender to the Agency that a guarantee is no longer desired provided the lender holds all of the guaranteed portion of the loan. The Loan Guarantee will be returned to the Agency office for cancellation within 30 days of the date of the notice by the lender.**

There are instances where the authorized agency official may need to consider terminating Loan Guarantees without the lender's written notification. Instances include lenders who refuse to provide FSA with either of the following:

- FSA-2241's
- FSA-2248's.

**Note:** This does not apply to occasional missed or late reports; but to a pattern of missing reports or reports that do not provide new information covering lengthy time periods.

## 250 Replacing or Terminating the Loan Guarantee (7 CFR 762.101 and 762.130) (Continued)

### B Terminating the Loan Guarantee (Continued)

Before terminating the Loan Guarantee, loan files must be documented to reflect attempts made to obtain required FSA-2241's or FSA-2248's from the lender or any other pertinent information on the status of loans.

Authorized agency officials will notify lenders, in writing, the specifics of the reporting problems and provide 30 calendar days to submit updated FSA-2241's, FSA-2248's, or other information.

| **IF lenders fail to provide updated FSA-2241's, FSA-2248's, or there is no response from lenders...** | **THEN...** |
|---|---|
| after the first 30 calendar days | a 2nd letter will be sent to the lender providing an additional 30 calendar days. |
| after the second 30 calendar days | a final letter will be sent to the lender informing them that because of their failure to follow the requirements of 7 CFR 762.141 (a) and/or (b), any loss claim would be denied according to 7 CFR 762.103(b)(2) and FSA is terminating the Loan Guarantee.<br><br>**Note:** Appeal rights must be provided according to 1-APP. |
| or no appeal is filed | the Loan Guarantee will be terminated.<br><br>**Note:** Loans may not be terminated simply because they have matured. |

**251-261 (Reserved)**

# Part 11 General Servicing Responsibilities

## Section 1 General Servicing Requirements

### 262 Relationships and Responsibilities (7 CFR 762.140(a))

#### A Lender Role

**Lenders are responsible for servicing the entire loan in a reasonable and prudent manner, protecting and accounting for collateral, and remaining the mortgagee or secured party of record.**

**The lender cannot enforce the guarantee to the extent that a loss results from a violation of usury laws or negligent servicing.**

The lender is responsible for:

- servicing their guaranteed loans as they service any other loan in their portfolio
- complying with all FSA program requirements.

FSA servicing regulations are designed to accommodate standard agricultural lending practices, so lenders can be assured they meet program regulations if they:

- service guaranteed loans in a prudent, traditional manner
- comply with specific program eligibility guidelines and loan limits.

## 262 Relationships and Responsibilities (7 CFR 762.140(a)) (Continued)

### B FSA Role

FSA is responsible for working with lenders to ensure that all servicing and reporting requirements are met. FSA shall:

- concur on feasible servicing requests made by the lender
- collect all necessary servicing reports required of the lender
- review a percentage of the lender's loan files annually to assess program compliance.

FSA will work closely with SEL's in loan servicing. SEL's may be new to the FSA guaranteed loan program and, therefore, may require additional assistance and guidance. CLP lenders will be monitored less, since these lenders have working knowledge of the program and should need minimal guidance and oversight. PLP lenders have proven experience with the guaranteed loan program and servicing guaranteed loans. PLP lenders will be provided maximum flexibility to service guaranteed loans and minimal supervision by FSA.

When a lender attains PLP status, the lender will service its existing guarantee portfolio under the provisions of its CMS summary and Lenders Agreement. Servicing requirements that were included in the Conditional Commitment for loans made before the lender was a PLP lender may be retained upon mutual agreement between the lender and FSA.

## 263 Borrower Supervision (7 CFR 762.140(b))

### A Overview

Lenders must supervise guaranteed loan borrowers in a manner similar to their supervision of regular loan customers. Lenders are expected to apply standard, agricultural loan servicing principles to their guaranteed customers.

Examples of standard borrower supervision include the following:

- maintaining regular contact with the farmer
- periodically discussing the farmer's goals and monitoring progress in meeting these goals
- accounting for loan proceeds by monitoring expenditures and discussing how these will facilitate the achievement of the operator's expressed goals
- monitoring collateral and tracking the sale of security.

### B Lender Supervision of Borrowers

**The lender's responsibilities regarding borrower supervision include, but are not limited to the following:**

- **ensuring loan funds are not used for unauthorized purposes**
- **ensuring borrower compliance with the covenants and provisions contained in the promissory note, loan agreement, mortgage, security instruments, any other agreements, and this part**

  **Note: Any violations which indicate non-compliance on the part of the borrower, must be reported, in writing, to both the Agency and the borrower.**

- **ensuring the borrower is in compliance with all laws and regulations applicable to the loan, the collateral, and the operations of the farm**

**263 Borrower Supervision (7 CFR 762.140(b)) (Continued)**

**B Lender Supervision of Borrowers (Continued)**

- **receiving all payments of principal and interest on the loan as they fall due and promptly disbursing to any holder its pro-rata share according to the amount of interest the holder has in the loan, less only the lender's servicing fee**

- **performing an annual analysis of the borrower's financial condition to determine the borrower's progress.**

***--Note:** Provisions of the Servicemembers Civil Relief Act of 2003 affect guaranteed lenders with borrowers and/or co-borrowers called to active duty. Guaranteed lenders are responsible for:

- understanding their lending institution's rights and remedies

- ensuring that benefits are promptly and properly extended to eligible guaranteed borrowers.

Servicing actions taken according to the Servicemembers Civil Relief Act of 2003 will not jeopardize guaranteed lenders' rights under the loan guarantee.**--***

**(7 CFR 762.140(d)) When a lender receives a payment from the sale of encumbered property, loan installments will be paid in the order of lien priority. When a payment is received from the sale of unencumbered property or other sources of income, loan installments will be paid in order of their due date. Agency approval is required for any other proposed payment plans.**

The loan application and other loan specific documents, including the Conditional Commitment, will detail the purposes and conditions for the loan. Lenders must inform FSA of any changes in the use of loan funds. SEL's must first receive FSA concurrence **before** allowing a change in the use of loan funds. If a borrower uses loan funds improperly, the lender must take steps to correct the violation. If improper use of loan funds results in a loss claim, lenders **must** make every effort to collect the loan's remaining outstanding debt and minimize loss to FSA.

Failure by the lender to report a borrower violation to FSA in a timely manner could result in the reduction or denial of a loss claim.

Borrower's progress is demonstrated by an annual improvement in balance sheets and the meeting of any interim goals (paragraph 265).

The lender shall obtain a perfected security interest in the loan collateral. Lenders **must** obtain secure liens on all collateral as outlined in the Conditional Commitment. A loss claim may be reduced if a lender failed to perfect the loan security.

## 263 Borrower Supervision (7 CFR 762.140(b)) (Continued)

### C FSA Monitoring of Borrower Supervision

If FSA discovers that a lender does not have adequate procedures in place to ensure sound borrower supervision, the authorized agency official should inform the lender in writing of the deficiency and, if necessary, require the lender to submit a plan outlining the actions they will take to correct the deficiency. Failure on the part of the lender to submit a plan or take action to correct the deficiency may result in denial of future loan applications or revocation of status.

For CLP and PLP lenders, any finding of a major deficiency should be forwarded to SED for action.

## 264 Servicing Collateral (7 CFR 762.142(a))

### A Lender Servicing of Collateral

**The lender's responsibilities regarding servicing collateral include, but are not limited to, the following:**

- **obtain income and insurance assignments when required**
- **ensure the borrower has or obtains marketable title to the collateral**
- **inspect the collateral as often as deemed necessary to properly service the loan**
- **ensure the borrower does not convert loan security**
- **ensure the proceeds from the sale or other disposition of collateral are accounted for and applied in accordance with the lien priorities on which the guarantee is based or used for the purchase of replacement collateral**
- **ensure the loan and the collateral are protected in the event of foreclosure, bankruptcy** (Part 13)**, receivership, insolvency, condemnation, or other litigation**
- **ensure taxes, assessments, or ground rents against or affecting the collateral are paid**
- **ensure adequate insurance is maintained**
- **ensure that insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or used to rebuild or acquire needed replacement collateral.**

These requirements spell out the standard servicing of collateral responsibilities for every FSA-guaranteed loan; however, the lender and the authorized agency official should refer to the specific loan documents, such as the Conditional Commitment, for additional servicing requirements on a loan-by-loan basis.

## 264 Servicing Collateral (7 CFR 762.142(a)) (Continued)

### B FSA Responsibilities

Authorized agency officials can offer assistance to lenders in this area of servicing. Assistance may include the following:

- advising the lender when there is concern that the lender is overestimating or underestimating the value of collateral
- regularly asking the lender about the condition of the borrower's collateral, especially security that is particularly valuable or volatile
- performing cross checks to verify that UCC filings have been made for all collateral
- informing the lender of deficiencies discovered during the annual review and proposing modifications in procedures to resolve the deficiencies.

### C FSA Monitoring of Collateral Servicing

If FSA discovers that a lender does not have adequate procedures in place to ensure that the collateral is being serviced to FSA standards, the authorized agency official should inform the lender in writing of the deficiency and, if necessary, require the lender to submit a plan outlining the actions they will take to correct the deficiency. Failure on the part of the lender to submit a plan or take action to correct the deficiency may result in denial of future loan applications or revocation of status until the deficiency is resolved.

For CLP and PLP lenders, any finding of a major deficiency should be forwarded to SED for action.

## 265 Annual Analysis of Borrower's Financial Condition (7 CFR 762.140(b)(5))

### A Overview

The lender must perform an annual financial analysis of the borrower's operation within 90 calendar days of the end of the borrower's operating cycle. SEL's and CLP lenders must submit documents to FSA in support of this analysis. **PLP lenders will perform an annual analysis in accordance with the requirements established in the Lender's Agreement** and document their files. However, PLP lenders do not submit the annual analysis to FSA for review. This paragraph describes the specific requirements for SEL's and CLP lenders.

### B Financial Analysis of Borrower by SEL

**The annual analysis will include:**

- **for loans secured by real estate only, the analysis for standard eligible lenders must include a balance sheet**

- **for loans secured by chattels, all lenders will review the borrower's progress regarding business goals, trends, and changes in financial performance, and compare actual to planned income and expenses for the past year**

***--Note:** For a borrower with Streamlined CL only, the financial analysis will **not** include the comparison of actual to planned income and expenses for the past year.**--***

- **an account of the whereabouts or disposition of all collateral**

- **a discussion of any observations about the farm business with the borrower.**

## 265 Annual Analysis of Borrower's Financial Condition (7 CFR 762.140(b)(5)) (Continued)

### C Documents Submitted to FSA by SEL in Support of Annual Analysis

**[7 CFR 762.141(d)]** SEL shall provide the following to FSA:

- **borrower's balance sheet and income and expense statement for the previous year,** if applicable

- **for lines of credit, the cash flow for the borrower's operation that projects a feasible plan or better for the upcoming operating cycle**

  **Note: The standard eligible lender must receive approval from the Agency before advancing future years' funds.**

- **an annual farm visit report or collateral inspection**

- narrative summary of borrower's financial progress, if applicable.

| Submission Summary | |
|---|---|
| Real Estate | Balance sheet, farm visit report, income and expense statement, and narrative summary of borrower's financial progress from previous year only if loan is also secured by chattels. |
| Term Chattels | Balance sheet, farm visit report, income and expense statement, and narrative summary of the borrower's financial progress. |
| Lines of Credit | Balance sheet, farm visit report, income and expense statement, projected cash flow, and narrative summary of the borrower's financial progress. |

These documents should be submitted to the authorized agency official within 30 calendar days of the completion of the annual financial analysis.

## 265 Annual Analysis of Borrower's Financial Condition (7 CFR 762.140(b)(5)) (Continued)

### D Annual Analysis of Borrower by CLP Lender

**CLP lenders will determine the need for the annual analysis based on the financial strength of the borrower and document the file accordingly.**

**For loans secured by chattels, all lenders will review the borrower's progress regarding business goals, trends and changes in financial performance, and compare actual to planned income and expenses for the past year.**

***--Note:** For a borrower with Streamlined CL only, the financial analysis will **not** include the comparison of actual to planned income and expenses for the past year.**--***

CLP lenders shall maintain **an account of the whereabouts or disposition of all collateral.** The accounting will occur in the form of a documented annual farm visit report or collateral inspection report for all chattel loans.

CLP lenders shall document **a discussion of any observations about the farm business with the borrower.**

If the lender determines that an analysis should be performed, the analysis may be based on a comparison of current and past balance sheets. If a balance sheet analysis is not performed by the lender, information that confirms the borrower is strong financially and reasons why the lender is confident of the borrower's progress must be provided by the lender. Examples of information that would indicate the financial strength of the borrower would include deposit or investment accounts with the lender.

## 265 Annual Analysis of Borrower's Financial Condition (7 CFR 762.140(b)(5)) (Continued)

### E Documents Submitted to FSA by CLP in Support of Annual Analysis

**[7 CFR 762.141(c)]** CLP lenders shall submit the following to FSA in support of their annual analysis:

- **a written summary of the lender's annual analysis of the borrower's operation**

  **Note: This summary should describe the borrower's progress and prospects for the upcoming operating cycle. This annual analysis may be waived or postponed if the borrower is financially strong. The summary will include a description of the reasons an analysis was not necessary.**

- **for lines of credit, an annual certification stating that a cash flow projecting at least a feasible plan has been developed, that the borrower is in compliance with the provisions of the line of credit agreement, and that the previous year income and loan funds and security proceeds have been accounted for.**

| Submission Summary | |
|---|---|
| Real Estate | Either a summary of lender's analysis or summary as to why financial strength makes analysis unnecessary. |
| Term Chattels | Either a summary of lender's analysis or summary as to why financial strength makes analysis unnecessary. |
| Lines of Credit | Certification that cash flow was obtained<br>Borrower in compliance with lender's agreement<br>Lender has accounted for previous year's income and loan funds and security proceeds are accounted. |

These documents must be submitted to the authorized agency official within 30 calendar days of the completion of the annual financial analysis.

## 265 Annual Analysis of Borrower's Financial Condition (7 CFR 762.140(b)(5)) (Continued)

### F FSA Review of Annual Financial Analyses

Upon receiving the annual borrower financial analysis supporting documentation from SEL, the authorized agency official should review the documentation for the following:

- indications of borrower financial distress or major changes in the borrower's financial status from the previous year

- changes in the appearance of the operation or collateral. If the authorized agency official notices any problems, he or she should call the lender to discuss these concerns.

For borrowers with LOC, FSA must determine at this time whether or not LOC should be renewed for the next year.

Upon receiving the annual borrower financial analysis supporting documentation from a CLP lender, the authorized agency official should review the documentation of the borrower's progress on loan payback. The narrative should summarize factors of financial strength which support the lender's determination that further analysis is unnecessary, if applicable.

After reviewing the annual financial analyses submitted by the SEL and CLP lender, the authorized agency official must document their review of the annual financial analysis by making an entry in the borrower's County Office guaranteed loan file. To the extent the authorized agency official has concerns about a specific borrower or lender's management and supervision of FSA-guaranteed loans in general, the authorized agency official should communicate these concerns to the lender in writing.

Copies of correspondence, including authorization to advance LOC funds, will be placed in the borrower's FSA guaranteed loan file. A copy of any correspondence sent to a lender about their management of a loan will be placed in the lender's file and, if the deficiency is major, a copy forwarded to SED. The borrower's file will be marked for necessary followup actions.

## 266 Lender Reporting Requirements (7 CFR 762.141)

### A Overview

This section covers the general reporting requirements for all lenders. These reporting requirements are not tied to any specific servicing action. Many servicing actions require additional reports and updates from lenders, which this paragraph does not cover. See Exhibit 12 for a checklist of all lender reporting requirements.

### B General Reporting Requirements

**Lenders are responsible for providing the local Agency credit officer with all of the following information on the loan and the borrower:**

- **When the guaranteed loan becomes 30 days past due, and following the lender's meeting or attempts to meet with the borrower, all lenders will submit the appropriate Agency form showing guaranteed loan borrower default status. The form will be resubmitted every 60 days until the default is cured either through restructuring or liquidation.**

- **All lenders will submit the appropriate guaranteed loan status reports as of March 31 and September 30 of each year.**

- **PLP lenders will submit additional reports as required in their Lender's Agreement.**

- **A lender receiving a final loss payment must complete and return an annual report on its collection activities for each unsatisfied account for 3 years following payment of the final loss claim.**

Lenders shall submit FSA-2248 to comply with the requirement to report borrower defaults. This report is used first to notify FSA that a loan is in default, second, as a progress report on the lender's attempt to make the loan current again, and third, once a loan is brought current, as a means to notify FSA of the new loan terms and conditions. See Part 12 for more details on this reporting requirement.

Lenders should submit FSA-2241 to comply with the requirement to submit a semi-annual loan status report. This report provides an update on the borrower's progress on loan payback and the loan's terms and conditions.

Lenders should submit FSA-2261 to satisfy the requirement for an annual report on collection activities. See Part 14 for more details on this reporting requirement.

## 266 Lender Reporting Requirements (7 CFR 762.141) (Continued)

### C FSA Monitoring of Lender Reports

*** * ***

***--**If not received through LINC, the authorized agency official will enter information from**--*** FSA-2241 into GLS when FSA-2241 is received from the lender. Lenders will be required to update loan information on loans that have a status report record created in GLS or displayed on FSA-2241 mailed to the lenders. Status reports will not be required to be updated until the next reporting period for loans that do not have a status report record created or that are not

***--**displayed on the mailed FSA-2241. If the lender is not sending these reports in a timely manner, the authorized agency official should document attempts to obtain the reports and communicate problems to SED.

The authorized agency official should review the information to determine whether it**--*** indicates that the loan is in good standing. If the principal balance has not been reduced in over a year, the accrued interest balance appears inordinately large, the interest rate does not comply with the promissory note, or other concerns, the issue should be discussed with the lender. If necessary, the discussion should be followed by a letter requesting that the account be corrected and a new FSA-2241 submitted.

An indication on FSA-2241 that the loan is past due will not place the account in default in FSA's records. If the lender has indicated that an account is past due, and FSA-2248 has not been submitted, the authorized agency official shall contact the lender and request that FSA-2248 be submitted if the account will not be brought current within a few days.

Entering information from FSA-2248, which shows a loan has been brought to a current status, will remove that loan from a delinquency status; however, it will not change the amount the loan payments are shown as Ahead/Behind. The authorized agency official will prepare an updated FSA-2241, using the information from FSA-2248, and process into GLS. If the information on FSA-2241 shows the loan as current, and the amount Ahead/Behind is shown as zero, the management reports will reflect the correct status of the loan.

See:

- Part 12 for other FSA-2248 actions
- Part 14 for FSA-2261 actions.

## 267 FSA Loan Servicing Responsibilities

### A Overview

Authorized agency officials will be FSA's primary point of contact with lenders on a day-to-day basis. Authorized agency officials must ensure that lenders are appropriately managing their guaranteed loans, and submitting all required reports on time. In cases where lenders may have deficiencies in loan servicing, the authorized agency official should provide loan servicing guidance and assistance.

The purpose of performing lender file reviews is to protect the guarantee, preserve lender status, and minimize losses and the need for adjustments to loss claims.

As part of the review, authorized agency officials will note whether they have become aware of the lender being under any enforcement actions either through checking the appropriate regulatory web sites in subparagraph 46 C or through discussions with the lender.

### B Lender Loan Files Review Priorities

For each SEL, FSA will annually review the files of 40 percent of the lender's outstanding guaranteed OL and/or OL-LOC borrowers, unless the 40 percent requirement would result in borrowers being reviewed who were reviewed the previous year. If the 40 percent requirement would result in some of the same borrowers being subject to review, then, for *****--those borrowers, the review will be every other year. SEL files for FO-only and CL-only--***** borrowers will be reviewed within 3 years of the date the loan is closed and subsequently if the loans become nonperforming. For each CLP and PLP lender, FSA must annually review the files of 20 percent of the lender's outstanding guaranteed loan borrowers. If the file reviews for a PLP lender have found no major deficiencies during the first 3 years of reviews, the frequency of file reviews may be reduced to biennially, and the number of files reviewed may be reduced to a minimum of 5 borrowers, or 10 percent of the lender's borrowers, whichever is greater. For lenders processing guaranteed loans in more than 1 State, the file reviews should be done in the State where the lender is headquartered, and other States in the lender's service area may send personnel to assist in the review.

**267 FSA Loan Servicing Responsibilities (Continued)**

**B Lender Loan Files Review Priorities (Continued)**

Loans are selected for review according to the following priorities:

- loans receiving consideration for rescheduling, deferral, writedown, transfer and assumption, or substitution of lender
- delinquent loans or loans which the lender or FSA has identified as high risk
- loans in which the funds were used to refinance the lender's own debt
- the most recent loans closed by the lender and not yet reviewed
- other loans.

FSA-2293 and PLP Checklist, developed by the National Office for each specific lender, may be used to document the lender file reviews. All questions on each FSA-2293 and PLP Checklist do not require completion for each file reviewed, as long as reviews are sufficient to document that lenders are meeting the underwriting, origination, and servicing requirements of their Lenders Agreement and this handbook. In addition to the lender's loan file, a copy of the loan account ledger should be obtained and reviewed. Additional information may be requested and reviewed by FSA, if necessary, based on deficiencies noted in the file, in loss claim reviews, or as suggested by other parties. SED shall determine how the file review requirement will be met in their State.

**Note:** See Exhibit 4 for State supplement requirements.

**267 FSA Loan Servicing Responsibilities (Continued)**

**C Multi-State PLP Lender File Review**

Where PLP lenders are approved to make and service loans in multiple States, it may be beneficial to both FSA and the lender to conduct a multi-State file review to meet the file review requirement. This review can benefit:

- FSA by:
  - helping to lead toward a more consistent handling of the reviews and the associated findings
  - having an opportunity to identify and correct inconsistent practices of the lender or FSA
- lenders by:
  - gaining a better understanding of across-the-board FSA expectations of the lender
  - having minimal disruption to their State operations as a result of FSA file reviews.

To ensure that multi-State reviews are given full consideration, the following procedures will be followed.

- In January of each year, the National Office will contact each lender that has PLP status in a minimum of 3 States and the appropriate States in which that lender has PLP status. This contact will determine, based upon the lender and the States' opinion, whether a multi-State review is necessary. If it is determined that a multi-State review is necessary, the National Office will take the lead in contacting the lender and coordinating the review. Multi-State reviews may be scheduled at any time during the year.

- In January of each year, the National Office will provide a list of lenders that have PLP status in only 2 States to appropriate Farm Loan Chiefs. Farm Loan Chiefs will be responsible for contacting each other to determine whether a multi-State review is necessary. State Offices will take the lead in coordinating the reviews. Farm Loan Chiefs will determine review participants.

The multi-State review will not alleviate the lender of their responsibility to provide authorized agency officials access to any particular file or files of the lender if in the authorized agency official's opinion an additional review is necessary.

## 267 FSA Loan Servicing Responsibilities (Continued)

### D Authorized Agency Official Review of PLP Lender Loan Files

PLP loan file reviews will be documented by completing the review checklist based on the individual lender's CMS. All review checklists will be either prepared or approved by the National Office. The review of PLP loan files will be based on the terms and conditions specified in the Lenders Agreement. The following questions should be considered during the loan file review.

- Do the files contain sufficient information to document that the underwriting and servicing was consistent with the Lenders Agreement?
- Were servicing actions implemented in a manner consistent with the Lenders Agreement?
- Was servicing prudent and reasonable?

### E Authorized Agency Official Response to Loan File Review

During the lender loan file reviews, the authorized agency official shall hold an entrance and exit conference with the lender. At the entrance conference, the authorized agency official will outline the purpose of the review and request any information that will be required to complete the review. At the exit conference, the authorized agency official will discuss with the lender any deficiencies as well as the lender's accomplishments. The authorized agency official will forward a letter to the lender outlining the findings of the loan file review. Letters or reports from lender visits and loan file reviews must be filed according to 25-AS, Exhibit 40.5, with copies forwarded to DD. If the review reveals frequent deficiencies, a report should be forwarded to SED.

If the lender is under an enforcement action imposed by the lender's regulatory agency, that finding will be documented in the letter to the lender outlining review findings, and a copy provided to SED. SED shall contact DAFLP, LSPMD.

## 267 FSA Loan Servicing Responsibilities (Continued)

### F Authorized Agency Official Review of Loan Servicing Reports Provided by Lender

The authorized agency official is responsible for obtaining all required information from lenders about the servicing of guaranteed loans. This includes the annual financial analysis performed to determine the borrower's progress on loan payback and goal achievement (paragraph 265), loan status reports (paragraph 266), and all other materials submitted to FSA, including requests by lenders to perform certain servicing actions.

### G Authorized Agency Official Approval Authority

Authorized agency officials can approve the following servicing actions:

- alterations in loan conditions that do not prejudice the government's interest
- replacement of collateral
- the use of proceeds from the disposition of collateral.

### H DD Servicing Responsibilities

DD servicing responsibilities include:

- providing guidance and assistance to the authorized agency official in monitoring guaranteed loans

- reviewing a sample of lender visit reports and loan reviews, making recommendations or comments, and forwarding reports of deficiencies to SED

- make recommendations to the authorized agency official on all delinquent loans

- conducting other servicing actions as directed by SED.

**267 FSA Loan Servicing Responsibilities (Continued)**

**I SED Servicing Responsibilities**

SED's have broad management responsibilities for the guaranteed loan program. SED servicing responsibilities include, but are not limited to, the following:

- review deficiencies identified by the authorized agency official and provide recommendations for resolution

- perform an annual review of each lender's CLP and PLP status, and if the lender is found to be deficient in meeting the minimum criteria, then upon notification to the lender, remove the status

  **Note:** For PLP lenders, the decision to remove PLP status must be made in the National Office after reviewing SED's recommendation.

- perform appraisal reviews according to 1-FLP, paragraph 143

  **Note:** See 1-FLP, Part 6 for additional guidance on appraisal review issues.

- maintain a lender file for each guaranteed lender in the State Office.

**J Addressing Deficiencies**

If deficiencies in loan servicing are detected by FSA, the authorized agency official will work with the lender to correct any problems. If the lender fails to correct a major loan servicing deficiency, and the deficiency results in a loss, the loss claim may be reduced or denied.

Subparagraph 52 H contains the definition of major and minor deficiencies. See paragraphs 48 and 54 for follow-up actions and consequences of not correcting deficiencies for SEL's and PLP lenders, respectively.

**K Memorandum of Understanding Between FSA and FDIC**

If a lender who participates in FSA's Guaranteed Farm Loan Programs fails, FDIC may, as Receiver, assume responsibility for the Conditional Commitment, Loan Guarantee, and/or FmHA-449-34 for all guaranteed loans to which the closed bank was a party.

Exhibit 13 outlines the responsibilities of FSA and FDIC in such cases.

**268-277 (Reserved)**

## Section 2 General Servicing Actions

### 278 Subordination of Guaranteed Loan Security (7 CFR 762.142)

#### A Overview

**The lender may not subordinate its interest in property which secures a guaranteed loan except as follows:**

- **the lender may subordinate its security interest in crops, feeder livestock, livestock offspring, or livestock products when no funds have been advanced from the guaranteed loan for their production, so a lender can make a loan for annual production expenses**

- **the lender may, with written Agency approval, subordinate its interest in basic** or additional **security in cases where the subordination is required to allow another lender to refinance an existing prior lien, no additional debt is being incurred, and the lender's security position will not be adversely affected by the subordination**

- **the Agency's National Office may provide an exception to the subordination prohibition if such action is in the Agency's best interest.**

**However, in no case can the loan made under the subordination include tax exempt financing.**

#### B Lender Request for Subordination of Guaranteed Loan Security

The *** * *** authorized agency official may approve a lender's request to subordinate crops, feeder livestock, livestock offspring, milk, produce, and other normal income security that were not produced through advances made under the guaranteed loan, to allow a borrower to obtain unguaranteed annual operating credit. Multi-year assignments of FSA program payments will not be subordinated. However, in those cases where normal income security is being subordinated so another lender can make a loan for annual production expenses, any amount that exceeds the guaranteed loan payment for that year may be released.

## 278 Subordination of Guaranteed Loan Security (7 CFR 762.142) (Continued)

### B Lender Request for Subordination of Guaranteed Loan Security (Continued)

FSA discourages subordination of real estate, equipment, and other basic security and will **not** provide regulatory approval authority at levels lower than DAFLP, except in cases where the subordination is required to allow another lender to refinance an existing prior lien. The *** * *** authorized agency official will approve the subordination, provided:

- no additional debt is being incurred
- the lender's security position will **not** be adversely affected by the subordination.

When SED determines that the subordination of basic and/or additional security for any other purpose is in the best interest of FSA and the borrower, the request shall be forwarded to the National Office for DAFLP approval. Subordination of basic and/or additional security will **not** be approved simply to allow the operation to expand or to make improvements, unless necessary for the operation to remain feasible, or to allow a lender to secure an operating loan with the security. The request should contain:

- a description of the transaction including the use of the funds to be obtained through the subordination

- explanation of the borrower's cash flow before and after the proposed subordination documenting the improvement to be attained

- certification that the guaranteed loan will still be secured after the subordination based on a current appraisal

  **Note:** If the subordination request is to refinance existing real estate debt and no additional funds are provided, an appraisal is **not** required.

  an explanation of how the subordination is necessary to keep the borrower in business, or otherwise how the Government will benefit from the subordination, other than through conservation of loan funds

- if funds are to be advanced for expansion or improvements, an explanation as to how the proposal is necessary for the feasibility of the operation.

FSA's refusal to grant an exception to published regulations is **not** appealable.

## 279 Subordination of Direct Loan Security (7 CFR 762.142(c))

### A Direct Loan Subordination When Guaranteed Loan Is Being Made

**The Agency may subordinate its security interest on a direct loan when a guaranteed loan is being made if, as appropriate, the requirements of the regulations governing Agency direct loan subordinations are met and only in the following circumstances:**

- **to permit a guaranteed lender to advance funds and perfect a security interest in crops, feeder livestock, livestock offspring, or livestock products,** such as milk, eggs, wool, etc.

- **when the lender requesting the guarantee needs the subordination of the Agency's lien position to maintain its lien position when servicing or restructuring**

- **when the lender requesting the guarantee is refinancing the debt of another lender and the Agency's position on real estate security will not be adversely affected**

- **to permit a Line of Credit to be advanced for annual operating expenses.**

See 4-FLP for additional guidance.

### B Direct Loan Subordination to Secure LOC

**The Agency may subordinate its basic security in a direct loan to permit guaranteed line of credit only when both of the following additional conditions are met.**

- **The total unpaid balance of the direct loans is less than or equal to 75 percent of the value of all of the security for the direct loans, excluding the value of growing crops or planned production, at the time of the subordination. The direct loan security value will be determined by an appraisal. The lender requesting the subordination and guarantee is responsible for providing the appraisal and may charge the applicant a reasonable appraisal fee.**

- **The applicant cannot obtain sufficient credit through a conventional guaranteed loan without a subordination.** Before approving a combination guaranteed loan and subordination, the local loan approval official will document that the applicant requested a Contract of Guarantee - LOC through at least 1 participating lender. If the local loan approval official has information available that supports a conclusion that credit is not available without a subordination, documentation in the case file will be sufficient to verify that other credit is not available.

## 280 Partial Releases (7 CFR 762.142(b))

### A Overview

A partial release is the release of a portion of security used as collateral for a loan.

### B Lender Request for Partial Release

**A lender may release guaranteed loan security without FSA concurrence as follows:**

- **when the security item is being sold for market value and the proceeds will be applied to the loan in accordance with lien priorities**

  **Note: In the case of term loans, proceeds will be applied as extra payments and not as a regular installment on the loan.** Security will not be released for the purposes of providing collateral for another loan.

- **the security item will be used as a trade-in or source of down payment funds for a like item that will be taken as security**

  **Note:** FSA input may be requested when there is a question of whether a reasonable value is being obtained for the security.

- **the security item has no present or prospective value.**

  **Note:** Older security items that are now junk or obsolete may be left off of FSA-2028 when it is updated. Regardless, proceeds from the sale of such items as scrap or salvage should be applied to the loan as an extra payment.

**A partial release of security may be approved in writing by the Agency upon the lender's request when:**

- **proceeds will be used to make improvements to real estate that increase the value of the security by an amount equal to or greater than the value of the security being released**

  **Example:** A borrower may sell a parcel of real estate to provide funds for construction of a dwelling.

**280 Partial Releases (7 CFR 762.142(b)) (Continued)**

**B Lender Request for Partial Release (Continued)**

- **security,** other than significant income generating property, **will be released outright, with no consideration, but the total unpaid balance of the guaranteed loan is less than or equal to 75 percent of the value of the security for the loan after the release, excluding the value of growing crops or planned production, based on a current appraisal of the security**

- **significant income generating property will not be released unless it is being replaced, and business assets will not be released for use as a gift or any similar purpose**

  **Note:** The release must serve a purpose other than to simply allow a borrower to obtain clear title to security items. Cropland, significant machinery, and business assets will not be released, unless being replaced or proceeds are being used for authorized loan purposes.

- **Agency concurrence is provided in writing to a lender's written request.**

  **Note: Standard eligible lenders and CLP lenders will submit the following to the Agency:**

  - **a current balance sheet on the borrower**

  - **a current appraisal of the security**

    **Note:** Unless specifically requested by FSA, the lender will not be required to provide an appraisal of any real estate security being released. **Based on the level of risk and estimated equity involved, the Agency shall determine what security needs to be appraised. Any required security appraisals must meet the requirements of § 762.127.**

  - **a description of the purpose for the release**

  - **any other information requested by the Agency to evaluate the proposed servicing action.**

## 280 Partial Releases (7 CFR 762.142(b)) (Continued)

### C FSA Response to Request for Partial Release

Written consent of any prior or junior lien holder must be obtained and delivered to FSA if any proceeds are not applied according to lien priority.

A partial release will not be allowed if it would result in the borrower being released from loan liability.

### D Reviewing Requests for Partial Releases

FSA shall review and approve or reject the request and notify SEL within 30 calendar days, and CLP and PLP lenders within 14 calendar days, from receipt of a complete request for servicing.

When reviewing a lender's request for a partial release, the authorized agency official should carefully consider any partial release intended as a gift. In all instances, the authorized agency official should assess whether or not the release of land will affect the overall value of the remaining security. In addition, the authorized agency official shall determine whether an appraisal of security is necessary based on risk and perceived equity involved in the release. If there is a question on the value of the security, the authorized agency official should request an appraisal. The appraisal must be paid for by the lender or borrower and meet the requirements of Part 8, Section 4, Subsection 3.

**The lender will provide the Agency copies of any agreements executed to carry out the servicing action. PLP lenders will request servicing approval in accordance with their agreement with the Agency at the time of PLP status certification.** Approval of requests forwarded to DAFLP for special consideration may be delayed beyond 30 calendar days.

## 281 Transfers and Assumptions (7 CFR 762.142(d))

### A Overview

A transfer and assumption is an action whereby a new, eligible guaranteed loan applicant assumes an existing guaranteed loan. The transfer and assumption process is very similar to the application and approval of a new loan.

### B Lender Request for a Transfer and Assumption

**For standard eligible and CLP lenders, the servicing action must be approved by the Agency in writing. For standard eligible and CLP lenders, the transferee must apply for a loan in accordance with § 762.110** (Part 5)**, including a current appraisal, unless the lien position of the guaranteed loan will not change, and any other information requested by the Agency to evaluate the transfer and assumption.**

**PLP lenders may process transfers and assumptions in accordance with their agreement with the Agency.**

**Any required security appraisals must meet the requirements of § 762.127** (Part 8, Section 4, Subsection 3).

Lenders must also submit a request to release the transferor, guarantor, or any third party from liability according to paragraph 285.

**281 Transfers and Assumptions (7 CFR 762.142(d)) (Continued)**

**C Conditions and Requirements for a Transfer and Assumption**

**The following limitations apply to transfers and assumptions.**

- **The transferee must meet the eligibility requirements and loan limitations for the loan being transferred, all requirements relating to loan rates and terms, loan security, feasibility, and environmental and other laws applicable to an applicant under this subpart.**

- **The lender will use its own assumption agreements or conveyance instruments providing they are legally sufficient to obligate the transferee for the total outstanding debt.**

- **The lender must give any holder notice of the transfer. If the rate and terms are changed, written concurrence from the holder is required.**

Additional limitations that apply to transfers and assumptions are as follows:

- the market value of the security being acquired, plus any additional security the transferee proposes to give, must be adequate to secure the balance of the guaranteed loan plus any prior liens

- at the time of the assumption, the indebtedness of the transferee may not exceed the limits outlined in subparagraph 244 A.

## 281 Transfers and Assumptions (7 CFR 762.142(d)) (Continued)

### D FSA Response to Request for Transfer and Assumption

**The Agency will review, approve or reject the request in accordance with the time frames in § 762.130 of this part** (Part 6).

**The Agency approves the transfer and assumption by executing a modification of the guarantee to designate the party that assumed the guaranteed debt, the amount of the debt at the time of the assumption, including interest that is being capitalized, and any new loan terms, if applicable.**

The authorized agency official will execute FSA-2245 and provide it to the lender for attachment to the original Loan Guarantee.

**The Agency will agree to releasing the transferor or any guarantor from liability only if the requirements of § 762.146(b)** (paragraph 285) **are met.**

The authorized agency official should treat a request for a transfer as an application for a new guaranteed loan. If all of the program requirements are met the transfer and assumption should be approved by FSA.

The authorized agency official will attach the assumption agreement to the Loan Guarantee or FmHA-449-34. To notify FSC, FLOO of the assumption, complete and forward FSA-2246. Guaranteed loan fees are not required for transfer and assumption.

**The lender will provide the Agency copies of any agreements executed to carry out the servicing action.**

## 282 Additional Loans or Advances (7 CFR 762.146(a))

### A Additional Loans or Advances

**SEL and CLP lenders must not make additional loans or advances without prior written approval of the Agency, except as provided in the borrower's Loan or Line of Credit Agreement.**

**The PLP lender may make additional loans or advances in accordance with the lender's agreement with the Agency.**

## 283 Emergency Advances (7 CFR 762.146(a))

### A Issuing an Emergency Advance Under LOC

**In cases of a guaranteed line of credit, lenders may make an emergency advance when a line of credit has reached its ceiling. The emergency advance will be made as an advance under the line and not as a separate note.** An emergency advance made on a loan with interest assistance is **not** and **cannot** be covered under the existing FSA-2221. Therefore, the lender will charge the full note interest rate on the emergency advance and the advance **cannot** be used as part of the average principal balance calculation for the lender's interest assistance claim.

**The lender's loan documents must contain sufficient language to provide that any emergency advance will constitute a debt of the borrower to the lender and be secured by the security instrument. The following conditions apply:**

- **the loan funds to be advanced are for authorized operating loan purposes**

  **Note:** An emergency advance may not be used to pay a carryover of an existing line of credit or for annual operating expenses for a subsequent year.

- **the financial benefit to the lender and the Government from the advance will exceed the amount of the advance**

- **the loss of crops or livestock is imminent unless the advance is made.**

**Note:** An emergency advance:

- in excess of the original loan amount is made when some aberration causes expenses to exceed the original budgeted amount, and is necessary to avoid significant damage to or loss of the security

- ***--**shall **not** be used if its use will cause the total amount of the borrower's debt to exceed the statutory limit.**--***

## 283 Emergency Advances (7 CFR 762.146(a)) (Continued)

### A Issuing an Emergency Advance Under LOC (Continued)

The following are examples where an emergency advance may be appropriate.

- The cost of an input item necessary for production of a crop, such as fertilizer or fuel unexpectedly increases substantially in price between the time the loan is made and the time the input is used.

- Unusual weather conditions result in additional expenses, such as a late freeze that results in a replanting of a crop, or an insect infestation results in unanticipated spraying.

- Fire or other calamity destroys a tractor or harvesting equipment just before harvest, and it is necessary to rent equipment, or custom hire for the harvest.

- The cost of inputs for raising livestock unexpectedly increases substantially, such as the cost of feed.

### B Lender Request for an Emergency Advance

SEL's and CLP lenders must obtain written permission from the authorized agency official before an emergency advance on LOC can be made.

Emergency advances are authorized for ongoing operations and may be used for OL's with a 1-year term, or in any year of LOC. Where liquidation is imminent, advances will be made as protective advances according to Part 14.

To request an emergency advance, SEL's and CLP lenders must submit the following to the authorized agency official:

- a narrative explaining that the loss of crops and/or livestock is imminent and can be prevented by an infusion of cash

- cash flow projections

- if necessary, a copy of the modified loan note that reflects the additional cash advanced.

PLP lenders may make emergency advances according to their Lenders Agreement.

## 283 Emergency Advances (7 CFR 762.146(a)) (Continued)

### C FSA Response to Request for Emergency Advance

The authorized agency official:

- shall review a SEL's and CLP lender's request for an emergency advance and notify the lender of FSA's decision in a timely manner

- should make every effort to respond to a request for an emergency advance within several days of receiving the lender's request.

## 284 Interest Rate Changes (7 CFR 762.146(d))

### A Overview

**The lender may change the interest rate on a performing (nondelinquent) loan only with the borrower's consent.**

### B A lender must follow the following procedures to change the interest rate.

- ***--If the loan has been sold on the secondary market, the lender must repurchase the loan** according to paragraph 375 B **or obtain the holder's written consent**.**--***

- **To change a fixed rate of interest to a variable rate of interest or vice versa, the lender and the borrower must execute a legally effective amendment or allonge to the existing note.**

- **If a new note is taken, it will be attached to and refer to the original note.**

- **The lender will inform FSA of the rate change by:**

  - completing FSA-2247
  - forwarding FSA-2247 to the County Office.

**Note:** Lenders do **not** need to seek FSA concurrence to change an interest rate.

## 285 Release of Liability Upon Withdrawal (7 CFR 762.146(b))

### A General Requirements

**An individual who is obligated on a guaranteed loan may be released from liability by a lender with the written consent of the Agency provided the following conditions have been met.**

- **The individual to be released has withdrawn from the farming operation.** The lender must submit a narrative outlining who is to be released and why.

- **A divorce decree and final property settlement does not hold the withdrawing party responsible for the loan payments.** A copy of the divorce decree must be submitted with the lender's request. The lender must document that release of divorced borrowers is a common practice carried out in their nonguaranteed loan portfolio.

- **The withdrawing party's interest in the security is conveyed to the individual or entity with whom the loan will be continued.**

- **The ratio of the amount of debt to the value of the remaining security is less than or equal to .75, or the withdrawing party has no income or assets from which collection can be made.**

- **Withdrawal of the individual does not result in legal dissolution of the entity to which the loans are made. Individually liable members of a general or limited partnership may not be released from liability. Partners, parents, cosigners, stockholders, and entity members may often be released from liability.** However, when the guaranteed loan is made to individuals farming as a partnership, and each partner is fully liable, release of 1 partner would terminate the partnership and the existence of the entity to which the loans were made. The lender must document that release of withdrawing members is common in their unguaranteed portfolio and all other conditions in this paragraph are met.

- **The remaining liable party projects a feasible plan (see § 762.102(b)).** The lender must submit a cash flow projection for the remaining liable party with the request for release. A release will not be approved when a loss is probable.

## 285 Release of Liability Upon Withdrawal (7 CFR 762.146(b)) (Continued)

### B Lender Request for Release of Borrower From Liability Upon Withdrawal

PLP lenders shall submit documentation to the authorized agency official in support of a release from liability, as specified in the Lenders Agreement.

### C FSA Actions to a Request for Release of Liability Upon Withdrawal

Upon review of the request, the authorized agency official must forward the request and a recommendation to SED for action. SED shall notify the lender of the decision in a timely manner either by notifying the lender directly or by instructing the County Office to inform the lender of whether the borrower may be released from liability.

### D Annual Review of Lender Loan Files in Cases of Release Liability Upon Withdrawal

During the annual FSA lender loan file review, for loans that received a release of liability, the authorized agency official must ensure that the lender proceeded with the release according to the documents provided when seeking FSA approval. In addition, authorized agency officials should ensure that the original loan note has been amended or a new note that is tied to the original has been issued to reflect the release of liability. If anomalies in process or documentation are noted, the authorized agency official should discuss the shortcomings with the lender.

## 286 Consolidation of Debt (7 CFR 762.146(e))

### A Overview

**Only OL may be consolidated.**

**Existing lines of credit may only be consolidated with a new line of credit if the final maturity date and conditions for advances of the new line of credit are made the same as the existing line of credit. OL loan note guaranteed loans may only be consolidated with other OL loan note guarantees.**

**The borrower must project a feasible plan after the consolidation. See § 762.102(b) for definition of feasible plan.**

**Guaranteed OL may not be consolidated with a line of credit, even if the line of credit has been rescheduled.**

## 286 Consolidation of Debt (7 CFR 762.146(e)) (Continued)

### A Overview (Continued)

The combining of outstanding principal and interest balances of 2 or more OL's or LOC's constitutes a consolidation of debt.

The following FSA loans cannot be consolidated:

•***--**CL's**--***

- FO's

- **OL's or lines of credit secured by real estate**

***--Note:** The "ACT" prohibits consolidation for loans secured by real estate.**--***

- OL's or lines of credit with outstanding Interest Rate Buydown Agreement, IA Agreement, or SAA

- non-FSA loans.

The following conditions also apply to consolidation:

- **guaranteed loans made before October 1, 1991, cannot be consolidated with those loans made on or after October 1, 1991**

- when 2 or more OL's or LOC's are consolidated the combined principal and interest must be kept separate; capitalization of interest is not allowed when loans are only being consolidated.

  **Note:** When a loan is consolidated with a loan that was made using FSA-1980-25, FSA-1980-28, Application for Guarantee, or Preferred Lender Application with the July 20, 2001, or later revision date, the consolidated debt is eligible for offset.

**286 Consolidation of Debt (7 CFR 762.146(e)) (Continued)**

**B Request for Consolidation**

SEL's must submit a feasible plan to FSA for concurrence before consolidating loans. CLP and PLP lenders may consolidate loans as long as the requirements of this paragraph are met.

**C Lender Actions to Consolidate Loans**

**A new note or line of credit agreement will be taken. The new note or line of credit agreement must describe the note or line of credit agreement being consolidated and must state that the indebtedness evidenced by the note or line of credit agreement is not satisfied. The original note or line of credit agreement must be retained.**

**The interest rate for a consolidated OL loan is the negotiated rate agreed upon by the lender and the borrower at the time of the action, subject to the loan limitations for each type of loan.**

**The Agency approves the consolidation by executing a modification of guarantee. The modification will indicate the consolidated loan amount, new terms, and percentage of guarantee, and will be attached to the originals of the guarantees being consolidated. If loans with a different guarantee percentage are consolidated, the new guarantee will be at the lowest percentage of guarantee being consolidated.**

**Any holders must consent to the consolidation, or the guaranteed portion must be repurchased by the lender.**

## 286 Consolidation of Debt (7 CFR 762.146(e)) (Continued)

### D FSA Response to Consolidation Request

The authorized agency official must approve of a SEL request for consolidation. When SEL submits a request for a loan consolidation, the authorized agency official should verify the following:

- only OL's and LOC's are being considered for consolidation
- the consolidation does not cause the loan principal to exceed program loan limitations
- the consolidation does not adversely affect the value of the security and the lender's security position.

The authorized agency official must complete FSA-2236 based on the information received from SEL and submit it to FSC, FLOO, along with a memorandum describing which loans were consolidated.

If a PLP or CLP lender consolidates loans:

- copies of documents will be obtained
- compliance with regulations will be verified through annual file reviews
- FSA-2236 is completed and submitted to FSC, FLOO, along with a memorandum describing which loans were consolidated.

## 287 Substitution of Lender (7 CFR 762.105)

### A Overview

When a borrower wants to move their guaranteed loan from 1 lender to another, or a lender wants to sell a guaranteed loan to another lender, with or without the borrower's consent, FSA must process a substitution of lender.

### B Lender Requirements

**A new eligible lender may be substituted for the original lender, if the original lender concurs, under the following conditions.**

- **The Agency approves of the substitution in writing by executing a modification of the guarantee to identify the new lender, the amount of debt at the time of the substitution and any new loan terms if applicable. The new lender agrees in writing to:**

  - **assume all servicing and other responsibilities of the original lender and to acquire the unguaranteed portion of the loan**

  - **execute a lender's agreement if one is not in effect**

  - submit a request to the authorized agency official that the new lender be approved as a substitute lender for the loan

  - **give any holder written notice of the substitution. If the rate and term are changed, written concurrence from the holder** or repurchase **is required.** The authorized agency official shall review the FSA file and determine if the loan has been sold. If the loan has been sold, the authorized agency official shall remind the lender of special considerations warranted by its sold status.

## 287 Substitution of Lender (7 CFR 762.105) (Continued)

### B Lender Requirements (Continued)

- The authorized agency official shall review the borrower and lender's substitution request as follows:
  - determine whether the requirements of this section are met
  - determine whether the new lender possesses the ability to service agricultural loans and, if necessary, discuss the loan with the lender and ensure that they are aware of their responsibilities
  - notify FSC, FLOO of the substitution by completing and submitting FSA-2243.
- **The original lender will assign their promissory note, lien instruments, loan agreements, and other documents to the new lender. The guarantee documents will then be assigned to the new lender.** The original lender must:
  - **assign their promissory note, lien instruments, loan agreements, and other documents to the new lender**
  - **if the loan is subject to an existing IA Agreement, submit a request for subsidy for the partial year that they have owned the loan**

    **Note:** FSA-2221 can then be transferred to the new lender. When a substitution is being processed, authorized agency officials should review the file to determine whether the loan has IA. If so, they should remind the:
    - original lender of the need for a subsidy request
    - new lender of special servicing requirements of a loan with IA.
  - if the original lender does not concur, the substitution cannot take place. If the borrower still wants to move their loan, the new lender may refinance the debt of the original lender.

**287 Substitution of Lender (7 CFR 762.105) (Continued)**

**C Lender Name or Ownership Changes**

**When a lender begins doing business under a new name or, undergoes an ownership change, the lender will notify the Agency.** If the lender simply changes their name and there is no change in ownership, location, or tax ID numbers, the authorized agency official shall:

- submit a request to FSC, FLOO to change the lender name
- attach a printout of the lender cross-reference screen from GLS with marks to explain the change.

**The lender's CLP or PLP status is subject to reconsideration when ownership changes.** If a status lender is merged with or purchased by a nonstatus lender, and the original lender's management, operating policies, CMS, and personnel are changed as a result, the lender's CLP or PLP status should be revoked. If the newly merged or purchased lender will continue to operate the status lender substantially as it has been managed in the past, revocation may not be necessary. The nonstatus lender will apply for status or their present status will be revoked. If a lender sells any guaranteed loans in their entirety, SED shall determine whether volume requirements of subparagraphs 49 E or 52 E are still being met.

**The lender will execute a new Lender's Agreement.**

## 287 Substitution of Lender (7 CFR 762.105) (Continued)

### C Lender Name or Ownership Changes (Continued)

The new lender must provide FSA with:

- its new tax ID number
- a list of all its branches where they will service guaranteed loans, their addresses, and responsible contacts.

**Note:** An interim request for subsidy payment from the original lender is not required when the entire lender has changed.

FSA-2243 must be completed and submitted to FSC, FLOO. One FSA-2243 may be completed with a list of the names, FSA case numbers, and loan numbers for the entire guaranteed loan portfolio of the lender attached.

Although guaranteed lenders are responsible for informing FSA when ownership changes occur, acquiring lenders are often unaware of this responsibility. If the authorized agency official becomes aware that a lender with FSA-guaranteed loans has been purchased by or merged with another lender, the authorized agency official shall contact the new management and remind them of their responsibilities under existing Lenders Agreement and the need to process a substitution. If authorized agency officials learn that a lender has been closed or placed in receivership by a financial institution regulatory agency, they shall contact their SED for guidance.

## 288 Servicing SAA's (7 CFR 762.147)

### A Overview

When receiving a debt writedown, a borrower is required to execute FSA-2253 that entitles the lender to future payments if the real estate used to secure the written down loan appreciates in value. FSA-2253 gives both the lender and FSA the possibility of recapturing money that was written off as a result of a debt writedown.

Before executing FSA-2253, the lender must obtain an appraisal of the real estate that is used to secure the written down loan. The appraisal figure will be recorded on FSA-2253. The appraisal must be dated within 1 year of FSA-2253 execution to be valid.

All servicing requirements apply to all existing SAA's that were entered into before SAA becoming FSA-2253. For purposes of this handbook, wherever FSA-2253 is referred to, it will also pertain to existing SAA's.

All requirements in this paragraph apply to all lender types, unless otherwise noted.

### B Lender Responsibilities When Servicing FSA-2253

**The lender is responsible for:**

- **monitoring the borrower's compliance with the Shared Appreciation Agreement**
- **notifying the borrower of the amount of recapture due**
- **beginning October 1, 1999, a notice of the agreement's provisions not later than 12 months before the end of the agreement**
- **reimbursing the Agency for its pro-rata share of recapture due.**

**288 Servicing SAA's (7 CFR 762.147) (Continued)**

**C Events That Trigger Recapture**

**Recapture of any appreciation of real estate security will take place at the end of the term of the Agreement, or sooner, if the following occurs:**

- **on the conveyance of the real estate security (or a portion thereof) by the borrower**

  **Note: If only a portion of the real estate is conveyed, recapture will only be triggered against the portion conveyed. Partial releases will be handled in *--accordance with § 762.142(b)** (paragraph 280); and **transfer of title to the--* spouse of the borrower on the death of such borrower, will not be treated as a conveyance under the agreement.**

- **on the repayment of the loans**

- **if the borrower ceases farming operations.**

Recapture may also occur in either of the following cases:

- the note FSA-2253 is attached to is accelerated
- the borrower dies and there is no spouse to whom the property will be conveyed.

After FSA-2253 has been executed, the lender must monitor the borrower's compliance with FSA-2253. This includes determining when an event that activates FSA-2253 occurs.

When the borrower performs an action that triggers the collection under FSA-2253, the lender will obtain an appraisal of the collateral, determine the recapture due, if any, and notify the borrower of the amount due in writing. **Security values will be determined by appraisals obtained by the lender and meeting the requirements listed in 7 CFR 762.127** (paragraphs 181 through 183). The lender will pay for the appraisal or recapture the appraisal expense from the borrower. If the sale of security triggers recapture and the price received for the security is higher than its appraised value, then the sale price will serve as the upper limit when calculating incremental increase in the appreciation of security.

After recapture, the lender will give FSA its pro-rata share of the proceeds or service the account according to subparagraph F.

To help lenders monitor a borrower's compliance with FSA-2253, authorized agency officials may encourage lenders to use the letter in subparagraph D to remind the borrower of the FSA-2253 commitment.

## 288 Servicing SAA's (7 CFR 762.147) (Continued)

### D Example of Letter Reminding Loan Borrowers of Potential Writedown Recapture

The following is an example of a letter for reminding loan borrowers of potential writedown recapture.

Borrower's Address

Dear (Borrower):

On Month, Day, Year, Name of Lender, wrote down $_____ of a debt that you owed in connection with a guarantee that was provided by the Farm Service Agency (FSA). In consideration for receiving this writedown, you executed a ___10-year ___5-year Shared Appreciation Agreement (Agreement) in connection with the real estate that you pledged as collateral for this loan. We have enclosed a copy of the Agreement for your reference.

This letter is to remind you of the possibility that you may have to repay all or a portion of the amount of your loan that was written down. The Agreement that you signed requires you to repay all or a portion of the debt written down if the real estate that secured the loans increased in value and one of the following occurs:

- ___10 years ___5 years have passed since you signed the Agreement;
- Title of the real estate security (or a portion thereof) was conveyed (with certain exceptions);
- The remainder of the loan has been repaid; or
- You have quit farming.

If you believe the value of your property has increased, you will need to consider this potential liability when you make future plans. The amount of repayment cannot exceed the amount written down.

If you would like any additional information on how this Agreement can affect you and what actions you need to take, please contact this office.

Sincerely,

Lender's Representative

Enclosure

**288 Servicing SAA's (7 CFR 762.147) (Continued)**

**E Calculating Recapture**

**The amount of recapture will be based on the difference between the value of the security at the time recapture is triggered and the value of the security at the time of write down as shown on the Shared Appreciation Agreement.**

- **If recapture is triggered within 4 years of the date of the Shared Appreciation Agreement, the lender shall recapture 75 percent of any positive appreciation in the market value of the property securing the loan or line of credit agreement.**

- **If recapture is triggered after 4 years from the date of the Shared Appreciation Agreement, the lender shall recapture 50 percent of any positive appreciation in the market value of the property securing the loan or line of credit agreement.**

**The amount of recapture will not exceed the amount of writedown shown on the Shared Appreciation Agreement.**

## 288 Servicing SAA's (7 CFR 762.147) (Continued)

### F Servicing Recapture Debt

**If recapture is triggered under the Shared Appreciation Agreement and the borrower is unable to pay the recapture in a lump sum, the lender may** do 1 of the following.

- **Reschedule the recapture debt with the consent of the Agency, provided the lender can document the borrower's ability to make amortized payments on the recapture debt plus pay all other obligations. In such case, the recapture debt will not be covered by the Guarantee.** The lender will send FSA its share of every payment when it's received.

- **Pay the Agency its pro rata share of the recapture due. In such case, the recapture debt of the borrower will be covered by the Guarantee.**

  **Note:** FSA-2247 will be completed and submitted to FSC, FLOO to indicate the new maturity date, if applicable, including the amortization period of the recapture. If the guaranteed loan has matured, complete FSA-2244 and submit it to FSC, FLOO indicating that the termination will be reversed and the loan reinstated.

- **Service the account in accordance with § 762.149.**

**If recapture is triggered, and the borrower is able, but unwilling to pay the recapture in a lump sum, the lender will service the account in accordance with § 762.149.**

**Any shared appreciation recaptured by the lender will be shared on a pro-rata basis between the lender and the Agency.**

**All appraisal fees will be paid by the lender.** The lender may pass the fee on to the borrower. The borrower has 30 calendar days to repay the debt in a lump sum after receiving a notice of the appreciation due to the lender.

The authorized agency official shall process recapture payments by completing FSA-2254 and forwarding it with payment to FSC, FLOO.

## 288 Servicing SAA's (7 CFR 762.147) (Continued)

### G Basis for the Amount of Recapture

Because of 2 consecutive years of drought that destroyed crops, a farmer and lender devised a restructuring plan where $200,000 of remaining debt was written down to $100,000 and FSA-2253 was executed. FO had been guaranteed by FSA at 90 percent. An appraisal at the time of the writedown valued the farmer's security at $75,000.

One year later the farmer sells his farm for $85,000. The Basis for the Amount of Recapture is equal to:

Value of real estate security (appraisal or sale price, whichever one is higher) at the time of a recapture triggering event minus value of real estate security when FSA-2253 was executed.

Basis for the Amount of Recapture: $85,000 - $75,000 = $10,000.

Since Basis for the Amount of Recapture is positive, the borrower will be required to pay the lender a percentage of the recaptured monies. The percentage to be paid to the lender within the first 4 years of FSA-2253 execution is 75 percent (the percentage drops to 50 percent 4 years after FSA-2253 execution). Therefore, the farmer owes his lender the following:

$10,000 x 75% = $7,500 due the lender.

FSA is entitled to the portion of the shared appreciation equal to the rate of the guarantee on the loan. Therefore, in this case, FSA's pro-rata share is equal to:

$7,500 x 90% = $6,750 due FSA.

At least annually, the authorized agency official will contact all lenders with active FSA-2253's to determine whether any FSA-2253 monies have been collected. To help lenders in their FSA-2253 monitoring responsibilities, a copy of the letter in subparagraph H may be used by FSA employees when performing this annual lender contact.

## 288 Servicing SAA's (7 CFR 762.147) (Continued)

### H Example of Servicing Recapture Debt Reminder Letter

This is an example of a letter for reminding lenders of guaranteed loan accounts that received a writedown.

Lender's Address

Dear (Lender's Representative or Sir/Madam):

Our records indicate that the Farm Service Agency (FSA), paid your institution $ ___ on Month, Day, Year, to reimburse it for the guaranteed portion of a $ ___ loss that you suffered by writing down the account of your borrower Borrower's Name. This letter is to remind you that the borrower signed a Shared Appreciation Agreement (SAA) in connection with this writedown and you are obligated to monitor that agreement. We have enclosed a copy of SAA for your reference and provided you with a letter that you may use to remind your borrower of the potential for recapture under SAA.

SAA requires the borrower to repay all or a portion of the debt written down as a result of an increase in value of the real estate that secured the loans written down. This recapture is triggered by any of the following events:

- ___10 years ___5 years have passed since the borrower executed SAA;
- Title to the real estate security (or a portion thereof) was conveyed by the borrower to someone other than the borrower's spouse upon the death of the borrower;
- The loans have been repaid; and
- The borrower quits farming.

Please review your records, consult with the borrower, review land records, or take other actions to determine whether any of the triggering actions have occurred in this case. If so, you should inform the borrower of the amount that they owe your institution under the terms of their agreement. If SAA has not been triggered, you may still wish to remind the borrower of the terms of this agreement, to allow sufficient time for them to plan for this possibility. You are responsible for obtaining any appraisals necessary to document the amount of appreciation; however, you may pass the expense to the borrower.

I sincerely appreciate your efforts to meet the credit needs of the farmers in our area. If you would like any additional information or assistance on this subject, please contact this office.

Sincerely,

Loan Servicing Official

Enclosure

## 288 Servicing SAA's (7 CFR 762.147) (Continued)

### I FSA Monitoring of FSA-2253

If an FSA employee suspects a recapture triggering event has occurred, and the lender has not taken action, the authorized agency official should discuss appropriate servicing actions with the lender.

**Beginning October 1, 1999, the lender must provide a borrower notice of the agreement's provisions not later than 12 months before the end.** The authorized agency official must send a note to lenders reminding them of FSA-2253 and their responsibilities at the time of recapture triggering.

**289-299 (Reserved)**

# Part 12 Servicing Distressed Accounts (Delinquent Loans)

## Section 1 General Process for Restructuring Guaranteed Loans

### 300 Monetary Default - Overall Loan Servicing Process (7 CFR 762.143)

#### A Default and Servicing Distressed Loans

**A borrower is in default when they are 30 days past due on a payment or in violation of provisions of the loan documents.**

When a default occurs, the lender is expected to work with the borrower so that the loan can be brought current and the borrower can continue the farming operation. Prompt follow-up on delinquent payments, early recognition of loan problems, and prudent use of restructuring tools are keys to resolving many delinquent loans. The lender has an assortment of restructuring tools that may be used to bring the loan current. These include:

- rescheduling
- deferral
- debt writedown
- IA, if eligible.

**The following table represents the time line for servicing distressed loans and the required lender actions for restructuring guaranteed loans.**

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

## 300 Monetary Default - Overall Loan Servicing Process (7 CFR 762.143) (Continued)

### B Loan Past Due

Default occurs on the loan immediately upon failure to make a scheduled installment on the day it is due. However, many lenders provide for a 30-calendar-day grace period before a notice of default is mailed or other actions are taken. To comply with this standard, FSA has established 30 calendar days after the payment due date as the maximum allowed before a loan must be declared in default. No direct action, other than monitoring of the situation, is required before this date. However, a lender does not have to wait until the loan is 30 calendar days past due before taking action. For example, perishable security, such as produce, or instances of maltreated livestock may dictate a quicker response to default than 30 calendar days.

**If a borrower is current on a loan, but will be unable to make a payment, a restructuring proposal may be submitted in accordance with § 762.145 of this part** and Section 2 **prior to the payment coming due.**

If through their involvement with an FSA direct loan, or in any manner, the authorized agency official becomes aware that a guaranteed borrower is in default or likely to default on their loan, they should communicate their concerns to the lender. If the loan payment was due but not paid over 30 calendar days ago, and no reports have been received from the lender, the authorized agency official will contact the lender to request a status report and remind them that they must work with the borrower and take timely action to correct delinquencies or liquidate the loan. Failure to address default in a prudent and timely fashion may result in a reduction or rejection of a lender's request for a loss claim, should a loss claim result. A loss claim may be reduced by the amount caused by the lender's failure to secure property after a default, and will be reduced by the amount of interest that accrues while no contact is made with the borrower or no action is taken to cure the default, once it occurs. Face to face or telephone communication should be followed up with a letter if the loan remains in default and corrective action is not taken.

## 300 Monetary Default - Overall Loan Servicing Process (7 CFR 762.143) (Continued)

### C Borrower in Default

**PLP lenders will service defaulted loans according to their lender's agreement. In the event of borrower default, SEL and CLP lenders will report to the Agency in accordance with 762.141,** and follow the requirements of 762.143.

A guaranteed loan is in default if a loan payment is outstanding 30 calendar days after its due date. A borrower may also be in default if they have violated a loan agreement in another manner such as conversion of loan security, filing bankruptcy, failure to submit reports as required, defaulting on another loan with the same lender, or failure to maintain collateral as agreed. The lender will determine if a loan warrants default status because of a nonmonetary violation of the loan agreement. See paragraph 301 for information on the servicing process for loans in nonmonetary default.

### D Borrower and Lender Meeting

The lender will **arrange a meeting with the borrower within 15 days of default, 45 days after payment due date for monetary defaults, to identify the nature of the delinquency and develop a course of action that will eliminate the delinquency and correct the underlying problems. The lender or the borrower may request the attendance of an Agency credit officer. If requested, the Agency credit officer will assist in developing solutions to the borrower's financial problems. Non-monetary defaults will be handled in accordance with the lender's note, loan agreements or any other applicable loan documents.**

During this meeting, the lender should discuss the following items with the borrower.

- Borrower's Ability to Bring Account in Compliance**. The lender and borrower will prepare a current balance sheet and cash flow projection in preparation for the meeting. If the borrower refuses to cooperate, the lender will compile the best available information.** These statements and their implication in the borrower's ability to bring the loan current should be discussed at the lender-borrower meeting.

## 300 Monetary Default - Overall Loan Servicing Process (7 CFR 762.143) (Continued)

### D Borrower and Lender Meeting (Continued)

- Restructuring Options Available to Borrower. The variety of possible restructuring options includes rescheduling, reamortization, deferral, or debt writedown or a combination thereof as described in paragraphs 325 through 328. After analyzing the current financial condition of the borrower, 1 or more of these options may be presented as possible solutions to resolve the borrower's financial problems.

  **Note:** If requested, the authorized agency official will assist in developing solutions to the borrower's financial problems. The authorized agency official may offer advice and answer questions to assist in developing solutions to the borrower's financial problems, and may concur with limited proposals, such as short term forbearance, that result from the meeting. In the case of SEL's, official FSA concurrence cannot be provided until FSA receives a formal proposal for restructuring from the lender.

- Determination of Availability of IA. The lender must inform the borrower about the IA Program. If the lender and borrower feel that IA in conjunction with a loan rescheduling will correct the loan default, they may submit an IA request to FSA according to Part 8, Section 3. IA eligibility is determined by FSA according to Part 9. The borrower can waive IA Program eligibility consideration during the meeting. If program eligibility consideration is waived in writing, the loan can be accelerated immediately and a liquidation plan may be submitted to FSA.

**The lender will summarize the meeting and proposed solutions on the Agency form for guaranteed loan borrower default status** (FSA-2248) **completed after the meeting** and submit it to the local credit office immediately. **The lender will indicate the results on this form for the lender's consideration of the borrower for interest assistance in conjunction with a rescheduling under § 762.145 (b).** Copies of correspondence sent to the borrower about agreements reached may be attached to this report. The meeting summary attached to FSA-2248 should also include the dates of planned servicing actions. The lender must continue to submit FSA-2248 every 60 calendar days until the default is resolved or a final loss claim is submitted. The lender will include on each report the most recent contact with the borrower or action to collect the loan as well as the next planned action and date. If a default is resolved, the lender must submit FSA-2248 by mail or electronically, indicating that the loan is current and the new loan terms and conditions. FSA will input the information through GLS immediately upon receipt, if the information was submitted by mail. Otherwise, the lender will update the information through GLS.

## 300 Monetary Default - Overall Loan Servicing Process (7 CFR 762.143) (Continued)

### E Borrower Refusal to Attend Meeting

If after 60 calendar days a delinquent borrower does not respond to the lender's request for a meeting or refuses to discuss resolution of the default, the lender should take actions to protect their security interests and proceed with liquidation of the loan according to subparagraph G.

### F Lender Repurchase of Guarantee

The lender **will determine whether it will repurchase the guaranteed portion from the holder in accordance with § 762.144 if the guaranteed portion of the loan was sold on the secondary market.** See Part 15.

The holder may ask the lender to repurchase the guarantee 60 calendar days after the missed payment date. The lender is encouraged to repurchase the guarantee when asked by the holder according to Part 15.

### G Earliest Date to Begin to Liquidate Security

**The lender may not initiate foreclosure action on the loan until 60 days after eligibility of the borrower to participate in the Interest Assistance Programs has been determined by the Agency.**

Sixty calendar days after the disposition of the issue of IA, the lender may accelerate the loan. When accelerating the loan, SEL's and CLP lenders must submit a liquidation plan to FSA. If at any point before the end of the 60-calendar-day period the borrower waives IA eligibility consideration in writing, the lender may prepare to liquidate the loan immediately. See Part 14.

No abeyance period applies to loan restructuring. The lender and borrower may restructure a loan at any time following the meeting, regardless of the IA eligibility decision.

## 300 Monetary Default - Overall Loan Servicing Process (7 CFR 762.143) (Continued)

### H Loan Restructuring Decision

**The lender must decide whether to restructure or liquidate the account within 90 days of default, unless the lender can document circumstances that justify an extension by the Agency.**

If loan restructuring cannot eliminate the default or the borrower will not eliminate the default within a reasonable period of time, the loan shall be liquidated. See Part 14. If requested by the lender, the authorized agency official may allow brief extensions for the preparation of a restructuring proposal and will document the request, reasons and concurrence in the FSA guaranteed loan file.

If the borrower can present a feasible restructuring proposal, the lender should prepare the plan and submit it to FSA as required by their Lenders Agreement. **Standard eligible lenders must obtain prior written approval of the Agency for all restructuring actions.** See paragraph 313.

FSA expects CLP and PLP lenders to have explored servicing options and implemented a feasible restructuring plan within 90 calendar days of default. If a lender plans to perform a debt writedown, prior approval from FSA is necessary. See paragraph 328. If restructuring is unfeasible, FSA expects the lender to accelerate the loan and prepare for liquidation by this date. See Part 14.

## 301 Nonmonetary Default - Overall Loan Servicing Process

### A Servicing Requirements

If a borrower defaults on his loan because of a nonmonetary default, the lender must service the loan in a manner consistent with monetary default regulations. While FSA does not require the lender to follow the monetary default time line in the cases of nonmonetary default, FSA expects the lender to have a meeting with the borrower to explain the cause of the default soon after default is declared.

At the meeting between the lender and borrower, the lender should discuss corrective actions desired and options for mitigation of the default. For example, if the borrower was supposed to maintain a herd of 130 breeding animals, but was declared in default because it has decreased to 120, the lender should discuss the availability of replacement collateral, timeframes, and conditions. The borrower and lender should work to develop a feasible restructuring plan.

Once default is declared the lender is expected to take all necessary actions to protect and secure the loan's collateral.

### B FSA Concurrence

If the lender and borrower cannot develop a feasible restructuring plan to bring the loan current again, the loan shall be liquidated. FSA will respond to CLP's request to liquidate a loan in the case of a nonmonetary default within 14 calendar days of receiving the lender's request for concurrence on loan liquidation. SEL lenders will be contacted by FSA within 30 calendar days of the receipt of a liquidation request. Once FSA concurs on a lender's request to liquidate a loan as a result of a nonmonetary default, FSA expects the lender to initiate a foreclosure action, accelerate the loan, and file a liquidation plan in a timely manner. See Part 14 for guidelines on liquidation.

**302-311 (Reserved)**

## Section 2 Restructuring Requirements for Guaranteed Loans

### 312 Lender Requirements and Conditions for Loan Restructuring (7 CFR 762.145)

#### A General Requirements

**For any restructuring action, the following conditions apply.**

- **The borrower meets the eligibility criteria of § 762.120, except the provisions regarding prior debt forgiveness and delinquency on a Federal debt do not apply.**

  **Note:** When a lender submits a request for FSA concurrence with a restructuring action, the authorized agency official will review the borrower's eligibility for the loan. However, the eligibility provisions of subparagraphs 108 C and D do not apply to the restructuring of existing loans.

- **The borrower's ability to make the amended payment is documented by the following:** (SEL and CLP lender only; PLP lender shall see the lender's agreement)

  - **a feasible plan * * ***

    **Note: If interest assistance is required to achieve a feasible plan, the items required by Sec. 762.150(d) must be submitted with a restructuring request.**

  - **current financial statements from all liable parties**

  - **verification of nonfarm income**

  - **verification of all debts of $1,000 or more**

  - **applicable credit reports**

  - **financial history (and production history for standard eligible lenders) for the past 3 years to support the cash flow projections.**

- **A final loss claim may be reduced, adjusted, or rejected as a result of negligent servicing after the concurrence with a restructuring action under this section.**

## 312 Lender Requirements and Conditions for Loan Restructuring (7 CFR 762.145) (Continued)

### A General Requirements (Continued)

- **Loans secured by real estate and/or equipment can be restructured using a balloon payment, equal installments, or unequal installments. Under no circumstances may livestock or crops alone be used as security for a loan to be rescheduled using a balloon payment. If a balloon payment is used, the projected value of the real estate and/or equipment security must indicate that the loan will be fully secured when the balloon payment becomes due. The projected value will be derived from a current appraisal adjusted for depreciation of depreciable property, such as buildings and other improvements, that occurs until the balloon payment is due. For equipment security, a current appraisal is required. The lender is required to project the security value of the equipment at the time the balloon payment is due based on the remaining life of the equipment, or the depreciation schedule on the borrower's Federal income tax return. Loans restructured with a balloon payment that are secured by real estate will have a minimum term of 5 years, and other loans will have a minimum of 3 years before the scheduled balloon payment. If statutory limits on terms of loans prevent the minimum terms, balloon payments may not be used. If the loan is restructured with unequal installments, a feasible plan, as defined in §762.102(b), must be projected for when installments are scheduled to increase.**

  **Example of unequal installment:** A payment that increases as the cash flow and debt repayment ability of the farming operation increases because of development or expansion. Unequal installments may be used when development is being financed, such as the planting of orchards or other perennial crops, the construction of livestock or other processing facilities, or the purchase of foundation livestock. Since typical production income may not be realized for quite a number of years in some cases, higher installments could be scheduled later in the life of the loan. For instance, an orchard development may be financed resulting in the planting of immature trees. In years 1 through 3, there may be no realized production and income. In years 4 through 6, initial production may be anticipated; however, full production may not be expected until years 8 through 10. Unequal payments may be adjusted accordingly.

- **If a borrower is current on a loan, but will be unable to make a payment, a restructuring proposal may be submitted prior to the payment coming due**.

- **The lender may capitalize the outstanding interest.** See subparagraph 326 D.

## 312 Lender Requirements and Conditions for Loan Restructuring (7 CFR 762.145) (Continued)

### A General Requirements (Continued)

- **The lender's security position will not be adversely affected because of the restructuring. New security instruments may be taken if needed, but a loan does not have to be fully secured in order to be restructured, unless it is restructured with a balloon payment. When a loan is restructured using a balloon payment, the lender must take a lien on all assets and project the loan to be fully secured at the time the balloon payment becomes due, in accordance with 7 CFR 762.145 (b)(4).**

  **Note:** If the lender takes additional security as part of the loan restructuring, a list of the new security items and their estimated values should be forwarded to the authorized agency official along with all other restructuring materials according to paragraph 313.

- **Any holder agrees to any changes in the original loan terms.**

**All lenders will submit copies of any restructured notes or lines of credit to the Agency.**

***--For CL, the lender must certify that the borrower remains in compliance with the approved conservation plan.--***

### B Lender Approval

If a co-borrower or co-signer is required to execute a note in conjunction with a restructuring, the lender must provide the name, Social Security number, and current address of the co-borrower or co-signer to FSA.

## 313 Specific Lender Requirements for Loan Restructuring (7 CFR 762.145)

### A SEL Request for Restructuring

**Standard eligible lenders must obtain prior written approval of the Agency for all restructuring actions.**

After SEL has restructured the loan, the lender must submit:

- FSA-2248 indicating that the loan is current
- copies of restructured notes or LOC's.

After SEL has submitted all of these documents, FSA shall:

- review the documents for compliance
- input FSA-2248 into GLS
- execute FSA-2245 and provide a copy to the lender, if applicable
- complete and forward FSA-2249 to FSC, FLOO.

**Note:** For loans with IA, see subparagraphs 230 D and E for additional requirements.

## 313 Specific Lender Requirements for Loan Restructuring (7 CFR 762.145) (Continued)

### B CLP Restructuring Requirements

**CLP lenders must obtain prior written approval of the Agency only for debt write down under this section.**

**For restructuring other than write down, CLP lenders will provide FSA with a certification that each requirement of this section** (Part) **has been met, a narrative outlining the circumstances surrounding the need for restructuring, and copies of any applicable calculations.**

In addition, the CLP lender will provide:

- copies of any restructured notes
- FSA-2248 to show the loan is current.

After the CLP lender has submitted all of these documents, FSA shall complete the same actions as for SEL's.

### C PLP Restructuring Requirements

**PLP lenders will restructure loans in accordance with their lender's agreement.**

A PLP lender may request guidance on or concurrence with a restructuring proposal. The authorized agency official shall review the lender's request for compliance with the terms indicated in the credit management plan of their PLP Lenders Agreement.

All PLP lenders will submit copies of any restructured notes to FSA. With the copies of any restructured notes, PLP's must attach a cover memo explaining the restructuring and FSA-2248 to confirm that the loan is once again current.

After the PLP lender has submitted all of these documents, FSA shall complete the same actions as for CLP lenders.

## 314 FSA Response to Restructuring Requests

### A Authorized Agency Official Responsibilities

Authorized agency officials have several responsibilities in the event a loan defaults and a lender submits a restructuring plan, including:

- provide loan restructuring assistance and guidance as requested
- review FSA-2248 for compliance with FSA guarantee documents, the lender's loan agreement, promissory notes, and FSA regulations
- inform the lender if the borrower is eligible for IA if requested
- process all FSA-2248's in GLS.

The authorized agency official should contact the lender to discuss any problems with the proposal, request corrections, or suggest revisions. If the requested corrections are significant, this contact should be followed up with a letter outlining the additional information needed and a timeframe for it to be provided. If the proposal is approved, the authorized agency official will inform the lender that they may proceed to restructure the loan.

If the lender fails to provide updates on recent or planned collection actions, estimated timeframes for corrective actions proposed by the borrower, or other information reviewed that indicates that the lender is not acting timely or prudently to protect their interest, the authorized agency official will inform the lender in writing of the problems noted and request modifications.

If an SEL lender has made the decision to liquidate a loan, the authorized agency officials should ensure that SEL has investigated the feasibility of every restructuring option before a decision to liquidate was reached. It is solely the lender's prerogative to accept or reject a borrower's plan for resolution of a default or offer an option for restructuring the debt. Still, the authorized agency official should review the situation and advise the lender of any unexplored servicing options that exist that may benefit the borrower, lender, and FSA.

## 314 FSA Response to Restructuring Requests (Continued)

### B FSA Response to Requests for Restructuring

**[7 CFR 762.145(a)] If the standard eligible lender's proposal for servicing is not agreed to by the Agency, the Agency approval official will notify the lender in writing within 14 days of the lender's request.**

Authorized agency officials must review and respond to a restructuring request from SEL in a timely manner. Any request for concurrence on a restructuring plan must be accompanied by all necessary supporting documents according to paragraphs 313 and 326 through 328.

- **FSA Response to Rescheduling Request:** The authorized agency official must review SEL's proposed rescheduling to determine that it is feasible and that the repayment period does not exceed the maximum allowable term. If SEL proposes a restructuring of a loan with capitalized interest the authorized agency official must concur on the capitalization request along with the rescheduling request.

- **FSA Response to Deferral Request:** After reviewing the restructuring proposal, the authorized agency official must ensure that the deferral plan is feasible and that the deferral does not extend beyond the final due date of the loan note. If the deferral period extends beyond 1 year, interest in its totality cannot be deferred. A portion of interest must be paid for each year the loan is in abeyance.

If the lender's proposal for servicing is not agreed to by FSA, the agency approval official shall notify the applicant in writing, with a copy to the lender, within 14 calendar days of the lender's request. This letter will inform the lender and borrower of their informal review, mediation, and appeal rights according to 1-APP.

**314 FSA Response to Restructuring Requests (Continued)**

**C FSA Review of PLP Restructuring Actions**

In addition, an explanation of the restructuring must accompany a completed FSA-2248 confirming that the loan is current.

The authorized agency official shall review the loan restructuring documents according to paragraphs 313 and 326 through 328, and confirm that the restructuring actions did not violate any FSA regulations. If the authorized agency official has any concerns about the restructuring of the loan, the authorized agency official shall contact the lender to discuss the concerns.

**315-325 (Reserved)**

## Section 3 Restructuring Options

### 326 Rescheduling of Debt (7 CFR 762.145)

#### A Overview

Rescheduling involves changing the payment terms of a loan, such as a change in the interest rate or term in years of a note or LOC agreement. The new repayment schedule must be based on the borrower's ability to repay over the maximum loan term or life of the security. A loan does not have to be in default before being rescheduled.

#### B General Requirements for Rescheduling

**[7 CFR 762.145(c)] Payments will be rescheduled within the following terms:**

- **FO and existing SW loans may be amortized over the remaining term of the note or rescheduled with an uneven payment schedule over a period not to exceed 40 years from the date of the original note**

- **OL notes must be rescheduled over a period not to exceed 15 years from the date of the rescheduling. An OL line of credit must be rescheduled over a period not to exceed 7 years from the date of the rescheduling or 10 years from the date of the original note, whichever is less. Advances cannot be made against a line of credit loan that has had any portion of the loan rescheduled.**

- ***--CL will be amortized over the remaining term or rescheduled with an uneven payment schedule. The maturity date cannot exceed 20 years from the date of the original note.--***

**The interest rate for a rescheduled loan is the negotiated rate agreed upon by the lender and the borrower at the time of the action, subject to the loan limitations for each type of loan.**

## 326 Rescheduling of Debt (7 CFR 762.145) (Continued)

### C Required Lender Actions

**[7 CFR 762.145(c)] A new note is not necessary when rescheduling occurs. However, if a new note is not taken, the existing note or line of credit agreement must be modified by attaching an "allonge" or other legally effective amendment, evidencing the revised repayment schedule and any interest rate change. If a new note is taken, the new note must reference the old note and state that the indebtedness evidenced by the old note or line of credit agreement is not satisfied. The original note or line of credit agreement must be retained.**

To request a rescheduling, SEL lenders must submit documentation according to the requirements listed in paragraph 313 and obtain FSA approval before implementation of the action. CLP and PLP lenders must submit documentation according to requirements listed in paragraph 313 **after** rescheduling a loan.

### D Capitalization of Interest

**[7 CFR 762.145(b)] The lender may capitalize the outstanding interest when restructuring the loan as follows:**

- **As a result of the capitalization of interest, a rescheduled promissory note may increase the amount of principal the borrower is required to pay. However, in no case will such principal amount exceed the statutory loan limits contained in § 761.8.**

- **When accrued interest causes the loan amount to exceed the statutory loan limits, rescheduling may be approved without capitalization of the amount that exceeds the limit. Noncapitalized interest may be scheduled for repayment over the term of the rescheduled note.**

In a restructuring action, if capitalization of interest will cause the increased combined principal of the borrower's outstanding OL's and FO's to exceed the limits outlined in subparagraph 244 A, the portion of the interest that would cause the loan to exceed the loan limit cannot be capitalized. Excess interest will be guaranteed and the lender may schedule the repayment over the term of the rescheduled note. If payments are received on the loan after the restructuring that exceed the regularly scheduled installment, excess payments may be applied to the non-capitalized interest first.

## 326 Rescheduling of Debt (7 CFR 762.145) (Continued)

### D Capitalization of Interest (Continued)

- **Only interest that has accrued at the rate indicated on the borrower's original promissory notes may be capitalized. Late payment fees or default interest penalties that have accrued due to the borrower's failure to make payments as agreed are not covered under the guarantee and may not be capitalized.**

- **Approved capitalized interest will be treated as part of the principal and interest that accrues thereon, in the event that a loss should occur.**

As part of restructuring request, SEL's must receive FSA concurrence before interest can be capitalized.

Following restructuring, the lender should submit FSA-2248 indicating that the loan is current.

The lender may keep a record of late fees and default charges and collect them from the borrower in the case of extra payments or payment in full.

### E FSA Review of Capitalization Request

**The Agency will execute a modification of guarantee form to identify the new loan principal and the guaranteed portion if greater than the original loan amounts, and to waive the restriction on capitalization of interest, if applicable, to the existing guarantee documents. The modification form will be attached to the original Guarantee as an addendum**.

When CLP or PLP has rescheduled or reamortized a loan with capitalized interest, or when the authorized agency official has concurred with SEL restructuring plan that includes capitalized interest, FSA must complete FSA-2245 to reflect the new guaranteed principal and any capitalized interest.

A copy of FSA-2245 will be placed in the FSA guaranteed loan file and the original will be attached to the original guarantee.

## 326 Rescheduling of Debt (7 CFR 762.145) (Continued)

### F IA

Rescheduling of a loan with IA must meet all the conditions described in this paragraph and Part 9.

### G Loan Consolidation

If a borrower has 2 or more guaranteed loans, the lender, under certain circumstances, may consolidate the guaranteed loans before rescheduling. The single, consolidated loan would be rescheduled according to this paragraph. See paragraph 286 for conditions about the consolidation of guaranteed loans.

## 327 Deferrals (7 CFR 762.145(d))

### A General Description

A deferral postpones the payment of principal and interest on FO, OL, or LOC to accommodate a temporary inability of the borrower to make scheduled payments. Loan principal can be deferred in whole or part. If the deferment period is 1 year or less, interest can be deferred in whole or in part. Interest may only be deferred in part if the deferral period extends over 1 year.

### B Conditions

**The following conditions apply to deferrals:**

- **Payments may be deferred up to 5 years, but the loan may not be extended beyond the final due date of the note.**
- **The principal portion of the payment may be deferred either in whole or in part.**
- **Interest may be deferred only in part. Payment of a reasonable portion of accruing interest as indicated by the borrower's cash flow projections is required for multi-year deferrals.**
- **There must be a reasonable prospect that the borrower will be able to resume full payments at the end of the deferral period.**

The amount of principal and interest deferred must be based on the borrower's current ability to pay and projections about ability to pay in the future. If the deferral period is to extend beyond 1 year, only a portion of the interest can be deferred.

If a LOC deferral exceeds 1 year, then LOC must be restructured and no new advances can be made. For LOC deferrals for less than 1 year there must be either inventory on hand to cover the carryover debt balances or they must show repayment of the carryover debt plus the new operating cycle advances. If the LOC deferral is 1 year or less, it is unnecessary to notify FSC, FLOO.

The loan may be rescheduled after the deferral if payments as scheduled cannot be made.

## 327 Deferrals (7 CFR 762.145(d)) (Continued)

### C Lender Request to Defer a Loan

To request a deferral, SEL lenders must submit documentation according to the requirements listed in paragraph 313. Based on this documentation, the authorized agency official will notify the lender in a timely manner whether or not the deferral plan is approved.

CLP lenders must submit documentation according to paragraph 313, after completing the loan restructuring.

PLP must restructure loans according to the Lenders Agreement and provide post-restructuring documentation to FSA according to paragraph 313.

## 328 Debt Writedown (7 CFR 762.145(e))

### A Overview

A debt writedown involves writing off a portion of the outstanding balance of a loan. A lender may write down a delinquent guaranteed loan only in an amount sufficient to enable the borrower to repay the reduced debt over the remaining term of the loan. All lenders must seek FSA concurrence before they can execute a debt writedown. Debt writedown loss claims must be approved by SED.

### B General Requirements

**The following conditions apply to debt writedown:**

- **A lender may only writedown a delinquent guaranteed loan or line of credit in an amount sufficient to permit the borrower to develop a feasible plan of operation as defined in § 762.102(b).**

- **The lender will request other creditors to negotiate their debts before a writedown is considered.**

- **The borrower cannot develop a feasible plan after consideration is given to rescheduling and deferral under this section.**

- **The present value of the loan to be written down, based on the interest rate of the rescheduled loan, will be equal to or exceed the net recovery value of the loan collateral.**

- ***--The loan will be restructured with regular payments at terms no shorter than 5 years for a line of credit and OL term note; and no shorter than 20 years for FO and CL, unless required to be shorter by paragraphs (c)(1)(i) through (ii) of this section** (subparagraph 326 B)**.--***

*** * ***

- **No further advances may be made on a line of credit that is written down.**

- **Loans may not be written down with interest assistance. If a borrower's loan presently on interest assistance requires a writedown, the writedown will be considered without interest assistance.**

**328 Debt Writedown (7 CFR 762.145(e)) (Continued)**

**B General Requirements (Continued)**

- **The writedown is based on writing down the shorter-term loans first.**

- **When a lender requests approval of a writedown for a borrower with multiple loans, the security for all of the loans will be cross-collateralized and continue to serve as security for the loan that is written down. If a borrower has multiple loans and one loan is written off entirely through debt writedown, the security for that loan will not be released and will remain as security for the other written down debt. Additional security instruments will be taken if required to cross-collateralize security or maintain lien priority.**

- **The writedown will be evidenced by an allonge or amendment to the existing note or line of credit reflecting the writedown.**

The payment of a loss claim in conjunction with a debt writedown does not establish a Federal debt and is not subject to offset.

The holder or holders, if any, must agree to the writedown or the lender must repurchase the guaranteed portion.

**C Borrower Execution of FSA-2253**

**The borrower executes an Agency shared appreciation agreement for loans which are written down and secured by real estate.** See paragraph 288 for information on servicing FSA-2253's.

- **The lender will attach the original agreement to the restructured loan document.**

- **The lender will provide the Agency a copy of the executed agreement.**

- **Security instruments must ensure future collection of any appreciation under the agreement.**

**328 Debt Writedown (7 CFR 762.145(e)) (Continued)**

**D Lender Actions to Support Write Down Debt Request**

**The lender will prepare and submit the following to the Agency:**

- **a current appraisal of all property securing the loan in accordance with § 762.127** and paragraphs 181 through 183

- **a completed report of loss on the appropriate Agency form for the proposed writedown loss claim**

- **detailed writedown calculation as follows:**

  **Note:** Detailed writedown calculations will be recorded on FSA-2252. If a borrower's cash flow projection indicates that within a definite, foreseeable time, additional repayment will be available for the guaranteed loan, the present value of the loan will be calculated based on an uneven payment stream.

  - **calculate the present value** (Exhibit 10)

  - **determine the net recovery value** (Exhibit 10)

  - **if the net recovery value exceeds the present value, writedown is unavailable; liquidation becomes the next servicing consideration**

  - **if the present value equals or exceeds the net recovery value, the debt may be written down to the present value**

- **the lender will make any adjustments in the calculations, as requested by the Agency.**

The appraisal will be paid for by the lender, but the cost can be passed to the borrower.

FSA-2252 will be used to calculate lender loss. After the lender loss has been calculated on FSA-2252, the lender loss claim will be submitted on FSA-2254. Lender loss will be the percentage of the guarantee multiplied by the difference between the outstanding principal and interest balance of the loan before the writedown and the outstanding balance of the loan after the writedown.

In addition to the materials noted in this paragraph, SEL's and CLP's must submit materials according to paragraph 313 to request a debt writedown.

## 329 FSA Review and Monitoring of Restructured Loans (7 CFR 762.145(b))

### A Post-Restructuring Review and FSA Reporting Requirements

The authorized agency official shall, after receiving a restructured note or LOC or an amendment to a note or LOC from a lender, review all applicable restructuring documents received by FSA, including the restructured note and FSA-2248 stating that the loan is current, and ensure that the loan was restructured with the principal, accrued interest, payments, interest rate and terms to which FSA agreed. If any discrepancies are found between regulatory requirements or the restructuring plan FSA originally agreed to and the executed restructuring, the lender must correct the restructured note. After the correctness of the restructured note has been verified, the restructured or amended note and the Modification of Guarantee, if interest was capitalized, should be attached to the copy of the original note.

### B FSA Monitoring of Lender Loan Files With Restructured Loans

When reviewing files of loans that have been restructured, FSA employees must ensure that lenders restructured their loans according to the terms agreed to by FSA according to their Lenders Agreement. If the loan was restructured with terms that FSA did not agree to, the lender must adjust the loan terms to comply with terms FSA agreed to originally.

When reviewing CLP loan files, authorized agency officials should ensure that loans were restructured according to FSA rules and regulations and that the materials submitted in support of a restructuring action are accurate.

When reviewing restructured loan files made by PLP lenders, authorized agency officials should ensure that all restructuring was done according to the Lenders Agreement. If the Lenders Agreement is silent on a certain restructuring subject, the PLP lender must follow FSA rules and regulations for CLP lenders.

FSA may use FSA-2294 as a guide for reviewing debt writedowns.

## 329 FSA Review and Monitoring of Restructured Loans (7 CFR 762.145(b)) (Continued)

### C FSA Monitoring of Loans That Have Been Restructured

**A final loss claim may be reduced, adjusted, or rejected as a result of negligent servicing after the concurrence with a restructuring action under this section.**

If the lender submits a loss claim on a loan that was restructured, and the loan was not restructured according to FSA-approved terms, the loss claim may be reduced or denied altogether.

**330-339 (Reserved)**

# Part 13 Bankruptcy

## 340 Bankruptcy (7 CFR 762.148(a))

### A Overview

**The lender must protect the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings.**

### B Lender Losses

Lenders can apply to FSA to recover principal, interest, and certain expenses lost as a result ***--**of bankruptcy proceedings. However, if interest is still accruing on the loan, all recovery proceeds must be applied to principal first and then toward accrued interest.**--***

## 341 Lender's Responsibilities in Bankruptcy Proceedings (7 CFR 762.148(a))

### A Lender Responsibilities in Bankruptcy Cases

Lenders must satisfy all requirements pertaining to a creditor in a bankruptcy proceeding, including the procedures under Chapter 7 (Liquidation), Chapter 11 (Reorganization), Chapter 12 (Adjustment of Debts of a Family Farmer with Regular Annual Income), or Chapter 13 (Adjustment of Debts of an Individual with Regular Income) of the Bankruptcy Code (11 U.S.C.), whichever is applicable. Lenders must ensure that a valid proof of claim is submitted; that collateral securing the guaranteed loan is protected; and that all rights of participation are exercised or protected. **The lender's responsibilities include, but are not limited to**, the following requirements.

- **Filing a proof of claim where required and all the necessary papers and pleadings.** If the loan includes FSA-2253, it must be included in the lender's proof of claim. See paragraph 288.

- **Attending, and where necessary, participating in meetings of the creditors and court proceedings.**

- **Protecting the collateral securing the guaranteed loan and resisting any adverse changes that may be made to the collateral.** If the debtor remains in possession, the lender must monitor for any adverse changes that may be made to the collateral and resist those changes by legal action, repossession of the collateral, or other suitable means. If the trustee in bankruptcy has assumed jurisdiction over the collateral, the lender must cooperate with the trustee in the administration of the estate. Such cooperation, however, should not preclude the lender from opposing actions of the trustee that do not advance the interests of the lender. The lender should attend and observe any public sales of collateral held by the trustee, and if appropriate submit a minimum bid.

- **Seeking a dismissal of the bankruptcy proceeding when the operation as proposed by the borrower to the bankruptcy court is not feasible.**

## 341 Lender's Responsibilities in Bankruptcy Proceedings (7 CFR 762.148(a)) (Continued)

### A Lender Responsibilities in Bankruptcy Cases (Continued)

- **Monitor confirmed plans under chapters 11, 12, and 13 of the bankruptcy code to determine borrower compliance. If the borrower fails to comply, the lender will seek a dismissal of the reorganization plan.**

- **When permitted by the bankruptcy code, requesting a modification of any plan of reorganization if it appears additional recoveries are likely.**

- **Keeping the Agency regularly informed in writing of all aspects of the proceedings.**

  - The lender will submit a regular default status report when the borrower defaults and should inform FSA of all significant steps in the bankruptcy proceeding, including the dates and pertinent details concerning:

    - confirmation of the plan
    - effective date of the plan
    - date the plan is completed
    - failure of the debtor to comply with the plan
    - discharge of the debtor.

  - **The lender shall submit a default status report when the borrower defaults and every 60 days until the default is resolved or a final loss claim is paid.** The initial Default Status Report is sent to the local credit office immediately following the lender-borrower default meeting (see paragraph 313).

  - **The default status report will be used to inform the Agency of the bankruptcy filing, the reorganization plan confirmation date and effective date, when the reorganization plan is complete, and when the borrower is not in compliance with the reorganization plan.**

## 342 Lender's Claims for Expenses and Estimated Losses in Reorganization Bankruptcy Proceedings (7 CFR 762.148)

### A Claims for Expenses in Reorganizations

Lenders will be compensated for expenses and losses incurred as a result of a Chapter 11, 12, or 13 bankruptcy proceeding as follows:

- **Lender's in-house expenses, which are those expenses which would normally be incurred for administration of the loan, including in-house lawyers, are not covered by the guarantee.**

- Expenses paid by lenders to third parties will be compensated as follows

  - **Expenses, such as legal fees, and the cost of appraisals incurred by the lender as a direct result of the borrower's Chapter 11, 12, or 13 reorganization, are covered under the guarantee, provided they are reasonable, customary, and provide a demonstrated economic benefit to the lender and the Agency** and will be paid upon satisfactory claim by the lender. Such expenses must be incurred following the filing of a voluntary petition by the borrower, and must be incurred before discharge of the debtor. Such third party costs must be reasonable and appropriate, and must be documented in the lender's files. Reasonable and appropriate generally will be determined by the commercial standards and practices in that location, and should be typical for the unguaranteed loans of the lender. Appraisal costs significantly higher than typical appraisal costs for a similar appraisal in the same part of the country by an appraiser of similar experience, for example, might be unreasonable.

    **Note:** When reviewing the ledger provided with a loss claim, it should be noted that interest may accrue on protective advances; however, interest that accrues on legal fees paid by the lender are not covered by the Guarantee.

  - Claims for expenses in reorganizations may be combined with claims for estimated losses of principal and interest or protective advances, but will not be paid the lender before plan confirmation.

## 342 Lender's Claims for Expenses and Estimated Losses in Reorganization Bankruptcy Proceedings (7 CFR 762.148) (Continued)

### B Claims for Estimated Losses of Principal and Interest in Reorganizations

Lenders may submit a claim for losses of principal and interest sustained as a result of a ***--**reorganization plan in a bankruptcy reorganization proceeding. Lenders may have had an estimated loss claim approved by FSA before the reorganization bankruptcy filing. These lenders may have to submit a revised loss claim as a result of the reorganization plan.**--***

- Claims should be submitted using FSA-2254 to the authorized agency official. The authorized agency official shall review the claim using FSA-2295 and either request modifications by the lender or forward the claim to SED with recommendations and supporting documents as necessary.

- **At confirmation, the lender may submit an estimated loss claim upon confirmation of the reorganization plan in accordance with the following:** The initial estimated loss claim must include a copy of the confirmed bankruptcy plan and a memorandum clearly indicating the plan's confirmation date, the date the plan is to go into effect, and any other relevant information concerning the loan and the loss claim, or such supporting documentation must be supplied immediately following confirmation of the plan. The loss will be paid as of the plan's effective date with no additional interest accrual after that date.

- **The estimated loss claim will cover the guaranteed percentage of the principal and accrued interest written off, plus any allowable costs incurred as of the effective date of the plan.**

- **The lender will submit supporting documentation for the loss claim.**

- **The estimated loss payment may be revised as consistent with a court-approved reorganization plan.**

- The estimated loss claim may be revised after a court approved partial liquidation of the collateral. When this occurs, the revised claim will be based upon the actual value received for the liquidated collateral as long as the lender made every effort to ensure that maximum proceeds were received.

## 342 Lender's Claims for Expenses and Estimated Losses in Reorganization Bankruptcy Proceedings (7 CFR 762.148) (Continued)

### C Claims for Estimated Interest-Only Losses in Reorganizations

**Lenders may submit an estimated loss claim for interest only after confirmation of the reorganization plan in accordance with the following.**

- Claims should be submitted using FSA-2254 to the authorized agency official.

- The interest-only estimated loss claim can be approved only after the confirmation date of the reorganization plan.

- The initial interest-only estimated loss claim may include a claim for interest accrued to the effective date of the reorganization plan (the date when the plan becomes effective). This date may be later than the date the plan is approved by the court (the confirmation date). This loss will be paid as of the plan's effective date with no additional interest accrual after that date.

- ***--**If the loan has a variable rate that remains at or below the court-ordered rate during the--***** claim period, no loss claim may be submitted.

- Subsequent claims for interest-only estimated losses covering 1-year periods following the effective date of the reorganization plan may be submitted annually, and will be processed on the anniversary date of the effective date of the reorganization plan or immediately thereafter.

- **The loss claims may cover interest losses sustained as a result of court-ordered, permanent interest rate reduction.**

- **The loss claims will be processed annually on the anniversary date of the effective date of the reorganization plan.**

  **Note:** Loss claims may also be processed immediately following the payment due date established in the reorganization plan and on that date annually thereafter.

- **If the borrower performs under the terms of the reorganization plan, annual interest reduction loss claims will be submitted on or near the same date, beyond the period of the reorganization plan.**

**342 Lender's Claims for Expenses and Estimated Losses in Reorganization Bankruptcy Proceedings (7 CFR 762.148) (Continued)**

**D Claims for Reimbursement of Protective Advances in Reorganizations**

**Protective advances made and approved in accordance with § 762.149 may be included in an estimated loss claim associated with a reorganization, if:**

- **they were incurred in connection with the initiation of liquidation action prior to bankruptcy filing**

- **the advance is required to provide repairs, insurance, etc. to protect the collateral as a result of delays in the case, or failure of the borrower to maintain the security.**

Interest *** * *** on protective advances will accrue only to the effective date of the reorganization plan.

**E Claims for Actual Losses in Reorganizations**

**Once the reorganization plan is complete, the lender will provide the Agency with documentation of the actual loss sustained.**

- **If the actual loss sustained is greater than the estimated loss payment, the lender may submit a revised estimated loss claim to obtain payment of the additional amount owed by the Agency under the guarantee.**

- **If the actual loss is less than the prior estimated loss, the lender will reimburse the Agency for the overpayment plus interest at the note rate from the date of the payment of the estimated loss.**

**F Payment to Holder in Reorganizations**

**In reorganization bankruptcy, if a holder makes demand upon the Agency, the Agency will pay the holder interest to the plan's effective date. Accruing interest thereafter will be based upon the provisions of the reorganization plan.** For lender and FSA responsibilities upon FSA repurchase, see subparagraph 376 B.

## 343 Lender's Claims for Expenses and Estimated Losses in Liquidation Bankruptcy Proceedings (7 CFR 762.148)

### A Claims for Expenses in Liquidation

**[7 CFR 762.148(b)] Reasonable and customary liquidation expenses may be deducted from the proceeds of the collateral in liquidation bankruptcy cases** or in reorganization bankruptcy where the plan calls for a partial liquidation of the collateral.

- **In-house expenses are not considered reasonable and customary liquidation expenses and may not be deducted from collateral proceeds.**

- **[7 CFR 762.148(d)] Upon receipt of notification that a borrower has filed for protection under Chapter 7 of the Bankruptcy Code, or upon confirmation of a liquidation plan under Chapter 11, the lender must proceed according to the liquidation procedures of this part** (Part 14).

- **If the property is abandoned by the trustee, the lender will conduct the liquidation according to § 762.149,** and seek to realize value from the property.

- **Proceeds received from partial sale of collateral during bankruptcy may be used by the lender to pay reasonable costs, such as freight, labor and sales commissions, associated with the partial sale. Reasonable use of proceeds for this purpose must *--be documented with the final loss claim in accordance with § 762.149(i)(4).--***

## 344 FSA Responsibilities in Bankruptcy Proceedings

### A Monitoring Responsibilities

The authorized agency official must review the default status report, submitted by the lender and periodically monitor the lender's files to ensure that all necessary actions are taken by the lender concerning a bankruptcy case. This review should include verifying that the lender:

- files proof of claim and all necessary papers and pleadings concerning the case
- attends and where necessary participates in meetings of the creditors and all court proceedings
- seeks adequate protection of the collateral
- advises the authorized agency official of the status of the bankruptcy action
- requests modification or dismissal of any plan of reorganization if it appears that additional recoveries are likely or if the borrower fails to comply with the requirements of the plan.

During a bankruptcy proceeding, the authorized agency official must:

- determine the necessity of an independent appraisal of collateral
- review documentation supporting loss claims, including expense claims, submitted by the lender.

## 344 FSA Responsibilities in Bankruptcy Proceedings (Continued)

### B Review of Bankruptcy Loss Claim

The authorized agency official must:

- review FSA-2254 submitted by the lender, for accuracy, to ensure that FSA-2254 is coded correctly
- accept the loss claim or contact the lender to obtain revisions or additional information
- forward the claim to SED or its designee.

**Note:** The payment of any loss claim under a Chapter 7 or reorganization bankruptcy establishes a Federal debt. In the case of a Chapter 7, Regional OGC opinion is required to determine if the borrower is or is not subject to offset. The payment of a claim under bankruptcy reorganization will not be subject to offset. See subparagraph 363 B for additional guidance.

All loss claims must be approved by SED. Following approval, SED shall forward approved loss claims to FSC, FLOO.

**345-354 (Reserved)**

## Part 14 Liquidation

### 355 Liquidation Process (7 CFR 762.149)

#### A Liquidation Process Overview

After a lender has determined that a borrower's financial difficulties cannot be solved with any 1 or combination of the loan restructuring options, the lender must liquidate the loan. All lenders are expected to proceed with liquidation in the following chronological order.

- The lender must give the borrower notice that the loan will be liquidated.
- The lender must accelerate the note.
- The lender must prepare a liquidation plan. SEL and CLP lenders will provide FSA with a copy.
- The lender must submit an estimated loss claim with the liquidation plan .
- The lender must liquidate the security.
- The lender must submit a final loss claim.
- The lender must remit future recoveries to FSA in proportion to the percentage of the guarantee.

Liquidation steps (maximum timeframes) are summarized as follows. All dates measured in calendar days after payment due date unless otherwise noted.

| Liquidation Dates | Action |
|---|---|
| 60 | Earliest date that lender may file to liquidate security.<br><br>**Note:** Sixty calendar days after disposition of IA eligibility issue (paragraph 300). |
| 90 | Lender gives notice to borrower and accelerates the loan or implements a loan restructuring plan. |
| 120 | Lender must reach a decision as to whether the account will be restructured or liquidated. |
| 150 | Liquidation plan and estimated loss claim must be submitted. |
| 164 | Estimated protective advances must be concurred with by FSA. |
| 170 | Liquidation plan must be approved by FSA. |
| 180 | Estimated loss claim must be approved by FSA. |
| 260 | Liquidation completed. |
| 290 | Final loss claim submitted. |
| 330 | FSA should approve or request modification of final loss claim.<br><br>**Note:** Forty calendar days after submission of final loss claim (subparagraph 360 F). |

## 355 Liquidation Process (7 CFR 762.149) (Continued)

### B Earliest Date the Lender Can File to Liquidate Security

The lender may not initiate foreclosure action on the loan until 60 calendar days after eligibility of the borrower to participate in the IA Program has been established by FSA. The lender and borrower must discuss IA Program eligibility at the default meeting. See paragraph 300 for more information on this meeting. If IA eligibility was waived in writing by the borrower, the lender may prepare to liquidate the loan immediately following receipt of the waiver.

It is the lender's prerogative to request IA on a loan, regardless of the borrower's desire or eligibility for the subsidy. However, it must be considered and documented in some fashion that it was rejected as an option. The authorized agency official shall remind the lender of this requirement if they attend the post default lender borrower meeting. Following this meeting or receipt of FSA-2248, the authorized agency official shall make a written entry in the running record of the borrower's FSA file as to the date that IA was considered and when the 60-calendar-day abeyance period ends.

### C FSA-2248 Is Submitted

FSA-2248 must be submitted following the lender-borrower default meeting and every ***--**60 calendar days thereafter. The initial FSA-2248 will notify FSA that the borrower is in default and if IA was considered as an option to correct the default. Subsequent FSA-2248 will comment on the progress of liquidation and identify any problems the lender is**--*** having or may have in completing the liquidation in a timely manner.

If FSA-2248 is not received as required, the authorized agency official shall contact the lender, inquire as to the status of the account and request that an accurate report be provided. If necessary, this contact should be followed up with a letter, and if the authorized agency official feels it is necessary, a copy provided to SED. Interest that accrues during unnecessary delays will not be paid as part of a loss claim. SED and DD shall monitor guaranteed loan ***--**delinquency reports to ensure that liquidating accounts are being monitored and FSA-2248**--*** are being filed timely.

## 355 Liquidation Process (7 CFR 762.149) (Continued)

### D Decision to Liquidate Must Be Reached or a Loan Restructuring Plan Must Be Implemented

Sometime between the date that the borrower's payment was due but not paid and 45 calendar days thereafter, the lender is expected to notify the borrower of the default and meet with the borrower to discuss solutions. Within 75 calendar days of this meeting (or unsuccessful attempts to meet) the account should be paid current or restructured. If a solution that requires more than 75 calendar days (90 calendar days after default) is agreed to, the reasons should be indicated on FSA-2248. The authorized agency official shall review FSA-2248 and depending on what the lender's plans are, concur with the lender's plan, request a restructuring plan, request a liquidation plan, or mark the file for a follow up action as of the date the account is supposed to be paid current.

### E Liquidation Plan and Estimated Loss Claim Must Be Submitted

***--Within 150 days after the payment due date, all lenders will prepare a liquidation plan. Standard eligible and CLP lenders will submit a written liquidation plan to the Agency** (see paragraph 358). The authorized agency official shall review the lender's estimates of timeframes and, based on their knowledge of the case and similar cases in their area, advise the lender of any concerns. **An estimated loss claim must be filed no later than 150 days past the payment due date unless the account has been completely liquidated and then a final loss claim must be filed** (see paragraph 359). **PLP lenders will submit a liquidation plan as required by their lender's agreement.**

FSA will not pay interest beyond 210 calendar days from the payment due date. If the lender estimates that there will be no loss after considering the costs of liquidation, an estimated loss of zero will be submitted within 150 calendar days of the payment due date. See subparagraph 360 F for information about additional interest that may be paid in some Chapter 7 Bankruptcy cases and when State redemption rights delay the sale of the property. See subparagraph 359 A for information on filing estimated loss claims.**--***

## 355 Liquidation Process (7 CFR 762.149) (Continued)

### F Liquidation Plan Is Approved or Rejected by FSA

When the decision has been made to liquidate, a liquidation plan is required to be submitted by a CLP lender or SEL in all cases, including where all of the security has been sold, the borrower is liquidating voluntarily, or when no loss is expected. FSA shall review a lender's liquidation plan and either approve it or request modifications within 20 calendar days after it is received. See subparagraph 358 F.

### G Estimated Loss Claim Is Approved by FSA or Modified by Lender

***--**When an estimated loss claim is submitted, it may be reviewed and approved separately**--*** from the liquidation plan. FSA shall respond in writing within 30 calendar days of the receipt of the lender's estimated loss claim. If FSA wants to dispute the estimated loss claim, FSA will resolve their differences with the lender before this 30-calendar-day deadline. See subparagraph 359 F.

SED shall determine the level of review to be conducted on each estimated loss claim. Estimated loss claims submitted by PLP lenders will be reviewed only for the accuracy of FSA-2254 and any mathematical calculations. Lenders will reimburse FSA for any overpayments on estimated loss claims at the time of a final loss, plus interest, at the note rate.

### H Liquidate

Liquidation is expected to be completed within 230 calendar days after the borrower was declared in default, unless otherwise approved in the liquidation plan.

### I Final Loss Claim Is Submitted

**Lenders may submit a final loss claim when the security has been liquidated and all proceeds have been received and applied to the account.** See paragraph 360.

A final loss claim should be submitted within 30 calendar days of the completion of liquidation or within 260 calendar days after the borrower was declared in default, unless an extension of this period is granted. The authorized agency official shall document the request for an extension and approve it or reject it as soon as practical.

The authorized agency official shall monitor liquidations and request a loss claim when they are aware that an account has been liquidated. A final loss claim will be reduced if there are unjustified delays in liquidation or submission of a claim. If the account is paid in full, FSA-2248 and FSA-2241 shall be input indicating that the loan is paid and the guarantee terminated.

## 356 Mediation (7 CFR 762.149(a))

### A Mediation Requirements

**When it has been determined that a default cannot be cured through any of the servicing options available or if the lender does not wish to utilize any of the authorities provided in this part, the lender must:**

- **participate in mediation according to the rules and regulations of any State which has a mandatory farmer-creditor mediation program**
- **consider private mediation services in those states which do not have a mandatory farmer-creditor mediation program**
- **not agree to any proposals to rewrite the terms of a guaranteed loan which do not comply with this part.**

**Any agreements reached as a result of mediation involving defaults and or loan restructuring must have written concurrence from the Agency before they are implemented.**

If requested by the lender, FSA may participate in mediation to provide guidance on FSA regulations and guidelines. However, the FSA representative may not concur on any restructuring plans that require FSA approval during a mediation meeting. Restructuring plans developed during mediation that require FSA approval must be submitted to the local credit office according to Part 12.

Though not indicated in the liquidation time line, the mediation process should begin immediately following a lender's decision to liquidate a loan. If the borrower fails to attend the default meeting required by paragraph 300, or if this meeting does not result in a plan for restructuring, then the lender should notify the borrower of the results of the meeting and their intention to proceed with liquidation of the account. This notification should include an offer of mediation, an explanation of what mediation may accomplish, and instructions on how and where a mediation hearing may be requested. This information is available from FSA State Offices or the State Department of Agriculture of the State in which the borrower is located.

### B Lender Participation in Mediation

If SED determines that a lender's failure to participate in a mediation program caused a loss to the Government, a final loss claim payment may be reduced or denied. SEL lenders who consistently fail to participate in mediation may jeopardize consideration for CLP or PLP status.

## 357 Foreclosure and Acceleration (7 CFR 762.149)

### A Overview

*** * *** The lender must initiate foreclosure action and accelerate the loan. The lender may not initiate foreclosure action on the loan until 60 calendar days after eligibility of the borrower to participate in the IA Program has been established by FSA. The lender may accelerate the loan before FSA approval of a liquidation plan.

### B Borrower Files for Bankruptcy After Loan Note is Accelerated

If the borrower files bankruptcy after the loan note is accelerated, the lender suspends liquidation proceedings until 1 of the following actions:

- bankruptcy case is dismissed or closed
- order lifting automatic stay is obtained from the court
- ***--**property is no longer property of the bankruptcy estate and the borrower has been**--*** discharged (see Part 13).

## 357 Foreclosure and Acceleration (7 CFR 762.149) (Continued)

### C Acceleration

**If the borrower is not in bankruptcy, the lender shall send the borrower notice that the loan is in default and the entire debt has been determined due and payable immediately after other servicing options have been exhausted.** Foreclosure proceedings commence once a loan is accelerated.

**The loan cannot be accelerated until after the borrower has been considered for Interest Assistance and the conclusion of mandatory mediation in accordance with § 762.149(a)** (paragraph 356)**.**

**The lender will submit a copy of the acceleration notice or other document to the Agency.**

The lender accelerates a loan note by giving the borrower written notice by certified mail that the loan is in default and the entire debt is due and payable. The lender must make a copy of the acceleration notice and attach it to the first FSA-2248 that is submitted following note acceleration. Once a note is accelerated, the borrower will typically have 30 calendar days from the date of acceleration to make payment in full by cash, transfer, sale of property, or voluntary conveyance. If the borrower fails to satisfy the account in the period specified in the notice, the foreclosure process will continue until the loan security is liquidated.

Once the note is accelerated all other servicing procedures other than liquidation and its associated actions, such as making protective advances, cease.

## 357 Foreclosure and Acceleration (7 CFR 762.149) (Continued)

### D Foreclosure

**The lender is responsible for determining who the necessary parties are to any foreclosure action or who should be named on a deed of conveyance taken in lieu of foreclosure.**

**When the property is liquidated, the lender will apply the net proceeds to the guaranteed loan debt.**

**When it is necessary to enter a bid at a foreclosure sale, the lender may bid the amount that it determines is reasonable to protect its and the Agency's interest. At a minimum, the lender will bid the lesser of the net recovery value or the unpaid guaranteed loan balance.**

Foreclosure refers to the comprehensive process of preparing for and selling the collateral that secures a loan that is being liquidated. Therefore, the foreclosure process begins once the lender decides to accelerate the loan in preparation for liquidation and ends once the loan's security is liquidated.

## 358 Lender Liquidation Plan (7 CFR 762.149(b))

### A Overview

***--**All lenders must prepare a liquidation plan with 150 calendar days of the payment due date. SEL and CLP lenders must submit a liquidation plan. If applicable, the lender should submit a request for IA reimbursement to FSA within 30 calendar days. The liquidation plan must--***** include a schedule of all projected liquidation activities, and a complete inventory of the security to be sold.

### B General Requirements

**If a default cannot be cured after considering servicing options and mediation, the lender will proceed with liquidation of the collateral in accordance with the following.**

***--Within 150 days after the payment due date, all lenders will prepare a liquidation plan. Standard eligible and CLP lenders will submit a written liquidation plan to the Agency which includes:--***

- **Current balance sheets from all liable parties or, if the parties are not cooperative, the best information available, or in liquidation bankruptcies, a copy of the bankruptcy schedules or discharge notice**

- **A proposed method of maximizing the collection of debt which includes specific plans to collect any remaining loan balances on the guaranteed loan after loan collateral has been liquidated, including possibilities for judgment**

  - **If the borrower has converted loan security, the lender will determine whether litigation is cost effective. The lender must address, in the liquidation plan, whether civil or criminal action will be pursued. If the lender does not pursue the recovery, the reason must be documented when an estimated loss claim is submitted** (subparagraph 360 E)**.**

  - **Any proposal to release the borrower from liability will be addressed in the liquidation plan in accordance with § 762.146(c)(2)** (paragraph 361)**.**

    **Note:** If according to paragraph 361 the release of liability can be approved, it will not be granted until either all of the collateral is voluntarily conveyed to the lender or it is liquidated.

**358 Lender Liquidation Plan (7 CFR 762.149(b)) (Continued)**

**B General Requirements (Continued)**

- **an independent appraisal report on all collateral securing the loan that meets the requirements of § 762.127** (paragraphs 181 through 183) **and a calculation of the net recovery value of the security as defined in §762.102** (Exhibit 10)**. The appraisal requirement may be waived by the Agency in the following cases:**

  **Note:** For poultry and other CAFO facility appraisals, see Exhibit 15.

  - **the bankruptcy trustee is handling the liquidation and the lender has submitted the trustee's determination of value**

  - **the lender's proposed method of liquidation rarely results in receipt of less than market value for livestock and used equipment**

  - **a purchase offer has already been received for more than the debt.**

- **an estimate of time necessary to complete the liquidation**

- **an estimated loss claim if the liquidation period is expected to exceed 90 days** (paragraph 359)

- **an estimate of reasonable liquidation expenses**

- **an estimate of any protective advances** (paragraph 360)**.**

**C Liquidation Status Reports**

Lenders must submit FSA-2248 to the authorized agency official every 60 calendar days during liquidation to report on the progress of liquidation. This report should provide information on the disposition of collateral, costs incurred, and specific actions taken by the lender or their representative since the previous FSA-2248 submission.

Details on future planned actions, and their estimated dates, must be identified on FSA-2248. Further, any changes in the approved liquidation plan must also be identified on FSA-2248. The authorized agency official shall input the loan status information on FSA-2248 into the GLS and monitor lender compliance with the 60-calendar-day reporting cycle for any loan in default until payment of a final loss claim.

## 358 Lender Liquidation Plan (7 CFR 762.149(b)) (Continued)

### D IA Reimbursement

IA payment will be conducted according to paragraph 228.

### E Lender Liquidation Plan and Holders

If the guaranteed portion of a loan undergoing liquidation was sold on the secondary market, see Part 15.

If the holder has not requested the lender to repurchase the guarantee but the lender determines that repurchase of the guarantee is necessary to adequately service the loan, the lender may repurchase the guaranteed portion of the loan from the holder, with the written approval of FSA. See Part 15 for information on the repurchase of loans sold on the secondary market and FSA approval of repurchase.

If the loan undergoing liquidation was sold on the secondary market and the unpaid guaranteed portion is still held by the holder at the time of liquidation plan submission, the liquidation plan must address the lender's plans to repurchase the guarantee. If the lender does not plan to repurchase the guarantee, the liquidation plan must include written notice from the holder certifying that the holder wants to keep the guarantee during liquidation. If the lender plans to repurchase the guarantee, the date of planned repurchase must be noted in the liquidation plan along with a request for FSA concurrence on the repurchase.

## 358 Lender Liquidation Plan (7 CFR 762.149(b)) (Continued)

### F FSA Approval of Liquidation Plan

**[7 CFR 762.149(c)] CLP lender's or standard eligible lender's liquidation plan, and any revisions of the plan, must be approved by the Agency.**

**If, within 20 calendar days of the Agency's receipt of the liquidation plan, the Agency fails to approve it or fails to request that the lender make revisions, the lender may assume the plan is approved. The lender may then proceed to begin liquidation actions at its discretion as long as it has been at least 60 days since the borrower's eligibility for interest assistance was considered.**

Upon receipt of the plan, FSA has 20 calendar days to respond in writing, either granting approval of the plan or requesting modification of the plan. The lender's liquidation plan must be submitted to the authorized agency official. The authorized agency official will receive the plan from the lender and notify the lender in writing of the decision to approve or request modification of the plan.

As part of a liquidation plan or a method for liquidation, the lender may propose to accept a deed from the borrower in lieu of a forced liquidation. The estimated loss claim will be based on the net recovery value of the property at the time the lender takes possession of it.

Lenders may include as part of their liquidation plan, environmental related fees, such as those that would be incurred for environmental assessments or environmental cleanup. When this occurs FSA must immediately notify the lender that it will not cover these costs unless the lender can provide documentation that these actions are required by law and the associated fees were not a result of any lender actions.

## 359 Lender Submission of Estimated Loss Claim (7 CFR 762.149)

### A Overview

***--An estimated loss claim must be submitted by the lenders no later than 150 days after the payment due date unless the account has been completely liquidated and then the final loss claim must be filed. The estimated loss will be based on the following:--***

- **The Agency will pay the lender the guaranteed percentage of the total outstanding debt, less the net recovery value of the remaining security, less any unaccounted for security**

- **The lender will discontinue interest accrual on the defaulted loan at the time the *--estimated loss claim is paid by the Agency. The Agency will not pay interest beyond 210 days from the payment due date. If the lender estimates that there will be no loss after considering the costs of liquidation, an estimated loss of zero will be submitted and interest accrual will cease upon approval of the estimated loss and never later than 210 days from the payment due date.--***

See subparagraph 329 C for loss claims on restructured loans.

### B Estimated Liquidation Expenses

Certain reasonable costs to liquidate a loan may be included in the estimated loss claim. Eligible liquidation expenses include, but are not limited to, the following:

- appraisals
- marketing expenses
- auctioneer expenses
- legal fees.

**Note:** Legal fees associated with the liquidation are a liquidation expense. FSA allows reasonable and necessary legal fees, including fees incurred in a Chapter 7 liquidation bankruptcy, to be deducted from the sale of the collateral before application of the net proceeds to the guaranteed debt. Lenders will be compensated for liquidation expenses incurred before the filing of a reorganization bankruptcy proceeding. An estimate of legal fees, and all liquidation costs, must be provided with an estimated loss claim, and documentation of actual expenses incurred must be provided with the final loss claim.

**Packager fees and outside consultant fees for servicing of guaranteed loans are not covered by the guarantee, and will not be paid in an estimated * * * loss claim.**

## 359 Lender Submission of Estimated Loss Claim (7 CFR 762.149) (Continued)

### B Estimated Liquidation Expenses (Continued)

In-house expenses are not allowable liquidation costs. In-house expenses include, but are not limited to, the following:

- employee salaries
- staff lawyers
- photocopying
- travel.

### C Lender Submission of Estimated Loss Claim

*****--Lenders will prepare and submit the estimated loss claim on FSA-2254 along with other supporting documentation to support the estimates to the authorized agency official.**--***

The lender's supporting documentation shall include the following:

- unpaid accrued interest
- advances
- payments
- periods of time
- interest rates
- principal balances.

SEL and CLP lenders will also be required to submit appraisals and other documentation to support the estimates on FSA-2254. Estimated loss claims for PLP lenders will only be reviewed for accuracy and calculations of FSA-2254. FSA-2254 instructions provide examples on how to complete certain fields.

The lender must justify and explain any liquidation expenses on the estimated loss claim * * *.

### D Unapproved Loans or Advances

**The amount of any payments made by the borrower on unapproved loans or advances outside of the guarantee will be deducted from any loss claim submitted by the lender on the guaranteed loan, if that loan or advance was paid prior, and to the detriment of, the guaranteed loan.**

## 359 Lender Submission of Estimated Loss Claim (7 CFR 762.149) (Continued)

### E FSA Approval of Protective Advances

FSA will approve a request for a protective advance if the request is reasonable and the value of the security would decrease significantly if the advance was not made. FSA will respond within 14 calendar days to an SEL and CLP written request for concurrence on a protective advance. Concurrence with protective advances can be provided separately from approval of the liquidation plan.

PLP lenders will make protective advances according to the Lenders Agreement.

### F FSA Approval and Payment of Estimated Loss Claim

The estimated loss claim may be reviewed and approved separately from the liquidation plan using FSA-2295. The estimated loss claim is submitted on FSA-2254 to the authorized agency official. After reviewing FSA-2254, the authorized agency official shall forward FSA-2254 and supporting documentation to SED with a recommendation to approve or dispute the estimated loss claim.

If SED finds the estimated loss claim to be accurate, SED shall approve the payment within 30 calendar days of estimated loss claim submission. If FSA wants to dispute the estimated loss claim, FSA shall attempt to resolve the differences with the lender within 30 calendar days of the submission.

After approval by SED, SED shall forward FSA-2254 to FSC, FLOO for payment of the estimated loss claim, by either of the following:

- FAXed to:
  - 314-539-3111 for States 01 through 32
  - 314-539-6447 for States 33 through 64
- sent to:

  USDA-FSA-FSC-FLOO
  PO Box 200003
  St Louis MO 63120-0003.

FSC, FLOO shall issue a check to the lender within 30 calendar days of receiving FSA-2254. The PLP estimated loss claim will be paid after a brief review for accuracy.

**359 Lender Submission of Estimated Loss Claim (7 CFR 762.149) (Continued)**

**G Application of Estimated Loss Payment**

**The lender will discontinue interest accrual on the defaulted loan at the time the estimated loss claim is paid by the Agency. The Agency will not pay interest beyond 210 days from the payment due date. If the lender estimates that there will be no loss after considering the costs of liquidation, an estimated loss of zero will be submitted and interest accrual will cease upon approval of the estimated loss and never later than 210 days from the payment due date**.

*** * ***

**The application of the loss claim payment to the account does not automatically release the borrower of liability for any portion of the borrower's debt to the lender.** The estimated loss payment compensates the lender for the loss, but does not reduce the loan balance or cure a delinquency, and should not be reflected as such on FSA-2248.

## 360 Lender Submission of Final Loss Claim (7 CFR 762.149)

### A Overview

**Lenders may submit a final loss claim when the security has been liquidated and all proceeds have been received and applied to the account.**

### B General Requirements

**If a lender acquires title to property either through voluntary conveyance or foreclosure proceeding, the lender will submit a final loss claim after disposing of the property. The lender may pay reasonable maintenance expenses to protect the value of the property while it is owned by the lender. These may be paid as protective advances or deducted as liquidation expenses from the sales proceeds when the lender disposes of the property. The lender must obtain Agency written concurrence before incurring maintenance expenses which exceed the amounts allowed in § 762.149(e)(1)** (subparagraph D).

**The lender will make its records available to the Agency for the Agency's audit of the propriety of any loss payment.**

The final loss claim will be based on the amount received from the sale of the property, less expenses incurred for its care and maintenance, assuming the lender has acted expeditiously ***--**and prudently to sell it. **All proceeds must be applied to the principal first and then toward accrued interest if the interest is still accruing.--***

**360 Lender Submission of Final Loss Claim (7 CFR 762.149) (Continued)**

**C Lender Submissions of Final Loss Claim**

**All lenders will submit the following documents with a final loss claim:**

- **an accounting of the use of loan funds**

- **an accounting of the disposition of loan security and its proceeds**

- **a copy of the loan ledger indicating loan advances, interest rate changes, protective advances, and application of payments, rental proceeds, and security proceeds, including a running outstanding balance total**

  **Note:** The lender's supporting documentation shall include the following:

  - unpaid accrued interest
  - advances
  - payments
  - periods of time
  - interest rates
  - principal balances.

- **documentation, as requested by the Agency, concerning the lender's compliance with the requirements of this part**

- the name, SSN, and current address of any co-borrower or co-signer for liquidation of loans that were made using FSA-1980-25 or FSA-1980-28 with the July 20, 2001, or later revision date, if not previously submitted to FSA.

**Note:** See subparagraph 359 B for liquidation expenses and legal fees.

**The lender will designate 1 or more financial institutions to which any FSA payments will be made by electronic funds transfer (EFT).**

Lenders should also submit EFT account numbers that are to be used for transmission of any loss payment from the Government.

*** * ***

## 360 Lender Submission of Final Loss Claim (7 CFR 762.149) (Continued)

### D Protective Advances

Protective advances are expenses incurred by a lender to protect or preserve collateral from loss or deterioration. Protective advances should be shown on FSA-2254.

**Prior written authorization from the Agency is required for all protective advances in excess of $5,000 for CLP lenders, $3,000 for standard eligible lenders. The dollar amount of protective advances for PLP lenders will be specified when PLP status is *--awarded by the Agency or as allowed and contained in the lender's agreement.**

PLP lenders, for which CMS does not contain the dollar amount of protective advances allowed, are required to obtain FSA's written authorization for advances in excess of $5,000. All other PLP lenders shall follow their CMS in making protective advances.**--***

**The lender may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances allowed in this part, plus interest that accrues on the protective advances.**

Interest that accrues on protective advances is limited to the guaranteed loan interest accrual cutoff if the protective advance is used to pay off the lender's prior lien.

**Payment for protective advances is made by the Agency when the final loss claim is approved, except in bankruptcy actions.**

**Protective advances are used only when the borrower is in liquidation, liquidation is imminent, or when the lender has taken title to real property in a liquidation action.**

**Legal fees are not a protective advance.**

**Protective advances may only be made when the lender can demonstrate the advance is in the best interest of the lender and the Government.**

**Protective advances must constitute a debt of the borrower to the lender and be secured by the security instrument.**

**Protective advances must not be made in lieu of additional loans.**

Protective advances approved by FSA may be made by a lender to protect or preserve the collateral from loss or deterioration. Additional loans made to improve the value of security, such as loans for home improvement, are not protective advances and should not be approved. Protective advances and the interest that accrues on the advances are covered by the guarantee.

**360 Lender Submission of Final Loss Claim (7 CFR 762.149) (Continued)**

**E Legal Fees**

Legal fees associated with liquidation are a liquidation expense, see subparagraph 359 B. Documentation of actual legal expenses incurred must be provided with the final loss claim.

**F FSA Approval and Payment of Final Loss Claim**

**The Agency will notify the lender of any discrepancies in the final loss claim or, approve *--or reject the claim within 40 days. Failure to do so will result in additional interest days being paid to the lender for the number of days over 40 taken to process the claim.** FSA officials may use FSA-2296 for this discrepancy review. **The application of the loss claim payment to the account does not automatically release the borrower of liability for any portion of the borrower's debt to the lender.--***

**Note:** For loans made using FSA-1980-25, FSA-1980-28, Application for Guarantee, or Preferred Lender Application with the July 20, 2001, or later revision date, before the payment of a final loss claim, FSA officials must have a copy of the original application, promissory note, Loan Guarantee, and the current interest rate if a variable rate loan.

**The Agency will reduce a final loss claim based on its calculation of the dollar amount of loss caused by the lender's negligent servicing of the account. Loss claims may be reduced or rejected as a result of the following:**

- **A loss claim may be reduced by the amount caused by the lender's failure to secure property after a default, and will be reduced by the amount of interest that accrues when the lender fails to contact the borrower or takes no action to cure the default, once it occurs**

- **Losses incurred as a result of interest accrual during excessive delays in collection, as determined by the Agency, will not be paid**

- **Unauthorized release of security proceeds, failure to verify ownership or possession of security to be purchased, or failure to inspect collateral as often as required to ensure its maintenance.**

**Packager fees and outside consultant fees for servicing of guaranteed loans are not covered by the guarantee, and will not be paid in a * * * final loss claim.**

**Losses will not be reduced for the following:**

- **Servicing deficiencies that did not contribute materially to the dollar amount of the loss**

- **Unaccounted for security, as long as the lender's efforts to locate and recover the missing collateral was equal to that which would have been expended in the case of an unguaranteed loan in the lender's portfolio.**

## 360 Lender Submission of Final Loss Claim (7 CFR 762.149) (Continued)

### F FSA Approval and Payment of Final Loss Claim (Continued)

**Default interest, late charges, and loan servicing fees are not payable under the loss claim.**

**The final loss will be the remaining outstanding balance after application of the estimated loss payment and the application of proceeds from the liquidation of the security. The lender will designate 1 or more financial institutions to which any FSA payments will be made by EFT.**

In the case of a Chapter 7 bankruptcy, where the lender filed an estimated loss claim, FSA will pay the lender interest that accrues during and up to:

- **45** calendar **days after the date of discharge on the portion of the chattel only secured debt that was estimated to be secured but upon final liquidation was found to be unsecured**

- **90** calendar **days after the date of discharge on the portion of real estate secured debt that was estimated to be secured but was found to be unsecured upon final disposition**

**The Agency will pay the lender interest which accrues during and up to 90** calendar **days after the time period the lender is unable to dispose of acquired property because of State imposed redemption rights, on any unsecured portion of the loan during the redemption period, if an estimated loss claim was** submitted by the lender or **paid by the Agency during the liquidation action.**

FSA shall pay the lender the guaranteed percentage of the unpaid balance remaining on the loan after liquidation and application of proceeds. To verify that the amount requested is valid, SED shall review the County Office loan file, the lender's loan ledgers, and, for PLP, the lender's loan file. If there are any discrepancies in the lender's application processing or loan servicing, the lender will be requested to provide clarification or explanation if the concern may have contributed to failure of the loan or caused a monetary loss. If security was not obtained as indicated on the application, the value will be deducted from the lender's claim, if that value is known or can be reasonably estimated. In the case of unaccounted for security that was not sold, traded, or explained in some manner, the value of the collateral will be deducted only to the extent that the actions of the lender contributed to its misplacement.

## 360 Lender Submission of Final Loss Claim (7 CFR 762.149) (Continued)

### F FSA Approval and Payment of Final Loss Claim (Continued)

Interest accrual on a final loss should be the same as on the estimated loss except for the amount that accrued while the payment was being issued and in some Chapter 7 Bankruptcy cases and cases where State redemption rights delay disposal of property. *** * *** If an estimated loss was not paid, SED shall determine whether the lender has liquidated the account in a timely manner. If liquidation was unduly delayed or the lender did not comply with the reporting requirements of this part, interest accrual will be included on the claim to the date that SED determines that liquidation should have reasonably been accomplished.

***--**Interest accrual as part of a lender's final loss claim will never exceed 210 calendar days from the payment due date, plus any additional days over 40 calendar days that it took FSA to**--*** review the claim up to the date of the check.

If an estimated claim was not submitted, interest accrual will not be paid beyond 150 calendar days from the payment due date for all loans made after July 9, 2008. For all loans made before July 9, 2008, interest accrual will not be paid beyond 90 calendar days from the date of the decision to liquidate as long as it does not exceed 210 calendar days from the payment due date.**--***

Interest accrual as part of a final claim will be the same as the estimated claim for all final claims in which an estimated claim was previously submitted except for some Chapter 7 Bankruptcy cases and where State redemption rights delay disposal of property.

FSA may pay a loss when a borrower sells security out of trust. If the borrower has converted loan security, the lender shall determine whether litigation is cost-effective. The lender must determine whether civil or criminal action is cost-effective and will be pursued. If the lender does not pursue the recovery, the reason must be documented when a loss claim is submitted. If recovery of converted security through legal action is possible, a lender may still submit a final loss claim and reimburse FSA according to subparagraph 362 A after proceeds are collected.

## 360 Lender Submission of Final Loss Claim (7 CFR 762.149) (Continued)

### F FSA Approval and Payment of Final Loss Claim (Continued)

If a lender's loss claim is denied or reduced, SED shall notify the lender in writing immediately of the decision. Lenders may appeal this decision according to 1-APP.

**Note:** For loans made before February 12, 1999, denied lender's loss claims will be handled according to FmHA Instructions 1980-A and 1980-B in effect at the time the guarantee was issued. See Exhibit 16.

When the final FSA-2254 is accepted by the authorized agency official and approved by *--SED, SED shall FAX FSA-2254, including final loss claims with no losses to FSC, FLOO for payment or processing. The final loss claim will be paid up to the maximum amount--* allowed, as provided in subparagraph 195 C. When a loan is a total loss, the loss payment may exceed the original guaranteed principal and accrued interest, if it includes emergency advances or protective advances.

### G Overpayment

**If the final loss is less than the estimated loss, the lender will reimburse the Agency for the overpayment plus interest at the note rate from the date of the estimated loss payment.**

The lender's ledger provided with the final loss claim should reflect that since the estimated claim was paid, the following has occurred:

- application of liquidation proceeds net of expenses
- approved protective advances
- any voluntary payments
- no additional interest accrual except on protective advances.

The ledger should not reflect that the FSA-estimated loss claim was applied as a regular payment. The amount of overpayment or underpayment will be calculated on FSA-2254. The interest due on any loss claim will be calculated by FSC, FLOO based upon the borrower's rate of interest and the date the estimated claim was paid. If the lender wants to submit a check with their request for a final loss claim, this amount may be obtained by contacting the FSC, FLOO technician before submitting FSA-2254.

### H Return of Guarantee

**The lender will return the original Guarantee marked paid after receipt of a final loss claim.**

The final loss claim payment will be sent by EFT whenever possible. Return of the Guarantee is not required before EFT or delivery of a check. After verification that the final loss claim has been paid, the account will be terminated in GLS.

## 361 Release of Liability After Liquidation (7 CFR 762.146(c))

### A Overview

For loans made using FSA-1980-25 or FSA-1980-28 with the revision date before July 20, 2001, after a final loss claim has been paid, the lender may release the borrower or any guarantor from liability with FSA concurrence if the conditions of subparagraph B can be met.

### B Loans Made Using FSA-1980-25 or FSA-1980-28 With a Revision Date Before July 20, 2001

**After a final loss claim has been paid on the borrower's account, the lender may release the borrower or guarantor from liability if:**

- **the Agency agrees to the release in writing**
- **the lender documents its consideration of the following factors concerning the borrower or guarantors:**
  - **the likelihood that the borrower or guarantor will have a sufficient level of income in the reasonably near future to contribute to a meaningful reduction of the debt**
  - **the prospect that the borrower or guarantor will inherit assets in the near term that may be attached by the Agency for payment of a significant portion of the debt**
  - **whether collateral has been properly accounted for, and whether liability should be retained in order to take action against the borrower or a third party for conversion of security property**
  - **the availability of other income or assets which are not security**
  - **the possibility that assets have been concealed or improperly transferred**
  - **the effect of other guarantors on the loan**
  - **cash consideration or other collateral in exchange for the release of liability.**

**The lender will execute its own release of liability documents.**

The lender will submit a narrative to the authorized agency official explaining the borrower or entity should be released from liability. The authorized agency official may ask for documentation to support the lender's argument. The authorized agency official will forward all relevant material to SED for review and approval.

**361 Release of Liability After Liquidation (7 CFR 762.146(c)) (Continued)**

**C Loans Made Using FSA-1980-25, FSA-1980-28, Application for Guarantee, or Preferred Lender Application With the July 20, 2001, or Later Revision Date**

For loans made using FSA-1980-25, FSA-1980-28, Application for Guarantee, or Preferred Lender Application with the July 20, 2001, or later revision date, a lender's request to release the borrower of liability after liquidation of the collateral but before the payment of a final loss claim can only be approved by DAFLP. The payment of a final loss claim on these loans establishes a Federal debt that is subject to offset. (Collection of the Federal debt will be pursued according to 7 CFR 762.149(m). See paragraph 363.)

SED's shall thoroughly evaluate all requests and forward them to DAFLP with their recommendation. All requests will include an analysis along with supporting documentation that includes a monetary analysis as to why such an exception is in the Government's best interest. DAFLP will evaluate each request on a case-by-case basis. DAFLP's decision is final and is not appealable.

## 362 Miscellaneous Liquidation Items (7 CFR 762.149)

### A Future Recovery

***--The application of the loss claim payment to the account does not automatically release the borrower of liability for any portion of the borrower's debt to the lender. The lender will continue to be responsible for collecting the full amount of the debt and sharing future recoveries with the Agency in accordance with paragraph (j) of this section.--***

**The lender will remit any recoveries made on the account after the Agency's payment of a final loss claim to the Agency in proportion to the percentage of guarantee in accordance with the lender's agreement until the account is paid in full or otherwise satisfied.**

A lender receiving a loss payment must complete and return in a timely manner a report on its collection activities, FSA-2261, for each unsatisfied account for three years following payment of loss claims.

In late October of each year, the authorized agency official will forward FSA-2261 with instructions to lenders that have received a loss claim because of liquidation in the past 3 years. FSA-2261 must be completed and returned by November 30.

**Note:** FSA-2261 will not be completed for Chapter 7 liquidation bankruptcy cases that have received a discharge.

SED's shall compile State reports and submit the results to the National Office upon request.

When FSA's share of an amount is received, the funds will be deposited according to 3-FI. The following items will be completed on FSA-2254:

- enter code 4 in item 5, "Report Type Code"
- enter the date funds were received in item 15, "Date of Settlement"
- enter the amount received in item 51, "Amount Due FSA by Lender".

FSA-2254 will be FAXed or sent to FSC, FLOO as follows:

- FAXed to:
  - 314-539-3111 for States 01 through 32
  - 314-539-6447 for States 33 through 64
- sent to:

  USDA-FSA-FSC-FLOO
  PO Box 200003
  St Louis MO 63120-0003.

## 362 Miscellaneous Liquidation Items (7 CFR 762.149) (Continued)

### A Future Recovery (Continued)

For loans made using FSA-1980-25, FSA-1980-28, Application for Guarantee, or Preferred Lender Application with a July 20, 2001, or later revision date, lenders may only issue IRS-1099-C on the unguaranteed portion of the debt once the lender has met its future recovery obligations.

Once FSA has concluded its collection efforts, then FSA will cancel any remaining debt and report to IRS accordingly.

### B FSA Option to Liquidate

**At its option, the Agency may liquidate the guaranteed loan as follows.**

- **Upon Agency request, the lender will transfer to the Agency all rights and interests necessary to allow the Agency to liquidate the loan. The Agency will not pay the lender for any loss until after the collateral is liquidated and the final loss is determined.**

- **If the Agency conducts the liquidation, interest accrual will cease on the date the Agency notifies the lender in writing that it assumes responsibility for the liquidation.**

Upon the recommendation of SED, DAFLP may approve liquidation of a guaranteed loan by FSA.

The lender will transfer to FSA all rights and interests necessary to allow the authorized agency official to liquidate the loan.

SED shall consult with OGC to answer questions relating to the assignment and transfer of the lender's loan documents to FSA. After the loan is transferred, the authorized agency official shall summarize the history of case, list all of the loan security and its estimated value, and address any other issues that SED or OGC have about the liquidation. SED shall refer the case to OGC to process the request for liquidation by the Government. SED shall send FSA-2262 to FSC, FLOO, and the authorized agency official shall oversee the liquidation. If requested by the lender, FSA shall provide an update on the liquidation proceedings. Interest accrual will stop when FSA notifies the lender in writing that FSA is assuming responsibility of the liquidation process. The final loss payment to the lender will not include interest beyond the date FSA took responsibility to liquidate. In this event, the lender is not paid for any loss until the collateral is liquidated and the final loss is determined.

## 363 Collecting Final Loss Claim Payments From Guaranteed Loan Debtors (7 CFR 762.149(m))

### A Establishment of a Federal Debt

**[7 CFR 762.149(m)] Any amounts paid by the Agency on account of liabilities of the guaranteed loan borrower will constitute a Federal debt owing to the Agency by the guaranteed loan borrower. In such case, the Agency may use all remedies available to it, including offset under the Debt Collection Improvement Act of 1996** (DCIA)**, to collect the debt from the borrower. Interest charges will be established at the note rate of the guaranteed loan on the date that the final loss claim is paid.**

Federal debt is established on the effective date of the final loss claim payment. All individuals liable for the debt will be subject to offset. FSA will use non-centralized administrative offset, including IAO of payments made by USDA, and centralized offset from the U.S. Department of Treasury's TOP, and by any other applicable debt collection methods to collect the debt owed to FSA.

FSA shall obtain copies of the promissory note, the original application, the loan guarantee, the final loss claim, and current interest rate as of the final loss payment date, if a variable rate loan, as documentation of the establishment of a Federal debt.

The authorized agency official shall ensure that all co-borrowers and co-signers are entered in GLS.

## 363 Collecting Final Loss Claim Payments From Guaranteed Loan Debtors (7 CFR 762.149(m)) (Continued)

### B Guaranteed Final Loss Claim Payments Not Subject to Offset

Final loss claim payments for borrowers who executed FSA-1980-25 with a revision date of July 27, 1999, or earlier, or FSA-1980-28 with a revision date of April 7, 1999, or earlier, shall not be offset.

Loans approved using FSA-1980-25 or FSA-1980-28 with the July 20, 2001, or later revision date and Application for Guarantee or Preferred Lender Application that are discharged in bankruptcy, will establish a Federal debt, but generally are not subject to offset. Any case where a final loss claim was paid after a Chapter 7 discharge should be processed as follows:

- all pertinent information, such as loss claim and documentation on the bankruptcy including the discharge order, is to be provided to the Regional OGC, requesting their opinion as to whether or not offset can be pursued

- document the case file with OGC's recommendation:

    - if Regional OGC's opinion is that the loan is not subject to offset, the debtor shall be removed from referral to IAO and TOP through the GLS maintenance screens and debts discharged in bankruptcy will be written off upon receipt of the discharge order; SED shall FAX or mail a copy of the discharge order along with a memorandum requesting that the debt be written off to FSC, FLOO

    - if Regional OGC's opinion is that the loan is subject to offset, then immediately follow the requirements of subparagraphs 363 D through G.

**Notes:** Any debt reaffirmed under Chapter 7 bankruptcy on which a final loss claim is later paid, is considered a Federal debt and shall be subject to offset.

In a reorganization bankruptcy, if the confirmed plan is not successfully completed and the bankruptcy is dismissed, the payment of a final loss claim will be considered a Federal debt and shall be subject to offset.

### C Payments Not Subject to Offset

The following payments are not subject to offset:

- Federal crop insurance indemnity payments
- the initial payment for planting expenses under certain conservation programs
- program payments ineligible for offset.

Payments will not be offset when the authorized agency official determines that it is not in the best interest of the Government.

## 363 Collecting Final Loss Claim Payments From Guaranteed Loan Debtors (7 CFR 762.149(m)) (Continued)

### D Debtor Notification of FSA's Intent to Offset

Immediately upon confirmation of a final loss claim payment, the authorized agency official shall provide the debtor and any co-debtors notification of intent to offset using Exhibit 17, according to this subparagraph and 7 CFR Part 3.

Exhibit 17 must be sent to debtors by certified mail. If Exhibit 17 is returned, the authorized agency official shall use first class mail or personal delivery.

The date Exhibit 17 was received by the debtor and/or co-debtor will be entered in GLS for:

- tracking
- referral of debt for offset.

The authorized agency official shall provide written notification to debtors a minimum of:

- 30 calendar days before affecting non-centralized administrative offset and IAO
- 60 calendar days before affecting TOP.

If a USDA payment will be made to a debtor within 30 calendar days of the payment of a final loss claim and FSA finds that failure to take the offset would substantially prejudice the Government's ability to collect the debt, FSA shall notify the debtor that FSA will/has offset the payment due using Exhibit 18.

Exhibit 18 shall:

- contain the reasons FSA had to affect IAO and non-centralized administrative offset
- be sent to the debtor as soon as possible.

The debtor's pro rata share of entity payments will be offset according to 7 CFR Part 3 and RD Instruction 1951-C, section 1951.106 after the nondebtor entity members have been notified using Exhibit 19 or 20, as appropriate.

**Note:** The authorized agency official shall request written concurrence from SED before sending Exhibit 18 or 20.

Authorized agency officials shall follow RD Instruction 1951-C, section 1951.103 subparagraphs (c) through (g) to handle debtor requests received as a result of the receipt of Exhibits 17 through 20.

Debtors proposing an agreement to repay the debt as an alternative to offset must include the full amount of the Federal debt. The Federal debt must be paid within a short period of time.

## 363 Collecting Final Loss Claim Payments From Guaranteed Loan Debtors (7 CFR 762.149(m)) (Continued)

### E Salary Offset

The authorized agency official shall determine whether collection by salary offset is feasible according to 7 CFR Part 3 and RD Instruction 1951-C, section 1951.111.

### F Referral of Debt for IAO Offset

The authorized agency official shall refer debtors:

- immediately for IAO and non-centralized administrative offset if Exhibit 18 or 20 was sent

- for IAO and non-centralized administrative offset 30 calendar days after sending Exhibit 17 or 19, and/or after the conclusion of a review or appeal.

The authorized agency official must complete the debtor's IAO referral information in GLS for the debt to be referred for offset.

**Note:** Debtors who are ineligible for IAO or who later become ineligible for IAO shall be removed from referral in GLS.

## 363 Collecting Final Loss Claim Payments From Guaranteed Loan Debtors (7 CFR 762.149(m)) (Continued)

### G Referral of Debt to TOP

***--**The authorized agency official shall refer debtors to TOP 60 calendar days after:**--***

- Exhibit 17 or 18 was sent
- the conclusion of a review or appeal.

***--**The authorized agency official must complete the debtor's TOP referral information in**--*** GLS. Once the information is entered, debtors will be programmatically referred according to the established Treasury quarterly referral schedule.

Once the debt is referred for TOP, FSC, FLOO will send Exhibit 21. The date of Exhibit 21 will be shown on the debtor's GLS maintenance screen.

**Note:** Debtors who are ineligible for TOP or who later become ineligible for TOP shall be removed from referral on the GLS maintenance screen.

### H State Office Responsibility

SED shall ensure that FSA employees responsible for servicing FLP guaranteed loans notify all County Offices where the debtor receives Federal payments that these payments are to be offset.

DD shall ensure that all County Offices are updated monthly on debtors whose payments are eligible to be offset.

**Note:** Management reports for debts currently referred for IAO and TOP are available in GLS.

***--**IAO and TOP collections taken by FSA will be discontinued when a guaranteed borrower and/or co-borrower are called to report for induction or military service. Co-borrowers associated with the debt must also be suspended from offset collections in GLS in an effort to reduce hardship on the family. Offsets should not be taken during the period of active duty and 3 months thereafter. Any collections received as a result of offset, **after** the date the borrower and/or co-borrower were called to active duty, will be refunded. State Offices shall make refund request to FSC, FLOO.

Offsets shall be suspended by State Offices by accessing GLS Debt Offsets Maintenance Screen and:

- selecting the Reason Deleting as "Other"
- inputting the Why Agency Deleting as "National Defense Act"
- inputting the delete date.

**Note:** This information should be entered for both IAO and TOP.**--***

## 363 Collecting Final Loss Claim Payments From Guaranteed Loan Debtors (7 CFR 762.149(m)) (Continued)

### I Collections and Refunds

Amounts collected through administrative offset will be applied to the debtor's account according to 3-FI using the Guaranteed Collection Codes in this table.

| Code | Description |
|---|---|
| 70 | Administrative Offset – Other |
| 71 | Administrative Offset – DCP |
| 72 | Administrative Offset – LCP |
| 73 | Administrative Offset – CRP |
| 74 | Administrative Offset – EQIP |
| 75 | Administrative Offset – Tobacco |
| 76 | Administrative Offset – Peanuts |
| 77 | Administrative Offset – Rice |
| 78 | Administrative Offset – LDP/Markt Asst Loan |
| 79 | Administrative Offset – DCP in Stay |
| 80 | Voluntary Collection |
| 81 | DOJ Collection |
| 82 | Debt Settlement Collection |
| 83 | Other Collection |

**Notes:** Collections will be applied to the oldest delinquent Federal debt first.

According to 58-FI, paragraph 164, delinquent debts due to FSA will be collected before an assignment is honored.

***--**Voluntary and Other collections, except IAO, DOJ, Lender Recoveries, and Debt Settlements, for loans subject to offset with a debt offset receivable established, must have FSA-2254 completed manually and FAXed to FSC, FLOO for processing. The collection will be processed as an offset collection.**--***

Refunds of amounts offset will be made within 45 calendar days if FSA determines that an amount should not have been offset or that the debtor has prevailed in an appeal. SED shall approve and submit refund requests to FSC, FLOO.

### J Notifying Lender of FSA Collections

County Offices shall notify the lender of any collections received through IAO or TOP by November 30 of each year. The annual notification shall include the following:

- amount collected by loan number
- current balance of the Federal debt.

**Note:** County Offices can obtain account information from the GLS loan offset view screen.

## 363 Collecting Final Loss Claim Payments From Guaranteed Loan Debtors (7 CFR 762.149(m)) (Continued)

### K Debt Settlement

Once a final loss claim is paid, FSA will be able to consider settlement offers received directly from the debtor. Compromise and adjustment offers should be compared against other collection options available, such as IAO and TOP. The option that offers the greatest recovery to the Government should be pursued.

FSA shall process a compromise or adjustment offer according to RD Instruction 1956-B, section 1956.66.

The debt settlement will only cover the Federal debt owed by the debtor. FSA shall notify the lender of the approval of a debt settlement.

After all payments under the compromise or adjustment offer have been received, the remaining balance of the debt will be written off. SED shall FAX or mail a copy of RD 1956-1 along with a memorandum requesting that the debt be written off to FSC, FLOO.

### L Bankruptcy Effect

FSA, subject to advice provided by the Regional OGC, will immediately file a proof of claim upon notification of a bankruptcy filing for any debtor subject to offset. At a minimum, the following shall be filed with the proof of claim as evidence of the debt:

- FSA-1980-25, FSA-1980-28, Application for Guarantee, or Preferred Lender Application
- FSA-1980-27 or Loan Guarantee
- copy of promissory note
- documentation of FSA's final loss claim payment to the lender.

Bankruptcy filing will halt any FSA offsetting actions. The debtor shall be removed from referral of IAO and TOP through the GLS maintenance screens.

Debts discharged in bankruptcy will be written off upon receipt of the discharge order. SED shall FAX or mail a copy of the discharge order along with a memorandum requesting that the debt be written off to FSC, FLOO.

### M Write Off of Debt When the Debtor Is Released From Liability by DAFLP

Debtors released from liability under subparagraph 361 C will have their outstanding debt written off. SED shall FAX or mail a copy of DAFLP approval along with a memorandum requesting that the debt be written off to FSC, FLOO.

## 364 Release from Liability and Unauthorized Assistance

### A Full Faith and Credit

An FSA guaranteed loan is supported by the full faith and credit of the U.S. (see 7 CFR 762.103). As a result, FSA has an obligation to ensure that the Government has not been defrauded by a lender, holder, and/or borrower when obtaining an FSA guaranteed loan. Fraud and misrepresentation by the lender or holder are the only circumstances under which FSA can completely deny liability on a guaranteed loan. Negligent servicing, by contrast, may result in a reduction of liability to the extent of the loss. In addition, the lender and/or holder may face fines and imprisonment under U.S.C. Title 18, Section 1014. Fraud and misrepresentation by the borrower or lender may also lead to criminal penalties under U.S.C. Title 18, Section 1001 that allows fines and/or imprisonment.

### B Definitions (7 CFR 761.2(b))

The following definitions are applicable to this paragraph.

**False information is information provided by an applicant, borrower or other source to the Agency that the applicant or borrower knows to be incorrect.**

**Example:** Intentional altering of UCC1 to obtain an FSA guaranteed loan.

**Inaccurate information is incorrect information provided by an applicant, borrower, lender, or other source without the intent of fraudulently obtaining benefits.**

**Example:** The transposition of numbers in a financing statement or inventory list.

**Unauthorized assistance is any loan, loan servicing action, lower interest rate, loan guarantee, or subsidy received by a borrower, or lender, for which the borrower or lender was not eligible, which was not made in accordance with all Agency procedures and requirements, or which the Agency obligated from the wrong appropriation or fund. Unauthorized assistance may result from borrower, lender, or Agency error.**

## 364 Release from Liability and Unauthorized Assistance (Continued)

### C Initial Determination That Unauthorized Assistance Was Received

Unauthorized assistance may be identified through audits conducted by OIG, USDA reviews conducted by FSA personnel, information provided by a private citizen, or discovered in processing a loss claim. If FSA employees have reason to believe unauthorized assistance was received, the case will be referred to OIG or the National Office, as appropriate, for review and advice. In every case where it is known or believed by FSA that the assistance was based on false information, investigation by OIG will be requested.

If an FSA official suspects that unauthorized assistance has been received the issues must be documented in the case file. The authorized agency official will specifically state whether the unauthorized assistance was because of any of the following:

- submission of inaccurate information by the borrower and/or lender
- submission of false information by the borrower and/or lender
- submission of inaccurate or false information by another party on the borrower or lender's behalf such as the holder, a seller, developer, real estate broker, attorney, or appraiser when the borrower and/or lender did know the other party had submitted inaccurate or false information
- error by FSA personnel, either in making computations or failure to follow published regulations or other FSA issuance.

### D Secondary Market Considerations

According to 7 CFR 762.103, and contained in subparagraph 19 D of this handbook, FSA must purchase the loan from the holder upon request if the lender refuses even if fraud, misrepresentation, or negligent servicing by the lender is suspected.

### E Voluntary Cancellation by Lender When Fraud or Misrepresentation Occurs

A lender may request that FSA cancel an FSA-1980-27 or Loan Guarantee in circumstances where FSA intends to seek a denial of liability provided that the lender has not assigned or transferred the loan to another party. A lender cannot cancel an FSA-1980-27 or Loan Guarantee for a loan sold in the secondary market without the concurrence of the holder.

## 364 Release from Liability and Unauthorized Assistance (Continued)

### F Involuntary Cancellation by Lender

In the following circumstances, FSA can terminate an FSA-1980-27 or Loan Guarantee on a loan without the lender's concurrence:

- the guarantee fee is not paid

  **Note:** The guarantee fee is usually paid when FSA-2233 is submitted and the loan is closed. Under 7 CFR 762.130, a Loan Guarantee should not be issued until all guarantee fees are paid.

- improper transfer by FDIC of an FSA guaranteed loan to a nonguaranteed loan to a nonparticipating lender.

  **Notes:** A Memorandum of Understanding between FSA and FDIC was signed by FSA on February 13, 2002, providing rules about FSA guaranteed loan servicing originated by failed banks. FDIC may sell FSA guaranteed loans only to eligible lenders. Barring the presence of a holder, the improper transfer is grounds for a denial of liability. See Exhibit 13 for a copy of the Memorandum of Understanding.

### G Unauthorized Interest Assistance

For unauthorized interest assistance see:

- paragraph 231
- 7 CFR 762.150(h) and (j).

FSA may make demand on lenders for repayment of unauthorized assistance payments.

**365-372 (Reserved)**

# Part 15 Secondary Market

## 373 Overview of the Secondary Market for FSA Guaranteed Loans

### A Overview

The secondary market is a mechanism that allows lenders to sell the guaranteed portion of a loan. This sale is referred to as an assignment throughout this part because the lender is assigning the benefits to another party (the holder) in return for cash. Through the secondary market, the lender may:

- reduce their interest rate risk

  **Note:** The lender can transfer the risk of interest rate increases to the secondary market through the assignment of the guaranteed portion of the loan.

- increase liquidity

  **Note:** The lender can use funds received from a loan assignment for additional lending or investing activity.

- increase return on investment

  **Note:** By assigning the loan to the secondary market and keeping a servicing fee, a lender may increase their return on the loan and reduce their interest rate risk.

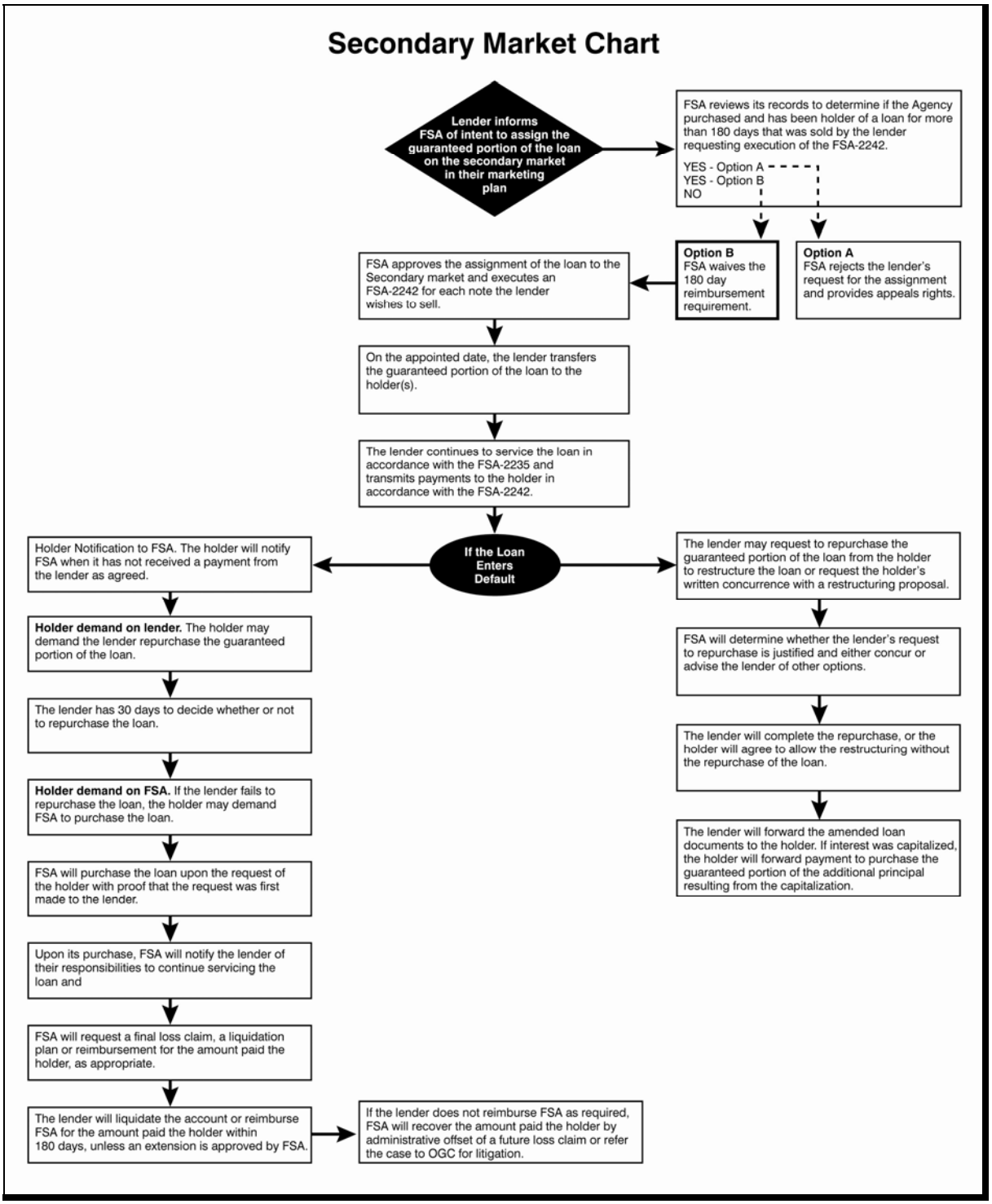
- increase the flexibility of loan terms.

  **Note:** The presence of the secondary market creates the ability for lenders to provide longer fixed rate terms then they would normally offer.

## 373 Overview of the Secondary Market for FSA Guaranteed Loans (Continued)

### B Secondary Market Flowchart

Following is the secondary market flowchart.



## 373 Overview of the Secondary Market for FSA Guaranteed Loans (Continued)

### C Pledging of Guaranteed Loans (7 CFR 762.159)

Lenders may also obtain liquidity by borrowing from funding sources.

**A lender may pledge all or part of the guaranteed or unguaranteed portion of the loan as security to a Federal Home Loan Bank, a Federal Reserve Bank, a Farm Credit System Bank, or any other funding source determined acceptable by the Agency.**

## 374 Agency Requirements (7 CFR 762.160)

### A Secondary Market Loan Requirements

**Subject to Agency concurrence, the lender may assign all or part of the guaranteed portion of the loan to one or more holders at or after loan closing, if the loan is not in default. However, a line of credit can not be assigned. The lender must always retain the unguaranteed portion in their portfolio, regardless of how the loan is funded.**

**The Agency may refuse to execute the Assignment of Guarantee and prohibit the assignment in the case of the following:**

- **The Agency purchased and is holder of a loan that was assigned by the lender that is requesting the assignment.**

- **The lender has not complied with the reimbursement requirements of § 762.144 (c)(7)** (paragraph 376)**, except when the 180 day reimbursement or liquidation requirement has been waived by the Agency.**

**The guaranteed portion of the loan may not be sold or assigned by the lender until the loan has been fully disbursed to the borrower.**

**The lender is not permitted to assign any amount of the guaranteed or unguaranteed portion of loan to the applicant or borrower, or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary, or affiliate.**

**Upon the lender's assignment of the guaranteed portion of the loan, the lender will remain bound to all obligations indicated in the Guarantee, Lender's Agreement, the Agency program regulations, and to future program regulations not inconsistent with the provisions of the Lenders Agreement. The lender retains all rights under the security instruments for the protection of the lender and the United States.**

The lender may assign all or part of the guaranteed portion of the loan to 1 or more holders at or after loan closing if the loan is not in default and proceeds have been fully disbursed.

Only the guaranteed portion of a loan may be assigned on the secondary market. In a secondary market assignment, the guaranteed portion of the loan is transferred to a holder while the lender keeps servicing responsibilities for the loan.

## 374 Agency Requirements (7 CFR 762.160) (Continued)

### B Secondary Market LOC Requirements

LOC's may not be assigned. However, the lender may obtain funding for LOC's from other sources. The lender retains the note, the collateral securing the note, and all responsibility for loan serving and liquidation. The guarantee is applicable only to the primary lender.

### C Transfer to the Secondary Market

Lenders generally market guaranteed loans to investors through an intermediary or directly to Farmer Mac.

Lenders are regularly contacted by and normally maintain a list of brokers or dealers interested in the purchase of FSA Guaranteed Loans. In an average transaction, lenders take the following steps to make a typical sale of a guaranteed loan on the secondary market.

- Contact several brokers or Farmer Mac for bids on the loan. The brokers will need to know:
  - loan amount and the size of the guaranteed portion
  - coupon rate (variable or fixed)

    **Note:** If variable, the broker will need to know the interest adjustment period.
  - if it is a new loan, when the loan will be funded
  - maturity date
  - payment schedule.

## 374 Agency Requirements (7 CFR 762.160) (Continued)

### C Transfer to the Secondary Market (Continued)

- Determine loan servicing fee. Obtain a commitment on the loan servicing fee, usually ranging from 0.4 to 2 percent.

- Select a bid. Analyze all the offers, select the most appropriate, and contact the winning broker. **Negotiations concerning premiums, fees, and additional payments for loans are to take place between the holder and the lender. The Agency will participate in such negotiations only as a provider of information.**

- Review documents. The broker or intermediary should send the lender a purchase commitment letter. The lender must notify the FSA office that the loan is being assigned and obtain the documents that the lender will need to execute. To complete the assignment, the lender should sign and return 1 copy of the commitment letter to the broker along with the following:

  - copy of the note
  - copy of the Loan Guarantee
  - FSA-2242.

- Close the transaction.

  - Upon receipt of the forms, the holder or broker prepares FSA-2242 and sends it to the lender in triplicate. For sales to Farmer Mac, FSA-2242 is prepared by the lender.

  - ***--**The lender signs all 3 forms, marks 1 of the forms as the original, and returns the 3 forms to FSA for execution.**--***

  - FSA signs the forms and forwards them to the investment broker. The settlement date is established by the broker.

  - The broker returns the original copy to the lender and another copy to FSA.

  - On settlement date, the broker wires the funds to the lender.

## 374 Agency Requirements (7 CFR 762.160) (Continued)

### D Executing FSA-2242's

The lender shall provide FSA with copies of all appropriate forms used in the assignment.

If a lender intends to assign the loan to the secondary market, they should inform FSA of their plans during the post-closing review (subparagraph 247 A).

In assigning a loan on the secondary market, lender will occasionally break the loan into more than 1 note. For each note, FSA will need a separate Loan Guarantee and the lender/broker or holder will need to execute a separate FSA-2242. See subparagraph C.

Once the lender accepts a specific buyer's offer, the lender should notify FSA that the loan is being assigned. The authorized agency official should inform the lender that they must submit FSA-2242 to FSA for execution.

**Note:** The authorized agency official shall execute FSA-2242 after reviewing it according to this subparagraph. FSA-2242 does not have to be signed by the holder before FSA approval of the assignment. After execution by the lender and FSA, the holder will execute it and return a copy to FSA for retention in the borrower's FSA file.

Before executing FSA-2242, the authorized agency official should review the documents to determine the following items.

- To whom is the loan being assigned? According to subparagraph A, a loan may not be assigned to the borrower or someone who has a relationship to the borrower or is an owner or subsidiary of the lender itself.

- Is the loan delinquent? Delinquent loans may not be assigned into the secondary market.

- Is the lender attempting to assign any of the unguaranteed portion of the loan? The lender is only permitted to assign the guaranteed portion of the loan into the secondary market.

- Is FSA currently holding the guaranteed portion of a loan that was purchased more than 180 calendar days after the lender refused the request to repurchase from the holder?

## 374 Agency Requirements (7 CFR 762.160) (Continued)

### D Executing FSA-2242's (Continued)

Once the authorized agency official is satisfied that all 4 of these conditions are met, FSA-2242 will be executed and all copies returned to the holder.

**The lender will send the holder the borrower's executed note attached to the Guarantee.**

**The holder will succeed to all rights of the guarantee pertaining to the portion of the loan assigned.**

**The holder, upon written notice to the lender and the Agency, may assign the unpaid guaranteed portion of the loan.**

**The holder must assign the guaranteed portion back to the original lender if requested for servicing or liquidation of the account.**

**The Guarantee or Assignment of Guarantee in the holder's possession does not cover:**

- **Interest accruing 90 days after the holder has demanded repurchase by the lender, except as provided in the Assignment of Guarantee and § 762.144(c)(3)(iii)**

- **Interest accruing 90 days after the lender or Agency requested the holder to surrender evidence of debt repurchase, if the holder has not previously demanded repurchase.**

## 375 Repurchase of Guaranteed Portion From a Secondary Market Holder (7 CFR 762.144)

### A Holder Demand for Repurchase

**The holder may request the lender to repurchase the unpaid guaranteed portion of the loan when either:**

- **the borrower has not made a payment of principal and interest due on the loan for at least 60 days**

- **the lender has failed to give the holder its pro-rata share of any payment made by the borrower within 30 days of receipt of a payment.**

The holder shall notify FSA when these circumstances exist. If the holder chooses not to make demand, authorized agency officials will monitor the account. If the loan remains past due for 90 calendar days, the lender will be requested to repurchase the loan. If the lender refuses to repurchase, FSA will immediately require the holder and lender to reconcile the loan balances. FSA will then repurchase from the holder no later than 150 calendar days past due.

**When a lender is requested to repurchase a loan from the holder, the lender must consider the request according to the servicing actions that are necessary on the loan. In order to facilitate servicing and simplified accounting of loan transactions, lenders are encouraged to repurchase the loan upon the holder's request.**

**If the lender does not repurchase the loan, the holder must inform the Agency in writing that demand was made on the lender and the lender refused. Following the lender's refusal, the holder may continue as holder of the guaranteed portion of the loan or request that the Agency purchase the guaranteed portion. Within 30 days after written demand to the Agency from the holder with required attachments, the Agency will forward to the holder payment of the unpaid principal balance, with accrued interest to the date of repurchase. If the holder does not desire repurchase or purchase of a defaulted loan, the lender must forward the holder its pro-rata share of payments, liquidation proceeds and Agency loss payments.**

If the lender believes the holder is making demand for repayment outside the allowable reasons, the lender should detail why they believe the demand is unreasonable in a refusal letter to the holder. A copy of this letter should also be forwarded to FSA.

Upon repurchase, the lender shall notify FSA by returning the original FSA-2242.

## 375 Repurchase of Guaranteed Portion From a Secondary Market Holder (7 CFR 762.144) (Continued)

### B Lender Initiated Repurchase

**If due to loan default or imminent loan restructuring, the lender determines that its repurchase is necessary to adequately service the loan, the lender may repurchase the guaranteed portion of the loan from the holder, with the written approval of the Agency.**

The requirements in FSA-2242 are as follows:

- the lender may demand repurchase to conduct any of the servicing actions in Part 9, 12, or 14

- lender repurchase is not required if the holder will agree to the restructured terms of the note

- if interest is capitalized, a new note is taken, the original note is amended, or the principal amount is modified, the lender must ensure that the assignment is amended to reflect the actual guaranteed portion held by the holder

  **Note:** In cases involving the secondary market, a restructuring action may involve repurchase from the holder.

- **the lender will not repurchase from the holder for arbitrage purposes. With its request for Agency concurrence, the lender will notify the Agency of its plans to resell the guaranteed portion following servicing**

- **the holder will sell the guaranteed portion of the loan to the lender for an amount agreed to between the lender and the holder.**

If the lender chooses to repurchase the loan for servicing, SEL and CLP lenders must receive written approval from the authorized agency official or SED or designee before repurchasing a guarantee. The request for approval must include the reason for repurchase; for example, IA, interest rate adjustments, default, restructuring, or liquidation; and the proposed servicing or liquidation plan, if any, for the loan or asset.

Once the request is received by FSA, the lender will receive notification of FSA's approval or rejection within 14 calendar days. PLP's do not need FSA approval to repurchase, but must repurchase the guarantee according to the terms of their Lenders Agreement.

The lender must document all attempts to repurchase the loan from the holder in the loan file.

**375 Repurchase of Guaranteed Portion From a Secondary Market Holder (7 CFR 762.144) (Continued)**

**C Purchase of the Loan or Note by FSA**

**With its demand on the Agency, the holder will include:**

- **a copy of the written demand made upon the lender**
- **originals of the Guarantee and note properly endorsed to the Agency, or the original of the Assignment of Guarantee**
- **a copy of any written response to the demand provided by the lender to the holder**
- **an account which FSA can forward the purchase amount by EFT.**

**The amount due the holder from the Agency includes unpaid principal, unpaid interest to the date of demand, and interest which has accrued from the date of demand to the proposed payment date.**

The authorized agency official will select a proposed settlement date no later than 30 calendar days from the date of the holder's demand letter to FSA. FSA will only pay interest that accrues based on the accrual method established by the terms of the promissory note.

**Upon Agency request, the lender will provide a current statement stating the unpaid principal and interest owed by the borrower and the amount due the holder. A bank officer must certify the statement. Any discrepancy between the amount claimed by the holder and the information submitted by the lender must be resolved by the lender and the holder before payment will be approved by the Agency.**

**The Agency will not participate in resolution of any such discrepancy. When there is a discrepancy, the 30 day Agency payment requirement to the holder will be suspended until the discrepancy is resolved** (subparagraph A).

## 375 Repurchase of Guaranteed Portion From a Secondary Market Holder (7 CFR 762.144) (Continued)

### C Repurchase of the Loan or Note by FSA (Continued)

Within 30 calendar days of the holder's demand for purchase, the authorized agency official shall:

- review the borrower's loan file

  **Note:** If the file indicates that a rescheduling or reamortization could correct the default then the authorized agency official should remind the lender of their responsibility for expeditiously liquidating the loan collateral in the event of an FSA purchase. Restructuring of the loan cannot occur once FSA purchase occurs.

- verify the amounts owed to the lender and the holder

- complete FSA-2250 and forward it to FSC, FLOO for processing.

**At the time of purchase by the Agency, the original Assignment of Guarantee** (FSA-1980-36 or FSA-2242) **will be assigned by the holder to the Agency without recourse, including all rights, title, and interest in the loan.**

**Purchase by the Agency does not change, alter, or modify any of the lender's obligations to the Agency specified in the Lender's Agreement or the Guarantee. Nor does the purchase waive any of the Agency's rights against the lender. The Agency succeeds to all rights of the holder under the Guarantee including the right to set-off against the lender.**

### D Repurchase Price of the Loan or Note

**The repurchase by the lender will be for an amount equal to the portion of the loan held by the holder plus accrued interest.**

**The Agency Guarantee will not cover servicing fees that the lender accrues after the repurchase.**

When the holder makes a demand on FSA to purchase the guaranteed portion of the loan, the purchase price will be equal to the unpaid principal and accrued interest. See subparagraph E.

## 375 Repurchase of Guaranteed Portion From a Secondary Market Holder (7 CFR 762.144) (Continued)

### E Interest Paid Upon FSA Repurchase

**In the case of a request for Agency purchase, the government will only pay interest that accrues for up to 90 days from the date of the demand letter to the lender requesting the repurchase. However, if the holder requested repurchase from the Agency within 60 days of the request to the lender and for any reason not attributable to the holder and the lender, the Agency cannot make payment within 30 days of the holder's demand to the Agency, the holder will be entitled to interest to the date of the payment.** See 7 CFR 762.160(b)(4)(i), subparagraph 374 D.

If at the time the holder requests FSA to purchase a loan or note, more than 90 calendar days have passed since the holder's demand to the lender, the holder will only receive principal and interest due at the time of the holder's request to the lender.

Immediately upon FSA's repurchase FSA will accrue interest at the note rate. (Lender servicing fees are not paid or reimbursed after the repurchase.) In addition, FSA will not cover the lender's fees by allowing the lender to keep the fees out of proceeds received from the liquidation of the collateral after FSA repurchases. In addition, in the event of a loss, if the interest accrual has ceased according to subparagraph 359 A before the FSA repurchase, FSA will not cover the lender's servicing fees by allowing the lender to keep the fees out of proceeds received from the liquidation of the collateral from the ceasing of interest accrual to the repurchase date.

Unless otherwise agreed to by SED and the holder, payment will be made in 30 calendar days of the receipt of the request from the holder.

## 376 Actions After Agency Repurchase (7 CFR 762.144)

### A Request for Lender Repayment

**Within 180 days of the Agency's repurchase, the lender will reimburse the Agency the amount of purchase, plus accrued interest, in one of the following ways:**

- **by liquidating the loan security and paying the Agency its pro-rata share of liquidation proceeds**
- **paying the Agency [from it's own capital] the full amount paid to the holder plus any accrued interest**
- **the Agency may sell a purchased guaranteed loan on a non-recourse basis, if it determines that selling the portion of the loan that it holds is in the Government's best interest.**

If SED has a loan in their State, which has been purchased by FSA, that they propose to sell to another lender, they will obtain agreement from the current owner of the note and security instruments and forward the following to DAFLP:

- the reasons why the lender cannot comply with the 180-calendar-day reimbursement requirement
- a copy of the request from the lender to whom the loan will be sold
- economic justification for the sale price.

A nonrecourse sale will be at a price determined by DAFLP**. A non-recourse purchase from the Agency requires a written request to the Agency from the party that wants to purchase it, and written concurrence from the lender.**

## 376 Actions After Agency Repurchase (7 CFR 762.144) (Continued)

### A Request for Lender Repayment (Continued)

Once FSA purchases the guarantee from the holder, the authorized agency official shall immediately notify the lender in writing that they must continue to service the loan and pass all payments to FSA according to FSA-1980-27. The authorized agency official will request 1 of the following actions by the lender within 60 calendar days.

- Payment of the entire purchase amount (guaranteed portion plus accrued interest) of the loan held by FSA. Details of the purchase will be provided in the FSA request including:

  - date demand was made on the lender
  - date demand was made on FSA
  - name of the previous holder
  - amount of purchase price paid by FSA
  - daily interest accrual on the purchase amount.

- The authorized agency official shall complete FSA-2251 and forward the payment to FSC, FLOO. The lender must complete FSA-2241 indicating that the guarantee is to be terminated.

- A properly completed FSA-2254 with loan ledgers and supporting documents *** * ***. FSA-2254 will be coded for final loss review by SED or designee. If the loss amount is less than the amount held by FSA, the loss claim must include a check from the lender for the difference, plus interest up to the date of payment (subparagraph 360 F).

- A liquidation plan, if not already received (subparagraph 358 B). Interest accruing to FSA as holder will continue until payment is received from the lender. If liquidation is projected to take longer than 180 calendar days after FSA purchase, the lender will be requested to submit a final loss claim based on receiving the market value of the collateral. See FSA-2254 for calculation of the final loss claim.

FSA will make similar requests of the lender again after 90 and 120 calendar days. If the lender refuses or fails to comply with the request after 180 calendar days, then SED will follow the procedures in subparagraph B.

## 376 Actions After Agency Repurchase (7 CFR 762.144) (Continued)

### A Request for Lender Repayment (Continued)

If a lender fails to comply with the requests, SED shall:

- notify the lender of FSA's intent to the collect the purchase amount by administrative offset according to RD Instruction 1951-C

  **Notes:** RD 1951-C-1 or a similar format may be used.

  An administrative offset will occur against future loss claims the lender may submit.

- refer the case to the Regional OGC for referral to the US Attorney's office to initiate legal action to collect the amount owed FSA for purchase

- determine whether lender status should be revoked according to 7 CFR 762.106(a)(2)(ix), if the lender is a PLP or CLP lender. See Part 4 for further information on revoking lender status.

### B Failure to Reimburse FSA

If the lender does not reimburse FSA within 180 calendar days, **the lender will be liable for the repurchase amount and any expenses incurred by the Agency to maintain the loan in its portfolio or liquidate the security. While the Agency holds the guaranteed portion of the loan, the lender will transmit to the Agency any payment received from the borrower, including the pro-rata share of liquidation or other proceeds.**

**If the borrower files for reorganization under the provisions of the bankruptcy code or pays the account current while the purchase by the Government is being processed, the Agency may hold the loan as long it determines this action to be in the Agency's interest. If the lender is not proceeding expeditiously to collect the loan or reimbursement is not waived under this paragraph, the Agency will demand payment by the lender and collect the purchase amount through administrative offset of any claims due the lender.**

Upon approval by SED, FSA may continue as holder of the guaranteed portion of the loan until it can be refinanced or the bankruptcy plan is completed, whichever comes first. In such a situation, the authorized agency official shall notify the lender that the lender must send the pro rata share of the borrower's payments directly to FSA.

## Reports, Forms, Abbreviations, and Redelegations of Authority

### Reports

This table lists the required reports in this handbook.

| Report Control Number | Title | Reporting Period | Submission Date | Negative Report | Reference |
|---|---|---|---|---|---|
| RPT-1-00-FLP-09-2 | SDA Loan Review Summary | Annually | October 31 | Required | 84 |

### Forms

This table lists all forms referenced in this handbook.

| Number | Title | Display Reference | Reference |
|---|---|---|---|
| AD-1026 | Highly Erodible Land Conservation and Wetland Conservation Certification | | 66, 208 |
| FEMA-81-93 | Standard Flood Hazard Determination Form | | 138 |
| FmHA-449-34 | Loan Note Guarantee | | 267, 281 |
| FmHA-1980-64 | Interest Assistance Agreement | | 224, 228, 230 |
| FSA-1940-3 | Request for Obligation of Funds Guaranteed Loans | | 226, 230 |
| FSA-1980-25 | Application For Guarantee | | 108, 286, 360, 361, 363 |
| FSA-1980-27 | Loan Guarantee | | 364, 376 |
| FSA-1980-28 | Preferred Lender Application For Guarantee | | 108, 360, 361, 363 |
| FSA-1980-36 | Assignment of Guarantee | | 375 |
| FSA-1980-64 | Interest Assistance Agreement | | 224, 228, 230 |
| FSA-2014 | Verification of Income | | 152 |
| FSA-2015 | Verification of Debts and Assets | | 152 |
| FSA-2028 | Security Agreement | | 50, 280 |
| FSA-2072 | Cancellation of U.S. Treasury Check and/or Obligation | | 249 |

**Reports, Forms, Abbreviations, and Redelegations of Authority (Continued)**

**Forms (Continued)**

| Number | Title | Display Reference | Reference |
|---|---|---|---|
| FSA-2201 | Lender's Agreement | | Text |
| FSA-2202 | USDA-FSA Certified Lender Sticker | | 50 |
| FSA-2203 | Preferred Lender Sticker | | 53 |
| FSA-2211 | Application for Guarantee | | Text |
| FSA-2212 | Preferred Lender Application for Guarantee | | Text |
| FSA-2221 | Interest Assistance Agreement | | Text |
| FSA-2222 | Request for Interest Assistance Payment | | 228, 326 |
| FSA-2231 | Request for Obligation of Funds Guaranteed Loans | | 226, 230, 244 |
| FSA-2232 | Conditional Commitment | | Text |
| FSA-2233 | Lender Certification | | 247 |
| FSA-2235 | Loan Guarantee | | Text |
| FSA-2236 | Guaranteed Loan Closing Report | | 227, 247, 249, 286 |
| FSA-2241 | Guaranteed Farm Loan Status Report as of | | 250, 266, 355, 376, Ex. 12 |
| FSA-2242 | Assignment of Guarantee | | 373-375, Ex. 12 |
| FSA-2243 | Notice of Substitution of Lender (Transaction 4034) | | 287 |
| FSA-2244 | Guaranteed Loan Status Update Adjustment (Transaction 4048) | | 288 |
| FSA-2245 | Modification of Loan Guarantee | | 281, 313, 326, Ex. 12 |
| FSA-2246 | Notification of Transfer and Assumption of a Guaranteed Loan Transaction Code 4037 | | 281 |
| FSA-2247 | Guaranteed Loan Borrower Adjustments | | 281, 284, 288 |
| FSA-2248 | Guaranteed Farm Loan Default Status Report | | Text, Ex. 12 |
| FSA-2249 | Request for Restructuring Guaranteed Loans | | 313 |

**Reports, Forms, Abbreviations, and Redelegations of Authority (Continued)**

**Forms (Continued)**

| Number | Title | Display Reference | Reference |
|---|---|---|---|
| FSA-2250 | FSA Purchase of a Guaranteed Loan Portion | | 375 |
| FSA-2251 | Lender's Guaranteed Loan Payment to USDA | | 376 |
| FSA-2252 | Farm Loan Programs Guaranteed Writedown Worksheet | | 328, Ex. 12 |
| FSA-2253 | Shared Appreciation Agreement for Guaranteed Loans | | 181, 288, 328, 341, Ex. 12 |
| FSA-2254 | Guaranteed Loan Report of Loss | | 136, 288, 328, 342, Part 14, 376, Ex. 12 |
| FSA-2261 | Report on Collection Activities on Liquidated Accounts | | 266, 362, Ex. 12 |
| FSA-2262 | Notice of Liquidation Responsibility | | 362 |
| FSA-2291 | Lender's Processing Checklist | | 65, 95 |
| FSA-2292 | Guaranteed Loan Processing Checklist | | 65 |
| FSA-2293 | Annual File Review Checklist for SEL and CLP Lenders | | 267 |
| FSA-2294 | Debt Writedown Review Checklist | | 329 |
| FSA-2295 | Guaranteed Estimated Loss Review Checklist for SEL and CLP Lenders | | 342, 359 |
| FSA-2296 | Guaranteed Loan Final Loss Review Checklist | | 360 |
| IRS-1099-C | Cancellation of Debt | | 362 |
| IRS-8379 | Injured Spouse Claim and Allocation | | Ex. 17, 18 |
| RD 1951-C-1 | Notice of Intent to Collect by Administrative Offset | | 376 |
| RD 1956-1 | Application for Settlement of Indebtedness | | 363 |
| RD-1980-64 | Interest Assistance Agreement | | 224, 228, 230 |
| UCC1 | Financing Statement | | 364 |
| W-2 | Wage and Tax Statement | | 152 |

**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 |
|---|---|---|
| AASM | Application Authorization Security Management | 73 |
| ACT | Consolidated Farm and Rural Development Act | 1, 108, 286 |
| ADPB | average daily principal balance | 228, Ex. 10 |
| CAFO | Concentrated Animal Feeding Operation | 358, Ex. 15 |
| CL | conservation loan | Text, Ex. 2 |
| CMS | Credit Management System | Text |
| EL | emergency livestock loan | 108 |
| EO | economic opportunity loan | 108 |
| FmHA | Farmers Home Administration | 108, Part 9, Part 11, 360 |
| IA | interest assistance | 18, Parts 9, 11-15, Ex. 10 |
| IAO | Internal Administrative Offset | 363, Ex. 2, 17, 18 |
| INA | Immigration and Nationality Act | Ex. 7 |
| LINC | Lender Interactive Network Connection | 73, 266 |
| LOC | line of credit | Text |
| PLP | Preferred Lender Program | Text, Ex. 12 |
| PRWORA | Personal Responsibility and Work Opportunity Reconciliation Act of 1996 | Ex. 7 |
| SAA | Shared Appreciation Agreement | 286, 288, Ex. 2 |
| SDMS | State Directive Management System | 84 |
| SEL | Standard Eligible Lender | Text, Ex. 12 |
| USCIS | U.S. Citizenship and Immigration Services | Ex. 7, 8 |

### Redelegations of Authority

This table lists the redelegations of authority in this handbook.

| Redelegation | Reference |
|---|---|
| Administering handbook provisions | 20 |

**Definitions 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 which provides security in excess of the amount of security value equal to the loan amount.**

**Adjustment**

**Adjustment is a form of settlement that reduces the financial obligation to the Agency, conditioned upon the completion of payment of a specified amount at a future time. An adjustment is not a final settlement until all payments have been made under the agreement.**

**Administrative Appraisal Review**

**Administrative appraisal review is a review of an appraisal to determine if the appraisal:**

**(1) Meets applicable Agency requirements; and**
**(2) Is accurate outside the requirements of standard 3 of USPAP.**

**Agency**

**Agency is the FSA.**

***--Agency Official**

Agency official is any employee with FSA.--*

**Agricultural Commodity**

**Agricultural commodity is livestock, livestock products, grains, cotton, oilseeds, dry beans, tobacco, peanuts, sugar beets, sugar cane, fruit, vegetable, forage, tree farming, nursery crops, nuts, aquaculture species, and other plant and animal production, as determined by the Agency.**

**Allonge**

**Allonge is an attachment or an addendum to a promissory note.**

**Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)**

**Applicant**

**Applicant is the individual or entity applying for a loan or 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.**

**Assignment of Guaranteed Portion**

**Assignment of guaranteed portion is a process by which the lender transfers the right to receive payments or income on a guaranteed loan to another party, usually in return for payment in the amount of the loan's guaranteed principal. The lender retains the unguaranteed portion in its portfolio and receives a fee from the purchaser or assignee to service the loan and receive and remit payments according to a written assignment agreement. This assignment can be reassigned or sold multiple times.**

**Assignment of Indemnity**

**Assignment of indemnity is the transfer of rights to compensation under an insurance contract.**

**Assistance**

**Assistance is financial assistance in the form of a direct or guaranteed loan or interest subsidy or servicing action.**

**Assumption**

**Assumption is the act of agreeing to be legally responsible for another party's indebtedness.**

***--Authorized Agency Official**

Authorized agency official is an employee who has either inherent or delegated authority to complete the described action.**--***

**Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)**

**Average Agricultural Loan Customer**

**Average agricultural loan customer is a conventional farm borrower who is required to pledge crops, livestock, other chattel and/or real estate security for the loan. This term does not include a high-risk farmer with limited security and management ability who is generally charged a higher interest rate by conventional agricultural lenders. Also, this term does not include a low-risk farm customer who obtains financing on a secured or unsecured basis, who is able to pledge as collateral for a loan items such as savings accounts, time deposits, certificates of deposit, stocks and bonds, and life insurance.**

**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.** With respect to livestock herds and flocks, animals that are sold as a result of the normal culling process are typically treated as normal income security unless the borrower does not have replacements that will keep the numbers and production up to planned levels. However, if the borrower plans to make a significant reduction in the foundation livestock herd or flock, the animals that are sold in making this reduction will be considered basic security.

**Beginning Farmer**

**Beginning farmer is an individual or entity who:**

***--(1) Meets the loan eligibility requirements for a direct or guaranteed OL, FO, or CL--* 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;**

**Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)**

**Beginning Farmer (Continued)**

**(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.**

**Borrower (or Debtor)**

**Borrower (or debtor) is an individual or entity that has an outstanding obligation to the Agency or to a lender under any direct or guaranteed FLP loan, without regard to whether the loan has been accelerated. The term "borrower" includes all parties liable for such obligation, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed, sold, or conveyed, or who have been discharged of all such obligations owed to the Agency or guaranteed lender.**

**Cancellation**

**Cancellation is the final discharge of, and release of liability for, a financial obligation to the Agency on which no settlement amount has been paid.**

**Definitions 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 Security**

**Chattel security is property that may consist of, but is not limited to: crops; livestock; aquaculture species; farm equipment; inventory; accounts; contract rights; general intangibles; and supplies that are covered by financing statements and security agreements, chattel mortgages, and other security instruments.**

**Civil Action**

**Civil action is a court proceeding to protect the Agency's financial interests. A civil action does not include bankruptcy and similar proceedings to impound and distribute the bankrupt's assets to creditors, or probate or similar proceedings to settle and distribute estates of incompetents or decedents, and pay claims of creditors.**

**Compromise**

**Compromise is the settlement of an FLP debt or claim by a lump-sum payment of less than the total amount owed in satisfaction of the debt or claim.**

**Conditional Commitment**

**Conditional commitment is the Agency's commitment to a lender that the material the lender has submitted is approved subject to the completion of all listed conditions and requirements.**

**Conservation Contract**

**Conservation Contract is a contract under which a borrower agrees to set aside land for conservation, recreation or wildlife purposes in exchange for reduction of a portion of an outstanding FLP debt.**

**Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)**

***--Conservation Loan (CL)**

**CL means a loan made to eligible applicants to cover the costs to the applicant of carrying out a qualified conservation project.**

**Conservation Plan**

**Conservation plan means an NRCS-approved written record of the land user's decisions and supporting information, for treatment of a land unit or water as a result of the planning process, that meets NRCS Field Office Technical Guide quality criteria for each natural resource (soil, water, air, plants, and animals) and takes into account economic and social considerations. The conservation plan describes the schedule of operations and activities needed to solve identified natural resource problems and takes advantage of opportunities at a conservation management system level. This definition only applies to the direct loans and guaranteed loans for the Conservation Loan Program.**

**Conservation Practice**

**Conservation practice means a specific treatment that is planned and applied according to NRCS standards and specifications as a part of a resource management system for land, water, and related resources.**

**Conservation Project**

**Conservation project means conservation measures that address provisions of a conservation plan.--***

**Consolidation**

**Consolidation is the process of combining the outstanding principal and interest balance of two or more loans of the same type made for operating purposes.**

**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.**

**Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)**

**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.**

**Criminal Action**

**Criminal action is the prosecution by the United States to exact punishment in the form of fines or imprisonment for alleged violation of criminal statutes.**

**Definitions 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 Settlement**

**Debt settlement is a compromise, adjustment, or cancellation of an Agency debt.**

**Debt Writedown**

**Debt writedown is the reduction of the borrower's debt to that amount the Agency determines to be collectible based on an analysis of the security value and the borrower's ability to pay.**

**Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)**

**Default**

**Default is the failure of a borrower to observe any agreement with the Agency, or the lender in the case of a guaranteed loan, as contained in promissory notes, security instruments, and similar or related instruments.**

**Deferral**

**Deferral is a postponement of the payment of interest or principal, or both.**

**Delinquent Borrower**

**Delinquent borrower, for loan servicing purposes, is a borrower who has failed to make all scheduled payments by the due date.**

**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 operation during the production cycle when the disaster occurred.**

***--Downpayment Loan**

**Downpayment loan is a type of FO** direct **loan made to eligible applicants to finance a portion of a real estate purchase under part 764, subpart E of this chapter.--***

**Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)**

**Due Diligence**

**Due Diligence (762.128) is the process of evaluating real estate in the context of a real estate transaction to determine the presence of contamination from release of hazardous substances, petroleum products, or other environmental hazards and determining what effect, if any, the contamination has on the security value of the property.**

**Economic Emergency Loan**

**Economic Emergency loan is a loan that was made or guaranteed to an eligible applicant to allow for continuation of the operation during an economic emergency which was caused by a lack of agricultural credit or an unfavorable relationship between production costs and prices received for agricultural commodities. EE loans are not currently funded; however, such outstanding loans are serviced by the Agency or the lender in the case of a guaranteed EE loan.**

**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.**

**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.**

**Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)**

**Family Farm**

**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.**

**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 borrower.**

**Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)**

**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.**

**Farmer**

**Farmer is an individual, corporation, partnership, joint operation, cooperative, trust, or limited liability company that is the operator of a farm.**

**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 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 the** direct *** * * downpayment loan.**

**Farm Program Payments**

**Farm Program payments are benefits received from FSA for any commodity, disaster, or cost share program.**

**Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)**

**Feasible Plan**

**Feasible plan is when an applicant or borrower's cash flow budget or farm operating 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 operating 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 operating plan must be prepared that reflects a typical cycle. If the request is for only one cycle, a feasible plan for only one production cycle is required for approval.**

**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 is 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).**

**Foreclosure Sale**

**Foreclosure sale is the act of selling security either under the power of sale in the security instrument or through judicial proceedings.**

**Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)**

**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.**

**Graduation**

***--Graduation is the payment in full of all direct FLP loans, except for CLs, made for--* operating, real estate, or both purposes by refinancing with other credit sources either with or without an Agency guarantee.**

**Guaranteed Loan**

**Guaranteed loan is a loan made and serviced by a lender for which the Agency has entered into a Lender's Agreement and for which the Agency has issued a Loan Guarantee. This term also includes guaranteed lines of credit except where otherwise indicated.**

**Guarantor**

**Guarantor is a party not included in the farming operation who assumes responsibility for repayment in the event of default.**

**Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)**

**Hazard Insurance**

**Hazard insurance is insurance covering fire, windstorm, lightning, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, builder's risk, public liability, property damage, flood or mudslide, workers compensation, or any similar insurance that is available and needed to protect the Agency security or that is required by law.**

**Highly Erodible Land**

**Highly erodible land is land as determined by Natural Resources Conservation Service to meet the requirements provided in section 1201 of the Food Security Act of 1985.**

**Holder**

**Holder is a person or organization other than the lender that holds all or a part of the guaranteed portion of an Agency guaranteed loan but has no servicing responsibilities. When the lender assigns a part of the guaranteed loan by executing an Agency assignment form, the assignee becomes a holder.**

**Inaccurate Information**

**Inaccurate information is incorrect information provided by an applicant, borrower, lender, or other source without the intent of fraudulently obtaining benefits.**

**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.**

**Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)**

**In-House Expenses**

**In-house expenses are expenses associated with credit management and loan servicing by the lender and the lender's contractor. In-house expenses include, but are not limited to, employee salaries, staff lawyers, travel, supplies, and overhead.**

**Interest Assistance Agreement**

**Interest Assistance Agreement is the appropriate Agency form executed by the Agency and the lender containing the terms and conditions under which the Agency will make interest assistance payments to the lender on behalf of the guaranteed loan borrower.**

**Internal Administrative Offset (IAO)**

Internal Administrative Offset (IAO) is a non-centralized administrative offset between a USDA creditor agency and a USDA payment authorizing agency.

**Joint Financing Arrangement**

**Joint financing arrangement is an arrangement in which two or more lenders make separate loans simultaneously to supply the funds required by one applicant.**

**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.**

**Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)**

**Leasehold**

**Leasehold is a right to use farm property for a specific period of time under conditions provided for in a lease agreement.**

**Lender**

**Lender is the organization making and servicing a loan, or advancing and servicing a line of credit that is guaranteed by the Agency. The lender is also the party requesting a guarantee.**

**Lender's Agreement**

**Lender's Agreement is the appropriate Agency form executed by the Agency and the lender setting forth their loan responsibilities when the Loan Guarantee is issued.**

**Lien**

**Lien is a legally enforceable claim against real or chattel property of another obtained as security for the repayment of indebtedness or an encumbrance on property to enforce payment of an obligation.**

**Line of Credit Agreement**

**Line of Credit Agreement is a contract between the borrower and the lender that contains certain lender and borrower conditions, limitations, and responsibilities for credit extension and acceptance where loan principal balance may fluctuate throughout the term of the contract.**

**Liquidation**

**Liquidation is the act of selling security for recovery of amounts owed to the Agency or lender.**

**Liquidation Expenses**

**Liquidation expenses are the costs of an appraisal, due diligence evaluation, environmental assessment, outside attorney fees, and other costs incurred as a direct result of liquidating the security for a direct or guaranteed loan. Liquidation expenses do not include internal Agency expenses for a direct loan or in-house expenses for a guaranteed loan.**

**Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)**

**Livestock**

**Livestock is a member of the animal kingdom, or product thereof, as determined by the Agency.**

**Loan Agreement**

**Loan Agreement is a contract between the borrower and the lender that contains certain lender and borrower agreements, conditions, limitations, and responsibilities for credit extension and acceptance.**

**Loan Servicing Programs**

**Loan servicing programs include any primary loan servicing program, conservation contract, current market value buyout, and homestead protection.**

**Loan Transaction**

**Loan transaction is any loan approval or servicing action.**

**Loss Claim**

**Loss claim is a request made to the Agency by a lender to receive a reimbursement based on a percentage of the lender's loss on a loan covered by an Agency guarantee.**

**Loss Rate**

**Loss rate is the net amount of loan loss claims paid on FSA guaranteed loans made in the previous 7 years divided by the total loan amount of all such loans guaranteed during the same period.**

**Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)**

**Major Deficiency**

**Major deficiency is a deficiency that directly effects the soundness of the loan.**

**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.**

**Minor Deficiency**

**Minor deficiency is a deficiency that violates agency regulations, but does not affect the soundness of the loan.**

**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."**

**Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)**

**Natural Disaster**

**Natural disaster is unusual and adverse weather conditions or natural phenomena that have substantially affected farmers by causing severe physical or production, or both, losses.**

**Negligent Servicing**

**Negligent servicing is servicing that fails to include those actions that are considered normal industry standards of loan management or comply with the lender's agreement or the guarantee. Negligent servicing includes failure to act or failure to act in a timely manner consistent with actions of a reasonable lender in loan making, servicing, and collection.**

**Negotiated Sale**

**Negotiated sale is a sale in which there is a bargaining of price or terms, or both.**

**Net Recovery Value of Security**

**Net recovery value of security is the market value of the security property, assuming that the lender in the case of a guaranteed loan, or the Agency in the case of a direct loan, will acquire the property and sell it for its highest and best use, less the lender's or the Agency's costs of property acquisition, retention, maintenance, and liquidation.**

**Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)**

**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.**

**Nonessential Assets**

**Nonessential assets 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.**

**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.**

**Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)**

**Offset**

Offset is the referral of a debt to TOP for offset of payments made to a debtor by Federal agencies other than USDA.

**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 direct 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.**

**Partial Release**

Partial release is the release of a portion of the security used as collateral for a loan, usually accomplished by the sale of the property.

**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.**

**Past Due**

**Past due is when a payment is not made by the due date.**

**Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)**

**Potential Liquidation Value**

**Potential liquidation value is the amount of a lender's protective bid at a foreclosure sale. Potential liquidation value is determined by an independent appraiser using comparables from other forced liquidation sales.**

**Present Value**

**Present value is the present worth of a future stream of payments discounted to the current date.**

**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.).**

**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.**

**Program Loans**

***--Program loans include FO, CL, 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.**

**Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)**

**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.**

**Prospectus**

**Prospectus consists of a transmittal letter, a current balance sheet and projected year's budget which is sent to commercial lenders to determine that lenders interest in financing or refinancing specific Agency direct loan applicants and borrowers.**

**Protective Advances**

**Protective advance is an advance made by the Agency or a lender to protect or preserve the collateral from loss or deterioration.**

**Purchase Money Interest**

Purchase money interest is a component of UCC dealing with security and lien position. A lender providing for a crop or a particular piece of equipment can frequently have first position on that item despite other financing statements in place.

**Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)**

**Reamortization**

**Reamortization is the rewriting of rates or terms, or both, of a loan made for real estate purposes.**

**Recapture**

Recapture is the amount that a guaranteed lender is entitled to recover from a guaranteed loan borrower in consideration for writing down a portion of their guaranteed loan debt when that loan was secured by real estate and that real estate increases in value. Also, the act of collecting shared appreciation.

**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.**

**Recoverable Cost**

**Recoverable cost is a loan cost expense chargeable to either a borrower or property account.**

**Recreation Loan**

**Recreation loan is a loan that was made to eligible applicants to assist in the conversion of all or a portion of the farm they owned or operated to outdoor income producing recreation enterprises to supplement or supplant farm income. RL's are no longer funded, however, such outstanding loans are serviced by the Agency.**

**Redemption Right**

**Redemption right is a Federal or state right to reclaim property for a period of time established by law, by paying the amount paid at the involuntary sale plus accrued interest and costs.**

**Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)**

**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.**

**Rescheduling**

**Rescheduling is the rewriting of the rates or terms, or both, of a loan made for operating purposes.**

**Restructuring**

**Restructuring is changing the terms of a debt through rescheduling, reamortization, deferral, writedown, or a combination thereof.**

**Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)**

**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 or** lender **a security interest on real or personal property.**

**Security Value**

**Security value is the market value of real estate or chattel property (less the value of any prior liens) used as security for an Agency** or lender's **loan.**

**Shared Appreciation Agreement**

**Shared Appreciation Agreement is an agreement between the Agency, or a lender in the case of a guaranteed loan, and a borrower on the appropriate Agency form that requires the borrower who has received a writedown on a direct or guaranteed loan to repay the Agency or the lender some or all of the writedown received, based on a percentage of any increase in the value of the real estate securing an SAA at a future date.**

**Definitions 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.**

**Soil and Water Loan**

**Soil and Water loan is a loan that was made to an eligible applicant to encourage and facilitate the improvement, protection, and proper use of farmland by providing financing for soil conservation, water development, conservation, and use; forestation; drainage of farmland; the establishment and improvement of permanent pasture; pollution abatement and control; and other related measures consistent with all Federal, State and local environmental standards. SW loans are no longer funded, however, such outstanding loans are serviced by the Agency.**

**State Beginning Farmer Program**

State Beginning Farmer Program is any program that is carried out by, or under contract to, a State and designed to assist persons in obtaining the financial assistance necessary to establish a new or maintain a recently established farming operation.

***--Streamlined Conservation Loan (CL)**

**Streamlined CL means a direct or guaranteed CL made to eligible applicants based on reduced documentation.--***

**Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)**

**Subordination**

**Subordination is a creditor's temporary relinquishment of all or a portion of its lien priority in favor of another creditor, providing the other creditor with a priority right to collect a debt of a specific dollar amount from the sale of the same collateral.**

**Subsequent Loans**

**Subsequent loan is any FLP loan processed by the Agency after an initial loan of the same type has been made to the same borrower.**

**Technical Appraisal Review**

**Technical appraisal review is a review of an appraisal to determine if such appraisal meets the requirements of USPAP pursuant to standard 3 of USPAP.**

**Transfer and Assumption**

**Transfer and assumption is the conveyance by a debtor to an assuming party of the assets, collateral, and liabilities of a loan in return for the assuming party's binding promise to pay the debt outstanding or the market value of the collateral.**

**Typical Plan**

Typical plan is a projected income and expense statement listing all anticipated cash flows for a typical 12 month production cycle; including all farm and nonfarm income and all expenses (including debt service) to be incurred by the borrower during such period.

**Typical Cash Flow Budget**

Typical cash flow budget is a cash flow budget that reflects the cash inflows and outflows the operation will likely incur during a normal production cycle.

**Trust**

**Trust is an entity that under applicable state law meets the criteria of being a trust of any kind but does not meet the criteria of being a farm cooperative, private domestic corporation, partnership, or joint operation.**

**Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)**

**Unaccounted for Security**

**Unaccounted for security is security for a direct or guaranteed loan that was misplaced, stolen, sold, or otherwise missing, where replacement security was not obtained or the proceeds from its sale have not been applied to the loan.**

**Unauthorized Assistance**

**Unauthorized assistance is any loan, loan servicing action, lower interest rate, loan guarantee, or subsidy received by a borrower, or lender, for which the borrower or lender was not eligible, which was not made in accordance with all Agency procedures and requirements, or which the Agency obligated from the wrong appropriation or fund. Unauthorized assistance may result from borrower, lender, or Agency error.**

**Uniform Standards of Professional Appraisal Practice**

**Uniform Standards of Professional Appraisal Practice are standards governing the preparation, reporting, and reviewing of appraisals established by the Appraisal Foundation pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.**

**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.**

**U. S. Attorney**

**U. S. Attorney is an attorney for the United States Department of Justice.**

**Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)**

**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.**

**Wetlands**

**Wetlands are those lands or areas of land as determined by the Natural Resources Conservation Service to meet the requirements provided in section 1201 of the Food Security Act of 1985.**

**Working Capital**

**Working capital is cash available to conduct normal daily operations including, but not limited to, paying for feed, seed, fertilizer, pesticides, farm supplies, cooperative stock, and cash rent.**

**State Supplements**

The following table lists required State supplements.

| Subparagraph | State Supplement |
|---|---|
| 267 B | Guidance on determining how the file review requirement will be met in their State. |

**Note:** SED's shall:

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

**Interim Guidance: Documentary Evidence of Status as a 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 documents listed below 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 one of the categories of "qualified alien" 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. Under the Immigration and Nationality Act (the "INA"), all aliens over the age of 14 who remain in the United States for longer than 30 days are required to register with the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) 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., a USCIS Form I-94) at the time of entry. The documents listed below that are registration documents are indicated with an asterisk ("*"). Each of the documents listed below will demonstrate lawful status, and you should not require presentation of a registration document if the applicant presents one 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 registration document listed below 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 USCIS; if the applicant presents a registration document that does not meet this standard, sending USCIS a copy of the document will assist it in verifying the applicant's status quickly and accurately.

**Interim Guidance: Documentary Evidence of Status as a Qualified Alien (Continued)**

**A. Alien Lawfully Admitted for Permanent Residence**

*USCIS Form I-551 (Alien Registration Receipt Card, commonly known as a "green card"); or
Unexpired Temporary I-551 stamp in foreign passport or on *USCIS Form I-94.

**B. Asylee**

*USCIS Form I-94 annotated with stamp showing grant of asylum under section 208 of the INA;
*USCIS Form I-688B (Employment Authorization Card) annotated "274a.12(a)(5)";
*USCIS Form I-766 (Employment Authorization Document) annotated "A5";
Grant letter from the Asylum Office of USCIS; or
Order of an immigration judge, granting asylum.

**C. Refugee**

*USCIS Form I-94 annotated with stamp showing admission under Sec. 207 of the INA;
*USCIS Form I-688B (Employment Authorization Card) annotated "274a.12(a)(3)";
*USCIS Form I-766 (Employment Authorization Document) annotated "A3"; or
USCIS Form I-571 (Refugee Travel Document).

**D. Alien Paroled Into the U.S. for a Least One-Year**

*USCIS Form I-94 with stamp showing admission for at least one year under section 212(d)(5) of the INA. (Applicant cannot aggregate periods of admission for less than one year to meet the one-year requirement.)

**E. Alien Whose Deportation or Removal Was Withheld**

*USCIS Form I-688B (Employment Authorization Card) annotated "274a.12(a)(10)";
*USCIS Form I-766 (Employment Authorization Document) annotated "A10"; or
Order from an immigration judge showing deportation withheld under Sec. 243(h) of the INA as in effect prior to April 1, 1997, or removal withheld under Sec. 241(b)(3) of the INA.

**F. Alien Granted Conditional Entry**

*USCIS Form I-94 with stamp showing admission under Sec. 203(a)(7) of the INA;
*USCIS Form I-688B (Employment Authorization Card) annotated "274a.12(a)(3)"; or
*USCIS Form I-766 (Employment Authorization Document) annotated "A3".

**Interim Guidance: Documentary Evidence of Status as a Qualified Alien (Continued)**

### G. Cuban/Haitian Entrant

*USCIS Form I-551 (Alien Registration Receipt Card, commonly known as a "green card") with the code CU6, CU7, or CH6
Unexpired temporary I-551 stamp in foreign passport or on
*USCIS Form I-94 with the code CU6 or CU7; or
USCIS Form I-94 with stamp showing parole as "Cuba/Haitian Entrant" under Section 212(d)(5) of the 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 USCIS 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 USCIS Form G-845 and Supplement, along with the alien registration number and a copy of any expired USCIS document presented, with the local USCIS office to verify status. As with any documentation of immigration status, you should confirm that the status information you receive back from USCIS 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 USCIS for a replacement document for one of the documents identified above, file USCIS Form G-845 and Supplement along with a copy of the receipt with the local USCIS office to verify status. Upon return receipt of information from USCIS, 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 a 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. Non-Citizen National**

**U.S. Non-Citizen 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 non-citizen 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 set forth in Paragraphs A and B below are drawn from existing guidance published by the Social Security Administration ("SSA") and regulations issued by the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS), regarding determination of U.S. citizenship and nationality; the lists in Paragraphs C through F are drawn solely from the SSA guidance. These lists are not exhaustive; you should refer to guidance issued by the agency or department overseeing your program to determine if it accepts documents or other evidence of citizenship not listed below.

**A. Primary Evidence:**

**(1)** A birth certificate showing birth in one 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 Paragraph C below.

**(2)** United States passport (except limited passports, which are issued for periods of less than five 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 USCIS through a Federal or State court, or through administrative naturalization after December 1990 to individuals who are individually naturalized; the N-570 is a replacement certificate issued when the N- 550 has been lost or mutilated or the individual's name has been changed);

**(6)** Certificate of Citizenship (N-560 or N-561) (issued by USCIS to individuals who derive U.S. citizenship through a parent; the N- 561 is a replacement certificate issued when the N-560 has been lost or mutilated or the individual's name has been changed);

**Interim Guidance: Documentary Evidence of Status as a U.S. Non-Citizen National (Continued)**

**(7)** United States Citizen Identification Card (I-197) (issued by USCIS 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 USCIS to a collectively naturalized citizen of the 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 the U.S. who derives citizenship through a parent but does not have an 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 one of the documents listed in A above, the following may be relied upon to establish U.S. citizenship or nationality:

**(1)** Religious record recorded in one 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 three 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 first 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;
**(5)** Adoption Finalization Papers showing the child's name and place of birth in one 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 above in which the child was born will not release a birth certificate prior to final adoption, a statement from a state-approved adoption agency showing the child's name and place of birth in one of such jurisdictions (NOTE: the source of the information must be an original birth certificate and must be indicated in the statement); or
**(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 one 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)).

**Interim Guidance: Documentary Evidence of Status as a U.S. Non-Citizen National (Continued)**

**C. Collective Naturalization:** If the applicant cannot present one of the documents listed in A or B above, 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 the 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 the 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 the 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 the U.S., U.S. possession or territory or the Canal Zone on June 28, 1932.

**(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, the 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 prior to 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). Note: 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 one of the documents listed in A or B above, you should 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 one parent resided in the U.S. or an outlying possession prior to the applicant's birth.

**(2) Applicant born abroad to a U.S. citizen parent and a U.S. non-citizen national parent:** Evidence that one parent is a U.S. citizen and that the other is a U.S. non-citizen national, evidence of the relationship of the applicant to the U.S. citizen parent, and evidence that the U.S. citizen parent resided in the U.S., a U.S. possession, American Samoa or Swain's Island for a period of at least one year prior to 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 the U.S. prior to the applicant's birth or, for births after December 24, 1952, evidence that the mother had resided, prior to the child's birth, in the U.S. or a U.S. possession for a period of one 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 one 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 one 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 one of the above categories but is unable to present the listed documentation:**

**(1)** If the applicant is in the U.S., refer him or her to the local USCIS office for determination of U.S. citizenship;

**(2)** If the applicant is outside the 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 above 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 USCIS 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. Note: 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 the U.S. at that time and continued to reside in the U.S.

**(5) Applicants With Disabilities and Nondiscrimination:** If 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), 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. See Nondiscrimination Advisory, Attachment 2 to Interim Guidance.

**Calculations and Formulas**

# Lender Loss Rate Calculation

$$\text{Lender Loss Rate} = \frac{\text{(Total } \textit{losses paid} \text{ on loans made during the past 7 years)}}{\text{(Total } \textit{loan amount} \text{ during the past 7 years)}}$$

**Calculations and Formulas (Continued)**

# Present Value Calculation

**Present Value is the current value of an expected future cashflow. In order to execute a debt writedown, the present value of the loan being written down must be greater than or equal to the net recovery value of the loan's security.**

**The present value is used when the Authorized Agency Official fills out Form FSA 1980-88 (see paragraph 328)**

## Balance Available is Projected to Remain CONSTANT During Loan Repayment Schedule

**Balance Available**

| | | |
|---|---|---|
| 1. Balance Available for Term Debt Repayment (BATDR) | $ _____ | |
| 2. All Other Debt Payments | –$ _____ | |
| **3. Balance Available (line 1 – line 2)** | | $ _____ |

**Present Value**

| | | |
|---|---|---|
| 4. Repayment Schedule (in years) | _____ | |
| 5. Interest Rate | _____ | % |
| 6. Loan Amortization Factor | _____ | |
| 7. **Present Value = Balance Available (Line 3) divided by Loan Amortization Factor (Line 6)** | | $ _____ |

Loan Amortization Factor is a function of Repayment Schedule and Interest Rate. See the **Loan Amortization Reference Book** to determine the Loan Amortization Factor.

Actual formula for present value of a regular payment stream: $V = A\left[\frac{1-(1+i)^{-N}}{i}\right]$

where V equals value, A is the payment, i is the interest rate, and N is the number of payments in months or years as applicable. Use of conversion table or calculator is recommended.

**Calculations and Formulas (Continued)**

# Present Value Calculation (continued)

## Balance Available is Projected to CHANGE During Loan Repayment Schedule

**Subsequent Balance Available (balance Available After Balance Change)**

1. Balance Available for Term Debt Repayment (BATDR) (After balance change) $ _____
2. All Other Debt Payments $ _____
3. **Subsequent Balance Available = BATDR (Line 1) minus All Other Debt Payments (Line 2) =** **$** _____

**Subsequent Present Value**

4. Repayment Schedule (total term of the restructured loan in years or months) _____
5. Interest Rate _____ %
6. Loan Amortization Factor _____
7. **Subsequent Present Value = Subsequent Balance Available (Line 3) divided by Loan Amortization Factor (Line 6)** **$** _____

**Initial Balance Available (balance Available Before Balance Change)**

8. Balance Available for Term Debt Repayment (BATDR) (Before balance change) $ _____
9. All Other Debt Payments $ _____
10. **Initial Balance Available = BATDR (Line 8) minus All Other Debt Payments (Line 9) =** **$** _____

**Initial Present Value**

11. Period Initial Balance is Available (years or months) _____
12. Interest Rate _____ %
13. Loan Amortization Factor _____
14. **Initial Present Value = Initial Balance Available (Line 10) divided by Loan Amortization Factor (Line 13)** **$** _____

15. **Subsequent Present Value (Line 7) + Initial Present Value (Line 14)** **$** _____

16. **Subsequent Balance Available Divided by Initial Loan Amortization Factor = Subsequent Balance Available (Line 3) ÷ Initial Balance Available Loan Amortization Factor (Line 13)** **$** _____

**Present Value Of Uneven Payments**

17. **Present Value of Uneven Payments = (Line 15)–(Line 16)** **$** _____

Loan Amortization Factor is a function of Repayment Schedule and Interest Rate. See the **Loan Amortization Reference Book** to determine the Loan Amortization Factor.

**Calculations and Formulas (Continued)**

# Net Recovery Value = (A+B) - C

Net Recovery Value is
–the estimated market value of security
–plus any expected revenue or rent generated by the security
–minus any reasonable lender incurred liquidation expenses

In order to execute a debt writedown, the net recovery value must be equal to or less than the present value of the loan being written down.

The net recovery value is used when the Authorized Agency Official fills out Form FSA 1980-88 (see paragraph 328)

**A. Market Value of Property**
**(based on appraisal conducted according to § 762.127)**
**(Part 8, Section 4, Subsection 3)** _____

**B. Expected Income or Revenue**
1. Annual Rent x Holding Period (HP)[1] _____
2. Annual Royalties x HP _____
3. Other Annual Income x HP _____
4. Annual % Property Appreciation x HP + _____
Total _____

**C. Expenses**
1. Prior Lienholder Indebtedness (P&I) _____
2. Annual Taxes and Assessments x HP _____
3. Annual Property Depreciation x HP _____
4. Annual Management Costs x HP _____
5. Essential Repairs to Secure and Resell _____
6. Other Costs:
Taxes _____
Closing Costs _____
Surveys _____
Administrative Costs Not Considered "In-House" _____
7. Resell Expenses-Commission, Advertising _____
8. Total Interest Cost During Holding Period (Note Rate) _____
9. Hazardous Waste Cleanup + _____
Total _____

[1] HP=Holding Period in years or percentages thereof. Typically 90 days unless longer period is agreed to by FSA.

**D. Net Recovery Value**

Market Value of Property + Expected Income or Revenue - Expenses = Net Recovery Value

_____ + _____ - _____ = $_____

**Calculations and Formulas (Continued)**

**Average Daily Principal Balance and IA Payment Calculations**

Calculate ADPB by multiplying the principal balance times the actual number of days it is outstanding. The sum of the daily principal balance is then divided by the total calendar days outstanding for a partial year or by 365 calendar days for a full year regardless of the interest accrual method.

The following is an example of a full year calculation for ADPB.

| Date | Number of Days | Principal Balance | Total |
|---|---|---|---|
| January 1 – April 15 | 104 | $25,000 | $2,600,000 |
| April 16 – July 15 | 91 | $20,000 | $1,820,000 |
| July 16 – September 15 | 62 | $15,000 | $930,000 |
| September 16 – January 1 | 108 | $10,000 | $1,080,000 |
| **Total** | **365** | | **$6,430,000** |

$6,430,000 ÷ 365 = $17,616.44 ADPB for a full year.

The following is an example of a **partial year** calculation for ADPB.

| Date | Number of Days | Principal Balance | Total |
|---|---|---|---|
| June 12 – August 2 | 51 | $15,000 | $765,000 |
| August 3 – September 28 | 57 | $10,000 | $570,000 |
| September 29 – October 29 | 31 | $12,000 | $372,000 |
| **Total** | **139** | | **$1,707,000** |

$1,707,000 ÷ 139 = $12,280.58 ADPB for the partial year.

**Note:** For the purpose of calculating ADPB for payment of IA, for loans made after June 8, 2007, the principal balance for calculating interest assistance shall not exceed $400,000 or the original loan amount, whichever is less, on any given day.

**Calculations and Formulas (Continued)**

**Average Daily Principal Balance and IA Payment Calculations (Continued)**

The following is an example of a loan, made under the rule limiting IA to 5 years and $400,000 or the original loan amount, whichever is less, that is restructured on July 1st, with capitalized interest above the original loan amount. For purposes of this example, the original loan amount was $300,000.

The lender's actual ledger may look like the following.

| Date | Number of Days | Principal Balance | Total |
|---|---|---|---|
| January 1 – July 1 | 181 | $280,000 | $50,680,000 |
| July 2 – January 1 | 184 | $310,000 | $57,040,000 |
| **Total** | **365** | | **$107,720,000** |

$107,720,000 ÷ 365 = $295,068.49 ADPB for a full year.

For purposes of calculating IA on this loan, ADPB should be calculated as follows.

| Date | Number of Days | Principal Balance | Total |
|---|---|---|---|
| January 1 – July 1 | 181 | $280,000 | $50,680,000 |
| July 2 – January 1 | 184 | $300,000 | $55,200,000 |
| **Total** | **365** | | **$105,880,000** |

$105,880,000 ÷ 365 = $290,082.19 ADPB for a full year.

- The lender can use interest basis (360, 365, 360/365) as indicated by the promissory note for calculating interest for the borrower. Some methods result in a slightly higher interest payment by the borrower; however, this is irrelevant to the amount FSA will pay, which is fixed at 4 percent.

- An interest assistance claim submitted with interest accrual based on 360 and then multiplied by 365 is not acceptable.

- If a loan is closed on a 365-calendar-day basis, interest that accrues on February 29 is not recognized by the FSC, FLOO computer system and will not be paid.

- GLS does not count the first day of the claim period. The ending day of a claim period becomes the first day on the next claim period.

**Calculations and Formulas (Continued)**

**IA Payment Calculation**

| **Full Year** |
|---|
| ADPB x 4 percent<br><br>**Note:** Interest basis is not an issue.<br><br>**Example:** $100,000 x 4 percent = $4,000 |
| **Partial Year (360-Day Base)** |
| ADPB x 4 percent x [(number of months in the claim period x 30 calendar days) + additional days in excess of a month] ÷ 360<br><br>**Note:** Convert all months to 30 calendar days. The system does not count the first day of the claim period. The ending day of a claim period becomes the first day on the next claim period.<br><br>**Example:** Claim period is March 1 through June 5 (3 months x 30 calendar days = 90 + 5 - 1 = 94 calendar days). $100,000 x 4 percent = $4,000 x 94 calendar days ÷ 360 = $1,044.44 interest assistance payment. |
| **Partial Year (365-Day Base)** |
| ADPB x 4 percent x actual days in the claim period ÷ 365.<br><br>**Note:** Count actual days in the month. The system does not count the first day of the claim period. The ending day of a claim period becomes the first day on the next claim period.<br><br>**Example:** Claim period is March 1 through June 5, which equals 97 - 1 calendar days. $100,000 x 4 percent = $4,000 x 96 calendar days ÷ 365 = $1,052.05 interest assistance payment. |

**Lender Documentation and Reporting Requirements**

| Document Submitted | SEL | CLP | PLP |
|---|---|---|---|
| **General Loan Servicing** | | | |
| FSA-2241 | √ | √ | √ |
| Projected Cash Flow for the coming year (for Lines of Credit). | √ | | |
| Borrower's Balance Sheet and Income Expense Statement for the previous year, if applicable. | √ | | |
| Annual Farm Inspection | √ | | |
| Narrative and Certification that the Borrower Analysis has been performed and borrower progress is satisfactory. | | √ | |
| Certification that projected cash flow is feasible (for Lines of Credit). | | √ | |
| | | | |
| **Secondary Market** | | | |
| FSA-2242 | √ | √ | √ |
| | | | |
| **Distressed Servicing** | | | |
| FSA-2248 (every 60 days after initial borrower/lender meeting). | √ | √ | √ |
| FSA-2254 | √ | √ | √ |
| Agency approval of the Liquidation Plan. | √ | √ | |
| FSA-2261 | √ | √ | √ |
| **Restructuring Loans** | | | |
| Agency Approval of Restructuring Request. | √ | | |
| Written Certification that the requirements of section 1980.145 have been met. | | √ | |
| Memo explaining the restructuring and certifying that the loan has become current. | | √ | √ |
| Narrative describing the proposed restructuring. | √ | | |
| A feasible plan. | √ | | |
| Current financial statement from all liable parties. | √ | | |
| Verification of nonfarm and other farm income. | √ | | |
| Verification of all debts of $1,000 or more. | √ | | |
| Borrower Credit Report | √ | | |
| Financial history for previous 3 years. | √ | | |
| Production history for the previous 3 years. | √ | | |
| Copies of restructured Promissory Notes. | √ | √ | √ |
| Copy of FSA-2248 stating the loan is current under restructured conditions. | √ | √ | √ |
| Request for Capitalization of Interest. | √ | | |
| FSA-2245 | √ | √ | √ |

**Lender Documentation and Reporting Requirements (Continued)**

| Document Submitted | SEL | CLP | PLP |
|---|---|---|---|
| **Debt Writedown** | | | |
| Request Agency concurrence. | √ | √ | √ |
| Balance Sheet | √ | √ | |
| Production History | √ | √ | |
| Financial History | √ | √ | |
| Cash Flow Statement | √ | √ | |
| Narrative explaining why no other restructuring option would work. | √ | √ | √ |
| A current appraisal of all property securing the loan. | √ | √ | √ |
| FSA-2252 | √ | √ | √ |
| FSA-2253 | √ | √ | √ |
| FSA-2254 | √ | √ | √ |

**Memorandum of Understanding**

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is between Farm Service Agency (FSA), formerly known as the Farmers Home Administration (FmHA), as to farm loans, and the Federal Deposit Insurance Corporation (FDIC).

### General Purpose

The purpose of this MOU is to clarify and define certain responsibilities of FSA and the FDIC, in its capacity as receiver (Receiver) of a failed insured depository institution (closed bank), with regard to FSA Loan Note Guarantees, Contracts of Guarantee and Conditional Commitments for Guarantee to which the closed bank was a party. It is also the purpose of this MOU to outline joint policies that will assist in the preservation of the value of FSA guaranteed loans and of borrowers' operations. It acknowledges that cooperative action is necessary to preserve these values for the benefit of the Receiver, the borrower, and FSA. It is not the purpose of this MOU to abrogate existing statutes, rules or regulations of either the FDIC or FSA. This MOU does not create any legal rights or obligations on the part of any third parties.

### Identification and Analysis of FSA Guaranteed Loans After a Bank is Closed

On the first business day following the closing of a bank that has FSA guaranteed loans, the Receiver will notify the FSA's Deputy Administrator for Farm Loan Programs in Washington, DC. The FSA's Deputy Administrator for Farm Loan Programs will advise the Receiver of the proper FSA contacts for the State or States in which the closed bank has guaranteed loans. The Receiver's notice to these FSA contacts will provide FSA with the name of the closed bank, the FDIC closing manager and other key FDIC personnel, the address to which any written correspondence regarding the closed bank is to be sent, the telephone number of the FDIC at the closed bank, and a copy of the FDIC's public notice regarding the latest date that claims can be filed against the closed bank's estate.

As long as the Receiver retains any FSA guaranteed loans, the Receiver will promptly notify FSA of any change in such contact information. FSA may rely upon the prior contact information until it receives the changed information from the Receiver.

Not later than 30 days after receipt of the above-mentioned notification of bank closing FSA will:

- provide the Receiver with a list of:
  (i) all FSA guaranteed loans in the closed bank's loan portfolio together with a list of any FSA Conditional Commitments for Guarantee which have been issued to the closed bank; for each guaranteed loan this list will include the FSA case number, borrower's name, the loan date, and original principal amount; and
  (ii) collateral for the loans to the extent reflected in FSA's records; at the option of FSA, this information may be furnished by providing copies of the lender's original request for guarantee.
- commence a review:
  (i) of the closed bank's records of FSA guaranteed loans in order to determine whether, and in what manner, the closed bank failed to meet FSA's standards in servicing or originating the loans; and
  (ii) of each FSA guaranteed operating loan with the Receiver and jointly determine if it is financially feasible to continue with the operation (including advancing funds for lines of credit) through the current crop year.

Such review shall take place at the closed bank's premises, or such other place as the Receiver and the FSA shall agree, and shall be completed within 30 days after commencement.

Notwithstanding the foregoing, if the Receiver receives a request for advancement of funds from a borrower under an FSA guaranteed operating loan prior to FSA's and the Receiver's initial determination that it is financially feasible to continue to fund such loan, the Receiver will forward the request with a recommendation to FSA for concurrence. Any request not denied by FSA within 7 days of FSA's receipt of the borrower's request will be deemed to be approved.

**Servicing FSA Guaranteed Loans**

To the extent feasible, FSA will provide the full and timely cooperation of its staff in support of the FDIC's closing teams and the Receiver's loan servicing responsibilities. Without in any way limiting the foregoing, FSA will assist the Receiver with any necessary completion of loan status reports and physical inspections of the loan security for any Performing Loan or Non-performing Loan, each as defined on Exhibit A hereto.

**Memorandum of Understanding (Continued)**

During the period commencing with the closing of the bank and ending 60 days after the Receiver's receipt of FSA's listing of any deficiencies in the servicing or origination of the guaranteed loans, the Receiver may postpone compliance with FSA servicing requirements promulgated for FSA guaranteed loans with the exception of those requirements pertaining to:

- payment processing,
- insurance policy maintenance,
- tax payments,
- UCC filings necessary to perfect and protect the security interests of the lender and FSA, and
- all other appropriate action reasonably necessary to protect the security interests of the lender and FSA where the Receiver has actual knowledge of conversion activity, deterioration or destruction of security property, or filing of bankruptcy by the borrower.

Thereafter, the Receiver will service (whether directly or through a subservicer) any remaining FSA guaranteed loans in accordance with the Lender's Agreement, FSA reporting requirements and any applicable loan agreements until such time as these loans are sold or the debt is paid.

The Receiver shall not be responsible for any unilateral actions on the part of FSA which cause a loss on a loan serviced by the Receiver.

When a borrower has both FSA guaranteed loans and other unguaranteed loans in a closed bank, collateral and lien positions as set forth in the loan documents will govern payment distributions. Before set-asides, windfalls or any other FSA guaranteed borrower income is applied against any loan balances, the Receiver and FSA will agree as to the distribution of these funds.

The Receiver will not be required to subordinate its lien position without prior consent.

The Receiver may make advances for the protection and preservation of collateral securing FSA guaranteed loans in accordance with 7 C.F.R. § 762.149.

FSA shall notify the Receiver and outline the details of any servicing or origination deficiencies of which FSA becomes aware. Working in coordination with FSA, the Receiver will take action to correct the identified deficiencies (regardless of whether they occurred before or after the closing of the bank) to the extent practicable. Any uncorrected deficiencies may result in the reduction or denial of a future loss claim with respect to that loan. Any remaining claim by FSA with respect to any such deficiency shall be a general liability of the closed bank under 12 U.S.C. § 1821(d)(11)(A)(iii) to the extent it arises out of or results from the closed bank's origination or servicing errors with respect to that loan. FSA claims with respect to deficiencies arising from

the Receiver's servicing errors shall be an administrative expense of the Receiver under 12 C.F.R. § 360.3(a)(1), except as otherwise provided herein. Notwithstanding the foregoing, FSA shall not make a claim against the Receiver, nor shall it reduce or deny a future loss claim, as a result of any postponed compliance with FSA servicing requirements as permitted under this MOU. FSA will not offset amounts owed to it from the Receiver for one closed bank against amounts due from FSA to the Receiver for another closed bank.

**FSA Conditional Commitment for Guarantee**

When an FSA Conditional Commitment for Guarantee has been issued to the closed bank, such commitment will be deemed canceled unless (i) the Receiver determines that the funding of the loan will enhance the ability of the borrower to fulfill its obligations under any existing FSA guaranteed loan, and (ii) the Receiver so notifies FSA within 30 days after receipt from FSA of the list of Conditional Commitments for Guarantee which have been issued to the closed bank.

**Disposition of FSA Guaranteed Loans**

FSA will assist the Receiver in identifying eligible lenders, as defined by 7 C.F.R. § 762.105, interested in acquiring guaranteed loans. FSA and the Receiver shall resolve the specific loan scenarios for Performing and Non-Performing Loans (as defined in Exhibit A) as follows:

**Performing Loans**

- The Receiver will determine the Reserve Price, as defined in Exhibit A hereto, of the entire loan.
- FSA shall provide the Receiver with a letter that the Receiver may provide to prospective purchasers that either (i) indicates that no deficiencies were discovered in FSA's review of the loan, or (ii) identifying deficiencies, other than deficiencies with respect to postponed compliance in accordance with this MOU, that pursuant to 7 C.F.R. § 762.103 will result in a reduction in any loss claim payment to the extent the violation resulted in the loss. In either case such letter shall provide that FSA reserves its rights with respect to any later discovered deficiencies. FSA shall provide such letter within 60 days of its receipt of the notice of the bank's closing.
- If FSA determines that no deficiencies exist in the originating or servicing of the guaranteed loan that would nullify the guarantee under FSA regulations, FSA will permit its guarantee to remain intact (subject to reduction for violations under 7 C.F.R. § 762.103) if the Receiver contracts with an eligible lender to purchase the loan.

- If there is an entity, other than the lender, which holds all or a part of the guaranteed portion on such loan and does not have servicing responsibilities (a "holder), the Receiver will notify the holder of any proposed sale. The Receiver shall obtain the holder's written concurrence, in accordance with 7 C.F.R. § 762.105(c), in any such sale if the rates and terms of the guaranteed loan will be changed. Where holder concurrence is required but not obtained, a new lender may not be substituted and the guaranteed loan may only be sold without FSA's guarantee. Notwithstanding the foregoing, the Receiver may repurchase the guaranteed portion from a non-concurring holder in accordance with 7 C.F.R. § 762.144(d) and thereafter sell the loan with the FSA's guarantee to an eligible lender. If such portion of the loan is sold without FSA's guarantee, the Receiver will notify the purchaser of the holder's remaining interest in the guaranteed loan.
- The Receiver will not make a claim upon FSA for any difference between the proceeds received on the sale of the loan and the amount of the outstanding principal and interest with respect to such loan as of the time of the sale.
- Nothing herein shall limit the Receiver's ability to sell the lender's interest in a Performing Loan.

**Non-performing Loans**

- The Receiver will determine the Reserve Price of the entire loan and shall notify the FSA. FSA shall approve or reject the Reserve Price within 5 days of receipt of such notice. If FSA rejects the Reserve Price, FSA and the Receiver shall (i) review the information and factors to be taken into account in determining the value of such Non-performing Loan and (ii) mutually determine a Reserve Price as soon as reasonably practical after the rejection notice.
- Upon FSA's approval of the Reserve Price, the Receiver will sell the loan. Proceeds from the sale will be paid to the lender and the holder, if any, on a pro-rata basis.
- If the Receiver cannot sell the loan, the Receiver will attempt to restructure the loan with the borrower on terms acceptable to FSA. If the loan is restructured (and borrower continues to perform), the restructured loan will be treated as a Performing Loan for purposes of this MOU, except as provided below. Such loan may be sold to an eligible lender with an FSA guarantee of a percentage of the restructured note amount equal to the percentage of the original loan that was guaranteed by FSA.

- If the Receiver cannot sell or restructure the loan, the Receiver will liquidate the loan security through foreclosure and sale of the collateral. Liquidation costs will be subtracted from the sales proceeds. Any remaining proceeds will be paid to the lender and the holder, if any, on a pro-rata basis.
- The Receiver may make a claim upon FSA for the loss incurred. The Receiver's loss shall be equal to difference between the Receiver's pro-rata share of
  - (i) (x) the proceeds received on the sale of the loan, (y) the reduced principal amount of a restructured loan, or (z) the net liquidation proceeds from the loan foreclosure and subsequent sale of the collateral, as the case may be, and
  - (ii) the amount of the outstanding principal and 60 days interest with respect to such loan as of the time of the sale, restructure, or foreclosure.
- FSA will review the claim and will either pay the claim in full, reduce the claim, or reject the claim in accordance with FSA regulations.

When a loan is sold as part of a pool or asset sale, the pro-rata distribution from the sale with respect to any loan will be based upon the net present value of the estimated cash recovery for Non-performing Loans, as determined in accordance with Exhibit A hereto.

**Miscellaneous**

All notices and other communications hereunder shall be in writing. The parties will deem that a notice has been received, when (i) delivered personally or transmitted by telecopy (with receipt acknowledged), (ii) 5 days after being mailed by first class postage prepaid, or (iii) when sent by E-mail, if a copy is sent contemporaneously by first class mail, postage prepaid.

If any date for performing any act under this MOU falls on a Saturday, Sunday or legal holiday, the date for performance shall be extended to the next business day.

This MOU may be amended at any time by written agreement of both parties and will take effect upon execution by both parties. The parties shall act reasonably and in good faith in complying with their obligations hereunder.

**Memorandum of Understanding (Continued)**

| Federal Deposit Insurance Corporation | Farm Service Agency |
|---|---|
| Mitchell L. Glassman | James R. Little |
| Mitchell L. Glassman,<br>Director<br>Division of Resolutions and Receiverships | Administrator |
| Date: 12/13/01 | Date: 2/13/02 |

## EXHIBIT A
## DEFINITIONS AND PROTOCOLS

### Definitions

**Performing Loan** - a loan that is paying as agreed (currently less than 30 days past due) and is expected to pay in full under the terms of the note. Past delinquency or file-documentation problems do not disqualify a loan as performing (although they may have an effect on the discount rate used to calculate the Market Value, as determined below).

**Non-performing Loan** - a loan that is 30 days or more past due or is past the note (or modification) maturity date, regardless of whether or not ongoing payments are being received from the borrower. Non-performing Loans also include all judgements, deficiency balances, and charge-offs regardless of delinquency.

**Reserve Price** - Reserve Price is equal to Market Value, as determined below, for Performing Loans, and shall be an amount based on the net present value of the estimated cash recovery (NPV-ECR), determined in accordance with the protocols below, for Non-performing Loans.

### Protocols

**Valuation of Performing Loans**

The valuation of Performing Loans is normally the first step in establishing a Reserve Price when selling to the secondary market. The value of a Performing Loan is calculated through a Mark-to-Market process in which the remaining payments are present-valued using current market yield requirements for similar loans. The result of this discounting is termed the Market Value. The Market Value for Performing Loans is calculated using a current market yield for similar types and quality of loans. The current market yield is comprised of a base rate, which is the rate for good quality, market-standard loans, and an adjustment for the characteristics of the specific loan(s). The base rate may be determined either through recognized publications that quote comparable rates or through surveys of local lending institutions. Once the base rate is determined, specific characteristics that affect the required yield should be identified through a review of the loan files and the payment histories. These characteristics include delinquency rates or documentation deficiencies such as missing financial statements or geographic location if the base rate does not reflect local lending practices. The current market yield is the result of adjusting the base rate for any of these characteristics.

**Valuation of Non-performing Loans**

The Net Present Value of the Estimated Cash Recovery (NPV-ECR), which is based on a liquidation scenario, is established by first estimating the cash recoveries, direct expenses, and payment of any prior liens over time. The estimated net cash flows are then present-valued using the appropriate rate. These rates reflect the risks associated with the source(s) of the ultimate collection and the estimated timing of the cash flows.

**Memorandum of Understanding (Continued)**

By using a liquidation scenario, decisions regarding a compromise, restructure, or the sale of a loan are based on the same established value. The liquidation scenario is broadly defined as the cash flows identified with the foreclosure/repossession; holding and sale of pledged collateral; and the collection through litigation from identifiable assets of the borrowers or guarantors.

Under normal circumstances, the Reserve Price for Non-performing Loan will range from 75% to 90% of NPV-ECR. Upward and downward adjustments may be made for both the size of individual loans and the size of the package of loans. Small loans (balances less than $25,000) are generally reserved at 75% of NPV-ECR. Loans with balances over $250,000 are generally reserved at 90% of NPV-ECR. Should the NPV-ECR fall below 5% of the package's aggregate book value, it may be sold without a minimum Reserve Price. Discretion is given for loans falling between $25,000 and $250,000.

**Appraisals for the Liquidation of Poultry and Other CAFO's**

## A Background

Poultry and other CAFO facilities are often appraised for the "liquidation or salvage" value by a guaranteed lender when submitting a loss claim because CAFO is no longer active. Subsequently, a third party may purchase the facility for the "liquidation or salvage" value and obtain a contract from an integrator that then inflates the value of the property to its "highest and best use" value as an active CAFO. This results in a greater loss paid by FSA than necessary and the possibility that FSA will approve a guarantee on the same property on which it previously paid a substantial loss.

## B State and County Offices Responsibilities

State and County Offices are required to:

- analyze lender's liquidation appraisals for poultry and other CAFO's to ensure that the market conditions for CAFO's and the demand for producers by area integrators has been properly reflected in the appraisal

- advise guaranteed lenders that they should, according to USPAP when submitting loss claims, appraise CAFO property to determine the "highest and best use" value considering the demand for CAFO facilities and operators by the area integrators and only use "liquidation or salvage" value appraisals when there is no demand and it is likely that the property will be used for a CAFO in the future.

## C Appraising Poultry Facilities and Other CAFO's for Loss Claims

If the market indicates that there is a demand for CAFO facilities with integrators in the area, then the appraisal requested by the lender will be a market value appraisal less the cost of repairs or retro-fitting, if necessary. When assigning the scope of work for the appraisal according to USPAP Standards Rule 1-2(f), the lender should require appraiser to:

- survey all existing integrators in the area as to the feasibility of the availability of an operating contract on the property

- appraise the property for its "highest and best use" value as required by USPAP Standard Rule 1-3.

Appraisers should be held accountable by the lender for a "liquidation or salvage" value appraisal of a CAFO facility that is in fact suitable as a functional facility. Lenders will be advised that FSA will be closely reviewing these types of appraisals.

**Appraisals for the Liquidation of Poultry and Other CAFO's (Continued)**

## D Appraisals and Actions After Final Loss Claims

This table provides guidance for appraisals and actions that shall be taken after final loss claims.

| IF... | THEN... |
|---|---|
| within 2 years of payment of the final loss claim, there is a loan request on the same property that includes an appraisal at a greater value than the appraisal used to calculate the final loss payment | the appraisals should be thoroughly reviewed to determine the reason for the discrepancy<br><br>**Note:** Any loan application received in this circumstance must be very thoroughly reviewed. |
| it is determined that the property appraisal at the time of the loss claim payment was deficient | FSA will initiate actions against the lender to recover the difference in value. |
| a property securing a poultry operation or other CAFO is repurchased at the foreclosure sale and subsequently re-sold by the lender for a higher value than the appraised value | the proceeds exceeding the appraised value must be paid proportionally to FSA as determined in the final loss claim. |

**Comparison Guide for Loss Claim Decisions and Appeals**

| Subject | 2-FLP | 2004 CFR | FmHA Instructions 1980-A and 1980-B |
|---|---|---|---|
| **90-day interest accrual.** | Subparagraphs 355 E, 359 A, and 360 F | 762.149(d)(2) | 1980.146 (d)(1)(V), 1980.146 (e)(1), and 1980, Subpart A, Appendix B (D) (2) |
| **Protecting loan collateral in bankruptcy, foreclosure, insolvency, or any other litigation.** | Subparagraphs 264 A, 341 A, and 360 F | 762.142(a)(6), 762.148(a), and 762.149(h)(6)(i) | 1980.130 (j) and 1980.144 |
| **Lender fails to contact borrower or takes no action to cure default.** | Subparagraphs 19 C and 360 F | 762.103 and 762.149(h)(6)(i) | 1980.145 |
| **Unauthorized release of security proceeds.** | Subparagraphs 15 C, 264 A, and 360 F | 762.103, 762.142(a)(5), 762.142(b), and 762.149(h)(6)(ii) | 1980.130 (k) |
| **Failure to inspect collateral.** | Subparagraphs 19 C, 264 A, and 360 F | 762.103, 762.142(a)(3) and (4), and 762.149(h)(6)(ii) | 1980.130 (i) |
| **Failure to verify ownership or possession of security.** | Subparagraphs 264 A and 360 F | 762.142(a)(2) and 762.149(h)(6)(ii) | 1980.130 (b) and 1980.130 (d) |
| **Protective advances.** | Subparagraphs 359 E and 360 D | 762.149(e) | 1980.136 |
| **Fraud, misrepresentation, and negligent servicing.** | Subparagraphs 19 B, 19 C, and 360 F | 762.103 and 762.149(i)(6) | 1980.130 |

**Demand for Payment, Notice of Intent to Collect by Non-Centralized Administrative Offset, Including Internal Administrative Offset, Centralized Offset, and Other Applicable Debt Collection Methods**

***--Note:** Exhibit17 is 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 "2-FLP Exhibit 17".

**2-FLP, Exhibit 17**

(Use Agency Letterhead format with local return address.)

**Demand for Payment, Notice of Intent to Collect by Non-Centralized Administrative Offset, Including Internal Administrative Offset, Centralized Offset, and Other Applicable Debt Collection Methods**

[ Date]

Dear [ Borrower]

This is to inform you that as a result of a final loss claim that the U.S. Department of Agriculture (USDA), Farm Service Agency (FSA) paid on your behalf, you now have a delinquent Federal debt.

The final loss claim is based on the following guaranteed loans: (Complete as necessary from Borrower Loan Records).

| Date of Loan | Lender | FSA ID Number | Loan Amount |
|---|---|---|---|

The amount of the final loss claim paid on your behalf which you owe is $_____. Interest will accrue at the note rate of the guaranteed loan on the date the final loss claim was paid (_____%). The amount due will increase as interest accrues at the annual rate indicated.

FSA will use:

- Centralized offset from the U.S. Department of Treasury's Treasury Offset Program (TOP),
- Non-centralized administrative offset between FSA and USDA payment authorizing agencies including, but not limited to, internal administrative offset (IAO) of payments made by FSA, and
- The other debt collection actions described in this notice to collect the debt you owe FSA.

**--***

**Demand for Payment, Notice of Intent to Collect by Non-Centralized Administrative Offset, Including Internal Administrative Offset, Centralized Offset, and Other Applicable Debt Collection Methods (Continued)**

*--



**Demand for Payment**

To avoid debt collection actions you must either comply with this demand for payment of your delinquent federal debt or successfully dispute that debt (see instructions under Debtors' Rights). To repay your debt, send a check or money order, for the full amount of the debt to [ Insert Service Center Name and address] . Please include your account number on your payment. The payment must be received no later than [ Date] to avoid non-centralized administrative offset. To avoid centralized offset and other debt collection actions, payment must be received no later than [ Date] .

**Debt Collection Actions**

- If the delinquent debt is not paid in full, or
- Timely resolved by the actions explained in this notice,

then USDA agencies will be notified to collect the debt by non-centralized administrative offset. Treasury also will be notified to collect by centralized offset from the following Federal Government sources or other private payments due you, if applicable:

- TOP (To obtain income tax refunds, contract or vendor payments, certain Federal benefit payments, such as Social Security, other than Supplemental Security Income, Railroad Retirement (other than tier 2), and Black Lung (part B) benefits and other Federal payments, including certain loans to you, that are not exempt from offset)

- Federal salary pay, including military pay (through Treasury's centralized computer matching program, not to exceed 15 percent of disposable pay)

- Federal retirement and disability pay, including military retirement pay (from the Office of Personnel Management, in most cases not to exceed 50 percent of the net annuity).

**Ineligibility for Federal Assistance**

If you do not resolve your delinquent Federal debt within the time frames provided in this notice, you will be ineligible to receive future Federal financial assistance including loans (except disaster loans), loan guarantees and loan insurance.

**Disclosure**

Your delinquent debt also will be disclosed to commercial credit reporting bureaus. To avoid this action you must either repay your debt immediately, propose an acceptable repayment agreement or request an appeal within the time frames provided in this notice.

--*

**Demand for Payment, Notice of Intent to Collect by Non-Centralized Administrative Offset, Including Internal Administrative Offset, Centralized Offset, and Other Applicable Debt Collection Methods (Continued)**

*--



**Non-Centralized Administrative Offset**

FSA intends to take any future payment that you are to receive from your participation in any USDA program or contract (this includes any FSA program or contract). The amount to be offset also will include any payments to other entities equal to your *pro rata* share in the entities if FSA has a legally enforceable right under state law or otherwise to pursue entity payments. FSA intends to begin administrative offset **31** calendar days after receipt of this notice, unless you resolve the debt with the options set out in this notice.

**Centralized Offset**

Your delinquent debt will be referred to Treasury for TOP and for centralized salary offset computer matching as required by the Debt Collection Improvement Act of 1996 (DCIA), 31 U.S.C. 3716, the Federal Claims Collection Standards, and Department of Treasury regulations if the debt is not satisfied by non-centralized administrative offset of payments within USDA. Under DCIA, Federal debts over 180 days delinquent must be referred to Treasury for such collection.

**Litigation**

FSA intends to enforce collection by referring the debt to the Department of Justice to initiate litigation if you fail to pay or otherwise resolve the debt.

**Debtors' Rights**

You have the right to inspect and copy Agency records, to make other arrangements for repaying your debt and to request an appeal of this demand for payment to the National Appeals Division (NAD).

**Access to Agency Records of the Debt**

You may inspect and copy your FSA file regarding this debt by notifying your local servicing office indicated above in writing within ***20 calendar days*** from the date of receipt of this notice. In response, FSA will notify you regarding a time and place for your review. At your request, one copy of the documents regarding this debt will be provided at FSA expense.

**Opportunity to Propose a Repayment Agreement**

At any time within ***20 calendar days*** of the date of receipt of this notice, you may present a written agreement to repay the debt as an alternative to non-centralized administrative offset. Your proposed repayment agreement must document your ability to pay the delinquent Federal debt within a short period of time. A written repayment plan for paying the delinquent Federal debt may be accepted by FSA in lieu of collection of the debt through non-centralized administrative offset.

--*

**Demand for Payment, Notice of Intent to Collect by Non-Centralized Administrative Offset, Including Internal Administrative Offset, Centralized Offset, and Other Applicable Debt Collection Methods (Continued)**

*--



**Right to Appeal to NAD**

You have the right to appeal this demand for payment to NAD in accordance with regulations published at 7 C.F.R. part 11. The issues under appeal will be limited to the existence of the debt, and the amount of the debt. If you wish to appeal this demand for payment, your written request for appeal must be postmarked no later than ***30 calendar days*** from the date you received this notice. Send the request for appeal to the office of the Area Supervisor, National Appeals Division, [ Insert NAD Address] [ NAD address continuation] .

The request for appeal must include a copy of this notice and a statement explaining why you think the demand for payment is incorrect. The request should also include your name, address, and phone number. NAD will advise you of the time and place of any hearing and of any procedural requirements. A copy of your request for appeal and any attachments should be sent to your servicing office indicated above. When you request a NAD appeal, there will be an immediate stay of the non-centralized administrative offset and referral for centralized offset until the NAD reviewing official issues a final written decision.

Please do not delay action to pay your delinquent Federal debt or exercise the rights offered in this notice. Your delinquent Federal debt will have a negative impact on your ability to obtain other credit. No additional advance notice will be forthcoming before referral of your debt to Treasury for TOP. If a Federal income tax return is filed, and your spouse is not responsible for this debt, please contact your local IRS office before filing your return to learn how to protect your spouse's share of the refund.

Otherwise, you can obtain IRS information at http://www.irs.gov. , including IRS Form 8379, if applicable. You should advise your local servicing office indicated above if you or another person liable for the debt files bankruptcy. If you have any questions about FSA's procedures, please call your local servicing office at [ Insert phone numer] or write FSA at the address indicated above.

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 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.

Sincerely,

_____
Farm Service Agency
United States Department of Agriculture

*The U.S. Department of Agriculture prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.*

--*

**Demand for Payment, Notice That Non-Centralized Administrative Offset, Including Internal Administrative Offset, Has Been Taken and Will Continue, and Intent to Collect by Centralized Offset and Other Applicable Debt Collection Methods**

***--Note:** Exhibit 18 is 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 "2-FLP Exhibit 18".

**2-FLP, Exhibit 18**

(Use Agency Letterhead format with local return address.)

**Demand for Payment, Notice That Non-Centralized Administrative Offset, Including Internal Administrative Offset, Has Been Taken and Will Continue, and Intent to Collect by Centralized Offset and Other Applicable Debt Collection Methods**

[ Date]

Dear [ Borrower]

This is to inform you that as a result of a final loss claim that the U.S. Department of Agriculture (USDA), Farm Service Agency (FSA) paid on your behalf, you now have a delinquent Federal debt.

The final loss claim is based on the following guaranteed loans: (Complete as necessary from Borrower Loan Records).

| Date of Loan | Lender | FSA ID Number | Loan Amount |
|---|---|---|---|

The amount of the final loss claim paid on your behalf which you owe is $_____. Interest will accrue at the note rate of the guaranteed loan on the date the final loss claim was paid (____%). The amount due will increase as interest accrues at the annual rate indicated.

FSA has taken non-centralized administrative offset, including internal administrative offset (IAO). FSA will continue to use:

- Centralized offset from the U.S. Department of Treasury's Treasury Offset Program (TOP),
- Non-centralized administrative offset between FSA and USDA payment authorizing agencies including, but not limited to, internal administrative offset (IAO) of payments made by FSA, and
- The other debt collection actions described in this notice to collect the debt you owe FSA.

**--***

**Demand for Payment, Notice That Non-Centralized Administrative Offset, Including Internal Administrative Offset, Has Been Taken and Will Continue, and Intent to Collect by Centralized Offset and Other Applicable Debt Collection Methods (Continued)**

*--

**2-FLP, Exhibit 18**

In accordance with 31 C.F.R. 901.3(b)(4), FSA determined non-centralized administrative offset must be exercised immediately against any amounts payable to you. This is because FSA has determined that there was insufficient time before payment to allow for prior notice and opportunity for appeal. [ Insert a narrative justification]
[ Narrative continuation]

The payment collected was $[ Amount] that you were to receive from [ Insert payment type]
The offset amount will include any payments to other entities equal to your *pro rata* share in the entities if FSA has a legally enforceable right under state law or otherwise to pursue entity payments. FSA also intends to continue offset from your participation in any Federal program or contract until you pay your Federal debt in full or the debt is otherwise resolved by actions explained in this notice.

**Demand for Payment**

To avoid further debt collection actions you must either comply with this demand for payment of your Federal debt or successfully dispute that debt (see instructions under Debtors' Rights). To repay your debt, send a check or money order, for the full amount minus offset amount taken of the debt to [ Insert Service Center Name and address].

Please include your account number on your payment. The payment must be received no later than [ Date] to avoid continued non-centralized administrative offset. To avoid centralized offset and other debt collection actions, payment must be received no later than [ Date] .

**Debt Collection Actions**

- If the delinquent debt is not paid in full, or
- Timely resolved by the actions explained in this notice,

then USDA agencies will continue to collect the debt by non-centralized administrative offset. Treasury also will be notified to collect by centralized offset from the following Federal Government sources or other private payments due you, if applicable:

- TOP (To obtain income tax refunds, contract or vendor payments, certain Federal benefit payments, such as Social Security, other than Supplemental Security Income, Railroad Retirement (other than tier 2), and Black Lung (part B) benefits and other Federal payments, including certain loans to you, that are not exempt from offset)

- Federal salary pay, including military pay (through Treasury's centralized computer matching program, not to exceed 15 percent of disposable pay)

- Federal retirement and disability pay, including military retirement pay (from the Office of Personnel Management, in most cases not to exceed 50 percent of the net annuity).

--*

**Demand for Payment, Notice That Non-Centralized Administrative Offset, Including Internal Administrative Offset, Has Been Taken and Will Continue, and Intent to Collect by Centralized Offset and Other Applicable Debt Collection Methods (Continued)**

*--



**Ineligibility for Federal Assistance**

If you do not resolve your delinquent Federal debt within the time frames provided in this notice, you will be ineligible to receive future Federal financial assistance including loans (except disaster loans), loan guarantees and loan insurance.

**Disclosure**

Your delinquent debt also will be disclosed to a commercial credit reporting bureau. To avoid this action you must either repay your debt immediately, propose an acceptable repayment agreement or request an appeal within the time frames provided in this notice. See the instructions above for immediate repayment and the instructions below for other rights.

**Non-Centralized Administrative Offset**

FSA intends to take any future payment that you are to receive from your participation in any USDA program or contract (this includes any FSA program or contract). The amount to be offset also will include any payments to other entities equal to your *pro rata* share in the entities if FSA has a legally enforceable right under state law or otherwise to pursue entity payments. Non-Centralized administrative offset has been exercised as explained on page 1 of this notice and will continue to be exercised unless you resolve the debt with the options set out in this notice.

**Centralized Offset**

Your delinquent debt will be referred to Treasury for TOP and for centralized salary offset computer matching as required by the Debt Collection Improvement Act of 1996 (DCIA), 31 U.S.C. 3716, the Federal Claims Collection Standards, and Department of Treasury regulations if the debt is not satisfied by non-centralized administrative offset of payments within USDA. Under DCIA, federal debts over 180 days delinquent must be referred to Treasury for such collection.

**Litigation**

FSA intends to enforce collection by referring the debt to the Department of Justice to initiate litigation if you fail to pay or otherwise resolve the debt.

**Debtors' Rights**

You have the right to inspect and copy FSA records, to make other arrangements for repaying your debt and to request an appeal of this demand for payment to the National Appeals Division (NAD).

--*

**Demand for Payment, Notice That Non-Centralized Administrative Offset, Including Internal Administrative Offset, Has Been Taken and Will Continue, and Intent to Collect by Centralized Offset and Other Applicable Debt Collection Methods (Continued)**

*--



**Access to Agency Records of the Debt**

You may inspect and copy your FSA file regarding this debt by notifying your local servicing office indicated above in writing within ***20 calendar days*** from the date of receipt of this notice. In response, FSA will notify you regarding a time and place for your review. At your request, one copy of the documents regarding this debt will be provided at FSA expense.

**Opportunity to Propose a Repayment Agreement**

At any time within ***20 calendar days*** of the date of receipt of this notice, you may present a written agreement to repay the debt as an alternative to non-centralized administrative offset. Your proposed repayment agreement must document your ability to pay the delinquent Federal debt within a short period of time. A written repayment plan for paying the delinquent Federal debt may be accepted by FSA in lieu of collection of the debt through non-centralized administrative offset.

**Right to Appeal to NAD**

You have the right to appeal this demand for payment to NAD in accordance with regulations published at 7 C.F.R. part 11. The issues under appeal will be limited to the existence of the debt, and the amount of the debt. If you wish to appeal this demand for payment, your written request for appeal must be postmarked no later than ***30 calendar days*** from the date you received this notice. Send the request for appeal to the office of the Area Supervisor, National Appeals Division, [ Insert NAD Address]
[ NAD address continuation] .

The request for appeal must include a copy of this notice and a statement explaining why you think the demand for payment is incorrect. The request should also include your name, address, and phone number. NAD will advise you of the time and place of any hearing and of any procedural requirements. A copy of your request for appeal and any attachments should be sent to your servicing office indicated above. While you will not avoid immediate offset of payment if you appeal, if you prevail on appeal, FSA will return the offset with interest and discontinue any future offsets unless you are re-notified.

Please do not delay action to pay your delinquent Federal debt or exercise the rights offered in this notice. Your delinquent Federal debt will have a negative impact on your ability to obtain other credit. No additional advance notice will be forthcoming before referral of your debt to Treasury for TOP. If a Federal income tax return is filed, and your spouse is not responsible for this debt, please contact your local IRS office before filing your return to learn how to protect your spouse's share of the refund.

--*

**Demand for Payment, Notice That Non-Centralized Administrative Offset, Including Internal Administrative Offset, Has Been Taken and Will Continue, and Intent to Collect by Centralized Offset and Other Applicable Debt Collection Methods (Continued)**

*--



Otherwise, you can obtain IRS information at http://www.irs.gov. , including IRS Form 8379, if applicable. You should advise your local servicing office if you or another person liable for the debt files bankruptcy. If you have any questions about FSA's procedures, please call your local servicing office at [ Insert phone numer] or write FSA at the address indicated above.

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 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.

Sincerely,

_____

Farm Service Agency
United States Department of Agriculture

*The U.S. Department of Agriculture prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.*

--*

**Notice to a Non-Debtor Entity of Intent to Collect by Non-Centralized Administrative Offset, Including Internal Administrative Offset From an Entity Member**

***--Note:** Exhibit 19 is 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 "2-FLP Exhibit 19".

**2-FLP, Exhibit 19**

(Use Agency Letterhead format with local return address.)

**Notice to a Non-Debtor Entity of Intent to Collect by Non-Centralized Administrative Offset, Including Internal Administrative Offset From an Entity Member**

[ Date]

Dear [ Non-debtor entity name] :

[ Insert Name of Borrower] , who is a member of your entity had a final loss claim paid on their behalf in the amount of $ [ Amount] by the Farm Service Agency (FSA). FSA's payment makes this amount a Federal debt of your entity member. This notice notifies you that the debt is now delinquent. FSA intends to take by pro-rata non-centralized administrative offset your entity member's percentage share of any payments your entity is to receive from participation in any USDA program or contract (this includes any FSA program or contract). FSA will use non-centralized administrative offset of [ Percent] of the payments made to collect the debt owed to FSA until either the entity member pays the delinquent Federal debt in full, submits a repayment plan acceptable to FSA or you or the debtor successfully disputes the debt through an appeal before the National Appeals Division (NAD). On [ Insert Date] the debtor was notified of the opportunity to inspect and copy FSA records related to the debt, propose a written repayment agreement, and request a NAD appeal.

The amount due on the Federal debt will increase as interest accrues at the note rate of the guaranteed loan on the date the final loss claim was paid ([In. rate]%).

You have the right to appeal this notice to NAD in accordance with regulations published at 7 C.F.R. part 11. When you request a NAD appeal, there will be an immediate stay of pro-rata offset until the NAD reviewing official issues a final written decision. The issue under appeal will be limited to the percentage share which the debtor has in your entity and whether the percentage to be offset is correct. If you appeal this notice, your written request for appeal must be postmarked no later than 30 calendar days from the date you receive this notice. Send the request for appeal to the office of the Area Supervisor, National Appeals Division, [ Insert NAD Address]
[ NAD continued]

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**Notice to a Non-Debtor Entity of Intent to Collect by Non-Centralized Administrative Offset, Including Internal Administrative Offset From an Entity Member (Continued)**

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The request for appeal must include a copy of this notice and a statement explaining why you think the notice is incorrect. The request should include your name, address, and phone number. NAD will advise you of the time and place of any hearing and of any procedural requirements. A copy of your appeal request and any attachments should be sent to this office.

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 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.

Sincerely,

_____

Farm Service Agency
United States Department of Agriculture

*The U.S. Department of Agriculture prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.*

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**Notice to a Non-Debtor Entity That Non-Centralized Administrative Offset, Including Internal Administrative Offset From an Entity Has Been Exercised and Will Continue**

***--Note:** Exhibit 20 is 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 "2-FLP Exhibit 20".

**2-FLP, Exhibit 20**

(Use Agency Letterhead format with local return address.)

**Notice to a Non-Debtor Entity That Non-Centralized Administrative Offset, Including Internal Administrative Offset From an Entity Has Been Exercised and Will Continue**

[ Date]

Dear [ Non-debtor entity name] :

[ Insert Name of Borrower] , who is a member of your entity had a final loss claim paid on their behalf in the amount of $ [ Amount] by the Farm Service Agency (FSA). FSA's payment makes this amount a Federal debt of your entity member. This notice notifies you that the debt is now delinquent. FSA has exercised and intends to continue to exercise non-centralized pro-rata administrative offset of your entity member's percentage share of any payments that the entity is to receive from participation in any USDA program or contract (this includes any FSA program or contract). FSA used non-centralized administrative offset of [ Percent] percent of the payments made to collect the debt owed to FSA until either the entity member pays the delinquent Federal debt in full, submits a repayment plan acceptable to FSA or you or the debtor successfully disputes the debt through an appeal before the National Appeals Division (NAD).

FSA has determined that offset must be exercised immediately against the delinquent member's percentage amount that is payable to the entity. This is because FSA has determined that there was insufficient time before payment or disbursement to the entity to allow for prior notice and opportunity for appeal. [ Insert a narrative justification]
[ Narrative continuation]

The payment collected was $ [ payment] that the entity member was to receive from [ Insert payment source]. While you will not avoid immediate offset of the payment if you appeal, if you prevail on appeal, FSA will return the offset with interest and discontinue any future offsets unless you are re-notified.

FSA also intends to take the entity member's percentage share of any future entity payments or disbursements that the entity is to receive from any USDA program or contract until either the entity member pays the Federal debt in full, submits a repayment plan acceptable to FSA, or you or the entity member successfully disputes the debt through an appeal before the National Appeals Division (NAD). The amount due on the Federal debt will increase as interest accrues at the note rate of the guaranteed loan on the date the final loss claim was paid ([ Int. rate] %). On [ Date] the debtor was notified of the opportunity to inspect and copy FSA records related to the debt, propose a written agreement to repay the debt, and request an appeal before NAD.

**--***

**Notice to a Non-Debtor Entity That Non-Centralized Administrative Offset, Including Internal Administrative Offset From an Entity Has Been Exercised and Will Continue (Continued)**

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You have the right to appeal this notice to NAD in accordance with regulations published at 7 C.F.R. Part 11. The issues under appeal will be limited to the correctness of FSA's determination that there was insufficient time before the USDA payment to provide prior notice and the opportunity to appeal, the percentage share which the debtor has in your entity, and whether the percentage offset was correct.

If you appeal this notice, your written request for appeal must be postmarked no later than 30 calendar days from the date you receive this notice. Send the request for appeal to the office of the Area Supervisor, National Appeals Division, **[Insert NAD Address]**
**[NAD address continued]**

The request for appeal must include a copy of this notice and a statement explaining why you think the notice is incorrect. The request should include your name, address, and phone number. NAD will advise you of the time and place of any hearing and of any procedural requirements. A copy of your appeal request and any attachments should be sent to this office.

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 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.

Sincerely,

_____
Farm Service Agency
United States Department of Agriculture

*The U.S. Department of Agriculture prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.*

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**Notice of Referral to the Department of Treasury to Collect Through the Treasury Offset Program (TOP) - Sent by FSC Only**

## Notice of Referral to the Department of Treasury to Collect Through the Treasury Offset Program (TOP)

Dear [Insert name of debtor]:

Our records indicate that the Farm Service Agency (FSA) paid a final loss claim to your lender on your guaranteed loan account and that amount is considered a Federal debt you now owe FSA. FSA previously demanded payment and notified you of intended debt collection actions and your rights in resolving the delinquency. As notified, FSA will use centralized administrative offset through the Treasury Offset Program (TOP) as required by the Debt Collection Improvement Act, 31 U.S.C. 3716, the Federal Claims Collection Standards, 31 C.F.R. parts 900-904, and the USDA administrative offset regulations at 7 C.F.R. Part 3 to collect your delinquent debt.

The time periods for resolving this matter have expired and your delinquent debt has been referred to TOP. Interest is accruing daily on this debt. The total amount due will continue to increase until the debt is paid or settled.

A representative of the Department of Treasury will contact you regarding offsets of Federal payments after they occur. To avoid offset of an Internal Revenue Service (IRS) tax refund where a joint Federal income tax return is filed and your spouse is not responsible for the debt, please contact your local IRS office before filing your return to learn how to protect your spouse's share of the refund.

For further information, call the toll-free number at 1-800-428-9643.

Sincerely,