

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

**Guaranteed Loan Making and Servicing
2-FLP (Revision 1)**

Amendment 12

Approved by: Deputy Administrator, Farm Loan Programs

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Amendment Transmittal

A Reasons for Amendment

Subparagraph 108 A has been amended to clarify that CAIVRS should be used to verify an applicant is not delinquent on any Federal debt.

Subparagraph 281 B has been amended to clarify the transfer and assumption process for PLP lenders.

Subparagraph 284 B has been amended to clarify the process on interest rate changes in GLS.

Subparagraph 287 has been amended to clarify the process for a lender's name change in GLS.

Subparagraph 300 A has been amended to remove the bold because the language is not in CFR.

Subparagraph 300 D has been amended to update the process for status reporting in GLS.

Subparagraph 313 A has been amended to clarify that FSA 2249 must be signed by an agency approving official.

Subparagraphs 314 B, 326 C and 327 C have been amended to clarify the documentation required for debt restructuring by lenders.

Subparagraphs 326 D and 327 A have been amended to add CL as a loan type for capitalization of interest and deferrals.

Subparagraphs 359 G and 360 F have been amended to:

- remove the incorrect date used to calculate the interest accrual termination date for loans made before, on, and after July 10, 2008, for estimated loss claims
- clarify interest accrual calculation during Chapter 11, 12, and 13 bankruptcies that are dismissed before liquidation
- clarify the documentation needed for interest accrual exceeding 210 calendar days because of bankruptcy.

Amendment Transmittal (Continued)

A Reasons for Amendment (Continued)

Subparagraphs 363 D, F, and G have been amended to provide clarification for updating a debtor offset account in GLS.

Subparagraph 376 A has been amended to clarify the repurchase options given to lenders when FSA has repurchased the guarantee from the holder.

Page Control Chart		
TC	Text	Exhibit
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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

***--Note:** The authorized agency official shall check CAIVRS to verify that the applicant 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.

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.

***--Note:** If transfers and assumptions are not covered in the Lender's Agreement with FSA, the PLP lender will process transfers and assumptions under the same conditions as SEL or CLP lenders.--*

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.

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 Changing Interest Rates--

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 subparagraph 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. * * ***

--The authorized agency official shall update the rate change in GLS on the Loan Maintenance Screen.--

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.

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 TIN, the authorized agency official shall make the change in GLS on the Lender Maintenance Screen.--*

* * *

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 when ownership changes.**--*

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 TIN
- 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 * * * 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 Lender's 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.

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 *--financial information available.** 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, including any comments, through GLS immediately upon--* receipt, if the information was submitted by mail. Otherwise, the lender will update the information through GLS.

*--**Note:** If comments are not provided by the lender, the authorized agency official will notate that comments were not provided by the lender when entering data from FSA-2248 in GLS.--*

**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 * * * FLOO.

***--Note:** See 1-FLP:

- subparagraph 29 D for loan approval limits
- subparagraph 29 G for guaranteed loan restructuring limits.--*

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 312 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 312 and obtain FSA approval before implementation of the action. CLP and PLP lenders must submit documentation according to requirements listed in paragraph 312 **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, FO’s, and CL’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.

327 Deferrals (7 CFR 762.145(d))

A General Description

--A deferral postpones the payment of principal and interest on CL, 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 the borrower 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 * * * 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 312. 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 Lender's Agreement and provide post-restructuring documentation to FSA according to paragraph 313.

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 Lender's 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 FLOO for payment of the estimated loss claim according to 1-FLP, paragraph 5.--

* * * 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 on loans made on or after July 10, 2008. 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.

***--Note:** For loans made before July 10, 2008, interest accrual will not be paid beyond 90 calendar days from the date of the decision to liquidate.

Interest may be paid in addition to the 210 calendar days allowed by this paragraph by the number of days the FSA review and approval of the claim extends beyond 30 calendar days when the delays were caused by FSA.

Note: For Chapter 12 and 13 bankruptcies, if the bankruptcy is dismissed before liquidation, interest accrual may exceed 210 calendar days from the payment due date. During the bankruptcy, interest continues to accrue, but the days for calculating interest termination do not count against the lender because the lender does not have the authority to liquidate. In such cases, the authorized agency official shall document that interest accrual exceeded 210 calendar days because of bankruptcy, and any other supporting documentation, in GLS. National Office approval does not need to be requested.--*

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) (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 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 and Chapter 12 or 13 cases that had previously been confirmed are now being liquidated. 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.

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 on or after July 10, 2008. For all loans made before July 10, 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.

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 being paid to the lender for the number of days over 40 taken to process the claim.

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.

Note: For Chapter 12 and 13 bankruptcies, if the bankruptcy is dismissed before liquidation, interest accrual may exceed 210 calendar days from the payment due date. During the bankruptcy, interest continues to accrue; but the days for calculating interest termination do not count against the lender because the lender does not have the authority to liquidate. In such cases, the authorized agency official shall document that interest accrual exceeded 210 calendar days because of bankruptcy, and any other supporting documentation, in GLS. National Office approval does not need to be requested.--*

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.

**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 * * * 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 the "Notified Date" field using the GLS Debt Offset Maintenance Screen for:--

- tracking
- referral of debt for offset.

*--**Note:** GLS will be updated for the debtor and/or co-debtor with the date of the return receipt of the debtor notification of FSA's intent to offset that is sent by certified mail to a debtor's last known address. This date shall be entered in the "Demand Letter" field using the GLS Debt Offset Maintenance Screen.--*

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 and/or co-debtor's IAO referral information, in GLS on the Debt Offset Maintenance Screen, 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 on the Debt Offset Maintenance Screen.--*

**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 on the Debt Offset Maintenance Screen, for the debt to be referred for offset. 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, * * * 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 in GLS on the Debt Offset 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 * * * FLOO.

Offsets shall be suspended by State Offices by accessing the 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.

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.

***--Notes:** The authorized agency official shall complete FSA-2251 and forward the payment to 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 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.