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

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

Approved by: Deputy Administrator, Farm Loan Programs

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Amendment Transmittal

A Reason for Revision

Subparagraph 267 B has been amended to clarify the reduced frequency of file reviews for PLP lenders where no major deficiencies were found during the first 3 years of reviews.

Subparagraph 278 B has been amended to allow an exception when additional debt is needed for an expansion or improvements of the operation and is necessary for the operation to remain feasible

Subparagraph 360 F has been amended to clarify that offices will FAX FSA-2254 to FSC, FLOO for payment or processing, rather than just forwarding the information.

Page Control Chart		
TC	**Text**	**Exhibit**
	11-15, 11-16 11-37, 11-38 14-23, 14-24	

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 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 biannually, 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.

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 local 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 local 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.

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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.