

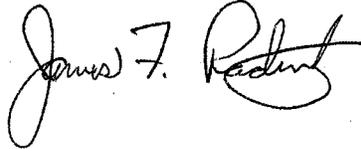
UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

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

Amendment 31

Approved by: Acting Deputy Administrator, Farm Loan Programs



Amendment Transmittal

A Reasons for Amendment

Subparagraph 123 B has been amended to include spouses.

Subparagraph 135 C has been amended to update the web site to access the 3-month LIBOR.

Subparagraph 208 D has been amended to provide guidance for identifying wetlands.

Subparagraph 244 C has been amended to provide guidance about notifying applicants when wetland indicators are present.

Subparagraphs 374 C and D have been amended to provide guidance on digitally signing FSA-2242.

Page Control Chart		
TC	Text	Exhibit
	8-33, 8-34 8-60.5, 8-60.6 8-191, 8-192 10-3, 10-4 15-5 through 15-8	

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).**

Notes: 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.

FO funds must only finance purchases by FSA loan applicants; therefore, when FO funds are advanced to acquire or enlarge a farm, all individuals that will own the farm (real estate) being purchased must also be owners of the family farm

--(operating entity) or their spouses.--

Acquiring farm assets by purchasing 100 percent of a corporation's stock is considered to be the same as purchasing the assets themselves. The corporation must be the operator at the time of loan closing. State Offices shall contact the National Office for guidance in processing these requests.

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

C Maximum Interest Rates for Lenders Not Using Risk-Based Pricing Practices

At the time of loan closing or loan restructuring, the interest rate on both the guaranteed portion and the nonguaranteed portion of a fixed or variable rate CL, OL or FO loan may not exceed the following, as applicable:

- **For lenders not using risk-based pricing practices, for variable rate loans or fixed rate loans with rates fixed for less than five years, 650 basis points (6.5 percentage points) above the 3-month LIBOR.**
- **For lenders not using risk-based pricing practices, for loans with rates fixed for five or more years, 550 basis points (5.5 percentage points) above the 5-year Treasury note rate.**

The lender is not required to tie its guaranteed loan interest rates to 3-month LIBOR or 5-year Treasury, nor is it required that the rate remain below the maximums throughout the term of the loan. This requirement only sets the maximum rate that may be charged to the customer at the time of loan closing or restructuring.

Note: The maximum rate is not based on loan terms, purpose, or type. It is based on how long the interest rate is fixed. For variable rate loans and loans with an interest rate fixed for less than 5 years, regardless of program type (CL, OL or FO), the maximum rate is based on the 3-month LIBOR index.

Loans with interest rate fixed for 5 or more years, the maximum rate is based on the 5-year Treasury index.

At lender loan file review, the authorized agency official will verify the interest rate charged the guarantee customer at closing did not exceed the maximum rate, and document on applicable file review checklist.

To obtain rates for each index, the authorized agency official can access the GLS Add Loan Screen and click the 3-month LIBOR or 5-year Treasury note rate. The links will open the following Web pages:

- **--3-month LIBOR at http://online.wsj.com/mdc/public/page/2_3030-libor.html,--***
scroll down to find year and date needed
- **5-year Treasury at <http://www.federalreserve.gov/releases/h15/data.htm>, scroll down to 5-year Treasury constant maturities and click on the business day.**

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

***--C Maximum Interest Rates for Lenders Not Using Risk-Based Pricing Practices (Continued)**

To access the training:

- go to FSA Intranet at <http://fsaintranet.sc.egov.usda.gov/fsa/>
- under “Resources”, CLICK “**FSA Applications**”
- under “Farm Loan Programs”, CLICK “**Farm Loan Programs Systems**”
- under “Informational Links”, CLICK “**Presentations**”
- under “Training Materials”, CLICK “**GL Interest Rate Training Presentation**”.

Note: The 5-yr Treasury note rate may also be listed as Treasury Constant Maturities as published on the Federal Reserve web site.

The following examples are provided to illustrate how to determine the maximum interest rate.

Example 1: Lender closes a 4-year GOL. The rate is fixed at 7.5% on the date loan closes. The 3-month LIBOR rate on date loan closes is 2.5% and the 5-year Treasury rate is 2.0%.

The maximum rate would be 9.0% (3-month LIBOR rate 2.5% plus maximum spread 6.5% = 9%).

In this example, the lender’s rate does not exceed the maximum rate and; therefore, meets the limitation.

Example 2: Lender closes a 7-year GOL. The rate is fixed for the first 3 years at 8% on the date loan closes and variable for the remaining term. The 3-month LIBOR rate on date loan closes is 2.0% and the 5-year Treasury rate is 1.75%.

The maximum rate would be 8.5% (3-month LIBOR rate 2.0% plus maximum spread 6.5% = 8.5%).

In this example, the lender’s rate does not exceed the maximum rate and; therefore, meets the limitation.

Example 3: Lender closes a 20-year GFO. The rate is fixed for the first 5 years at 7.0% on the date loan closes and variable for the remaining term. The 3-month LIBOR rate on date loan closes is 2.0% and the 5-year Treasury rate is 1.0%.

The maximum rate would be 6.5% (5-year Treasury rate 1.0% plus maximum spread 5.5% = 6.5%).

In this example, the lender’s rate exceeds the maximum rate and; therefore, does not meet the limitation.--*

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.

--See 1-FLP, subparagraph 222 C for guidance to identify potential wetlands that may be impacted by the proposed action.--

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 question 6, 7A, 7B, or 7C is answered “yes” by the applicant, then AD-1026 will be referred to NRCS for a HEL or wetland determination as appropriate.--

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.

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.

***--Notes:** See 1-FLP, Exhibit 27.5 for information to be included when notifying the applicant that wetland indicators were determined to be present, as provided in 1-FLP, subparagraph 222 C.--*

If requested by the lender, FSA may participate in mediation to provide guidance on FSA regulations and guidelines.

244 Loan Approval (7 CFR 762.122) (Continued)

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)

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)

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 will sign FSA-2242 and forward FSA-2242 along with the signed commitment letter or sale agreement to FSA for execution.
 - FSA will digitally sign FSA-2242 and e-mail FSA-2242 the holder and the lender. If the holder requests a hard copy, the authorized agency official will mail the hard copy directly to the holder along with a cover letter, including USDA letterhead as verification of the guarantee.--*
 - 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)

After the authorized agency official is satisfied that all 4 of these conditions are met,
--FSA-2242 will be executed and e-mailed 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.**