

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

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

Amendment 67

Approved by: Deputy Administrator, Farm Loan Programs



Amendment Transmittal

A Reasons for Amendment

Subparagraph 65A has been amended to emphasize the importance of sharing information with guaranteed lenders when the Agency is simultaneously processing a direct loan.

Subparagraph 84 C (Designated Review Official Responsibilities) has been removed to eliminate the SDA Lender Review Reports

Subparagraph 84 C (formerly D) has been amended to replace references to outdated GLS reports.

Subparagraph 84 D (formerly E) has been amended to eliminate SDA Lender Review Reports.

Subparagraphs 96 D, 108 A, and 151 B have been amended to clarify how a guaranteed loan application should be evaluated by Agency staff when the application is made in conjunction with a Direct Down Payment loan or a Direct Joint Financing loan.

Subparagraph 166 B has been amended to more clearly define guaranteed loan security requirements.

Subparagraph 166 D has been amended to provide clarification on junior and shared lien positions.

Subparagraph 168 B has been amended to clarify guidance regarding the appropriate type of security based on the proposed loan term.

Subparagraph 169 B has been amended to provide clarification on how SED's should evaluate and request exceptions to security requirements.

Subparagraph 196 A has been amended to reflect a CFR change which made socially disadvantaged applicants ineligible for a 95 percent guarantee for FO's and OL's solely based on their socially disadvantaged status.

Amendment Transmittal (Continued)

A Reasons for Amendment (Continued)

Subparagraph 196 B has been amended to reflect a CFR change which made socially disadvantaged applicants ineligible for a 90 percent guarantee for CL's solely based on their socially disadvantaged status.

Subparagraph 245 C has been amended to describe how agency officials should execute the conditional commitment

Subparagraph 246 A has been amended to remove duplicate language and provide guidance on how to handle the conditional commitment after all conditions have been accepted.

Subparagraph 246 B has been amended to make the lender responsible for requesting an extension to the conditional commitment if needed.

Subparagraph 247 A has been amended to reflect a CFR change which made socially disadvantaged applicants ineligible for a fee waiver if they are participating in the direct down payment loan program or a qualified state beginning farmer program solely based on their socially disadvantaged status.

Subparagraph 267 B A has been amended to provide additional time between required reviews for performing lenders

Subparagraph 278 B has been amended to provide a link to a template that can be used to standardize subordination requests.

Subparagraph 344 A has been amended to provide guidance for pausing the processing of Type 01 estimated loss claims when the borrower files for a reorganization bankruptcy and to clarify that the Type 05 estimated loss claim will be submitted to RD Business Center upon confirmation of the bankruptcy plan.

Subparagraph 355 A has been amended to clarify liquidation timeline and steps.

Subparagraph 355 B has been amended to clarify the liquidation timeline when Interest Assistance is not currently funded.

Subparagraph 355 C has been amended to clarify the requirement of the lender to submit a copy of the acceleration notice and how accelerated loans must be reported.

Subparagraphs 355 D and E have been amended to include liquidation guidance for MLP lenders.

Subparagraph 355 G has been amended to identify items that will be reviewed on estimated loss claims.

Subparagraph 355 H has been amended to clarify when liquidation should be completed.

Subparagraph 355 I has been amended to clarify when a final loss claim must be submitted.

Amendment Transmittal (Continued)

A Reasons for Amendment (Continued)

Subparagraph 357 A has been amended to clarify when the lender may initiate foreclosure if Interest Assistance is not funded.

Subparagraph 357 B has been amended for grammar.

Subparagraph 357 C has been amended to clarify the requirement of the lender to submit a copy of the acceleration notice and how accelerated loans must be reported.

Subparagraph 357 D has been amended to clarify how to determine the minimum bid amount.

Subparagraph 358 A has been amended to clarify lender liquidation plan requirements.

Subparagraph 358 B has been amended to clarify lender liquidation plan requirements for MLP lenders.

Subparagraph 358 C has been amended to specify how lenders should report accelerated loans

Subparagraphs 359 A, B, and C have been amended to provide additional guidance for the lender submission of estimated loss claims and guidance for FSA processing, review, and approval of estimated loss claims.

Subparagraph 359 D has been amended to state that the lender will certify with the estimated loss claim that appropriate deductions were made if necessary.

Subparagraph 359 E has been amended to provide requirements for FSA approval and payment of protective advances.

Subparagraph 359 F has been amended to provide clarification for requesting corrections to estimated loss claims and how to process \$0 estimated loss claims in GLS.

Subparagraph 360 A has been amended to provide a correction to the CFR language.

Subparagraph 360 C has been amended to move additional details for documents submitted with a lender's final loss claim from Subparagraph 360 G.

Subparagraph 360 D has been amended to clarify requests for and interest accrual for protective advances.

Subparagraph 360 F has been amended to clarify policies for requesting and receiving additional interest paid as a result of FSA processing delays, to include details about reducing a final loss claim, and to provide additional guidance for calculating and paying interest for loans in bankruptcy.

Amendment Transmittal (Continued)

A Reasons for Amendment (Continued)

Subparagraph 360 G has been amended to specify when accrued interest on overpayments ceases.

Exhibit 15.5 has been amended to provide updated examples for interest accrual.

Exhibit 22 has been added to provide guidance on completion of Conditional Commitments.

Page Control Chart		
TC	Text	Exhibit
5-8	5-1, 5-2 6-3, 6-4 6-5 7-3, 7-4 7-4.5, 7-4.6 (add) 8-1, 8-2 8-85, 8-86 8-113 through 8-116 8-116.5, 8-116.6 8-117, through 8-140 8-167 through 8-188 10-7 through 10-14 11-15, 11-16 11-37, 11-38 13-7 through 13-10 14-1 through 14-10 14-12.5, 14-12.6 (add) 14-13, 14-14 14-14.5, 14-14.6 14-15 through 14-18 14-18.5, 14-18.6 (add) 14-19 through 14-24	1, pages 1-4 15.5, pages 1-4 pages 5, 6 (add) 22, pages 1, 2 (add) page 3 (add)

Table of Contents (Continued)

Page No.

Part 10 Processing Approvals and Issuing the Guarantee

244	Loan Approval (7 CFR 762.122)	10-1
245	Agency Obligation of the Loan (7 CFR 762.130)	10-5
246	Lender's Response to the Conditional Commitment (7 CFR 762.130(c))	10-8
247	Actions Before Issuing Loan Guarantee (7 CFR 762.130)	10-10
248	Issuing the Loan Guarantee	10-16
249	Deobligation of Loan Funds	10-16
250	Replacing or Terminating FSA-2235 (7 CFR 762.101 and 762.130)	10-17
251-261	(Reserved)	

Part 11 General Servicing Responsibilities

Section 1 General Servicing Requirements

262	Relationships and Responsibilities (7 CFR 762.140(a))	11-1
263	Borrower Supervision (7 CFR 762.140(b))	11-3
264	Servicing Collateral (7 CFR 762.142(a))	11-6
265	Annual Analysis of Borrower's Financial Condition (7 CFR 762.140(b)(5))	11-8
266	Lender Reporting Requirements (7 CFR 762.141)	11-13
267	FSA Loan Servicing Responsibilities	11-15
268-277	(Reserved)	

Section 2 General Servicing Actions

278	Subordination of Guaranteed Loan Security (7 CFR 762.142)	11-37
279	Subordination of Direct Loan Security (7 CFR 762.142(c))	11-39
280	Partial Releases (7 CFR 762.142(b))	11-40
281	Transfers and Assumptions (7 CFR 762.142(d))	11-43
282	Additional Loans or Advances (7 CFR 762.146(a))	11-46
283	Emergency Advances (7 CFR 762.146(a))	11-47
284	Interest Rate Changes (7 CFR 762.146(d))	11-49
285	Release of Liability Upon Withdrawal (7 CFR 762.146(b))	11-50
286	Consolidation of Debt (7 CFR 762.146(e))	11-52
287	Substitution of Lender (7 CFR 762.105)	11-55
288	Servicing SAA's (7 CFR 762.147)	11-59
289-299	(Reserved)	

Table of Contents (Continued)

Page No.

Part 12 Servicing Delinquent Accounts

Section 1 General Process for Restructuring Guaranteed Loans

300	Monetary Default - Overall Loan Servicing Process (7 CFR 762.143).....	12-1
301	Nonmonetary Default - Overall Loan Servicing Process	12-7
302-311	(Reserved)	

Section 2 Restructuring Requirements for Guaranteed Loans

312	Lender Requirements and Conditions for Loan Restructuring (7 CFR 762.145)	12-27
313	Specific Lender Requirements for Loan Restructuring (7 CFR 762.145)	12-30
314	FSA Response to Restructuring Requests.....	12-32
315-325	(Reserved)	

Section 3 Restructuring Options

326	Rescheduling of Debt (7 CFR 762.145)	12-55
327	Deferrals (7 CFR 762.145(d)).....	12-59
328	Debt Write-Down (7 CFR 762.145(e)).....	12-61
329	FSA Review and Monitoring of Restructured Loans (7 CFR 762.145(b)).....	12-64
330-339	(Reserved)	

Part 13 Bankruptcy

340	Bankruptcy (7 CFR 762.148(a))	13-1
341	Lender's Responsibilities in Bankruptcy Proceedings (7 CFR 762.148(a)).....	13-2
342	Lender's Claims for Expenses and Estimated Losses in Reorganization Bankruptcy Proceedings (7 CFR 762.148)	13-4
343	Lender's Claims for Expenses and Estimated Losses in Liquidation Bankruptcy Proceedings (7 CFR 762.148)	13-8
344	FSA Responsibilities in Bankruptcy Proceedings	13-8
345-354	(Reserved)	

Table of Contents (Continued)

Page No.

Part 14 Liquidation

355	Liquidation Process (7 CFR 762.149)	14-1
356	Mediation (7 CFR 762.149(a))	14-5
357	Foreclosure and Acceleration (7 CFR 762.149)	14-6
358	Lender Liquidation Plan (7 CFR 762.149(b)).....	14-9
359	Lender Submission of Estimated Loss Claim (7 CFR 762.149).....	14-12.5
360	Lender Submission of Final Loss Claim (7 CFR 762.149)	14-17
361	Release of Liability After Liquidation (7 CFR 762.146(c))	14-24
362	Miscellaneous Liquidation Items (7 CFR 762.149).....	14-26
363	Collecting Final Loss Claim Payments From Guaranteed Loan Debtors (7 CFR 762.149(m)).....	14-28
364	Release From Liability and Unauthorized Assistance	14-35
365-372	(Reserved)	

Part 15 Secondary Market

373	Overview of the Secondary Market for FSA Guaranteed Loans.....	15-1
374	Agency Requirements (7 CFR 762.160).....	15-4
375	Repurchase of Guaranteed Portion From a Secondary Market Holder (7 CFR 762.144)	15-9
376	Actions After Agency Repurchase (7 CFR 762.144)	15-14

Exhibits

1	Reports, Forms, Abbreviations, and Redelegations of Authority
2	Definitions of Terms Used in This Handbook (7 CFR 761.2(b))
3	(Reserved)
4	State Supplements
4.5	Lenders Loan Narrative
5	Electronic Access for FSA Lenders
6	(Withdrawn--Amend. 41)
7	Interim Guidance: Documentary Evidence of Status as a Qualified Alien
8	Interim Guidance: Documentary Evidence of Status as a U.S. Non-Citizen National
9	Embedded Entity Examples
10	Calculations and Formulas
11	Using an Allonge for a Loan Already Closed by the Lender When Guarantee Funds Were Not Available
12	Lender Documentation and Reporting Requirements
13	Interagency Agreement
14	FSA Appraisal Guidelines
14.1	FSA Appraisal Guidelines for Poultry
14.2	FSA Appraisal Guidelines for Dairy
14.3	FSA Appraisal Guidelines for Hog

Table of Contents (Continued)

Exhibits (Continued)

- 15 Appraisals for the Liquidation of Poultry and Other CAFO's
- 15.4 Lender and FSA Reporting to Credit Reporting Bureaus
- 15.5 Loss Claims
- 16 Comparison Guide for Loss Claim Decisions and Appeals
- 17 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
- 18 (Withdrawn--Amend. 65)
- 19 Notice to a Non-Debtor Entity of Intent to Collect by Non-Centralized Administrative Offset, Including Internal Administrative Offset From an Entity Member
- 20 (Withdrawn--Amend. 65)
- 21 Notice of Referral to the Department of Treasury to Collect Through the Treasury Offset Program (TOP) - Sent by the RD Business Center Only
- 22 Conditional Commitment Guidelines

Part 5 Loan Application Requirements (7 CFR 762.110)

Section 1 Application Requirements

65 General Application Requirements

A Application Requirements

[7 CFR 762.110(a)(1)] Lenders must perform at least the same level of evaluation and documentation for guaranteed loans that the lender typically performs 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.

--When FSA receives a guaranteed loan application in conjunction with a direct loan application, the authorized agency official will share application documentation with the guaranteed lender, if necessary, to facilitate application completeness and consistency.--

SEL's and CLP lenders may use FSA-2291 as an application processing checklist. FSA may use FSA-2292 to review an application for completeness.

[7 CFR 762.110(a)(2)] The application thresholds in this section apply to 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 fall below the threshold in order to avoid additional documentation.--*

To qualify for an EZ Guarantee Loan, an applicant's outstanding guaranteed loan principal balance may not exceed \$100,000 (\$50,000 for MLP lenders) for FO and OL combined at the time of loan closing.

[7 CFR 762.110(a)(3)] The Agency may require lenders with a lender loss rate in excess of the rate for CLP lenders to assemble additional documentation from (paragraph 68).

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

65 General Application Requirements (Continued)

B Maintaining Complete Loan File

[7 CFR 762.110(g)] 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 through 68 and all correspondence with the borrower about servicing actions and other loan-related documentation generated after loan approval.

[7 CFR 762.110(g)] The Agency may request additional information from any lender or review the lender's loan file as needed to make eligibility and approval decisions.

65.5 Application Requirements for EZ Guarantee Loans

A EZ Guarantee Loan Qualification

[7 CFR 762.110(b)] MLP lenders may submit an EZ Guarantee application for loans up to \$50,000. All other lenders may submit EZ Guarantee application for loans up to \$100,000.

To qualify for an EZ Guarantee Loan, an applicant's outstanding guaranteed loan principal balance may not exceed \$100,000 (\$50,000 for MLP lenders) for FO and OL combined at the time of loan closing.

B Application Package

[7 CFR 762.110(b)] Lenders must submit:

- Application for Guarantee, FSA-2211
- **if the loan fails to pass the underwriting criteria for EZ Guarantee approval in 762.125(d), or the responses in the application are insufficient for the agency to make a loan decision, the lender must provide additional information as requested by the Agency.**

Note: The intent of the EZ Guarantee Loan program is to reduce application requirements, provide lenders with more flexible underwriting rules, and therefore provide for faster FSA approval.

Additional information may only be required on a case-by-case basis * * * when necessary to make eligibility, environmental, or other determinations which are outside of the lenders' purview or to resolve inconsistencies in the application package.

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

* * *

C FLC Responsibilities

FLC's will:

- monitor loan application processing timeframes, GLS data entry, and performance goal
*-- accomplishments using Tableau dashboards. The "Guaranteed Loan Making"
dashboard will be used to monitor these items. The dashboard is available at
https://cxodashboard.dl.usda.gov/#/site/FPAC/views/FSALandingPage/LandingPage_1?iid=1&:redirect=auth--*

* * *

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

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

D SED Responsibilities

SED's will:

* * *

- 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 * * * average loan application processing timeframes

* * *

85-94 (Reserved)

96 Complete Application (7 CFR 762.130)**A When Application Is Complete**

[7 CFR 762.130(a)(3)] 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.

--This environmental review, conducted by FSA (using FSA-850 or an environmental assessment), focuses on the proposed use of loan funds and the environmental compliance of the action being supported by FSA funds. This is unrelated to the lender's own environmental due diligence (FSA-851 or other similar forms) which focuses on the suitability of loan security. See subparagraph 208 C for information about the lender's environmental due diligence requirements.--

B Documenting Completeness

The date the application is complete:

- will be documented on the Application for Guarantee 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

[7 CFR 762.130(a)(4)] 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.

A guaranteed loan application cannot be approved before the appropriate environmental review is completed and approved. In the case of a PLP lender, if an approval or rejection decision is not made within 14 calendar days of a complete application, FSA will consider feasibility requirements met and will conduct no further financial analysis after that point. However, the application will not be approved, funds will not be obligated, and the conditional commitment will not be issued until after the appropriate environmental review is completed and approved.

This environmental review, conducted by FSA (using FSA-850 or an environmental assessment), focuses on the proposed use of loan funds and the environmental compliance of the action being supported by FSA funds. This is unrelated to the lender's own environmental due diligence (FSA-851 or other similar forms), which focuses on the suitability of loan security. See subparagraph 208 C for information about the lender's environmental due diligence requirements.

96 Complete Application (7 CFR 762.130) (Continued)**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. Authorized agency officials will complete FSA-2231 to document all application evaluations regardless of final disposition.

*--When FSA receives a GFO application to be made in conjunction with a direct down payment program loan (3-FLP, Part 7, Section 2) or direct joint financing arrangement loan (3-FLP paragraph 134) the credit presentation completed in the FBP documenting analysis of the direct loan request will be adequate for the guaranteed credit evaluation under this paragraph. The authorized agency official will not be required to complete items 16 through 18, 19C and D, 20, and 21 on FSA-2231.

Agency officials will identify in item 25 that the guaranteed loan was made in conjunction with a direct down payment program loan or a direct joint financing arrangement loan and to see FBP for credit evaluation.--*

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 will 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.

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 will check DNP to verify that the applicant is not delinquent on any Federal debt. See 1-FLP, paragraph 53 and Exhibit 15.6 for more information on DNP.

- 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

Note: If an applicant is convicted of one of the offenses above, they may be ineligible during the crop year of the conviction and the next 4 succeeding crop years. Therefore, at the time of the application, if the applicant's conviction was within the past 5 years, they could be considered ineligible.

- is not ineligible because of disqualification resulting from a Federal Crop Insurance violation
- is not debarred or suspended from participating in government contracts or programs.

The authorized agency official will document that the applicant meets all eligibility requirements using FSA-2231. If the GFO request is in conjunction with a DFO request, see subparagraph 96 D for evaluation requirements.--*

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

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; or
- 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.

--If the debt forgiveness is resolved by repayment of the Agency’s loss, the Agency may still consider the debt forgiveness in determining the applicant’s creditworthiness.--

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.
- Instructs PLP lenders to use methods outlined in their CMS to determine the financial feasibility of a loan.
- details how to address missing or incomplete financial feasibility application information submitted by each lender according to the lender's status.

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.

--If the GFO request is in conjunction with a DFO request, see subparagraph 96 D for evaluation requirements.--

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 lender will provide a cash flow budget that:

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

The authorized agency official will document the following information on FSA-2231:

- cash flow budget that includes all cash inflows and outflows, such as farm income sources, lease information, expenses, marketing strategies, non-farm income sources, and cash flow ratio information
- reasonable capital reserves or savings for education and retirement if needed to support operation stability and growth.

Notes: Inclusion is not required, but it may be done at the lender's discretion according to internal policies.--*

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

B Feasible Plan (Continued)

*--If a lender does not specifically budget for reasonable working capital reserves or savings, they still must address how the applicant is able to make progress toward long-term financial goals within the loan narrative.

If the submitted cash flow budget **does not** meet these requirements, 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.

Poultry or hog production contracts are the basis of grower income and facility value. The dependability of production contracts has a profound impact on the prospects for loan repayment. “Flock-to-flock” or “turn-by-turn” type arrangements alone may not be a dependable source of income or a reasonable projection of income for poultry or hog applicants who **do not** have a current financial performance history with FSA.

Note: For contract income to be considered dependable, the contract must:

- be for a minimum period of 3 years
- provide for termination based on objective “for cause” criteria only
- require that the grower be notified of specific reasons for cancellation
- provide assurance of the grower’s opportunity to generate enough income to ensure repayment of the loan, by incorporating requirements such as a minimum number of flocks or turns a year, minimum number of bird or hog placements per year, or similar quantifiable requirements.

Applicants requesting loans to expand their poultry or hog operation by adding more houses/barns or purchasing additional land to increase the size of the poultry or hog operation, and who **are** presently indebted to FSA, will be required to have a contract with a minimum 3-year term. The contract must at least cover the facilities financed with the guaranteed funds.

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 stated in FSA-2232 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.

Note: It is required that all security items be listed in FSA-2232, item 16.

B Adequate Security

[7 CFR 762.126(a)(1)] 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.

*--Adequate security is defined as property which is required to provide a security value at least equal to the loan amount.

An additional amount of security will be obtained at the lender's discretion according to their internal lending practices. SEL and CLP lenders will provide documentation on how the loan request meets their internal lending practices in the loan narrative. PLP lenders will follow their collateral standards based on their approved CMS. If the authorized agency official determines that the proposed security does not meet the lender's internal lending practices, the lender must take additional security (if available) or provide documentation as to why additional security is not necessary.--*

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

*--To determine LTV for FSA guaranteed loan requests use the following calculation.

$$\text{LTV} = \frac{(\text{Guaranteed loan amount} + \text{prior liens})}{\text{Market value}}$$

Guaranteed Loan: \$516,800

Security item	Lien Position	Value	Prior Liens	Collateral Value
40 Acres	1 st	\$474,000	\$0	\$474,000
5 Acres & buildings	2 nd	\$365,000	\$129,443	\$235,557
		\$839,000		\$709,557

$$\text{LTV} = \frac{(\$516,800 + \$129,443)}{\$839,000} = 77\%$$

For LOC's, the loan ceiling must be used when calculating the LTV. The value of crops may be considered in the calculation only if harvested and marketable; for example, stored in bins; and the value of market livestock must be considered at their current weight.--*

* * *

[7 CFR 762.126(b)(1)] 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.

[7 CFR 762.126(b)(2)] 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.--*

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

--The lender's status has no bearing on the requirements regarding junior liens, identifiable collateral, the type of security required by the type of loan, or any other regulatory requirements regarding loan security.--

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

D Lien Position

[7 CFR 762.126(e)] 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.**

Notes: 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.

A lender may secure a guaranteed and unguaranteed loan with individual personal property items provided they can be identified separately. For example, a lender with a first lien on all equipment may subordinate two
--tractors and a planter to the FSA guaranteed loan, providing adequate-- collateral to secure the 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: The security used to determine the 85 percent threshold must be valued using an evaluation or appraisal as described in paragraphs 181 through 183.

Personal property secured guaranteed loans may be secured by a junior lien position which meets this requirement when a different lender is involved.

Junior lien positions are acceptable for real estate security when the same or a different lender is involved.

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

--If a proposed loan is to be secured with 1 or more items in a junior lien position that are necessary to meet adequate security requirements, the 85 percent limitation applies. In those cases, agency officials should utilize the calculation in subparagraph 166 B to determine whether the 85 percent threshold has been met. If junior liens are taken as additional security only, the 85 percent limitation does not apply.--

* * *

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

D Lien Position (Continued)

A subsequent guaranteed loan is not considered junior provided that it is made by the same lender with the same real estate or personal property security and also provided that it is not junior to a nonguaranteed loan. In these cases, the subsequent guaranteed loan will be treated as having an equal lien position as the existing guaranteed loan.

A subsequent unguaranteed loan made by the same or a different lender will be considered junior to the guaranteed loan.

A guaranteed loan and an unguaranteed loan secured by the same real estate security and made by the same lender may be considered to have a shared lien.

Note: This applies to a guaranteed and an unguaranteed loan closed at the same time or a guaranteed loan made subsequent to an unguaranteed loan. It does not apply to an unguaranteed loan made subsequent to a guaranteed loan.

*--The following table provides the lien position scenarios in this subparagraph.

WHEN the loan request is a...	THEN the lien position is...
subsequent guaranteed loan	equal lien to original guaranteed loan.
<ul style="list-style-type: none"> • with: <ul style="list-style-type: none"> • same lender • same collateral • not junior to unguaranteed loan 	
subsequent guaranteed loan and is junior to an unguaranteed loan	junior lien position.
subsequent non-guaranteed loan and has the same or different lender	junior lien position to the guaranteed loan.
guaranteed loan and non-guaranteed loan <ul style="list-style-type: none"> • with: <ul style="list-style-type: none"> • same lender • same collateral • that close at the same time or the guarantee comes after 	shared lien position or junior lien position (if the 85 percent threshold is met) depending on agreement with the lender. Note: Lender makes the shared lien determination. The agency cannot require a shared lien if the junior lien provisions of this subparagraph (including the 85 percent threshold) are met.

--*

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

D Lien Position (Continued)

If a lender chooses to consider the loans to have a shared lien position, FSA will include a description on the FSA-2232, outlining how proceeds will be distributed if security is liquidated. Language similar to the following should be used:

--“This guaranteed FO loan in the amount of \$_____ is to be closed simultaneously with an unguaranteed loan in the amount of \$_____. These loans will equally share first lien position on approximately _____ acres of real estate along with leases and improvements. In the event the security is liquidated, the proceeds will be divided pro rata based on the above loan amounts totaling \$_____. If liquidation occurs ___% of the proceeds would be applied onto the guaranteed loan and ___% of the proceeds would be applied onto the unguaranteed loan.”--

- **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.

- **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.

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

E Additional Security

[7 CFR 762.126(a)(2)] The lender will obtain a lien on additional security when necessary to protect the Agency's interest.

[7 CFR 762.126(f)] For real estate, 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.

Note: 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 additional security:

- the lien position restrictions in subparagraph D do not apply
- FSA must ensure the FSA-2232 includes any required additional security and the expected lien position in addition to all other required security
- for personal property security, the lender will be expected to file and perfect the position(s)
- an appraisal is not required to be completed on additional security, but the lender must provide a statement of estimated value.

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 useful life 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 a formal memo and supporting documentation addressing the following items:

- analysis of the benefits or problems
- documentation of exception criteria requirements
- analysis of why the exception is in the best interest of the government, the lender, and the applicant
- 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)

196 Exception to Standard Guarantee Limits (7 CFR 762.129)

A Exceptions for FO and OL

[7 CFR 762.129(b)(1)] For OL's and FO's, the guarantee will be issued at 95 percent when:

- a loan is made to a qualified beginning farmer * * *; or
- the sole purpose of a guaranteed FO or OL loan is to refinance an Agency direct farm loan. When only a portion of the loan is used to refinance a direct Agency loan, a weighted percentage of a guarantee will be provided; or

Note: 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.

The weighted average guarantee is calculated as follows.

$$\begin{array}{rcl}
 \frac{\text{Outstanding direct loan}}{\text{Guaranteed loan amount.}} \times 95\% + & \frac{\text{Portion of guaranteed loan not refinancing direct loan}}{\text{Guaranteed loan amount.}} \times \text{Percent of guarantee.} = \\
 \frac{90,000}{300,000} \times 95\% + & \frac{300,000 - 90,000}{300,000} \times 90\% = 91.5 \text{ percent}
 \end{array}$$

The weighted average guarantee must be rounded up to the next whole percent, so the guarantee in this example would be 92 percent.

196 Exception to Standard Guarantee Limits (7 CFR 762.129) (Continued)**A Exceptions for FO and OL (Continued)**

- **the purpose of an FO loan guarantee is to participate in the down payment loan program; or**

Note: The down payment loan program is a loan made under 3-FLP, Part 7, Section 2 provisions.

- **a guaranteed OL is made to a farmer who is participating in the Agency's down payment loan program; or**

Notes: The guaranteed OL must be made during the period that a borrower has the down payment loan outstanding.

Applicants are not required to be beginning, socially disadvantaged, or veteran farmer to qualify for a 95 percent guarantee. There only must be an outstanding balance on a down payment loan at the time the guaranteed OL is closed, or there is a direct down payment loan approved but funding is not available at the time the guaranteed OL is closed.

- loans made under a State beginning farmer program where a memorandum of understanding between the State and USDA has been approved by DAFLP; or
- **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.**

B Exceptions for CL

--[7 CFR 762.129(b)(2)] For CL's, the guarantee will be issued at 90 percent if the applicant is a qualified beginning farmer.--

197-207 (Reserved)

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 and any agreed modifications.
- **Security for the Loan.** The authorized agency official should ensure that all security items and expected lien positions are included on the Conditional Commitment.
- **Electronic Applications.** If the lender submitted Application for Guarantee electronically and all of the required electronic signatures are not obtained, then Conditional Commitment, item 17 should specify that the signed copy of the application be submitted with the loan closing documents. FAXed or scanned signatures are acceptable.
- **Lender's Agreement.** The lender will be required to execute FSA's Lender's Agreement if the lender does **not** have one in effect.
- **Corporate Restriction.** Lenders that are corporations must read and certify to the statements on Part C of FSA-2236 before FSA issues FSA-2235. FSA officials will add this as a condition to FSA-2232.

--In developing the Conditional Commitment, the authorized agency official will tailor the Conditional Commitment to the specific borrower and loan request. Each condition placed on the loan must be appropriate to the specific lending situation with the goal of producing a higher quality loan. The authorized agency official will avoid duplicating requirements already included in FSA-2201, 7 CFR Part 762, FSA-2232, or the PLP Lender's CMS. See Exhibit 22 for a list of conditions by loan type that should be included in Part B of the Conditional Commitment. Conditions listed on FSA-2232 will be limited to those the lender can fulfill before receiving FSA-2235.--

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**

[7 CFR 762.130 (c)] 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.

* * *

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 249.

If a PLP lender rejects an 80 percent guarantee, received as a result of FSA not acting on a request within 14 calendar days of receiving a complete application, 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.

--Once the lender executes the Conditional Commitment accepting the conditions, it must be returned to FSA before issuing the guarantee. After both parties execute the document, the lender may proceed to close the loan within the timeframe specified in Part D, 21 B of the Conditional Commitment.--

246 Lender's Response to the Conditional Commitment (7 CFR 762.130(c)) (Continued)**B * * * Extending the Conditional Commitment**

*--It is the lender's responsibility to request an extension if one is needed. The authorized agency official may grant an extension in writing to the lender if the lender provides reasonable justification for the extension. If a lender submits closing documentation after the expiration of the Conditional Commitment and an extension was not requested, adequate justification for the delay in closing must be provided. Before issuing a guarantee after an extension of the target closing date, the authorized agency official must ensure the applicant's financial information is still up to date.

The National Office routinely monitors guaranteed loans that have been obligated for an extended period of time without being closed. Similarly, State Offices are recommended to also track obligated but unclosed guaranteed loans.--*

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-2236 Guaranteed Loan Closing Report and Lender Certification

Note: [7 CFR 762.130(d)(4)(i)] The lender must complete an Agency closing report form and return it to the Agency.

[7 CFR 762.130 (d)(1)] 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.

- 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

247 Actions Before Issuing the Loan Guarantee (7 CFR 762.130) (Continued)

A Lender's Actions (Continued)

- **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.**

***--Note:** Lenders who complete the loan closing report and certify to the above items in LINC will not be required to submit FSA-2236 to FSA.--*

- a completed Application for Guarantee * * * with appropriate signatures if the lender submitted the application electronically without all required signatures
- an acceptable evaluation from SEL's, if the guarantee was approved subject to an evaluation

Notes: If the loan was approved subject to an appraisal, the lender will certify an appraisal is in their files.

SEL's should be encouraged to submit the evaluation to FSA before loan closing to ensure compliance with FSA requirements.

- Lenders Agreement

Note: [7 CFR 762.130(d)(3)] **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.

247 Actions Before Issuing the Loan Guarantee (7 CFR 762.130) (Continued)

A Lender's Actions (Continued)

- guarantee fee

[7 CFR 762.130(d)(4)(ii)] The guarantee fee for the loan type will be calculated as follows:

FO guarantee fee = Loan Amount x % guaranteed x (FO percentage established by FSA)

OL guarantee fee = Loan Amount x % guaranteed x (OL percentage established by FSA)

CL guarantee fee = Loan Amount x % guaranteed x (CL percentage established by FSA).

Note: The guarantee fee is established by the Agency at the time the guarantee is obligated. The fee, beginning in FY 2012, is 1.5 percent. The current fee schedule is available at any FSA office. The Agency may change the guarantee fee by a notice in the Federal Register. Guaranteed fees may be adjusted annually based on factors that affect program costs. 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.

[7 CFR 762.130(d)(4)(iii)] 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 beginning * * * or veteran farmers involved in the direct Down Payment Loan program or beginning farmers participating in a qualified State Beginning Farmer Program.

Note: Only applicants who meet both of the following requirements will qualify for a waiver of the fee:

- meets the definition of a beginning farmer according to Exhibit 2 as of the date the application is received, for the type of guarantee being requested * * * or veteran farmer, **and**

247 Actions Before Issuing the Loan Guarantee (7 CFR 762.130) (Continued)

A Lender's Actions (Continued)

- as of loan closing, applicant has an outstanding balance on a direct down payment loan under 3-FLP, Part 7, Section 2, or a qualified State Beginning Farmer loan; or has a direct down payment loan or a qualified State Beginning Farmer loan approved but funding is not available at the time the guaranteed loan is closed.

Notes: Applicants meeting only the definition of beginning * * * or veteran farmer will not qualify for the waiver.

A qualified State Beginning Farmer Program has MOU between the State and USDA and has been approved by DAFLP and signed by the State.

- a copy of the executed promissory note or loan agreement

Note: [7 CFR 762.130(e)] **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**

Note: HEL/WL language is required to be included in lender's debt and security instruments as outlined in Part 12 of the conditional commitment if the farming operation has HEL/WL present. However, WL determinations are not always complete, or the applicant may acquire additional farms during the term of the loan. Due to these uncertainties, it is often difficult to determine that there will be no HEL/WL present. Therefore, the HEL/WL language should typically be included in the debt and security instruments for all guaranteed loans.

- **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

247 Actions Before Issuing the Loan Guarantee (7 CFR 762.130) (Continued)

A Lender's Actions (Continued)

- 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.
- the note is executed by the individual liable for the loan

Note: For entity applicants, the promissory note will be executed to evidence liability for the entity, any embedded entities, and the individual liability of all entity members (including individual owners of embedded entities). 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.

Note: This also applies when a lender has closed an approved guaranteed loan before funds are available.

See Exhibit 11 for additional guidance.

- FSA-2236. Lenders that are corporations must read and certify to the statements on Part C of FSA-2236. A lender is a corporation if they file articles of incorporation with the Department of State where their headquarters is located. A completed FSA-2236 must be received for each application.--*

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.**

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 and MLP, FSA will review 20 percent of the lender's outstanding guaranteed borrowers every 3 years, unless there has been financial deterioration of the lender or the guaranteed program.

For each CLP and PLP lender, FSA must review the files of 20 percent of the lender's outstanding guaranteed loan borrowers, up to a maximum of 50 borrowers every 5 years, unless there has been financial deterioration of the lender or the guaranteed program.

Notes: Financial deterioration of the lender is when there is a significant increase in the number of, and/or dollar amounts associated with, the following items from the previous year:

- Default Status Reports
- Past Due Status Reports
- Estimated Loss Claims
- Final Loss Claims.

Financial deterioration may also be evidenced by notification or public notice from lending oversight or review organizations such as:

- Federal Deposit Insurance Corporation (FDIC)
- National Credit Union Administration (NCUA)
- Farm Credit Administration (FCA)
- Federal Reserve Board
- A state banking regulatory agency.--*

267 FSA Loan Servicing Responsibilities (Continued)

B Lender Loan Files Review Priorities (Continued)

*--Any such notifications or public notices should be reviewed carefully to determine if there could be an impact of the lender's ability to continue operating or if there are concerns related to the guaranteed program. If concerns arise, a lender review should be completed.

Loans will be selected for review according to the following priorities:

- loans receiving consideration for rescheduling, deferral, write-down, 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
- performing LOC and OL
- performing FO, only if required to reach minimum number of required reviews.

For lenders processing guaranteed loans in more than one State, the file reviews should be done in the State where the lender is headquartered, unless the lender requests the review be conducted in a different location. States are responsible for communicating with each other to determine who will lead the review and who from each State will assist with the review.

Review Summary		
Lender Type	Number of Borrowers to Review	Minimum Frequency
SEL	20 percent of guaranteed loan borrowers.	Every 3 years.
CLP	20 percent of guaranteed loan borrowers, with a minimum of 5 borrowers and a maximum of 50 borrowers.	Every 5 years.
PLP	20 percent of guaranteed loan borrowers, with a minimum of 5 borrowers and a maximum of 50 borrowers.	Every 5 years.

--*

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, with written Agency approval, 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 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.

--A template is available for DAFLP exception requests for subordination along with instructions and examples. The "Template for DAFLP Exception Requests for Subordination" can be found under the Loan Making Guides and Trainings section located on the Program Base Trainings SharePoint site at <https://usdagcc.sharepoint.com/sites/FSA-DAFLP/SitePages/programbased.aspx> --

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.

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

***--(subparagraph 360 D) 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 request updates to the bankruptcy proceedings. They should 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.

344 FSA Responsibilities in Bankruptcy Proceedings (Continued)

A Monitoring Responsibilities (Continued)

During a bankruptcy proceeding, the authorized agency official must:

- determine the necessity of an independent appraisal or evaluation according to 7 CFR 762.127 (paragraphs 181 and 182) of collateral
- review documentation supporting loss claims, including expense claims, submitted by the lender

***--Note:** If a Type 01 estimated loss claim was received prior to a reorganization bankruptcy filing but was not yet processed, the agency will cease processing. The days during the bankruptcy deliberations (from filing to confirmation or, if no confirmation, filing to dismissal) will not count against the agency's processing time. If a final loss claim is later filed, the lender will be entitled to interest during the bankruptcy deliberations, according to subparagraph 360 F.

However, if a relief of stay is granted and the lender is able to proceed with liquidating all remaining guaranteed loan security, then the agency may proceed with processing the Type 01 estimated loss claim.

During the bankruptcy proceedings the lender generally does not have the authority to liquidate. Pausing the processing of the Type 01 estimated loss claim during bankruptcy deliberations will prevent any potential overpayment if a Type 05 is needed upon confirmation. The lender will still be entitled to interest during the bankruptcy deliberations on the final loss claim.

- upon confirmation of the reorganization bankruptcy plan, FSA will submit FSA-2249 and a copy of the confirmed bankruptcy plan to the RD Business Center, Guaranteed Commercial Branch, with any Type 05 loss claim to adjust to the new loan amount.--*

B Post Bankruptcy Plan Completion Actions

When a Chapter 11, 12, or 13 confirmed bankruptcy plan has been completed, unsecured debt will be discharged. Subparagraph 342 E requires the lender to provide documentation on the actual loss sustained. If there has been an additional loss incurred, an adjusted bankruptcy type 05 loss claim will be processed.

If the lender liquidates after a bankruptcy plan has been completed, but before the end of the term of the guarantee, the loss claim will be processed according to paragraphs 359 and 360 using the bankruptcy plan completion date as a beginning date for the new principal loan balance and the interest accrual for the loans.

If the loan pays in full, a loss claim is **not** required.

344 FSA Responsibilities in Bankruptcy Proceedings (Continued)**C 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 whether 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 the RD Business Center, Guaranteed Commercial Branch.--

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 one or a 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 and provide a copy of the acceleration notice to FSA.~~
- The lender must prepare a liquidation plan. SEL, CLP, and MLP 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 in the following table. All dates are measured in calendar days after the missed payment due date. If the lender is liquidating due to non-monetary default, dates are measured in calendar days from the date the lender notified the borrower of the non-monetary default. See subparagraph 300 A for the Delinquent Loan Servicing Timeline and paragraph 301 for additional non-monetary default guidance.~~

Liquidation Dates	Action
60	Earliest date that lender may initiate foreclosure action. Note: 60 days after IA eligibility has been determined (paragraph 300). If IA is not currently funded, 60 days is measured from the missed payment due date.
90	Lender accelerates the loan and gives notice to borrower and FSA.
120	Lender prepares liquidation plan.
150	Liquidation plan and estimated loss claim must be submitted.
170	Liquidation plan must be approved by FSA. Note: 20 days after submission of liquidation plan (subparagraph 358 F).
180	Estimated loss claim must be approved by FSA. Note: 30 days after submission of estimated loss claim (subparagraph 359 F).
260	Liquidation completed.
290	Final loss claim submitted.
330	FSA should approve or request modification of final loss claim. Note: 40 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 responsibility 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.

***--Note:** If IA is not currently funded, 60 calendar days is measured from the missed payment due date and all other requirements related to IA are waived.--*

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.** Once the loan has been accelerated, the lender will include a copy of the acceleration notice with the next FSA-2248 and will begin reporting the loan as fully due and payable (see subparagraph 357 C). If the FSA-2248 is submitted via LINC, the lender will mail or email the acceleration letter to the agency.--*

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 * * ***

--Within 45 calendar days of the missed payment due date, the lender is expected to notify the borrower of the default and meet with the borrower to discuss solutions. If restructuring is not an option, then within 90 calendar days after the missed payment due date the account should be accelerated and the borrower notified. If a solution that requires more than 90 calendar days is agreed to, the reasons should be indicated on FSA-2248. The authorized agency official will review FSA-2248 and if acceptable, concur with the lender's plan and request a restructuring plan or a liquidation plan if necessary, 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 and MLP lenders will submit a written liquidation plan to the Agency** (see paragraph 358). The authorized agency official will review the lender's timeframe estimates 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 SEL, CLP, and MLP lenders in all cases, including when all of the security has been sold,
 the borrower is liquidating voluntarily, or no loss is expected. FSA must 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 will respond in writing within 30 calendar days of the receipt. If
 FSA questions the accuracy of the estimated loss claim, FSA will resolve the discrepancy
 before the 30-calendar-day deadline. See subparagraph 359 F.

Estimated loss claims will only be reviewed for the accuracy of the principal and interest
 balance (based on the lender's provided ledger and interest accrual rules according to
 paragraph 359), to ensure the form was completed correctly, and for any mathematical
 errors. 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 260 calendar days after the missed payment
 due date, unless otherwise approved in the liquidation plan.--*

I Final Loss Claim Is Submitted

--Lenders must 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 290 calendar days after the missed payment due date, whichever comes
 first, unless an extension of this period is granted. The authorized agency official will--*
 document the request for an extension and approve it or reject it as soon as practical.

The authorized agency official will 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 must 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 timeline, 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. If IA is not currently funded, 60 days is measured from the missed payment due date. 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. * * * 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.

--The lender must provide a copy of the acceleration notice to FSA by attaching it to the first FSA-2248 that is submitted following acceleration. The FSA-2248 must reflect the entire balance as past due. All future FSA-2248's and FSA-2241's must reflect the entire balance as past due.--

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.

Note: When there is a lien ahead of the guaranteed debt, the prior lien amount will be added to the net recovery value and the unpaid guaranteed loan balance when determining
--the minimum bid amount. Exhibit 10 may be used to calculate the net recovery value and the minimum bid amount.--

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 within 150 calendar days of the missed payment due date. SEL, CLP, and MLP lenders must submit a liquidation plan to FSA.--

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 and MLP 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 §761.2(b) of this chapter (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 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**
- **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. If the loan was accelerated, the FSA-2248 must reflect the entire balance as past due. All future FSA-2248's must reflect the entire balance as past due. The lender must also submit a copy of the acceleration letter to FSA.--*

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.

359 Lender Submission of Estimated Loss Claim (7 CFR 762.149)

A Overview

***--An estimated loss claim must be submitted by all lenders no later than 150 calendar days after the payment due date unless the account has been completely liquidated and then the final loss claim must be filed.** If the estimated loss claim is not submitted within 150 calendar days after the missed payment due date, then interest accrual on the estimated loss claim will not exceed 150 calendar days. At a minimum, lenders should be encouraged to submit an estimated loss claim for \$0 within 150 calendar days, even if a loss is anticipated.

All lenders will provide FSA with **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 loan ledger must include the following:

- daily interest accrual rate
- unpaid accrued interest
- amount and dates of any advances
- amounts and dates of any payments
- interest rates
- principal balances.--*

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 certify with the estimated loss claim that appropriate deductions were made for unaccounted for security, if necessary.
- **The lender will discontinue interest accrual on the defaulted loan at the time the estimated loss claim is paid by the Agency (settlement date). 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.**
- ***--Payment of interest up to 210 calendar days is to provide sufficient time for FSA to review the claim and for lenders to provide clarification, when requested (see subparagraph F for details regarding FSA's review), but only in cases where the estimated loss claim was submitted timely. If the estimated loss claim was submitted after 150 calendar days, interest will cease at 150 calendar days. --***
- Lenders will provide their loan daily interest accrual with their estimated loss claim.

359 Lender Submission of Estimated Loss Claim (7 CFR 762.149) (Continued)

A Overview (Continued)

- * * *The lender may claim interest between the approval date and the date they received the estimated loss claim payment on the final loss claim.

Notes: For Chapter 7 bankruptcy liquidation cases, interest accrual is processed like any estimated loss claim. The date of filing has no impact on the interest accrual determination.

*--If the loan was delinquent prior to the Chapter 7 filing date, interest will be calculated from the missed payment due date. If the loan was current on the Chapter 7 filing date, interest will be calculated from the date of filing.

Additional interest beyond 210 calendar days may be paid in some cases where the loss is following a Chapter 11, 12, or 13 bankruptcy dismissal and in some cases involving borrower-initiated litigation. However, this additional interest will be calculated and paid on the final loss claim only.

FSA will approve the estimated loss claim within 30 calendar days of submission. In cases where the claim was submitted timely, if FSA delays the review and approval beyond 210 calendar days from the missed payment due date, FSA will pay the lender additional interest for each day of FSA's delay to the date of approval. However, this additional interest beyond 210 calendar days will not be included with the loan's interest accrual calculation on the FSA-2254.

In cases where the claim was not submitted timely, FSA will still pay the lender additional interest for each day of FSA's delay beyond 30 calendar days, to the date of approval. However, this additional interest will not be included with the loan's interest accrual calculation on the FSA-2254. (See Exhibit 15.5 for additional information).

Note: If the borrower files for reorganization bankruptcy following the submission of an estimated loss claim but prior to the payment of the estimated loss claim, the Agency will cease processing the estimated loss claim. The days during the bankruptcy deliberations (from filing to confirmation or, if no confirmation, filing to dismissal) will not count against the Agency's processing time. If a final loss claim is later filed, the lender will be entitled to interest during the bankruptcy deliberations, according to subparagraph 360 F.

However, if a relief of stay is granted and the lender is able to proceed with liquidating all remaining guaranteed loan security, then the agency may proceed with processing the Type 01 estimated loss claim.

During the bankruptcy proceedings the lender generally does not have the authority to liquidate. Pausing the processing of the Type 01 estimated loss claim during bankruptcy deliberations will prevent any potential overpayment if a Type 05 is needed upon confirmation, while the lender will still be entitled to interest during the bankruptcy deliberations on the final loss claim.--*

* * *

359 Lender Submission of Estimated Loss Claim (7 CFR 762.149) (Continued)**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, should be provided on the 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.

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.

359 Lender Submission of Estimated Loss Claim (7 CFR 762.149) (Continued)**C Lender Submission of Estimated Loss Claim**

--Lenders will prepare and submit the estimated loss claim on FSA-2254 along with a copy of the loan ledger to the authorized agency official. Within 7 calendar days of receipt, the authorized agency official must enter and submit the estimated loss claim into GLS using the Lender Proposed column.--

* * *

*--Estimated loss claims, regardless of lender status, will only be reviewed for accuracy of the principal and interest balance (based on the lender's provided ledger and interest accrual rules of this paragraph), to ensure FSA-2254 was completed correctly, and for any mathematical errors. FSA-2254 instructions provide examples on how to complete certain fields.

Lenders must itemize all expenses claimed and security proceeds in Item 60 of the FSA-2254 or on an attached addendum.--*

359 Lender Submission of Estimated Loss Claim (7 CFR 762.149) (Continued)

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. The lender will certify with the estimated loss claim that appropriate deductions were made, if necessary.--*

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. See subparagraph 360 D for additional information.--*

PLP lenders will make protective advances according to the Lender's Agreement.

*--Protective advances are not paid on a Type 01 estimated loss claim. **Payment for protective advances is made by the Agency when the final loss claim is approved, except in reorganization bankruptcy actions.** Protective advances in reorganization bankruptcies may be paid on the Type 05 estimated loss claim, according to subparagraph 342 D.--*

F FSA Approval and Payment of Estimated Loss Claim

*--The estimated loss claim is submitted on FSA-2254 to the authorized agency official. FSA will review the submitted claim to ensure it has been completed correctly. FSA may request corrections to the form if necessary; however, FSA's review must not include requiring supporting documentation as that will be done at the time the final loss claim is processed.

After reviewing FSA-2254 to ensure the form was completed correctly, the authorized agency official shall forward FSA-2254 to the SED with a recommendation to approve the estimated loss claim. If SED finds the estimated loss claim to be accurate, SED shall approve it within 30 calendar days of estimated loss claim submission. If the authorized agency official is unable to recommend approval of the estimated loss claim, the concerns should be reviewed with the SED. The SED will determine if the estimated loss claim will be disputed with the lender. If FSA wants to dispute the estimated loss claim, FSA will attempt to resolve the differences with the lender within 30 calendar days of the submission.--*

After approval by SED, SED must forward FSA-2254 to the RD Business Center, Guaranteed Commercial Branch for payment of the estimated loss claim according to 1-FLP, paragraph 5. The RD Business Center, Guaranteed Commercial Branch shall issue a check to the lender within 30 calendar days of receiving FSA-2254.

*--**Note:** Estimated loss claims for \$0 do not require SED signature and the FSA-2254 will not be submitted to RD Business Center for processing. When the authorized agency official clicks "Refer to NFAOC" in GLS, the status of the estimated loss claim will automatically change to "Complete."--*

359 Lender Submission of Estimated Loss Claim (7 CFR 762.149) (Continued)

G Application of Estimated Loss Payment

* * *

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 must 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 loan ledger will include the following:

- daily interest accrual rate
- unpaid accrued interest
- amounts and dates of any advances
- amounts and dates of any payments--*
- * * *
- interest rates
- principal balances.

***--The ledger provided with the final loss claim should reflect the following:**

- application of any net liquidation proceeds
- approved protective advances, if applicable
- any voluntary payments
- no additional interest accrual except on protective advances.

The ledger should not reflect that the estimated loss claim was applied as a regular payment.--*

360 Lender Submission of Final Loss Claim (7 CFR 762.149) (Continued)**C Lender Submissions of Final Loss Claim (Continued)**

•*--documentation, as requested by the Agency, concerning the lender's compliance with the requirements of this part, including but not limited to:

- receipts or invoices of all liquidation expenses (see subparagraph 359 B for liquidation expenses and legal fees) and protective advances
- settlement statements or similar documents for the sale of all security items
- ledgers for nonguaranteed loans, to ensure proceeds have been applied accordingly.

Note: Documentation with a final loss claim is not required if:

- the final loss claim is for \$0, following a \$0 estimated loss claim, or
- the final loss claim (actual loss) is for \$0, following an estimated loss claim that resulted in a payment where the entire estimated loss claim must be repaid, according to subparagraph 360 G.--*

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 will be reflected on the Type 02 final loss claim, unless they are being advanced for reorganization bankruptcy proceedings, then they may be reflected on the Type 05 estimated loss claim (see subparagraph 342 D).--*

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.

360 Lender Submission of Final Loss Claim (7 CFR 762.149) (Continued)**D Protective Advances (Continued)**

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 accrues at the note rate from the date of each advance to the date the final loss claim is submitted. A reduction of the final loss claim may be necessary if interest on protective advances continues to accrue because of excessive delays in liquidation or submission of the final loss claim.--

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 (see subparagraph 342 D).--*

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.

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.

360 Lender Submission of Final Loss Claim (7 CFR 762.149) (Continued)

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 calendar 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. This additional interest paid to the lender for FSA delays in processing the final loss claim over 40 calendar days is not included with the loan's interest accrual calculation on the FSA-2254. (See Exhibit 15.5 for additional information). FSA officials may use FSA-2296 for this discrepancy review.

Note: When FSA must request additional information from the lender to proceed with processing, FSA's review and approval clock will pause as of the date of the request and will resume when the requested information is received.--*

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 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.**
- ***--A final loss claim may be reduced, adjusted, or rejected as a result of negligent servicing after the concurrence with a restructuring action under 7 CFR 762.145 (see subparagraph 329 C).--***

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 one or more financial institutions to which any FSA payments will be made by EFT.

*** * ***

***--Interest accrual as part of a final claim will be the same as the estimated claim, (unless the interest on the estimated claim is incorrectly calculated), except for the following circumstances.**

- **It may include interest that accrued between the estimated loss claim settlement date and the date the lender received the estimated loss claim payment for all final claims in which an estimated claim was previously paid.**
- **In the case of a Chapter 7 bankruptcy, in cases where the lender timely 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 timely submitted by the lender and paid by the Agency during the liquidation action.--***

360 Lender Submission of Final Loss Claim (7 CFR 762.149) (Continued)**F FSA Approval and Payment of Final Loss Claim (Continued)**

- *--For Chapter 11, 12, and 13 bankruptcies, if the bankruptcy is dismissed before liquidation, interest accrual may exceed 210 calendar days from the missed payment due date on the final loss claim only. During the bankruptcy, interest continues to accrue, but the days for calculating interest termination do not count against the lender, including cases where the lender did not have an estimated loss claim, because the lender does not have the authority to liquidate. Interest may be paid from the date of filing through the date of confirmation, or if a plan was never confirmed, then to the date of dismissal. In these 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. See Exhibit 15.5 for examples.
- For cases involving borrower-initiated litigation, interest accrual may exceed 210 calendar days from the missed payment due date on the final loss claim only. During the litigation, interest continues to accrue, but the days for calculating interest accrual termination will not count against the lender, including cases where the lender did not have an estimated loss claim, if the lender is unable to liquidate. In these cases, the authorized agency official shall document that interest accrual exceeded 210 calendar days because of litigation. See Exhibit 15.5 for examples.

If an estimated loss claim was not timely submitted or the final loss claim was not submitted within 150 calendar days of the missed payment due date, interest accrual on the final loss claim may only be paid beyond 150 calendar days from the payment due date if the requirements of one of the last two bullet points above are met (Chapter 11, 12, and 13 bankruptcies or borrower-initiated litigation).

FSA will 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 calculated on the claim to the date that FSA determines--* that liquidation should have reasonably been accomplished.

* * *

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 the RD Business Center, Guaranteed Commercial Branch 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 to the date the final loss claim is submitted.--

* * *

* * *The amount of overpayment or underpayment will be calculated on FSA-2254. The interest due on any loss claim will be calculated by the RD Business Center, Guaranteed Commercial Branch based on 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 RD Business Center, Guaranteed Commercial Branch 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.

Note: When the original Guarantee is not available, an electronic copy of the original or
--some other form of written verification from the lender stating the guarantee is terminated is acceptable.--

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.

Reports, Forms, Abbreviations, and Delegations of Authority

Reports

None.

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
FmHA-449-34	Loan Note Guarantee		267, 281
FmHA-1980-64	Interest Assistance Agreement		224, 228, 230
FSA-850	Environmental Screening Worksheet		66, 69, 70, 83, 95, 96, 195, 244
FSA-851	Environmental Risk Survey Form		Text, Ex. 22
FSA-1940-3	Request for Obligation of Funds Guaranteed Loans		226, 230
FSA-1980-25	Application for Guarantee		108, 285, 286, 360, 361, 363
FSA-1980-27	Loan Guarantee		364, 376
FSA-1980-28	Preferred Lender Application for Guarantee		108, 285, 360, 361, 363
FSA-1980-36	Assignment of Guarantee		375
FSA-1980-64	Interest Assistance Agreement		224, 228, 230
FSA-2028	Security Agreement		50
FSA-2072	Cancellation of U.S. Treasury Check and/or Obligation		249
FSA-2201	Lender's Agreement		Text
FSA-2203	Preferred Lender Sticker		53
FSA-2205	Guaranteed Micro Lender Application		55
FSA-2211	Application for Guarantee		Text
FSA-2221	Interest Assistance Agreement		Text

Reports, Forms, Abbreviations, and Delegations of Authority (Continued)

Forms (Continued)

Number	Title	Display Reference	Reference
FSA-2222	Request for Interest Assistance Payment		228, 326
FSA-2231	Guaranteed Loan Evaluation and Obligation Request		96, 108, 151-153, 226, 230, 244, 245
FSA-2232	Conditional Commitment		Text, Ex. 22
FSA-2234	FSA Review of Lender's Evaluation of Collateral		247
FSA-2235	Loan Guarantee		Text
FSA-2236	Guaranteed Loan Closing Report and Lender Certification		46, 227, 245, 247, 248, 286
FSA-2241	Guaranteed Farm Loan Status Report		250, 266, 355, 357, 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, 286, 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, 344
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		Text, Ex. 12
FSA-2261	Report on Collection Activities on Liquidated Accounts		266, 362, Ex. 12

Reports, Forms, Abbreviations, and Delegations of Authority (Continued)

Forms (Continued)

Number	Title	Display Reference	Reference
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
FSA-2701	Notice of Intent to Collect by Administrative Offset		376
FSA-2731	Cancellation of Debt Without Application (RD-1956-1)		363
FSA-2731A	Cancellation of Debt Without Application (Continuation)		363
FSA-2732	Debt Settlement Application (RD-1956-1 Application For Settlement of Indebtedness)		363
IRS-1099-C	Cancellation of Debt		362
IRS-8379	Injured Spouse Claim and Allocation		Ex. 17
NRCS CPA-1155	Conservation Plan or Schedule of Operations		66
RD-1980-64	Interest Assistance Agreement		224, 228, 230
UCC1	Financing Statement		364
W-2	Wage and Tax Statement		152

Note: Agency officials may use digital signatures on all Guaranteed Loan Program forms. Lenders and loan applicants may use digital or other electronic signatures on all Guaranteed Loan Program forms.

Some secondary market holders may not accept digital signatures on FSA-2235 and FSA-2242. Lenders should verify with their secondary market holders and notify FSA if digital signatures will **not** be accepted.

Authorized agency officials shall reference the User Guide for Digital Signatures on FLP's Presentation intranet web site for instructions to create a digital signature with their employee LINCPASS.

Reports, Forms, Abbreviations, and Delegations 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, Ex. 5
ACT	Consolidated Farm and Rural Development Act	1, 108, 286
ADPB	average daily principal balance	228, Ex. 10
CAFO	Concentrated Animal Feeding Operation	181, 358, Ex. 15
CL	conservation loan	Text, Ex. 2
CMS	Credit Management System	Text
DFO	direct farm ownership	108, 151
DNP	Do Not Pay	46, 108
EL	emergency livestock loan	108
EO	economic opportunity loan	108
FmHA	Farmers Home Administration	108, Part 9, Part 11, 360
FTP	file transfer protocol	Ex. 15.4
GFO	guaranteed farm ownership loan	96, 108, 135
GLOC	guaranteed line of credit	108
GLS	guaranteed loan system	248, Ex. 15.4
GOL	guaranteed operation loan	135
IA	interest assistance	18, Parts 9, 11-15, Ex. 10
IAO	Internal Administrative Offset	363, Ex. 2, 17
INA	Immigration and Nationality Act	Ex. 7
LINC	Lender Interactive Network Connection	73, 266, Ex. 5
LOC	line of credit	Text
LTV	loan to value	166
MLP	Micro Lender Program	Text
NPO	nonprofit organization	111
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
SAM	System for Award Management	108
SDMS	State Directive Management System	84
SEL	Standard Eligible Lender	Text, Ex. 12
SOFR	Secured Overnight Financing Rate	135
USCIS	U.S. Citizenship and Immigration Services	Ex. 7, 8

Delegations of Authority

This table lists the delegations of authority in this handbook.

Delegation	Reference
Administering handbook provisions	20

Loss Claims

A Estimated Loss Claim Interest Accrual Examples

*--Lender submits estimated loss claim on day 149. FSA approves on day 160. Lender receives 160 calendar days of interest.

Lender submits estimated loss claim on day 160. FSA approves on day 170. Lender receives 150 calendar days of interest.--*

Lender submits estimated loss claim on day 90. FSA approves on day 140 after 20 calendar days
--of lender delay in providing FSA requested clarification. Lender receives 140 calendar days of--
interest. * * *

Lender submits estimated loss claim on day 140. FSA approves on day 190 after 30 calendar
*--days of lender and FSA discussing points of clarification and revising the claim for accuracy.
Lender receives 190 calendar days of interest accrual.--*

* * *

*--B Estimated Loss Claim Interest Accrual When FSA Delays Approval Over 30 Days

When additional interest is owed to the lender due to FSA delays in approving the estimated loss claim over 30 calendar days, FSA will pay the lender additional interest, regardless if the estimated loss claim was submitted timely.

If the claim was submitted timely and FSA delays over 30 calendar days cause interest accrual to exceed 210 calendar days, the interest accrual for each day beyond 210 calendar days will be calculated based on the principal portion of the loss claim only and will not be included in the loan's interest accrual shown on item 20 of the FSA-2254.

If the claim was not submitted timely, interest accrual on item 20 of the FSA-2254 will not exceed 150 calendar days, except when allowed for reorganization bankruptcy or borrower-initiated litigation. For each day of interest due to FSA delays in processing over 30 calendar days, the interest accrual will be calculated based on the principal portion of the loss claim only (item 53).

The calculation for the principal portion of the loss claim is as follows:

Principal (item 19 + item 23) / Total Loan Items (item 22 + item 25) x Balance Due
lender – Legal Expense Payment (item 48 – item 44) = Principal Portion of Loss Claim
(item 53)--*

Loss Claims

***--B Estimated Loss Claim Interest Accrual When FSA Delays Approval Over 30 Days
(Continued)**

When additional interest is owed to the lender, beyond what is allowable in item 20, FSA must calculate the principal portion of the loss claim (item 53) and indicate that additional interest is owed on item 52. The number of interest days owed based on the principal portion of the loss claim must be provided to RD BC when the estimated loss claim is submitted for payment (may be included in item 60).

The additional interest due to FSA delays that is owed to the lender beyond what is allowed in item 20 will not be included in item 20 so that it will not be part of the borrower's Federal debt when a final loss claim is processed.

Examples:

Lender submits estimated loss claim on day 150. FSA approves on day 220. Lender will receive 210 max calendar days of interest, reflected in item 20. Lender will also receive 10 additional days of interest, based on the principal portion of the loss claim only (item 53), because FSA delays in processing over 30 calendar days exceeded 210 calendar days.

Lender submits estimated loss claim on day 150. FSA approves on day 200. Lender will receive 200 days of interest, reflected in item 20. While FSA did delay approval over 30 calendar days, the delay did not cause the interest accrual in item 20 to exceed 210 calendar days.

Lender submits estimated loss claim on day 160. FSA approves on day 200. Lender will receive max 150 calendar days of interest in item 20 and will also receive 10 additional days of interest due to FSA's delay over 30 calendar days in processing, based on the principal portion of the loss claim (item 53) only.--*

Loss Claims (Continued)

C Estimated Loss Claim Interest Accrual When Reorganization Bankruptcy Is Filed and Dismissed Examples

* * *

*--Lender submits estimated loss claim on day 110. Borrower files reorganization bankruptcy on day 120. Bankruptcy is dismissed on day 220. FSA approves on day 225. Lender will receive max 210 calendar days of interest. When the lender submits a final loss claim, they may claim interest between the 210 days maximum allowed on the estimated claim and the date of dismissal, for an additional 10 days. FSA's 30-day timeframe for processing the estimated loss claim is paused during the bankruptcy deliberations, however the lender will still be compensated for the 10 days not covered in item 20 of the estimated loss claim on the final loss claim (see subparagraph 359 A and 344 A).

Lender submits estimated loss claim on day 155. Borrower files reorganization bankruptcy on day 160. Bankruptcy is dismissed on day 260. FSA approves on day 300. Lender will receive 150 calendar days of interest accrual in item 20. Lender will also receive 15 additional days of interest due to FSA delays over 30 calendar days in processing (5 days between submission of estimated loss claim and bankruptcy filing, plus 40 days between dismissal and FSA approval, minus 30 days allowed for processing), based on the principal portion of the loss claim only (item 53). FSA's 30-day timeframe for processing the estimated loss claim is paused during the bankruptcy deliberations, however the lender will still be compensated for the 100 days between bankruptcy filing and dismissal not covered in item 20 of the estimated loss claim on the final loss claim (see subparagraphs 359 A and 344 A).--*

D Estimated Loss Claim With Borrower-Initiated Litigation Example

--Lender submits estimated loss claim on day 110. Borrower files suit on day 130. Estimated loss claim is approved on day 160. Suit is dismissed on day 270. Lender will receive 160 calendar days of interest accrual in item 20. When lender files the final loss claim they will receive an additional 110 days of interest accrual in item 20 (270 (day of dismissal) – 160 days (day estimated loss claim was approved) = 110 days).--

E Estimated Loss Claim Post Reorganization Bankruptcy Plan Completion

--Handled the same as any other liquidation. Following the completion of a Chapter 11, 12, or 13 bankruptcy plan, the loan balances and terms remain in effect, as per the plan.--

* * *

Loss Claims (Continued)

F Final Loss Claim Interest Accrual Examples

*--Lender submits final loss claim with interest accruing through 150 calendar days. FSA approves on day 190. The estimated loss claim was approved by FSA on day 150 and lender was paid for 150 calendar days of interest accrual, receiving the estimated loss payment on day 155. Lender may receive 5 additional calendar days of interest accrual on the final loss claim in item 20 (155 days) based upon the daily interest accrual rate submitted with the estimated loss claim.

Lender submits final loss claim on day 300. FSA approves on day 335. An estimated loss claim was not previously submitted. FSA approves the final loss claim on day 330. Lender will receive 150 calendar days of interest in item 20.--*

***--G Final Loss Claim Interest Accrual When FSA Delays Approval Over 40 Days**

When additional interest is owed to the lender due to FSA delays in approving the final loss claim over 40 calendar days, FSA will pay the lender additional interest, regardless if the estimated loss claim was submitted timely. However, the additional interest due to FSA delays over 40 calendar days will not be included in the loan's interest accrual shown on item 20 of the FSA-2254. The interest accrual will be calculated based on the principal portion of the loss claim only (item 53).

The calculation for the principal portion of the loss claim is as follows:

$$\text{Principal (item 19 + item 23) / Total Loan Items (item 22 + item 25) x Balance Due lender - Legal Expense Payment (item 48 - item 44) = Principal Portion of Loss Claim (item 53)}$$

When additional interest is owed to the lender, beyond what is allowable in item 20, FSA must calculate the principal portion of the loss claim (item 53) and indicate that additional interest is owed on item 52. The number of interest days owed based on the principal portion of the loss claim must be provided to RD Business Center, Guaranteed Commercial Branch when the estimated loss claim is submitted for payment (may be included in item 60).

The additional interest caused by FSA delays will not be part of the borrower's Federal debt when a final loss claim is processed. --*

Loss Claims (Continued)

***--G Final Loss Claim Interest Accrual When FSA Delays Approval Over 40 Days (Continued)**

Examples:

Lender submits final loss claim with complete information that reflects interest accruing through 140 calendar days, after having an estimated loss claim timely submitted and timely approved by FSA. FSA approved the estimated loss claim on day 140 and lender was paid on day 143. FSA approves the final loss claim 60 calendar days after receiving the final loss claim with complete information. Lender may receive 3 additional days of interest accrual on the final loss claim in item 20, based upon the daily interest accrual rate submitted with the estimated loss claim. Lender will also receive 20 calendar days of additional interest for FSA delays over 40 calendar days of processing, based on the principal portion of the loss claim only (item 53).

Lender submits final loss claim with accruing interest through 180 calendar days, after having an estimated loss claim submitted and paid timely. FSA approved estimated loss claim on day 180 and lender was paid on day 183. FSA approves the final loss claim 75 calendar days after it was submitted. However, on day 10 after submission, FSA requested additional information from the lender required to proceed with the review. Information was provided 30 calendar days after the request. Lender may receive 3 additional days of interest accrual on the final loss claim in item 20, based upon the daily interest accrual rate submitted with the estimated loss claim. Lender will also receive 5 additional days of interest due to FSA's delay over 40 calendar days of processing (75 days total processing days – 30 days paused for lender requested information = 45 days of FSA processing – 40 calendar days allowed for FSA processing = 5 calendar days). This additional interest due to FSA delays is based on the principal portion of the loss claim only (item 53).--*

**H Final Loss Claim Interest Accrual When Reorganization Bankruptcy Is Filed and
*--Dismissed (Type 01 Estimated Loss Previously Paid)**

Lender files estimated loss claim on day 100. FSA approves estimated loss claim on day 125 with 125 days of accrued interest. Lender receives payment on day 128. Borrower files Chapter 12 bankruptcy on day 130. Bankruptcy is dismissed on day 310. Lender submits final loss claim on day 400. FSA approves final loss claim on day 440. Lender receives 308 calendar days of interest accrual, reflected in item 20. (125 days paid on estimated loss claim + 3 days between estimated loss claim approval and payment received by lender + 180 days for bankruptcy deliberations = 308 days). Interest may exceed the 210 calendar days typically allowed when an estimated loss claim is submitted timely, according to subparagraph 360 F.

Lender files estimated loss claim on day 160. FSA approves estimated loss claim on day 165 with 165 days of accrued interest. Lender receives payment on day 169. Borrower files Chapter 12 Bankruptcy on day 180. Bankruptcy is dismissed on day 280. Lender submits final loss claim on day 400. FSA approves final loss claim on day 440. Lender receives 269 days of interest accrual in item 20 (165 days paid on estimated claim + 4 days between estimated loss claim approval and payment received by lender + 100 days for bankruptcy deliberations = 269). Interest may exceed the 150 calendar days typically allowed when an estimated loss claim is not submitted timely, according to subparagraph 360 F.--*

Loss Claims (Continued)

***--I Final Loss Claim Interest Accrual When Reorganization Bankruptcy is Filed and Dismissed (Type 05 Estimated Loss Previously Paid)**

Borrower files Chapter 12 bankruptcy on day 175 and gets a confirmed plan on day 300. Lender files Type 05 estimated loss claim on day 320. FSA approves on day 330. The bankruptcy plan is dismissed on day 400. Lender submits final loss claim on day 500. FSA approves on day 530. FSA must work with RD BC to convert the previously paid Type 05 to a Type 01 estimated loss claim. On the final loss claim, the lender will receive 275 days of interest accrual in item 20 (150 maximum allowed because an estimated loss claim was not submitted within 150 days + 125 days for bankruptcy deliberations = 275).--*

J Final Loss Claim Interest Accrual With Borrower-Initiated Litigation (Estimated Loss Previously Paid)

--Lender files estimated loss claim on day 130. Information is complete. FSA approves loss claim on day 160 with 160 days of interest accrual. Lender receives payment on day 170. Borrower files lawsuit that prohibits lender from liquidating on day 200. Lawsuit is dismissed on day 300. Lender completes liquidation and submits final loss claim on day 350. FSA approves final loss claim on day 400. Lender receives 270 calendar days of interest accrual reflected in item 20. (160 days paid on estimated loss claim + 10 days between estimated loss claim approval and payment received by lender + 100 for litigation deliberations = 270 days). Lender will also receive 10 calendar days for FSA processing over 40 calendar days. This additional interest due to FSA delays is based on the principal portion of the loss claim only (item 53, see subparagraph G).--

K Final Loss Claim Post Reorganization Bankruptcy Plan Completion

--Handled the same as any other liquidation. Following the completion of a Chapter 11, 12, or 13 bankruptcy plan, the loan balances and terms remain in effect, as per the plan.--

Conditional Commitment Guidelines

A Conditions by Loan Type

The following table provides the conditions by loan type to assist authorized agency officials when preparing FSA-2232. The authorized agency official should select appropriate conditions from the table. This is not a complete list so additional conditions may apply to unique situations.

Operating Line of Credit (OL-LOC)	
Number	Condition
1	The lender certifies that no prior year's operating expenses will be included in the OL/LOC.
2	(SEL & CLP) The lender agrees not to make any additional loans or advances (non-guaranteed loans) to the borrower without written concurrence from FSA.
3	(Include for entities) The promissory note will be executed by the member(s) authorized to sign for the entity and by all entity members as individuals.
5-Year LOC	
Number	Condition (In addition to 1 through 3 in this table)
4	All advances on the LOC must be made within 5 years from the date of the loan guarantee.
5	Each subsequent promissory note used for this LOC must reference the original promissory note number.

Term Operating Loan (TOL)	
Number	Condition
1	(SEL & CLP) The lender agrees not to make any additional loans or advances (non-guaranteed loans) to the borrower without written concurrence from FSA.
2	(Include for entities) The promissory note will be executed by the member(s) authorized to sign for the entity and by all entity members as individuals.
3	The lender assures that 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 lender's interest or the borrower's ability to pay the guaranteed loan.
4	(When real estate is primary security) The lender must retain documentation of environmental due diligence with a completed American Society of Testing Materials e-1528 questionnaire, FSA-851, or similar questionnaire.

Conditional Commitment Guidelines (Continued)

A Conditions by Loan Type (Continued)

Farm Ownership Loan (FO)	
Number	Condition
1	(Include for entities) The promissory note will be executed by the member(s) authorized to sign for the entity and by all members of the entity as individuals.
2	The lender assures that 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 lender's interest or the borrower's ability to pay the guaranteed loan.
3	The lender must retain documentation of environmental due diligence with a completed American Society of Testing Materials e-1528 questionnaire, FSA-851, or similar questionnaire.
4	Following the closing of the loan the borrower will be required to update their records with FSA farm programs to be added as owner/operator on the farm purchased.
Shared Lien Position	
Number	Condition (In addition to 1 through 4 in this table)
5	This guaranteed FO loan in the amount of \$ _____ is to be closed simultaneously with an unguaranteed loan in the amount of \$ _____. These loans will equally share a lien position on approximately ____ acres of real estate along with leases and improvements. In the event the security is liquidated, the proceeds will be divided pro rata based on the above loan amounts totaling \$ _____. If liquidation occurs, ____% of the proceeds would be applied onto the guaranteed loan and the remaining ____% of the proceeds would be applied onto the unguaranteed loan.

Conditional Commitment Guidelines (Continued)

B FSA-2232, “Conditional Commitment” Best Practices

Approval officials will utilize the following best practices when completing FSA-2232.

Eligibility. If the loan is approved subject to a prior loss, federal delinquency, or judgement that is expected to be cured, these details and any evidence required should be described as a condition. Otherwise, there is no need to restate eligibility requirements under item 17, “Other”.

Loan Purpose. Describe fully in item 14 (see examples in FSA-2232, Instructions for Preparation). Do not repeat under item 17, “Other”.

Limitations. If FLP debt must be paid down prior to closing, or with funds, describe the details under other conditions. If an existing guaranteed loan is to be paid off, state this under item 17, “Other”.

Security. Describe on the table in item 16 (see examples in FSA-2232, Instructions for Preparation). Specify clearly the lien position expected, but do not detail the method of perfection. Do not repeat security requirements in item 17, “Other” unless additional clarification is necessary, such as a shared lien.

Appraisals. Do not repeat appraisal requirements already in 2-FLP or require lenders to submit appraisals to FSA prior to receiving the guarantee.

Interest Rate and Loan terms. Describe interest rates and loan repayment terms in item 15 (see examples in FSA-2232, Instructions for Preparation). Do not repeat under item 17, “Other”.

Insurance. Insurance requirements are described in paragraph 138. Generally, the loan approval official should not provide additional specificity, and consider it the lender’s responsibility to determine adequate insurance.

Environmental. Generally, all environmental requirements and reviews must be completed prior to loan approval. Agency officials should avoid adding conditions outside of the lender’s own environmental due diligence (FSA-851) requirements.

Obligation of Entity Members. Entity member personal obligation for debt requirements is outlined in this handbook and 7 CFR 762.130. Nevertheless, under certain circumstances it may be advisable to include the details of who must sign the promissory note under item 17, “Other” as a reminder.

Lender Responsibility for documenting loan advances. The lender’s responsibility to track and document the purposes for which loan funds are advanced are described in subparagraph 247 A and 7 CFR 762.130; therefore, there is no need to restate this under item 17, “Other” on the Conditional Commitment.

