

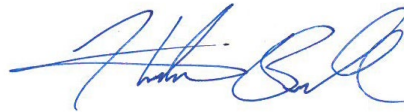
UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

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

Amendment 69

Approved by: Deputy Administrator, Farm Loan Programs



Amendment Transmittal

A Reasons for Amendment

Subparagraph 67 D has been amended to clarify that balance sheet history is only required if available.

Subparagraph 96 D has been amended to:

- clarify when a direct loan servicing action that requires full financial analysis is processed in conjunction with a guaranteed FO request, the credit presentation in FBP will serve as the evaluation for the guaranteed FO
- update item to 11A to identify the loan will be made in conjunction with a direct to reflect the recent change in the FSA-2231.

Subparagraph 108 C has been amended to identify which types of loss claims qualify as a loss to the agency and to clarify that the loss must be repaid in full before loan closing for an applicant to regain eligibility for a new loan.

Subparagraph 138 B has been amended to remove outdated CFR references to crop insurance waivers and to provide updated guidance regarding crop insurance requirements.

Subparagraph 166 B has been amended to provide additional guidance for adequate and additional security requirements and clarify how the value of annual production secures a line of credit.

Subparagraph 208 A has been amended to specify that lenders must consider potential environmental issues for servicing actions as well as new loans.

Subparagraph 250 B has been amended to clarify when authorized agency officials may need to consider terminating a loan guarantee and when to request guidance from the National Office on reasons for termination.

Amendment Transmittal (Continued)

Page Control Chart		
TC	Text	Exhibit
	5-5, 5-6 7-4.5, 7-4.6 8-3, 8-4 8-65, 8-66 8-113, 8-114 8-189, 8-190 10-17, 10-18	

66 Requirements for Loans up to \$125,000 [7 CFR 762.110] (Continued)

I Additional Requirements for Entity Applicants

--All members of entity applicants must complete the appropriate sections on FSA-2211, and sign the application as individuals. In addition, each member must provide a current personal balance sheet.--

* * *

67 Application Requirements for Loans Over \$125,000 (7 CFR 762.110)**A Application Package**

[7 CFR 762.110(d)] A complete application package for a guaranteed loan over \$125,000 will consist of the items in paragraph 66, plus subparagraphs B through G.

B Verification of Income

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

C Verification of Debts

Verification of debts over \$5,000 can be documented using the same documentation the lender uses for its nonguaranteed loans.

D Financial History

The financial history should support cash flow projections and include 3 years of income *--and expenses and 3 years of balance sheets, if available.--*

E Production History

The application should include **[7 CFR 762.110 (b)(4)] 3 years of production history (SEL only)**.

F Proposed Loan Agreements

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

G Development Plans

[7 CFR 762.110 (b)(6)]If construction or development is planned, a copy of the plans, a copy of the specifications, and a development schedule is needed.

68 (Withdrawn—Amend. 37)

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), direct joint financing arrangement loan (3-FLP paragraph 134), or a direct loan servicing request that requires a full financial analysis, the credit presentation completed in the FBP documenting analysis of the direct loan portion of the 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, 20, and 21 on FSA-2231.

Agency officials will identify in item 11A that the guaranteed loan was made in conjunction with a direct down payment program loan, a direct joint financing arrangement loan, or a loan servicing action and to see FBP for the 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.

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

C No Agency Loss (Continued)

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

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

Debt forgiveness does **not** include any write-down provided as part of a resolution of a discrimination complaint or any direct or guaranteed loan assistance received under the Inflation Reduction Act.

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

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

***--Note:** Guaranteed losses include any loss claim paid by a type 01, 02, 05, 06, 07, or 08 loss claim.--*

The authorized agency official will verify previous loss to the Government, or debt forgiveness, for each applicant and all individuals who will sign the promissory note. Both DLS, for direct loans, and GLS, for guaranteed loans, will be used to verify prior debt forgiveness.

Note: The applicant may be considered eligible if the loss to the Agency is paid in ***--full before loan closing.--***

108 General Eligibility Requirements for OL, FO, and CL (7 CFR 762.120) (Continued)**D Delinquency on Federal Debt**

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

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

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

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

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

--The authorized agency official shall verify, through DNP, that the applicant and all individuals who will sign the promissory note are not delinquent on Federal debt. DNP screen prints will be placed in the case file to document the basis for eligibility. See 1-FLP, paragraph 53, and 1-FLP, Exhibit 15.6, for more information related to the use of DNP.--

E Outstanding Recorded Judgments

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

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

137 Loan Term and Payment Schedules (7 CFR 762.124(b), (c), (d), and (e)) (Continued)**G Loan Term to Qualified Alien**

The loan term to a qualified alien may not exceed the number of years of residency that they have been formally granted by the documents described in Exhibit 7. This is to ensure that the operation's viability and guaranteed loan security are not adversely affected during the term of the loan.

Note: An applicant may lawfully be admitted to the U.S. for permanent residence per Bureau of Citizenship and Immigration Service Form I-551, commonly known as the Green Card or Alien Registration Card. The Bureau of Citizenship and Immigration Service Form I-551 may have an expiration date. The expiration date is for the card only. Their U.S. permanent resident status is not affected. Unless the applicant acts in an unlawful way that demands the removal of the status or voluntarily give up the status, their permanent resident status remains. Therefore, in these cases, the applicant's residency will be considered permanent.

H Multiple Notes

When a lender uses multiple notes for a loan, such as a guaranteed and unguaranteed portion, the loan term for both portions **must** be the same. For example, it is not permitted to have a 5-year term for the unguaranteed portion and a 7-year term for the guaranteed portion.

138 Insurance Requirements (7 CFR 762.123(a))**A Lender Responsibilities**

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

--General hazard insurance obtained by the applicant, at a minimum, should be the standard type of insurance policy for the locality in which the property is located. Additional coverage should be considered on a case-by-case basis for operations with specialized, high value buildings that constitute a significant portion of the operation's income generating capacity and collateral value. Lenders must require borrowers to maintain insurance coverage throughout the term of the loan unless it subsequently becomes unavailable for a reason such as those indicated in this subparagraph.--

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

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

A Lender Responsibilities (Continued)

In certain cases, a lender may opt to not require insurance for reasons such as the following:

- insurance is not sold or available by agents or companies in the area of the applicant's operation
- cost of the insurance premiums exceed the benefit of the policy and/or the value of the property
- value of buildings on the property is minimal.

Justification must be provided in the loan narrative if a lender will not require a certain type of insurance. Specific reasons such as those identified in this subparagraph should be explained in detail. Lenders must also document what other measures they require the applicant to take to protect the security and offset the risk presented by the lack of insurance coverage. If insurance coverage was available at reasonable rates and the lender suffers a loss which could have been mitigated by insurance coverage, the resulting loss claim could be negatively impacted.

B Crop Insurance

* * *

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

*--By loan closing, applicants must obtain at least the catastrophic risk protection level of crop insurance coverage, if available, for each crop of economic significance, as defined by 7 CFR 400.651.

Note: 7 CFR 762.123(a)(2) currently indicates that a borrower may opt to execute a waiver of emergency crop loss assistance in lieu of obtaining crop insurance. However, the agency, in consultation with OGC, has determined that provision does not comply with Section 371 of the CONACT (7 U.S.C. 2008f) which simply requires FLP borrowers to obtain crop insurance, if available, as a condition of receiving a FLP direct or guaranteed loan. 7 CFR 762.123(a)(2) will be updated to reflect this, but effective immediately, FSA no longer allows for a waiver of the requirement to obtain crop insurance.--*

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. A lender must ensure that enough additional collateral is obtained, if available, to meet their loan to value threshold for a similarly situated unguaranteed loan. A lender may not waive its standard collateral requirements simply because the loan will be guaranteed.

Example 1: A loan request has a 90 percent LTV with no other collateral available and lender's internal policy states that their target LTV threshold is 80 percent without a guarantee. This would be considered to be adequately secured based on the lender's internal policy despite not meeting the 80 percent LTV standard since no additional security was available.

Example 2: A loan request has a 90 percent LTV with other collateral available that would allow the lender to meet their internal threshold of 80 percent. The lender would like to make an exception to their internal policy since they would be obtaining a guarantee. Since the lender provided no justification beyond the fact that the loan will be guaranteed, FSA will require the lender to take the additional collateral necessary to meet their internal policy for adequate security.--*

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. That documentation must provide case-specific justification beyond the fact that the loan will be guaranteed.--*

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.

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

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

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

--For LOC's, the loan ceiling must be used when calculating the LTV. The value of the annual production assigned to secure a LOC will be projected to be equal to the loan amount. --

[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.

Section 5 Environmental and Special Laws**208 Environmental Requirements (7 CFR 762.128)****A Overview**

--Lenders must consider environmental issues when making and servicing guaranteed-- loans. Authorized agency officials should consult 7 CFR part 12 and 799, for guidance on what FSA must do to comply with the various environmental statutes and Executive Orders on issues such as HEL, wetlands, floodplains, and hazardous waste.

All lenders will assist in the environmental review process by providing information requested by the authorized agency official. In all cases, the lender must keep documentation of their investigation in the applicant's case file. Lenders must certify that documentation is in their files and that all applicable laws have been considered before

--FSA will issue a guarantee or concur with a loan servicing action.--

B Environmental Requirements

The requirements found in 7 CFR parts 12 and 799, must be met for guaranteed OL, FO, and CL. CLP, PLP, and MLP lenders may certify that they have documentation in their file to demonstrate compliance with this section. Standard eligible lenders must submit evidence supporting compliance with this section.

The Agency determination of whether an environmental problem exists will be based on:

- **the information supplied with the application**
- **the Agency official's personal knowledge of the operation**
- **environmental resources available to the Agency including, but not limited to, documents, third parties, and governmental agencies**

208 Environmental Requirements (7 CFR 762.128) (Continued)**B Environmental Requirements (Continued)**

- **a visit to the farm operation when the available information is insufficient to make a determination**
- **other information supplied by the lender or applicant upon Agency request. If necessary, information not supplied with the application will be requested by the Agency.**

Lenders will assist in the environmental review process by providing environmental information. In all cases, the lender must retain documentation of their investigation in the applicant's case file.

It is the responsibility of the authorized agency official to complete the proper level of ~~environmental review for each loan application as required in 7 CFR Part 799 and 1-EQ.~~
The certification by the lender on Application for Guarantee does not certify that the loan request is in full compliance with the environmental requirements. The certification only demonstrates that reasonable investigations have been completed for certain items.

C Hazardous Substances

All lenders are required to ensure that due diligence is performed in conjunction with a request for guarantee of a loan involving real estate. The Agency will accept as evidence of due diligence the most current version of the American Society of Testing Materials (ASTM) transaction screen questionnaire available from 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959, or similar documentation, supplemented as necessary by the ASTM Phase I environmental site assessments form.

249 Deobligation of Loan Funds**A Deobligation of Funds**

Under certain circumstances, the authorized agency official may need to consider a deobligation of loan funds. If the conditions for the loan or LOC cannot be met after completing the appeal process, the authorized agency official must execute FSA-2072 to cancel the actual obligation.

B FAXing FSA-2072

FSA-2072 should be FAXed to the State Office that will process the cancellation or deobligation through GLS.

250 Replacing or Terminating the Loan Guarantee (7 CFR 762.101 and 762.130)**A Replacing the Loan Guarantee**

If the guarantee or assignment guarantee agreements are lost, stolen, destroyed, mutilated, or defaced, except where the evidence of debt was or is a bearer instrument, the Agency will issue a replacement to the lender or holder upon receipt of acceptable documentation, including a certificate of loss or an indemnity bond. It is the responsibility of the lender to coordinate the replacement activities with the holder and submit the required documents to SED for processing. SED shall contact the National Office for further guidance when replacing the Loan Guarantee.

B Terminating the Loan Guarantee

The Loan Guarantee will automatically terminate as follows:

- **upon full payment of the guaranteed loan**

Note: A zero balance within the period authorized for advances on a line of credit will not terminate the guarantee.

- **upon payment of a final loss claim**
- **upon written notice from the lender to the Agency that a guarantee is no longer desired provided the lender holds all of the guaranteed portion of the loan. The Loan Guarantee will be returned to the Agency office for cancellation within 30 days of the date of the notice by the lender.**

250 Replacing or Terminating the Loan Guarantee (7 CFR 762.101 and 762.130) (Continued)

B Terminating the Loan Guarantee (Continued)

There are instances where the authorized agency official may need to consider terminating *--Loan Guarantees without the lender’s written notification. For example, when lenders refuse to provide FSA with required status or default status reports.--*

This does not apply to occasional missed or late reports; but to a pattern of missing reports or reports that do not provide new information covering lengthy time periods.

Before terminating the Loan Guarantee, loan files must be documented to reflect attempts made to obtain required FSA-2241’s or FSA-2248’s from the lender or any other pertinent information on the status of loans.

Authorized agency officials will notify lenders, in writing, the specifics of the reporting problems and provide 30 calendar days to submit updated FSA-2241’s, FSA-2248’s, or *--other required information.--*

IF lenders fail to provide updated FSA-2241’s, FSA-2248’s, or there is no response from lenders...	THEN...
after the first 30 calendar days	a 2nd letter will be sent to the lender providing an additional 30 calendar days.
after the second 30 calendar days	a final letter will be sent to the lender informing them that because of their failure to follow the requirements of 7 CFR 762.141 (a) and/or (b), any loss claim would be denied according to 7 CFR 762.103(b)(2) and FSA is terminating the Loan Guarantee. Note: Appeal rights must be provided according to 1-APP.
or no appeal is filed	the Loan Guarantee will be terminated. Note: Loans may not be terminated simply because they have matured.

--Other situations that may justify terminating the guarantee without the lender’s written notice should follow the same steps in the provided example. If the State Office believes the guarantee should be terminated because of other circumstances besides failure to submit status or default status reports, the State Office should contact the National Office for guidance before taking action to terminate the guarantee.--

251-261 (Reserved)