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

Guaranteed Loan Making and Servicing 2-FLP (Revision 1)	Amendment 70

Approved by: Deputy Administrator, Farm Loan Programs

Amendment Transmittal

A Reasons for Amendment

Subparagraph 262 A has been amended to clarify lender responsibilities and environmental requirements during loan servicing actions.

Subparagraph 262 B has been amended to summarize FSA’s servicing responsibilities.

Subparagraph 263 B has been amended to clarify payment application requirements, and the lender’s requirement to obtain a revised feasible plan for major operational changes.

Subparagraph 265 F has been amended to clarify actions to take when FSA determines an LOC should not be renewed.

Subparagraph 266 B has been amended to clarify lender reporting requirements.

Subparagraph 266 C has been amended to clarify FSA monitoring of lender reports.

Subparagraph 267 B has been amended to clarify lender loan file review priorities.

Subparagraph 267 E has been amended to clarify when the authorized agency official should forward a copy of a PLP review letter to DAFLP.

Subparagraphs 278 A and B have been amended to clarify requirements for the subordination of guaranteed loan security.

Subparagraph 280 B has been amended to clarify requirements for a lender’s request for partial release.

A Reasons for Amendment (Continued)

Subparagraph 280 D has been amended to:

- cross-reference redelegation authority in 1-FLP
- clarify the authorized agency official's responsibility to ensure environmental requirements have been met
- provide guidance for an adverse decision.

Subparagraph 281 B has been amended to provide guidance on documentation requirements for a release of liability when a transfer and assumption is involved.

Subparagraph 281 D has been amended to clarify FSA's response to a request for transfer and assumption.

Subparagraph 283 A has been amended to clarify emergency advances.

Subparagraph 283 B has been amended to clarify the lender's narrative when requesting an emergency advance.

Subparagraph 283 C has been amended to provide guidance on adverse decisions related to a request for an emergency advance.

Subparagraph 285 C has been amended to:

- clarify notifying the lender of FSA's decision on a release of liability
- provide guidance for an adverse decision related to a release of liability
- move the note to subparagraph 363 A.

Subparagraph 286 A has been amended to clarify environmental requirements when consolidating debt.

Subparagraph 286 D has been amended to:

- clarify FSA's response to a consolidation request
- provide guidance for adverse decisions related to consolidation requests.

Subparagraph 300 A has been amended to clarify the IA eligibility determination date when IA is not funded.

Subparagraph 300 D has been amended to clarify the borrower and lender meeting requirements and that FSA-2248 must be submitted until the default is resolved or a final loss claim is paid.

A Reasons for Amendment (Continued)

Subparagraph 300 G has been amended to clarify the IA eligibility determination date when IA is not funded.

Subparagraph 312 A has been amended to clarify environmental requirements during loan restructuring actions.

Subparagraph 313 B has been amended to clarify what a CLP lender is required to submit with a request for write-down.

Subparagraph 314 B has been amended to include a paragraph reference.

Subparagraphs 327 A, B, and C have been amended to clarify loan deferrals.

Subparagraph 327 D has been added to clarify forbearance agreements.

Subparagraph 342 B has been amended to clarify documentation requirements for Type 05 estimated loss claims during a reorganization bankruptcy.

Subparagraph 359 A has been amended to clarify what is submitted with a $0 estimated loss claim.

Subparagraph 359 F has been amended to clarify:

- documentation requirements for Type 05 estimated loss claims
- FSA’s actions when an estimated loss claim is reduced or denied
- the calculation of processing days.

Subparagraph 360 F has been amended to provide guidance on the settlement date of the final loss claim that results in no additional payment to the lender or a partial repayment from the lender, and to clarify:

- when additional interest may be paid
- FSA’s actions when an estimated loss claim is reduced or denied
- how to send the completed FSA-2254 to RD Business Center for processing.

Subparagraph 362 A has been amended to clarify FSA’s responsibility when receiving a collection for a guaranteed loan loss to the government.

Subparagraph 363 A has been amended to provide guidance to remove any borrower or coborrower from offset referral if they were previously released from liability.

Amendment Transmittal (Continued)

A Reasons for Amendment (Continued)

Subparagraph 363 F has been amended to clarify:

- Exhibit 17 or Exhibit 19 may be sent 30 calendar days after the conclusion of a review or appeal
- steps to take for Internal Administrative Offset.

Subparagraph 363 G has been amended to clarify that the debtor may be referred to TOP 60 calendar days after the conclusion of a review or appeal.

Subparagraph 363 H has been amended to clarify where offset management reports are located and State Office responsibilities for when to remove borrowers from offset.

Amendment Transmittal (Continued)

Page Control Chart		
TC	**Text**	**Exhibit**
	11-1 through 11-6 11-11 through 11-14 11-14.5, 11-14.6 (add) 11-15 through 11-18 11-37, 11-38 11-38.5, 11-38.6 (add) 11-39 through 11-52 11-52.5, 11-52.6 (add) 11-53 through 11-56 12-1 through 12-6 12-27, 12-28 12-31 through 12-34 12-59, 12-60 12-60.5, 12-60.6 (add) 13-3 through 13-6 14-12.5, 14-12.6 14-15, 14-16 14-21, 14-22 14-22.5, 14-22.6 (add) 14-25 through 14-28 14-31 through 14-34	

Part 11 General Servicing Responsibilities

Section 1 General Servicing Requirements

262 Relationships and Responsibilities (7 CFR 762.140(a))

A Lender Role

Lenders are responsible for servicing the entire loan in a reasonable and prudent manner, protecting and accounting for collateral, and remaining the mortgagee or secured party of record.

The lender cannot enforce the guarantee to the extent that a loss results from a violation of usury laws or negligent servicing.

The lender is responsible for:

- ***--**working with the agency to ensure all environmental requirements are met during the loan servicing actions according to 7 CFR 762.128 and paragraph 208**--***
- complying with all FSA program requirements.

FSA servicing regulations are designed to accommodate standard agricultural lending practices, so lenders can be assured they meet program regulations if they:

- service guaranteed loans in a prudent, traditional manner
- comply with specific program eligibility guidelines and loan limits.

262 Relationships and Responsibilities (7 CFR 762.140(a)) (Continued)

B FSA Role

FSA is responsible for working with lenders to ensure that all servicing and reporting requirements are met. FSA shall:

- ***--**complete a review of annual financial analyses according to subparagraph 265 F

- concur on feasible servicing requests made by the lender according to paragraphs 278 through 288

- ensure all environmental requirements are followed during loan servicing actions according to paragraph 208, 1-EQ, and 2-EQ

- collect and review all necessary servicing reports required of the lender according to paragraph 266

- review a percentage of the lender's loan files annually to assess program compliance according to paragraph 267.**--***

FSA will work closely with SEL's in loan servicing. SEL's may be new to the FSA guaranteed loan program and, therefore, may require additional assistance and guidance. CLP lenders will be monitored less, since these lenders have working knowledge of the program and should need minimal guidance and oversight. PLP lenders have proven experience with the guaranteed loan program and servicing guaranteed loans. PLP lenders will be provided maximum flexibility to service guaranteed loans and minimal supervision by FSA.

When a lender attains PLP status, the lender will service its existing guarantee portfolio under the provisions of its CMS summary and Lender's Agreement. Servicing requirements that were included in the Conditional Commitment for loans made before the lender was a PLP lender may be retained upon mutual agreement between the lender and FSA.

263 Borrower Supervision (7 CFR 762.140(b))

A Overview

Lenders must supervise guaranteed loan borrowers in a manner similar to their supervision of regular loan customers. Lenders are expected to apply standard, agricultural loan servicing principles to their guaranteed customers.

Examples of standard borrower supervision include the following:

- maintaining regular contact with the farmer
- periodically discussing the farmer's goals and monitoring progress in meeting these goals
- accounting for loan proceeds by monitoring expenditures and discussing how these will facilitate the achievement of the operator's expressed goals
- monitoring collateral and tracking the sale of security.

B Lender Supervision of Borrowers

The lender's responsibilities regarding borrower supervision include, but are not limited to the following:

- **ensuring loan funds are not used for unauthorized purposes**
- **ensuring borrower compliance with the covenants and provisions contained in the promissory note, loan agreement, mortgage, security instruments, any other agreements, and this part**

  Note: Any violations which indicate non-compliance on the part of the borrower, must be reported, in writing, to both the Agency and the borrower.

- **ensuring the borrower is in compliance with all laws and regulations applicable to the loan, the collateral, and the operations of the farm**

263 Borrower Supervision (7 CFR 762.140(b)) (Continued)

B Lender Supervision of Borrowers (Continued)

- **receiving all payments of principal and interest on the loan as they fall due and promptly disbursing to any holder its pro-rata share according to the amount of interest the holder has in the loan, less only the lender's servicing fee**

--Note:** Payments from the borrower will be reviewed and applied upon receipt, unless otherwise agree on by the borrower and lender. Payments may not be held in escrow to be applied on the payment due date.**--

- **performing an annual analysis of the borrower's financial condition to determine the borrower's progress.**

Note: Provisions of the Servicemembers Civil Relief Act of 2003 affect guaranteed lenders with borrowers and/or co-borrowers called to active duty. Guaranteed lenders are responsible for:

- understanding their lending institution's rights and remedies
- ensuring that benefits are promptly and properly extended to eligible guaranteed borrowers.

Servicing actions taken according to the Servicemembers Civil Relief Act of 2003 will not jeopardize guaranteed lenders' rights under the loan guarantee.

(7 CFR 762.140(d)) When a lender receives a payment from the sale of encumbered property, loan installments will be paid in the order of lien priority. When a payment is received from the sale of unencumbered property or other sources of income, loan installments will be paid in order of their due date. Agency approval is required for any other proposed payment plans.

--**The loan application, projected farm operating plan, and other loan specific documents, including the Conditional Commitment, will detail the purposes and conditions for the loan. Lenders must inform FSA of any changes in the use of loan funds and revised documentation of feasibility must be in the lender's case file. For LOC's, if deviations to the original plan are made during any of the 5-year operating cycles, such as a change in enterprises, a substantial change in acreage being farmed, or other comparable modifications, the plan must be revised and continue to reflect positive repayment capacity. SEL's must first receive**-- FSA concurrence **before** allowing a change in the use of loan funds. If a borrower uses loan funds improperly, the lender must take steps to correct the violation. If improper use of loan funds results in a loss claim, lenders **must** make every effort to collect the loan's remaining outstanding debt and minimize loss to FSA.

263 Borrower Supervision (7 CFR 762.140(b)) (Continued)

B Lender Supervision of Borrowers (Continued)

--**Failure by the lender to document a feasible plan following major changes or to report a**-- borrower violation to FSA in a timely manner could result in the reduction or denial of a loss claim.

Borrower's progress is demonstrated by an annual improvement in balance sheets and the meeting of any interim goals (paragraph 265).

The lender shall obtain a perfected security interest in the loan collateral. Lenders **must** obtain secure liens on all collateral as outlined in the Conditional Commitment. A loss claim may be reduced if a lender failed to perfect the loan security.

C FSA Monitoring of Borrower Supervision

If FSA discovers that a lender does not have adequate procedures in place to ensure sound borrower supervision, the authorized agency official should inform the lender in writing of the deficiency and, if necessary, require the lender to submit a plan outlining the actions they will take to correct the deficiency. Failure on the part of the lender to submit a plan or take action to correct the deficiency may result in denial of future loan applications or revocation of status.

For CLP and PLP lenders, any finding of a major deficiency should be forwarded to SED for action.

264 Servicing Collateral (7 CFR 762.142(a))

A Lender Servicing of Collateral

The lender's responsibilities regarding servicing collateral include, but are not limited to, the following:

- **obtain income and insurance assignments when required**
- **ensure the borrower has or obtains marketable title to the collateral**
- **inspect the collateral as often as deemed necessary to properly service the loan**
- **ensure the borrower does not convert loan security**
- **ensure the proceeds from the sale or other disposition of collateral are accounted for and applied in accordance with the lien priorities on which the guarantee is based or used for the purchase of replacement collateral**
- **ensure the loan and the collateral are protected in the event of foreclosure, bankruptcy** (Part 13)**, receivership, insolvency, condemnation, or other litigation**
- **ensure taxes, assessments, or ground rents against or affecting the collateral are paid**
- **ensure adequate insurance is maintained**
- **ensure that insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or used to rebuild or acquire needed replacement collateral.**

These requirements spell out the standard servicing of collateral responsibilities for every FSA-guaranteed loan; however, the lender and the authorized agency official should refer to the specific loan documents, such as the Conditional Commitment, for additional servicing requirements on a loan-by-loan basis.

265 Annual Analysis of Borrower's Financial Condition (7 CFR 762.140(b)(5)) (Continued)

E Documents Submitted to FSA by CLP in Support of Annual Analysis

[7 CFR 762.141(c)] CLP lenders shall submit the following to FSA in support of their annual analysis:

- **a written summary of the lender's annual analysis of the borrower's operation**

  Note: This summary should describe the borrower's progress and prospects for the upcoming operating cycle. This annual analysis may be waived or postponed if the borrower is financially strong. The summary will include a description of the reasons an analysis was not necessary.

- **for lines of credit, an annual certification stating that a cash flow projecting at least a feasible plan has been developed, that the borrower is in compliance with the provisions of the line of credit agreement, and that the previous year income and loan funds and security proceeds have been accounted for.**

Submission Summary	
Real Estate	Either a summary of lender's analysis or summary as to why financial strength makes analysis unnecessary.
--**Term Personal Property**--	Either a summary of lender's analysis or summary as to why financial strength makes analysis unnecessary.
Lines of Credit	Certification of the following: • cash flow was obtained • borrower is in compliance with Lender's Agreement • previous year's income, loan funds, and security proceeds are accounted for.

These documents must be submitted to the authorized agency official within 30 calendar days of the completion of the annual financial analysis.

265 Annual Analysis of Borrower's Financial Condition (7 CFR 762.140(b)(5)) (Continued)

F FSA Review of Annual Financial Analyses

Upon receiving the annual borrower financial analysis supporting documentation from SEL and MLP, the authorized agency official should review the documentation for the following:

- indications of borrower financial distress or major changes in the borrower's financial status from the previous year
- changes in the appearance of the operation or collateral. If the authorized agency official notices any problems, he or she should call the lender to discuss these concerns.

--**For borrowers with an LOC from an SEL or MLP lender, FSA will also determine whether or not the LOC should be renewed for the next year. If FSA determines the LOC should not be renewed, the authorized agency official will prepare and send a letter to the borrower informing them that FSA does not concur with the renewal, the reason for rejection, and the right to appeal the decision according to paragraph 33 and 1-APP. A copy of the letter must be provided to the lender.**--

Upon receiving the annual borrower financial analysis supporting documentation from a CLP lender, the authorized agency official should review the documentation of the borrower's progress on loan payback. The narrative should summarize factors of financial strength which support the lender's determination that further analysis is unnecessary, if applicable.

After reviewing the annual financial analyses submitted by the SEL, MLP, and CLP lender, the authorized agency official must document their review of the annual financial analysis by making an entry in the borrower's County Office guaranteed loan file. To the extent the authorized agency official has concerns about a specific borrower or lender's management and supervision of FSA-guaranteed loans in general, the authorized agency official should communicate these concerns to the lender in writing.

Copies of correspondence, including authorization to advance LOC funds in SEL and MLP cases, will be placed in the borrower's FSA guaranteed loan file. A copy of any correspondence sent to a lender about their management of a loan will be placed in the lender's file and, if the deficiency is major, a copy forwarded to SED. The borrower's file will be marked for necessary followup actions.

266 Lender Reporting Requirements (7 CFR 762.141)

A Overview

This section covers the general reporting requirements for all lenders. These reporting requirements are not tied to any specific servicing action. Many servicing actions require additional reports and updates from lenders, which this paragraph does not cover. See Exhibit 12 for a checklist of all lender reporting requirements.

B General Reporting Requirements

Lenders are responsible for providing the local Agency credit officer with all of the following information on the loan and the borrower:

- **When the guaranteed loan becomes 30 days past due, and following the lender's meeting or attempts to meet with the borrower, all lenders will submit the appropriate Agency form showing guaranteed loan borrower default status. The** *--**form will be resubmitted every 60 days until the default is cured either through** the borrower paying current**, restructuring or liquidation.**

  Note: Liquidation does not cure default until the guarantee is terminated either by the loan being paid in full or a final loss claim being processed.**--***

- **All lenders will submit the appropriate guaranteed loan status reports as of** *--**March 31 and September 30 of each year.** Status reports are due within 30 calendar days after March 31 and September 30, respectively.--*

- **PLP lenders will submit additional reports as required in their Lender's Agreement.**

- **A lender receiving a final loss payment must complete and return an annual report on its collection activities for each unsatisfied account for 3 years following payment of the final loss claim.**

--**Lenders must submit FSA-2248 to comply with the requirement to report borrower**-- defaults. This report is used first to notify FSA that a loan is in default, second, as a progress report on the lender's attempt to make the loan current again, and third, once a loan is brought current, as a means to notify FSA of the new loan terms and conditions. See Part 12 for more details on this reporting requirement.

--**Lenders must submit FSA-2241 to comply with the requirement to submit a semi-annual**-- loan status report. This report provides an update on the borrower's progress on loan payback and the loan's terms and conditions.

Loan information reported on both the FSA-2248 and FSA-2241 is transmitted monthly to the commercial credit bureaus. See Exhibit 15.4 for more details.

266 Lender Reporting Requirements (7 CFR 762.141) (Continued)

B General Reporting Requirements (Continued)

Note: Lenders who are authorized to participate in electronic reporting shall update loan information for FSA-2248 and FSA-2241 in LINC. Lenders shall see Exhibit 5, for additional information about registering and accessing FSA's electronic online systems.

--**Lenders must submit FSA-2261 to satisfy the requirement for an annual report on**-- collection activities. See Part 14 for more details on this reporting requirement.

266 Lender Reporting Requirements (7 CFR 762.141) (Continued)

C FSA Monitoring of Lender Reports

*--Lenders are encouraged to submit status reports through LINC (see Exhibit 5). However, they may also submit FSA-2241 to the County Office. Upon receipt of FSA-2241, the authorized agency official will enter information from FSA-2241 into GLS. The Past Due Status Report Dashboard will be used to ensure status reports are submitted timely. If the lender is not sending or submitting the reports in a timely manner, the authorized agency official should document attempts to obtain the reports and communicate problems to SED.

The authorized agency official will review the information provided on FSA-2241 or submitted through LINC using the Guaranteed Loan Servicing Dashboard, Submitted Status Reports tab, to determine whether the loan is in good standing. If the principal balance--* has not been reduced in over a year, the accrued interest balance appears inordinately large, the interest rate does not comply with the promissory note, or other concerns, the issue should be discussed with the lender. If necessary, the discussion should be followed by a *--letter requesting that the account be corrected and a new FSA-2241 submitted. Corrections may only be entered by FSA, may not be submitted through LINC, and must be provided on FSA-2241.

An indication on FSA-2241 that the loan is past due will not place the account in default in FSA's records. If the lender has indicated that an account is past due, and an FSA-2248 has not been submitted, the authorized agency official will contact the lender to request an FSA-2248 be submitted if the account will not be brought current within a few days. Upon receiving
FSA-2248, the authorized agency official will enter the information in GLS and review--* the information to determine whether follow-up action is necessary. The findings of the review along with any planned follow-up action will be entered into the Comments Section of the Default Status Report Screen in GLS. The initials of the reviewer and the date of the review will also be entered into the Comments Section to document the review. Any comments entered by a lender will not be altered or removed, but supplemented with the FSA review information.

Entering information from FSA-2248, which shows a loan has been brought to a current status, will remove that loan from a delinquency status; however, it will not change the amount the loan payments are shown as Ahead/Behind. The authorized agency official will prepare an updated FSA-2241, using the information from FSA-2248, and process into GLS. If the information on FSA-2241 shows the loan as current, and the amount Ahead/Behind is shown as zero, the management reports will reflect the correct status of the loan.

See:

- Part 12 for other FSA-2248 actions
- Part 14 for FSA-2261 actions.

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 that have recently received or are 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, who from each State will assist with the review, and which files will be reviewed based on the preceding priorities. The percentage of borrowers to be reviewed is based on the lender's entire guaranteed loan portfolio.**--***

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.

267 FSA Loan Servicing Responsibilities (Continued)

B Lender Loan Files Review Priorities (Continued)

FSA-2293 and PLP Checklist, developed by the National Office for each specific lender, may be used to document the lender file reviews. All questions on each FSA-2293 and PLP Checklist do not require completion for each file reviewed, as long as reviews are sufficient to document that lenders are meeting the underwriting, origination, and servicing *--requirements of their Lender's Agreement and this handbook. If a loan selected for review based on the preceding priorities was previously reviewed for loan making, it will be reviewed for loan servicing only in the subsequent review.--*

In addition to the lender's loan file, a copy of the loan account ledger should be obtained and reviewed, and lender's risk-based pricing practices, if applicable. Additional information may be requested and reviewed by FSA, if necessary, based on deficiencies noted in the file, in loss claim reviews, or as suggested by other parties. SED shall determine how the file review requirement will be met in their State.

Note: See Exhibit 4 for State supplement requirements.

C Multi-State PLP Lender File Review

Where PLP lenders are approved to make and service loans in multiple States, it may be beneficial to both FSA and the lender to conduct a multi-State file review to meet the file review requirement. This review can benefit:

- FSA by:
  - helping to lead toward a more consistent handling of the reviews and the associated findings
  - having an opportunity to identify and correct inconsistent practices of the lender or FSA
- lenders by:
  - gaining a better understanding of across-the-board FSA expectations of the lender
  - having minimal disruption to their State operations as a result of FSA file reviews.

To ensure that multi-State reviews are given full consideration, in January of each year, the National Office will contact each State that has lenders with PLP status in a minimum of 2 States. Farm Loan Chiefs will work with each other, and with the National Office when necessary, to determine whether a waiver for review will be granted according to subparagraph B or where a multi-State review is necessary. If it is determined that multi-State review is necessary for a PLP lender in 3 or more States, the National Office will take the lead in contacting the lender and coordinating the review. If it is determined that a multi-State review is necessary for a PLP lender in only 2 States, the Farm Loan Chiefs will be responsible for contacting each other to determine who will be contacting the lender to coordinate the review or where a waiver for review will be granted according to subparagraph B. Multi-State reviews may be scheduled at any time during the year.

267 FSA Loan Servicing Responsibilities (Continued)

C Multi-State PLP Lender File Review (Continued)

The multi-State review will not alleviate the lender of their responsibility to provide authorized agency officials access to any particular file or files of the lender if in the authorized agency official's opinion an additional review is necessary.

D Authorized Agency Official Review of PLP Lender Loan Files

PLP loan file reviews will be documented by completing the review checklist based on the individual lender's CMS. All review checklists will be either prepared or approved by the National Office. The review of PLP loan files will be based on the terms and conditions specified in the Lender's Agreement.

Note: As the National Offices updates PLP checklists during the lender's renewal or amendment, the States will need to include a question or provide documentation on the last checklist developed from the National Office, that the interest rate charged at loan closing meets the requirements outlined in paragraph 135.

The following questions should be considered during the loan file review.

- Do the files contain sufficient information to document that the underwriting and servicing was consistent with the Lender's Agreement?

- Were servicing actions implemented in a manner consistent with the Lender's Agreement?

- Was servicing prudent and reasonable?

E Authorized Agency Official Response to Loan File Review

During the lender loan file reviews, the authorized agency official shall hold an entrance and exit conference with the lender. At the entrance conference, the authorized agency official will outline the purpose of the review and request any information that will be required to complete the review. At the exit conference, the authorized agency official will discuss with the lender any deficiencies as well as the lender's accomplishments. The authorized agency official will send a letter to the lender outlining the findings of the loan file review. The letter and loan file review forms will be filed in the lender's operational file, with copies ***--**forwarded to DD and SED. Copies of letters from PLP reviews should be forwarded to DAFLP, LSPMD to be filed in the lender's PLP file only if major deficiencies are found or other concerns or issues arise.**--***

If the lender is under an enforcement action imposed by the lender's regulatory agency, that finding will be documented in the letter to the lender outlining review findings, and a copy provided to SED. SED shall contact DAFLP, LSPMD.

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**

***--Notes:** The authorized agency official may approve a lender's request to subordinate normal income security that was not produced through advances made under the guaranteed loan to allow a borrower to obtain nonguaranteed annual operating credit.

Multi-year assignments of FSA program payments cannot be subordinated. However, in 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.**--***

- **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**

***--Note:** The authorized agency official will approve the subordination, provided that:

  - no additional debt is being incurred (beyond customary closing costs)
  - 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**, according to subparagraph 278 B.**--***

However, in no case can the loan made under the subordination include tax exempt financing.

--**Subordination requests for easements must be submitted as an exception request to be considered by DAFLP according to subparagraph 278 B.**--

278 Subordination of Guaranteed Loan Security (7 CFR 762.142) (Continued)

--B DAFLP Exception to Subordination Prohibition--

* * *

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 a lender to refinance an existing prior lien.--*

* * *

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.

278 Subordination of Guaranteed Loan Security (7 CFR 762.142) (Continued)

--B DAFLP Exception to Subordination Prohibition (Continued)--

- 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.

- ***--**certification that environmental requirements of paragraph 208 and 1-EQ have been met

- if the request is for an easement, an explanation of the value of the security both before and after the easement, the scope of the operation, and the proposed use of easement funds.**--***

FSA's refusal to grant an exception to published regulations is **not** appealable.

279 Subordination of Direct Loan Security (7 CFR 762.142(c))

A Direct Loan Subordination When Guaranteed Loan Is Being Made

The Agency may subordinate its security interest on a direct loan when a guaranteed loan is being made if, as appropriate, the requirements of the regulations governing Agency direct loan subordinations are met and only in the following circumstances:

- **to permit a guaranteed lender to advance funds and perfect a security interest in crops, feeder livestock, livestock offspring, or livestock products,** such as milk, eggs, wool, etc.

- **when the lender requesting the guarantee needs the subordination of the Agency's lien position to maintain its lien position when servicing or restructuring**

- *--**when the lender requesting the guarantee is refinancing debt and the Agency's position on real estate** (or personal property) **security will not be adversely affected**--*

  * * *

- **to permit a Line of Credit to be advanced for annual operating expenses.**

See 4-FLP for additional guidance.

B Direct Loan Subordination to Secure LOC

The Agency may subordinate its basic security in a direct loan to permit guaranteed line of credit only when both of the following additional conditions are met.

- **The total unpaid balance of the direct loans is less than or equal to 75 percent of the value of all of the security for the direct loans, excluding the value of growing crops or planned production, at the time of the subordination. The direct loan security value will be determined by an appraisal. The lender requesting the subordination and guarantee is responsible for providing the appraisal and may charge the applicant a reasonable appraisal fee.**

- **The applicant cannot obtain sufficient credit through a conventional guaranteed loan without a subordination.** Before approving a combination guaranteed loan and subordination, the local loan approval official will document that the applicant requested a Contract of Guarantee - LOC through at least 1 participating lender. If the local loan approval official has information available that supports a conclusion that credit is not available without a subordination, documentation in the case file will be sufficient to verify that other credit is not available.

280 Partial Releases (7 CFR 762.142(b))

A Overview

A partial release is the release of a portion of security used as collateral for a loan.

B Lender Request for Partial Release

A lender may release guaranteed loan security without FSA concurrence as follows:

- **when the security item is being sold for market value and the proceeds will be applied to the loan in accordance with lien priorities**

  Note: **In the case of term loans, proceeds will be applied as extra payments and not as a regular installment on the loan.** Security will not be released for the purposes of providing collateral for another loan.

- **the security item will be used as a trade-in or source of down payment funds for a like item that will be taken as security**

  Notes: The security may be exchanged for a like item of equal or greater value, based on a current appraisal.

  FSA input may be requested when there is a question of whether a reasonable value is being obtained for the security.

- **the security item has no present or prospective value.**

  Note: Older security items that are now junk or obsolete may be left off of the lender's security agreement when it is updated. Regardless, proceeds from the sale of such items as scrap or salvage should be applied to the loan as an extra payment.

*--**A partial release of security may be approved in writing by the Agency** (SED or designee according to 1-FLP, Exhibit 1) **upon the lender's request when:**--*

- **proceeds will be used to make improvements to real estate that increase the value of the security by an amount equal to or greater than the value of the security being released**

  Example: A borrower may sell a parcel of real estate to provide funds for construction of a dwelling.

280 Partial Releases (7 CFR 762.142(b)) (Continued)

B Lender Request for Partial Release (Continued)

- **security,** other than significant income generating property, **will be released outright, with no consideration, but the total unpaid balance of the guaranteed loan is less than or equal to 75 percent of the value of the security for the loan after the release, excluding the value of growing crops or planned production, based on a current *--appraisal of the security**, if required by the Agency

  Notes: Based on the level of risk and estimated equity involved, the Agency will determine what security must be appraised. Any required security appraisals or valuations must meet the requirements of § 762.127.**--***

  For LOC's, the loan ceiling must be used when calculating the loan to value. 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.

- **significant income generating property will not be released unless it is being replaced, and business assets will not be released for use as a gift or any similar purpose**

  Notes: Significant income generating property is real or personal property that is collateral for the guaranteed loan and generates income that is necessary for the farming operation to achieve a feasible plan.

  Significant income generating property is considered a business asset and will not be released unless being replaced or proceeds are being used for comparable authorized loan purposes if the loan to value is 75 percent or less after the release, and if the lender can demonstrate that the release will improve the borrower's profitability and likelihood of success.

- **Agency concurrence is provided in writing to a lender's written request.**

***--Note: Standard eligible lenders and CLP** and MLP **lenders will submit the--* following to the Agency:**

  - **a current balance sheet on the borrower**
  - *--**a current appraisal of the security**, if required by the Agency**--***

    Note: Unless specifically requested by FSA, the lender will not be required to provide an appraisal of any real estate security being released. * * *

  - **a description of the purpose for the release**
  - **any other information requested by the Agency to evaluate the proposed servicing action.**

280 Partial Releases (7 CFR 762.142(b)) (Continued)

B Lender Request for Partial Release (Continued)

***--PLP lenders will request servicing approval** (including for partial releases) **according to their agreement with the Agency at the time of PLP status certification.**

If the release is necessary to secure credit or to use proceeds for changes, expansion, or improvements, the requirements of paragraph 208 and 1-EQ must be met.**--***

C FSA Response to Request for Partial Release

Written consent of any prior or junior lien holder must be obtained and delivered to FSA if any proceeds are not applied according to lien priority.

A partial release will not be allowed if it would result in the borrower being released from loan liability.

D Reviewing Requests for Partial Releases

FSA will review and approve or reject the request and notify SEL within 30 calendar days, and CLP and PLP lenders within 14 calendar days, from receipt of a complete request for servicing.

When reviewing a lender's request for a partial release, the authorized agency official should carefully consider if the security to be released is significant income generating property. In all instances, the authorized agency official should assess whether or not the release of land will affect the overall value of the remaining security.

In addition, the authorized agency official will determine whether an appraisal of security is necessary based on risk and perceived equity involved in the release. If there is a question on the value of the security, the authorized agency official should request an appraisal. The appraisal must be paid for by the lender or borrower and meet the requirements of Part 8, ***--**Section 4, Subsection 3. The authorized agency official is responsible for ensuring all environmental requirements have been met.

Partial releases that require agency approval must be approved by SED (or designee according to 1-FLP, Exhibit 1). If FSA determines the release will not be approved, SED will prepare and send a letter to the borrower informing them that FSA does not concur with the release, the reason for denial, and their right to appeal the decision according to paragraph 22 and 1-APP. A copy of the letter must be provided to the lender.**--***

The lender will provide the Agency copies of any agreements executed to carry out the servicing action. * * *

281 Transfers and Assumptions (7 CFR 762.142(d))

A Overview

A transfer and assumption is an action whereby a new, eligible guaranteed loan applicant assumes an existing guaranteed loan. The transfer and assumption process is very similar to the application and approval of a new loan.

B Lender Request for a Transfer and Assumption

The servicing action must be approved by the Agency in writing. The transferee must apply for a loan in accordance with § 762.110 (Part 5)**, and provide any other information requested by the Agency to evaluate the transfer and assumption request. A current appraisal is required unless the lien position of the guaranteed loan will not change.**

Any required security appraisals must meet the requirements of § 762.127 (Part 8, Section 4, Subsection 3).

Lenders must also submit a request to release the transferor, guarantor, or any third party from liability when applicable. The request must include documentation to support the ***--**release according to § 762.146(c) (the items listed in subparagraph 361 B).**--***

Note: A release of liability as a result of a transfer and assumption is considered a release due to liquidation. The transferor is liquidating by transferring the operation to a *--different individual or entity but with no loss to the agency. A release of liability in conjunction with a transfer and assumption may be approved by SED.**--***

281 Transfers and Assumptions (7 CFR 762.142(d)) (Continued)

C Conditions and Requirements for a Transfer and Assumption

The following limitations apply to transfers and assumptions.

- **The transferee must meet the eligibility requirements and loan limitations for the *--loan being transferred, including all requirements relating to loan rates and terms, loan security, feasibility, and environmental and other laws applicable to an applicant under this part, except for a current appraisal when permitted in paragraph (d)(2) of this section.--***

  Note: Loans made to beginning or socially disadvantaged farmers in conjunction with the direct FO down payment loan program may be transferred to and assumed only by beginning farmers and socially disadvantaged farmers. Loans made to beginning farmers participating in a qualified State beginning farmer program may be transferred to and assumed only by beginning farmers.

- **The lender will use its own assumption agreements or conveyance instruments providing they are legally sufficient to obligate the transferee for the total outstanding debt.**

- **The lender must give any holder notice of the transfer. If the rate and terms are changed, written concurrence from the holder is required.**

Additional limitations that apply to transfers and assumptions are as follows:

- the market value of the security being acquired, plus any additional security the transferee proposes to give, must be adequate to secure the balance of the guaranteed loan plus any prior liens

- at the time of the assumption, the indebtedness of the transferee may not exceed the limits outlined in subparagraph 244 A.

281 Transfers and Assumptions (7 CFR 762.142(d)) (Continued)

D FSA Response to Request for Transfer and Assumption

The Agency will review, approve or reject the request in accordance with the time *--frames in § 762.130 of this part (Part 6). The Agency will complete the review using FSA-2231.**--***

The Agency approves the transfer and assumption by executing a modification of the guarantee to designate the party that assumed the guaranteed debt, the amount of the debt at the time of the assumption, including interest that is being capitalized, and any new loan terms, if applicable.

The authorized agency official will execute FSA-2245 and provide it to the lender for attachment to the original Loan Guarantee.

***--**To process a guaranteed loan transfer and assumption in GLS, an Application Package and Loan Guarantee Request must be entered for the transferee.

The Agency will agree to releasing the transferor or any guarantor from liability only if the requirements of § 762.146(c) (the items listed in subparagraph 361 B) **are met.**

Note: The release does not require DAFLP exception in this situation and may be approved by SED.**--***

The authorized agency official should treat a request for a transfer as an application for a new guaranteed loan. If all of the program requirements are met the transfer and assumption should be approved by FSA.

The authorized agency official will attach the assumption agreement to the Loan Guarantee or FmHA-449-34. To notify the RD Business Center, Guaranteed Commercial Branch of the assumption, complete and forward FSA-2246. Guaranteed loan fees are not required for transfer and assumption.

The lender will provide the Agency copies of any agreements executed to carry out the servicing action.

282 Additional Loans or Advances (7 CFR 762.146(a))

A Additional Loans or Advances

***--SEL and CLP lenders must not make additional loans or advances** (non-guaranteed and guaranteed term loans) **without prior written approval of the Agency, except as provided in the borrower's Loan or Line of Credit Agreement.**

The PLP lender may make additional (non-guaranteed) **loans or advances in --* accordance with the lender's agreement with the Agency.**

283 Emergency Advances (7 CFR 762.146(a))

A Issuing an Emergency Advance Under LOC

In cases of a guaranteed line of credit, lenders may make an emergency advance when a line of credit has reached its ceiling. The emergency advance will be made as an advance under the line and not as a separate note. An emergency advance made on a loan with interest assistance is **not** and **cannot** be covered under the existing FSA-2221. Therefore, the lender will charge the full note interest rate on the emergency advance and the advance **cannot** be used as part of the average principal balance calculation for the lender's interest assistance claim.

The lender's loan documents must contain sufficient language to provide that any emergency advance will constitute a debt of the borrower to the lender and be secured by the security instrument. The following conditions apply:

- **the loan funds to be advanced are for authorized operating loan purposes**

  Note: An emergency advance may not be used to pay a carryover of an existing LOC or for annual operating expenses for a subsequent year.

- **the financial benefit to the lender and the Government from the advance will exceed the amount of the advance**

- **the loss of crops or livestock is imminent unless the advance is made.**

Note: An emergency advance:

- in excess of the original loan amount is made when some aberration causes expenses to exceed the original budgeted amount, and is necessary to avoid significant damage to or loss of the security

- ***--**will not be approved if the shortfall is because of a major change in the operating plan where revised documentation regarding feasibility was not completed by the lender according to subparagraph 263 B**--***

- shall **not** be used if its use will cause the total amount of the borrower's debt to exceed the statutory limit.

283 Emergency Advances (7 CFR 762.146(a)) (Continued)

A Issuing an Emergency Advance Under LOC (Continued)

The following are examples where an emergency advance may be appropriate.

- The cost of an input item necessary for production of a crop, such as fertilizer or fuel unexpectedly increases substantially in price between the time the loan is made and the time the input is used.

- Unusual weather conditions result in additional expenses, such as a late freeze that results in a replanting of a crop, or an insect infestation results in unanticipated spraying.

- Fire or other calamity destroys a tractor or harvesting equipment just before harvest, and it is necessary to rent equipment, or custom hire for the harvest.

- The cost of inputs for raising livestock unexpectedly increases substantially, such as the cost of feed.

B Lender Request for an Emergency Advance

SEL's and CLP lenders must obtain written permission from the authorized agency official before an emergency advance on LOC can be made.

Emergency advances are authorized for ongoing operations and may be used for OL's with a 1-year term, or in any year of LOC. Where liquidation is imminent, advances will be made as protective advances according to Part 14.

To request an emergency advance, SEL's and CLP lenders must submit the following to the authorized agency official:

- a narrative explaining that the loss of crops and/or livestock is imminent and can be prevented by an infusion of cash

--Note:** A feasible plan is not required, but the narrative must support that the loss to the government will be less with the emergency advance than without it.**--

- cash flow projections

- if necessary, a copy of the modified loan note that reflects the additional cash advanced.

PLP lenders may make emergency advances according to their Lender's Agreement.

283 Emergency Advances (7 CFR 762.146(a)) (Continued)

C FSA Response to Request for Emergency Advance

The authorized agency official:

- shall review a SEL's and CLP lender's request for an emergency advance and notify the lender of FSA's decision in a timely manner

- should make every effort to respond to a request for an emergency advance within several days of receiving the lender's request.

--**If FSA determines the release will not be approved, the authorized agency official will prepare a letter to the borrower informing them that FSA does not concur with the requested emergency advance, the reason for denial, and their right to appeal the decision according to paragraph 33 and 1-APP. A copy of the letter must be provided to the lender.**--

284 Interest Rate Changes (7 CFR 762.146(d))

A Overview

The lender may change the interest rate on a performing (nondelinquent) loan only with the borrower's consent.

B Changing Interest Rates

A lender must follow the following procedures to change the interest rate.

- **If the loan has been sold on the secondary market, the lender must repurchase the loan** according to subparagraph 375 B **or obtain the holder's written consent**.

- **To change a fixed rate of interest to a variable rate of interest or vice versa, the lender and the borrower must execute a legally effective amendment or allonge to the existing note.**

- **If a new note is taken, it will be attached to and refer to the original note.**

- **The lender will inform FSA of the rate change.**

The new interest rate may not exceed the maximums established in paragraph 135.

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

Note: Lenders do **not** need to seek FSA concurrence to change an interest rate.

285 Release of Liability Upon Withdrawal (7 CFR 762.146(b))

A General Requirements

[7 CFR 762.146(b)] An individual who is obligated on a guaranteed loan may be released from liability by a lender with the written consent of the Agency provided the following conditions have been met.

- **The individual to be released has withdrawn from the farming operation.** The lender must submit a narrative outlining who is to be released and why.

- **A divorce decree and final property settlement does not hold the withdrawing party responsible for the loan payments.** A copy of the divorce decree must be submitted with the lender's request. The lender must document that release of divorced borrowers is a common practice carried out in their nonguaranteed loan portfolio.

- **The withdrawing party's interest in the security is conveyed to the individual or entity with whom the loan will be continued.**

- **The ratio of the amount of debt to the value of the remaining security is less than or equal to .75, or the withdrawing party has no income or assets from which collection can be made.**

- **Withdrawal of the individual does not result in legal dissolution of the entity to which the loans are made. Individually liable members of a general or limited partnership may not be released from liability. * * *** When the guaranteed loan is ***--**made to individuals farming as a general or limited partnership, and each partner is fully liable, release of one partner would terminate the partnership and the existence of the entity to which the loans were made. In these cases, a release can only be approved if a replacement member is not being obtained, and the entity is dissolved, and the remaining member(s) choose to form a new entity, the agency would consider a transfer and assumption of the newly formed entity.

  Typically, corporations and limited liability corporations (LLC) are not legally dissolved when an individual member exits. However, in every case before the agency makes a final decision on a request for release of any entity member, the authorized loan official will discuss with OGC and the lender the legal effects of the release. All discussions should be well documented.**--***

  The lender must document that release of withdrawing members is common in their unguaranteed portfolio and all other conditions in this paragraph are met.

- **The remaining liable party projects a feasible plan (see § 761.2(b) of this chapter).** The lender must submit a cash flow projection for the remaining liable party with the request for release. A release will not be approved when a loss is probable.

285 Release of Liability Upon Withdrawal (7 CFR 762.146(b)) (Continued)

B Lender Request for Release of Borrower From Liability Upon Withdrawal

PLP lenders shall submit documentation to the authorized agency official in support of a release from liability, as specified in the Lender's Agreement.

C FSA Actions to a Request for Release of Liability Upon Withdrawal

Upon review of the request, the authorized agency official must forward the request and a *--recommendation to SED for action. Following the SED's determination, the lender will be notified in writing. Notification of approval may come from SED, or SED may instruct the County Office to send the written notification. If FSA determines the release will not be approved, SED will prepare and send a letter to the borrower informing them that FSA does not concur with the release of liability request, the reason for denial, and their right to appeal the decision according to paragraph 33 and 1-APP. A copy of the letter must be provided to the lender.--*

The authorized agency official shall manually maintain a Released of Liability list of borrowers and/or co-borrowers who signed FSA-1980-25 or FSA-1980-28 with the July 20, 2001, for later revision date and have been approved and released of liability on active and terminated guaranteed loans. The following information shall be documented for each borrower:

- borrower name
- FSA borrower ID
- loan numbers
- date the release liability was approved.

The "Remove Co-Borrower from the Loan" function in GLS shall not be used in cases where release of liability has been approved.

* * *

D Annual Review of Lender Loan Files in Cases of Release Liability Upon Withdrawal

During the annual FSA lender loan file review, for loans that received a release of liability, the authorized agency official must ensure that the lender proceeded with the release according to the documents provided when seeking FSA approval. In addition, authorized agency officials should ensure that the original loan note has been amended or a new note that is tied to the original has been issued to reflect the release of liability. If anomalies in process or documentation are noted, the authorized agency official should discuss the shortcomings with the lender.

286 Consolidation of Debt (7 CFR 762.146(e))

A Overview

Only OL may be consolidated.

Existing lines of credit may only be consolidated with a new line of credit if the final maturity date and conditions for advances of the new line of credit are made the same as the existing line of credit. OL loan note guaranteed loans may only be consolidated with other OL loan note guarantees.

The borrower must project a feasible plan after the consolidation. See Exhibit 2 for definition of feasible plan.

Guaranteed OL may not be consolidated with a line of credit, even if the line of credit has been rescheduled.

The combining of outstanding principal and interest balances of 2 or more OL's or LOC's constitutes a consolidation of debt.

The following FSA loans cannot be consolidated:

- CL's
- FO's
- **OL's or lines of credit secured by real estate**

  Note: The "ACT" prohibits consolidation for loans secured by real estate.

- OL's or lines of credit with outstanding Interest Rate Buydown Agreement, IA Agreement, or SAA
- non-FSA loans.

The following conditions also apply to consolidation:

- **guaranteed loans made before October 1, 1991, cannot be consolidated with those loans made on or after October 1, 1991**

286 Consolidation of Debt (7 CFR 762.146(e)) (Continued)

A Overview (Continued)

- when 2 or more OL's or LOC's are consolidated the combined principal and interest must be kept separate; capitalization of interest is not allowed when loans are only being consolidated

  Note: When a loan is consolidated with a loan that was made using FSA-1980-25, FSA-1980-28, Application for Guarantee, or Preferred Lender Application with the July 20, 2001, or later revision date, the consolidated debt is eligible for offset.

- ***--**the environmental requirements of paragraph 208 and 1-EQ must be met.**--***

286 Consolidation of Debt (7 CFR 762.146(e)) (Continued)

B Request for Consolidation

SEL's must submit a feasible plan to FSA for concurrence before consolidating loans. CLP and PLP lenders may consolidate loans as long as the requirements of this paragraph are met.

C Lender Actions to Consolidate Loans

A new note or line of credit agreement will be taken. The new note or line of credit agreement must describe the note or line of credit agreement being consolidated and must state that the indebtedness evidenced by the note or line of credit agreement is not satisfied. The original note or line of credit agreement must be retained.

The interest rate for a consolidated OL loan is the negotiated rate agreed upon by the lender and the borrower at the time of the action, subject to the loan limitations for each type of loan. The new interest rate may not exceed the maximums established in paragraph 135.

The Agency approves the consolidation by executing a modification of guarantee *--(FSA-2245)**. The modification will indicate the consolidated loan amount, new terms,--* and percentage of guarantee, and will be attached to the originals of the guarantees being consolidated. If loans with a different guarantee percentage are consolidated, the new guarantee will be at the lowest percentage of guarantee being consolidated.**

Any holders must consent to the consolidation, or the guaranteed portion must be repurchased by the lender.

286 Consolidation of Debt (7 CFR 762.146(e)) (Continued)

D FSA Response to Consolidation Request

--**The authorized agency official will approve an SEL's request for consolidation if all requirements have been met. When SEL submits a request for a loan consolidation, the**-- authorized agency official should verify the following:

- only OL's and LOC's are being considered for consolidation
- the consolidation does not cause the loan principal to exceed program loan limitations
- the consolidation does not adversely affect the value of the security and the lender's security position
- ***--**the environmental requirements of paragraph 208 and 1-EQ have been met.**--***

The authorized agency official must complete FSA-2236 based on the information received from SEL and submit it to the RD Business Center, Guaranteed Commercial Branch, along with a memorandum describing which loans were consolidated.

--**If FSA determines the consolidation cannot be approved, the authorized agency official will prepare and send a letter to the borrower informing them that FSA cannot concur with the consolidation, the reason for denial, and their right to appeal the decision according to paragraph 33 and 1-APP. A copy of the letter must be provided to the lender.**--

If a PLP or CLP lender consolidates loans:

- copies of documents will be obtained
- compliance with regulations will be verified through annual file reviews
- FSA-2236 is completed and submitted to the RD Business Center, Guaranteed Commercial Branch, along with a memorandum describing which loans were consolidated.

287 Substitution of Lender (7 CFR 762.105)

A Overview

When a borrower wants to move their guaranteed loan from 1 lender to another, or a lender wants to sell a guaranteed loan to another lender, with or without the borrower's consent, FSA must process a substitution of lender.

B Lender Requirements

A new eligible lender may be substituted for the original lender, if the original lender concurs, under the following conditions.

- **The Agency approves of the substitution in writing by executing a modification of the guarantee** (FSA-2245, Modification of Loan Guarantee) **to identify the new lender, the amount of debt at the time of the substitution and any new loan terms if applicable. The new lender agrees in writing to:**

  - **assume all servicing and other responsibilities of the original lender and to acquire the unguaranteed portion of the loan**

  - **execute a lender's agreement if one is not in effect**

  - submit a request to the authorized agency official that the new lender be approved as a substitute lender for the loan

  - **give any holder written notice of the substitution. If the rate and term are changed, written concurrence from the holder** or repurchase **is required.** The authorized agency official shall review the FSA file and determine if the loan has been sold. If the loan has been sold, the authorized agency official shall remind the lender of special considerations warranted by its sold status.

287 Substitution of Lender (7 CFR 762.105) (Continued)

B Lender Requirements (Continued)

- The authorized agency official shall review the borrower and lender's substitution request as follows:

  - determine whether the requirements of this section are met

  - determine whether the new lender possesses the ability to service agricultural loans and, if necessary, discuss the loan with the lender and ensure that they are aware of their responsibilities

  - ***--**notify the RD Business Center, Guaranteed Commercial Branch of the substitution by completing and submitting FSA-2243, and changes to the rate of term, if applicable, by completing and submitting FSA-2249.**--***

- **The original lender will assign their promissory note, lien instruments, loan agreements, and other documents to the new lender. The guarantee documents will then be assigned to the new lender.** The original lender must:

  - **assign their promissory note, lien instruments, loan agreements, and other documents to the new lender**

  - **if the loan is subject to an existing IA Agreement, submit a request for subsidy for the partial year that they have owned the loan**

    Note: FSA-2221 can then be transferred to the new lender. When a substitution is being processed, authorized agency officials should review the file to determine whether the loan has IA. If so, they should remind the:

    - original lender of the need for a subsidy request
    - new lender of special servicing requirements of a loan with IA.

  - if the original lender does not concur, the substitution cannot take place. If the borrower still wants to move their loan, the new lender may refinance the debt of the original lender.

Part 12 Servicing Delinquent Accounts

Section 1 General Process for Restructuring Guaranteed Loans

300 Monetary Default - Overall Loan Servicing Process (7 CFR 762.143)

A Default and Servicing Delinquent Loans

A borrower is in default when they are **30 days past due on a payment or in violation of provisions of the loan documents.**

When a default occurs, the lender is expected to work with the borrower so that the loan can be brought current and the borrower can continue the farming operation. Prompt followup on delinquent payments, early recognition of loan problems, and prudent use of restructuring tools are keys to resolving many delinquent loans. The lender has an assortment of restructuring tools that may be used to bring the loan current. These include:

- rescheduling
- deferral
- debt writedown
- ***--**IA, if eligible and if funding is available.**--***

The following table represents the timeline for servicing delinquent loans and the required lender actions for restructuring guaranteed loans.

Delinquent Loan Servicing Timeline (Monetary Default)	
Payment Due Date	Payment Missed
30 Calendar Days After Due Date	Borrower in Default
Within 45 Calendar Days After Due Date	Meeting Between Borrower and Lender
60 Calendar Days After IA Determination	Earliest Date that Lender Can Initiate Foreclosure Action
Within 120 Calendar Days After Due Date	Loan Restructuring Plan Implemented or Decision to Liquidate Made

--Note:** When funding is not available for IA, the date of determination for IA eligibility is the missed payment due date.**--

300 Monetary Default - Overall Loan Servicing Process (7 CFR 762.143) (Continued)

B Loan Past Due

Default occurs on the loan immediately upon failure to make a scheduled installment on the day it is due. However, many lenders provide for a 30-calendar-day grace period before a notice of default is mailed or other actions are taken. To comply with this standard, FSA has established 30 calendar days after the payment due date as the maximum allowed before a loan must be declared in default. No direct action, other than monitoring of the situation, is required before this date. However, a lender does not have to wait until the loan is 30 calendar days past due before taking action. For example, perishable security, such as produce, or instances of maltreated livestock may dictate a quicker response to default than 30 calendar days.

If a borrower is current on a loan, but will be unable to make a payment, a restructuring proposal may be submitted in accordance with § 762.145 of this part and Section 2 **prior to the payment coming due.**

If through their involvement with an FSA direct loan, or in any manner, the authorized agency official becomes aware that a guaranteed borrower is in default or likely to default on their loan, they should communicate their concerns to the lender. If the loan payment was due but not paid over 30 calendar days ago, and no reports have been received from the lender, the authorized agency official will contact the lender to request a status report and remind them that they must work with the borrower and take timely action to correct delinquencies or liquidate the loan. Failure to address default in a prudent and timely fashion may result in a reduction or rejection of a lender's request for a loss claim, should a loss claim result. A loss claim may be reduced by the amount caused by the lender's failure to secure property after a default, and will be reduced by the amount of interest that accrues while no contact is made with the borrower or no action is taken to cure the default, once it occurs. Face to face or telephone communication should be followed up with a letter if the loan remains in default and corrective action is not taken.

300 Monetary Default - Overall Loan Servicing Process (7 CFR 762.143) (Continued)

C Borrower in Default

PLP lenders will service defaulted loans according to their lender's agreement. In the event of borrower default, SEL and CLP lenders will report to the Agency in accordance with 762.141, and follow the requirements of 762.143.

A guaranteed loan is in default if a loan payment is outstanding 30 calendar days after its due date. A borrower may also be in default if they have violated a loan agreement in another manner such as conversion of loan security, filing bankruptcy, failure to submit reports as required, defaulting on another loan with the same lender, or failure to maintain collateral as agreed. The lender will determine if a loan warrants default status because of a nonmonetary violation of the loan agreement. See paragraph 301 for information on the servicing process for loans in nonmonetary default.

D Borrower and Lender Meeting

The lender will **arrange a meeting with the borrower within 15 days of default, 45 days after payment due date for monetary defaults, to identify the nature of the delinquency and develop a course of action that will eliminate the delinquency and correct the underlying problems. The lender or the borrower may request the attendance of an Agency credit officer. If requested, the Agency credit officer will assist in developing solutions to the borrower's financial problems. Non-monetary defaults will be handled in accordance with the lender's note, loan agreements or any other applicable loan documents.**

During this meeting, the lender should discuss the following items with the borrower.

- Borrower's Ability to Bring Account in Compliance**. The lender and borrower will prepare a current balance sheet and cash flow projection in preparation for the meeting. If the borrower refuses to cooperate, the lender will compile the best** ***--financial information available.** These statements and their implication in the**--*** borrower's ability to bring the loan current should be discussed at the lender-borrower meeting.

300 Monetary Default - Overall Loan Servicing Process (7 CFR 762.143) (Continued)

D Borrower and Lender Meeting (Continued)

- Restructuring Options Available to Borrower. The variety of possible restructuring options includes rescheduling, reamortization, deferral, or debt writedown or a combination thereof as described in paragraphs 325 through 328. After analyzing the current financial condition of the borrower, 1 or more of these options may be presented as possible solutions to resolve the borrower's financial problems.

  Note: If requested, the authorized agency official will assist in developing solutions to the borrower's financial problems. The authorized agency official may offer advice and answer questions to assist in developing solutions to the borrower's financial problems, and may concur with limited proposals, such as short term forbearance, that result from the meeting. In the case of SEL's, official FSA concurrence cannot be provided until FSA receives a formal proposal for restructuring from the lender.

- *--Availability of IA (if currently funded). The lender must inform the borrower about--* the IA Program. If the lender and borrower feel that IA in conjunction with a loan rescheduling will correct the loan default, they may submit an IA request to FSA according to Part 8, Section 3. IA eligibility is determined by FSA according to Part 9. The borrower can waive IA Program eligibility consideration during the meeting. If program eligibility consideration is waived in writing, the loan can be accelerated immediately and a liquidation plan may be submitted to FSA.

The lender will summarize the meeting and proposed solutions on the Agency form for guaranteed loan borrower default status (FSA-2248) **completed after the meeting** and submit it to the local credit office immediately. **The lender will indicate the results on this form for the lender's consideration of the borrower for interest assistance in conjunction with a rescheduling under § 762.145 (b).** Copies of correspondence sent to the borrower about agreements reached may be attached to this report. The meeting summary attached to FSA-2248 should also include the dates of planned servicing actions. The lender must continue to submit FSA-2248 every 60 calendar days until the default is *--resolved or a final loss claim is paid. The lender will include on each report the most--* recent contact with the borrower or action to collect the loan as well as the next planned action and date. If a default is resolved, the lender must submit FSA-2248 by mail or electronically, indicating that the loan is current and the new loan terms and conditions. FSA will input the information, including any comments, through GLS immediately upon receipt, if the information was submitted by mail. Otherwise, the lender will update the information through GLS.

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

300 Monetary Default - Overall Loan Servicing Process (7 CFR 762.143) (Continued)

E Borrower Refusal to Attend Meeting

If after 60 calendar days a delinquent borrower does not respond to the lender's request for a meeting or refuses to discuss resolution of the default, the lender should take actions to protect their security interests and proceed with liquidation of the loan according to subparagraph G.

F Lender Repurchase of Guarantee

The lender **will determine whether it will repurchase the guaranteed portion from the holder in accordance with § 762.144 if the guaranteed portion of the loan was sold on the secondary market.** See Part 15.

The holder may ask the lender to repurchase the guarantee 60 calendar days after the missed payment date. The lender is encouraged to repurchase the guarantee when asked by the holder according to Part 15.

G Earliest Date to Begin to Liquidate Security

The lender may not initiate foreclosure action on the loan until 60 days after eligibility of the borrower to participate in the Interest Assistance Programs has been determined
--by the Agency.** When IA is not funded, the date of determination of IA eligibility is the missed payment due date.**--

Sixty calendar days after the disposition of the issue of IA, the lender may accelerate the loan. When accelerating the loan, SEL's and CLP lenders must submit a liquidation plan to FSA. If at any point before the end of the 60-calendar-day period the borrower waives IA eligibility consideration in writing, the lender may prepare to liquidate the loan immediately. See Part 14.

No abeyance period applies to loan restructuring. The lender and borrower may restructure a loan at any time following the meeting, regardless of the IA eligibility decision.

300 Monetary Default - Overall Loan Servicing Process (7 CFR 762.143) (Continued)

H Loan Restructuring Decision

The lender must decide whether to restructure or liquidate the account within 90 days of default, unless the lender can document circumstances that justify an extension by the Agency.

If loan restructuring cannot eliminate the default or the borrower will not eliminate the default within a reasonable period of time, the loan shall be liquidated. See Part 14. If requested by the lender, the authorized agency official may allow brief extensions for the preparation of a restructuring proposal and will document the request, reasons and concurrence in the FSA guaranteed loan file.

If the borrower can present a feasible restructuring proposal, the lender should prepare the plan and submit it to FSA as required by their Lender's Agreement. **Standard eligible lenders must obtain prior written approval of the Agency for all restructuring actions.** See paragraph 313.

FSA expects CLP and PLP lenders to have explored servicing options and implemented a feasible restructuring plan within 90 calendar days of default. If a lender plans to perform a debt writedown, prior approval from FSA is necessary. See paragraph 328. If restructuring is unfeasible, FSA expects the lender to accelerate the loan and prepare for liquidation by this date. See Part 14.

Section 2 Restructuring Requirements for Guaranteed Loans

312 Lender Requirements and Conditions for Loan Restructuring (7 CFR 762.145)

A General Requirements

For any restructuring action, the following conditions apply.

- **The borrower meets the eligibility criteria of § 762.120, except the provisions regarding prior debt forgiveness and delinquency on a Federal debt do not apply.**

  Notes: When a lender submits a request for FSA concurrence with a restructuring action, the authorized agency official will review the borrower's eligibility for the loan. However, the eligibility provisions of subparagraphs 108 C and D do not apply to the restructuring of existing loans.

  If a co-borrower or co-signer is required to execute a note in conjunction with a restructuring the lender must provide the name, Social Security number, and current address of the co-borrower or co-signer to FSA. The co-borrower must also meet the eligibility criteria of **§ 762.120**.

- **The borrower's ability to make the amended payment is documented by the following:** (SEL and CLP lender only; PLP lender shall see the Lender's Agreement)

  - **a feasible plan**

    Note: **If interest assistance is required to achieve a feasible plan, the items required by Sec. 762.150(d) must be submitted with a restructuring request.**

  - **current financial statements from all liable parties**
  - **verification of nonfarm income**
  - ***--verification of all debts** (if over $5,000)**--***
  - **applicable credit reports**
  - **financial history (and production history for standard eligible lenders) for the past 3 years to support the cash flow projections.**

  Note: **A final loss claim may be reduced, adjusted, or rejected as a result of negligent servicing after the concurrence with a restructuring action under this section.**

312 Lender Requirements and Conditions for Loan Restructuring (7 CFR 762.145) (Continued)

A General Requirements (Continued)

- **Loans can be restructured using a balloon payment, equal installments, or unequal installments. Under no circumstances may crops or livestock other than breeding stock, be the only security for a loan to be rescheduled using a balloon payment. If a balloon payment is used, the projected value of the security must indicate that the loan will be fully secured when the balloon payment becomes due. The projected value will be derived from a current appraisal adjusted for depreciation of depreciable property, such as buildings and other improvements, that occurs until the balloon payment is due. For other security, a current appraisal is required. The lender is required to project the security value at the time the balloon payment is due based on the remaining life of the security, or the depreciation schedule on the borrower's Federal income tax return. Loans restructured with a balloon payment that are secured by real estate will have a minimum term of 5 years, and other loans will have a minimum of 3 years before the scheduled balloon payment. If statutory limits on terms of loans prevent the minimum terms, balloon payments may not be used. If the loan is restructured with unequal installments, a feasible plan, as defined in §761.2(b) of this chapter, must be projected for when installments are scheduled to increase.**

  Example of unequal installment: A payment that increases as the cash flow and debt repayment ability of the farming operation increases because of development or expansion. Unequal installments may be used when development is being financed, such as the planting of orchards or other perennial crops, the construction of livestock or other processing facilities, or the purchase of foundation livestock. Since typical production income may not be realized for quite a number of years in some cases, higher installments could be scheduled later in the life of the loan. For instance, an orchard development may be financed resulting in the planting of immature trees. In years 1 through 3, there may be no realized production and income. In years 4 through 6, initial production may be anticipated; however, full production may not be expected until years 8 through 10. Unequal payments may be adjusted accordingly.

- **If a borrower is current on a loan, but will be unable to make a payment, a restructuring proposal may be submitted prior to the payment coming due**.

- **The lender may capitalize the outstanding interest,** according to the requirements of subparagraph 326 D.

- ***--**The lender and FSA will ensure that environmental requirements of paragraph 208 and 1-EQ have been met.**--***

313 Specific Lender Requirements for Loan Restructuring (7 CFR 762.145) (Continued)

B CLP Restructuring Requirements

CLP lenders must obtain prior written approval of the Agency only for debt *--write-down under this section. The debt write-down request must include the items listed in subparagraph 312 A.--*

CLP lenders must submit all calculations required in paragraph (e) of this section for debt write-down.

For restructuring other than write-down, CLP lenders will provide FSA with a certification that each requirement of this section (Part) **has been met, a narrative outlining the circumstances surrounding the need for restructuring, and copies of any applicable calculations.**

In addition, the CLP lender will provide:

- FSA-2248 to show the loan is current
- copies of any restructured notes, lines of credit agreements, or allonges.

After the CLP lender has submitted all of these documents, FSA will complete the same actions as for SEL's.

C PLP Restructuring Requirements

PLP lenders will restructure loans in accordance with their lender's agreement.

A PLP lender may request guidance on or concurrence with a restructuring proposal. The authorized agency official will review the lender's request for compliance with the terms indicated in the credit management system of their PLP Lender's Agreement.

All PLP lenders will submit copies of any restructured notes, line of credit agreements, or allonges to FSA. With the copies of any restructured notes, line of credit agreements, or allonges, PLP's must attach a cover memo explaining the restructuring and, if the loan was delinquent, submit FSA-2248 to confirm that the loan is once again current.

After the PLP lender has submitted all of these documents, FSA will complete the same actions as for SEL lenders.

314 FSA Response to Restructuring Requests

A Authorized Agency Official Responsibilities

Authorized agency officials have several responsibilities in the event a loan defaults and a lender submits a restructuring plan, including:

- provide loan restructuring assistance and guidance as requested
- review FSA-2248 for compliance with FSA guarantee documents, the lender's loan agreement, promissory notes, and FSA regulations
- inform the lender if the borrower is eligible for IA if requested
- process all FSA-2248's in GLS.

The authorized agency official should contact the lender to discuss any problems with the proposal, request corrections, or suggest revisions. If the requested corrections are significant, this contact should be followed up with a letter outlining the additional information needed and a timeframe for it to be provided. If the proposal is approved, the authorized agency official will inform the lender that they may proceed to restructure the loan.

If the lender fails to provide updates on recent or planned collection actions, estimated timeframes for corrective actions proposed by the borrower, or other information reviewed that indicates that the lender is not acting timely or prudently to protect their interest, the authorized agency official will inform the lender in writing of the problems noted and request modifications.

If an SEL lender has made the decision to liquidate a loan, the authorized agency officials should ensure that SEL has investigated the feasibility of every restructuring option before a decision to liquidate was reached. It is solely the lender's prerogative to accept or reject a borrower's plan for resolution of a default or offer an option for restructuring the debt. Still, the authorized agency official should review the situation and advise the lender of any unexplored servicing options that exist that may benefit the borrower, lender, and FSA.

314 FSA Response to Restructuring Requests (Continued)

B FSA Response to Requests for Restructuring

[7 CFR 762.145(a)] If the standard eligible lender's proposal for servicing is not agreed to by the Agency, the Agency approval official will notify the lender in writing within 14 days of the lender's request.

Authorized agency officials must review and respond to a restructuring request from SEL in a timely manner. Any request for concurrence on a restructuring plan must be accompanied by all necessary supporting documents according to paragraphs 312 and 326 through 328.

- **FSA Response to Rescheduling Request:** The authorized agency official must review SEL's proposed rescheduling to determine that it is feasible and that the repayment period does not exceed the maximum allowable term. If SEL proposes a restructuring of a loan with capitalized interest the authorized agency official must concur on the capitalization request along with the rescheduling request.

- **FSA Response to Deferral Request:** After reviewing the restructuring proposal, the authorized agency official must ensure that the deferral plan is feasible and that the deferral does not extend beyond the final due date of the loan note. If the deferral period extends beyond 1 year, interest in its totality cannot be deferred. A portion of interest must be paid for each year the loan is in abeyance.

If the lender's proposal for servicing is not agreed to by FSA, the agency approval official shall notify the applicant in writing, with a copy to the lender, within 14 calendar days of the lender's request. This letter will inform the lender and borrower of their informal review, ***--**mediation, and appeal rights according to paragraph 33 and 1-APP.**--***

314 FSA Response to Restructuring Requests (Continued)

--C FSA Review of CLP and PLP Restructuring Actions--

* * *

--The authorized agency official shall review the loan restructuring documents and FSA-2248 according to paragraphs 313 and 326 through 328, and confirm that the-- restructuring actions did not violate any FSA regulations. If the authorized agency official has any concerns about the restructuring of the loan, the authorized agency official shall contact the lender to discuss the concerns.

315-325 (Reserved)

327 Deferrals (7 CFR 762.145(d))

A General Description

A deferral postpones the payment of principal and interest on CL, FO, OL, or LOC to accommodate a temporary inability of the borrower to make scheduled payments. Loan principal can be deferred in whole or part. If the deferment period is 1 year or less, interest can be deferred in whole or in part. Interest may only be deferred in part if the deferral ***--**period extends over 1 year. Following the deferral period, the lender must resume regular servicing actions. If the loan becomes delinquent or is in non-monetary default, the lender will proceed with default servicing according to Part 12.

The following are examples of when a deferral may be a useful servicing tool because there is a reasonable prospect that the borrower will be able to resume full payments at the end of the deferral period according to 7 CFR 762.145(d):

- A borrower with a guaranteed farm ownership loan loses a poultry contract but has successfully obtained a new contract that will not begin immediately.

- A borrower with a guaranteed LOC was unable to harvest the crop as scheduled because of ongoing adverse weather and will therefore not have the funds needed to make the upcoming installment on time.

- A borrower with a guaranteed farm ownership loan typically makes the annual installment from crop proceeds. Crop proceeds were short this year and only a partial payment was made, so the borrower proposes to make the remaining installment from projected cattle income that will be received later in the year.

- A borrower with a guaranteed term operating loan lost several greenhouses in a fire. The replacement greenhouses are projected to be finished in 6 months, but it will take at least 1 year to fully resume operations for a total of 18 months before income is projected to return.**--***

* * *

327 Deferrals (7 CFR 762.145(d)) (Continued)

B Conditions

The following conditions apply to deferrals.

- **Payments may be deferred up to 5 years, but the loan may not be extended beyond the final due date of the note.**
- **The principal portion of the payment may be deferred either in whole or in part.**
- **Interest may be deferred only in part. Payment of a reasonable portion of accruing interest as indicated by the borrower's cash flow projections is required for multi-year deferrals.**
- **There must be a reasonable prospect that the borrower will be able to resume full payments at the end of the deferral period.**

The amount of principal and interest deferred must be based on the borrower's current ability to pay, and projections about ability to pay in the future. If the deferral period is to extend beyond 1 year, only a portion of the interest can be deferred.

--**An LOC may not be deferred beyond 1 year. If a deferral of more than 1 year is needed, the LOC must be restructured and no new advances can be made. For LOC deferrals 1 year or less, there must be either inventory on hand to cover the carryover debt balances or the**-- borrower must show repayment of the carryover debt plus the new operating cycle advances. * * *

The loan may be rescheduled after the deferral if payments as scheduled cannot be made.

C Lender Request to Defer a Loan

To request a deferral, SEL lenders must submit documentation according to the requirements listed in paragraph 312. Based on this documentation, the authorized agency official will notify the lender in a timely manner whether or not the deferral plan is approved.

***--**CLP lenders must submit documentation according to subparagraph 313 B, after completing the deferral.

PLP lenders may defer loans according to their CMS and provide documentation to FSA according to subparagraph 313 C.

Note: Since deferrals do not change the final maturity date of the loan, it is not necessary for FSA to complete and forward FSA-2249 to the RD Business Center, Guaranteed Commercial Branch.**--***

327 Deferrals (7 CFR 762.145(d)) (Continued)

*--D Forbearance Agreements

A forbearance agreement is a formal agreement between a lender and a borrower in which the lender temporarily pauses, reduces, or delays the borrower's loan payments because of financial hardship for a specific period of time. During the forbearance agreement time period, the lender agrees not to begin forced liquidation in exchange for the borrower's agreement to certain conditions.

Common features of a forbearance agreement include, but are not limited to:

- a set time period during which payments are paused or reduced
- a plan for how the missed payments will be repaid (including but not limited to lump sum, refinance, voluntary liquidation)
- an agreement that the lender will begin forced liquidation if the conditions are not met by the end of the forbearance period.

A forbearance agreement is generally a last opportunity for the borrower to avoid forced liquidation by providing additional time to refinance, voluntarily liquidate, or take some other action to pay off the loan balance or bring the account current.

A forbearance agreement differs from a deferral according to 7 CFR 761.146(d) in the following ways:

- Forbearance agreements do not require FSA concurrence, but they should be discussed with FSA before executing.
- If the conditions of the forbearance agreement are not met and the lender proceeds with liquidation, the original missed payment due date must be used when calculating interest on the estimated or final loss claim.
- The lender may choose to continue reporting the loan as past due and delinquent on status and default status reports for the length of the agreement or choose to report the loan as current once the agreement is executed. In either case, the lender should include in the comments a forbearance agreement has been executed along with the date of expiration.--*

341 Lender's Responsibilities in Bankruptcy Proceedings (7 CFR 762.148(a)) (Continued)

A Lender Responsibilities in Bankruptcy Cases (Continued)

- **Monitor confirmed plans under chapters 11, 12, and 13 of the bankruptcy code to determine borrower compliance. If the borrower fails to comply, the lender will seek a dismissal of the reorganization plan.**

- **When permitted by the bankruptcy code, requesting a modification of any plan of reorganization if it appears additional recoveries are likely.**

- **Keeping the Agency regularly informed in writing of all aspects of the proceedings.**

  - The lender will submit a regular default status report when the borrower defaults and *--should include with the default status report all significant steps in the bankruptcy--* proceeding, including the dates and pertinent details concerning:

    - confirmation of the plan
    - effective date of the plan
    - date the plan is completed
    - failure of the debtor to comply with the plan
    - discharge of the debtor.

  - *--**The lender shall submit a default status report** (FSA-2248) **when the borrower defaults and every 60 days until the default is resolved or a final loss claim is paid.** The initial Default Status Report is sent to the local credit office immediately following the lender-borrower default meeting (see paragraph 313).

  - **The default status report** (FSA-2248) **will be used to inform the Agency of the--* bankruptcy filing, the reorganization plan confirmation date and effective date, when the reorganization plan is complete, and when the borrower is not in compliance with the reorganization plan.**

342 Lender's Claims for Expenses and Estimated Losses in Reorganization Bankruptcy Proceedings (7 CFR 762.148)

A Claims for Expenses in Reorganizations

Lenders will be compensated for expenses and losses incurred as a result of a Chapter 11, 12, or 13 bankruptcy proceeding as follows:

- **Lender's in-house expenses, which are those expenses which would normally be incurred for administration of the loan, including in-house lawyers, are not covered by the guarantee.**

- Expenses paid by lenders to third parties will be compensated as follows

    - **Expenses, such as legal fees, and the cost of appraisals incurred by the lender as a direct result of the borrower's Chapter 11, 12, or 13 reorganization, are covered under the guarantee, provided they are reasonable, customary, and provide a demonstrated economic benefit to the lender and the Agency** and will be paid upon satisfactory claim by the lender. Such expenses must be incurred following the filing of a voluntary petition by the borrower, and must be incurred before discharge of the debtor. Such third party costs must be reasonable and appropriate, and must be documented in the lender's files. Reasonable and appropriate generally will be determined by the commercial standards and practices in that location, and should be typical for the unguaranteed loans of the lender. Appraisal costs significantly higher than typical appraisal costs for a similar appraisal in the same part of the country by an appraiser of similar experience, for example, might be unreasonable.

      Note: When reviewing the ledger provided with a loss claim, it should be noted that interest may accrue on protective advances; however, interest that accrues on legal fees paid by the lender are not covered by the Guarantee.

    - Claims for expenses in reorganizations may be combined with claims for estimated losses of principal and interest or protective advances, but will not be paid the lender before plan confirmation.

B Claims for Estimated Losses of Principal and Interest in Reorganizations

Lenders may submit a claim for losses of principal and interest sustained as a result of a reorganization plan in a bankruptcy reorganization proceeding. Lenders may have had an estimated loss claim approved by FSA before the reorganization bankruptcy filing. These lenders may have to submit a revised loss claim (bankruptcy type 05) as a result of the reorganization plan.

342 Lender's Claims for Expenses and Estimated Losses in Reorganization Bankruptcy Proceedings (7 CFR 762.148) (Continued)

B Claims for Estimated Losses of Principal and Interest in Reorganizations (Continued)

- Claims should be submitted using FSA-2254 to the authorized agency official. The authorized agency official shall review the claim using FSA-2295 and either request modifications by the lender or forward the claim to SED with recommendations and supporting documents as necessary.

- **At confirmation, the lender may submit an estimated loss claim** (bankruptcy type 05) **upon confirmation of the reorganization plan in accordance with the following:** The initial estimated loss claim (bankruptcy type 05) must include a copy of the confirmed bankruptcy plan and a memorandum clearly indicating the plan's confirmation date, the date the plan is to go into effect, and any other relevant information concerning the loan and the loss claim. Supporting documentation must be supplied immediately following confirmation of the plan.

  Note: 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.

- When a confirmed plan extends the term of a guaranteed loan beyond the agency's maximum allowable terms, it does not extend the term of the guarantee. When preparing FSA-2249, agency officials will only extend the terms of the loan according to subparagraph 326 B.

- During the bankruptcy, interest accrual coverage begins with the filing date and continues through the plan confirmation date and will be paid as part of the estimated (bankruptcy type 05) loss.

- For subsequent bankruptcy reorganization filings, FSA will cover interest accrual on the portion of the debt determined to have become unsecured because of the multiple filings, but only if the initial bankruptcy was filed within 150 calendar days of default or the lender submitted an estimated loss claim within 150 calendar days of default.

- **The estimated loss claim** (bankruptcy type 05) **will cover the guaranteed percentage of the principal and accrued interest written off, plus any allowable costs incurred as of the effective date of the plan.**

- ***--The lender will submit supporting documentation for the loss claim.** Documentation may include, but is not limited to:

  - receipts or invoices of all legal fees, protective advances, and liquidation expenses
  - ledgers for guaranteed loans and applicable nonguaranteed loans
  - an accounting and appraisal of all loan security.**--***

- **The estimated loss** (bankruptcy type 05) **payment may be revised as consistent with a court-approved reorganization plan.**

342 Lender's Claims for Expenses and Estimated Losses in Reorganization Bankruptcy Proceedings (7 CFR 762.148) (Continued)

- The estimated loss (bankruptcy type 05) claim may be revised after a court-approved partial liquidation of the collateral. When this occurs, the revised claim will be based upon the actual value received for the liquidated collateral as long as the lender made every effort to ensure that maximum proceeds were received. In these cases, FSA will pay the lender additional interest on that portion of debt that is determined to be unsecured on the bankruptcy (type 05) loss claim during and up to 45 calendar days after ***--**the court order for the personal property-secured portion of the debt and 90 calendar**--*** days for real estate.

C Claims for Estimated Interest-Only Losses in Reorganizations

Lenders may submit an estimated loss claim for interest only after confirmation of the reorganization plan in accordance with the following.

- Claims should be submitted using FSA-2254 to the authorized agency official.

- The interest-only estimated loss claim can be approved only after the confirmation date of the reorganization plan.

- The initial interest-only estimated loss claim may include a claim for interest accrued to the effective date of the reorganization plan (the date when the plan becomes effective). This date may be later than the date the plan is approved by the court (the confirmation date). This loss will be paid as of the plan's effective date with no additional interest accrual after that date.

- If the loan has a variable rate that remains at or below the court-ordered rate during the claim period, no loss claim may be submitted.

- Subsequent claims for interest-only estimated losses covering 1-year periods following the effective date of the reorganization plan may be submitted annually, and will be processed on the anniversary date of the effective date of the reorganization plan or immediately thereafter.

- **The loss claims may cover interest losses sustained as a result of court-ordered, permanent interest rate reduction.**

- **The loss claims will be processed annually on the anniversary date of the effective date of the reorganization plan.**

  Note: Loss claims may also be processed immediately following the payment due date established in the reorganization plan and on that date annually thereafter.

- **If the borrower performs under the terms of the reorganization plan, annual interest reduction loss claims will be submitted on or near the same date, beyond the period of the reorganization plan.**

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.** A copy of the loan ledger is not required for estimated loss claims of $0 but will be required with the final loss claim if a payment is requested.**--***

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)

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. For Type 01 estimated loss claims, FSA may request corrections to the form if necessary; however, FSA's review must not include requiring supporting documentation, aside from the loan ledger, as that will be done at the time the final loss claim is processed. For Type 05 estimated loss claims, documentation to support the entire claim is required according to subparagraph 342 B and must be reviewed before approval.**--***

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.

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

F FSA Approval and Payment of Estimated Loss Claim (Continued)

*--If FSA and the lender cannot resolve the disputes, resulting in a denial of the lender's entire estimated loss claim request, the authorized agency official will approve the loss claim in GLS for $0 and will not require the lender's signature on the approved FSA-2254. See GLS User Guide for additional information.

If FSA and the lender cannot resolve the disputes resulting in a partial denial of the lender's estimated loss claim request, the authorized agency official will process the approved amount of the estimated loss claim in GLS and will not require the lender's signature on the approved FSA-2254. See GLS User Guide for additional information.

If FSA makes any reductions that the lender will not agree to, SED will prepare and send a letter to the lender informing them of the dollar amount of each deduction with the corresponding CFR and 2-FLP references (see Exhibit 16 for assistance with references) and their right to appeal the decision according to paragraph 33 and 1-APP.

Note: When FSA must request additional information from the lender such as the loan ledger, required documentation for a Type 05 claim, or clarification or a correction to the form to proceed with processing, FSA's review and approval timeframes will pause as of the date of the request and will resume when the requested information is received.

After approval by SED, the authorized agency official 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."

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) (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.

--Note:** If the final loss claim follows an estimated loss claim that resulted in a payment to the lender and the final loss claim results in either no additional payment to the lender or a partial repayment from the lender, then the settlement date on the final loss claim must be adjusted in GLS to match the date the final loss claim is processed.**--

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 on all final claims in which an estimated claim was previously submitted timely (within 150 calendar days) and 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)

***--**After reviewing FSA-2254 and all supporting documentation, the authorized agency official will forward FSA-2254 to SED with a recommendation for the final loss claim. If SED finds the final loss claim to be accurate, SED will approve it. If the authorized agency official is unable to recommend approval of the final loss claim, the concerns should be reviewed with SED. SED will determine if the estimated loss claim will be disputed with the lender. If FSA wants to dispute the final loss claim, FSA will attempt to resolve the differences with the lender within 40 calendar days of the submission.

If FSA and the lender cannot resolve the disputes resulting in a denial of the lender's entire final loss claim request, the authorized agency official will approve the loss claim in GLS for $0 and will not require the lender's signature on the approved FSA-2254. See GLS User Guide for additional information.

If FSA and the lender cannot resolve the disputes resulting in a partial denial of the lender's final loss claim request, the authorized agency official will process the approved amount of the final loss claim in GLS and will not require the lender's signature on the approved FSA-2254. See GLS User Guide for additional information.

If FSA makes any reductions that the lender will not agree to, SED will prepare and send a letter to the lender informing them of the dollar amount of each deduction with the corresponding CFR and 2-FLP references (see Exhibit 16 for assistance with references) and their right to appeal the decision according to paragraph 33 and 1-APP.**--***

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

F FSA Approval and Payment of Final Loss Claim (Continued)

* * *

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, the authorized agency official will send FSA-2254, including final loss claims with no losses to the RD Business Center, Guaranteed Commercial Branch for payment or processing according to 1-FLP, paragraph 5. 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.

361 Release of Liability After Liquidation (7 CFR 762.146(c)) (Continued)

C Loans Made Using FSA-1980-25, FSA-1980-28, Application for Guarantee, or Preferred Lender Application With the July 20, 2001, or Later Revision Date

For loans made using FSA-1980-25, FSA-1980-28, Application for Guarantee, or Preferred Lender Application with the July 20, 2001, or later revision date, a lender's request to release the borrower of liability after liquidation of the collateral but before the payment of a final loss claim can only be approved by DAFLP. The payment of a final loss claim on these loans establishes a Federal debt that is subject to offset. (Collection of the Federal debt will be pursued according to 7 CFR 762.149(m). See paragraph 363.)

SED's shall thoroughly evaluate all requests and forward them to DAFLP with their recommendation. All requests will include an analysis along with supporting documentation that includes a monetary analysis as to why such an exception is in the Government's best interest. DAFLP will evaluate each request on a case-by-case basis. DAFLP's decision is final and is not appealable.

362 Miscellaneous Liquidation Items (7 CFR 762.149)

A Future Recovery

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 lender will continue to be responsible for collecting the full amount of the debt and sharing future recoveries with the Agency in accordance with paragraph (j) of this section.

The lender will remit any recoveries made on the account after the Agency's payment of a final loss claim to the Agency in proportion to the percentage of guarantee in accordance with the lender's agreement until the account is paid in full or otherwise satisfied.

A lender receiving a loss payment must complete and return in a timely manner a report on its collection activities, FSA-2261, for each unsatisfied account for three years following payment of loss claims.

In late October of each year, the authorized agency official will forward FSA-2261 with instructions to lenders that have received a loss claim because of liquidation in the past 3 years. FSA-2261 must be completed and returned by November 30.

Note: FSA-2261 will not be completed for Chapter 7 liquidation bankruptcy cases that have received a discharge.

SED's shall compile State reports and submit the results to the National Office upon request.

***--**When FSA's share of an amount is received, the funds will be deposited according to 64-FI, paragraph 50, using collection code 33.

In cases where a receivable has not been established, or was established but later cancelled, FSA-2254 must also be completed and sent to the RD Business Center, Guaranteed Commercial Branch, according to 1-FLP, paragraph 5. The following items will be**--*** completed on FSA-2254:

- enter code 4 in item 5, "Report Type Code"
- enter the date funds were received in item 15, "Date of Settlement"
- enter the amount received in item 51, "Amount Due FSA by Lender".

* * *

362 Miscellaneous Liquidation Items (7 CFR 762.149) (Continued)

A Future Recovery (Continued)

For loans made using FSA-1980-25, FSA-1980-28, Application for Guarantee, or Preferred Lender Application with a July 20, 2001, or later revision date, lenders may only issue IRS-1099-C on the unguaranteed portion of the debt once the lender has met its future recovery obligations.

Once FSA has concluded its collection efforts, then FSA will cancel any remaining debt and report to IRS accordingly.

B FSA Option to Liquidate

At its option, the Agency may liquidate the guaranteed loan as follows.

- **Upon Agency request, the lender will transfer to the Agency all rights and interests necessary to allow the Agency to liquidate the loan. The Agency will not pay the lender for any loss until after the collateral is liquidated and the final loss is determined.**

- **If the Agency conducts the liquidation, interest accrual will cease on the date the Agency notifies the lender in writing that it assumes responsibility for the liquidation.**

Upon the recommendation of SED, DAFLP may approve liquidation of a guaranteed loan by FSA.

The lender will transfer to FSA all rights and interests necessary to allow the authorized agency official to liquidate the loan.

SED shall consult with OGC to answer questions relating to the assignment and transfer of the lender's loan documents to FSA. After the loan is transferred, the authorized agency official shall summarize the history of case, list all of the loan security and its estimated value, and address any other issues that SED or OGC have about the liquidation. SED shall refer the case to OGC to process the request for liquidation by the Government. SED shall ***--**send FSA-2262 to the RD Business Center, Guaranteed Commercial Branch, and the**--*** authorized agency official shall oversee the liquidation. If requested by the lender, FSA shall provide an update on the liquidation proceedings. Interest accrual will stop when FSA notifies the lender in writing that FSA is assuming responsibility of the liquidation process. The final loss payment to the lender will not include interest beyond the date FSA took responsibility to liquidate. In this event, the lender is not paid for any loss until the collateral is liquidated and the final loss is determined.

363 Collecting Final Loss Claim Payments From Guaranteed Loan Debtors (7 CFR 762.149(m))

A Establishment of a Federal Debt

[7 CFR 762.149(m)] Any amounts paid by the Agency on account of liabilities of the guaranteed loan borrower will constitute a Federal debt owing to the Agency by the guaranteed loan borrower. In such case, the Agency may use all remedies available to it, including offset under the Debt Collection Improvement Act of 1996 (DCIA)**, to collect the debt from the borrower. Interest charges will be established at the note rate of the guaranteed loan on the date that the final loss claim is paid.**

Federal debt is established on the effective date of the final loss claim payment. All individuals liable for the debt will be subject to offset. FSA will use non-centralized administrative offset, including IAO of payments made by USDA, and centralized offset from the U.S. Department of Treasury's TOP, and by any other applicable debt collection methods to collect the debt owed to FSA.

FSA shall obtain copies of the promissory note, the original application, the loan guarantee, the final loss claim, and current interest rate as of the final loss payment date, if a variable rate loan, as documentation of the establishment of a Federal debt.

The authorized agency official shall ensure that all co-borrowers and co-signers are entered in GLS.

--Note:** If a borrower, co-borrower, or both, has been previously released from liability on a loan where a final loss has been paid and a debt offset receivable has been established, the authorized agency official will update the Maintain Debt Offset Screen to remove the borrower, co-borrower, or both, from offset referral.**--

Federal debts established as a result of a liability paid by the Agency will be reported to commercial credit bureaus on a monthly basis. See Exhibit 15.4.

363 Collecting Final Loss Claim Payments From Guaranteed Loan Debtors (7 CFR 762.149(m)) (Continued)

D Debtor Notification of FSA's Intent to Offset (Continued)

Authorized agency officials will follow 7-FLP, paragraph 63 B, to handle debtor requests received as a result of the receipt of Exhibits 17 and 19.

Debtors proposing an agreement to repay the debt as an alternative to offset must include the full amount of the Federal debt. The Federal debt must be paid within a short period of time.

E Salary Offset

The authorized agency official will determine whether collection by salary offset is feasible according to 7 CFR Part 3 and 7-FLP, Part 5.

F Referral of Debt for IAO Offset

The authorized agency official will refer debtors for IAO and non-centralized administrative
--**offset 30 calendar days after sending Exhibit 17 or 19, or 30 calendar days after the**--
conclusion of a review or appeal.

The authorized agency official must complete the debtor's and/or co-debtor's IAO referral information, in GLS on the Debt Offset Maintenance Screen, for the debt to be referred for
***--**offset. Indication of referral to IAO in GLS does not automatically refer the debt. The authorized agency official must also work with Farm Program staff to ensure borrower accounts are flagged for offset in Financial Services, Subsidiary, and NPS.

Note: Debtors who are ineligible for IAO or who later become ineligible for IAO will be removed from referral in GLS on the Debt Offset Maintenance Screen and the authorized agency official must work with Farm Program staff to ensure all other flags are removed.**--***

G Referral of Debt to TOP

--**The authorized agency official will refer debtors to TOP 60 calendar days after Exhibit 17 was sent or 60 calendar days after the conclusion of a review or appeal.**--

The authorized agency official must complete the debtor's TOP referral information, in GLS on the Debt Offset Maintenance Screen, for the debt to be referred for offset. After the information is entered, debtors will be programmatically referred according to the established Treasury quarterly referral schedule.

After the debt is referred for TOP, the RD Business Center, Guaranteed Commercial Branch will send Exhibit 21. The date of Exhibit 21 will be shown on the debtor's GLS maintenance screen.

Note: Debtors who are ineligible for TOP or who later become ineligible for TOP will be removed from referral in GLS on the Debt Offset Maintenance Screen.

363 Collecting Final Loss Claim Payments From Guaranteed Loan Debtors (7 CFR 762.149(m)) (Continued)

H State Office Responsibility

SED will ensure that FSA employees responsible for servicing FLP guaranteed loans notify all County Offices where the debtor receives Federal payments that these payments are to be *--offset according to subparagraphs 363 F and G.

DD will ensure that all County Offices are updated monthly on debtors whose payments are eligible to be offset or are no longer eligible for offset.

Note: Management reports for debts currently referred for IAO and TOP are available in Tableau.

Debts may become ineligible for offset because of bankruptcy filing (see subparagraph 363 L) when:

- it has been 6 years since the last collection or 6 years since the debt was established and collections are less than accruing interest (see subparagraph 363 K)
- the borrower has an approved debt settlement plan (see subparagraph 363 K)
- the debt is referred to DOJ, or when the borrower or coborrower are on active duty in the military.

Debts referred to DOJ will be suspended from TOP according to 7-FLP, subparagraph 352 B. DOJ has exclusive jurisdiction over the debts referred to it, therefore FSA will remove DOJ debts from TOP. If any TOP collections are received after the debt is referred to DOJ but before removal from TOP, DOJ must be notified of the collection. Debt referred to DOJ may continue to be referred for IAO, but the steps in 7-FLP, subparagraph 352 A must be followed.

When a guaranteed borrower, co-borrower, or both, are called to report for induction or military service, debts will be removed from IOA and TOP. Co-borrowers associated**--*** with the debt must also be suspended from offset collections in GLS in an effort to reduce hardship on the family. Offsets should not be taken during the period of active duty and 3 months thereafter. Any collections received as a result of offset, **after** the date the borrower and/or co-borrower were called to active duty, will be refunded. State Offices will *--make refund request to the RD Business Center, Guaranteed Commercial Branch. When removing the debt from offset, the Reason Deleting selection will be "Other" with "National Defense Act" entered in the "Why Agency Deleting" box for both IAO and TOP.**--***

* * *

363 Collecting Final Loss Claim Payments From Guaranteed Loan Debtors (7 CFR 762.149(m)) (Continued)

I Collections and Refunds

Amounts collected through administrative offset will be applied to the debtor's account according to 64-FI using the Guaranteed Collection Codes in this table.

Code	Description
70	Administrative Offset – Other
71	Administrative Offset – DCP
72	Administrative Offset – LCP
73	Administrative Offset – CRP
74	Administrative Offset – EQIP
75	Administrative Offset – Tobacco
76	Administrative Offset – Peanuts
77	Administrative Offset – Rice
78	Administrative Offset – LDP/Markt Asst Loan
79	Administrative Offset – DCP in Stay
80	Voluntary Collection
81	DOJ Collection
82	Debt Settlement Collection
83	Other Collection

Notes: Collections will be applied to the oldest delinquent Federal debt first.

According to 58-FI, paragraph 164, delinquent debts due to FSA will be collected before an assignment is honored.

Lender recoveries, voluntary, and other collections, except IAO, DOJ, and Debt Settlements, for loans subject to offset with a debt offset receivable established, must have FSA-2254 ***--**completed manually and FAXed to the RD Business Center, Guaranteed Commercial Branch for processing. The collection will be processed as an offset collection.

Refunds of amounts offset will be made within 45 calendar days if FSA determines that an amount should not have been offset or that the debtor has prevailed in an appeal. SED shall approve and submit refund requests to the RD Business Center, Guaranteed Commercial Branch.**--***

J Notifying Lender of FSA Collections

County Offices shall notify the lender of any collections received through IAO or TOP by November 30 of each year. The annual notification shall include the following:

- amount collected by loan number
- current balance of the Federal debt.

Note: County Offices can obtain account information from the GLS loan offset view screen.

363 Collecting Final Loss Claim Payments From Guaranteed Loan Debtors (7 CFR 762.149(m)) (Continued)

K Debt Settlement

Once a final loss claim is paid, FSA will be able to consider settlement offers received directly from the debtor. Compromise and adjustment offers should be compared against other collection options available, such as IAO and TOP. The option that offers the greatest recovery to the Government should be pursued.

FSA will process a compromise or adjustment offer according to 7-FLP, Part 12.

The debt settlement will only cover the Federal debt owed by the debtor. FSA will notify the lender of the approval of a debt settlement.

After all payments under the compromise or adjustment offer have been received, the remaining balance of the debt will be written off. SED will send a copy of FSA-2732 along with a memorandum requesting that the debt be written off to the RD Business Center, Guaranteed Commercial Branch, according to 1-FLP, paragraph 5.

Where it has been a minimum of 6 years since the last collection, FSA will cancel the debt without application according to 7-FLP, paragraph 404, as appropriate. For guaranteed loans the lender is the cross servicer. After 6 years with no collections, FSA's documentation that the lender anticipates no future collection satisfies the return from cross-servicing requirement of subparagraph 404 D.

Where it has been 6 years since the debt was established and collections are less than accruing interest, FSA will cancel the debt without application, following the guidance in 7-FLP, subparagraph 404 D, upon documentation that the lender and FSA anticipate no increase in collections. The SED will send a copy of FSA-2731 and FSA-2731A, if appropriate, along with a memorandum requesting that the debt be written off to the RD Business Center, Guaranteed Commercial Branch, according to 1-FLP, paragraph 5.

L Bankruptcy Effect

FSA, subject to advice provided by the Regional OGC, will immediately file a proof of claim upon notification of a bankruptcy filing for any debtor subject to offset. At a minimum, the following will be filed with the proof of claim as evidence of the debt:

- FSA-2211, FSA-2212, Application for Guarantee, or Preferred Lender Application
- FSA-2235 or Loan Guarantee
- copy of promissory note
- documentation of FSA’s final loss claim payment to the lender.

Bankruptcy filing will halt any FSA offsetting actions. The debtor will be removed from referral of IAO and TOP through the GLS maintenance screens.

Debts discharged in bankruptcy will be written off upon receipt of the discharge order. SED will send a copy of FSA-2731 and the discharge order along with a memorandum requesting that the debt be written off to the RD Business Center, Guaranteed Commercial Branch, according to 1-FLP, paragraph 5. GLS will have been updated earlier upon FSA notification of the bankruptcy action.