

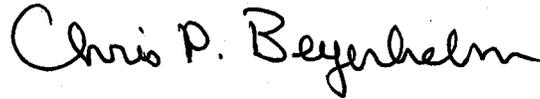
UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

Guaranteed Loan Making and Servicing
2-FLP

Amendment 25

Approved by: Acting Deputy Administrator, Farm Loan Programs



Amendment Transmittal

A Reasons for Amendment

Subparagraph 46 C has been amended to add information, including web sites of regulatory agencies, so that the Agency can determine if guaranteed lenders are operating under lender regulatory/agency enforcement actions.

Subparagraph 49 I has been removed because of changes in the regulation.

Subparagraph 108 C has been amended to include information needed to verify and document previous loss to the government or debt forgiveness received by guaranteed loan applicants.

Subparagraphs 108 L and M have been added to include information about OL term limits.

Note: These subparagraphs are suspended until January 1, 2007.

Subparagraph 166 D has been amended to clarify the distribution of proceeds when guaranteed and non-guaranteed loans share lien positions.

Subparagraph 208 D has been amended to clarify when a certified wetland determination is necessary.

Subparagraph 265 C has been amended to clarify submission requirements of SEL lenders in support of annual analysis.

Subparagraph 267 A has been amended to include language requiring FSA officials, as part of file reviews, to determine if lenders are under any enforcement actions imposed by their regulatory agency.

Subparagraph 267 E has been amended to provide that FSA shall document a finding that a lender is under an enforcement action imposed by their regulatory agency.

Subparagraph 280 B has been amended to clarify the note about releasing property.

Amendment Transmittal (Continued)

A Reasons for Amendment (Continued)

Subparagraph 283 A has been amended to include additional information on the proper uses of emergency advances, including examples of 4 situations when emergency advances can be properly used.

Subparagraph 375 E has been amended to clarify that FSA will not cover the lender's servicing fees by allowing the lender to keep the fees out of proceeds received from the liquidation of collateral, from the ceasing of interest accrual to the repurchase date.

Exhibit 10 has been amended to clarify language for the Repayment Schedule when performing the Present Value Calculation.

Exhibit 18 has been amended to include language on offset under "Right to Appeal to NAD" that conforms with language in Exhibit 20.

Page Control Chart		
TC	Text	Exhibit
	4-1, 4-2	10, pages 3, 4
	4-9, 4-10	18, pages 3, 4
	8-2.5, 8-2.6	
	8-5, 8-6	
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	11-45, 11-46	
	11-46.5, 11-46.6 (add)	
	12-61, 12-62	
	15-11, 15-12	

Part 4 Lender Eligibility**46 Eligibility Requirements for SEL (7 CFR 762.105(b))****A Overview**

The basic level of participation in the FSA Guarantee Farm Loan Program is SEL. SEL must meet the eligibility criteria in this section to submit an application for a guarantee. If the lender does not meet the eligibility criteria to the satisfaction of FSA, the application will be denied.

B Capacity

A lender must have experience in making and servicing agricultural loans and have the capability to make and service the loan for which a guarantee is requested.

In reviewing the SEL request, the Authorized Agency Official shall consider FSA's prior experience with the lender in assessing whether or not they have the capability to make and service the loan. An important factor in reviewing the lender's capacity is their experience in agricultural lending. Experience in agricultural lending must be demonstrated for either the lender or the lender's personnel.

The lenders must not have losses or deficiencies in processing and servicing guaranteed loans above a level which would indicate an inability to properly process and service a guaranteed agricultural loan.

Previous problems with a lender, as evidenced in monitoring reports, excessive loss claims, or denial of loss claims, should be considered in this determination.

46 Eligibility Requirements for SEL (7 CFR 762.105(b)) (Continued)

C Examination and Supervision

A lender must be subject to credit examination and supervision by an acceptable State or Federal regulatory agency.

Only regulated lenders that are subject to both examination and supervision may participate in the FSA Loan Guarantee Program. Examination will normally include a review of the lenders' asset quality, management practices, financial condition, and compliance with applicable laws and regulations. Supervision gives the regulator the authority to require that the lender make changes to ensure safety and soundness.

*--Lenders that are audited and subject to oversight by a State agency may or may not be examined and subject to supervision. Any questions concerning whether a lender meets this requirement should be addressed to DAFLP, Guaranteed Loan Making Branch.

Acceptable agencies and their web sites that in some cases identify enforcement actions as well as other activities associated with a lender, include, but are not limited to, the following:

- FDIC at <http://www.fdic.gov/bank/individual/enforcement/index.html>
- Office of Comptroller of the Currency at http://www.occ.treas.gov/enforce/enf_search.htm
- Office of Thrift Supervision at <http://www.ots.treas.gov/enforcement/default.cfm?catNumber=41>
- Federal Reserve Board at <http://www.federalreserve.gov/boarddocs/enforcement/>
- FCA at <http://www.fca.gov/FCA-HomePage.htm>
- National Credit Union Administration at http://www.ncua.gov/administrative_orders/Index.htm
- State banking commissions.

SED's shall check the appropriate regulatory agency web sites to determine if a lender is subject to any enforcement action before engaging in or renewing a lending relationship.--*

49 Eligibility Requirements for CLP (7 CFR 762.106) (Continued)**F Acceptable Level of Soundness**

The lender must **not be under any regulatory enforcement action such as a cease and desist order, written agreement, or an appointment of conservator or receiver, based on financial condition.**

In addition, the National Office monitors the bank rating services and other sources to determine the financial soundness of each lender participating in the Guaranteed Farm Loan Program. When a lender requests CLP status, SED shall contact LMD, Guaranteed Loan Branch to determine the lender's financial strength rating.

G Qualified Person

The lender must **designate a qualified person or persons to process and service Agency guaranteed loans for each of the lender offices which will process CLP loans. To be qualified, the person must meet the following conditions:**

- **have attended Agency sponsored training in the past 12 months or will attend training in the next 12 months**
- **agree to attend Agency sponsored training each year.**

The CLP application should include the resume or resumes of the person or persons qualified to process and service FSA-guaranteed loans. For a CLP lender, it is expected that this person will have experience in agricultural lending and experience in originating and servicing FSA-guaranteed loans.

H Acceptable Forms

The lender must **use forms acceptable to the Agency for processing, analyzing, securing, and servicing Agency guaranteed loans and lines of credit.**

* * *

50 Approval of Certified Lenders (7 CFR 762.106)

A Request for CLP Status

Lenders who desire CLP status must prepare a written request addressing:

- **the States in which they desire to receive CLP status and their branch offices which they desire to be considered by the Agency for approval**
- **each item of the eligibility criteria for CLP approval in paragraph 49, as appropriate.**

See subparagraph B for what a request should contain.

The lender may include any additional supporting evidence or other information the lender believes would be helpful to the Agency in making its determination.

The lender must send its request to the Agency State Office for the State in which the lender's headquarters is located.

The lender must provide any additional information requested by the Agency to process a CLP request, if the lender continues with the approval process.

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

C No Agency Loss (Continued)

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

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

A lender should contact the local FSA office if it is unsure of a loan applicant's eligibility.

- *--Note:** The Authorized Agency Official shall verify and document previous loss to the government, or debt forgiveness, for each applicant and all individuals who will sign the promissory note. The Social Security number or tax identification number for each will be entered into the following data bases to document eligibility. Screen prints of the information used as the basis for the eligibility determination will be placed in the case file.
- The Current Debts/Past Debt Inquiry System in ADPS will be used to verify previous debt forgiveness on direct loans. A list of paid codes can be found in Chapter 19 of the ADPS System Operating Instructions and Supplemental Information for Online Help. If the paid code indicates debt forgiveness, access ADPS online borrower detail history to determine the type, date, the amount of the debt forgiveness, and if the debt forgiveness has been paid in full. The information is **not** available in summary history. History is available from 1989 to present. If the debt forgiveness was a writedown, the Equity Recapture Screen and online history must be accessed to determine the type, date, amount of debt forgiveness, and if the debt forgiveness has been paid in full. If an equity record exists, the borrower online history should be reviewed for partial writedowns.
 - The View Loan Screen in GLS will be used to verify previous debt forgiveness for guaranteed loans. At the Loan List Screen, enter the tax ID number or name of the applicant and each individual who will sign the promissory note. The Loan List Screen will be displayed with previous and current loan information for the individuals entered. Detail information for a specific loan can be accessed by selecting the View Loan Screen from the "Action" drop down box and clicking on the loan number hyperlink.--*

108 General Eligibility Requirements for OL and FO (7 CFR 762.120) (Continued)**J Test for Credit (Continued)**

If the loan applicant has significant assets that are not essential to the farm operation, and the sale of those assets would remove the need for a guarantee, the loan applicant does not meet the test for credit requirement.

Assets and income of the entity members will also be considered when evaluating the availability of other credit to the entity applicant.

The Authorized Agency Official shall:

- review the financial information supplied by the lender in conjunction with information compiled under RD Instruction 1951-F
- document that the loan requested does not meet the lender's loan requirements without a guarantee.

K Controlled Substances

Neither the applicant nor any entity member has been convicted of planting, cultivating, growing, producing, harvesting, or storing a controlled substance under Federal or state law within the last five crop years. "Controlled substance" is defined at 21 CFR part 1308. Applicants must certify on the Agency application form that it and its members, if an entity, have not been convicted of such a crime within the relevant period. If the lender uses the lender's Agency approved forms, the certification may be an attachment to the form.

The applicant also certifies that he or she as an individual, or any member of an entity applicant, is not ineligible for Federal benefits based on a conviction for the distribution of controlled substances or any offense involving the possession of a controlled substance under 21 U.S.C. 862. Applicants must certify the above on the Agency application form or, if the lender uses the lender's Agency-approved forms, the certification may be an attachment to the form.

***--L 15-Year OL Time Limit**

Note: Enforcement of this subparagraph is suspended until January 1, 2007.

[7 CFR 762.122] No guaranteed OL shall be made to any loan applicant after the 15th year that a loan applicant, or any individual signing the promissory note, received a direct or guaranteed OL.

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

*--L 15-Year OL Time Limit (Continued)

If a borrower had any combination of direct or guaranteed OL closed in 10 or more prior calendar years, before October 28, 1992, eligibility to receive new guaranteed OL is extended for 5 additional years from October 28, 1992, and the years need not run consecutively. However, in the case of a line of credit, each year in which an advance is made after October 28, 1992, counts toward the 5 additional years.

Once determined eligible, a loan or line of credit may be approved for any authorized term.

Example: A 5-year LOC may be approved on the last year an applicant is eligible and advances may be made for 5 years.

M Determining Years of Eligibility for Guaranteed OL's

Note: Enforcement of the subparagraph is suspended until January 1, 2007.

Loan applicants are eligible to close guaranteed or direct OL's in 15 nonconsecutive years. The following table summarizes the eligibility requirement based on the loan applicant's status on October 28, 1992, the number of years the loan applicant has received direct or guaranteed loans, and the type of loan requested.

IF the loan applicant...	THEN they are eligible for...
had direct or guaranteed OL's closed in 10 or more years on or before October 28, 1992	5 years of guaranteed OL closing after October 28, 1992. 5 years - _____ = _____ (# years loan closed after 10/28/92) (# years remaining)
had fewer than 10 years of direct or guaranteed OL's closed on or before October 28, 1992	15 years of guaranteed OL. 15 years - _____ = _____ (# years loan closed) (# years remaining)

Note: Before October 28, 1992, only the year in which the loan was closed is counted. Subsequent year advances on LOC's closed before October 28, 1992, do not count as an additional year of eligibility. However, after October 28, 1992, subsequent advances on LOC's are counted as a year of eligibility used.--*

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

D Lien Position

All guaranteed loans will be secured by the best lien obtainable. Provided that:

- **Any chattel-secured guaranteed loan must have a higher lien priority (including purchase money interest) than an unguaranteed loan secured by the same chattels and held by the same lender.**

Note: Any lender, who holds an unguaranteed loan with a first lien on the same collateral proposed as primary security for a guaranteed loan, must subordinate its lien position to the guaranteed loan.

- **Junior lien positions are acceptable only if the total amount of debt with liens on the security, including the debt in junior lien position, is less than or equal to 85 percent of the value of the security.**

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

*--Subsequent guaranteed loans made by the same lender with the same security will not be considered junior in this limitation and will be treated as having an equal lien position with existing outstanding loans.

When guaranteed and unguaranteed loans share equal lien position, neither loan will be considered junior. In these situations, the lender will provide a written agreement, agreeable to FSA, outlining how proceeds will be distributed if security is liquidated. If an agreement is not provided, then when any equally shared security is liquidated, the net proceeds shall be divided pro rata based on the amounts loaned.

Example: When the net proceeds are divided pro rata, if the lender makes a--* \$700,000 guaranteed loan in conjunction with a \$300,000 unguaranteed loan and the security is subsequently liquidated resulting in \$800,000 net proceeds, \$560,000 would be applied to the guaranteed loan and \$240,000 to the unguaranteed loan.

- **Junior liens on crops or livestock products will not be relied upon for security unless the lender is involved in multiple guaranteed loans to the same borrower and also has the first lien on the collateral.**

Note: Junior liens on income security may be taken as security, but will be considered to have no collateral value unless the prior lien is securing an FSA-guaranteed loan to the same lender.

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

D Lien Position (Continued)

- **additional security or any loan of \$10,000 or less may be secured by the best lien obtainable on real estate without title clearance or legal services normally required, provided the lender believes from a search of the county records that the loan applicant can give a mortgage on the farm and provided that the lender would, in the normal course of business, waive the title search**

Notes: This exception to title clearance will not apply when land is to be purchased.

Title clearance work can be expensive and cost-prohibitive in some cases. Title clearance is not required for loans of \$10,000 or less if the lender feels such a search is not necessary. In addition, FSA does not want to discourage taking additional security. Therefore, any amount of real estate to be taken as additional security that is clearly in excess of what is needed to fully secure the loan does not need title clearance. Both of these exceptions require that the lender conduct an informal check, be reasonably certain that a lien can be perfected, and otherwise follow internal lending policy on title clearance.

- **when taking a junior lien, prior lien instruments will not contain future advance clauses (except for taxes, insurance, or other reasonable costs to protect security), or cancellation, summary forfeiture, or other clauses that jeopardize the Government's or the lender's interest or the borrower's ability to pay the guaranteed loan, unless any such undesirable provisions are limited, modified, waived or subordinated by the lienholder for the benefit of the Agency and the lender.**

Note: Provisions on prior lien instruments, such as prepayment penalties, will be considered when evaluating the collateral value of the lender's security on the guaranteed loan.

208 Environmental Requirements (7 CFR 762.128) (Continued)

C Hazardous Substances (Continued)

The presence of hazardous substances that have been released can reduce a property's value, because of the regulatory and cleanup costs associated with contaminated soils and groundwater. The lender is responsible for conducting a due diligence investigation on the subject property. Of concern is the presence of contamination from hazardous substances or petroleum products and their impact on the market value of the property.

The lender is expected to conduct a site visit with the loan applicant. If real estate will be taken as primary security, the lender must:

- complete the American Society of Testing and Materials' Standards e-1528, *--Transaction Screen Questionnaire, or FSA Environmental Risk Survey Form

Note: Similar questionnaires or screening tools reviewed and approved by the FSA State Environmental Coordinator may also be used.--*

- indicate on FSA-1980-25 and explain if the questionnaire indicates a problem may exist

Note: Lenders can attach a copy of the American Society of Testing and Materials questionnaire.

- indicate on FSA-1980-25 if the questionnaire indicates no problem was discovered
- keep the questionnaire in the borrower's case file.

The lender should submit enough information in the due diligence process so that the Authorized Agency Official, in most cases, can perform an adequate assessment without having to visit the farm.

208 Environmental Requirements (7 CFR 762.128) (Continued)

D Wetlands and HEL

The loan applicant must certify that they will not violate the provisions of Section 363 of *--the CONACT, the Food Security Act of 1985, and Executive Order 11990 relating--* to Highly Erodible Land and Wetlands.

The Authorized Agency Official must:

- ensure that the loan applicant has certified they:
 - will not violate HEL and WC provisions
 - are not currently out of compliance with HEL or WC provisions
- determine that loan funds will not be used for a purpose that will contribute to a violation of HEL and WC provisions.

According to 6-CP, loan applicants must certify that they will not violate HEL and WC provisions by completing and executing AD-1026 for each tract of land in which they have a farming interest. * * *

IF...	THEN...
--any or all of questions 5, 9,-- or 10 are answered “yes” by the applicant	AD-1026 will be referred to NRCS for a certified wetland determination. For loan requests involving building construction or other major ground disturbing *--activities, question 10 A should be answered “yes”--* unless NRCS has previously completed a certified wetland determination for the proposed construction site.
--all of questions 5, 9, and 10-- are answered “no” by the applicant	a certified wetland determination will not be necessary.

A conservation plan may be required if the property contains HEL. If a conservation plan is required, NRCS should be contacted to:

- determine what the conservation plan will contain
- evaluate if the applicant has the resources to carry out the plan.

The Authorized Agency Official should consider the proposed use of loan funds, the contents of the conservation plan, if one exists, and changes in land use when determining whether a loan applicant is likely to violate HEL and WC provisions.

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

C Documents Submitted to FSA by SEL in Support of Annual Analysis

[7 CFR 762.141(d)] SEL shall provide the following to FSA:

- **borrower’s balance sheet and income and expense statement for the previous year, if applicable**
- **for lines of credit, the cash flow for the borrower’s operation that projects a feasible plan or better for the upcoming operating cycle**

Note: The standard eligible lender must receive approval from the Agency before advancing future years’ funds.

- **an annual farm visit report or collateral inspection**
- **--narrative summary of borrower's financial progress, if applicable.**

Submission Summary	
Real Estate	Balance sheet, farm visit report, income and expense statement, and narrative summary of borrower's financial progress from previous year only if loan is also secured by chattels.
Term Chattels	Balance sheet, farm visit report, income and expense statement, and narrative summary of the borrower's financial progress.
Lines of Credit	Balance sheet, farm visit report, income and expense statement, projected cash flow, and narrative summary of the borrower's financial progress.--*

These documents should be submitted to the Authorized Agency Official within 30 calendar days of the completion of the annual financial analysis.

D Annual Analysis of Borrower by CLP Lender

CLP lenders will determine the need for the annual analysis based on the financial strength of the borrower and document the file accordingly.

For loans secured by chattels, all lenders will review the borrower’s progress regarding business goals, trends and changes in financial performance, and compare actual to planned income and expenses for the past year.

CLP lenders shall maintain **an account of the whereabouts or disposition of all collateral.** The accounting will occur in the form of a documented annual farm visit report or collateral inspection report for all chattel loans.

CLP lenders shall document **a discussion of any observations about the farm business with the borrower.**

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

D Annual Analysis of Borrower by CLP Lender (Continued)

If the lender determines that an analysis should be performed, the analysis may be based on a comparison of current and past balance sheets. If a balance sheet analysis is not performed by the lender, information that confirms the borrower is strong financially and reasons why the lender is confident of the borrower’s progress must be provided by the lender. Examples of information that would indicate the financial strength of the borrower would include deposit or investment accounts with the lender.

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 Chattels	Either a summary of lender’s analysis or summary as to why financial strength makes analysis unnecessary.
Lines of Credit	Certification that cash flow was obtained Borrower in compliance with lender’s agreement Lender has accounted for previous year’s income and loan funds and security proceeds are accounted.

--*

These documents must be submitted to the Authorized Agency Official within 30 calendar days of the completion of the annual financial analysis.

266 Lender Reporting Requirements (7 CFR 762.141) (Continued)**B General Reporting Requirements (Continued)**

Lenders should submit FSA-1980-26 to satisfy the requirement for an annual report on collection activities. See Part 14 for more details on this reporting requirement.

C FSA Monitoring of Lender Reports

The Authorized Agency Official should carefully review reports received from lenders, noting changes from previous reports. If the lender is not sending these 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 enter information from FSA-1980-41 into GLS when FSA-1980-41 is received from the lender. The first FSA-1980-41 for a loan will be completed for the second semi-annual reporting cycle after the loan was closed. FSA-1980-41 will not be required on a loan that was closed within the past 6 months.--*

The Authorized Agency Official should review the lender's semi-annual FSA-1980-41 to see if it indicates that 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-1980-41 submitted.

An indication on FSA-1980-41 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 FSA-1980-44 has not been submitted, the Authorized Agency Official shall contact the lender and request that FSA-1980-44 be submitted if the account will not be brought current within a few days.

- *--Entering information from FSA-1980-44, 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-1980-41, using the information from FSA-1980-44, and process into GLS. If the information on FSA-1980-41 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 actions regarding FSA-1980-44.--*

See Part 14 for FSA actions regarding FSA-1980-26.

267 FSA Loan Servicing Responsibilities

A Overview

Authorized Agency Officials will be FSA's primary point of contact with lenders on a day-to-day basis. Authorized Agency Officials must ensure that lenders are appropriately managing their guaranteed loans, and submitting all required reports on time. In cases where lenders may have deficiencies in loan servicing, the Authorized Agency Official should provide loan servicing guidance and assistance.

The purpose of performing lender file reviews is to protect the guarantee, preserve lender status, and minimize losses and the need for adjustments to loss claims.

--As part of the review, Authorized Agency Officials will note whether they have become aware of the lender being under any enforcement actions either through checking the appropriate regulatory web sites in subparagraph 46 C or through discussions with the lender.--

B Lender Loan Files Review Priorities

For each SEL, FSA will annually review the files of 40 percent of the lender's outstanding guaranteed OL and/or OL-LOC borrowers, unless the 40 percent requirement would result in borrowers being reviewed who were reviewed the previous year. If the 40 percent requirement would result in some of the same borrowers being subject to review, then, for those borrowers, the review will be every other year. SEL files for FO-only borrowers will be reviewed within 3 years of the date the loan is closed and subsequently if the loans become nonperforming. For each CLP and PLP lender, FSA must annually review the files of 20 percent of the lender's outstanding guaranteed loan borrowers. If the file reviews for a PLP lender have found no major deficiencies during the first 3 years of reviews, the frequency of file reviews may be reduced to biennially, and the number of files reviewed may be reduced to a minimum of 5 files, or 10 percent of the lender's loans, whichever is greater. For lenders processing guaranteed loans in more than 1 State, the file reviews should be done in the State where the lender is headquartered, and other States in the lender's service area may send personnel to assist in the review.

Loans are selected for review according to the following priorities:

- loans receiving consideration for rescheduling, deferral, writedown, transfer and assumption, or substitution of lender
- delinquent loans or loans which the lender or FSA has identified as high risk
- loans in which the funds were used to refinance the lender's own debt
- the most recent loans closed by the lender and not yet reviewed
- other loans.

267 FSA Loan Servicing Responsibilities (Continued)**B Lender Loan Files Review Priorities (Continued)**

FSA-1980-03 and FSA-1980-04 may be used to document the lender file reviews. All questions on each FSA-1980-03 and FSA-1980-04 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 FSA-1980-38's and this handbook. In addition to the lender's loan file, a copy of the loan account ledger should be obtained and reviewed. Additional information may be requested and reviewed by FSA, if necessary, based on deficiencies noted in the file, in loss claim reviews, or as suggested by other parties. SED shall determine how the file review requirement will be met in their State.

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, the following procedures will be followed.

- *--In January of each year, the National Office will contact each lender that has PLP status in a minimum of 3 States and the appropriate States in which that lender has PLP status. This contact will determine, based upon the lender and the States' opinion, whether a multi-State review is necessary. If it is determined that a multi-State review is necessary, the National Office will take the lead in contacting the lender and coordinating the review. 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)**

- In January of each year, the National Office will provide a list of lenders that have PLP status in only 2 States to appropriate Farm Loan Chiefs. Farm Loan Chiefs will be responsible for contacting each other to determine whether a multi-State review is necessary. State Offices will take the lead in coordinating the reviews. Farm Loan Chiefs will determine review participants.

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 either FSA-1980-04 or a 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 FSA-1980-38. 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 FSA-1980-38?
- Were servicing actions implemented in a manner consistent with FSA-1980-38?
- 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 forward a letter to the lender outlining the findings of the loan file review. Letters or reports from lender visits and loan file reviews must be filed according to 25-AS, Exhibit 40.5, with copies forwarded to DD. If the review reveals frequent deficiencies, a report should be forwarded to SED.

--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.--

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**
- **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**

Note: The release must serve a purpose other than to simply allow a borrower to obtain clear title to security items. Cropland, significant machinery, and business assets will not be released, unless being replaced or proceeds are being used for authorized loan purposes * * *.

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

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

- **a current balance sheet on the borrower**
- **a current appraisal of the security**

Note: Unless specifically requested by the Agency, the lender will not be required to provide an appraisal of any real estate security being released. **Based on the level of risk and estimated equity involved, the Agency shall determine what security needs to be appraised. Any required security appraisals must meet the requirements of § 762.127.**

- **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)**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 shall 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 any partial release intended as a gift. 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 shall 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 lender will provide the Agency copies of any agreements executed to carry out the servicing action. PLP lenders will request servicing approval in accordance with their
***--agreement with the Agency at the time of PLP status certification.** Approval of requests forwarded to DAFLP for special consideration may be delayed beyond 30 calendar days.--*

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 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 loans or advances in accordance with the lender's agreement with the Agency.

283 Emergency Advances (7 CFR 762.146(a))

A Issuance of 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-1980-64. 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 line of credit 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
- shall **not** be used to cover for inadequate planning, and should not be necessary on a repeated basis year after year.--*

283 Emergency Advances (7 CFR 762.146(a))**A Issuance of 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
- 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 FSA-1980-38.

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.

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 Procedures Lender Must Follow to Change Interest Rate

If the loan has been sold on the secondary market, the lender must repurchase the loan 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 the Agency of the rate change.

The lender shall inform FSA of the rate change by completing RD-1980-47 and forwarding it to the County Office.

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

328 Debt Writedown (7 CFR 762.145(e)) (Continued)

B General Requirements (Continued)

- **When a lender requests approval of a writedown for a borrower with multiple loans, the security for all of the loans will be cross-collateralized and continue to serve as security for the loan that is written down. If a borrower has multiple loans and one loan is written off entirely through debt writedown, the security for that loan will not be released and will remain as security for the other written down debt. Additional security instruments will be taken if required to cross-collateralize security or maintain lien priority.**
- **The writedown will be evidenced by an allonge or amendment to the existing note or line of credit reflecting the writedown.**

--The payment of a loss claim in conjunction with a debt writedown does not establish a Federal debt and is not subject to offset.--

The holder or holders, if any, must agree to the writedown or the lender must repurchase the guaranteed portion.

C Borrower Execution of FSA-1980-89

The borrower executes an Agency shared appreciation agreement for loans which are written down and secured by real estate. See paragraph 288 for information on servicing FSA-1980-89's.

- **The lender will attach the original agreement to the restructured loan document.**
- **The lender will provide the Agency a copy of the executed agreement.**
- **Security instruments must ensure future collection of any appreciation under the agreement.**

328 Debt Writedown (7 CFR 762.145(e)) (Continued)

D Lender Actions to Support Write Down Debt Request

The lender will prepare and submit the following to the Agency:

- **a current appraisal of all property securing the loan in accordance with § 762.127 and paragraphs 181 through 183**
- **a completed report of loss on the appropriate Agency form for the proposed writedown loss claim**
- **detailed writedown calculation as follows:**

Note: Detailed writedown calculations will be recorded on FSA-1980-88. Refer to FMI for completion instructions and examples. If a borrower's cash flow projection indicates that within a definite, foreseeable time, additional repayment will be available for the guaranteed loan, the present value of the loan will be calculated based on an uneven payment stream.

- **calculate the present value (Exhibit 10)**
- **determine the net recovery value (Exhibit 10)**
- **if the net recovery value exceeds the present value, writedown is unavailable; liquidation becomes the next servicing consideration**
- **if the present value equals or exceeds the net recovery value, the debt may be written down to the present value**
- **the lender will make any adjustments in the calculations, as requested by the Agency.**

**375 Repurchase of Guaranteed Portion From a Secondary Market Holder (7 CFR 762.144)
(Continued)**

C Repurchase of the Loan or Note by FSA (Continued)

Within 30 calendar days of the holder's demand for purchase, the Authorized Agency Official shall:

- review the borrower's loan file

Note: If the file indicates that a rescheduling or reamortization could correct the default then the Authorized Agency Official should remind the lender of their responsibility for expeditiously liquidating the loan collateral in the event of an FSA purchase. Restructuring of the loan cannot occur once FSA purchase occurs.

- verify the amounts owed to the lender and the holder

- *--complete FSA-1980-37 and forward it to KCFO, St. Louis for processing.--*

At the time of purchase by the Agency, the original Assignment of Guarantee (FSA-1980-36) will be assigned by the holder to the Agency without recourse, including all rights, title, and interest in the loan.

Purchase by the Agency does not change, alter, or modify any of the lender's obligations to the Agency specified in the Lender's Agreement or the Guarantee. Nor does the purchase waive any of the Agency's rights against the lender. The Agency succeeds to all rights of the holder under the Guarantee including the right to set-off against the lender.

D Repurchase Price of the Loan or Note

The repurchase by the lender will be for an amount equal to the portion of the loan held by the holder plus accrued interest.

The Agency Guarantee will not cover servicing fees that the lender accrues after the repurchase.

- *--When the holder makes a demand on FSA to purchase the guaranteed portion of the loan, the purchase price will be equal to the unpaid principal and accrued interest. See--* subparagraph E.

**375 Repurchase of Guaranteed Portion From a Secondary Market Holder (7 CFR 762.144)
(Continued)**

E Interest Paid Upon Agency Repurchase

In the case of a request for Agency purchase, the government will only pay interest that accrues for up to 90 days from the date of the demand letter to the lender requesting the repurchase. However, if the holder requested repurchase from the Agency within 60 days of the request to the lender and for any reason not attributable to the holder and the lender, the Agency cannot make payment within 30 days of the holder's demand to the Agency, the holder will be entitled to interest to the date of the payment. See 7 CFR 762.160(b)(4)(i), subparagraph 374 D.

If at the time the holder requests FSA to purchase a loan or note, more than 90 calendar days have passed since the holder's demand to the lender, the holder will only receive principal and interest due at the time of the holder's request to the lender.

Immediately upon FSA's repurchase FSA will accrue interest at the note rate. (Lender servicing fees are not paid or reimbursed after the repurchase.) In addition, FSA will not cover the lender's fees by allowing the lender to keep the fees out of proceeds received from *--the liquidation of the collateral after FSA repurchases. In addition, in the event of a loss, if the interest accrual has ceased according to subparagraph 359 A before the FSA repurchase, FSA will not cover the lender's servicing fees by allowing the lender to keep the fees out of proceeds received from the liquidation of the collateral from the ceasing of interest accrual to the repurchase date.--*

Unless otherwise agreed to by SED and the holder, payment will be made in 30 calendar days of the receipt of the request from the holder.

376 Actions After Agency Repurchase (7 CFR 762.144)

A Request for Lender Repayment

Within 180 days of the Agency's repurchase, the lender will reimburse the Agency the amount of purchase, plus accrued interest, in one of the following ways:

- **by liquidating the loan security and paying the Agency its pro-rata share of liquidation proceeds**
- **paying the Agency [from it's own capital] the full amount paid to the holder plus any accrued interest**
- **the Agency may sell a purchased guaranteed loan on a non-recourse basis, if it determines that selling the portion of the loan that it holds is in the Government's best interest.**

Calculations and Formulas (Continued)

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Present Value Calculation (continued)

Balance Available is Projected to CHANGE During Loan Repayment Schedule

Subsequent Balance Available (balance Available After Balance Change)

- | | |
|--|-----------------|
| 1. Balance Available for Term Debt Repayment (BATDR) (After balance change) | \$ _____ |
| 2. All Other Debt Payments | \$ _____ |
| 3. Subsequent Balance Available = BATDR (Line 1) minus All Other Debt Payments (Line 2) = | \$ _____ |

Subsequent Present Value

- | | |
|---|-----------------|
| 4. Repayment Schedule (total term of the restructured loan in years or months) | _____ |
| 5. Interest Rate | _____ % |
| 6. Loan Amortization Factor | _____ |
| 7. Subsequent Present Value = Subsequent Balance Available (Line 3) divided by Loan Amortization Factor (Line 6) | \$ _____ |

Initial Balance Available (balance Available Before Balance Change)

- | | |
|--|-----------------|
| 8. Balance Available for Term Debt Repayment (BATDR) (Before balance change) | \$ _____ |
| 9. All Other Debt Payments | \$ _____ |
| 10. Initial Balance Available = BATDR (Line 8) minus All Other Debt Payments (Line 9) = | \$ _____ |

Initial Present Value

- | | |
|--|-----------------|
| 11. Period Initial Balance is Available (years or months) | _____ |
| 12. Interest Rate | _____ % |
| 13. Loan Amortization Factor | _____ |
| 14. Initial Present Value = Initial Balance Available (Line 10) divided by Loan Amortization Factor (Line 13) | \$ _____ |

- | | |
|--|-----------------|
| 15. Subsequent Present Value (Line 7) + Initial Present Value (Line 14) | \$ _____ |
|--|-----------------|

- | | |
|--|-----------------|
| 16. Subsequent Balance Available Divided by Initial Loan Amortization Factor = Subsequent Balance Available (Line 3) ÷ Initial Balance Available Loan Amortization Factor (Line 13) | \$ _____ |
|--|-----------------|

Present Value Of Uneven Payments

- | | |
|---|-----------------|
| 17. Present Value of Uneven Payments = (Line 15) – (Line 16) | \$ _____ |
|---|-----------------|

Loan Amortization Factor is a function of Repayment Schedule and Interest Rate. See the **Loan Amortization Reference Book** to determine the Loan Amortization Factor.

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Calculations and Formulas (Continued)

Net Recovery Value = (A+B) - C

Net Recovery Value is

- the estimated market value of security
- plus any expected revenue or rent generated by the security
- minus any reasonable lender incurred liquidation expenses

In order to execute a debt writedown, the net recovery value must be equal to or less than the present value of the loan being written down.

The net recovery value is used when the Authorized Agency Official fills out Form FSA 1980-88 (see paragraph 328)

A. Market Value of Property
(based on appraisal conducted according to § 762.127)
(Part 8, Section 4, Subsection 3) _____

B. Expected Income or Revenue

1. Annual Rent x Holding Period (HP) ¹	_____
2. Annual Royalties x HP	_____
3. Other Annual Income x HP	_____
4. Annual % Property Appreciation x HP	+ _____
Total	_____

C. Expenses

1. Prior Lienholder Indebtedness (P&I)	_____
2. Annual Taxes and Assessments x HP	_____
3. Annual Property Depreciation x HP	_____
4. Annual Management Costs x HP	_____
5. Essential Repairs to Secure and Resell	_____
6. Other Costs:	_____
Taxes	_____
Closing Costs	_____
Surveys	_____
Administrative Costs Not Considered "In-House"	_____
7. Resell Expenses-Commission, Advertising	_____
8. Total Interest Cost During Holding Period (Note Rate)	_____
9. Hazardous Waste Cleanup	+ _____
Total	_____

¹HP=Holding Period in years or percentages thereof. Typically 90 days unless longer period is agreed to by FSA.

D. Net Recovery Value

Market Value of Property + Expected Income or Revenue - Expenses = Net Recovery Value

_____ + _____ - _____ = \$ _____

Demand for Payment, Notice That Non-Centralized Administrative Offset, Including Internal Administrative Offset, Has Been Taken and Will Continue, and Intent to Collect by Centralized Offset and Other Applicable Debt Collection Methods (Continued)

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Ineligibility for Federal Assistance

If you do not resolve your delinquent Federal debt within the time frames provided in this notice, you will be ineligible to receive future Federal financial assistance including loans (except disaster loans), loan guarantees and loan insurance.

Disclosure

Your delinquent debt also will be disclosed to a commercial credit reporting bureau. To avoid this action you must either repay your debt immediately, propose an acceptable repayment agreement or request an appeal within the time frames provided in this letter. See the instructions above for immediate repayment and the instructions below for other rights.

Non-Centralized Administrative Offset

FSA intends to take any future payment that you are to receive from your participation in any USDA program or contract (this includes any FSA program or contract). The amount to be offset also will include any payments to other entities equal to your *pro rata* share in the entities if FSA has a legally enforceable right under state law or otherwise to pursue entity payments. Non-Centralized administrative offset has been exercised as explained on page 1 of this letter and will continue to be exercised unless you resolve the debt with the options set out in this letter.

Centralized Offset

Your delinquent debt will be referred to Treasury for TOP and for centralized salary offset computer matching as required by the Debt Collection Improvement Act of 1996 (DCIA), 31 U.S.C. 3716; the Federal Claims Collection Standards, and Department of Treasury Regulations if the debt is not satisfied by non-centralized administrative offset of payments within USDA. Under DCIA, FSA debts over 180 days delinquent must be referred to Treasury for such collection.

Litigation

FSA intends to enforce collection by referring the debt to the Department of Justice to initiate litigation if you fail to pay or otherwise resolve the debt.

Debtors' Rights

You have the right to inspect and copy Agency records, to make other arrangements for repaying your debt and to request an appeal of this demand for payment to the National Appeals Division (NAD).

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Demand for Payment, Notice That Non-Centralized Administrative Offset, Including Internal Administrative Offset, Has Been Taken and Will Continue, and Intent to Collect by Centralized Offset and Other Applicable Debt Collection Methods (Continued)

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Access to Agency Records of the Debt

You may inspect and copy your Agency file regarding this debt by notifying your local servicing office indicated below in writing within *20 calendar days* from the date of receipt of this notice. In response, FSA will notify you regarding a time and place for your review. At your request, one copy of the documents regarding this debt will be provided at our expense.

Opportunity to Propose a Repayment Agreement

At any time within *20 calendar days* of the date of receipt of this notice, you may present a written agreement to repay the debt as an alternative non-centralized administrative offset. Your proposed repayment agreement must document your ability to pay the delinquent Federal debt within a short period of time. A written repayment plan for paying the delinquent Federal debt may be accepted by the Agency in lieu of collection of the debt through non-centralized administrative offset of payments you are to receive.

Right to Appeal to NAD

You have the right to appeal this demand for payment to NAD in accordance with regulations published at 7 C.F.R. part 11. The issues under appeal will be limited to the existence of the debt, and the amount of the debt. If you wish to appeal this demand for payment, your written request for appeal must be postmarked no later than *30 calendar days* from the date you received this notice. Send the request for appeal to the office of the Area Supervisor, National Appeals Division, [Insert NAD Address]
[NAD address continuation].

The request for appeal must include a copy of this notice and a statement explaining why you think the demand for payment is incorrect. The request should also include your name, address, and phone number. NAD will advise you of the time and place of any hearing and of any procedural requirements. A copy of your request for appeal and any attachments should be sent to this office. While you will not avoid immediate offset of payment if you appeal, if you prevail on appeal, FSA will return the offset with interest and discontinue any future offsets unless you are re-notified.

Please do not delay action to pay your delinquent Federal debt or exercise the rights offered in this notice. Your delinquent Federal debt will have a negative impact on your ability to obtain other credit. No additional advance notice will be forthcoming before referral of your debt to Treasury for TOP. If a Federal income tax return is filed, and your spouse is not responsible for this debt, please contact your local IRS office before filing your return to learn how to protect your spouse's share of the refund.

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