

**UNITED STATES DEPARTMENT OF AGRICULTURE**

Farm Service Agency  
Washington, DC 20250

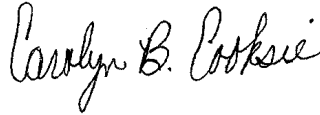
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**Direct Loanmaking  
3-FLP (Revision 1)**

**Amendment 2**

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**Approved by:** Deputy Administrator, Farm Loan Programs



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**Amendment Transmittal**

**A Reasons for Amendment**

Subparagraph 1 C has been amended to provide information and an example on citing CFR citations.

Subparagraph 41 B has been amended to:

- ensure consistency between FP and FLP
- update FAXed application procedure.

Subparagraph 42 A has been amended to update the following:

- signature requirements on FSA-2001 for an entity
- information required for the following:
  - husband and wife joint operation
  - 3 years of financial records
  - 3 years of production records
- tax return requirements for self-employed applicants
- income verification requirements for entity member
- using FSA-2006.

Subparagraph 43 A has been amended to add balance sheets for a complete Lo-Doc application.

Subparagraph 45 B has been amended to add information about the following:

- EM's waiting for production information
- sending FSA-2305 by certified mail or hand delivery.

## **Amendment Transmittal (Continued)**

### **A Reasons for Amendment (Continued)**

Subparagraph 45 G has been added to provide information for priority consideration for prevailing claimants.

Subparagraph 63 A has been amended to clarify eligibility of entities with members who have not reached the age of majority.

Subparagraph 65 A has been amended to clarify the process for considering debt forgiveness for *Pigford Consent Decree* members.

Subparagraph 69 A has been amended to clarify how entity members can meet the managerial ability requirements.

Paragraph 91 has been amended to:

- add information about FLP loans in conjunction with EQIP
- clarify FSA-2313 certified mail or hand delivery requirements
- add information about the 150 percent additional security requirements.

Subparagraph 95 B has been amended to add real estate and chattel security as item that may have their value estimated for additional security.

Subparagraph 112 C has been amended to clarify when crop insurance cannot be waived.

Subparagraph 132 C has been amended to update final rule language about entities.

Subparagraphs 135 and 175 have been amended to update paragraph references.

Paragraph 261 has been amended to clarify FBP presentation requirements.

Paragraph 262 has been amended to:

- provide FSA-2313 certified mail or hand delivery requirements
- add that the application will be withdrawn if FSA-2313 is not returned within a specified time period
- update FSA-2313 reference.

Subparagraph 281 C has been amended to update:

- State supplements for trusts
- application signature requirements for co-signors.

## **Amendment Transmittal (Continued)**

### **A Reasons for Amendment (Continued)**

Subparagraph 302 A has been amended to require that FSA-2341 be sent to closing attorneys for the preliminary title opinion.

Subparagraph 303 A has been amended to remove FSA-2040 and FSA-2044 from the closing package sent to the closing agent.

Subparagraph 323 F has been amended to clarify information for perfecting liens on fixtures and equipment.

Subparagraph 343 B has been amended to only require that essential documents to be kept in the safe.

Paragraph 361 has been amended to:

- add information for approving the closing agent
- clarify debarment information
- add information about a protection letter and related fidelity bond requirements.

Subparagraph 362 A has been amended to clarify who approves title insurance companies and how long the approval is good.

Paragraph 402 has been amended to:

- add using FSA-2370 to request a waiver
- add reviewing applicant's FSA-2002 and FSA-2302 for waiving financial management training
- add FSA-2003 and FSA-2302 for waiving production training requirement
- remove combining education, training, and experience for demonstrating managerial ability for a direct loan
- provide FSA-2313 certified mail or hand delivery requirements.

Exhibit 5 has been amended to update the information needed to submit and FSA direct loan application.

Exhibit 24 has been added to provide the notice of funding availability.

**Amendment Transmittal (Continued)**

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## Part 1 Introduction and Purpose

### 1 Purpose and Sources of Authority

#### A Handbook Purpose

This handbook is designed to assist FSA in understanding:

- direct loanmaking regulations governing FLP
- roles and responsibilities in implementing those regulations and other direct loanmaking responsibilities.

#### B Sources of Authority

The sources of authority for this handbook include:

- 7 CFR Part 764 and other regulations that may be referenced throughout this handbook
- various laws and statutes passed by Congress, including CONACT.

#### C Regulation References

Text in this handbook that is published in CFR is printed in **bold** text. The CFR citation is printed in brackets in front of the text. The references and text:

- are intended to highlight the requirement spelled out in CFR
- may be used to support adverse FSA decisions.

**\*--Note:** Cross-references printed in **bold** are citing a CFR section. The handbook paragraph or subparagraph where the cross-referenced CFR text can be found is printed in the nonbold text in parenthesis within the bold text.

**Example:** Subparagraph 103 C provides “[**7 CFR 764.51(c)(4)**] **Submit items (1), (2), (7), (9), and (11) of paragraph (b) of this section** (paragraph 42). **The Agency may require a Lo-Doc applicant to submit any other information listed in paragraph (b) of this section as needed to make a determination on the loan application**”.

**Note:** The text “**items (1), (2), (7), (9), and (11) of paragraph (b) of this section**” refers to 7 CFR 764.51(b)(1), (2), (7), (9), and (11). The nonbold reference indicates that 7 CFR 764.51(b) is included in paragraph 42.--\*  
\*--\*  
\*--\*

2 **Related References**

**A Related FSA Handbooks**

The following FSA handbooks concern FLP.

<b>IF the area of concern is about...</b>	<b>THEN see...</b>
State and county organization and administration policies, procedures, principles, and standards, such as work organization	16-AO.
civil rights compliance and administration for FSA programs	18-AO.
appeals and mediation	1-APP.
State and county records management	25-AS.
policies and procedures for the acquisition of supplies, equipment, and services	27-AS.
common management and operating provisions for program management activities, functions, and automated applications, such as forms that cannot be accepted by FAX	1-CM.
environmental requirements	1-EQ.
processing collections and canceling loan checks and payments	3-FI.
general and administrative regulations governing FLP	1-FLP.
guaranteed loan making and servicing	2-FLP.
direct loan regular or routine servicing	4-FLP.
direct loan special servicing and inventory property management	5-FLP.
the Emergency Loan Seed Producers Program, Horse Breeder Loan Program, Indian Tribal Land Acquisition Program, Special Apple Loan Program, and servicing of minor loan programs	6-FLP.
procedures for making records available to the public, other Federal agencies, and Congress	2-INFO.
procedures for collecting, maintaining, or disclosing data or information about an individual	3-INFO.
personnel management, such as employee conflict of interest	3-PM.
employee development and training	6-PM.

**Notes:** See FmHA Instruction 1945-A for information on the disaster designation process.

RD Instruction 1940-G must be used along with 1-EQ.

**B Helpful Links**

The Helpful Links web site at <https://indianocean.sc.egov.usda.gov/flp/InformationalLinks?Action=HelpfulLinks&caller=index> provides links to useful web sites.

**Part 3 Loan Application****41 Obtaining and Filing a Loan Application****A Obtaining a Loan Application**

A loan application may be obtained from:

- any FSA office
- FSA's web site at <http://www.fsa.usda.gov>
- eGov's web site at <http://www.sc.egov.usda.gov>.

An agency official will:

- not refuse to provide a requested application to any person
- not discourage the prospective applicant to apply for a direct loan even when loan funds are limited or unavailable
- not make oral or written statements that would discourage any individual from applying for assistance based on any ECOA prohibited basis (race, color, religion, national origin, sex, marital status, age, applicants income deriving from public assistance, or because the applicant has in good faith exercised any right under the Consumer Protection Act)
- provide Exhibit 5 to all persons requesting an application

**Notes:** Information that would create unapproved paperwork burden will not be requested. Specifically, anything that asks the applicant to provide information to FSA is not allowed by the State without approval from the National Office.

Exhibit 5 will be available in a fillable format at <http://intranet.fsa.usda.gov> under form name "3-FLP Exhibit 5".

- provide assistance as necessary to help applicants complete the application.

**Note:** Information about race, national origin, sex, and marital status is collected on a voluntarily basis on FSA-2001 and FSA-2301.

41 **Obtaining and Filing a Loan Application (Continued)****B Filing a Loan Application**

**[7 CFR 764.51(a)] A loan application must be submitted in the name of the actual operator of the farm. Two or more applicants applying jointly will be considered an entity applicant. The Agency will consider tax filing status and other business dealings as indicators of the operator of the farm.**

Upon receiving an application for direct loan assistance the authorized agency official shall ensure that the type of operation reflected on FSA-2001 is consistent with any representations previously made by the applicant for FP benefits. \* \* \*

\*--If any difference in representations of the farming operation is identified, notify the applicant using FSA-2304 and insert the following for why the application is incomplete.

**Note:** See subparagraph 45 B for notification of incomplete application guidance.

“A review of your FSA records revealed inconsistent representations in how your farming operation is conducted. (Provide details of different representations identified by FSA records.) Documentation must be provided to resolve the inconsistencies identified prior to your application for assistance to be considered complete.”

**Exception:** An application will not be considered incomplete if the difference in representation is the result of either of the following:

- husband and wife representing themselves as a joint operation for FLP assistance but combined as a single person for FP
- producer participating in 2 separate and distinct operations.--\*

When receiving an application from married persons, FSA cannot treat a married couple applying together the same way as 1 person applying individually. A married person may apply according to 1 of the following, depending on how the farm is operated.

- “As an individual” – A married person should apply as an individual when they are the operator of the farm, and the spouse has minimal involvement in the farm operation, particularly the day-to-day management and operations. In such cases, the nonfarming spouse will not be required to sign the application, except when required by State law to perfect a lien on marital or jointly owned property.

41 **Obtaining and Filing a Loan Application (Continued)****B Filing a Loan Application (Continued)**

- “As a joint operation” – Married persons should apply as a joint operation if they share the responsibilities of the farm including day-to-day management and operations, they wish to apply for the loan together, and they have not formed some other operating entity such as a partnership, LLC, trust, or corporation. When a married couple does apply as a joint operation, both parties must meet the eligibility requirements in Part 4.
- “As an entity” – If married persons have formed a legal entity (partnership, LLC, etc.), which operates the farm, the entity must apply for the loan.

**Notes:** Forming or changing the form of an entity can have significant tax and legal consequences. Loan officials should not advise applicants whether or not to form an entity, or what type of entity to form. It is appropriate to explain the impact of any proposed change to applicant structure on loan eligibility and on any existing FSA loans. Applicants considering entity formation or a change in operating structure should be strongly encouraged to seek guidance from qualified professionals such as a tax accountant or attorney.

An application from a husband and wife as a joint operation for FLP assistance, but who are combined as a single person for FP benefits, shall be considered as being the same type of operation, and therefore requires no corrective action.

All applicants, including an entity, should ordinarily file their loan application with the FSA FLP office serving the area where the headquarters of the farm operation is located. If the authorized agency official is not present in the office when the application is filed, the receiving office must immediately contact the office where the authorized agency official is located to determine whether the application needs to be forwarded to that office for processing.

**Exceptions:** For applications from:

- FSA employees and relatives of employees, see 3-PM
- applicants who have either filed a new discrimination complaint or have an outstanding discrimination complaint, contact DD and SED for direction on application processing.

In unclear cases, the authorized agency official should contact SED for a determination on where the applicant should file the loan application.

Electronic applications may be accepted from applicants who have Level 2 eAuth \*-credentials. FAXed applications are acceptable; however, an original signature **must** be obtained on the application before loan approval.--\*

**41 Obtaining and Filing a Loan Application (Continued)****C Notification of SDA, Socially Disadvantaged Group, Beginning Farmer, and Limited Resource**

See Exhibit 2 for definitions of a SDA, socially disadvantaged group, beginning farmer, and limited resource interest rates.

To determine whether an applicant is a member of a socially disadvantaged group, the applicant must voluntarily provide the applicant's ethnicity, race, and gender on FSA-2001 or FSA-2301. If the applicant will not voluntarily provide the ethnicity, race, or gender information, targeted funding will not be available.

FSA-2001 and FSA-2301 provide applicants notification that FO and OL funds are targeted for SDA and beginning farmer assistance. In addition, FSA-2001 provides notification of the availability of limited resource rates for FO's and OL's.

**Note:** SDA funding is available for youth loans, but beginning farmer assistance and limited resource rates are not available for youth loans.

**D Technical Assistance**

Agency officials are required to:

- inform applicants that FSA will provide technical assistance, if needed, to complete FSA forms and gather information necessary for a complete application
- explain the application procedure and process, and the requirements for a complete application
- assist applicants in completing FSA forms and identifying sources of information needed for a complete application, if assistance is requested
- inform applicants of other technical assistance providers who may be of assistance at minimal or no charge; examples include, but are not limited to the Cooperative Extension Service, institutions and organizations providing assistance under Section 2501 or other USDA outreach grants, SCORE, and other similar organizations
- advise applicants of alternatives that would help overcome barriers to being determined eligible, but caution that significant changes may have tax, estate planning, or other legal implications that may require consultation with an accountant, legal counsel, or other qualified expert.

## 41 Obtaining and Filing a Loan Application (Continued)

### E SED Action

SED's will prepare and publicize, at least semi-annually, through newspaper articles, radio announcements, and television broadcasts, that FSA targets direct and guaranteed loan funds to SDA and beginning farmers. These required SDA and beginning farmer outreach efforts are in addition to any information provided in State or Service Center newsletters.

**Note:** Outreach to assist these potential applicants will include maintaining and documenting close liaison and attending meetings with local, State, and national organizations serving SDA and beginning farmers.

## 42 Complete Loan Application

### A Requirements

**[7 CFR 764.51(b)] A complete loan application, except as provided in paragraphs (c) through (e) of this section, (paragraphs 42 through 44) will include:**

**[7 CFR 764.51(b)(1)] The completed Agency application form;**

The application must be signed and dated by the applicant. An unsigned FSA-2001 or FSA-2301 will be returned to the applicant.

**Note:** Youth loan applications should be filed according to paragraph 44.

**[7 CFR 764.51(b)(2)] If the applicant is an entity:**

**(i) A complete list of entity members showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or stock held in the entity by each member, or the percentage of interest in the entity held by each member;**

**(ii) A current personal financial statement from each member of the entity;**

**(iii) A current financial statement from the entity itself;**

**(iv) A copy of the entity's charter or any entity agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (good standing), and a resolution adopted by the Board of Directors or entity members authorizing specified officers of the entity to apply for and obtain the desired loan and execute required debt, security and other loan instruments and agreements;**

**\*--Note:** If entity documents require more than 1 member to apply, then all identified members must sign FSA-2001, Part E, item 18A.--\*

## 42 Complete Loan Application (Continued)

## A Requirements (Continued)

**(v) In the form of married couples applying as a joint operation, items (i) and (iv) will not be required. The Agency may request copies of the marriage license, prenuptial agreement or similar documents as needed to verify loan eligibility and security. Items (ii) and (iii) are only required to the extent needed to show the individual and joint finances of the husband and wife without duplication.**

\*--For a married couple, FSA will accept any of the following to verify existence of a joint operation:

- applicable FSA-502
- jointly filed tax return
- marriage license
- prenuptial agreement
- similar documentation.--\*

Ordinarily, individual financial statements are not required from a married couple applying as a joint operation. However, in States without community property laws and in some other States, individual financial statements may be necessary to obtain a complete picture of the financial situation. A State supplement will be issued when applicable to provide additional guidance and related information requirements for a married couple applying as a joint operation.

**[7 CFR 764.51(b)(3)] A written description of the applicant's farm training and experience, including each entity member who will be involved in managing or operating the farm;**

This requirement applies to either new applications or when significant changes to an applicant's operation have occurred. The applicant will provide the information using FSA-2302.

**[7 CFR 764.51(b)(4)] The last 3 years of farm financial records, including tax returns, unless the applicant has been farming less than 3 years;**

\*--Financial information will be primarily provided by the applicant on FSA-2002. Additional financial records, such as balance sheets, may be requested if necessary, for the last 3 years.

The authorized agency official may request up to 2 additional years of farm financial records in extenuating circumstances, such as natural disasters or adverse economic conditions.

**Note:** The applicant may submit alternate documents as long as they contain all information collected on FSA-2002.--\*



**42 Complete Loan Application (Continued)****A Requirements (Continued)**

**[7 CFR 764.51(b)(5)] The last 3 years of farm production records, unless the applicant has been farming less than 3 years;**

Production information will be provided by the applicant on FSA-2003.

The authorized agency official may request up to 2 additional years of farm production records in extenuating circumstances, such as natural disasters or adverse economic conditions.

**\*--Note:** Applicant may submit alternate documents if all information collected on FSA-2003 is provided.--\*

**[7 CFR 764.51(b)(6)] Documentation that the applicant and each member of an entity applicant cannot obtain sufficient credit elsewhere on reasonable rates and terms, including a loan guaranteed by the Agency;**

**[7 CFR 764.51(b)(7)] Documentation of compliance with the Agency's environmental regulations contained in subpart G of 7 CFR 1940;**

An applicant must have a current AD-1026 on file for all real estate owned or rented.

All real estate owned or rented on AD-1026 should be compared to FSA-2006 to determine whether all land is listed.

See RD Instruction 1940-G and 1-EQ for additional information on environmental regulations and requirements.



## 42 Complete Loan Application (Continued)

## A Requirements (Continued)

**[7 CFR 764.51(b)(8)] Verification of all non-farm income \* \* \*;**

\*--A self-employed applicant's income may be verified by 3 years of income tax returns.--\*

An applicant employed outside of the farm will submit either of the following:

- FSA-2004 authorizing FSA to send FSA-2014 to the applicant's employer
- 2 most recent earning statements.

**Notes:** The amount and dependability of income from a cosigner, including a nonapplicant spouse, will be verified using the listed format. See subparagraph 281 C for information about cosigner signature and eligibility requirements.

\*--If a nonapplicant will be providing information and will sign FSA-2026, the nonapplicant will complete FSA-2001, Part C. If a nonapplicant's income will only be used to cover family living/owner withdrawal. The nonapplicant must sign FSA-2004 and FSA-2007 but will not be required to sign FSA-2026.

If needed for an operation to cash flow, then the income of individual entity members can be verified as needed. The name of the individuals employer will be obtained as part of the individual credit report for entity members or included as a requirement on FSA-2304.--\*

**[7 CFR 764.51(b)(9)] A current financial statement and the operation's farm operating plan, including the projected cash flow budget reflecting production, income, expenses, and loan repayment plan;**

\*--The applicant will supply most of this information on FSA-2037 and FSA-2038.--\*

**[7 CFR 764.51(b)(10)] A legal description of the farm property owned or to be acquired and, if applicable, any leases, contracts, options, and other agreements with regard to the property;**

\*--**Note:** FSA-2006 will be provided by the applicant as part of the complete application.--\*

This information will be used to determine:

- FSA security
- value of security
- eligibility
- potential income affecting cash flow.

**[7 CFR 764.51(b)(11)] Payment to the Agency for ordering a credit report on the applicant;**

The agency official will record the date the credit report fee is received in DLS.

**42 Complete Loan Application (Continued)****A Requirements (Continued)****[7 CFR 764.51(b)(12)] Verification of all debts;**

Applicants must complete FSA-2005 to provide a list of creditors and FSA-2004 to authorize those creditors to release information to FSA.

The authorized agency official:

- must verify the status of debts over \$1,000
- must confirm the balance of the debt, the applicant's payment history on the debt including any delinquency, the security pledged for the debt, and the payment schedule including the amount and date of the next scheduled installment
- may obtain this information with any of the following as long as the required information is provided:
  - credit report
  - FSA-2310 (EM's)
  - CAIVRS
  - completed FSA-2015
  - most recent billing statement for the debt (e.g., credit card debt)
  - DLS Customer Profile (printer friendly version) verification of both current/past debts and any prior debt forgiveness
  - any other form of verification that provides the required information.

**[7 CFR 764.51(b)(13)] Any additional information deemed necessary by the Agency to effectively evaluate the applicant's eligibility and farm operating plan; and**

Examples of additional information include:

- divorce or separation decree
- child support or alimony payments
- 2 additional years for farm production or financial records (in extenuating circumstances).

**[7 CFR 764.51(b)(14)] For EM loans, a statement of loss or damage on the appropriate Agency form (FSA-2309).**

**42 Complete Loan Application (Continued)****B Existing Information in Applicant's File**

**[7 CFR 764.51(e)] The applicant need not submit any information under this section \*(subparagraph A) that already exists in the applicant's Agency file and is still current.--\***

Generally, information less than 90 calendar days old, unless noted otherwise, is considered current.

**43 Lo-Doc Loan Requests****A Complete Lo-Doc Application**

**[7 CFR 764.51(c)(4)] Submit items (1), (2), (7), (9), and (11) of paragraph (b) of this section (paragraph 42). The Agency may require a Lo-Doc applicant to submit any other information listed in paragraph (b) of this section as needed to make a determination on the loan application.**

A completed Lo-Doc application includes:

- completed FSA-2001
- entity information
- environmental information
- farm operating plan
- payment of credit report fee
- \*(--balance sheet.--\*

**Note:** An applicant is qualified for loan processing under Lo-Doc provisions, when all of the Lo-Doc requirements of subparagraph 191 B are met.

**44 Youth Loan Requests****A Complete Youth Loan Application**

A youth loan application is submitted by using FSA-2301, which includes the majority of information for a youth loan application. See Part 8, Section 3 for more information on youth loans.

**[7 CFR 764.51(d) For a youth loan request:**

**[7 CFR 764.51(d)(1)] The applicant must submit items (1), (7), and (9) of paragraph (b) of this section (paragraph 42).**

These items are the following:

- completed FSA-2301
- environmental information
- farm operating plan (when FSA-2301 is not considered sufficient).

**[7 CFR 764.51(d)(2)] Applicants 18 years or older, must also provide items (11) and (12) of paragraph (b) of this section (paragraph 42).**

These items are the following:

- payment to FSA for ordering a credit report
- verification of all debts.

**[7 CFR 764.51(d)(3)] The Agency may require a youth loan applicant to submit any other information listed in paragraph (b) of this section (paragraph 42) as needed to make a determination on the loan application.**

## 45 Processing Loan Applications

### A Application Review

Upon receiving a loan application, the agency official shall:

- insert date application was received on FSA-2001
- determine whether application is complete
- enter loan application information into DLS
- assemble loan application according to 25-AS
- obtain credit report
- obtain CAIVRS
- obtain DLS Customer Profile (printer friendly version) as verification of both current/past debts and any prior debt forgiveness

**Note:** Copies of the DLS Customer Profile must be attached to the applicant's file.

- complete RD 1940-22, or Class I or Class II assessment, whichever is applicable.

If an application is received and the applicant has not completed the section that identifies race, ethnicity, or gender of the applicant or members of the entity, the application will be processed as a non-SDA.

**Exception:** An application from an existing SDA, who has previously provided the documentation needed to qualify as SDA, does not need to resubmit qualifying information.

**Note:** Race, ethnicity, and gender determinations completed as observed by a FSA employee will not be used to qualify an applicant for SDA funding.

### B Notification of Incomplete Application

When an application is received, if it is incomplete or the employee receiving the application cannot determine whether it is complete, the applicant will be provided with FSA-2303. If the applicant hand delivers the application, FSA-2303 will be provided to the applicant before the applicant leaves the office. In all other situations, FSA-2303 will be mailed to the applicant within 2 workdays of receiving an incomplete application.

If the application is determined to be complete upon receipt, FSA-2303 will not be sent. The applicant will be immediately notified in writing according to subparagraph C.

## 45 Processing Loan Applications (Continued)

**B Notification of Incomplete Application (Continued)**

**[7 CFR 764.52(a)] Within 10 days of receipt of an incomplete application, the Agency will provide the applicant written notice of any additional information which must be provided. The applicant must provide the additional information within 20 calendar days of the date of this notice.**

The authorized agency official must notify the applicant in writing within 10 calendar days, after receiving the incomplete application, by using FSA-2304. FSA-2304 will:

- list the additional information needed
- state that the application cannot be processed until all required information is received
- offer assistance to the applicant if they do not understand what is required or are having difficulty obtaining the required information
- establish a due date for receiving the information of 20 calendar days from the date of FSA-2304.

**\*--Exception:** An EM application will not be withdrawn if the information required under 7 CFR 764.51(b)(14) (see subparagraph 42 A) is the only information that has not been received. Specifically, if accurate disaster year production information is not available, because of the producer having not completed harvest, the application will be held for a reasonable time to allow for the information to become available.

**Note:** FSA has determined that a reasonable time period is 3 months after the normal conclusion of harvest.

For EM's, insert the following on FSA-2304 for disaster year production information only.

“We must receive the following information by (add 20 days to the date the authorized agency official determines to be 3 months after the normal conclusion of harvest) so that we can continue processing your request for assistance.”--\*

If information is needed from other USDA agencies, the agency official will inform those agencies and the applicant of the information needed, and note the date of the request in the running record. For operating loan applications, the agency official will request that the information be returned within 15 calendar days of receiving the request.

**Note:** If it is clear that the application will be rejected for obvious eligibility reasons, the authorized agency official shall provide an application rejection letter with appropriate appeal or review rights



## 45 Processing Loan Applications (Continued)

## B Notification of Incomplete Application (Continued)

**[7 CFR 764.52(b)] If the additional information is not received, the Agency will provide written notice that the application will be withdrawn if the information is not received within 10 calendar days of the date of this second notice.**

If the applicant does not respond or does not supply all of the information requested within the 20 calendar day period specified on FSA-2304, the authorized agency official must immediately send FSA-2305. FSA-2305 will:

- \*--be sent certified mail or hand delivered

**Note:** If hand delivered, FSA must obtain a signed statement from the applicant acknowledging receiving FSA-2305 on the specific date.--\*

- list the additional information needed
- state that the application cannot be processed until all required information is received and unless the applicant supplies the required information, the application will be withdrawn
- establish a due date for receiving the information of 10 calendar days from the date of FSA-2305
- contain the ECOA statement according to 1-FLP, paragraph 41.

**Note:** A copy of FSA-2305 must be sent to DD at the same time it is sent to the applicant.

FSA will withdraw the application if the additional material is not provided.

Applicants will be sent FSA-2306 to inform them that their application has been withdrawn.  
\*--FSA-2306 will be sent by certified mail or hand delivered.

**Note:** If hand delivered, FSA must obtain a signed statement from the applicant acknowledging receiving FSA-2306 on the specific date.--\*

The withdrawn application will be maintained according to 25-AS.

\* \* \*

**45 Processing Loan Applications (Continued)****C Processing of Complete Application**

**[7 CFR 764.53] Upon receiving a complete loan application, the Agency will:**

**[7 CFR 764.53(a)] Consider the loan application in the order received, based on the date the application was determined to be complete; and**

**[7 CFR 764.53(b)] Provide written notice to the applicant that the application is complete.**

The authorized agency official must notify the applicant in writing within 10 calendar days after receiving the complete application using FSA-2307.

**Note:** Insert the date the application was determined to be complete on either FSA-2001 or FSA-2301.

**D Applicant Withdraws Application**

The applicant may request that a loan application be withdrawn at any time during the loanmaking process.

If the applicant makes the request:

- in writing, the authorized agency official will send FSA-2306 and withdraw the application
- by phone, the authorized agency official will send FSA-2306 to the applicant that, per their request, the loan application will be withdrawn unless the applicant contacts the County Office within 10 calendar days of the date of the letter.

**Note:** The authorized agency official shall maintain withdrawn applications according to 25-AS.

**E Reactivating Withdrawn Application**

A withdrawn application may not be reactivated. The applicant must file a new application.

**Note:** Any information in the withdrawn file that is still current may be included with the new application. Generally, information less than 90 calendar days old, unless noted otherwise, is considered current.

**45 Processing Loan Applications (Continued)**

**F Loan Processing When Civil Rights Complaint Has Been Filed**

The filing of a civil rights complaint does not stop loan processing activity. If an application for assistance has been filed, that request must be processed according to FSA instructions.

Because failure to advise an applicant of their ineligibility may be considered an adverse action in itself, the authorized agency official should timely process all applications, in those instances where a discrimination complaint is filed, and notify the applicant of the decision. The authorized agency official must fully explain to the applicant the basis for the unfavorable eligibility or feasibility decision according to paragraph 266.

**\*--G Priority Consideration for Prevailing Claimants**

See current FLP notice for guidance on priority consideration.--\*

**46-60 (Reserved)**



63 Legal Capacity

A General Requirements

**[7 CFR 764.101(b)] The applicant, and anyone who will sign the promissory note, must possess the legal capacity to incur the obligation of the loan. A Youth loan applicant will incur full personal liability upon execution of the promissory note without regard to the applicant's minority status.**

The applicant must be of legal age, mental capacity, and have authority to enter into a legally binding agreement. If the applicant is an entity, all members must meet this requirement.

The authorized agency official must review documentation provided by entity applicants to ensure that the entity members meet legal capacity requirements.

**Note:** An entity that has members who have not reached the age of majority is ineligible for assistance because of the requirement that all entity members must sign FSA-2026 as an individual.--\*

64 Citizenship

**A General Requirement**

**[7 CFR 764.101(c)] The applicant and anyone who will sign the promissory note must be a citizen of the United States, United States non-citizen national, or a qualified alien under applicable Federal immigration laws.**

See:

- Exhibit 2 for the definition of U.S. noncitizen national and qualified alien
- Exhibits 8 and 9 for guidance about documentary evidence of U.S. noncitizen national citizenship and qualified alien status.

**Note:** The loan term to a qualified alien may not exceed the number of years of residency which they have been formally granted by the documents described in Exhibit 8.

**65 Credit History****A General Requirement**

**[7 CFR 764.101(d)] The applicant must have acceptable credit history demonstrated by debt repayment.**

**[7 CFR 764.101(d) (1)] As part of the credit history the Agency will determine whether the applicant will carry out the terms and conditions of the loan, and deal with the Agency in good faith. In making this determination, the Agency may examine whether the applicant has properly fulfilled its obligations to other parties, including other agencies of the Federal Government.**

The authorized agency official may determine that an applicant is not creditworthy if the applicant:

- deliberately falsifies information
- intentionally omits information relevant to the loan decision
- does not make every reasonable effort to meet the conditions and terms of any previous FSA loan
- failed to make reasonable effort to resolve delinquencies with other lenders.

**Note:** Applicants who provide false information may also be subject to civil and/or criminal prosecution and should be referred by the authorized agency official to OIG.

## 65 Credit History (Continued)

## A General Requirement (Continued)

**[7 CFR 764.101(d) (2)] When the applicant caused the Agency a loss by receiving debt forgiveness, the applicant may be ineligible for assistance in accordance with eligibility requirements for the specific loan type. If the debt forgiveness is cured by repayment of the Agency's loss, the Agency may still consider the debt forgiveness in determining the applicant's creditworthiness.**

FSA will not consider the following as debt forgiveness for loanmaking purposes:

- debt reduction through a conservation easement or contract
- any debt written off as part of the resolution of a discrimination complaint against FSA, including debt written off in conjunction with the *Pigford Consent Decree*

**\*--Note:** See current FLP notice for guidance on priority consideration.--\*

- prior debt forgiveness that has been repaid in its entirety.

**Notes:** In the majority of cases under Chapter 11 of the Bankruptcy Code, the debt is discharged when the plan is confirmed (see 11 U.S.C. § 1141 (d) for exceptions to automatic discharge). In Chapter 12 and 13 cases, the discharge normally occurs, in 3 to 5 years, by court order. Debt forgiveness occurs when an applicant has completed all payments according to the plan and the unsecured FLP claim is written off. At that point, the applicant will be ineligible for most additional loans according to paragraphs 132, 172, and 232. Specifically, according to paragraphs 132, 172, and 232, the applicant may be eligible for annual production loans, but no other type of assistance.

An applicant who has successfully completed a bankruptcy reorganization plan will be considered to be current on the plan. Therefore, as long as the applicant remains current on the plan they may be eligible to receive annual production loans as outlined above. However, this status changes if the applicant subsequently becomes delinquent on any loans covered by the plan, including non-FSA loans. The denial for failure to comply with an approved bankruptcy plan is appealable. See 1-APP for further instruction.



**67 Delinquent Federal Debt and Unpaid Federal Judgments****A General Requirement**

**[7 CFR 764.101(f)] As provided in 31 CFR Part 285, except for EM loan applicants, the applicant and anyone who will sign the Promissory Note must not be in delinquent status on any Federal debt, other than a debt under the Internal Revenue Code of 1986 at the time of loan closing. All delinquent debts, however, will be considered in determining credit history and ability to repay under this part.**

The applicant must not be delinquent on any nontax Federal debt, not paid within 90 calendar days of the due date according to 31 CFR §285.13, or FSA guaranteed debt, a guaranteed loan will not be considered delinquent Federal debt until a final loss claim has been paid. Verification through the Department of Housing and Urban Development's CAIVRS, the credit report, ADPS Current/Past Debt and Borrower Cross Reference Inquiry screens, and GLS View Loan Screen is sufficient. However, if it becomes known, and verified, through other means that the applicant is delinquent on a Federal debt, this information must be considered when making an eligibility determination.

**Note:** Delinquent Federal tax debt only affects eligibility as it relates to credit history according to paragraph 65.

**[7 CFR 764.101(g)] The applicant and anyone who signs the Promissory Note must have no outstanding unpaid judgments obtained by the United States in any court. Such judgments do not include those filed as a result of action in the United States Tax Courts.**

The authorized agency official shall review debt verification obtained according to subparagraph 65 B.

**B Resolving Delinquent Federal Debt and Judgments**

Applicants who pay their delinquent Federal debt or judgment in full or otherwise resolve the \*--delinquency or judgment before or at loan closing may be eligible.--\*

**Note:** FSA will consider such debts as part of the creditworthiness eligibility requirement and in determining cash flow during the loan evaluation process.

**68 Federal Crop Insurance Violations****A General Requirement**

**[7 CFR 764.101(h)] The applicant, and all entity members in the case of an entity, must not be ineligible due to disqualification resulting from Federal Crop Insurance violation, according to 7 CFR Part 718.**

Section 515(h) of FCIA provides that a person who willfully and intentionally provides any false or inaccurate information to FCIC or to an approved insurance provider with respect to a policy or plan of FCIC insurance after notice and an opportunity for a hearing on the record, will be subject to 1 or more sanctions, which may effect the applicants eligibility for all Federal assistance.

Applicants, as well as individual entity members, will self certify on FSA-2001 that they have not been disqualified. Additionally, RMA will notify the National Office of individuals and entities that have been disqualified as a result of crop insurance violations. The National Office will notify the State Office. State Offices shall notify the appropriate County Office.

**Notes:** See 7 CFR 718.11 for additional information on disqualifications.

Information on individuals and entities disqualified may be obtained from EPLS at <http://www.epls.gov>. Review of the EPLS web site is not mandatory.

## 69 Managerial Ability

### A General Requirement

\*--For an entity to meet the requirements in this subparagraph, either the individual holding the majority interest in the entity or the individual responsible for the day-to-day operations of the entity must demonstrate sufficient managerial ability as described in this paragraph.--\*

**[7 CFR 764.101(i)] The applicant must have sufficient managerial ability to assure reasonable prospects of loan repayment, as determined by the Agency. The applicant must demonstrate this managerial ability by:**

**[7 CFR 764.101(i)(1)] Education. For example, the applicant obtained a 4-year college degree in agricultural business, horticulture, animal science, agronomy, or other agricultural-related field.**

To meet the managerial requirement through education alone, the applicant must document completing a comprehensive educational program in agriculture or an equivalent combination of hands-on experience and education. Acceptable educational programs include any of the following, as long as the programs are relevant to the planned operation:

- a 4-year college degree in agriculture business, horticulture, animal science, agronomy, or other agricultural related fields
- a 2-year degree from a technical college in agriculture business, horticulture, animal science, agronomy, or other agricultural related fields, provided that the applicant also has experience working on a farm
- vocational or general agriculture classes in high school, provided that the applicant also has experience working on a farm and participated in and successfully completed applicable projects in 4-H, FFA, or another agriculture affiliated group
- successful completion of farm management courses offered by the Cooperative Extension Service, a community college, adult vocational agricultural program, land grant university, or a similar program with academic integrity, provided that the applicant was raised and worked on a farm or is currently working on a farm.

**[7 CFR 764.101(i)(2)] On-the-job training. For example, the applicant is currently working on a farm as part of an apprenticeship program.**

To meet the managerial ability requirement through on-the-job training alone, the applicant must be currently working, or have recently worked, as hired farm labor with management responsibilities, as part of an apprenticeship program for at least 1 entire production and marketing cycle.

**69 Managerial Ability (Continued)****A General Requirement (Continued)**

**[7 CFR 764.101(i)(3)] Farming experience. For example, the applicant has been an owner, manager, or operator of a farm business for at least one entire production cycle. The farming experience must have been obtained within the last five years.**

To meet the managerial ability requirement through farming experience alone, the applicant must have been 1 of the following:

- an owner of a farm business with management and operator responsibilities for at least 1 entire production and marketing cycle
- employed as a farm manager or farm management consultant for at least 1 entire production and marketing cycle
- raised on a farm and held significant responsibility for day-to-day management decisions for at least one entire production and marketing cycle.

The applicant must document this experience through tax returns, FSA farm records, or similar documentation.

The applicant may satisfy the managerial ability requirement through any equivalent combination of education, on-the-job training, and farm experience. The authorized agency official must consider each application on a case-by-case basis.

Applicants must demonstrate that they have carried out their operation according to standard farming practices in the area. The following are some examples of practices, which do not meet the requirement of having followed standard farming practices:

- planting crops that are not typically grown in that area because of risks associated with the existing climatic conditions
- late planting not because of disaster
- poor tillage practices
- poor breeding practices
- lack of good record keeping, including income and expense records, income tax records, and breeding records.

## 71 Owner/Operator of a Family Farm (Continued)

**B Factors for Consideration**

**[7 CFR 764.101(k)(4)] If the entity applicant has an operator and ownership interest for farm ownership loans and emergency loans for farm ownership loan purposes, in any other farming operation, that farming operation must not exceed the requirements of a family farm.**

See Exhibit 2 for the definition of what constitutes a family farm.

The authorized agency official must consider the following factors when making the family farm determination.

- Be recognized in the community as a farm. The applicant's farm operation must be large enough to be considered a working farm (as opposed to a "hobby farm," garden, or residence) and provide a significant financial return.
- Members of the farm family must make all the day-to-day farm management and operational decisions. The use of outside consultants or advisors is acceptable provided that someone in the farm family is the ultimate decision-maker.
- Family or entity members must supply a substantial amount of the full-time labor. This does not preclude using seasonally hired labor, but in most instances, the family should provide most of the day-to-day labor. Exceptions may be made for enterprises that produce high value, labor-intensive crops such as fruit or vegetables.
- Credit needs. Congress established FSA's loan limits to assist family sized operations. The loan limits generally ensure that loans are made to family farm operations.
- \*--Loan participation arrangements are acceptable when FSA farm loans cannot meet the total credit needs of the applicant. However, if the FSA loan only represents a small portion of the total credit requirements, this may be an indication that the applicant is larger than a family-sized farm when all factors are considered. The authorized agency official must also fully consider if credit is available from another source, including a guaranteed loan.--\*

To make a determination about the family farm requirement, the authorized agency official must judge the factors individually and also weigh and consider how the factors relate to each other. If the authorized agency official determines that the applicant's farm does not satisfy the definition of a family farm, the reasoning behind the authorized agency official's decision must be documented in the loan file.

**72 Entity Composition****A General Requirement**

[7 CFR 764.101(l)] **If the applicant is an entity, the entity members are not themselves entities.** Entity applicants who are composed of other entities are not eligible applicants.

**B Individual Members of Entity**

Each member of the entity must meet the general and program-specific eligibility requirements. The 1 exception is the FO requirement for an owner-operator. See subparagraph 132 D.

**C Married Persons**

Married persons applying together shall be treated as a joint operation unless they form or have formed a legal entity before application for assistance. If they apply as a joint operation, both parties must meet the general and program specific eligibility requirements for the loan requested.

**D Joint Operations**

In the case of an informal joint operation, where no formal tax ID number has been assigned by a taxing authority, the persons requesting the assistance will designate which SSN will be used as primary to assign the case number.

## Part 5 Loan Security

## 91 Security Requirements

## A General

**[7 CFR 764.103(a)] Security requirements specific to each loan program are outlined in subparts D through H of this part (Parts 7 through 9).**

For the specific requirements for each direct loan program, see:

- paragraph 135 for FO security
- paragraph 154 for beginning farmer downpayment security
- paragraph 175 for OL security
- paragraph 215 for youth loan security
- paragraph 236 for EM security.

Advice on obtaining security will be obtained from OGC when necessary, especially on obtaining security when a life estate is involved.

## B Adequate Security

**[7 CFR 764.103(b)] All loans must be secured by assets having a security value of at least 100 percent of the loan amount, except for EM loans as provided in subpart H of this part (Part 9). If the applicant's assets do not provide adequate security, the Agency may accept:**

**[7 CFR 764.103(b)(1)] A pledge of security from a third party; or**

In cases where nonapplicants will pledge chattel security, \* \* \* the authorized agency official \*--will obtain either a signed CCC-10 and FSA-2028 from the nonapplicant authorizing FSA to file the required instrument to perfect FSA's lien or the nonapplicant can provide FSA-2318.

**Note:** FSA-2318 does not require using either CCC-10 or FSA-2028.--\*

In unique situations, such as areas where land is held in communal rather than fee simple title, or where DOJ lacks jurisdiction, it may be necessary for SED, with advice from OGC, to issue a State supplement.

**[7 CFR 764.103(b)(2)] Interests in property not owned by the applicant (such as leases that provide a mortgageable value, water rights, easements, mineral rights, and royalties).**

The value of adequate security is established according to subparagraph 95 A.

## 91 Security Requirements (Continued)

## C Additional Security

**[7 CFR 764.103(c)] An additional amount of security up to 150 percent of the loan amount will be taken when available, except for beginning farmer downpayment loans and youth loans.**

In the case of an entity, when all the security held by the entity does not meet the requirement for additional security up to 150 percent of the loan amount, FSA will take liens on personal assets held by individual members, as security to the extent that the members have suitable personal assets. The entity will select and notify FSA which asset it prefers to offer as security for the loan.

The authorized agency official will take security with a value that exceeds 150 percent of the loan amount if it is not practical to separate the property.

The value of additional security is established according to subparagraph 95 B.

**\*--Note:** If a loan is in conjunction with EQIP, the EQIP contract will be considered the additional security needed to meet the 150 percent requirement.--\*

## D Choice of Security

**[7 CFR 764.103(d)] The Agency will choose the best security available when there are several alternatives that meet the Agency's security requirement.**

When there are several alternatives available, any 1 of which will meet the security requirements for the loan, the authorized agency official has the discretion to select the best \*--alternative for obtaining adequate security. The choice of security the will be included on FSA-2313 which shall be sent by certified mail or hand delivery.

**Notes:** If hand delivered, FSA must obtain a signed statement from the applicant acknowledging receiving FSA-2313 on the specific date.--\*

FSA primarily chooses between like types of security. For example, FSA will not choose chattel over real estate if real estate is the appropriate security for the loan and other real estate is available. FSA will also consider lien position when choosing security.



## 91 Security Requirements (Continued)

**E Requirement to Obtain Liens on all Non-essential Assets**

**[7 CFR 764.103(e)] The Agency will take a lien on all assets that are not essential to the farming operation and are not being converted to cash to reduce the loan amount when each such asset, or aggregate value of like assets (such as stocks), has a value in excess of \$5,000. The value of this security is not included in the Agency's additional security requirement stated in paragraph (c) of this section (subparagraph C). This requirement does not apply to beginning farmer down payment loans and youth loans.**

This requirement is intended to provide FSA with a security interest in assets that are not essential to the farming operation, but which the applicant cannot or will not convert to cash to reduce credit needs or outstanding obligations. This requirement applies to individual applicants, entity applicants, as well as all individual members of the entity.

\*--The value of nonessential assets is:

- not included as part of the 150 percent additional security requirement

**Note:** The value of the nonessential asset may be included in the adequate security value calculation if necessary, for the applicant to meet the 100 percent collateral requirement.\*

- is established according to subparagraph 95 B.

**F Securing Multiple Loans**

**[7 CFR 764.104(d)] The same real estate may be pledged as security for more than one direct or guaranteed loan.**

**[7 CFR 764.105] The same chattel may be pledged as security for more than one direct or guaranteed loan.**

## 92 Real Estate Security

### A Overview

Real estate security includes land and permanent structures, including fixtures that can be described on the security instrument, such as bins, silos, and gutter cleaners. It also includes items that are considered part of the farm and ordinarily pass with the title to the farm. These items include assignments of leases and leasehold interests having mortgageable value, water rights, easements, rights-of-way, revenues, mineral rights, and royalties from mineral rights.

Different lien positions on real estate are considered separate and identifiable security.

### B Agency Lien Position

**[7 CFR 764.104(a)] If real estate is pledged as security for a loan, the Agency must obtain a first lien, if available. When a first lien is not available, the Agency may take a junior lien under the following conditions:**

**[7 CFR 764.104(a)(1)] The prior lien does not contain any provisions that may jeopardize the Agency's interest or the applicant's ability to repay the FLP loan;**

Each prior lienholder must agree in writing on FSA-2361, before loan closing, to modify, waive, or subordinate such objectionable provisions to the interest of the Government.

**[7 CFR 764.104(a)(2)] Prior lienholders agree to notify the Agency prior to foreclosure;**

In some States, a prior lienholder may be able to foreclose the security instrument without providing junior lienholders notice of the foreclosure proceedings. In that case, any prior lienholder must agree in writing on FSA-2319 to:

- give FSA advance notice of foreclosure
- offer to assign the mortgage to FSA for the amount of the outstanding debt owed to the prior lienholder.

**[7 CFR 764.104(a)(3)] The applicant must agree not to increase an existing prior lien without the written consent of the Agency; and**

The applicant agrees on FSA-2029 to obtain permission from FSA before granting any additional security interest in the real estate.

**[7 CFR 764.104(a)(4)] Equity in the collateral exists.**

**94 Exceptions to Security Requirements (Continued)**

**G Softwood Timber**

**[7 CFR 764.106(f)] On marginal land and timber that secures an outstanding ST loan.**

FSA is statutorily prohibited from taking additional liens on property securing a softwood timber loan.

**H Title Held by Contractor**

When the title to a livestock or crop enterprise is held by a contractor under a written contract or the enterprise is to be managed by the applicant under a share lease or share agreement, an assignment of all or part of the applicant's share of the income will be taken. A form approved by the Regional OGC will be used to obtain the assignment.

**I Documenting Exceptions**

When security is not taken for any of the mentioned reasons, the authorized agency official must document the decision in the running record.

## 95 Appraisals and Values

### A Adequate Security

**[7 CFR 764.107(a)] The value of real estate will be established by an appraisal completed in accordance with §761.7 (1-FLP) of this chapter.**

A real estate appraisal is required when real estate is taken as primary security and the amount of the loan to be secured by the real estate exceeds \$50,000.

A new real estate appraisal is not required if the latest appraisal report available is not over 1 year old, unless significant changes in the market value of real estate have occurred in the area within the 1 year period.

**[7 CFR 764.107(b)] The value of chattels will be established as follows:**

An appraisal will be completed to determine market value and applicant equity when:

- an initial loan is made on all chattel property owned by the applicant, and on chattel property to be acquired when the item can be specifically identified
- a subsequent loan is made to refinance chattel debt
- a subsequent loan is made and the existing chattel appraisal is more than 2 years old.

**(1) The security value of annual livestock and crop production is presumed to be 100 percent of the amount loaned for annual operating and family living expenses, as outlined in the approved farm operating plan.**

**(2) The value of livestock and equipment will be established by an appraisal completed in accordance with §761.7 (1-FLP) of this chapter.**

### B Additional Security and Nonessential Assets

\*--A real estate appraisal is not required when real estate or chattels are taken as additional security.

The loan approval or other authorized agency official, to whom SED delegated authority under 1-FLP, will estimate the market value of additional security, real estate or chattel security, and nonessential assets.--\*

The authorized agency official must document the value in the running record, along with the basis for the estimate. If the applicant disagrees with the estimated values, FSA may accept an appraisal from the applicant, obtained at the applicant's expense, if the appraisal meets all FSA requirements.

96-110 (Reserved)

112 Type of Insurance Required (Continued)

C Crop Insurance

**[7 CFR 764.108(c)] Growing crops used to provide adequate security must be covered by crop insurance if such insurance is available. The Agency must be listed as loss payee for the insurance indemnity payment.**

**\*--Note:** This reference applies when FSA is actually financing the crop with loan funds. In these cases, the requirement for crop insurance cannot be waived.

If perennial crops are used to secure loans with a term of more than 1 year, the applicant will be required to obtain crop insurance in all subsequent years until the loan is paid in full.--\*

**[7 CFR 764.108(d)] Prior to closing the loan, the applicant must have obtained at least the catastrophic risk protection level of crop insurance coverage for each crop which is a basic part of the applicant's total operation, if such insurance is available, unless the applicant executes a written waiver of any emergency crop loss assistance with respect to such crop. The applicant must execute an assignment of indemnity in favor of the Agency for this coverage.**

**\*--Note:** This reference applies when FSA is not financing the crop with loan funds.--\*

**113 Documentation****A General**

Before loan closing, applicants must provide the applicable documentation required according to subparagraphs B and C.

**B Documentation of Hazard and Flood Insurance**

An applicant should demonstrate hazard or flood insurance coverage by 1 or more of the following documents:

- an insurance policy showing the effective date
- an endorsement to a policy showing the effective date
- a written binder showing the effective date
- a “declaration” page furnished by the insurance company, clearly stating that it is an original declaration page, and showing the effective date
- a receipt for insurance premiums, if the receipt shows the period covered.

An applicant relying on a written binder or receipt for premiums must submit an acceptable insurance policy or endorsement to the authorized agency official within 60 calendar days after the effective date of the policy and before the expiration date of the binder.

The applicant must demonstrate, either through receipts for insurance premiums or another way, that the insurance is effective for at least 12 months following loan closing.

Coverage for a building under construction should be demonstrated by either coverage under a builder’s risk:

- policy naming the applicant as the insured
- endorsement for a policy issued to the applicant.

A policy or endorsement used to cover a building while the building is under construction must convert automatically to full coverage once the building is completed or the applicant must obtain other acceptable coverage.

The authorized agency official shall not rely upon a builder’s risk policy issued to the contractor who is constructing the building.

**Part 7 Farm Ownership Programs****Section 1 FO's****131 Uses****A General**

**[7 CFR 764.151] FO loan funds may only be used to:**

See subparagraphs B through F for FO uses.

**B Farm Purchases**

FO funds may only be used to:

**[7 CFR 764.151(a)] Acquire or enlarge a farm or make a down payment on a farm;**

Examples include, but are not limited to, the purchase of easements, the applicant's portion of land being subdivided, purchase of cooperative stock, appraisal and survey fees, and participation in special FO programs. Downpayments are authorized as a loan purpose subject to the following.

- A deed is obtained and the transaction is properly documented by debt and security instruments.
- Any prior liens meet the FO security requirements for FSA's junior lien position.
- For contract purchases, purchase contracts must properly obligate the buyer and seller to fulfill the terms of the contract, provide the buyer with possession, control, and beneficial use of the property, and entitle the buyer to marketable title upon fulfillment of the contract terms. The deed must be held in trust by a bonded agent until transferred to the buyer. Upon a buyer's default, the seller must give FSA written notice of the default and a reasonable opportunity to cure the default. The applicant must repay any sums advanced by FSA.

## 131 Uses (Continued)

**B Farm Purchases (Continued)**

The authorized agency official should advise the applicant to have an understanding with the seller on such items as:

- land description and number of acres
- buildings and fixtures included in the transaction

**Note:** The applicant should determine the condition of property attached to the land and the working condition of any fixtures with movable parts.

- minerals and the effect any mineral reservation has on the land value and operating it as a farm
- access to the land or any part of it
- the party responsible for taxes and insurance
- the party who will receive the income from the land during the crop year of the transaction.

**C Capital Improvements**

FO funds may only be used to:

**[7 CFR 764.151(b)] Make capital improvements to a farm owned by the applicant, for construction, purchase or improvement of farm dwellings, service buildings or other facilities and improvements essential to the farming operation. In the case of leased property, the applicant must have a lease to ensure use of the improvement over its useful life or to ensure that the applicant receives compensation for any remaining economic life upon termination of the lease;**

FO funds can be used to purchase, improve, or build any type of structure, including a dwelling that either adequately meets family needs or is modest in size, cost, and design, provided the structure is related to the farming enterprise. The dwelling shall be located on \*--the farm when FO funds are used to purchase the dwelling. However, the applicant already owns a dwelling located close to the farm, FO funds may be used to repair or improve the dwelling.--\*

An applicant must be the owner of the property, or hold a lease interest for the property, which has a term at least equal to the term of the proposed loan on the property, which the improvement is to be made. In the case of Indian tribal lands, trust properties, and Hawaiian homelands, the applicant's leasehold must show an ownership interest as specified by a State supplement.



**131 Uses (Continued)****D Soil and Water Conservation and Protection**

FO funds may only be used to:

**[7 CFR 764.151(c)] Promote soil and water conservation and protection;**

Examples include the correction of hazardous environmental conditions and the construction or installation of tiles, terraces, and waterways. All soil and water conservation projects are subject to the limitations in subparagraph 74 D.

**E Loan Closing Costs**

FO funds may only be used to:

**[7 CFR 764.151(d)] Pay loan closing costs;**

FO funds may not be used to pay loan packaging or consultant fees associated with applying for or obtaining a FSA loan.

**F Refinance Bridge Loan**

FO funds may only be used to:

**[7 CFR 764.151(e)] Refinance a bridge loan if the following conditions are met:**

- (1) The applicant obtained the loan to be refinanced to purchase a farm after a direct FO was approved;**
- (2) Direct FO funds were not available to fund the loan at the time of approval;**
- (3) The loan to be refinanced is temporary financing; and**
- (4) The loan was made by a commercial or cooperative lender.**

**Note:** Refinancing of a bridge loan is not guaranteed. The applicant and the lender must understand that the anticipated FO is subject to all conditions of loan approval and availability of funds. FSA personnel shall not make any commitments or imply that a bridge loan will be refinanced.

**132 Eligibility****A General Eligibility**

**[7 CFR 764.152] The applicant:**

**[7 CFR 764.152(a)] Must comply with the general eligibility requirements established at § 764.101 (paragraphs 62 through 72);**

FO program specific eligibility is addressed in this paragraph. If different from the general eligibility in paragraphs 62 through 72, the information in this paragraph 132 is to be substituted for those portions.

**B No Prior Debt Forgiveness**

The applicant:

**[7 CFR 764.152(b)] And anyone who will sign the promissory note, must not have received debt forgiveness from the Agency on any direct or guaranteed loan;**

The authorized agency official shall review debt verification obtained under subparagraph 65 B to determine whether there is any prior loss by the Government.

**C FO Individual and Entity Owner and Operator Requirement**

The applicant:

**[7 CFR 764.152(c)] Must be the owner-operator of the farm financed with Agency funds after the loan is closed. In the case of an entity:**

- (1) The entity is controlled by farmers engaged primarily and directly in farming in the United States, after the loan is made;**
- (2) The entity must be authorized to own and operate the farm in the State in which the farm is located;**
- (3) If the entity members holding a majority interest are:**
  - (i) Related by blood or marriage, at least one member of the entity must operate the farm; \* \* \***
  - (ii) Not related by blood or marriage, the entity members holding a majority interest must \* \* \* operate the farm.**

## 132 Eligibility (Continued)

**D FO Owner and Operator Past Farm Responsibility**

\*--The applicant:--\*

**[7 CFR 764.152(d)] And in the case of an entity, one or more members constituting a majority interest, must have participated in the business operations of a farm for at least 3 years out of the 10 years prior to the date the application is submitted.**

Factors to determine participation in the business operations of a farm are similar to those for determining adequate farming experience necessary to ensure a reasonable prospect of success in the operation.

**Note:** The applicant need not have been the primary operator.

Significant responsibilities include, but are not limited to:

- decisions to cull livestock
- selection of seed varieties and weed control programs
- determination of whether equipment should be repaired or replaced
- selection of input suppliers
- selection of feeding programs or strategies.

Applicants must thoroughly document participation in the business operation of a farm and verify that participation was not solely as a laborer. Documentation includes but is not limited to:

- copies of farm business operation related bills or statements with applicant's name
- copies of checks with applicant's signature for payment of farm business operation related goods or services
- written statements from other parties with knowledge of applicant's role and responsibilities in the business operation of a farm.

For an individual applicant to be an operator, the applicant must have materially and substantially participated and provided day-to-day labor and management of the farm for at least 3 years, such that if the individual did not provide these inputs, operation of the farm would have been seriously impaired.

For an entity applicant to be an operator, 1 or more members constituting a majority interest must have materially and substantially participated in the operation of the farm for at least 3 years. Material and substantial participation requires that the members provided a significant amount of management or management and labor necessary for day-to-day activities, such that if the members did not provide these inputs, operation of the farm would have been seriously impaired.

**132 Eligibility (Continued)****D FO Owner and Operator Past Farm Responsibility (Continued)**

**Example 1:** Jane Doe applies for an FO to purchase a hog farm in Illinois. She is currently practicing law in Seattle. She indicates on her application that she was raised on a family farm in Illinois, where it was her job to feed and tend to the hogs. It turns out the entire family moved to the city of Seattle when she was 12 years old. She is ineligible since she has not operated or participated in the business operations of a farm.

**Example 2:** Jane Smith applies for an FO to purchase a hog farm adjacent to the 1 currently owned by her mother. She recently graduated from veterinary school. In between college and veterinary school, she spent 4 years working on the family hog farm. Her father had died while she was in college and she assumed responsibility for the farm, and continued to oversee the day-to-day operation of the farm while she attended veterinary school. She is deemed to have complied with this eligibility requirement since she has had significant responsibility for the day-to-day business operations of a farm for more than 3 years.

**E Term Limits**

The applicant;

**[7 CFR 764.152(e)] And anyone who signs the promissory note must satisfy at least one of the following conditions:**

**[7 CFR 764.152(e)(1)] Meet the definition of a beginning farmer;**

**[7 CFR 764.152(e)(2)] Have not had a direct FO loan outstanding for more than a total of 10 years prior to the date the new FO loan is closed.**

**[7 CFR 764.152(e)(3)] Have never received a direct FO loan.**

**134 Joint Financing Arrangements****A General**

**[7 CFR 764.154(a)(3)] If the FO loan is part of a joint financing arrangement and the amount of the Agency's loan does not exceed 50 percent of the total amount financed, the Agency will use the Farm Ownership participation rate, available in each Agency office.**

FSA encourages using joint financing arrangements. In such arrangements, an applicant obtains financing from another lender, which can be a commercial lender, a State program, or \*--the seller of a farm. The applicant will use this financing along with FSA financing for any authorized FO purpose.--\*

See 1-FLP, Exhibit 17 for interest rates.

Other lender's loans may be guaranteed by FSA. See 2-FLP.

**B FSA Loan Made at Same Time as Other Lenders**

When an FO is made at the same time as a loan from another lender, that lender's lien will have priority over the FSA lien unless otherwise agreed. The lender's lien priority can cover payment of taxes, property insurance, reasonable maintenance to protect the security, and reasonable foreclosure cost including attorney's fees in addition to principal and interest.

**135 Rates, Terms, Payments, and Security****A Rates**

**[7 CFR 764.154(a)(1)] The interest rate is the Agency's Direct Farm Ownership rate, available in each Agency office.**

See 1-FLP, Exhibit 17 for interest rates.

**[7 CFR 764.154(a)(2)] The limited resource Farm Ownership interest rate is available to applicants who are unable to develop a feasible plan at regular interest rates.**

See subparagraph 261 C for more information on limited resource loans when the farm operating plan shows that installments at the higher rate, along with other debts, cannot be paid during the period of the plan.

**[7 CFR 764.154(a)(4)] The interest rate charged will be the lower of the rate in effect at the time of loan approval or loan closing.**

**B Terms**

**[7 CFR 764.154(b)] The Agency schedules repayment of an FO loan based on the applicant's ability to repay and the useful life of the security. In no event will the term be more than 40 years from the date of the note.**

The FO term may not exceed the useful life of the security or 40 years, whichever is less.

When setting the term, the authorized agency official must review:

- FBP or other similar plans of operation to establish repayment ability
- the appraisal to establish the useful life of the security.

The specific term of a loan is determined by the applicant's projected ability to repay the loan as shown by FBP or other farm plan developed according to 1-FLP, Part 8.

**135 Rates, Terms, Payments, and Security (Continued)****B Terms (Continued)**

The loan term must be the minimum period of time that the projected ability to repay will allow. Loan terms are considered in 5-year increments.

**Example:** If a 15-year term would not result in a feasible plan, then 20 years would be considered, then 25 years, and so on until the resulting installment will fit in a feasible plan.

Repayment terms that include balloon installments are prohibited.

**Note:** Balloon installments result when scheduled payments are insufficient to pay the loan without requiring a final installment that exceeds twice the amount of a regularly amortized installment.

**C Payment Frequency**

All notes are scheduled with annual payments. Assignments or FSA-2027 can be put in place to collect payments that correspond with the income stream of the applicant's operation.

The minimum scheduled annual payment for the first 5 years must be the interest accrued on the principal balance. The applicant must be informed that no reduction will be made in principal when an interest only payment is scheduled. FSA typically considers such payments when a farming operation is new and not fully developed, but will have a future income stream. One example of such an operation is establishing a new orchard.

**D Security**

**[7 CFR 764.155] An FO loan must be secured:**

**[7 CFR 764.155(a)] In accordance with §§ 764.103 through 764.106 (paragraphs 91 \*--through 94);--\***

**[7 CFR 764.155(b)] At a minimum, by the real estate being purchased or improved.**

**136 Subsequent Loans**

**A General**

A subsequent FO is a loan made to an applicant who is currently in debt for an FO.

A subsequent loan may be made for the same purpose, under the same conditions, and processed in the same manner as an initial loan.

A new real estate mortgage will not be necessary provided:

- a new mortgage is not required by State law
- that all the land which will serve as security for the subsequent loan is described on the present real estate mortgage
- the real estate mortgage has a future advance clause and a State supplement provides authority for using such a clause
- the required lien priority is obtained with the existing mortgage and future advance clause.

SED shall issue a State supplement about when to obtain a new mortgage for a subsequent loan.



174 Rates, Terms, and Repayment (Continued)

**D Repayment**

The farm operating plan used to project repayment ability must be completed according to 1-FLP, Part 8.

The OL repayment schedule may include equal, unequal, or balloon payments.

- The first payment is due when income is received or within 18 months.
- After the initial payment, payments are scheduled annually unless the loan is repaid in a single payment.
- The repayment term for OL is 1 to 7 years, as determined by the applicant's projected repayment ability.
- Annual installments must cover, at a minimum, the accrued interest.
- Annual installments may be collected by assignments and supplemental payments.
- If unequal or interest only installments are scheduled, the applicant must be able to show that there will sufficient resources available to pay the loan in full by the final maturity date.

**175 Security**

**A General**

**[7 CFR 764.255] An OL loan must be secured:**

**\*--(a) In accordance with §§ 764.103 through 764.106 (paragraphs 91 through 94).--\***

**(b) By a:**

**(1) First lien on all property or products acquired or produced with loan funds;**

**(2) Lien of equal or higher position of that held by the creditor being refinanced with loan funds.**

**176-190 (Reserved)**

**Section 3 Youth Loans****211 Youth Loan Application Process****A Application Requirements**

See paragraph 44 for complete youth loan application requirements.

**B Youth Loan Exceptions to Operating Loan Requirements**

The following requirements from 1-FLP, Part 8 do not apply to the Youth Loan program.

- Farm assessments are not required for youth loans.
- \*--All new youth loans are automatically classified as a "3".

**Note:** If a youth loan borrower reaches the age of majority and subsequently gets a direct OL and/or FO, all loans including any outstanding youth loans will be entered into FBP and classified based upon data collected.--\*

- FSA-2037 and FSA-2038 will not be required except in complex cases where information provided on FSA-2301 is inadequate.

**C Initial Meeting with Youth Loan Applicant**

The authorized agency official should offer a preliminary meeting with the youth to discuss:

- the Youth Loan program, including authorized use of funds and eligibility requirements
- whether the youth has appropriate supervision
- the proposed plan.

## 212 Uses and Limitations

### A Uses

**[7 CFR 764.301] Youth loan funds may only be used to finance a modest, income-producing, agriculture-related, educational project while participating in 4-H, FFA, or a similar organization.**

A youth loan provides an opportunity for a rural youth to acquire experience and education in agriculture-related skills. The approved project must be related to the business of agriculture and must not be a noneligible enterprise. See Exhibit 2. Each project must be part of an organized and supervised program of work and must produce sufficient income to repay the loan.

The applicant must use youth loan funds only to pay the expenses associated with the approved project.

**Note:** The youth must be participating in an established organization that supports agricultural projects, such as 4-H, FFA, or a similar organization. The organization provides the structure, the adult supervision, and the expertise to help the youth plan and complete the project.

### B Limitations

**[7 CFR 764.303(a)] The applicant must comply with the general limitations established at § 764.101 (a) through (g) (paragraph 74).**

Loan funds may not be used to:

- purchase real estate or make real estate improvements
- refinance debts
- pay family living expenses, except as they relate directly to the approved educational project
- finance a personal vehicle.

**Note:** The applicant may use loan funds to make only very minor repairs to real estate, for example to fix a window or repair a shed, when the repair is directly related to the approved project.

**232 Eligibility (Continued)****I Qualifying Losses**

The applicant:

**[7 CFR 764.352(h)] For production loss loans, must have a disaster yield that is at least 30 percent below the normal production yield of the crop, as determined by the Agency, that comprises a basic part of an applicant's total farming operation.**

See Exhibit 2 for the definition of basic part of an applicant's total farming operation.

Production losses are calculated according to subparagraph 234 C.

**Note:** If an applicant cannot plant the usual crop or plants the crop and it is destroyed as a result of the disaster and the applicant plants a substitute crop in its place, then the applicant is not eligible for a production loss on the original crop. However, if the substitute crop suffers a qualifying loss, a loan may be made for the loss on that crop.

The applicant:

**[7 CFR 764.352(i)] For physical loss loans, must have suffered disaster-related damage to chattel or real estate essential to the farming operation, or to household contents that must be repaired or replaced, to harvested or stored crops, or to perennial crops.**

**J Changes in Ownership Structure**

The applicant:

**[7 CFR 764.352(j)] Must meet all of the following requirements if the ownership structure of the family farm changes between the time of a qualifying loss and the time an EM loan is closed:**

- (1) The applicant, including all owners must meet all of the eligibility requirements;**
- (2) The individual applicant, or all owners of an entity applicant, must have had an ownership interest in the farming operation at the time of the disaster; and**
- (3) The amount of the loan will be based on the percentage of the former farming operation transferred to the applicant and in no event will the individual portions aggregated equal more than would have been authorized for the former farming operation.**

## 232 Eligibility (Continued)

**K Duplicative Federal Assistance**

The applicant:

**[7 CFR 764.352(k)] Must agree to repay any duplicative Federal assistance to the agency providing such assistance. An applicant receiving Federal assistance for a major disaster or emergency is liable to the United States to the extent that the assistance duplicates benefits available to the applicant for the same purpose from another source.**

If additional disaster benefits are expected from existing programs, but the amount is not known at loan approval, the applicant must assign the benefits to FSA.

Programs enacted after loan approval will not effect EM calculations and are not considered duplicative benefits. Therefore, assignments will not be taken on any programs enacted after loan approval.

\*--Programs enacted after loan approval will not effect EM calculations and are not considered duplicative benefits. In such cases, however, FSA may require an assignment to ensure loan repayment according to subparagraphs 93 B and C or any subsequent payment made to the applicant after the time of loan approval.--\*

## Part 10 Loan Decision

## 261 Reviewing and Evaluating Applications

## A Timeframe

**[7 CFR 764.53(c)] Within 60 calendar days after receiving a complete loan application, the Agency will complete the processing of the loan request and notify the applicant of the decision reached, and the reason for any disapproval.**

The authorized agency official must make the decision to approve or deny the loan so that the applicant can be notified in writing within 60 calendar days after the loan application is determined complete.

To ensure that a loan application is expeditiously reviewed, the State or County Office must enter a reason and, if necessary, an explanation into DLS when the loan decision has not been made within 45 calendar days after receiving a complete loan application.

SED, FLC, and DD will monitor the processing of all loan applications to ensure that loan applications are processed in a timely manner.

## B Eligibility

**[7 CFR 764.53(d)] If, based on the Agency's review of the application, it appears the applicant's credit needs could be met through the guaranteed loan program, the Agency will assist the applicant in securing guaranteed loan assistance under the market placement program in accordance with § 762.110(g) (2-FLP, Part 5, paragraph 72) of this chapter.**

\*--To evaluate the applicant's eligibility, the following should be considered during preparation of the FBP's Credit Presentation.--\*

- Does the applicant meet the general eligibility and specific eligibility requirements for the type of loan requested?
- Does the applicant meet the definition of beginning farmer or SDA to qualify for targeted funds?
- Are funds requested for authorized purposes?
- Will the requested loan, plus the principal balance on other FLP loans, be within the loan limits contained in 1-FLP?
- Is a plan in place or has a waiver been granted to meet applicant training needs?
- Is the applicant unable to obtain sufficient credit elsewhere?
- If the request is for EM, did the applicant have a qualifying loss?

## 261 Reviewing and Evaluating Applications (Continued)

### C Feasibility

\*--To evaluate the applicant's operating plan feasibility, the following should be considered during the preparation of the FBP Credit Presentation.--\*

- Does the farm operating plan show that the new loan, farm operating and family living expenses, and all other obligations will be repaid? The plan should first be prepared using regular rates and terms. If the plan shows repayment at regular rates, the regular rates will be used for the loan. However, if the plan does not show repayment at regular rates, limited resource rates should be substituted and the plan recalculated to see if repayment is possible.
- Are the operating and family living expenses, nonfarm income, and farm and other income included in the farm operating plan realistic?
- Is projected production realistic based on the applicant's or operation's history and the planned improvement practices?
- If non-FSA credit is planned, has documentation been obtained that the loan has been approved?
- Is the farm suitable for any planned specialized operations?
- Is the land, buildings and facilities, and water supply adequate for the planned operation?
- Is there reasonable assurance that any rented land which the applicant depends on will continue to be available?
- Is any off farm employment the applicant depends on likely to continue?

### D Security

The authorized agency official must ensure that the security requirements have been met and the total debt including loans being made against the security will not exceed the market value of the security.

A loan requiring real estate for adequate security may be approved subject to obtaining an appraisal in those cases where the following conditions are met.

- The available information demonstrates that the security requirements can be met when the appraisal is completed.
- FSA will obtain an acceptable appraisal before loan closing.



**261 Reviewing and Evaluating Applications (Continued)**

**E Environmental**

The applicant has complied with or has plans in place for the proposed operation, which cover all the environmental requirements of 1-EQ and RD Instruction 1940-G.

**F Loan Narrative**

The authorized agency official shall document each item considered under subparagraphs B through E to support the final loan decision. The documentation shall be added to the FBP's Credit Presentation to document the decision making process.

**Note:** If repayment ability is used as security according to subparagraph 236 B, documentation of the requirements of that section shall be included in the narrative.

## 262 Loan Approval

### A Assessment

The authorized agency official must confirm and document in the case file that the loan assessment is complete or updated, when required, and necessary supervision is planned.

### B Establishing Loan Approval Conditions

**[7 CFR 764.401(a)(2)] The Agency will place conditions upon loan approval it determines necessary to protect its interest and maximize the applicant's potential for success.**

The authorized agency official must specify on FSA-2313, or an attachment if necessary, any conditions that must be met including, but not limited to, the following:

- borrower training requirements as established in subparagraph 402 C
- all security requirements, including required lien position
- any agreements needed with prior lienholders
- supervised bank account according to 1-FLP, Part 4
- obtaining an appraisal that demonstrates that the security requirements can be met if loan was approved subject to obtaining an appraisal
- any actions required of the applicant before loan closing, such as:
  - insurance and indemnity requirements
  - assignments from sale proceeds or income
  - reduction of outstanding indebtedness to meet maximum loan limits.

\*--When a loan is approved for which a title search is necessary, check (✓) the following statement on FSA-2313:

“Loan funds will be made available to you within 15 business days of loan approval. However, you agree that in certain circumstances the 15 days may be exceeded when additional information, such as, a lien and/or title search, an appraisal, subordination, etc. is needed prior to loan closing.”

**Note:** FSA-2313 shall be either sent certified mail or hand delivered to the applicant. If hand delivered, FSA must obtain a signed statement from the applicant acknowledging receiving FSA-2313 on the specific date.--\*

## 262 Loan Approval (Continued)

## C Approval

**[7 CFR 764.401(a)(1)] The Agency will approve a loan only if it determines that:**

**[7 CFR 764.401(a)(1)(i)] The applicant's farm operating plan reflects a feasible plan, which includes repayment of the proposed loan and demonstrates that all other credit needs can be met;**

When FSA determines that an FO or OL applicant's financial condition justifies a reduced annual interest rate, FSA charges the applicant the limited resource rate.

FSA uses this reduced interest rate only to assist applicants who otherwise meet all requirements for a FSA direct loan, but whose farm operating plan indicates that a feasible plan cannot be achieved at the regular interest rate.

**Note:** The authorized agency official shall not approve loans at the limited resource rate when the regular interest rate is less than or equal to the limited resource rate.

**[7 CFR 764.401(a)(1)(ii)] The proposed use of loan funds is authorized for the type of loan requested;**

**[7 CFR 764.401(a)(1)(iii)] The applicant has been determined eligible for the type of loan requested;**

**[7 CFR 764.401(a)(1)(iv)] All security requirements for the type of loan requested have been, or will be met before the loan is closed;**

**[7 CFR 764.401(a)(1)(v)] The applicant's total indebtedness to the Agency, including the proposed loan, will not exceed the maximum limits established in § 761.8 (1-FLP, paragraph 29) of this chapter;**

**Note:** When the indebtedness of the applicant, or anyone who will sign the note, exceeds the maximum loan limits established in 1-FLP, paragraph 29, at the time of loan approval, the applicant's operating plan must reflect that funds will be available to reduce the indebtedness before loan closing.

**[7 CFR 764.401(a)(1)(vi)] There have been no significant changes in the farm operating plan or the applicant's financial condition since the time the Agency received a complete application; and**

**262 Loan Approval (Continued)****C Approval (Continued)**

**[7 CFR 764.401(a)(1)(vii)] All other pertinent requirements have been, or will be met before the loan is closed.**

The authorized agency official must determine that the appropriate environmental reviews and determinations have been completed and the loan will not violate any portion of 1-EQ, RD Instruction 1940-G, State Environmental requirements, and any other relevant requirements.

**Note:** An applicant will be advised that compliance with all applicable local, State, and Federal special laws and regulations will be required.

The authorized agency official will approve the loan by executing the electronic signature command in the credit presentation section of FBP. FSA-2313 will be provided to the applicant as notification of loan approval and conditions and must be signed and returned by \*-the applicant within 15 workdays. If FSA-2313 is not returned within 15 workdays, the application will be withdrawn.

**Note:** See 4-FLP, Part 9 for approving assumptions.--\*

## 262 Loan Approval (Continued)

### D Actions After Loan Approval

Once the loan application is approved, the authorized agency official will:

- input data into DLS
- notify applicant of approval and any conditions using FSA-2313

**\*--Note:** FSA-2313 shall be either sent certified mail or hand delivered to the applicant. If hand delivered, FSA must obtain a signed statement from the applicant acknowledging receiving FSA-2313 on the specific date.--\*

- prepare for loan closing.

**[7 CFR 764.402(e)(1)] Loan funds will be made available to the applicant within 15 days of loan approval, subject to the availability of funding.**

Funds must be provided to the applicant within 15 workdays of when they become available unless the applicant agrees to a longer period.

**\*--Loan applications will be processed through approval subject to the availability of funds. FSA-2313 will be executed at the time of approval.--\***

### E Failure to Meet or Accept Loan Approval Conditions

If an applicant informs the authorized agency official that the loan approval conditions established under subparagraph B are unacceptable or cannot be met:

- the authorized agency official will meet with the applicant to discuss the condition or conditions which are unacceptable or cannot be met
- explore alternatives which are different from the condition in question but would result in compliance with the program requirements the condition addresses
- the application will be withdrawn, and the applicant notified with appropriate review rights for nonappealable decisions according to 1-APP, if an agreement cannot be reached and the applicant cannot or will not meet the conditions in question.

**Note:** The loan obligation shall not be cancelled until the withdrawal decision is administratively final, as defined in 1-APP.

**263 Funding Approved Loans****A Lack of Program Funds**

**[7 CFR 764.53(e)] In the absence of funds for a direct loan, the Agency will keep an approved loan application on file until funding is available. At least annually, the Agency will contact the applicant to determine if the Agency should retain the application or if the applicant wants the application withdrawn.**

The authorized agency official will notify the applicant in writing that funds are not currently available and place the approved loan on a waiting list based on the date the loan application was received.

The authorized agency official will contact the approved loan applicant at least once a year to determine whether the applicant is still interested in receiving a FSA loan. If the applicant wants the loan application to remain active, the applicant must provide FSA with a written request within 30 calendar days and must also provide updated financial information. If the applicant does not want the loan application to remain active, it will be withdrawn.

**B Preferences When There is Limited Funding**

**[7 CFR 764.54(a)] When there is a shortage of loan funds, approved applications will be funded in the order of the date the application was received, whether or not complete.**

**[7 CFR 764.54(b)] If two or more applications were received on the same date, the Agency will give preference to:**

**[7 CFR 764.54(b)(1)] First, an applicant who is a veteran of any war;**

See Exhibit 2 for the definition of veteran.

**Note:** Period of war means that it was officially declared a war, with a defined beginning date, by Congress and was officially ended, with a prescribed date, by either Presidential proclamation or concurrent resolution of the Congress.

**263 Funding Approved Loans (Continued)****B Preferences When There is Limited Funding (Continued)**

**[7 CFR 764.54(b)(2)] Second, an applicant who is not a veteran, but:**

- (i) Has a dependent family;**
- (ii) Is able to make a downpayment; or**
- (iii) Owns livestock and farm implements necessary to farm successfully.**

**[7 CFR 764.54(b)(3)] Third, to other eligible applicants.**

FSA uses the secondary priorities only when funding is limited and more than 1 loan application was received on the same date.

**C When Loan Funds Become Available**

**[7 CFR 764.53(f)] If funding becomes available, the Agency will resume processing of approved loans in accordance with this part.**

When funds become available, the applicant will be notified immediately by letter \*--(Exhibit 24), sent certified mail with return receipt requested or hand delivered with signed receipt. The letter will advise the applicant to contact the FSA Office within 15 workdays from the date the certified letter was received. The letter will also contain a statement that if the applicant does not contact the authorized agency official within 15 workdays from the date the letter was received, the applicant's application will be withdrawn.--\*

**264 Changes After Loan Approval****A Changes in Loan Amount**

If it becomes necessary to increase or decrease the amount of the loan before loan closing, the authorized agency official requests that all distributed loan forms be returned to FSA and reprocessed. If the change is minor and replacement forms can readily be completed and submitted, a memorandum justifying the change is attached to the revised forms and sent to the State Office.

**B Cancellation of Funds**

The authorized agency official cancels obligations, advances, checks, and electronic fund disbursements according to 3-FI, paragraph 90 and other appropriate FI directives.

When necessary, the authorized agency official prepares and executes FSA-2026 reflecting the revised total of the loan and the revised repayment schedule.

**C Cancellation of Loan**

When a loan is canceled:

- the authorized agency official notifies the State Office and FSC, FLOO of loan cancellation by using FSA-2072
- the authorized agency official notifies the designated closing agent that the loan has been canceled

**Note:** If the loan, based upon updated information after initial approval, is rejected because of problems with eligibility or feasibility, see paragraph 261.

- at the request of the applicant, the application will be withdrawn. See subparagraph 45 D for more information.



## 281 Overview (Continued)

## C Loan Document Signatures (Continued)

Required signatures:

- in the case of an entity applicant will include:
  - each individual required to obligate the entity
  - each individual member of the entity
  - cosigner if required
  - other signatures as required in State supplements
- in the case of a partnership or joint operation will include:
  - both the partner or joint operator authorized to sign for the entity
  - all partners in the partnership or joint operators in the joint operation, as individuals

**\*--Note:** Husband and wife informal joint operations will only sign FSA-2026 as individuals.--\*
- in the case of a cooperative or corporation will include:
  - both the individual authorized to sign for the entity
  - all members or stockholders, as individuals
- \*--in the case of a trust, SED will, after consultation with the Regional OGC, issue a State supplement for trusts outlining:--\*
  - security requirements when lending to trusts
  - signature requirements on FSA-2026's and security instruments
  - unique characteristics of State trust statutes, such as trustee authority to mortgage trust property for the planned farming purposes, signature requirements for third party trustees, alternate trustees, beneficiaries of a revocable trust, and beneficiaries with only a future interest

**[7 CFR 764.402(a)(3)] Despite minority status, a youth executing a promissory note for a Youth Loan will incur full personal liability for the debt.**

- in the case of a youth applicant will include:
  - youth applicant individually
  - cosigner, if required.

**Note:** A cosigner will be required only if it is determined that the applicant cannot possibly meet the repayment or security requirements for the loan request. When a plan is feasible using realistic figures, a cosigner will not be required.

## 281 Overview (Continued)

**C Loan Document Signatures (Continued)**

**[7 CFR 764.402(a)(4)] A cosigner will be required to sign the promissory note if they assist the applicant in meeting the repayment requirements for the loan requested.**

**\*--Note:** A cosigner is required to complete FSA-2001, Part C of the applicant's current application to provide necessary information, including self certifications.--\*

**Exception:** In the case of a married couple, when 1 spouse of the couple applies individually, if the spouse that is not party to the application has off farm income that:

- pays only family living expenses and does not contribute to the farm operation, then neither the off farm income nor the family living expenses will be included in FBP and the spouse will not be required to sign FSA-2026
- is needed to contribute to a feasible farm operating plan, then both the off farm income and family living expenses will be included in FBP and the spouse will be required to sign FSA-2026 as a cosigner and would therefore, be required to be eligible under certain requirements according to paragraphs 62 through 72.

**Example 1:** Tom has applied for a term operating loan. Mary's salary for her job as a teacher is \$35,000. FBP indicates that owner withdrawals would total \$35,000 and would all be paid from Mary's salary. After removing Mary's income and the family living from FBP, the ending cash on hand remains positive. In this case, Mary will not be required to sign FSA-2026 and will not be considered a cosigner.

**Example 2:** Bruce has applied for a term operating loan. Camille's salary as a nurse at the local hospital is \$60,000. FBP indicates that family living would total \$40,000. The ending cash on hand is -\$10,000 if Camille's salary is not included. In this case, it is clear that Camille's income must be included to show positive ending cash on hand. Camille would be required to sign FSA-2026 as a cosigner and would therefore, be required to be eligible under certain requirements under paragraphs 62 through 72.

## 281 Overview (Continued)

**C Loan Document Signatures (Continued)**

**[7 CFR 764.402(a)(5)] All signatures needed for the Agency to acquire the required security interests will be obtained according to State law.**

Signature requirements on the mortgage or deed of trust will be sufficient to obtain the required lien, and to make the property being offered as security available to satisfy the debt in the event of default.

SED shall issue a State supplement to provide requirements according to State real property law. SED will obtain the advice of the Regional OGC before issuing the State supplement.

**D Waiver of Title Clearance and Legal Services**

**[7 CFR 764.402(d)(1)] The Agency will close a real estate loan only when it determines that the Agency requirements for the loan have been satisfied and the closing agent can issue a policy of title insurance or final title opinion as of the date of closing. The title insurance or final title opinion requirement may be waived:**

**(i) For loans of \$10,000 or less;**

FSA may accept the best lien obtainable without title clearance or legal service provided the authorized agency official believes from a search of the county records that the applicant can give a mortgage on the property. This exception to title clearance will not apply when:

- the loan is made simultaneously with that of another lender
- land is being purchased
- this provision conflicts with program regulations of any other FSA loan being made simultaneously with the loan.

**(ii) As provided in § 764.355 (paragraph 237) for EM loans;****(iii) When the real estate is considered additional security by the Agency; or****(iv) When the real estate is a non-essential asset.****E Additional Security and Nonessential Assets Requirements**

FSA does not require a search of public records to verify the available lien position or insurance for additional security or nonessential assets.

**282 Using a Closing Agent****A Applicant's Selection of Closing Agent**

If a closing agent is required, the applicant will select the closing agent, which may be a title insurance company or an attorney. The applicant will select the closing agent by using FSA-2340.

The closing agent must be approved according to Part 12, by using FSA-2341 or FSA-2342.

The authorized agency official may provide the applicant with the names of agents who can be contacted to conduct the closing. Any such list must include the names of all FSA-approved agents in the relevant jurisdiction. FSA employees will not recommend using any particular closing agent or title insurance company. In addition, the authorized agency official must inform the applicant that they may not select someone with whom the applicant has a business or family relationship.

**B Closing Agent Responsibilities**

FSA relies on a closing agent to prepare, complete, or approve documents, including deeds, necessary for title clearance and closing of a loan secured by real estate. The authorized agency official must be assured that the applicant has, or will have, clear title to any real estate taken as security. FSA also must have the lien position necessary to adequately secure the loan. The closing agent must provide FSA with the title insurance policy or title opinion that provides the lien priority required by FSA.

**Section 2 Preparing for and Completing Loan Closing for Real Estate**

**301 Title Clearance Requirements**

**A Use of Closing Agent or FSA**

Title clearance will be obtained when required by FSA.

See:

- paragraphs 302 through 304 when a closing agent is being used
- paragraph 305 if FSA will close the loan.

**302 Preliminary Title Opinion/Title Commitment****A Requesting Preliminary Title Opinion**

The authorized agency official will send either:

- \*--FSA-2341 to the closing attorney
- FSA-2342 to the closing agent.

FSA-2341 or FSA-2342 will be sent along with the following documents and information:--\*

- real estate contract
- legal description of the property
- FSA-2343
- FSA-2344
- \*--any other relevant forms that the closing agent must complete for the preliminary title opinion.--\*

**B Reviewing Preliminary Title Opinion**

The closing agent must provide the authorized agency official the preliminary title opinion on FSA-2344 or provide the preliminary insurance binder on the agent's standard form. After receiving the preliminary title opinion or preliminary title insurance binder, the authorized agency official will:

- check the legal description to ensure that it covers all property taken as security
- review all exceptions to the title to determine which must be modified, eliminated, or waived. In doing this, the authorized agency official will work with the title company, the applicant, and, in the event of a land purchase, the seller to fully understand and resolve any exceptions.

SED shall issue a State supplement about securing loans with:

- land held under a purchase contract
- fixtures.

**302 Preliminary Title Opinion/Title Commitment (Continued)****B Reviewing Preliminary Title Opinion (Continued)**

If the loan cannot be closed because of failure to obtain correct lien position, the applicant will be notified according to 1-APP of their review rights. The notification will include:

- clear, specific reasons the loan cannot be closed
- citations of requirements from CFR and handbook sections that are not met by the applicant
- review rights according to 1-APP.

**303 Requesting Loan Closing****A Loan Closing**

If the preliminary title opinion reflects that FSA can obtain the required lien, the authorized agency official shall:

- order the funds for closing

**Note:** EFT is to be used, unless circumstances warrant an exception.

- send a closing package to the closing agent with the following forms and documents, as needed:
  - FSA-2026
  - FSA-2029
  - \* \* \*
  - \* \* \* assignment of income documents, as appropriate
  - FSA-2350
  - FSA-2351
  - FSA-2352
  - HUD 1
  - UCC1, if applicable
  - supervised bank account documents
  - loan check, if funds not provided by EFT.

If exceptions or newly recorded items arise between the date of the preliminary title opinion and date of closing, the transaction will not be closed until these entries can be cleared or approved by FSA. The closing agent will advise the authorized agency official of the nature of such intervening instruments and the effect on obtaining a valid mortgage of the priority required or the title insurance policy to be issued.

**304 Closing Agent Responsibilities**

**A Scheduling Loan Closing**

The closing agent should schedule the loan closing within 3 workdays of receiving notification from FSA that the loan should be closed. FO's are considered closed when the mortgage is filed for record.

**B Execution of Documents**

The closing agent must ensure that all closing forms are properly executed and must file and record all documents as required by law.

SED shall issue a State supplement, subject to the Regional OGC's approval, providing guidance in correcting errors in recorded security instruments.

**C Documents**

The authorized agency official must:

- document that the loan file contains satisfactory evidence that all applicable requirements have been met or will be met before loan closing
- confirm and document that the applicant has obtained or will obtain any required insurance before loan closing.

**D Disbursing Loan Funds**

Loan funds will be disbursed according to paragraph 341.

**E Taxes and Assessments**

The closing agent must ensure that all taxes and assessments are paid.



### Section 3 Preparing for and Completing Loan Closing for Chattels

#### 321 Overview

##### A General

A lien search is required on all chattels taken to adequately secure the loan. A lien search is not required on:

- additional security
- nonessential assets
- youth loans, unless the applicant has reached the age of majority, there is evidence that the applicant obtained other credit, or they have assets which may be subject to a lien.

See:

- paragraphs 322 through 324 for obtaining lien searches and filing liens on adequate security
- paragraph 324 for filing a lien on additional security or nonessential assets.

##### B Performing Lien Searches and Closings

Lien searches and closings may be completed by the authorized agency official or approved closing agent as required by State law.

##### C Security Pledged by Multiple Owners

When security is held by more than 1 owner who wishes to pledge the full value of the property as security, the authorized agency official must ensure that all owners execute FSA-2028 pledging the security.

In cases where nonapplicants will pledge security either jointly with an applicant or \*--separately, the authorized agency official will obtain a signed CCC-10 and FSA-2028, authorizing FSA to file the required instrument to perfect FSA's lien.

**Note:** In cases where the nonapplicant will not pledge their interest in jointly owned property, the authorized agency official will obtain a completed FSA-2318 according to subparagraph 323 A.--\*

\* \* \*

**322 Preparing for Loan Closing****A Conducting and Reviewing Lien Search**

The authorized agency official or closing agent will file UCC1 and complete a lien search to show that FSA has the required lien position on:

- all chattel property taken to adequately secure a loan
- property to be acquired when the item can be specifically identified, unless the item is to be purchased from a manufacturer or dealer.

The following records shall be searched:

- Federal and State tax liens
- judgments
- UCC1 records.

Use FSA-2360 to complete a report of the results of the lien search.

**B Establish Loan Closing Conditions**

The authorized agency official or closing agent may have to:

- terminate satisfied liens
- satisfy judgments
- terminate liens to be paid off with loan funds
- subordinate other lender's liens by using FSA-2361 or other acceptable lender's forms.

**323 Perfecting Liens****A Perfecting a Lien on an Undivided Interest**

An applicant obtaining a loan to finance an undivided interest in security or to refinance debts on an undivided interest in such property must secure the loan with a lien on the undivided interest. All individuals having an undivided interest in the security shall execute FSA-2318 unless a written agreement to the same effect is signed.

**B Perfecting a Lien on Income from Products or Program Payments**

The authorized agency official shall obtain assignments, consents, and security interests relating to income from products and program payments whenever possible to protect FSA's interest.

The following FSA forms are used for taking assignments:

- FSA-2041 to obtain assignment of proceeds from the sale of products when FSA does not have perfected lien under UCC
- FSA-2042 to obtain consent to payment of proceeds from the sale of products when FSA has a perfected lien on the products
- FSA-2043 to obtain assignment of proceeds from the sale of dairy products and release of security interest
- CCC-36 and CCC-37 to assign incentive and other agricultural program payments.

**C Perfecting a Lien on Milkbase and Grazing Permits**

SED shall issue a State supplement about perfecting a security interest when milkbase or grazing permits are financed or taken as security.

**D Perfecting a Lien on Stock in Cooperative Associations**

FSA may take a security interest, in the form of an assignment pledge or other instrument, in stock or other evidence of association membership if it has value. FSA also may take a security interest in dividends to be paid on stock, memberships, or patronage or in undivided profits and other retainages.

SED shall issue a State supplement about perfecting liens on stock in cooperative associations.

**323 Perfecting Liens (Continued)**

**E Perfecting a Lien on Motor Vehicles**

SED shall issue a State supplement about perfecting liens on motor vehicles.

**F Perfecting a Lien on Fixtures and Equipment**

SED shall issue a State supplement about perfecting liens on equipment or fixtures  
\*--purchased, refinanced, or taken as security with loan funds for real estate purposes,--\*  
whenever such property is not included in the real estate lien.

**Section 4 Actions After Loan Closing****341 Disbursing Funds****A When and How Loan Funds are Disbursed**

**[7 CFR 764.402(e)(3)] The Agency or closing agent will be responsible for disbursing loan funds. The electronic funds transfer process, followed by Treasury checks, are the Agency's preferred methods of loan funds disbursement. The Agency will use these processes on behalf of borrowers to disburse loan proceeds directly to creditors being refinanced with loan funds or to sellers of chattel property that is being acquired with loan funds. A supervised bank account will be used according to Subpart B of part 761 of this chapter (1-FLP, Part 4) when these processes are not practicable.**

The authorized agency official or closing agent may disburse loan funds in a lump sum or in multiple disbursements.

The authorized agency official or closing agent must not disburse loan funds before filing \*--and recording the security instruments for chattel secured loans. The authorized agency official or closing agent may disburse loan funds for real estate secured loans at loan closing and subsequently record the mortgage or deed of trust. When necessary, loan funds may be placed in escrow before the instruments are recorded and disbursed. The closing agent--\* does not keep development funds in escrow after loan closing, unless approved by the authorized agency official. Loan funds for payment of a lien may be disbursed only upon the recording of a discharge, satisfaction, or releasing prior lien interests or assignment where necessary to protect FSA's interests.

**B Handling Loan Funds**

If loan funds are received and the loan cannot be closed within 20 workdays from the date the funds were received, the authorized agency official will return or cancel the funds according to 3-FI. The authorized agency official will document the new closing date to which the applicant has agreed in the running record.

**342 Review Closing Documents**

**A General**

The authorized agency official must review the closing documents to ensure accuracy and completeness, and if necessary, to take corrective action.

**Note:** This does not relieve the closing agent from their legal responsibilities.

**B DLS**

Once the loan is closed, the authorized agency official will enter the final information about the loanmaking process into DLS.

See 1-FLP for general information on DLS.

**C Loan Classification**

The authorized agency official must classify a new loan within 10 calendar days of loan closing.

See 1-FLP, Part 8 for instructions on loan classification.

**343 Distribution of Loan Documents after Closing****A Closing Agent Responsibilities for Documents**

Within 1 day after loan closing, the closing agent must return completed and executed copies of the loan closing instructions, the executed original FSA-2026, and all other documents required for loan closing, except the recorded instruments, to the authorized agency official. If the recorded instruments are customarily returned to the closing agent after recording, those instruments must be forwarded to the authorized agency official immediately.

**[7 CFR 764.402(d)(2)] The title insurance or final title opinion must show title vested as required by the Agency, the lien of the Agency’s security instrument in the priority required by the Agency, and title to the security property, subject only to those exceptions approved in writing by the Agency.**

The final title opinion or title insurance policy will be provided to the authorized agency official as soon as possible after loan closing. Issuing the final title opinion or title insurance should not be held up pending the return of recorded instruments. If the final title opinion does not show the book and page of recording of the FSA security instrument, the words “and is recorded” on FSA-2352 may be deleted and the blank space completed to show the filing office and the filing instrument number, if available. The closing agent will attach the available documents, including any that the authorized agency official has furnished to the closing agent that were not previously returned, to the final title opinion.

**343 Distribution of Loan Documents after Closing (Continued)****B FSA Responsibilities for Documents**

The authorized agency official should review the forms and closing actions and take corrective action when necessary. Closing documents will be handled according to the following.

- Real estate mortgage or deed of trust (and other recorded instruments) when the original recorded instrument is:
  - returned to the County Office, the original shall be filed in the safe, a copy placed in the applicant's loan file, and a copy given to the applicant
  - retained by the recorder, file a conformed copy in safe, place a copy in the applicants loan file, give a conformed copy to the applicant, and provide copies to interested third parties as needed.
- Water stock certificates or similar security that requires possession by FSA to perfect the security interest will be retained in the safe.
- Abstracts of title:
  - shall be returned to the applicant, except when obtained from a third party with the understanding it will be returned to the third party

**Note:** Store abstracts in safe until such time they are returned.

  - a memorandum receipt shall be obtained when abstracts are delivered to the third party.
- Preliminary and final title opinions shall be reviewed and maintained in the loan file.
- For other loan documents:
  - retain essential documents \* \* \* in the safe and place a copy in the applicant's loan file

**Note:** See 25-AS, subparagraph 82 E for a list of essential documents.

  - place UCC1's, UCC search's, and any other lien documents in FSA-2008
  - place all other loan documents in the applicants loan file.

See the State supplement for specific guidance. See 25-AS for instructions on assembling and maintaining the loan file.

**344–360 (Reserved)**



**Part 12 Approving Closing Agents and Title Insurance Companies**

**361 Approving Closing Agents**

**A FSA Approval of the Closing Agent**

**[7 CFR 764.402(d)(3)] The Agency must approve agents who will close FLP loans. Closing agents must meet all of the following requirements to the Agency's satisfaction:**

\*--The approval official has the authority to approve the closing agent, which may be either an attorney or title insurance agent selected by the applicant. If a loan must be approved at a higher approval authority level, the initiating office may still approve the closing agent.--\*

See subparagraphs B through I for requirements for a closing agent.

**B Licensing Requirements**

A closing agent must:

**[7 CFR 764.402(d)(3)(i)] Be licensed in the state where the loan will be closed;**

An attorney must be duly licensed to practice law in the State in which the real estate security is located.

A title insurance company must be licensed to do business in the State, if a license is required.

**C Not Debarred or Suspended**

A closing agent must:

**[7 CFR 764.402(d)(3)(ii)] Not be debarred or suspended from participating in any Federal programs;**

\*--No attorney, title insurance company, or title company closing agent, currently debarred or--\* suspended from participating in Federal programs may participate in any aspect of FSA loan closing and title clearance process. The "List of Parties Excluded from Federal Procurement and Nonprocurement Programs" is a monthly listing of all suspended and debarred individuals and is available on the Internet at <http://epls.arnet.gov>.

**361 Approving Closing Agents (Continued)****D Liability Insurance**

A closing agent must:

**[7 CFR 764.402(d)(3)(iii)] Maintain liability insurance;**

All closing agents must carry liability insurance that protects FSA against damage, loss, fraud, theft, or injury as a result of negligence by the closing agent, approved attorney, or title company when title clearance is done by means of a policy of title insurance.

If the closing agent is a title company, FSA will require a closing protection letter issued by an approved title insurance company to cover the closing agent. A closing protection letter is often an American Land Title Association form closing protection letter. Depending upon the area, closing protection letters may also be known as “Insured Closing Letters,” “Indemnification Agreements,” “Insured Closing Service Agreements,” or “Statements of Settlement Service Responsibilities.” This protection letter must include a certification that the company has the ability to cover losses. A title company can submit a list of attorneys in their firm to FSA and these attorneys will be approved if covered by the company’s closing protection letters.

An attorney who will be providing title clearance where the certificate of title will be an attorney’s opinion must certify to professional liability insurance coverage on FSA-2341. The minimum amount of coverage required for the attorney is \$250,000 per occurrence. The insurance coverage may include a deductible, but this may not be more than \$5,000.

**E Fidelity Bond**

The closing agent must:

**[7 CFR 764.402(d)(3)(iv)] Have a fidelity bond that covers all employees with access to loan funds;**

FSA-2341 and FSA-2342 provide certification that the closing agent meets the fidelity bond requirement.

**\*--Note:** When covered by a protection letter, closing agents will not be required to obtain liability insurance or a fidelity bond.--\*

**F Current Knowledge of State Requirements**

The closing agent must:

**[7 CFR 764.402(d)(3)(v)] Have current knowledge of the requirements of State law in connection with the loan closing and title clearance;**

Closing agents are responsible for having current knowledge of the requirements of State law in connection with loan closing and title clearance and should advise FSA of any changes in State law that necessitate changes in FSA’s State mortgage forms and State supplements.

**361 Approving Closing Agents (Continued)****G Conflict of Interest**

The closing agent must:

**[7 CFR 764.402(d)(3)(vi)] Not represent both the buyer and seller in the transaction;**

**[7 CFR 764.402(d)(3)(vii)] Not be related as a family member or business associate with the applicant; and**

A closing agent who has, or whose spouse, child, or business associate, a financial interest in the real estate that will secure the FSA debt shall not be involved in the title clearance or loan closing process.

Financial interest includes having an equity, creditor, or debtor interest in any corporation, trust, or partnership with a financial interest in the real estate that will secure the FSA debt.

**H Prompt Services**

The closing agent must:

**[7 CFR 764.402(d)(3)(viii)] Act promptly to provide required services.**

A closing agent's delay in providing services without justification may be a basis for not approving the closing agent in future cases.

**I Declining the Closing Agent**

If the authorized agency official cannot approve the closing agent, the authorized agency official, within 5 workdays from receiving FSA-2341 or FSA-2342, will send the agent a letter explaining the reasons for disapproval. FSA does not provide appeal rights to the agent.

\* \* \* The authorized agency official will send a copy of the letter notifying the agent of the agent's disapproval to the applicant, along with a letter asking the applicant to identify a different closing agent. The applicant may identify the same agent if that agent can meet the requirements that they had previously not met.

**362 Approval of Title Insurance Companies****A Approval Conditions**

\*--The approval official will approve any title insurance company that issues policies of title--\* insurance in the State where the security property is located if all of the following conditions are met.

- The form of the lender's policies of title insurance, including required endorsements to be used in closing FSA loans, are acceptable to FSA and contain only standard types of \*--exceptions and exclusions approved in advance by FSA with the advice of the Regional OGC.--\*
- The title insurance company is licensed to do business in the State, if a license is required.
- The title insurance company is regulated by a State insurance commission or similar regulator or, if not, the title insurance company will submit copies of audited financial statements or other approved financial statements satisfactory to FSA that show that the company has the financial ability to cover losses both:
  - arising out of its activities as a title insurance company
  - under any closing protection letters issued by the title insurance company
  - \*--caused by fraud, dishonesty, or failure to comply with FSA closing instructions.

**Note:** If the title insurance company is not regulated by the State, the approval process will be repeated at least every 5 years, or more often if adverse information becomes available.--\*

- The company has not delayed in providing services without justification in prior loan closings with FSA.

If the title insurance company is not approved, it will be notified in writing of the specific reasons.

**363-400 (Reserved)**

## 402 Assessing an Individual's Need for Training (Continued)

**B Determining Whether to Waive Training Requirements**

**[7 CFR 764.453(a)] The applicant must request the waiver in writing.**

\*--Use FSA-2370 to request a waiver.--\*

**[7 CFR 764.453(b)] The Agency will grant a waiver for training in production, financial management, or both, under the following conditions:**

**(1) The applicant submits evidence of successful completion of a course similar to a course approved under section § 764.457 (paragraph 422) and the Agency determines that additional training is not needed; or**

**(2) The applicant submits evidence, which demonstrates to the Agency's satisfaction the applicant's experience and training necessary for a successful and efficient operation.**

After the applicant has been determined eligible, and before loan closing, the authorized agency official will determine whether to waive training.

If an applicant is applying for additional FSA assistance or benefits, such as a subsequent loan, the authorized agency official must reassess whether to waive a borrower's training requirements even if FSA waived training for the applicant's initial loan.

The authorized agency official will:

- determine whether to waive financial management training based on the applicant's:
  - \*--FSA-2002 and FSA-2302--\*
  - practical experience
  - demonstrated ability to keep records
  - education and training
- consider the complexity of the applicant's operation
- \*--determine whether to waive the production training requirement based on a review of FSA-2003 and FSA-2302.--\*

If the applicant does not have a 3-year production history, the authorized agency official will consider any similar practical experience the applicant might have.

## 402 Assessing an Individual's Need for Training (Continued)

**B Determining Whether to Waive Training Requirements (Continued)**

**[7 CFR 764.453(c)] If the production and financial functions of the operation are shared among individual entity members, the Agency will consider the collective knowledge and skills of the individuals when determining whether to waive training requirements.**

**[7 CFR 764.452(f)] The Agency cannot reject a request for a direct loan based solely on an applicant's need for training.**

However, as described in paragraph 69, an applicant must demonstrate managerial ability through \* \* \* education, training, or experience to be eligible to receive a direct loan.

**C Notifying a Applicant of the Training Decision**

**[7 CFR 764.452(g)] The Agency will provide written notification of required training or waiver of training.**

\*--The authorized agency official will provide the following information on FSA-2313 as part of additional requirements and comments.

**Note:** FSA-2313 shall be either sent certified mail or hand delivered to the applicant. If hand delivered, FSA must obtain a signed statement from the applicant acknowledging receiving FSA-2313 on the specific date.

If the authorized agency official decides to require training, this notification will include an attachment including the following:--\*

- the names of approved vendors in the applicant's area
- the specific courses required.

**[7 CFR 764.452(e)] Even if a waiver is granted, the borrower must complete borrower training as a condition for future loans if and when Agency supervision provided in 7 CFR 761 subpart C (1-FLP, Part 8) reflects that such training is needed.**

**D Production Training Requirements**

**[7 CFR 764.452(b)] When the Agency determines that production training is required, the applicant must agree to complete course work covering production management in each crop or livestock enterprise the Agency determines necessary.**

FSA will require an applicant to complete production management training only in crop or livestock enterprises that are relevant to the applicant's operation.

\*--Items to be included in the training are those production management requirements found in subparagraph 422 C.--\*

402 Assessing an Individual's Need for Training (Continued)

**E Financial Management Training Requirements**

**[7 CFR 764.452(c)] When the Agency determines that financial management training is required, the applicant must agree to complete course work covering all aspects of farm accounting and integrating accounting elements into a financial management system.**

Items to be included in the training are those financial management requirements found in  
\*--subparagraph 422 C.--\*





## Reports, Forms, Abbreviations, and Redelegations of Authority

### Reports

None.

### Forms

This table lists all forms referenced in this handbook.

Number	Title	Display Reference	Reference
AD-1026	Appendix to Form for AD-1026 Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification		42
CCC-10	Representations for Commodity Credit Corporation or Farm Service Agency Loans and Authorization to File a Financing Statement and Related Documents		91, 321
CCC-36	Assignment of Payment		323
CCC-37	Joint Payment Authorization		323
CCC-452	NAP Production and Yield Report		234
CCC-452 Manual	NAP Actual Production History and Approved Yield Record		234
DS-1350	Certification of Report of Birth		Ex. 9
FS-240	Consular Report of Birth		Ex. 9
FS-545	Certificate of Birth		Ex. 9
FSA-502A	Farm Operating Plan for Payment Eligibility Review for an Individual		42
FSA-502B	Farm Operating Plan for Payment Eligibility Review for a Joint Venture or General Partnership		42
FSA-502C	Farm Operating Plan for Payment Eligibility Review for Corporations, Limited Partnerships or Other Similar Entities		42
FSA-502D	Farm Operating Plan for Payment Eligibility Review for an Estate or Trust		42
FSA-502EZ	Farm Operating Plan for Payment Eligibility Review for an Individual		42
FSA-570	Waiver of Eligibility for Emergency Assistance		113
FSA-2001	Request for Direct Loan Assistance		41, 42, 45, 62, 66, 281
FSA-2002	Three-Year Financial History		42, 402
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FSA-2005	Creditor List		42
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FSA-2007	Statement Required by the Privacy Act for Non-Applicants		42

## Reports, Forms, Abbreviations, and Redelegations of Authority (Continued)

## Forms (Continued)

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FSA-2037	Farm Business Plan Worksheet (Balance Sheet)		42, 211
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FSA-2040	Agreement and Record of the Disposition of FSA Security/Release of Proceeds		324
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## Reports, Forms, Abbreviations, and Redelegations of Authority (Continued)

## Forms (Continued)

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I-571	Refugee Travel Document		Ex. 8
I-688B	Employment Authorization Card		Ex. 8
I-766	Employment Authorization Document		Ex. 8
N-550	Certificate of Naturalization		Ex. 9
N-560	Certificate of U.S. Citizenship		Ex. 9
N-561	Certificate of U.S. Citizenship		Ex. 9
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RD 1940-22	Environmental Checklist for Categorical Exclusions		45
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UCC1	National Financing Statement		92, 93, 283, 303, 324, 343

## Reports, Forms, Abbreviations, and Redelegations of Authority (Continued)

## Abbreviations Not Listed in 1-CM

The following abbreviations are not listed in 1-CM.

<b>Approved Abbreviation</b>	<b>Term</b>	<b>Reference</b>
ADPS	Automated Discrepancy Processing System	67
APH	actual production history	234
BCIS	Bureau of Citizenship and Immigration Services	Ex. 8, 9
CAIVRS	Credit Alert Interactive Voice Response System	42, 45, 67
CONACT	Consolidated Farm and Rural Development Act	1
CAT	Catastrophic Risk Protection Endorsement	113, 234
DLS	Direct Loan System	Text
DSA	disaster set-aside	231
ECOA	Equal Credit Opportunity Act	41, 45, 73, 266
EE	economic emergency loan	Ex. 2
EFT	electronic funds transfer	303
EM	emergency loan	Text, Ex. 2, 4
EPLS	Excluded Parties List System	68
FBP	Farm Business Plan	Text
FCIA	Federal Crop Insurance Act	68
FFA	Future Farmers of America	69, 212
FLC	Farm Loan Chief	234, 261, 265, 403
FO	farm ownership loan	Text, Ex. 2
FP	Farm Program	41, 93, 234
FSC, FLOO	Financial Services Center, Farm Loan Operations Office	264
GLS	Guaranteed Loan System	65
INA	Immigration and Nationality Act	Ex. 8
ITLAP	Indian Tribal Land Acquisition Program	2
LLC	Limited Liability Company	41
Lo-Doc	low documentation operating loan	43, 191
MOU	memorandum of understanding	137
OL	operating loan	Text, Ex. 2
PRWORA	Personal Responsibility and Work Opportunity Reconciliation Act of 1996	Ex. 2

## Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

**Beginning Farmer**

Beginning farmer is an individual or entity who:

- (1) Meets the loan eligibility requirements for a direct or guaranteed OL or FO loan, as applicable;
- (2) Has not operated a farm for more than 10 years. This requirement applies to all members of an entity;
- (3) Will materially and substantially participate in the operation of the farm:
  - (i) In the case of a loan made to an individual, individually or with the family members, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm, consistent with the practices in the county or State where the farm is located.
  - (ii) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm. Material and substantial participation requires that the member provide some amount of the management, or labor and management necessary for day-to-day activities, such that if the individual did not provide these inputs, operation of the farm would be seriously impaired;
- (4) Agrees to participate in any loan assessment and borrower training required by Agency regulations;
- (5) Except for an OL applicant, does not own real farm property or who, directly or through interests in family farm entities owns real farm property, the aggregate acreage of \*-which does not exceed 30 percent of the median acreage of the farms in the county where-\* the property is located. If the farm is located in more than one county, the median farm acreage of the county where the applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm or if the applicant is an entity, the median farm acreage of the county where the major portion of the farm is located will be used. The median county farm acreage will be determined from the most recent Census of Agriculture;
- (6) Demonstrates that the available resources of the applicant and spouse (if any) are not sufficient to enable the applicant to enter or continue farming on a viable scale; and
- (7) In the case of an entity:
  - (i) All the members are related by blood or marriage; and
  - (ii) All the members are beginning farmers.

**Beginning Farmer Downpayment Loan**

Beginning Farmer Downpayment loan is a type of FO loan made to eligible applicants to finance a portion of a real estate purchase under part 764, subpart E of this chapter.

**Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)****Cash Flow Budget**

Cash flow budget is a projection listing of all anticipated cash inflows (including all farm income, nonfarm income and all loan advances) and all cash outflows (including all farm and nonfarm debt service and other expenses) to be incurred during the period of the budget. Advances and principal repayments of lines of credit may be excluded from a cash flow budget. Cash flow budgets for guaranteed loans under \$125,000 do not require income and expenses itemized by categories. A cash flow budget may be completed either for a 12-month period, a typical production cycle, or the life of the loan, as appropriate. It may also be prepared with a breakdown of cash inflows and outflows for each month of the review period and include the expected outstanding operating credit balance for the end of each month. The latter type is referred to as a “monthly cash flow budget.”

**Chattel or Real Estate Essential to the Farming Operation**

Chattel or real estate essential to the farming operation is chattel or real estate that would be necessary for the applicant to continue operating the farm after the disaster in a manner similar to the manner in which the farm was operated immediately prior to the disaster, as determined by the Agency.

**Chattel Security**

Chattel security is property that may consist of, but is not limited to: crops; livestock; aquacultural species; farm business and recreational equipment; inventory; accounts; contract rights; general intangibles; and supplies that are covered by financing statements and security agreements, chattel mortgages, and other security instruments.

**Closing Agent**

Closing agent is the attorney or title insurance company selected by the applicant and approved by the Agency to provide closing services for the proposed loan or servicing action. Unless a title insurance company provides loan closing services, the term “title company” does not include “title insurance company.”

## Information Needed to Submit an FSA Direct Loan Application

\*--Note: Exhibit 5 will be available in a fillable format at <http://intranet.fsa.usda.gov>. CLICK “FFAS Employee Forms/Publications Site” and CLICK “Find Current Forms Using Our Form Number Search”. For “Form Number”, ENTER “3-FLP Exhibit 5”.

3-FLP, Exhibit 5

(Use Agency Letterhead format with local return address.)

[Name and Address]

### INFORMATION NEEDED TO SUBMIT AN FSA DIRECT LOAN APPLICATION

Dear [Name] :

Date [MM-DD-YYYY]

Please provide the items marked with an “X” in the box so that your request for loan assistance can be considered. Any required forms are enclosed. Additional copies of forms, if needed, can be obtained at <http://forms.sc.egov.usda.gov/eforms/mainervlet>.

- 1) FSA-2001, “Request for Direct Loan Assistance”.
- 2) FSA-2301, “Request for Youth Loan”.
- 3) For entity applicants only:
  - a. Copies of any Organizational and Operation Documents (e.g., Charter, Articles of Incorporation, Bylaws, Partnership or Joint Operation Agreement, etc.).
  - b. Any evidence of current registration with relevant state regulatory agencies (good standing).
  - c. A duly adopted resolution to apply for and obtain financing.
  - d. A balance sheet not more than 90 days old for the entity.
  - e. A balance sheet not more than 90 days old for each individual entity member.

**Note:** If there are no individually owned assets then husband and wife joint operations may submit a consolidated balance sheet.

- 4) Notification of Exercise of Priority Consideration under Consent Decree, or similar written request, if you are exercising your right to priority consideration. If FSA does not receive your written notice, your application will be processed in the normal manner.
- 5) Evidence that you have recently applied with a commercial lender for a loan at their rates and terms for similar purposes, and have been denied.

**Note:** EM loans have different credit elsewhere requirements. (See Item 22)

If FSA believes you or the members of the entity can obtain commercial credit based on the financial information provided, you may be asked to apply with another lender or FSA may contact lenders interested in assisting you under FSA’s Guaranteed Loan Program.

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Information Needed to Submit an FSA Direct Loan Application (Continued)

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3-FLP, Exhibit 5

- 6) FSA-2002, "Three-Year Financial History", or similar form acceptable to the Agency. Also provide tax returns, including Schedule F, for the past three years, or each year you have been in business, whichever is less. You may be asked to provide supporting documentation if you provide financial summaries. If the financial history has been previously provided, complete only for those years not previously provided.

**Note:** Provide 3 years balance sheets, if available.

- 7) FSA-2003, "Three-Year Production History", or similar form acceptable to the Agency, for the past three years, or each year you have been in business, whichever is less. If production history has been previously provided, complete only for those years not previously provided.

- 8) FSA-2004, "Authorization to Release Information".

**Note:** If you are relying on non-farm income or other assets of a non-applicant spouse to generate positive cashflow or pay family living expenses he/she must execute an FSA-2004 or provide their 2 most recent earning statements.

- 9) FSA-2005, "Creditor List".

- 10) FSA-2006, "Property Owned and Leased". Attach a copy of the legal descriptions of any farm property owned, or to be acquired, and if applicable, any lease, contracts, options and other agreements with regard to the property.

- 11) FSA-2007, "Statement Required by the Privacy Act", required from anyone who will sign loan or security documents, but is not the applicant or an entity member.

- 12) Projected farm operating plan which includes a balance sheet and cash flow for the next 12 months. You may use the Farm Business Plan Worksheets: the FSA-2037, "Balance Sheet" and FSA-2038, "Income and Expenses", or similar forms acceptable to the Agency.

- 13) Most recent account statement for credit cards, loans, and all other bank accounts. Any original documents you submit will be returned to you.

- 14) Credit Report Fee made payable to the Farm Service Agency for the type of applicant:

Individual \$ \_\_\_\_\_ Joint \$ \_\_\_\_\_ or Commercial \$ \_\_\_\_\_

- 15) SF-3881, "ACH Vendor/Miscellaneous Payment Enrollment Form", or Form SF-1199A, "Direct Deposit Sign-Up", for electronic funds transfer.

- 16) FSA-2302, "Description of Farm Training and Experience," For entity applicants, provide for each individual member involved in managing or operating the farm.

- 17) FSA-2370, "Request for Waiver of Borrower Training Requirements".

- 18) Verification of any other non-farm income (i.e., social security, rental income, pension).

Page 2

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Information Needed to Submit an FSA Direct Loan Application (Continued)

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3-FLP, Exhibit 5

- 19) RD-1940-20, "Request for Environmental Information".
- 20) AD-1026, "Highly Erodible Land Conservation and Wetland Conservation Certification".
- 21) For construction loans only:
  - a. A copy of any plans and specifications for the improvements you intend to make.
  - b. A description of any planned development, the proposed schedule and cost estimate.
- 22) For emergency loans only:
  - FSA-2309, "Certification of Disaster Losses".
  - FSA-2310, "Lender's Verification of Loan Application".
- 23) Other

**A DECISION CANNOT BE MADE ON A LOAN REQUEST WITHOUT ALL INFORMATION REQUESTED IN THIS LETTER**

Please contact this office if you need help. We can help you complete the requested forms, explain what information we need, and answer any questions about the information requested in this letter. If we cannot assist you by phone, we will schedule an appointment to meet with you.

Sincerely,

Enclosures

Page 3

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**\*--Notice of Funding Availability**

**Note:** Exhibit 24 will be available in a fillable format at <http://intranet.fsa.usda.gov>. CLICK “FFAS Employee Forms/Publications Site” and CLICK “Find Current Forms Using Our Form Number Search”. For “Form Number”, ENTER “3-FLP Exhibit 24”.

3-FLP, Exhibit 24

(Use Agency Letterhead format with local return address.)

**NOTICE OF FUNDING AVAILABILITY**

[Borrower Name/Address]  
[Borrower Address]  
[City, State, Zip Code]

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
[Return Receipt Number]

<Applicant's Name>

This notice is to inform you that funds may now be available for the Farm Service Agency (FSA) to resume processing your approved loan(s). As stated in your FSA-2313, “Notification of Loan Approval and Borrower Responsibilities”, dated \_\_\_\_, FSA may request updated financial and eligibility information.

Please contact this office to schedule an appointment, so that the processing of your approved loan may continue. If you fail to contact this office within 15 business days from the date you received this certified letter your application and loan approval will be withdrawn. No review, mediation, or appeal rights will be provided.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant’s income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

For more information or if you have any questions, please contact [this office or the specific office name] at [County Office Address] or telephone [phone number].

Sincerely,

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