

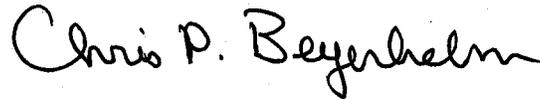
**UNITED STATES DEPARTMENT OF AGRICULTURE**

Farm Service Agency  
Washington, DC 20250

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

**Amendment 6**

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



**Amendment Transmittal**

**A Reasons for Amendment**

This handbook has been amended to include Pages 12-3 and 12-4 which were inadvertently omitted in Amendment 5.

<b>Page Control Chart</b>		
<b>TC</b>	<b>Text</b>	<b>Exhibit</b>
	5-1, 5-2 12-3, 12-4	



## 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 downpayment loan 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 the full value of chattel security, the authorized--\* agency official will obtain CCC-10 and FSA-2028 from the nonapplicant authorizing FSA to file the required instrument to perfect FSA's lien \* \* \* .

\* \* \*

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.

- \*--See subparagraph 321 C for further guidance on chattel security pledged by multiple owners.--\*

**[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 \* \* \* 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.

**361 Approving Closing Agents (Continued)****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.

**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)**