Amendment Transmittal

A Reasons for Amendment

Subparagraph 72 C has been amended to clarify the requirement of EIN’s for entities.

Subparagraph 91 C has been amended to:

- provide guidance on additional security requirements
- remove the EQIP related note.

Subparagraph 132 E has been amended to address FO term limits.

Subparagraph 202 G has been amended to clarify OL term limit waiver requirements.

Exhibit 2 has been amended to clarify the definition of a veteran and veteran farmer.

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 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 family farm.

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

- Produces agricultural commodities for sale in sufficient quantities so that it is recognized as a farm. Primarily, is the farm operated in a business-like manner, does the operation have records, and is the operator changing methods to try and make a profit?

- 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 farm 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's operation is larger than a family 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.
Entity Composition

A General Requirement

[7 CFR 764.101(l)] If the applicant has 1 or more embedded entities, at least 75 percent of the individual ownership interests of each embedded entity must be owned by members actively involved in managing or operating the family farm.

B 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.

C 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 TIN will be used as primary to assign the case number.

*--Note: IRS requires an EIN for all operations identified and required to register as a partnership with their respective State. States shall consult with their regional OGC to determine under what circumstances an operation is required to register as a partnership with their State.--*
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 I of this part (Parts 7 through 10), and--*

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

- paragraph 135 for FO security
- paragraph 154 for downpayment loan security
- paragraph 175 for CL security
- paragraph 205 for OL security
- paragraph 230 for youth loan security
- paragraph 246 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 I of--* this part (Part 10). 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 416 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.
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, ML’s made for purposes other than annual operating, 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. Notably, real estate is often not practical to separate because of extensive and costly processes at the local level. Additionally, it is recognized that a blanket lien on all livestock or all equipment will also result in a security margin exceeding 150 percent as it is typically not practical to separate these types of chattels as livestock replacements and equipment turnover are common on many operations. Loan approval officials need to take steps to ensure the Agency is not taking more than 150 percent security when avoidable. Standard chattel lien statements providing a blanket lien on all chattels should be altered if necessary.

Example 1: An annual operating loan of $100,000 is secured primarily by crops. The applicant has equity in livestock valued at $30,000 and equity in equipment valued at $60,000. The loan approval official should perfect the Agency's lien on crops and equipment, and ensure livestock is not taken as security for the Agency loan.

Example 2: A term operating loan of $200,000 is secured primarily by equipment with equity valued at $350,000. The loan approval official should perfect the Agency's lien on equipment only, and ensure other chattels, including crops, are not taken as security.--*

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

***
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 will be included on FSA-2313.

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.

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 down payment loans, CL, ML, or 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.

For FO, OL, and EM, the value of nonessential assets is:

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

  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.

- established according to subparagraph 95 B.

For CL, the applicant is only required to pledge enough nonessential assets to meet the 150 percent requirement.
Security Requirements (Continued)

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.
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:

Each prior lienholder must sign FSA-2319 before loan closing, when real estate will serve as security necessary to meet the adequate security requirement in subparagraph 91 B.

Note: The lien will be taken on the security even if FSA-2319 is not obtained.

[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;

[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 complete FSA-2319.

[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.
E  Term Limits (Continued)

*--Example 2: An applicant receives their first FO in 2016 and pays the loan off in 2021.--*
In determining outstanding years, the exact date is not significant, no matter if it is paid off on 1/1, 6/23, or 12/31 it still counts as 1 calendar year and the applicant would have 4 additional total years to get an FO. If the applicant comes back for another FO in the year 2027, this applicant would still have 4 additional total years in which they may receive an FO.

Note: The following exceptions apply:

- rescheduling a loan does not count against the direct FO eligibility limitation
- ML’s made for FO purposes are not exempt and count towards the FO eligibility limitation
- cosigning for a direct FO counts against the direct FO eligibility limitation
- assuming a direct FO counts against the direct FO eligibility limitation
- an entity applicant is eligible for a direct FO only if all of its individual members have not exceeded the term limits
- guaranteed FO’s do not count against the direct FO eligibility limitation
- an applicant shall be eligible to close an FO any time prior to the 10-year anniversary date of the day they closed their first FO.

Example: If an applicant closed their first FO May 30, 2019, the applicant may close a subsequent FO on or before May 29, 2029.--*

(3) Have never received a direct FO loan.
D  OL Term Limits (Continued)

[7 CFR 764.252(e)(1)] This limitation does not apply if the applicant and anyone who will sign the promissory note is a beginning farmer * * *.

* * *

See Exhibit 2 for the definition of a beginning farmer * * *.

The maximum number of years a beginning farmer may receive OL assistance is 10 years.

**Example 1:** If a beginning farmer receives a direct OL in their 1st year of farming, this applicant has 9 additional years in which they may receive direct OL assistance as a beginning farmer applicant. This applicant is not eligible for the 2-year waiver or any future direct OL assistance if loans were received in all 10 years as a beginning farmer.

**Example 2:** If a beginning farmer receives a direct OL in their 5th year of farming, this applicant has 5 additional years in which they may receive direct OL assistance as a beginning farmer applicant, but only 1 year remaining as a nonbeginning farmer applicant. This applicant may be considered to receive the 2-year waiver to extend eligibility as a nonbeginning farmer.

E  Indian Tribe Jurisdiction

[7 CFR 764.252(e)(2)] This limitation does not apply if the applicant’s land is subject to the jurisdiction of an Indian tribe, the loan is secured by one or more security instruments subject to the jurisdiction of an Indian tribe, and commercial credit is generally not available to such farm operations.

On an annual basis the authorized agency official should contact lenders in the area to determine whether commercial credit would be available on land subject to the jurisdiction of an Indian tribe. Results of these contacts will be documented in the Service Center operational files.

The authorized agency official will verify with BIA if the land or security instrument is subject to the jurisdiction of an Indian tribe.
F OL Transition Rule

[7 CFR 764.252(e)(3)] If the applicant and anyone who will sign the promissory note, has closed direct OL loans in 4 or more previous calendar years as of April 4, 1996, the applicant is eligible to close OL loans in any 3 additional years after that date.

The 3 additional years will begin with the 1st loan closed after April 4, 1996. The 3 additional years of eligibility are independent of each other and do not have to be consecutive.

If the applicant or any cosigner had closed direct OL’s in fewer than 4 calendar years before April 4, 1996, the 7-year eligibility requirement applies.

G Waivers

The applicant:

- does not need to request the waiver
- will be considered automatically for the 2-calendar year waiver.

[7 CFR 764.252(e)(4)] On a case-by-case basis, may be granted a one-time waiver of OL term limits for a period of 2 years, not subject to administrative appeal, if the applicant:

(i) **Has a financially viable operation;** see Exhibit 2 for the definition of a financially viable operation

(ii) And in the case of an entity, the members holding the majority interest, applied for commercial credit from at least two lenders and were unable to obtain a commercial loan, including an Agency-guaranteed loan; and

*--Note: This requirement applies to individual applicants, entity applicants, as well as all individual members of the entity.--*

(iii) Has successfully completed, or will complete within one year, borrower training. Previous waivers to the borrower training requirements are not applicable under this paragraph.
U.S. Noncitizen National

A U.S. noncitizen national means a person born in American Samoa or Swains Island on or after the date the U.S. acquired American Samoa or Swains Island, or a person whose parents are U.S. noncitizen nationals. Typical evidence of the relatively uncommon status as a noncitizen national includes a birth certificate or passport with a document bearing a photograph of the person.

Note: See Exhibit 9 for further documentary requirements to meet this definition.

Veteran

Veteran means any person who served in the military, naval, or air service during any *--war as defined in section 101(12) of title 38, United States Code. For a National Guard member to be eligible for Veteran status, they must have served for 20 years or more and been discharged other than dishonorably or been deployed on active duty for at least 180 consecutive days during their service commitment.

Veteran Farmer

Veteran farmer is a farmer who has served in the Armed Forces (as defined in 38 U.S.C. 101(10) and, the term “Armed Forces” means the U.S. Army, Navy, Marine Corps, Air Force, and Coast Guard, including the reserve components, who:

- has not operated a farm; or
- has operated a farm but for not more than 10 years
- is a veteran who has first obtained status as a veteran during the most recent 10-year period.

For entity applicants, the majority interest must be held by veteran farmers. For married couples, the veteran farmer must have at least 50 percent ownership in the farm business and make most of the management decisions, contribute a significant amount of labor, and generally be recognized as the operator of the farm.--*
Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

Working Capital

Working capital means cash available to conduct normal daily farming operations including but not limited to feed, seed, fertilizer, pesticides, farm supplies, cooperative stock, and cash rent.

Youth Loan

Youth loan means an operating type loan made to an eligible rural youth applicant to finance a modest income-producing agricultural project.

Note: This definition is being amended to remove “rural” by the 2014 Farm Bill and is effective immediately. This change will be incorporated in a Farm Bill CFR, but is effective, as provided here, immediately.