

**FSA**  
**HANDBOOK**

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Direct Loan Making

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For State and County Offices

SHORT REFERENCE

**3-FLP**  
**(Revision 2)**

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



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**Direct Loan Making  
3-FLP (Revision 2)**

**Amendment 37**

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

*William S. Cobb*

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**Amendment Transmittal**

**A Reason for Amendment**

Subparagraph 41 B has been amended to clarify loan application filing requirements.

Subparagraphs 42 A and B have been amended to update guidance on complete loan application requirements.

Subparagraph 45 D has been amended to clarify application withdrawals by the applicant.

Subparagraph 65 A has been amended to clarify credit history requirements.

Subparagraph 67 A has been amended to clarify delinquent federal debt eligibility requirements.

Subparagraph 73 has been withdrawn because the guidance about eligibility determinations has been incorporated into paragraph 352.

Subparagraph 92 B has been amended to clarify the lien requirements for real estate.

Subparagraphs 95 A and B have been amended to clarify loan evaluation and appraisal requirements.

Paragraphs 111 and 112 have been amended to clarify insurance requirements.

Subparagraph 113 C has been amended to clarify crop insurance requirements.

Subparagraph 131 B has been amended to clarify Farm Ownership use of funds.

Subparagraph 132:

- A has been amended to update Farm Ownership eligibility criteria
- B has been amended to add a note about operator requirements.

Subparagraphs 135 B through D have been amended to update Farm Ownership loan term and security requirements.

## **Amendment Transmittal (Continued)**

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

Subparagraph 154 D has been amended to update security requirements on Down Payment loans.

Subparagraphs 201 A and F have been amended to clarify Operating Loan use of funds.

Subparagraph 202 B has been amended to clarify Operating Loan eligibility criteria.

Subparagraph 204 B has been amended to update Operating Loan term requirements.

Subparagraph 217 A has been amended, and subparagraphs B and C have been added to revise the guidance on the Streamlined Operating Loan program.

Subparagraph 228 B has been amended to clarify Youth Loan eligibility requirements.

Subparagraph 229 C has been amended to update Youth Loan repayment terms.

Subparagraph 242 G has been amended to clarify Emergency Loan requirements.

Subparagraph 244 C has been amended to clarify Emergency Loan loss calculation methodology.

Subparagraphs 245 E and F have been amended to clarify Emergency Loan repayment terms.

Subparagraph 248 B has been amended to clarify Emergency Loan valuation authority.

Subparagraph 352 C has been amended to remove reference to obsolete procedure.

Subparagraph 352 D has been amended to provide guidance on eligibility determinations.

Subparagraph 355 C has been amended to clarify SDA account review requirements.

Subparagraph 356 B has been added to clarify when eligibility determinations are to be made.

Subparagraph 416 A has been amended to clarify lien search requirements for loan closings.

Subparagraph 419 B has been amended to clarify security agreement requirements.

The following terms throughout the handbook have been revised:

- “husband and wife” to “married persons”
- “downpayment” to “down payment”
- “loanmaking” to “loan making”.

**Amendment Transmittal (Continued)**

<b>Page Control Chart</b>		
<b>TC</b>	<b>Text</b>	<b>Exhibit</b>
1, 2	3-1, 3-2 3-2.5, 3-2.6 (add) 3-3 through 3-6 3-6.5, 3-6.6 3-7 through 3-12 3-17, 3-18 4-5, 4-6 4-6.5, 4-6.6 4-8.5, 4-8.6 4-9, 4-10 4-17 through 4-20 5-1, 5-2 5-3, 5-4 5-13, 14 5-15 6-1 through 6-6 7-1, 7-2 7-2.5, 7-2.6 7-3, 7-4 7-4.5, 7-4.6 7-11 through 7-40 7-41 through 7-44 9-1 through 9-4 9-7, 9-8 9-15 through 9-72 9-75 through 9-78 10-11, 10-12 10-19, 10-20 10-23 through 10-26 10-29 15-3 through 15-8 15-13 through 5-18 15-19 (has been added) 16-3, 16-4 16-71, 72 16-75 through 16-98	1, pages 3, 4 16, pages 1, 2



# Table of Contents

	<b>Page No.</b>
<b>Part 1</b>	<b>Introduction and Purpose</b>
1	Purpose and Sources of Authority ..... 1-1
2	Related References..... 1-2
3	FLP Forms ..... 1-4
4	Introduction to Direct FLP's ..... 1-8
5-20	(Reserved)
<b>Part 2</b>	<b>(Reserved)</b>
21-40	(Reserved)
<b>Part 3</b>	<b>Loan Application</b>
41	Obtaining and Filing a Loan Application ..... 3-1
42	Complete Loan Applications ..... 3-5
43	Streamlined OL, ML (FO and OL), and Streamlined CL Requests ..... 3-11
44	Youth Loan Requests ..... 3-13
45	Processing Loan Applications..... 3-14
46-60	(Reserved)
<b>Part 4</b>	<b>General Eligibility and Loan Limitations</b>
<b>Section 1</b>	<b>Eligibility Requirements</b>
61	Overview..... 4-1
62	Controlled Substances..... 4-2
63	Legal Capacity ..... 4-3
64	Citizenship ..... 4-4
65	Credit History..... 4-5
66	Credit Elsewhere..... 4-8.6
67	Delinquent Federal Debt and Unpaid Federal Judgments ..... 4-10
68	Federal Crop Insurance Violations ..... 4-11
69	Managerial Ability ..... 4-12
70	Borrower Training ..... 4-14
71	Owner/Operator of a Family Farm ..... 4-14
72	Entity Composition ..... 4-16
73	(Withdrawn--Amend. 37)
74	Limitations ..... 4-19
75-90	(Reserved)

## Table of Contents (Continued)

Page No.

### Part 5      **Loan Security**

91	Security Requirements .....	5-1
92	Real Estate Security .....	5-4
93	Other Security Requirements .....	5-10
94	Exceptions to Security Requirements .....	5-11
95	Appraisals and Values.....	5-14
96-110	(Reserved)	

### Part 6      **Insurance**

111	Overview.....	6-1
112	Type of Insurance Required.....	6-2
113	Documentation.....	6-4
114	Indemnity .....	6-6
115-130	(Reserved)	

### Part 7      **Farm Ownership Loan (FO) Programs**

#### Section 1      **FO (Regular and Microloan)**

131	Uses.....	7-1
132	Eligibility .....	7-4
133	Limitations .....	7-7
133.5	Direct Farm Ownership - Microloan.....	7-8.5
134	Joint Financing Arrangements .....	7-9
135	Rates, Terms, Payments, and Security.....	7-10
136	Subsequent Loans .....	7-12
137	Program Outreach.....	7-13
138-150	(Reserved)	

#### Section 2      **Downpayment Program**

151	Uses.....	7-41
152	Eligibility .....	7-42
153	Limitations .....	7-43
154	Rates, Terms, and Security .....	7-44
155-170	(Reserved)	

## 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 [www.fsa.usda.gov](http://www.fsa.usda.gov)
- eGov's web site at [www.sc.egov.usda.gov](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

**Note:** On Friday, May 13, 2011, FR notice was published to inform the public that, because of a lack of funding for the CL program, direct CL applications will not be accepted until further notice. Agency officials should advise prospective applicants of the availability of other FSA loan programs.

- 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, applicant's income deriving from public assistance, or because the applicant has in good faith exercised any right under the Consumer Protection Act)

**Note:** Additional information, as necessary, may be requested; however, 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.

- provide assistance as necessary to help applicants complete the application
- \*--provide 3-FLP, Exhibit 7, as necessary, to applicants who are applying for assistance using FSA-2001 only.--\*

**Note:** Information about race, national origin, sex, and marital status is collected on a voluntarily basis on FSA-2001, FSA-2301, FSA-2314, and FSA-2330.

#### 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.**

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

### B Filing a Loan Application (Continued)

Generally, requiring a non-applicant's spouse signature on loan documents is a violation of ECOA regulations. Therefore, unless required by State law, FSA will not require the signature of an applicant's spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies under FSA's standards of creditworthiness for the amount and terms of the credit requested. FSA will **not** consider the submission of a joint financial statement or other evidence of jointly held assets, such as a joint bank account, as an application for joint credit. See Exhibit 6 for guidance on submitting documents in compliance with ECOA as required by this handbook.

Upon receiving an application for direct loan assistance the authorized agency official and DD shall follow 1-PL to 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 reason why the application is incomplete.--\*

“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.”

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

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

- \*--married persons 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 structure of an entity can have significant tax and legal consequences. Agency 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 married persons as a joint operation for FLP assistance, but who are combined as a single person for FP benefits, shall be considered 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. In situations where an operation is spread out between multiple county or State jurisdictions, the operation headquarters will typically be the location where the majority of operational and production activities occur. Once an FLP servicing office is assigned, efforts should be taken to maintain account activities with that servicing office providing significant farming activities are likely to continue within the jurisdiction of the FLP servicing office originally assigned.

If the authorized agency official is not present in the office where 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.

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

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 eAuthentication \*--credentials. FAXed and emailed applications are acceptable. See 1-FLP for a list of forms that must be signed with an original pen and ink signature or a digital signature completed with an approved 2-factor authentication process.--\*

**C Notification of Targeted Funding and Limited Resource Interest Rates**

To determine whether an applicant is a member of an SDA 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, FSA-2301, FSA-2314, and FSA-2330 provide applicants notification, as applicable, that a portion of FO, CL, and OL funds are targeted for SDA and beginning farmer assistance. In addition, FSA-2001 FSA-2314, and FSA-2330 provide notification of the availability of limited resource interest rates for FO's and OL's.

See Exhibit 2 for definitions of beginning farmer, limited resource interest rates, SDA applicant or farmer, and SDA group.

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

**41 Obtaining and Filing a Loan Application (Continued)****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, 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, Intertribal Agriculture Council, Service Corp of Retired Executives, 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.

**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 beginning and SDA farmers.

These required outreach efforts are in addition to 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 beginning and SDA farmers.

**42 Complete Loan Application****A Requirements**

**[7 CFR 764.51(b)] A complete loan application, except as provided in paragraphs (c) through (f) of this section (paragraphs 43 and 44), will include:**

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

The application must be initialed, signed, and dated by the applicant. An unsigned FSA-2001, FSA-2301, FSA-2314, or FSA-2330 will be considered an incomplete application.

**Notes:** FSA-2001, FSA-2314, or FSA-2330, with missing initials only, will not be considered incomplete; however, initials shall be obtained before loan closing.

Youth loan applications should be filed according to paragraph 44.

The authorized agency official shall consider if an application can be ML or Streamlined before requiring a regular, full documentation application. See paragraphs 216 and 217. ML and streamlined OL applications should be filed according to paragraph 43.

Streamlined OL applications should be filed according to paragraph 43, but a ~~qualified~~ applicant needs to only submit additional information necessary to make ~~their~~ application complete when added to the information already in the applicants file.

## 42 Complete Loan Application (Continued)

## A Requirements (Continued)

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

**[7 CFR 764.51 (b)(2)(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;**

**Note:** Each member of the entity must demonstrate individual ownership of the entity by owning either shares or a percentage of the entity.

**[7 CFR 764.51 (b)(2)(ii)] A current financial statement from each member of the entity;**

**[7 CFR 764.51 (b)(2)(iii)] A current financial statement from the entity itself;**

**Note:** A completed AD-3030 must be submitted each time a corporation applies for assistance. This does not include LLC's and trusts.

**[7 CFR 764.51(b)(2)(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, including members in embedded entities, must sign FSA-2001, Part E, item 18A.

**[7 CFR 764.51(b)(2)(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 CCC-502/CCC-902
- jointly filed tax return
- marriage license
- prenuptial agreement
- similar documentation.

## 42 Complete Loan Application (Continued)

## A Requirements (Continued)

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. Farm experience of the applicant, without regard to lapse of time between the experience and the new application, may be included in the applicant's written description. If farm experience occurred more than 5 years prior to the date of the application, the applicant must demonstrate sufficient on-the-job training or education within the last 5 years to demonstrate managerial ability.**

**Note:** See subparagraph 69 A for additional guidance if farm experience occurred more than 5 years before application.

A complete description of the applicant's farm training and experience is required for new applicants and when significant changes to an existing borrower's operation have occurred. The information will be provided 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. Existing borrowers do not need to resubmit historical financial information already on file.--\*  
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.

**Notes:** The applicant may submit alternate documents if they contain all information collected on FSA-2002.

If tax returns are not available or do not exist, the application will not be considered incomplete for that reason. The authorized agency official must make a notation in FBP of the reason tax returns are not available. A lack of tax returns may be taken into consideration when making credit history determinations as it relates to the applicant fulfilling obligations to other parties (subparagraph 65 A), managerial ability determination (paragraph 69), or feasibility (paragraph 351).

## 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.

**Notes:** The applicant may submit alternate documents, if they contain all information \*--collected on FSA-2003. Existing borrowers do not need to resubmit historical production information already on file.--\*

For cash basis operations, such as farmers who sell produce at farmer markets, it may not be possible or useful to determine yield. In those cases, income and expenses may be substituted for yields to determine production.

**[7 CFR 764.51(b)(6)] Except for CL, 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;**

Applicants provide documentation that they are unable to obtain credit elsewhere by signing FSA-2001, FSA-2314, or FSA-2330. However, after reviewing the financial information and type of loan requested (EM's have a different credit elsewhere requirements), FSA may require written evidence to support the applicant's inability to obtain credit elsewhere. FSA will use the Market Placement Program to assist qualified applicants in obtaining a guaranteed farm loan from a commercial lender, where applicable.

**[7 CFR 764.51(b)(7)] Documentation of compliance with the Agency's environmental regulations contained in 7 CFR Parts 12 and 799.**

An applicant must have AD-1026 on file for all real estate owned or rented. From an environmental compliance perspective, an application is considered complete upon receipt of:

- a current AD-1026
- information within the applicant's ability to control about the specific location and nature of the proposed action so that the appropriate level of environmental review can be completed.



## 42 Complete Loan Application (Continued)

### A Requirements (Continued)

**Notes:** Applications may not be approved “subject to” completion of the requisite level of environmental review, including, but not limited to, obtaining and providing to FSA copies of all permits and plans. In addition, the time needed to process or obtain permits, plans, approvals, or complete environmental assessments does not constitute a basis for withdrawing an application as incomplete.

A new AD-1026 is not required for each subsequent loan if there has been no change to the applicant’s farming operation.

See 1-EQ and 6-CP for additional information on environmental regulations and requirements.

#### [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 may submit any of the following:

- FSA-2004 authorizing FSA to send FSA-2014 to the applicant’s employer
- 2 most recent earning statements
- Tax forms such as 1099 or W-2
- Bank statements verifying income.--\*

**Notes:** The amount and dependability of income from a cosigner will be verified using the listed format. See subparagraph 371 C for information about cosigner signature and eligibility requirements.

If a nonapplicant’s income will only be used to cover family living/owner withdrawal, the nonapplicant must not be required to sign FSA-2004, FSA-2007, FSA-2026, or any other loan documents. See Exhibit 6 for guidance on submitting documents in compliance with ECOA as required by this handbook.

If needed for an operation to cash flow, then the income of individual entity members can be verified as needed.

## 42 Complete Loan Application (Continued)

## A Requirements (Continued)

**[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;**

\*--An application will not typically be considered complete without a full legal description for property to be purchased or used as primary security for a loan. Partial or abbreviated descriptions are not typically adequate for these circumstances. Applications to purchase only a portion of a larger parcel will not be complete unless the Agency is provided a legal description of the specific property to be purchased.

**Note:** FSA -2006 shall be provided only if any changes occur from previously submitted form.--\*

## 42 Complete Loan Application (Continued)

### A Requirements (Continued)

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.

#### **[7 CFR 764.51(b)(12)] Verification of all debts;**

Applicants complete FSA-2005, or similar acceptable documentation to provide a list of creditors, if not already in the applicant's file, and FSA-2004 to authorize those creditors to release information to FSA.

The authorized agency official:

- \*--must verify the status of debts over \$5,000--\*
- must confirm the balance of the debt, the applicant's payment history on the debt including any delinquency 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)
  - any other form of verification, including phone calls, that provides the required information.

## 42 Complete Loan Application (Continued)

## A Requirements (Continued)

**[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;**

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)
- \*--payment to complete required State and county lien searches (many States and counties offer certified searches free of charge).--\*

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

**[7 CFR 764.51(b)(15)] For CL only, a conservation plan or Forest Stewardship Management Plan as defined in 761.2 of this chapter; (see Exhibit 2 for definition of conservation plan and Forest Stewardship Management Plan) and**

**Note:** NRCS CPA-1155 or Tool Kit is considered sufficient documentation.

**[7 CFR 764.51(b)(16)] For CL only, and if the applicant wishes to request consideration for priority funding, plans to transition to organic or sustainable agriculture when the funds requested will be used to facilitate the transition.**

**Note:** For all FLP loans involving construction, according to 1-FLP, Part 5.

## B Existing Information in Applicant's File

**[7 CFR 764.51(f)] 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.**

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

**\*--Notes:** Information that does not change, such as college transcripts, will be considered current and should be used as part of any future application.

If not already in the applicant's file, obtain SF-3881 according to 63-FI, if needed to establish an account to for Electronic Funds Transfer. This item is not required for a complete application, but can be requested early in the application process.--\*

## 43 Streamlined OL, ML (FO and OL), and Streamlined CL Requests

### A Complete Streamlined OL Application

A complete streamlined OL application includes:

- completed FSA-2314
- environmental information
- farm operating plan (updated to current production year)
- payment of credit report fee
- balance sheet
- prior year or years financial and production records.

**Notes:** An applicant is qualified for loan processing under streamlined OL provisions when  
\*--all the streamlined OL requirements in subparagraph 217 A-E are met.--\*

The Farm Business Plan information, (cash flow, balance sheet, financial records, production records, and Credit Presentation) shall be updated only as necessary to complete information added to the records.

### B Complete DOL-ML Applications

**[7 CFR 764.51(c)(2)] The applicant must submit the following:**

**[7 CFR 764.51(c)(2)(i)] items (1), (2), (3), (6), (7), (9), and (11) of paragraph (b) of this section (paragraph 42)**

**[7 CFR 764.51(c)(2)(ii)] Financial and Production records for the most recent production cycle if available, and practicable to project the cash flow of the operating cycle;**

**[7 CFR 764.51(c)(2)(iv)] Verification of all non-farm income relied upon for repayment; and**

**[7 CFR 764.51(c)(3)] The Agency may require an ML applicant to submit any other information listed in paragraph (b) of this section upon request when specifically needed to make a determination on the loan application.**

A complete DOL-ML application includes:

- completed FSA-2330
- entity information, if applicable
- written description of applicant's farm training and experience, included on FSA-2330
- environmental information
- credit elsewhere requirements
- farm operating plan, included on FSA-2330
- payment of credit report fee
- balance sheet, included on FSA-2330.

**Note:** An applicant is qualified for loan processing under DOL-ML provisions, when all of the DOL-ML requirements in subparagraph 216 B are met.

## \*--43 Streamlined OL, ML (FO and OL), and Streamlined CL Requests (Continued)

**C Complete DFO-ML Applications**

**[7 CFR 764.51(d)(2) The applicant must submit the following:**

**[7 CFR 764.51(d)(2)(i) items (1), (2), (3), (6), (7), (9), (10), (11) of paragraph (b) of this section (paragraph 42)**

**[7 CFR 764.51(d)(2)(ii) Financial and Production records for the most recent production cycle if available and practicable to project the cash flow of the operating cycle, and**

**[7 CFR 764.51(d)(2)(iv) Verification of all non-farm income relied upon for repayment, and**

**[7 CFR 764.51(d)(2)(v) Verification of applicant's farm experience.**

**[7 CFR 764.51(d)(3) The Agency may require an DFO-ML applicant to submit any other information listed in paragraph (b) of this section upon request when specifically needed to make a determination on the loan application.**

A complete DFO-ML application includes:

- completed FSA-2330
- entity information, if applicable
- written description of the applicant's farm training and experience (if not included on FSA-2330)
- legal description of the farm property owned or to be acquired and if leases, contracts options, and other agreements with regard to the property
- verification of applicant's farm experience.

**Note:** Additional information may only be required on a case-by-case basis when essential for an eligibility or credit decision. The basis for the request for additional information shall be documented in FBP. State and County Offices may not establish blanket requirements for additional information without prior approval of the National Office.--\*

## 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:** Use DLS to record the date the application was determined to be complete.

**[7 CFR 764.53(d)] Except for CL requests, 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 as specified in 762.110(h) of this chapter (2-FLP, paragraph 72).**

**D Applicant Withdraws Application**

\*--The applicant may request that a loan application be withdrawn at any time during the loan making 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 FSA-2306.

**Note:** The authorized agency official shall maintain withdrawn applications according to 32-AS.

**E Reactivating Withdrawn Application**

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

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

Information that does not change, such as college transcripts, will be considered current and should be used as part of any future application.

**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 356.

**G Priority Consideration for Prevailing Claimants**

\*--See Exhibit 14 for guidance on processing loan applications for claimants.--\*

**46-60 (Reserved)**

## 65 Credit History

## A General Requirement

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

In the case of an entity, the applicant and all members of the entity must have an acceptable credit history.

**Note:** In some cases, credit reports for applicants may have been negatively impacted by delays in healthcare reimbursements, slow interaction with other agencies and organizations, or by other circumstances beyond the applicant's control. Therefore, extra diligence should be taken to review the credit reports to determine if the circumstances were beyond the control of the applicant. Loan officials should consider if problems identified on the credit report have been corrected or will be corrected if the requested loan is approved. This is especially true of credit reports for microloan applicants who may have been operating using personal credit cards or high interest non-agricultural loans before applying with FSA.

**[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 has not acted in good faith 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
- failed to file Federal tax returns when it appears that sufficient income was generated to require a tax filing.

**\*--Notes:** A lack of good faith determination is only good for that application, and only with a current OGC determination.--\*

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 loan making 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 or Keepseagle* settlement.

**Notes:** This includes any debt forgiveness on eligible loans that occurred before the Keepseagle Settlement Agreement signed on October 29, 2010.

See Exhibit 14 for guidance on processing loan applications for claimants.

- prior debt forgiveness that has been repaid in its entirety
- prior debt forgiveness on a youth loan, if circumstances were beyond the applicant's control.

\* \* \*

\*--**Notes:** Debt forgiven on any non-Youth Loan debt will still be considered in determining applicant's credit worthiness. Determination that debt forgiveness was beyond the applicant's control should have been made and documented at the time of debt forgiveness approval.

Debts and receivables established by Farm Programs will be reviewed for compliance with this subparagraph. Established debts that are forgiven or granted relief will not hinder eligibility for Farm Loan Programs but should be considered when assessing credit worthiness.--\*

**65 Credit History (Continued)****A General Requirement (Continued)**

**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, 202, and 242. Specifically, according to paragraphs 132, 172, 202, and 242, 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.



**65 Credit History (Continued)****D Assessing Past Repayment Problems (Continued)**

When an applicant's credit history includes an adverse or delinquent account status, the authorized agency official shall meet with the applicant to discuss the questionable account. The objectives of the meeting are to gather information to determine whether the adverse account status was caused by circumstances beyond the applicant's control and to explain FSA creditworthiness requirements to the applicant. In addition, the applicant will be counseled about the importance of paying accounts as agreed and provided guidance on improving their credit history. The meeting shall be documented in FBP. If additional information is to be provided by the applicant as a result of the meeting, this will be confirmed with the applicant in writing.

**Note:** Credit scores will not be:

- used as an indicator of poor credit history
- used as a basis of denial
- cited as an indicator of unacceptable credit in a denial letter.

**66 Credit Elsewhere****A General Requirement**

**[7 CFR 764.101(e)] Except for CL, the applicant, and all entity members in the case of an entity, must be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms. The Agency will evaluate the ability to obtain credit based on factors including, but not limited to:**

**(1) Loan amounts, rates, and terms available in the marketplace; and**

The applicant must certify in writing on FSA-2001, FSA-2314, or FSA-2330 that the applicant is unable to obtain sufficient credit, with or without a guarantee, to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in, or near, where the applicant resides for loans for similar purposes and periods of time.

**(2) Property interests, income, and significant non-essential assets.**

## 66 Credit Elsewhere

**B Documentation Requirements for FO and OL (Including DFO-ML and DOL-ML)**

No applicant will be required to obtain credit denial letters from a lender, when obtaining an FO or OL, until the application has been reviewed and a determination made that the applicant has a reasonable potential to obtain financing from other credit sources.

Some areas of the nation do not have a significant number of lenders who are making agricultural loans (credit desert). In addition, even if lenders are making agricultural loans, there are particular areas where loans are less likely to be made (such as Indian Reservations) or history indicates the applicant's chance of obtaining financing from a lender is low, regardless of meeting the lenders underwriting standards. Some lenders appear willing to make loans in these areas but only at rates and terms that are unreasonable compared to rates and terms offered outside these areas.

Consequently, when FSA loan officers are considering the "test for credit", they must not only consider the financial strength of the applicant, but also if other lenders are "actively" making agricultural loans in the applicant's area at reasonable rates and terms in comparison to areas where credit is readily available.

If based on evaluation of the application, the authorized agency official determines there is a reasonable possibility that the applicant can obtain credit elsewhere, the authorized agency official:

- may request the applicant apply for credit from a commercial lender and obtain a letter of denial
- may request applicant apply to additional lenders outside of local community
- may pursue market placement according to 2-FLP, paragraph 72
- must document results.

If based on the evaluation of the application, the authorized agency official determines the applicant will not qualify for credit elsewhere, the authorized agency official must document the reasons in the applicant's file.

**Note:** Applicants will be encouraged to supplement FO's and OL's with credit from other credit sources to the extent economically feasible and according to sound financial management practices.

## 66 Credit Elsewhere (Continued)

**B Documentation Requirements for FO and OL (Including DFO-ML and DOL-ML)  
(Continued)**

The fact that an applicant has obtained credit for farm purposes through credit cards, finance companies, or other “sub-prime” lenders does not constitute failure to meet the test for credit unless the rates and terms for that credit are similar to the rates and terms offered on loans for the same purpose by other farm lenders in the community.

**C Documentation Requirements for EM**

An applicant for EM has different credit elsewhere requirements. To meet the requirements, applicants must supply documentation according to subparagraph 242 F.

## 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. Verification through CAIVRS, the credit report, DLS 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:** An FSA-Guaranteed Loan is not considered a Federal debt unless a final loss claim--\* has been paid on a guaranteed loan made using 1 of the following:

- FSA-1980-25 or FSA-1980-28 with the July 20,2001, or later revision date
- FSA-2211 or FSA-2212.

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

**\*--Debts and receivables established by Farm Programs will be reviewed for compliance with this subparagraph. Established debts that are forgiven or granted relief will not hinder eligibility for Farm Loan Programs, but should be considered when assessing credit history.--\***

**72 Entity Composition (Continued)****D Treatment of Trusts**

SED's, after consultation with the Regional OGC, shall issue a State supplement about the following for trusts:

- security requirements when lending to trusts
- unique characteristics of State trust statutes.

In trusts cases, SED shall consult with the Regional OGC to determine if:

- nonparticipant beneficiaries, third party trustees, beneficiaries of a revocable trust, and beneficiaries with only a future interest need to sign on behalf of the trust and as individuals
- submitted trust documents demonstrate valid organization under State law
- trustee has authority to mortgage trust property for the planned farming purposes.

**E Life Estates**

An FO involving a life estate may be made under certain circumstances to:

- both the life estate holder and the remainderman, if both:
  - have a legal right to occupy and operate the farm
  - are eligible for the loan independently
  - parties sign the note and lien instrument
- just the remainderman, if the remainderman has a legal right to operate the farm
- just the life estate holder, if:
  - there is no restriction placed on a life estate holder who occupies and operates a farm
  - the lien instrument is signed by the life estate holder, remainderman, and any other party having any interest in the security.

**72 Entity Composition (Continued)**

**F NPO's**

NPO's are not eligible to receive FSA loan assistance. Eligible entities must be comprised of members who have an individual ownership interest in the entity and can assume personal liability on FSA-2026, as required by subparagraph 371 C.

**73 (Withdrawn--Amend. 37)**

74 **Limitations**

**A Program Limitations**

**[7 CFR 764.102(a)] Limitations specific to each loan program are contained in subparts D through I of this part (Parts 7 through 10).**

**B Maximum Loan Limits**

**[7 CFR 764.102 (b)] The total principal balance owed to the Agency at any one time by the applicant, or anyone who will sign the promissory note, cannot exceed the limits established in § 761.8 of this chapter (1-FLP, paragraph 29).**

**C Loan Funds Used in the United States**

**[7 CFR 764.102(c)] The funds from the FLP loan must be used for farming operations located in the United States.**

## 74 Limitations (Continued)

**D Highly Erodible Soil and Wetlands Conversion**

[7 CFR 764.102(d)] **The Agency will not make a loan if the proceeds will be used:**

- (1) For any purpose that contributes to excessive erosion of highly erodible land, or to the conversion of wetlands;**
- (2) To drain, dredge, fill, level, or otherwise manipulate a wetland; or**
- (3) To engage in any activity that results in impairing or reducing the flow, circulation, or reach of water, except in the case of activity related to the maintenance of previously converted wetlands as defined in the Food Security Act of 1985.**

**Notes:** The above includes HEL and wetland provisions administered by NRCS and the Army Corp of Engineers. The Corp may issue permits for specific agriculture and related wetland activities which they determine to be permissible.

See 6-CP and 1-EQ for guidance if NRCS has determined that the applicant committed any of the above violations.

**E Construction**

[7 CFR 764.102(e)] **Any construction financed by the Agency must comply with the standards established in § 761.10 of this chapter (1-FLP, Part 5).**

**F Non-eligible Enterprise**

[7 CFR 764.102(f)] **Loan funds will not be used to establish or support a non-eligible enterprise, even if the non-eligible enterprise contributes to the farm. Notwithstanding this limitation, an EM loan may cover qualified equine losses as specified in subpart I of this part.**

See Exhibit 2 for the definition of noneligible enterprise.

**75-90 (Reserved)**

## 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 Down Payment 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 non-applicants 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.

## 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, 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.

\* \* \*

91 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.**

## 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:**

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 real estate to be pledged as additional 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.**

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

**G ST Loans**

**[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 an ST loan.

**H Documenting Exceptions**

When security is not taken for any of the mentioned reasons, the authorized agency official  
\*--must document the decision in FBP.--\*

## 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, except that for ML's for FO purposes, the appraisal requirement may be satisfied by an evaluation by an authorized agency official that establishes the value of the real estate.**

**Note:** Until CFR is amended, the following instructions will be followed:

\*--When real estate is taken as security, regardless of loan type, the real estate appraisal requirement may be satisfied by an evaluation from a loan approval official when the amount of the Agency loan to be secured by the real estate does not exceed--\* \$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.

**Note:** An acceptable evaluation for FO ML must:

- be performed by a loan approval official that the SED has delegated the authority to perform real estate evaluations after sufficient training and experience
- be included in the Farm Assessment of the FBP
- identify the location of the property
- provide a description of the property, including any improvements and its current and projected use
- provide confirmation that the property was physically inspected and the date of the inspection
- describe the analysis performed and supporting information used to determine the property's market value, including where information was obtained i.e. court house records, comparable sales, property tax assessments, etc,
- include an effective date of the evaluation and a signature of the preparer.

**Note:** See Exhibit 12 for additional guidance on how to complete an evaluation. The evaluation will be documented in FBP Farm Assessment's Type of Farming Operation.

If a DFO-ML is made in conjunction with a real estate loan from another lender, that lender's evaluation or appraisal may be used as a determination of the property's market value. A copy of the evaluation information or appraisal must be included in the loan file as documentation of the determination.

**Note:** See 1-FLP, subparagraph 141 G for additional information about using third party appraisals.

## 95 Appraisals and Values (Continued)

## A Adequate Security (Continued)

**[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 chattel property owned by the applicant
- properties to be acquired when the item can be specifically identified
- a subsequent loan is made to refinance debt.

**\*--Note:** A desk appraisal may be completed on livestock or equipment when video or photographs exist of the items to be purchased, negating the need to always have to complete an in-person inspection of security items.--\*

**[7 CFR 764.107(b)(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.**

**[7 CFR 764.107(b)(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 Situation When Appraisals Are Not Required

An appraisal is not required for:

- real estate or chattels taken as additional security
- nonessential assets
- loans for annual operating and family living expenses when crops are the primary security
- \*--items that are not readily and specifically identifiable.

**Note:** If property **cannot** be specifically identified (such as livestock or equipment planned to be purchased at auction), a formal chattel appraisal does **not** need to be completed. However, the estimated value of the items to be purchased must be analyzed and satisfy FSA security requirements and should be documented in the credit action of FBP. Security agreements will be updated once security items are more specifically identifiable.--\*

The authorized agency official, to whom SED delegated loan approval authority under 1-FLP, will estimate the market value. The authorized agency official must document the value in FBP, 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)



## Part 6 Insurance

## 111 Overview

## A Adequate Insurance

**[7 CFR 764.108] The applicant must obtain and maintain insurance equal to the lesser of the value of the security at the time of loan closing or the principal of all FLP and non-FLP loans secured by the property, subject to the following:**

**(a) All security, except growing crops, must be covered by hazard insurance if it is readily available (sold by insurance agents in the applicant's normal trade area) and insurance premiums do not exceed the benefit. The Agency must be listed as loss payee for the insurance indemnity payment or as a beneficiary of the mortgagee loss payable clause.**

\*--The hazard insurance obtained by the applicant, at a minimum, should be the standard--\* insurance policy for the locality in which the property is located.

**Note:** The requirement to obtain hazard insurance does not apply to non-essential assets and additional basic security. However, crop insurance is required whenever crops are taken as either primary or additional security, as provided in subparagraph 112 C.--\*

## B Qualifications of Insurance Agents and Companies

\* \* \*

\*--The applicant is responsible for selecting the agent for hazard insurance coverage. The insurance agent and the company supplying the policy should be licensed or otherwise--\* authorized by law to transact the business in the State or other jurisdiction where the property is located. State insurance regulators can provide information about the licensing status of companies.

If the required insurance is not available at comparable rates from an insurance company licensed or otherwise authorized to do business, the authorized agency official may accept insurance from another company if:

- OGC advises that policies issued by the company will be enforceable in the State
- SED determines that the company is reputable and financially sound.

## 112 Type of Insurance Required

### A Hazard Insurance

Subparagraphs A through C contain general insurance requirements.

\*--Hazard insurance is required if the security is the applicant's dwelling, other buildings, and basic security equipment or livestock chattels that are necessary for the farm operation or that provide income to ensure the orderly repayment of the loan.

The authorized agency official may waive the insurance requirement if 1 or more of the following conditions apply:

- cost of insurance is very high in comparison to the value of the property
- property is subject to very slight hazards
- building has a depreciated value of \$2,500 or less.

The minimum amount of coverage for buildings, improvements, and chattels shall be equal to the lesser of the value of security or the cumulative principal owed on all FLP and non-FLP loans at the time of loan closing. Waivers need to be justified and documented in the credit presentation of the Farm Business Plan.--\*

### B Flood Insurance

**[7 CFR 764.108(b)] Real estate security located in flood or mudslide prone areas must be covered by flood or mudslide insurance. The Agency must be listed as a beneficiary of the mortgagee loss payable clause.**

The contents of a building must be insured separately from the building itself.

## 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 financing crop inputs with loan funds. In these cases, the requirement for crop insurance **cannot** be waived if insurance is available. The assignment is obtained on crop insurance company's forms, provided they meet RMA requirements.

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.

The specific insurance plan and amount of coverage is at the applicant's discretion if the plan meets the Catastrophic Risk Protection level for each crop. Insurance products that are based on farm revenue may be considered adequate.

**[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 but is taking a lien on the crop for additional security. The assignment is obtained on crop insurance company's forms, provided they meet RMA requirements. The reason that **\*--crop insurance was not obtained must be documented in FBP and must be for a reason beyond the applicant's control.**

**Example:** The loan or farm was not obtained until after the signup period for crop--\* insurance has expired.

**D NAP**

The NAP program is an important tool in managing potential risk for individuals who raise crops not covered by standard crop insurance. The authorized agency official will discuss the NAP program with all applicants who plan to raise crops which are eligible for NAP coverage. FSA should determine if using NAP coverage is cost effective for the operation and if it will likely benefit both the applicant and the Agency as part of the overall farm plan. If NAP coverage is likely to provide benefits to the operation, applicants will be encouraged to participate in the NAP program, but under no circumstances can it be made mandatory.--\*

**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.

113 Documentation (Continued)

**C Documentation of Crop Insurance**

\*--An applicant can demonstrate meeting the crop insurance requirement by evidence of 1 of the following, as applicable:

- CAT
- crop insurance policy
- FSA-570, if crops are not used as primary security.--\*

**114 Indemnity**

**A General**

The insurance provider must complete FSA-2320, attach to the insurance policy, endorsement, or binder, and provide to the authorized agency official before closing. The mandatory mortgage clause in FSA-2320 provides that loss or damage under the policy shall be payable to the FSA as mortgagee.

**B Using Mortgage Clauses and FSA-2320's**

If the standard mortgage clause in FSA-2320 has been incorporated into the language and is printed in the terms of the policy adopted for use in a State, a separate FSA-2320 is not required.

If using a mortgage clause other than the standard mortgage clause on FSA-2320 has been made mandatory by State law or insurance regulation, SED should issue a State supplement about using that mortgage clause.

**115-130 (Reserved)**

## Part 7 Farm Ownership Loan (FO) Programs

### Section 1 FO (Regular and Microloan)

#### 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. Tree-farming requires a timber management plan that promotes a sustainable annual harvest of trees. FSA will use a Forest Stewardship Management Plan as proof that the applicant has an approved plan.

\*--Down payments 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.

\*--Acquiring farm assets by purchasing ownership interest in an entity is considered to be the same as purchasing the assets themselves. The following uses are authorized:

- individual(s) purchasing ownership interest in an existing operating entity to become the new owner(s)
- existing member(s) purchasing the shares of a withdrawing member(s).--\*

**131 Uses (Continued)****B Farm Purchases (Continued)**

\*--When considering these requests:

- in all cases, the entity must be the applicant and operator of the farm
- all entity members must sign the promissory note providing individual liability for the debt
- the assets purchased must be an authorized FO loan purpose
- the loan amount must be consistent with the interests purchased.

Refinancing of real estate debt is not an authorized use of FO funds. When considering whether or not a request is a technical refinance, the loan approval official shall determine if the ownership structure of the property will change. Ownership changes are often signified by a change in the name of the deeded owner, but this may not always be the situation. For example, an individual buying out the interest of another entity member may constitute a change to the underlying ownership structure.

When considering these requests, FSA must ensure test for credit eligibility criteria is satisfied. To fully assess test for credit requirements in these instances, FSA must consult with relevant creditors, including existing lien holders, to determine if commercial underwriting standards can be met.

State Offices shall contact the National Office for guidance if needed.

**Note:** Proportionality guidance should be considered to ensure family-sized farm requirements are satisfied. See subparagraph 132 A.--\*

## 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 and 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, if 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:**

**(a) Must comply with the general eligibility requirements established at § 764.101** (paragraphs 62 through 72).

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

\*--To ensure compliance with family farm requirements as provided in subparagraph 71 A, the gross farm income generated by the operation (the applicant's entire proposed operation, including the property to be purchased) associated with the purchase must be proportionate to the purchase price. Gross farm income in current and typical year plans must be at least equal to the annual installments for any debts associated with the purchase of the real estate.--\*

The following are entity rule basics for direct FO:

- applicant must be the operator of the farm and match farming records in Farm Programs
- all members of the operating entity, including embedded entities and individuals, must sign the application and meet eligibility requirements as outlined in Part 4
- individual members who own the farm (real estate) must own 50 percent of the farm business (operating entity)
- if the operating entity has embedded entities, the 75 percent rule applies
- loan is made to the operating entity (FLP applicant), and all entity members (from the operating entity) must sign the promissory note
- deed and/or mortgage may be made to any person or entity (in any combination) that was a party to the application as a member of the operating entity or spouses of those individuals (who do not have to be a party to the application or FSA-2026).

## 132 Eligibility (Continued)

## A General Eligibility (Continued)

**\*--Example:** For this example, use the following facts.

<p>Smith Farms, LLC, (operating entity) members are Bob Smith, Betty Smith, Fred Smith, and Ginger Smith.</p>	<p>Real Estate is owned as follows:</p> <ul style="list-style-type: none"> <li>• Bob Smith and Betty Smith, as individuals, own 160 acres.</li> <li>• Fred Smith and Ginger Smith, as Fred's Acres Inc., own 80 acres.</li> </ul>
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Based on these facts:

- the FLP applicant would be Smith Farms, LLC, and all the individual members of Smith Farms, LLC
- FLP would get a Credit Report and financial information on Smith Farms, LLC, and all individual members of Smith Farms, LLC
- the FLP loan would be to Smith Farms, LLC
- Smith Farms, LLC, and Bob, Betty, Fred, and Ginger must sign the Promissory Note
- deed and/or mortgage for the real estate (purchased with the FLP loan) can be to an individual (in any combination), or an entity (including a new entity) as long as the members of that entity are members of the operating entity and listed on the Promissory Note (no new members, not on the application, can be added), and allowed by State law; therefore, for this example, the deed and/or mortgage could be to:
  - Bob, Betty, Fred, or Ginger, as individuals, or in any combination; thereof
  - Fred's Acres, Inc., that is just Fred and Ginger, or any new entity created by the individuals to own the real estate purchased with the FLP loan funds, must still be properly incorporated.--\*

## 132 Eligibility (Continued)

**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. Ownership of the farm operation and farm real estate may be held either directly in the individual's name or indirectly through interest in a legal entity. 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) An ownership entity must be authorized to own a farm in the state or states in which the farm is located. An operating entity must be authorized to operate a farm in the state or states 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 family farm and at least one member of the entity or the entity must own the farm; or,**

**(ii) Not related by blood or marriage, the entity member holding a majority interest must operate the family farm and the entity members holding a majority interest or the entity must own the farm.**

**(4) If the entity is an operator only entity, the individuals that own the farm (real estate) must own at least 50 percent of the family farm (operating entity).--\***

**\*--Note:** In circumstances where the applicant is applying to purchase property that is subject to an active lease authorizing another party to operate the property for the remainder of the crop year, the transaction may close providing the lease is terminated at the end of the crop year and the applicant can assume operatorship of the property the following crop year.--\*

**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 first installment for all FO loans must be scheduled within 12 months from the date of loan closing.--\*

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:**

(a) **In accordance with §§ 764.103 through 764.106** (paragraphs 91 through 94);

(b) **At a minimum, by the real estate being purchased or improved.**

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

**(c) In accordance with §§764.103(c) and 764.101(e), ML's are exempted from the requirements of obtaining 150% security and taking a lien on non-essential assets. Therefore, an ML made for FO purposes, while following the applicable provisions of 764.103 through 764.106, may be secured only by the real estate being purchased or improved, as long as it meets the 100% security requirement.**

**\*--Note:** The purchase price of a property may exceed the appraised value, providing adequate security is available to satisfy all security requirements.--\*

**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.

**137 Program Outreach**

**A General**

In addition to outreach requirements in subparagraph 41 E, SED shall be responsible for:

- maintaining efforts to inform potential applicants and retiring farmers of FLP
- coordinating with State Beginning Farmer programs and other organizations that assist beginning farmers.

**B Relationship between FSA and a State Beginning Farmer Program**

DAFLP has the authority to execute MOU with any State Beginning Farmer program expressing an interest in coordinating financial assistance to beginning farmers. MOU must be executed within 60 calendar days of the State notifying DAFLP in writing of such interest, and will be developed according to Exhibit 16.

\*--Under MOU, FSA will agree to provide qualified beginning farmers with a down payment--\* loan under Section 2 and/or a guarantee of the balance of the purchase price provided by the State program.

This agreement will be subject to applicable law, loan approval requirements, and the availability of funds. FSA will not charge a fee to obtain or retain a guarantee in connection with any joint funding under MOU.

If any changes are made to MOU, the Regional OGC will be consulted. States will send MOU's to LMD, at the following address, to obtain the DAFLP's approval:

Director  
USDA FSA DAFLP LMD  
STOP 0522  
1400 Independence Ave SW  
Washington DC 20250-0522.

**138-150 (Reserved)**



**\*--Section 2 Down Payment Program**

**151 Uses**

**A General**

The following regulations and requirements will apply to both regular FO and DFO-ML.

**[7 CFR 764.201] Downpayment loan funds may be used to partially finance the purchase of a family farm by an eligible beginning farmer, socially disadvantaged farmer.**

**Note:** For Down payment loan purposes, the applicant must meet the definition of a--\* beginning farmer, according to Exhibit 2, at the time the application is received by FSA.

**152 Eligibility****A Requirements**

[7 CFR 764.202] **The applicant must:**

- (a) Comply with the general eligibility requirements established at § 764.101**  
**\*--(paragraphs 62 through 72) and the FO (including DFO-ML) eligibility requirements--\***  
**of § 764.152 (paragraph 132); and**
- (b) Be a beginning farmer, socially disadvantaged farmer.**

See Exhibit 2 for the definition of a beginning farmer, and SDA farmer.

**B Farm Size for Beginning Farmers**

The applicant must not own more than 30 percent of the average size farm as established under the beginning farmer definition at the time of the application. The applicant may exceed the 30 percent after the loan is closed.

The average farm acreage and 30 percent of the average acreage shall be published in a State supplement. The 30 percent of the average acreage will be rounded to the closest tenth of a percent.

**Example:** The average size farm for the county is 94 acres. 30 percent of the average, rounded to the nearest tenth, is 28.2 acres. Therefore, to meet the beginning farmer requirements, the applicant must own no more than 28.2 acres.

If the farm is located in more than 1 county, FSA uses the average farm acreage of the county where the applicant's residence is located.

If the applicant's residence is not located on the farm or if the applicant is an entity, FSA uses the average farm acreage of the county where the largest portion of the farm is located.

**Note:** Average farm size does **not** apply to SDA applicants. However, the family farm requirement under § 764.101(k) (paragraph 71) does apply.

**153 Limitations**

**A General**

[7 CFR 764.203(a)] **The applicant must:**

**(1) Comply with the general limitations established at § 764.102 (paragraph 73).**

**\*--B Minimum Down Payment--\***

The applicant must:

[7 CFR 764.203(a)(2)] **Provide a minimum downpayment of 5 percent of the purchase price of the farm.**

The applicant must provide the minimum down payment in cash.

**C Maximum FSA Loan Amount**

[7 CFR 764.203(b)] **Downpayment loans will not exceed 45 percent of the lesser of:**

- (1) The purchase price,**
- (2) The appraised value of the farm to be acquired, or**
- (3) \$667,000; subject to the direct FO dollar limit specified in 7 CFR 761.8(a)(1)(i).**

[7 CFR 764.203(c)] **Downpayment loans made as ML for FO purposes may not exceed \$50,000.**

The following is an example of a DFOML down payment loan.

<b>Example:</b> Purchase Price	\$325,000
Cash down payment	\$ 16,250
*--Down Payment DFOML	\$ 50,000
Other Financing	\$258,750

**Note:** The balance of the purchase price not covered by the Down Payment loan and--\* applicant downpayment may be financed by a commercial, cooperative, or private lender, including the seller.

**D Maximum Combined Loans**

[7 CFR 764.203(d)] **Financing provided by the Agency and all other creditors must not exceed 95 percent of the purchase price. Financing provided by eligible lenders may be guaranteed by the Agency under part 762 of this chapter (2-FLP).**

## 154 Rates, Terms, and Security

## A Rates

**[7 CFR 764.204(a)] The interest rate for Downpayment loans will be the regular direct FO rate minus 4 percent, but in no case less than 1.5 percent.** See 1-FLP, Exhibit 17 for current rates.

## B FSA Terms

**[7 CFR 764.204(b)(1)] The Agency schedules repayment of Downpayment loans in equal, annual installments over a term not to exceed 20 years.**

The authorized agency official may schedule repayment over a period of less than 20 years if requested by the applicant and the farm operating plan (see 1-FLP, Part 8, Section 3) indicates that the loan can be repaid within the period requested.

## C Other Lender Terms

**[7 CFR 764.204(b)(2)] The non-Agency financing must have an amortization period of at least 30 years and cannot have a balloon payment due within the first 20 years of the loan.**

## D Minimum Security Requirements

**[7 CFR 764.205] A Downpayment loan must:**

**(a) Be secured in accordance with §§ 764.103 through 764.106 (paragraphs 91 through 93);**

**(b) Be secured by a lien on the property being acquired with the loan funds and junior only to the party financing the balance of the purchase price.**

FSA:

- \*--requires adequate security on a Down Payment loan as it does for an FO
- does not require additional security
- does not require a lien on nonessential assets.

**Note:** The purchase price of a property may exceed the appraised value, providing adequate security is available to satisfy all security requirements.--\*

See Part 5 for detailed information on security requirements.

155-170 (Reserved)

**Part 9 Operating Loan (OL) Program****Section 1 OL's****201 Uses****A General**

**[7 CFR 764.251(a)] Except as provided in paragraph (b), OL and ML used for OL purposes loan funds may only be used for:** See subparagraphs B through L for OL uses.

**Note:** To conserve FSA funding, applicants will be strongly encouraged to obtain a portion of their credit needs from other sources if possible. Such arrangements may include splitting annual operating from term loan purposes, vendor credit, FSA guarantees, and subordinations. Maximizing the use of other available credit sources, especially for shorter term operating credit, will allow FSA to better meet program demand.

**B Reorganizing a Farm**

OL funds may only be used for:

**[7 CFR 764.251(a)(1)] Costs associated with reorganizing a farm to improve its profitability;**

The following requirements apply when reorganizing a farm.

- Reorganizing the farm means changing enterprises, production practices, marketing methods, or other parts of the farm business to enhance the viability of the farm.
- Examples of acceptable use of loan funds under this provision include but are not limited to:
  - purchase of equipment to convert from conventional to no-till production
  - change from stocker to cow/calf production
  - shifting from row crop to vegetable production
  - purchasing grain drying and storage equipment to facilitate better marketing
  - purchase shares in value-added processing and marketing cooperatives.

**Note:** These situations are for illustrative purposes only. Any similar operational changes are acceptable as long as a realistic farm plan indicates the changes will improve the financial viability of the farm.

**C Chattel and Other Purchases**

OL funds may only be used for:

**[7 CFR 764.251(a)(2)] Purchase of livestock, including poultry, farm equipment, quotas and bases, and cooperative stock for credit, production, processing or marketing purposes;**

**201 Uses (Continued)****C Chattel and Other Purchases (Continued)**

Funds may be used only for purchases essential to the success of the farming operation.

Farm vehicles used for farm operating purposes may be purchased, repaired, or refinanced only when the following conditions apply.

- The applicant provides verification that the vehicle will be used exclusively for farm operating purposes. Examples of vehicles used for farm operating purposes include, but are not limited to, grain or livestock hauling trucks, vehicles needed to pull wagons or livestock trailers, and pick-up trucks.
  - A pick-up truck used primarily as a personal vehicle shall not be financed.
  - The income tax treatment of a vehicle is a good indication of its use. If the farm vehicle is or will be depreciated as a farm asset, FSA financing may be authorized.
- The applicant documents need for purchasing, repairing, or refinancing.
- Other credit is not available from usual sources, including dealers and banks. When a farm vehicle is being purchased, dealer and bank financing is usually readily available, often at low rates.
- The vehicle being purchased, repaired, or refinanced is modest in size, utility, and cost and meets the needs of the operation.

\*--Acquiring farm assets by purchasing ownership interest in an entity is considered to be the same as purchasing the assets themselves. The following uses are authorized:

- Individual(s) purchasing ownership interest in an existing operating entity to become the new owner(s).
- Existing member(s) purchasing the shares of a withdrawing member(s).

When considering these requests:

- in all cases, the entity must be the applicant and operator of the farm
- all entity members must sign the promissory note providing individual liability for the debt
- the assets purchased must be an authorized OL loan purpose
- the loan amount must be consistent with the interests purchased.

State Offices shall contact the National Office for guidance if needed.--\*

**201 Uses (Continued)****D Annual Farm Operating Expenses**

OL funds may only be used for:

**[7 CFR 764.251(a)(3)] Farm operating expenses, including but not limited to, feed, seed, fertilizer, pesticides, farm supplies, repairs and improvements which are to be expensed, cash rent and family living expenses;**

See Exhibit 2 for the definition of family living expenses.

**E Principal and Interest Payments**

OL funds may only be used for:

**[7 CFR 764.251(a)(4)] Scheduled principal and interest payments on term debt provided the debt is for authorized FO or OL purposes;**

The payment must be the current year's installment and cannot be delinquent.

**F Other Farm Needs**

OL funds may only be used for:

**[7 CFR 764.251(a)(5)] Other farm needs;**

Funds can be used to finance the initial processing of agricultural commodities provided that a majority of the agricultural commodities processed are produced by the applicant's farm.

**\*--Example:** Allowable processing activities include but are not limited to canning tomatoes, packaging maple syrup, bottling milk, making cheese or yogurt, producing juice or wine, and other general value-added processes.--\*

**G Land and Water Development**

OL funds may only be used for:

**[7 CFR 764.251(a)(6)] Costs associated with land and water development, use, or conservation;**

**201 Uses (Continued)****H Loan Closing Costs**

OL funds may only be used for:

**[7 CFR 764.251(a)(7)] Loan closing costs;**

An applicant may use OL funds to pay only for those loan closing costs that are reasonable and customary.

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

**I Occupational Safety and Health Act of 1970 Compliance**

OL funds may only be used for:

**[7 CFR 764.251(a)(8)] Costs associated with Federal or State-approved standards under the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 667) if the applicant can show that compliance or non-compliance with the standards will cause substantial economic injury;**

**J Training Costs**

OL funds may only be used for:

**[7 CFR 764.251(a)(9)] Borrower training costs when required or recommended by the Agency;**

**K Refinancing Farm-Related Debts**

OL funds may only be used for:

**[7 CFR 764.251(a)(10)] Refinancing farm-related debts other than real estate to improve the farm's profitability, provided the applicant has refinanced direct or guaranteed OL loans four times or fewer and one of the following conditions is met:**

- (1) A designated or declared disaster caused the need for refinancing; or**
- (2) The debts to be refinanced are owed to a creditor other than the USDA.**

**Notes:** The debts refinanced must be held by the applicant.

Loans made for authorized direct or guaranteed OL purposes, regardless of the type of security, may be refinanced.

**202 Eligibility (Continued)****B Prior FSA Losses (Continued)**

If the applicant for an OL has caused FSA or its predecessor agency, FmHA, a loss on any direct or guaranteed loan, the applicant is ineligible, except in the following 2 scenarios.

- If the applicant caused FSA a loss by receiving a write-down, the applicant may receive an OL to pay annual operating and family living expenses. See 5-FLP, Part 4 for an explanation of the write-down process.
- If the applicant caused FSA a loss, as part of a confirmed bankruptcy plan, and the applicant is now current on payments to all creditors, the applicant may receive an OL to pay annual operating and family living expenses.

The applicant may become eligible for an OL, for uses other than annual farm operating and family living expenses, only after the total amount of debt forgiveness is cured by repayment.

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

**Note:** FSA should under no circumstances inform a discharged debtor that they must repay their “loss” to regain full eligibility. If the applicant asks they may be informed that if the debt was repaid in full their eligibility would be reconsidered, however, there is no guarantee that a loan will be approved as all loan approval factors will be reviewed as part of the application process.

The authorized agency official will consider losses to other Federal agencies and the circumstances for such losses under the credit history requirement (paragraph 65).

The authorized agency official will review items obtained according to subparagraph 65 B.

**C Operator of Farm**

**[7 CFR 764.252(d)] In the case of an entity applicant, the entity must be:**

- (1) Controlled by farmers engaged primarily and directly in farming in the United States; and**
- (2) Authorized to operate the farm in the State in which the farm is located.**

**202 Eligibility (Continued)****D OL Term Limits**

**\*--[7 CFR 764.252(e)] The applicant and anyone who will sign the promissory note, may close an OL in no more than seven calendar years, either as an individual or as a member of an entity, except as provided in paragraph (e)(1) through (4) of this section. The years may be consecutive or non-consecutive, and there is no limit on the number of OL's closed in a year. Microloans made to a beginning farmer or a veteran farmer are not counted toward this limitation. Youth loans are not counted toward this limitation.**

**Note:** The following exceptions apply.--\*

- The applicant and anyone who signs FSA-2026 is eligible to close direct OL's in 7 calendar years. This does not mean that the applicant or cosigner has necessarily had loans outstanding for 7 years, but that the applicant or cosigner has closed new loans in 7 different years.
- Guaranteed OL's do not count against the direct OL eligibility limitation.
- Rescheduling a loan does not count against the direct OL eligibility limitation.
- Cosigning for a direct OL counts against the direct OL eligibility limitation.
- Assuming a direct OL counts against the direct OL eligibility limitation.
- An entity applicant is eligible for a direct OL only if all of its individual members have not exceeded the term limits.

**204 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, as follows:

- \*--for annual operating loans the first payment is due when income is received or within 18 months
- for all other operating loans, the first payment is due within 12 months of loan closing
- 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.--\*

## 205 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) Except for ML's, 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.

\*--[7 CFR 764.255(c)] For ML's used for OL purposes:--\*

[7 CFR 764.255(c)(1)] For annual operating purpose loans must be secured by a first lien on farm property or products having a security value of at least 100 percent of the loan amount, and up to 150 percent, when available. A lien is not required on crops or livestock financed with annual operating ML's. However, the loan must be secured at least 100 percent and up to 150 percent if available, without taking a lien on personal residences or nonessential assets.

[7 CFR 764.255(c)(2)] For loans made for purposes other than annual operating \*--purposes, loans must be secured by a first lien on farm property or products--\* purchased with loan funds and having a security value of at least 100 percent of the loan amount.

**Notes:** Loans made for refinancing purposes will be secured by a lien on any farm property valued at least 100 percent of the loan amount.

In cases where livestock is the only security that will be pledged, FSA will take no more than 100 percent of the loan amount when separate and identifiable security can clearly be established.

[7 CFR 764.255(c)(3)] A lien on real estate is not required unless the value of the farm products, farm property, and other assets available to secure the loan is not at least equal to 100 percent of the loan amount.

[7 CFR 764.255(c)(4)] Notwithstanding the provisions of paragraphs (c)(1), (c)(2), and (c)(3) of this section, FSA will not require a lien on a personal residence.

206-215 (Reserved)

## Section 2 Microloan OL's and Streamlined OL's

## 216 DOL-ML Process

## A Overview

Applicants meeting the requirements established in subparagraph 43 B may apply for DOL-ML's.

## B Requirements

**[7 CFR 764.51(c)] For an ML request, all of the following criteria must be met:**

**[7 CFR 764.51(c)(1)] The loan requested for OL purposes is:**

**[7 CFR 764.51(c)(1)(i)] To pay annual or term operating expenses,**

**[7 CFR 764.51(c)(1)(ii)] \$50,000 or less and;**

**[7 CFR 764.51(c)(1)(iii)] the applicant's total outstanding principal agency OL debt at the time of loan closing will be \$50,000 or less.**

**Notes:** For ML purposes, FSA has determined that an operation with gross sales of agricultural products of at least \$1,000 annually will be recognized as a farm.

\*--The loan limits allow a borrower to receive up to \$50,000 in OL Microloan funds and \$50,000 in FO Microloan funds, for a total of \$100,000. However, in no case will the loans exceed the individual loan type amount even if done in combination.

DOL – ML must be less than or equal to \$50,000.

DFO – ML must be less than or equal to \$50,000.--\*

This will be incorporated by a Farm Bill CFR change but is effective, as provided here, immediately.

## 217 Streamlined OL Process

**\*--A Overview**

The Streamlined Operating Loan (OL) process provides existing FSA loan borrowers, meeting the requirements established in subparagraph 43 A, the opportunity to apply for direct annual operating and/or term operating loans with an abbreviated application process using FSA-2314. The Streamlined OL application eases the quantity of documentation submitted by an applicant and the underwriting performed by the authorized agency official. This does not mean priority consideration for application processing. Farm Ownership, Down Payment Loans, Conservation Loans, Microloans, and Youth Loans do not qualify to use the Streamlined OL process.

**B General Requirements for all Streamlined OL Requests**

The following are general requirements for all Streamlined OL requests.

- The applicant must not be delinquent with any creditors, including FSA.
- There have been no significant changes to the operation since the last closed direct FSA loan.

**Note:** If the operation consists of the same type of commodities and/or livestock and will not require additional labor or equipment resources beyond what is being financed using the Streamlined OL, the change will not be considered significant. However, if the operation changes commodities, enterprises, practices, management, or requires additional labor or equipment resources beyond what is being financed using the Streamlined OL, the change will be considered significant. Whenever there are significant changes to the operation, a streamlined application is not appropriate.

- The updated cash flow for the new loan is positive for repayment to FSA and all creditors.
- The loan amount for the new loan may be increased if it is supported by the cash flow and the applicant continues to meet the streamlined OL requirements.
- The applicant must not have received primary loan servicing in the previous year.
- Refinancing of any type is prohibited, because refinancing requests are not eligible for a Streamlined OL.
- All other requirements remain the same as any Direct OL exceeding the ML limit.--\*

**217 Streamlined OL Process (Continued)****\*--C Streamlined OL – Annual Operating Loans**

FSA will consider Streamlined OL requests for annual operating loan purposes that satisfy the criteria provided in subparagraph 217 B in addition to the following.

- The loan request is to cover projected annual operating and family living expenses.
- The applicant has financed the preceding crop year with an FSA direct annual operating loan.
- The loan request may be increased beyond the previously closed annual operating loan when supported by a feasible cash flow.
- Capacity increases of up to 20% are still eligible to be processed as a Streamlined OL.

**Note:** Capacity increases can be qualified by, but not limited to, documenting total crop acres, livestock head count, and total production.

**D Streamlined OL – Term Operating Loans**

FSA will consider Streamlined OL requests for certain term operating loan purposes that satisfy the criteria provided in subparagraph 217 B in addition to the following:

- The loan request is limited strictly to the purchase of livestock or equipment
- The applicant has not received a Streamlined OL Term Operating Loan in the last 12 months

**Notes:** The Agency will consider and approve Streamlined OL Annual and Term Operating Loans as part of the same application package when possible.

If there have been no significant changes, the previous FBP will be copied and brought forward as the Streamlined OL plan with minimal changes required, such as commodity price updates. The FBP date will be changed to reflect it is the Streamlined OL plan. The authorized agency official must input a new credit presentation that documents the OL is being processed as a Streamlined OL application request. All pertinent information on the previous credit presentation may be copied and brought forward. In cases where the capacity or loan amount has increased, the Agency will document the changes under the Capacity section of the credit presentation. All other typical loan making documents will be updated or prepared, as necessary.--\*

**218-225 (Reserved)**



227 Uses and Limitations (Continued)

**C Maximum Loan Limit**

**[7 CFR 764.303(b)] The total principal balance owed by the applicant to the Agency on all Youth loans at any one time cannot exceed \$5,000.**

The authorized agency official should not loan more than is necessary to successfully carry out the project or more than the projections show can be repaid.

## 228 Eligibility

**A General**

**[7 CFR 764.302] The applicant:**

**(a) Must comply with the general eligibility requirements established at §764.101(a) through (g) (paragraphs 62 through 67);**

See subparagraphs B through F for OL Youth Loan program specific information. If different from the general eligibility in paragraphs 62 through 67, the information in this paragraph to be substituted for those portions.

A youth loan applicant:

- does not need to demonstrate managerial ability
- will satisfy the borrower training requirement by the project advisor's supervision
- does not need to operate a farm
- is not limited in the number of years in which loans may be closed.

**B Debt Forgiveness**

The applicant:

**[7 CFR 764.302(b)] And anyone who will sign the promissory note, must not have received debt forgiveness from the Agency on any direct or guaranteed loan.**

\*--As provided in subparagraph 65 A, prior debt forgiveness on a youth loan will not count as debt forgiveness for eligibility purposes if circumstances were beyond the control of the applicant. However, this paragraph is still valid in limited circumstances, when an applicant for a youth loan previously realized prior debt forgiveness with the Agency for a non-youth loan.--\*

**C Age**

The applicant:

**[7 CFR 764.302(c)] Must be at least 10 but not yet 21 years of age at the time the loan is closed.**

## 228 Eligibility (Continued)

**D Project Advisor**

The applicant:

**\*--[7 CFR 764.302(d)] Must be recommended and continuously supervised by a project advisor, such as a 4-H Club advisor, a vocational teacher, a county extension agent, Tribal youth advisor, or other agriculture-related organizational sponsor; and--\***

The application for a youth loan must contain a recommendation from the project advisor and verify that:

- the project advisor:
  - will sponsor the youth
  - has training and/or experience to supervise youth
  - is available to help the youth plan the project, to review the youth's books and records, and to answer questions
- the youth is a member of an organization.

While the project advisor should supervise the youth applicant to an extent acceptable to the authorized agency official, the authorized agency official still has the primary responsibility for supervising the loan.

**E Parental Consent**

The applicant:

**\*--[7 CFR 764.302(e)] Must obtain a written recommendation and consent from a--\* parent or guardian if the applicant has not reached the age of majority under state law.**

**F Requiring Cosigners**

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.

**Note:** When a plan is feasible using realistic figures, a cosigner will not be required.

**229 Rates, Terms, and Repayment****A Rates**

**[7 CFR 764.304(a)(1)] The interest rate is the Agency's Direct Operating Loan rate, available in each Agency office.**

**[7 CFR 764.304(a)(2)] The limited resource Operating Loan interest rate is not available for Youth loans.**

**[7 CFR 764.304(a)(3)] The interest rate charged will be the lower rate in effect at the time of loan approval or loan closing.**

See 1-FLP, Exhibit 17 for interest rates.

**B Terms**

**[7 CFR 764.304(b)] Youth loan terms are the same as for an OL established at § 764.254(b) (paragraph 204).**

Payments will be tailored to the type of project for which the loan is made.

**Exception:** Balloon payments are prohibited.

**C Repayment Frequency**

\*--Youth loan repayment schedules may include equal or unequal payments as follows:

- for annual operating youth loans, the first payment is due when income is received or within 18 months
- for all other operating youth loans, the first payment is due within 12 months of loan closing--\*
- after the initial payment, payments are scheduled annually unless the loan is repaid in a single payment
- annual installments must cover, at a minimum, the accrued interest.

## 242 Eligibility (Continued)

## F Availability of Credit Elsewhere (Continued)

**(3) In the case of a loan of \$100,000 or less, the Agency may waive the requirement for obtaining a written declination of credit, if the Agency determines that it would pose an undue burden on the applicant, the applicant certifies that they cannot get credit elsewhere, and based on the applicant's circumstances credit is not likely to be available;**

The authorized agency official:

- may waive the requirement for written credit denial when a review of the financial statement, credit report, and other financial information clearly indicates that other credit is not available to the applicant
- must thoroughly document this conclusion in the loan file by comparing the credit standards of local lenders that make farm loans to the applicant's financial condition and showing how the applicant does not meet those standards.

The fact that an applicant has obtained credit for farm purposes through credit cards, finance companies, or other "sub-prime" lenders does not constitute failure to meet the test for credit unless the rates and terms for that credit are similar to the rates and terms offered on loans for the same purpose by other farm lenders in the community.

**(4) Notwithstanding the applicant's submission of the required written declinations of credit, the Agency may contact other commercial lending institutions within reasonable proximity of the applicant and make an independent determination of the applicant's ability to obtain credit elsewhere;**

If the authorized agency official believes, based on a review of the applicant's financial statement, credit report, and other financial information, that other credit is available, the authorized agency official may contact lenders to determine if they are willing to extend credit to the applicant.

The following are used to verify and document the availability of other credit:

- FSA-2310
- FSA-2015
- written letters from lenders that contain all the information requested on FSA-2310.

When the applicant is an entity, all individual members must meet the requirements of this subparagraph.

## 242 Eligibility (Continued)

**G Prior Debt Forgiveness**

The applicant:

**[7 CFR 764.352(f)] And all entity members in the case of an entity must not have received debt forgiveness from the Agency on more than one occasion on or before April 4, 1996, or any time after April 4, 1996.**

See Exhibit 2 for the definition of debt forgiveness.

If an applicant repays the forgiven debt, this restriction does not apply.

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

**Notes:** The 2018 Farm Bill does not change the requirements pertaining to the number and date of debt forgiveness on or before April 4, 1996. However, it will allow borrowers who have received a restructuring with a debt writedown of a farm loan to maintain eligibility for an emergency loan if those applicants successfully made payments and kept agreements per their restructure.

This will be incorporated by a Farm Bill CFR change but is effective, as provided here, immediately.

**H Timely Loan Application**

The applicant:

**[7 CFR 764.352(g)] Must submit an application to be received by the Agency no later than eight months after the date the disaster is declared or designated in the county of the applicant's operation.**

If a county has been designated or declared a disaster area, either a contiguous or primary, more than 1 time for the same disaster, applicants will have 8 months from the date of the most recent designation to submit an application.

The applicant may seek EM only with respect to a family farm that had production or physical losses as a result of a disaster in a designated or declared disaster area, either a contiguous or primary.

**Note:** See State supplements, which provide a list of current disaster designations and establish the timeframe during which applicants may apply for assistance. The State supplement shall provide the authorized agency official with sufficient information to determine if an applicant was operating in a designated disaster area, either a contiguous or primary, and that the application was received during the eligible period.

244 **Calculating Losses (Continued)****C Calculating Production Losses (Continued)**

**(4) Subtract any other disaster related compensation or insurance indemnities received or to be received by the applicant for the production loss.**

\*--Disaster related compensation includes only yield and production payments related to the specific disaster designation, including but not limited to:

- crop insurance yield protection payments--\*
- CAT
- NAP
- other FSA disaster program payments, such as Emergency Feed Assistance Program, emergency conservation programs, and any other special disaster program payments
- any other disaster assistance provided through agencies such as FEMA.

The authorized agency official will verify, through CED and the Comprehensive Information Management System, where available, producer's "other disaster-related compensation or insurance indemnities received or to be received" for the loss.

**Notes:** Only compensation received specifically for the production loss for which the applicant is requesting assistance is deducted from the loss amount.

\*--Revenue protection crop insurance payments are not deducted from the amount of the disaster loan as EM disaster assistance is available only for operations that received payments for yield and production reductions.--\*

**D Quality Loss Adjustments**

Quality losses are determined by comparing the average market price for the commodity at the grade the applicant would have normally sold the product, with the average price of the grade at actual sale.

**E Losses to Native Pasture and Rangeland**

Production losses to native pastures, rangeland, and grazing permit lands are calculated by determining the average per head cost of feed purchased for 3 years before the disaster, then comparing it to the average per head cost of feed in the disaster year. If the disaster year cost per head exceeds the average cost per head in the non-disaster year by 30 percent or more, the applicant's loss is calculated by multiplying the number of head of livestock in the disaster year by the difference between the cost per head in the disaster year and the 3-year average cost.

## 244 Calculating Losses (Continued)

**F Examples of Production Loss Calculations**

The following are examples of loss calculations.

**Example 1:** The applicant provides reliable records to show that the cost per head for feed purchased in the previous 3 years was \$230. In the disaster year, the average cost per head was \$300.

- $\$300 \div \$230 = 1.30$  or 30 percent higher feed costs.
- $\$300 - \$230 = \$70$  is the production loss per head.
- The applicant had 100 head of cattle during the disaster year. Therefore,  $\$70 \times 100 = \$7,000$  feed loss is the amount of the production loss.

**Example 2:** The applicant normally produces fresh market apples, but because of the disaster, the apples were sold for processor, peeler, or juice apples.

The average price offered for fresh market apples is \$258/ton. The price the applicant received for processor apples is \$60/ton. The quality loss is calculated as follows.

- $\$60 \div \$258 = 23$  percent of the normal price.
- To make the adjustment, the applicant's quality adjusted disaster year yield would be reduced by 77 percent of the actual disaster year yield.
- To determine this adjustment, the actual disaster year yield is multiplied by .23 to get the quality adjusted disaster year yield.

**\*--Example 3:** The applicant produces multiple crops in a designated county with all being essential to the farming operation except blueberries. In the disaster year the crop losses were:

- Cotton = 70 percent loss
- Peanuts = 26 percent loss
- Blueberries = 100 percent loss
- Soybeans = 15 percent loss.

Since cotton, which is a basic part of the operation, suffered a qualifying loss, an EM loan can include all losses on crops in a designated or contiguous county which are essential to the operation (Cotton, Peanuts, and Soybeans).--\*

**245 Rates, Terms, and Repayment****A Rates**

**[7 CFR 764.354(a)(1)] The interest rate is the Agency's Emergency Loan Actual Loss rate, available in each Agency office.**

**[7 CFR 764.354(a) (2)] The interest rate charged will be the lower rate in effect at the time of loan approval or loan closing.**

See 1-FLP, Exhibit 17 for interest rates.

**B Terms**

**[7 CFR 764.354(b)(1)] The Agency schedules repayment of EM loans based on the useful life of the security, the applicant's repayment ability, and the type of loss.**

The applicant's ability to repay the loan is a critical factor in determining the repayment term of the loan.

**C Minimum Repayment Requirement**

**[7 CFR 764.354(b)(2)] The repayment schedule must include at least one payment every year.**

The payment must be at a minimum the amount of interest accrued on the principal balance at the time the installment is scheduled to be paid.

If unequal or interest only installments are scheduled, the applicant must be able to show the availability of resources to pay the loan in full by the final maturity date.

**D Repayment of Loans for Annual Operating Expenses**

**[7 CFR 764.354(b)(3)] EM loans for annual operating expenses, except expenses associated with establishing a perennial crop that are subject to paragraph (b)(4), must be repaid within 12 months. The Agency may extend this term to not more than 18 months to accommodate the production cycle of the agricultural commodities.**

Annual operating loans must be scheduled for repayment at the time income will be available to make the payment, but not later than 18 months from the date of the note.

## 245 Rates, Terms, and Repayment (Continued)

**E Repayment of Loans for Production or Physical Losses to Chattels**

**[7 CFR 764.354(b)(4)] EM loans for production losses or physical losses to chattel (including but not limited to assets with an expected life between one and seven years) may not exceed seven years. The Agency may extend this term up to a total length not to exceed 20 years, if necessary to improve the applicant's repayment ability and real estate security is available.**

The usual repayment term for a loan secured by chattel is 1 to 7 years. The specific term of a loan shall be determined by the applicant's projected ability to repay the loan based on the farm operating plan.

When the applicant's projected repayment ability does not permit repayment within 7 years, a 10-year term may be considered. If repayment is not possible in 10 years, then a longer term may be considered in 2-year increments. At no time will the maximum term exceed 20 years.

Real estate security is required in addition to chattel security when the repayment term will exceed 7 years.

\*--The first installment, which may be interest only, will be scheduled within 12 months of loan closing.--\*

Repayment terms with 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.

## 245 Rates, Terms, and Repayment (Continued)

**F Repayment of Loans for Physical Losses to Real Estate**

**[7 CFR 764.354(b)(5)] The repayment schedule for EM loans for physical losses to real estate is based on the applicant's repayment ability and the useful life of the security, but in no case will the term exceed 40 years.**

The specific term of a loan is determined by the applicant's projected ability to repay based on the farm operating plan.

The loan term is 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 projected installment results in a feasible plan.

\*--The first installment will be scheduled within 12 months of loan closing.--\*

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.

## 246 Security Requirements

## A General

**[7 CFR 764.355(a)] EM loans made under § 764.351(a)(1) (subparagraph 241 A) must comply with the general security requirements established at §§ 764.103 (paragraph 91), 764.104 (paragraph 92) and 764.155(b) (subparagraph 135 D).**

**[7 CFR 764.355(b)] EM loans made under § 764.351(a)(2) (subparagraph 241 B) and (b) (subparagraph 241 C) must generally comply with the general security requirements established at §§ 764.103 (paragraph 91), 764.104 (paragraph 92) and 764.255(b) \*--(subparagraph 205 A). These general security requirements, however, do not apply to equine loss loans to the extent that a lien is not obtainable or obtaining a lien may prevent the applicant from carrying on the normal course of business. Other security may be considered for an equine loss loan in the order of priority as follows:**

- (1) Real estate,**
- (2) Chattels and crops, other than horses,**
- (3) Other assets owned by the applicant,**
- (4) Third party pledges of property not owned by the applicant,**
- (5) Repayment ability under paragraph (c) of this section.--\***

FSA may take the following as security.

- In the case of an entity, personal assets held by individual members when all the security held by the entity do not meet the requirement for additional security up to 150 percent of the loan amount. The entity will select and notify FSA which assets will be offered as security for the loan.
- A lien on all nonessential assets held by the applicant and any individual entity members, with an aggregate value exceeding \$5,000, if the assets cannot be sold to reduce the amount of the loan request before loan closing.

**Note:** The value of nonessential assets taken as security according to subparagraph 91 E cannot be used to meet the 150 percent requirement of this section.

See Exhibit 2 for the definition of nonessential assets.

See Exhibit 21 for security requirements for loans made for reestablishing fruit, nut bearing, and income producing trees and plants.

248 Appraisal and Valuation Requirements (Continued)

**B Establishing Values for Assets Damaged by Disaster**

**[7 CFR 764.356(a)] In the case of physical losses associated with livestock, the applicant must have written documentation of the inventory of livestock and records of livestock product sales sufficient to allow the Agency to value such livestock or livestock products just prior to the loss.**

**[7 CFR 764.356(b)] In the case of farm assets damaged by the disaster, the value of such security shall be established as of the day before the disaster occurred.**

**[7 CFR 764.356(c)] In the case of an equine loss loan:**

**(1) The applicant's Federal income tax and business records will be the primary source of financial information. Sales receipts, invoices, or other official sales records will document the sales price of individual animals.**

**(2) If the applicant does not have 3 complete years of business records, the Agency will obtain the most reliable and reasonable information available from sources such as the Cooperative Extension Service, universities, and breed associations to document production for those years for which the applicant does not have a complete year of business records.**

**\*--Values for EM valuation must be determined by employees who have been delegated chattel appraisal authority.--\***

249-265 (Reserved)

**Part 11 (Reserved)**

266-285 (Reserved)

**Part 12 (Reserved)**

286-305 (Reserved)

**Part 13 (Reserved)**

306-330 (Reserved)

**Part 14 (Reserved)**

331-350 (Reserved)



## 351 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 2-EQ, and will not violate CONACT, Section 363; the Food, Security Act of 1985 (Sodbuster, Swampbuster); Executive Order 11990; or the Clean Water Acts.

See 1-EQ, paragraph 51 for guidance to identify potential wetlands that may be impacted--\* by the proposed action.

The authorized loan official must ensure the applicant has certified that he or she will not violate HEL or WC provisions and that loan funds will not be used for a purpose that will contribute to a violation of HEL or WC provisions.

According to 6-CP, applicants must certify that they will not violate HEL and WC provisions by completing and executing AD-1026 for each farming interest. If, on AD-1026, question 6, 7A, 7B, or 7C is answered “yes” by the applicant, then AD-1026 will be referred to NRCS for a HEL or wetland determination, as appropriate.

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

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

The authorized agency official should consider the proposed use of loan funds; the contents of the conservation plan, if a conservation plan exists; and changes in land use when determining whether an applicant is likely to violate HEL and WC provisions.

### 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 246 B, documentation of the requirements of that section shall be included in the narrative.

## 352 Loan Approval

### A Assessment

The authorized agency official must confirm and document in FBP 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.**

Authorized agency officials shall not make any written or oral commitments or in any way imply that a loan will be made to any individual or entity before the closing of a loan.

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 472 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 the 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 funds are available and 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 business 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 will be sent by regular mail or hand delivered to the primary applicant.--\*

## 352 Loan Approval (Continued)

## C Approval

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

**(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;**

Streamlined CL's are considered feasible when all requirements in subparagraph 191 B are 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.

**(ii) The proposed use of loan funds is authorized for the type of loan requested;**

**(iii) The applicant has been determined eligible for the type of loan requested;**

**(iv) All security requirements for the type of loan requested have been, or will be met before the loan is closed;**

**(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.

**(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**

**(vii) All other pertinent requirements have been, or will be met before the loan is closed.**

**352 Loan Approval (Continued)****C Approval (Continued)**

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, \*--2-EQ, 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 primary applicant as notification of loan approval and conditions
- must be signed and returned by all applicants, including all entity members “within 15 business days”
- must be “returned within 15 business days” or the application will be withdrawn.

The authorized agency official must include, in the physical case file, all components of FBP that require signatures as provided in the FBP User Guide.

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

**D Eligible Applicants**

Eligibility determinations will be made concurrently with the formal approval or denial decision of the loan request. Eligibility decisions will not be made prior to an approval or denial decision. The authorized agency official provides written notification of a favorable eligibility determination using form FSA-2313.

The authorized agency official must document in the FBP Credit Action whether the applicant meets:

- all eligibility requirements
- SDA requirements
- the beginning farmer definition.--\*

## 352 Loan Approval (Continued)

**E Actions After Loan Approval**

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

- input data into DLS
- \*--notify the primary applicant of approval and any conditions using FSA-2313--\*
- prepare for loan closing.

**[7 CFR 764.402(e)(1)] Loan funds will be made available to the applicant within 15 “business” 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.

A printed copy of “Your FSA Farm Loan Compass” shall be provided to all **new** FLP customers at the time of their first loan closing.

**F 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 non-appealable decisions according to 1-APP, if an agreement cannot be reached and the applicant cannot or will not meet the conditions in question
- See 1-FLP, paragraph 144 in the case of an approved loan subject to an appraisal, where the appraisal value is less than projected.

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

**353 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 response within 30 calendar days. If the applicant does not respond or does not want the loan application to remain active, it will be withdrawn and the applicant will be notified in writing.--\*

**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:**

**(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.

**355 Monitoring FSA Approval (Continued)****C Designated Review Officials Action**

Officials designated by SED to review applications will:

- review at least 50 percent of the rejected or withdrawn SDA loan applications for each quarter in each office of their jurisdiction
- if any improper rejections or withdrawals are found, review all rejected and withdrawn SDA loan applications in the approval official's coverage area
- notify SED of any problems detected
- with the advice of FLC, take action on improperly rejected or withdrawn SDA loan applications to correct any errors
- recommend appropriate personnel actions to SED, such as training or revocation of loan approval authority, for the approval officials responsible for rejections and withdrawals that appear to reflect a pattern or practice of discrimination against SDA
- review the reasons and explanations why decisions have not been made in a timely manner on complete loan applications
- \*--Reviews completed according to 1-FLP, subparagraph 28 D may be used towards satisfying the review requirements of this subparagraph.--\*

**D FLC Action**

FLC will:

- monitor loan application processing timeframes, DLS, and performance goal accomplishments using Intranet application reports

**Note:** Offices will access reports “Direct Applications Disposition by Race and Gender” and “Direct Application Processing – Race and Gender” through the Intranet applications reporting site at <http://www.flp.fsa.usda.gov:4019/>. These reports include data on processing times and final disposition of loan applications.

- provide reports on loan application processing timeframes to SED
- provide technical advice and direction for corrective actions on improperly rejected or withdrawn loan applications.

## 355 Monitoring FSA Approval (Continued)

**E SED Action**

SED will:

- designate DD or other qualified State Office personnel as review officials
- be accountable for SDA loan application processing in the State, including ensuring that designated review officials:
  - conduct reviews of rejected SDA loan applications
  - take corrective action in a timely manner
- emphasize the importance of timely loan application processing for all applicants
- ensure that loan application processing data is monitored through DLS or Intranet application reports, so that applications are being processed in a timely and equitable manner in the State
- manage staff resources appropriately to minimize loan application processing delays
- when necessary, initiate or monitor appropriate personnel actions recommended by the designated review official
- review the:
  - reports on loan application processing problems submitted by the designated review officials
  - FLC reports on both SDA and non-SDA average loan application processing timeframes
- provide DD's with report findings and ensure that DD's monitor County Office SDA activity
- submit the SDA Loan Review Summary Report for affected cases, findings, corrective action, and results, by October 31 of each year through SDMS.

**Note:** See 1-AS, Exhibit 8 for guidance on using SDMS. ENTER "SDA Loan Review Summary" as the directive's title.

## 356 Loan Denial

**A Denial**

**[7 CFR 764.401(b)] The Agency will not approve a loan if it determines that:**

**[7 CFR 764.401(b)(1)] The applicant's farm operating plan does not reflect a feasible plan;**

Streamlined CL's meet feasibility requirements when all requirements in subparagraph 191 B are met.

**[7 CFR 764.401(b)(2)] The proposed use of loan funds is not authorized for the type of loan requested;**

**[7 CFR 764.401(b)(3)] The applicant does not meet the eligibility requirements for the type of loan requested;**

**[7 CFR 764.401(b)(4)] There is inadequate security for the type of loan requested;**

**[7 CFR 764.401(b)(5)] Approval of the loan would cause the applicant's total indebtedness to the Agency to exceed the maximum limits established in § 761.8 of this chapter (1-FLP);**

**[7 CFR 764.401(b)(6)] The applicant's circumstances may not permit continuous operation and management of the farm; or**

**[7 CFR 764.401(b)(7)] The applicant, the farming operation, or other circumstances surrounding the loan are inconsistent with the authorizing statutes, other Federal laws, or Federal credit policies.**

**Notes:** This includes determinations by other Federal agencies, that the applicant is not in compliance with applicable environmental regulations.

See 1-EQ, Exhibit 26 for information to be included when notifying the applicant that wetland indicators were determined to be present, as provided in 1-EQ, subparagraph 51.

**\*--B Ineligible Applicants**

Eligibility determinations will be made concurrently with the formal approval or denial decision of the loan request. Eligibility decisions will not be made prior to an approval or denial decision. If the authorized agency official determines the applicant ineligible, the authorized agency official must:

- document in FBP and DLS the specific reasons for denial
- cite CFR references as applicable
- notify the applicant in writing of the determination providing appeal rights according to 1-APP and ECOA and nondiscrimination statements according to 1-FLP, paragraph 41.--\*

## 356 Loan Denial (Continued)

**\*--B Ineligible Applicants (Continued)**

If the unfavorable decision is the result of a determination that the applicant is not creditworthy, the authorized agency official will meet with the applicant before sending a rejection letter to:

- discuss the credit report information in detail
- explain the reasons for the adverse decision
- provide the applicant with a copy of the credit report including the name and address of the credit reporting company and any other nonconfidential information used to make the creditworthiness decision
- inform the applicant that any dispute about the accuracy of the information in the credit report must be resolved between the credit reporting company and the applicant.

If the applicant fails to attend the meeting, a rejection letter will immediately be sent and the fact that the applicant failed to attend the meeting will be documented in FBP.

**Note:** If denial is based on information obtained from a source other than a credit reporting company, the applicant will be advised that the information can only be disclosed upon written request.

**C Notification of Loan Denial**

The authorized agency official notifies the applicant of loan denial by letter according to 1-APP. The letter must provide:

- clear, specific reasons for the denial
- citations of requirements from CFR and handbook sections that are not met by the applicant
- \*--a description of any loan review aspect that was not evaluated

**Example:** If the loan was denied for eligibility purposes only, it should be noted that feasibility and security requirements were not evaluated.--\*

- appeal or review rights according to 1-APP
- ECOA and nondiscrimination statement according to 1-FLP, paragraph 41.

**356 Loan Denial (Continued)****D Actions After Denial**

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

- input data into DLS
- close the loan application process.

FSA must maintain applications that have been rejected. See 32-AS for maintaining loan files.

See 1-APP for information on reconsideration if the applicant requests FSA reconsider the loan application for approval.

**E Counseling**

When discussing a denial decision, the authorized agency official will advise the applicant of potential actions or alternatives that might resolve or help resolve the issues that resulted in the denial of the loan request. Examples include, but are not limited to, obtaining necessary experience or training, restructuring debts, liquidating assets and paying down debts, repaying debt forgiveness, and changing the size or scope of the farm operation.

The authorized agency official should not tell the applicant what actions to take, and make it clear that what is being discussed are options; it is up to the applicant to decide what course of action to take.

Authorized agency officials shall not guarantee that loan approval is certain, especially when that guarantee is based upon an applicant taking a specific action.

**\*--357 Actions if Loan Denial is Overturned in NAD Final Determination****A Final NAD Determination**

1-APP, subparagraph 135 A requires FSA implement a final determination not later than 30 calendar days after the effective date of the notice of final determination. An appeal determination is administratively final when the provisions of 1-APP, subparagraph 135 B have been met.

**B Advising Applicant of Next Steps**

The authorized agency official will advise the applicant of the next steps to be taken in application processing according to subparagraphs C through E within 5 workdays of the date the appeal decision becomes administratively final, or the date FSA determines that it will not pursue a further review of the hearing officer's decision, whichever comes first. The contact will be by telephone or in person, with a written followup.

**C Obtaining Updated or Revised Information**

**[7 CFR 764.401(c)] If an Agency loan denial is overturned on administrative appeal, the Agency will not automatically approve the loan. Unless prohibited by the final appeal determination or otherwise advised by the Office of General Counsel, the Agency will:**

**(1) Request current financial information from the applicant as necessary to determine whether any changes in the applicant's financial condition or agricultural conditions which occurred after the Agency's adverse decision was made will adversely affect the applicant's farming operation;**

**Note:** Adversely affect means that a change unrelated to the issue resolved through appeal will result in an applicant no longer being eligible, the previously developed FBP not being feasible, or in the proposed security being inadequate for the type of loan requested.

If there have been no significant changes to the applicant's financial or farming situation since the date of the original Agency decision, the applicant will initial and date FBP, at which time FBP will be considered current. If the applicant indicates that significant changes have occurred, it is not necessary that all new financial or other information be provided. Only the information that has changed needs to be submitted or revised. Any revised or new documents must be initialed or signed, as appropriate, by both the applicant and authorized agency official.

**Note:** A significant change is a change that would materially affect the feasibility of, or the eligibility or security for, the proposed loan. Examples include incurring a debt for purchasing livestock, equipment, or planting a crop, loss of livestock or crops because of disaster, material increases or decreases in off-farm income, and entry into or loss of a production, marketing, or lease contract, or other events that effect potential income, expenses, or production capacity.--\*

**357 Actions if Loan Denial is Overturned in NAD Final Determination (Continued)****D Additional Considerations Applicable to Annual Production Loans**

When evaluating the impact of the NAD final determination and any new or revised information according to subparagraph E, the loan approval official will only:

**[7 CFR 764.401(c) (2)] Approve a loan for crop production:**

**(i) Only if the Agency can determine that the applicant will be able to produce a crop in the production cycle for which the loan is requested; or**

**(ii) For the next production cycle, upon review of current financial data and a farm operating plan for the next production cycle, if the agency determines the loan can be repaid. The new farm operating plan shall reflect any financial issues resolved in the appeal.**

**E Evaluating Impact NAD Decision and New or Revised Information**

The authorized agency official shall:

**[7 CFR 764.401(c) (3)] Determine whether the applicant's farm operating plan, as modified based on the appeal decision, reflects a feasible plan, which includes repayment of the proposed loan and demonstrates that all other credit needs can be met.**

After completing the review and evaluating any necessary revisions, the loan approval official will:

- approve the loan if the requirements of subparagraph 353 C have been met and notify the applicant accordingly
- deny the loan according to paragraph 356, if the requirements of subparagraph 353 C are not met.

**Note:** Any denial of a loan request after a receipt of a final NAD determination will be considered a new decision and new appeal rights will be provided, as appropriate.

**F Monitoring Implementation**

The State appeals coordinator will monitor receipt and implementation of final NAD determinations to ensure that they are properly and timely implemented.

See the DLS manual for further information about calculating application processing time in appeal situations.

**358-370 (Reserved)**



## 371 Overview (Continued)

**C Loan Document Signatures (Continued)**

- just the life estate holder, the lien instrument is signed by the life estate holder, remainderman, and any other party having any interest in the security.

**(2) For entity applicants, the promissory note will be executed to evidence the liability of the entity, any embedded entities, and the individual liability of all entity members.**

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:** Married persons 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 or entities, including LLC's, SED will, after consultation with the Regional OGC, issue a State supplement for trusts outlining signature requirements on FSA-2026's and security instruments.

**(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.

## 371 Overview (Continued)

**C Loan Document Signatures (Continued)**

**(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:** ECOA allows FSA to require a cosigner when the applicant does not qualify for credit alone, but FSA cannot require that the cosigner be the applicant's spouse. A cosigner is required to complete FSA-2007 to provide necessary information, including self-certifications.

**Examples:** 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 and applicant selects his/her spouse as the cosigner, 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 as an individual.--\* Mary's salary for her job as a teacher is \$35,000. FBP indicates that family living 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 remains positive. Mary must not be required to sign FSA-2026 and must 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, if Bruce selects Camille as his cosigner, her income will 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.

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

#### 416 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 417 through 419 for obtaining lien searches and filing liens on adequate security
- paragraph 419 for filing a lien on additional security or nonessential assets.

**\*--Note:** Agency officials are encouraged to complete a lien search upon the receipt of an application by searching State and county records when no fee is assessed for searches. Receipt of this information may assist the Agency in determining additional application requirements. However, in States where certified searches are only obtainable by a fee, the Agency should ensure only one fee is assessed and the certified search ensures the required lien position is obtained.--\*

##### 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

FSA obtains a lien on the full value of the security, when the chattel security is held by more than 1 owner as follows.

- If all owners are applicants, the authorized agency official must ensure that all owners execute FSA-2028.
- If all owners are not applicants, the authorized agency official will obtain CCC-10 and FSA-2028 from the owners who did not sign FSA-2001.

**416 Overview (Continued)****C Security Pledged by Multiple Owners (Continued)**

When chattel security is jointly held by the applicant and nonapplicant who will not pledge their interest in the property, the authorized agency official will obtain FSA-2318.

**Note:** FSA-2318:

- acknowledges that the nonapplicant is joint owner of the property being offered as security for the loan
- provides nonapplicant certain rights about partial ownership on the property
- is not a security agreement or an obligation to pay the applicant's loan should the applicant default.

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

The authorized agency official or closing agent will file UCC-1 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
- UCC-1 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.

## 419 Closing Chattel Secured Loans

## A General

[7 CFR 764.402(c)] The following requirements apply to loans secured by chattel:

**(1) The Agency will close a chattel loan only when it determines the Agency requirements for the loan have been satisfied;**

The authorized agency official or closing agent shall take the following steps:

- check the security description to ensure it covers all property taken as security and includes the legal description if so required by State supplement
- review all prior liens and encumbrances on the security to determine which must be modified, eliminated, or waived. In doing so, the authorized agency official will work with the applicant to fully understand and resolve any exceptions
- prepare FSA-2040 according to 4-FLP, paragraph 162
- \*--make the borrower aware of PAD option. See Exhibit 26 for the guidance.--\*

**(2) A financing statement is required for every loan except when a filed financing statement covering the applicant's property is still effective, covers all types of chattel property that will serve as security for the loan, describes the land on which crops and fixtures are or will be located, and complies with the law of the jurisdiction where filed;**

## 419 Closing Chattel Secured Loans (Continued)

**B Using FSA-2028's**

**[7 CFR 764.402(c)(3)] A new security agreement is required for new loans, as necessary to secure the loan under State law, prior to the disbursement of loan funds.**

FSA requires a new FSA-2028 whenever filing UCC-1.

The authorized agency official should describe on FSA-2028 all of the chattel property that will serve as security. The authorized agency official will identify security specifically as follows:

- for ML's, only those items being specifically taken as security

**Note:** See 1-FLP, Exhibit 15 for specific guidance on filling out the security agreements for ML's.

- crop production by describing the real estate on which the crops are grown and by the landowner's name
- livestock by type and exact number
- equipment by manufacturer, model, year, and serial number, where possible

**Note:** If this information is not available, a written description of the equipment should be provided.

- all accounts, goods, supplies, and inventory by an appropriate description by item or type of property.

**\*--Note:** It is not acceptable simply to rely on blanket statements in FSA-2028 referring to a lien on all livestock and equipment. Security items must be specifically identified as described in this subparagraph. Updates to FSA-2028 will occasionally be required, and should be signed by all individuals required to perfect the required Agency security interest.--\*

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's pledging the security.

**420-430 (Reserved)**

## Section 4 Actions After Loan Closing

## 431 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, is the Agency's preferred methods of loan funds disbursement. The Agency will use these processes to disburse loan proceeds directly to creditors being refinanced with loan funds, to sellers of chattel property being acquired with loan funds, or directly to the borrower's personal bank account. A supervised bank account will be used according to Subpart B of part 761 of this chapter (1-FLP, Part 4) only when these processes are not practicable.**

**Note:** FSA has added the applicant as an approved recipient of loan proceeds by EFT or Treasury Checks for loan disbursements. This practice may be implemented immediately and will be included in an upcoming CFR update.

The authorized agency official or closing agent may disburse loan funds in a lump sum or in multiple disbursements. CL's that are for a project taking multiple years will be funded by multiple disbursements.

The authorized agency official or closing agent normally will not disburse loan funds before filing and recording the security instruments. The authorized official or closing agent may disburse loan funds for real estate loans after all documents are signed but before actual recording of the mortgage.

Loan funds may be placed in escrow until necessary instruments are recorded; however, development funds may be placed in escrow only with the approval of 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.

Closing agents should provide FSA an itemized accounting of loan proceeds using any format that provides all required information necessary to fully account for loan proceeds.

## 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 64-FI. The authorized agency official will document the new closing date to--\* which the applicant has agreed in FBP.

## 432 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 loan making process into DLS, including:--\*

- borrower training information
- loan closing date
- loan installment information.

Within 10 calendar days of loan closing, the DLS Loan Servicing Dashboard will be updated to establish the following workflows:

- Classification Review
- Graduations Review
- Limited Resource Review (if applicable)
- Year End Analysis
- Farm Assessment
- Security Instruments including financing statement and/or mortgages

See 1-FLP for general information and detailed instructions on DLS and the DLS Users Guide.

### C Loan Classification

The authorized agency official must classify a new loan by completing a post-closing loan classification, including CL's. Within 10 calendar days of loan closing in DLS, the classification review workflow in DLS, must be input in to the DLS dashboard.

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

## Forms (Continued)

Number	Title	Display Reference	Reference
FSA-2301	Request for Youth Loan		41, 42, 44, 45, 62, 226, Ex. 6
FSA-2302	Description of Farm Training and Experience		42, 472
FSA-2304	Notice of Incomplete Application		41, 42, 45
FSA-2305	Second Notice of Incomplete Application		45
FSA-2306	Notice of Application Withdrawal/Pending Withdrawal		45
FSA-2307	Notice of Complete Application		45
***	***		***
FSA-2309	Certification of Disaster Losses		42, 244
FSA-2310	Request for Lender's Verification of Loan Application		42, 242
FSA-2311	Calculation of Actual Losses Worksheet		244
FSA-2313	Notification of Loan Approval and Borrower Responsibilities		69, 91, 352, Ex. 26
FSA-2314	Streamlined Request for Direct OL Assistance		41-43, 45, 62, 66, 68
FSA-2317	Consent and Subordination Agreement		92
FSA-2318	Agreement for the Disposition of Jointly Owned Property		416, 418
FSA-2319	Agreement with Prior Lien Holder		92
FSA-2320	Property Insurance Mortgage Clause (Without Contribution)		114, Ex. 4
FSA-2330	Request for Microloan Assistance		41-43, 45, 62, 66, 68, Ex. 6
FSA-2340	Selection of Attorney/Title Agent		372, 373.5
FSA-2341	Certification of Attorney		372, 373.5, 397,
FSA-2342	Certification of Title Agent		372, 373.6, 397,
FSA-2343	Transmittal of Title Information		397
FSA-2344	Preliminary Title Opinion		397
FSA-2350	Loan Closing Instructions		398
FSA-2351	Certification of Improvement of Property		398
FSA-2352	Final Title Opinion		398, 433
FSA-2360	Report of Lien Search		417
FSA-2361	Lender Subordination Agreement		417

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

## Forms (Continued)

Number	Title	Display Reference	Reference
FSA-2370	Request for Waiver of Borrower Training Requirements / Borrower Training Assessment		70, 472
FSA-2371	Agreement to Complete Training		473
FSA-2375	Agreement to Conduct Production or Financial Management Training		493, 494
FSA-2376	Borrower Training Course Evaluation		494
FSA-2510	Notice of Availability of Loan Servicing to Borrowers Who Are 90 Days Past Due		3
FSA-2512	Notice of Availability of Loan Servicing to Borrowers Who Are Current, Financially Distressed, or Less than 90 Days past Due		3
FSA-2514	Notice of Availability of Loan Servicing to Borrowers Who are in Non-Monetary Default		3
FSA-2535	Conservation Contract		3
G-845	Document Verification Request		Ex. 8
HUD 1	Uniform Settlement Statement		398
I-94	Arrival/Departure Record		Ex. 8
I-179	Certificate of Birth Abroad		Ex. 9
I-197	United States Citizen Identification Card		Ex. 9
I-551	Alien Registration Receipt Card		64, Ex. 8
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
N-570	Certificate of Naturalization		Ex. 9
NRCS CPA-1155	Conservation Plan/Schedule of Operations		42, 43, 171, Ex. 2
NRCS CPA-1202	Conservation Program Contract		173
***	***		***
Schedule F (Form 1040)	Profit or Loss from Farming		246
SF-3881	ACH Vendor/Miscellaneous Payment Enrollment Form		73
UCC-1	National Financing Statement		92, 93, 373, 398, 417, 419, 433

**MOU Between FSA and [Enter Name of State Beginning Farmer Program]**

The following is an example format of MOU between FSA and a State beginning farmer program.

\*--

**Memorandum of Understanding Between FSA and [Enter Name of State Beginning Farmer Program]**

**1. SUBJECT:**

Implementation of Section 309(i) of the Consolidated Farm and Rural Development Act (CONACT), as added by Section 5 of the Agricultural Credit Improvement Act of 1992 (Pub. L. 102-554, October 28, 1992).

**2. PURPOSE:**

The purpose of this Memorandum of Understanding (MOU) is to provide cooperation and participation in joint funding between FSA and (enter name of State Beginning Farm Program).

**3. BACKGROUND:**

Section 309(i) of the CONACT requires that an MOU between FSA and any State Beginning Farmer Program be entered into when the State expresses interest, in writing, to coordinate financial assistance to beginning farmers. The CONACT describes a State Beginning Farmer program as any program that is "(A) carried out by, or under contract with, a State; and (B) designed to assist persons in obtaining the financial assistance necessary to enter agriculture and establish viable farming operations".

**4. AGREEMENT:**

It is mutually agreed by the parties to this MOU that they will cooperate and participate in joint funding as specified below:

- A. If (enter name of State Beginning Farmer Program) makes a commitment to provide a qualified beginning farmer with financing to establish or maintain a viable farming operation, FSA will provide financial assistance through the use of the Down Payment Loan Program and/or the guaranteed loan programs subject to all of the following:
  1. applicable law and regulations
  2. normal loan approval criteria, and
  3. availability of funds.
- B. FSA will not provide guaranteed assistance when the funds have been derived from tax-exempt bonds.
- C. FSA will not charge a fee to obtain or retain a guarantee in connection with any joint funding under this MOU.

--\*

MOU Between FSA and [Enter Name of State Beginning Farmer Program] (Continued)

\*--

**Memorandum of Understanding Between FSA and [Enter Name of State Beginning Farmer Program]**

**5. IMPLEMENTATION**

This MOU is effective immediately upon the last signature dated below and will continue in effect until modified or revoked by agreement of both parties, or revoked by either party alone upon thirty (30) calendar days written notice. Modification to this document may be made by mutual agreement and such modifications will be in effect upon the signing of the modified document.

\_\_\_\_\_  
(NAME)  
Deputy Administrator, Farm Loan Programs  
Farm Service Agency  
Washington, DC 20250

\_\_\_\_\_  
(NAME)  
(Name of State Beginning Farmer Program)  
(City, State)

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DATE

--\*