

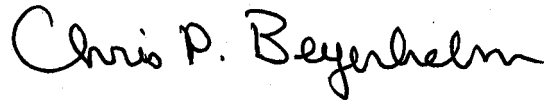
UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

Direct Loanmaking
3-FLP (Revision 2)

Amendment 7

Approved by: Deputy Administrator, Farm Loan Programs



Amendment Transmittal

A Reasons for Amendment

Subparagraph 42 A has been amended to provide that the Forest Stewardship Management Plan is part of a complete CL application.

Subparagraph 171 A has been amended to add conservation practices on the Forest Stewardship Management Plan as eligible uses for CL.

Subparagraph 175 A has been amended to update the security requirements for CL.

Subparagraph 371 D has been amended to clarify conditions for waiving title clearance for CL.

Exhibit 2 has been amended to clarify the definitions of “conservation plan”, “conservation practice”, and “conservation project”, and add the definition of “Forest Stewardship Management Plan”.

Note: A correction will be published in FR to amend sections 764.231 and 764.235. This amendment provides the corrected text that will be published in FR.

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

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

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

This information will be used to determine:

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

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

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

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

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

The authorized agency official:

- must verify the status of debts over \$1,000
- must confirm the balance of the debt, the applicant's payment history on the debt including any delinquency, the security pledged for the debt, and the payment schedule including the amount and date of the next scheduled installment

42 Complete Loan Application (Continued)

A Requirements (Continued)

- may obtain this information with any of the following as long as the required information is provided:
 - credit report
 - FSA-2310 (EM's)
 - CAIVRS
 - completed FSA-2015
 - most recent billing statement for the debt (e.g., credit card debt)
 - DLS Customer Profile (printer friendly version) verification of both current/past debts and any prior debt forgiveness
 - any other form of verification that provides the required information.

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

Examples of additional information include:

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

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

--[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 are 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, see 1-FLP, Part 5.

Part 8 Conservation Loan (CL) Program

Section 1 CL's

171 Uses

A General

[7 CFR 764.231(a)] CL funds may be used for any conservation activities included in a *--conservation or Forest Stewardship Management Plan, including but not limited to:--*

- (1) The installation of conservation structures to address soil, water and related resources;**
- (2) The establishment of forest cover for sustained yield timber management, erosion control, or shelter belt purposes;**
- (3) The installation of water conservation measures;**
- (4) The installation of waste management systems;**
- (5) The establishment or improvement of permanent pasture; and**
- (6) Other purposes including the adoption of any other emerging or existing conservation practices, techniques, or technologies.**

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.

--FSA's file will contain a Forest Stewardship Management Plan, NRCS CPA-1155, or--
Tool Kit as proof of an approved conservation plan.

Any equipment, conservation practice, conservation project listed on the conservation plan, or anything that is required to carry out the provisions of the conservation plan, including items regularly funded with OL or FO can be funded with CL.

***--The completed conservation practice must meet NRCS or FS standards.**

See Exhibit 2 for definitions of conservation plan, conservation practice, conservation project, and Forest Stewardship Management Plan.--*

172 Eligibility

A General Eligibility

[7 CFR 764.232(a)] **The applicant:**

[7 CFR 764.232(a)(1)] **Must comply with general eligibility requirements specified in *--§764.101 except paragraphs (e) and (k) (paragraphs 66 and 71).--***

B No Prior Debt Forgiveness

The applicant:

[7 CFR 764.232(a)(2)] **And anyone who will sign the promissory note, must not have received debt forgiveness from the Agency on any direct or guaranteed loan.**

C CL Individual and Entity Owner and Operator Requirement

The applicant:

[7 CFR 764.232(a)(3)] **Must be the owner-operator or tenant-operator of a farm and be engaged in agricultural production after the time the loan is closed. In the case of an entity:**

(i) The entity is controlled by farmers engaged primarily and directly in farming in the United States;

(ii) The entity must be authorized to operate a farm in the State in which the farm is located.

[7 CFR 764.232(b)] [Reserved].

***--D Term Limits**

CL's are not subject to term limits.--*

174 Rates, Terms, and Repayment (Continued)

C Repayment

All CL's are scheduled with annual payments. The repayment schedule may include equal, unequal, or balloon payments, as follows:

- the first payment is due within 18 months
- 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
- annual installments may be collected by assignments and supplemental payments
- if unequal or interest only installments are scheduled for a nonstreamlined CL, the applicant must be able to show that there will be sufficient resources available to pay the loan, in full, by the final maturity date
- if a cost share payment is planned, repayment may be scheduled with the cost share portion as the balloon portion, enabling regularly scheduled payments before and after applying the cost share payment.

175 Security

A Security Requirements

*--[7 CFR 764.235(a)] The loan must be secured in accordance with requirements established in 764.103 through 764.106 (Part 5).

[7 CFR 764.235(b)] Loans to purchase chattels will be secured by a first lien on chattels purchased with loan funds. Real estate may be taken as additional security if needed.

[7 CFR 764.235(c)] Loans of \$25,000 or less for real estate purposes will be secured in the following order of priority:

(1) By a lien on chattels determined acceptable by the Agency, and then

(2) By a lien on real estate, if available and necessary. When real estate is taken as security a certification of ownership in real estate is required. Certification of ownership may be in the form of an affidavit that is signed by the applicant, names all the owners of record of the real estate in question and lists the balances due on all known debts against the real estate. Whenever the Agency is uncertain of the record owner or debts against the real estate security, a title search is required.

[7 CFR 764.235(d)] Loans greater than \$25,000 for real estate purposes will be secured in the following order of priority:

(1) By a lien on real estate, if available, and then

(2) By a lien on chattels, if needed and determined acceptable by the Agency.

[7 CFR 764.235(e)] For loans greater than \$25,000 title clearance is required when real estate is taken as security.--*

176-190 (Reserved)

371 Overview (Continued)

C Loan Document Signatures (Continued)

(5) All signatures needed for the Agency to acquire the required security interests will be obtained according to State law.

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

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

D Waiver of Title Clearance and Legal Services

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

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

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

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

--(ii) As provided in 764.235 (paragraph 175) for CL's and 764.355 (paragraph 247) for EM;--

(iii) When the real estate is considered additional security by the Agency; or

(iv) When the real estate is a non-essential asset.

E Additional Security and Nonessential Assets Requirements

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

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

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

The closing agent must be approved according to Part 17, by using FSA-2341 or FSA-2342.

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

B Closing Agent Responsibilities

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

Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)**Conservation Loan (CL)**

CL means a loan made to eligible applicants to cover the costs to the applicant of carrying out a qualified conservation project.

Conservation Plan

Conservation plan means **an NRCS-approved written record of the land user's decisions and supporting information, for treatment of a land unit or water as a result of the planning process, that meets NRCS Field Office Technical Guide (FOTG) quality criteria for each natural resource (soil, water, air, plants, and animals) and takes into account economic and social considerations. The conservation plan describes the schedule of operations and activities needed to solve identified natural resource problems and takes advantage of** *--**opportunities at a conservation management system level. This definition only applies to the direct loans and guaranteed loans for the Conservation Loan Program.**

Note: FSA will use a Forest Stewardship Management Plan, NRCS CPA-1155, or Tool Kit provided by NRCS as proof that the applicant has an approved conservation plan.

Conservation Practice

Conservation practice means **a specific treatment, such as a structural or vegetative measure, or management technique, commonly used to meet specific needs in planning and implementing conservation, for which standards and specifications have been developed. Conservation practices are contained in the appropriate NRCS Field Office Technical Guide (FOTG), which is based on the National Handbook of Conservation Practices (NHCP).**

Conservation Project

Conservation project means **conservation measures that address provisions of a conservation plan or Forest Stewardship Management Plan.--***

Construction

Construction means **work such as erecting, repairing, remodeling, relocating, adding to, or salvaging any building or structure, and the installing, repairing, or adding to heating and electrical systems, water systems, sewage disposal systems, walks, steps, and driveways.**

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

Controlled means **when a director or an employee has more than a 50 percent ownership in an entity or, the director or employee, together with relatives of the director or employee, have more than a 50 percent ownership.**

Controlled Substance

Controlled substance means **the term as defined in 21 U.S.C. 812.**

Cooperative

Cooperative means **an entity that has farming as its purpose, whose members have agreed to share the profits of the farming enterprise, and is recognized as a farm cooperative by the laws of the state in which the entity will operate a farm.**

Corporation

Corporation means **a private domestic corporation created and organized under the laws of the State in which it will operate a farm.**

Cosigner

Cosigner means **a party, other than the applicant, who joins in the execution of a promissory note to assure its repayment. The cosigner becomes jointly and severally liable to comply with the repayment terms of the note, but is not authorized to severally receive loan servicing available under 7 CFR parts 765 and 766. In the case of an entity applicant, the cosigner cannot be a member of the entity.**

County

County means **a local administrative subdivision of a State or similar political subdivision of the United States.**

County Average Yield

County average yield means **the historical average yield for an agricultural commodity in a particular political subdivision, as determined or published by a government entity or other recognized source.**

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

Feasible Plan

Feasible plan means when an applicant or borrower's cash flow budget or farm operation plan indicates that there is sufficient cash inflow to pay all cash outflow. If a loan approval or servicing action exceeds one production cycle and the planned cash flow budget or farm operation plan is atypical due to cash or inventory on hand, new enterprises, carryover debt, atypical planned purchases, important operating changes, or other reasons, a cash flow budget or farm operation plan must be prepared that reflects a typical cycle. If the request is for only one cycle, a feasible plan for only one cycle is required for approval.

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

Situations may arise in which an applicant/borrower cannot develop a feasible plan because of open accounts or judgment debts that are considered fully due and payable.

In such cases, when the applicant/borrower indicates that a creditor is willing to extend terms which would enable a feasible plan to be developed, the approval official must obtain written documentation that an agreement has been reached.

Acceptable documentation will be any of the following:

- promissory note reflecting the rates and terms of the agreement
- dated and signed allonge or attachment to existing promissory note or judgment, which states the new rate and terms

Note: Any revision of terms in a court-ordered judgment must be approved by the court with guidance from OGC.

- written agreement between the creditor and the applicant/borrower clearly stating the rates and terms and signed by the borrower and the creditor.

Financially Viable Operation

Financially viable operation, for the purposes of considering a waiver of OL term limits under §764.252 of this chapter, means a farming operation that, with Agency assistance, is projected to improve its financial condition over a period of time to the point that the operator can obtain commercial credit without further Agency assistance. Such an operation must generate sufficient income to:

- (1) Meet annual operating expenses and debt payments as they become due;**
- (2) Meet essential family living expenses to the extent they are not met by dependable non-farm income;**
- (3) Provide for replacement of capital items; and**
- (4) Provide for long-term financial growth.**

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

Fixture means **an item of personal property attached to real estate in such a way that it cannot be removed without defacing or dismantling the structure, or damaging the item itself.**

Floodplains

Floodplains means **lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year. The base floodplain shall be used to designate the 100-year floodplain (one percent chance floodplain). The critical floodplain is defined as the 500-year floodplain (0.2 percent chance floodplain).**

***--Forest Stewardship Management Plan**

Forest Stewardship Management Plan means **a property-specific, long-term, multi-resource plan that addresses private landowner objectives while recommending a set and schedule of management practices designed to achieve a desired future forest condition developed and approved through the USDA Forest Service or its agent.--***

Good Faith

Good faith means **when an applicant or borrower provides current, complete, and truthful information when applying for assistance and in all past dealings with the Agency, and adheres to all written agreements with the Agency including, but not limited to, loan agreement, security instruments, farm operating plans, and agreements for use of proceeds. The Agency considers a borrower to act in good faith, however, if the borrower's inability to adhere to all agreements is due to circumstances beyond the borrower's control. In addition, the Agency will consider fraud, waste, or conversion actions, when substantiated by a legal opinion from OGC, when determining if an applicant or borrower has acted in good faith.**

Graduation

Graduation means the payment-in-full of all direct FLP loans, **except CL's**, made for operating and/or real estate, by refinancing with other credit sources with or without an Agency guarantee.

Hazard Insurance

Hazard insurance means **insurance covering fire, windstorm, lightning, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, builders risk, public liability, property damage, flood or mudslide, workers' compensation, or any similar insurance that is available and needed to protect the security, or that is required by law.**

Household Contents

Household contents means **essential household items necessary to maintain viable living quarters. Household contents exclude all luxury items such as jewelry, furs, antiques, paintings, etc.**

Inaccurate Information

Inaccurate information means **incorrect information provided by an applicant, borrower, lender, or other source without the intent of fraudulently obtaining benefits.**