

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

Regular Direct Loan Servicing 4-FLP	Amendment 18
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Approved by: Deputy Administrator, Farm Loan Programs

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Amendment Transmittal

A Reasons for Amendment

Subparagraph 118 A has been amended for correction and clarification.

Subparagraph 246 G has been added to provide 2014 Farm Bill requirements about eligibility for transfer and assumption after forgiveness of youth loan debt.

Exhibit 2 has been amended to add the definition of “Good Faith” as it is referenced in subparagraph 100 C.

Page Control Chart		
TC	Text	Exhibit
	6-35, 6-36 9-1, 9-2	2, pages 5, 6

117 Conditions for Real Estate Subordinations (Continued)**B Releasing and Refiling Lien Instruments Instead of Subordination (Continued)**

- the borrower agrees to execute new security instruments

Notes: The new security instruments will be refiled immediately after the refinancing is completed.

SED will consult OGC, as needed, to obtain instructions in protecting FLP's lien position.

- no additional debt will be placed ahead of FLP's debt, except for customary costs appropriate to the transaction

Note: See subparagraph 197 B for customary costs.

- the refinancing will result in better repayment terms that, except for CL, will assist the borrower in progressing toward graduation.

118 Conditions for Chattel Subordinations**A Chattel Security**

[7 CFR 765.205(c)] The requirement for chattel subordinations are as follows: (1) For loans secured by chattel, the subordination must meet the conditions contained in *--paragraphs (b)(3)(i) through (xiii) of this section (subparagraph 117 A). Multi-year subordinations may only be approved according to OGC-approved State supplements.

Multi-year subordination must meet all requirements set forth in this subparagraph. State supplements must specifically address the following:

- borrower's inability to obtain credit without subordination, including guarantee;
- borrower's inability to partially graduate; and
- borrower's ability to pay debt before funds are released for each production cycle.--*

B Second Subordinations on Chattel Security

[7 CFR 765.205(c)(2)] The Agency will approve a request for a second subordination to enable a borrower to obtain crop insurance, if the following conditions are met:

(i) The creditor to whom the first subordination was given did not provide for payment of the current year's crop insurance premium, and consents in writing to the provisions of the second subordination to pay insurance premiums from the crop or insurance proceeds;

118 Conditions for Chattel Subordinations (Continued)**B Second Subordinations on Chattel Security (Continued)**

(ii) **The borrower assigns the insurance proceeds to the Agency or names the Agency in the loss payable clause of the policy; and**

(iii) **The subordination meets the conditions under paragraphs (b)(1) through (12) of this section** (subparagraph 117 A).

C CCC Loans

CCC-679's will be used according to 8-LP instead of a subordination when FP makes a CCC loan to the borrower. FSA does not subordinate to CCC loans.

119 Appraisal Requirements**A Appraisals**

[7 CFR 765.205(d)] An appraisal of the property that secures the Agency loan will be required when the Agency determines it necessary to protect its interest. Appraisals will be obtained in accordance with § 761.7 (1-FLP) of this chapter.

At a minimum, real estate appraisals will be obtained when property is to be improved, purchased, or exchanged. FSA does not require an appraisal for real estate security when the:

- loan for which the borrower requests the subordination is:
 - to refinance an existing prior lien and the resulting prior lien will **not** be increased
*--except for customary costs appropriate to the transactions

Note: See subparagraph 197 B for customary costs.--*

- for an essential repair that is needed to restore the value of the security and complies with subparagraph 117 A
- borrower's case file contains an existing appraisal that is less than 1 year old and FSA determines the appraisal to still be sufficiently accurate.

FSA does **not** require an appraisal for chattel security when the:

- proposed subordination is for annual operating and family living expenses only and the projected income from farm production exceeds the subordination amount
- existing FSA appraisal is less than 1 year old and the authorized agency official determines it to be adequate (the authorized agency official must consider property additions to, and deletions from, the latest FSA appraisal) and fully document the decision.

Part 9 Transfer of Real Estate and Chattel Security

246 Transfer of Security and Assumption of Debt

A General

[7 CFR 765.401(a)] (1) Approval of a security transfer and corresponding loan assumption obligates a new borrower to repay an existing Agency debt.

(2) All transferees will become personally liable for the debt and assume the full responsibilities and obligations of the debt transferred when the transfer and assumption is complete. If the transferee is an entity, the entity and each member must assume personal liability for the loan.

(3) A transfer and assumption will only be approved if the Agency determines it is in the Agency's financial interest.

FBP for the new entity must demonstrate the repayment ability and management capacity of the transferee.

[7 CFR 765.401(b)] A borrower must request and obtain written Agency consent prior to selling or transferring security to another party.

FSA requires the transfer and assumption of security and FSA debt when:

- a new borrower wants to replace the existing borrower
- a new member wants to join the borrower entity
- an entity member withdraws when remaining entity members are not personally liable for the debt.

Note: For the purposes of this Part and Part 8, an entity is defined as a husband and wife, partnership, corporation, or any other arrangement in which more than 1 person is party to the debt.

*--B ST's

ST's will only be transferred on NP rates and terms according to subparagraph 248 E, unless transfer is required because of the death of a borrower, in which case transfer will be considered according to Part 10.--*

246 Transfer of Security and Assumption of Debt (Continued)**C Junior Liens**

When a transferee assumes:

- the transferor's entire FSA debt, SED's must concur with the proposed transfer of any junior liens
- less than the full amount of FSA's debt, junior liens to the assumed debt are prohibited.

D Partial Transfer and Assumption

A borrower may transfer FSA indebtedness in whole notes only. The borrower and transferee may not split an individual loan. The borrower must demonstrate that a proposed partial sale is in the best financial interest of the operation and that the sale will not adversely affect the security and/or Government's financial interest.

The compensation received by the transferor and applied to the transferor's FSA debt may not be less than the market value of the property sold.

When the value of the property exceeds the debt to be assumed, the transferee may pay with cash on hand or obtained through credit. FSA applies such cash payment to the transferor's indebtedness according to Part 5.

E Determining the Assumption Amount

[7 CFR 765.403(d)] The transferee must assume the lesser of:

- (1) The outstanding balance of the transferor's loan; or**
- (2) The market value of the security, less prior liens and authorized costs, if the outstanding loan balance exceeds the market value of the property.**

F Determining the Value of the Security Property

The value of the security property must be determined before approving a transfer and assumption. Appraisals will be conducted according to 1-FLP, Part 6. The appraisal determines the value of the security and the amount of the indebtedness that may be assumed.

***--G Forgiveness of Youth Loan Debt**

Notwithstanding any other FSA regulation, forgiveness of youth loan debt, because of circumstances beyond the borrower's control, does not preclude the applicant, or any member of an entity applicant, from obtaining additional direct or guaranteed loans from FSA. This includes assumption of FSA debt or any other financial assistance that cites this section as part of its eligibility. The criteria for determining if the forgiveness was beyond the borrower's control are the same criteria used in 7 CFR section 766.104(a)(1). Any borrower who met those criteria when the youth loan was forgiven will not be denied loan assistance based on forgiveness of youth loan debt. Debt that was forgiven on any other type of loan, even with the same borrower, is still considered according to the present regulations and can preclude the applicant from receiving a loan from FSA.--*

Definitions of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)**Family Living Expenses**

Family living expenses are the costs of providing for the needs of family members and those for whom the borrower has a financial obligation, such as alimony, child support, and care expenses of an elderly parent.

Family Members

Family members are the immediate members of the family residing in the same household with the borrower, or, in the case of an entity, with the operator.

Farm

Farm is a tract or tracts of land, improvements, and other appurtenances that are used or will be used in the production of crops, livestock, or aquaculture products for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term “farm” also includes the term “ranch.” It may also include land and improvements and facilities used in a non-eligible enterprise or the residence which, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.

FLP’s

Farm Loan Programs are Agency programs to make, guarantee, and service loans to family farmers authorized under the Act or Agency regulations.

Foreclosed

Foreclosed is the completed act of selling security either under the power of sale in the security instrument or through judicial proceedings.

Graduation

***--Graduation** means the payment in full of all direct FLP loans, except for CLs, made for--* operating, real estate, or both purposes by refinancing with other credit sources either with or without an Agency guarantee.

Guaranteed Loan

Guaranteed loan is a loan made and serviced by a lender for which the Agency has entered into a Lender’s Agreement and for which the Agency has issued a Loan Guarantee. This term also includes guaranteed lines of credit except where otherwise indicated.

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

***--Good Faith**

Good faith is 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.--*

Hazard Insurance

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

Initial Loan

Initial loan is the first loan of its type processed by FSA. A borrower having one OL and one FO has 2 initial loans, because they are different loan types.

Joint Operation

Joint operation is an operation run by individuals who have agreed to operate a farm or farms together as an entity, sharing equally or unequally land, labor, equipment, expenses, or income, or some combination of these items. The real and personal property is owned separately or jointly by the individuals.

Junior Lien

A **junior lien** is a lien that is subordinate to a prior lien on the same item of security.

Lien

Lien is a legally enforceable claim against real or chattel property of another obtained as security for the repayment of indebtedness or an encumbrance on property to enforce payment of an obligation.

Limited Resource Interest Rate

Limited resource interest rate is an interest rate normally below the Agency's regular interest rate, which is available to applicants unable to develop a feasible plan at regular rates and are requesting:

- (1) FO or OL loan assistance under part 764 of this title; or
- (2) Primary loan servicing on an FO, OL, or SW loan under part 766 of this title.