

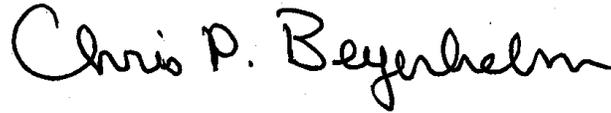
**UNITED STATES DEPARTMENT OF AGRICULTURE**

Farm Service Agency  
Washington, DC 20250

**Regular Direct Loan Servicing  
4-FLP**

**Amendment 22**

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



**Amendment Transmittal**

**A Reason for Amendment**

Paragraphs 246, 247, and 248 have been amended to conform with 2014 Farm Bill entity changes in 3-FLP.

<b>Page Control Chart</b>		
<b>TC</b>	<b>Text</b>	<b>Exhibit</b>
	9-1 through 9-4 9-7, 9-8	



## 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 entity--\* 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.--\*

**247 Types of Transfers and Assumptions****A New Eligible Borrower**

**[7 CFR 765.403(a)] The Agency may approve transfers of security with assumption of Agency debt, other than EM loans for physical or production losses, by transferees eligible for the type of loan being assumed if:**

**(1) The transferee meets all loan and security requirements in part 764 (3-FLP) of this chapter for the type of loan being assumed; and**

**(2) The outstanding loan balance (principal and interest) does not exceed the maximum loan limit for the type of loan as contained in § 761.8 (1-FLP) of this chapter.**

Before a sale, the borrower and the proposed transferee should contact their local FSA office and submit or participate in completion of the documents to initiate the transfer and assumption process. The completed documents may include:

- complete application by the proposed transferee for the type of loan and amount of debt to be assumed according to 3-FLP, Part 3
- narrative by the authorized agency official describing the proposal
- appraisal from the transferor's file, with a copy to the transferee's file
- transferring "deed" or "bill of sale" from the transferor to the transferee
- FSA-2025
- FSA-2060
- FSA-2080, if applicable
- FSA-2476
- FSA-2489
- additional documents such as UCC1's, FSA-2028's, and mortgages as required.

**247 Types of Transfers and Assumptions (Continued)****B Adding a New Member to a Borrower Entity**

\*--To add new entity members to an existing borrower entity, the proposed individual entity--\* members and the entity as a whole must meet the eligibility requirements as defined in 3-FLP, Part 4.

The borrower and the proposed entity member should contact their local FSA office and submit or participate in the completion of the documents to initiate the transfer and assumption process. The completed documents may include:

- complete application by the proposed new entity for the type of loan and amount of debt to be assumed according to 3-FLP, Part 3
- narrative by the authorized agency official describing the proposal
- FSA-2025
- new FSA-2026's, if needed
- FSA-2476
- security instruments, as appropriate.

**248 Assumption Terms****A Basic Policy**

Loans will generally be assumed on new rates and terms. A loan may only be assumed on the same rates and terms according to paragraph C.

**B Eligible Applicant - New Rates and Terms**

**[7 CFR 765.403(e)] The interest rate and loan term will be determined according to rates and terms established in part 764 (3-FLP) of this chapter for the type of loan being assumed.**

**C Eligible Applicant - Same Rates and Terms**

A transfer and assumption of all debt and security processed at the same rates and terms does not require an appraisal.

**[7 CFR 765.402] An eligible applicant may assume an Agency loan under the same rates and terms as the original note if:**

- (a) The original borrower has died and the spouse, other relative, or joint tenant who is not obligated on the note inherits the security property;**
- (b) A family member of the borrower or an entity comprised solely of family members of the borrower assumes the debt along with the original borrower;**
- (c) An individual with an ownership interest in the borrower entity buys the entire ownership interest of the other members and continues to operate the farm in accordance with loan requirements. The new owner must assume personal liability for the loan;**
- (d) A new entity buys the borrower entity and continues to operate the farm in accordance with loan requirements; or**

**\*--Note:** The new entity must replace the present entity and consist of the same members.--\*

## 248 Assumption Terms (Continued)

**C Eligible Applicant - Same Rates and Terms (Continued)**

**(e) The original loan is an EM loan for physical or production losses and persons who were directly involved in the farm's operation at the time of the loss will assume the loan. If the original loan was made to:**

**(1) An individual borrower, the transferee must be a family member of the original \*--borrower or an entity in which the entity members are comprised solely of family--\* members of the original borrower.**

**(2) A trust, partnership or joint operation, the transferee must have been a member, partner or joint operator when FSA made the original loan or remain an entity \*--comprised solely of people who were original entity members, partners or joint--\* operators when the entity received the original loan.**

**\*--(3) A corporation, including limited liability company, cooperative, or other legal business organization, the transferee must:**

**(i) Have been a corporate stockholder, cooperative member, or other member of a legal business organization, when the Agency made the original loan or will be an entity comprised solely of entity members who were entity members when the entity--\* received the loan; and**

**(ii) Assume only the portion of the physical or production loss loan equal to the transferee's percentage of ownership. In the case of entity transferees, the transferee must assume that portion of the loan equal to the combined percentages of ownership of \*--the individual stockholders or entity members in the transferee.--\***

**D Transfer and Assumption of Types of Loans No Longer Made by FSA**

**[7 CFR 765.403(c)] Real estate loan types the Agency no longer makes (i.e. EE, RL, RHF) may be assumed and reclassified as FO loans if the transferee is eligible for an FO loan under part 764 of this chapter (3-FLP) and the property proposed for transfer meets program requirements.**