

**FSA
HANDBOOK**

Special Programs

To access the transmittal page click on the short reference.

For State and County Offices

SHORT REFERENCE

6-FLP

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

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

| | |
|-----------------------------------|---------------------|
| Special Programs 6-FLP | Amendment 27 |
|-----------------------------------|---------------------|

Approved by: Deputy Administrator, Farm Loan Programs



Amendment Transmittal

A Reasons for Amendment

Subparagraph 25 E has been amended to change the reference from FSA-2060 to FSA-2061, and to provide clarification on use.

Subparagraph 70 B has been amended to change the reference from FSA-2060 to FSA-2062.

| Page Control Chart | | |
|---------------------------|-------------------------------|----------------|
| TC | Text | Exhibit |
| | 2-33 through 2-64 4-7, 4-8 | 1, pages 1, 2 |

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Part 1 Introduction and Purpose

1 Purpose and Sources of Authority

A Handbook Purpose

This handbook is designed to assist FSA in understanding:

- regulations governing special loan programs implemented under DAFLP
- roles and responsibilities for processing loans under these programs.

The loan programs addressed in this handbook include the:

- ITLAP
- Special Apple Loan Program
- Emergency Loan for Seed Producers Program

* * *

- Land Contract Guarantee Program
- Minor Program loans.

B Sources of Authority

The sources of authority for this handbook include:

- 7 CFR Part 763 for Land Contract Guarantee Program
- 7 CFR Part 770 for Indian Tribal Land Acquisition Loans
- 7 CFR Part 772 for servicing Minor Programs
- 7 CFR Part 773 for Special Apple Loan Program
- 7 CFR Part 774 for Emergency Loans to Seed Producers Program
- NOFA for HBL Program
- other Agency regulations that may be referenced throughout this handbook
- various laws and statutes passed by Congress including CONACT.

1 Purpose and Sources of Authority (Continued)

C Regulation References

Text in this handbook that is published in CFR is printed in **bold** text. The CFR citation is printed in brackets in front of the text. The references and text:

- are intended to highlight the requirement spelled out in CFR
- may be used to support adverse FSA decisions.

***--Note:** Cross-references printed in **bold** are citing a CFR section. The handbook paragraph or subparagraph where the cross-referenced CFR text can be found is printed in nonbold text in parenthesis within the bold text.--*

Example: Subparagraph 12 C provides “[7 CFR 770.3 (b)] Except for refinancing activities authorized in 770.4 (c) (subparagraph 21 A), obtain an option or other acceptable purchase agreement for land to be purchased with loan funds;”.

The nonbold reference indicates that 7 CFR 770.4(c) is included in subparagraph 21 A.

2 **Related References**

A Related FSA Handbooks

The following FSA handbooks concern FLP.

| IF the area of concern is about... | THEN see... |
|---|--------------------|
| State and county organization and administration policies, procedures, principles, and standards, such as work organization | 16-AO. |
| civil rights compliance and administration for FSA programs | 18-AO. |
| appeals and mediation | 1-APP. |
| State and county records management | *--32-AS.--* |
| policies and procedures for the acquisition of supplies, equipment, and services | 42-AS. |
| common management and operating provisions for program management activities, functions, and automated applications, such as forms that cannot be accepted by FAX | 1-CM. |
| environmental requirements | 1-EQ. |
| *--environmental risk management | 2-EQ.--* |
| processing collections and canceling loan checks and payments | 3-FI. |
| General and administrative regulations governing FLP and implementation of NAD final determinations | 1-FLP. |
| Guaranteed loan making and servicing | 2-FLP. |
| Direct loan regular or routine servicing | 4-FLP. |
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| procedures for making records available to the public, other Federal agencies, and Congress | 2-INFO. |
| procedures for collecting, maintaining, or disclosing data or information about an individual | 3-INFO. |
| personnel management, such as employee conflict of interest | 3-PM. |
| employee development and training | 6-PM. |

* * *

B Helpful Links

--The Handbook website at <http://intranet.fsa.usda.gov/dam/handbooks/handbooks.asp> provides access to handbooks and handbook amendments.--

2 Related References (Continued)

***--C State Supplements**

See Exhibit 4 for State supplements required by this handbook. SED's are authorized to issue State supplements to this handbook in addition to State supplements listed in Exhibit 4.

Note: Additional State supplements may:

- **not** be issued to simply state verbatim, policies already established in the national handbook
- be issued:
 - when the national handbook does not provide complete guidance
 - to provide additional guidance for employees with limited experience
 - when State law requirements are not specifically addressed in the national handbook.

SED's shall:

- issue required supplements, and any additional supplements, according to 1-AS, paragraph 231--*
- obtain approval of State supplements according to 1-AS, paragraph 220.

3-10 (Reserved)

Part 2 Indian Tribal Land Acquisition Program**Section 1 Program Overview****11 Objective****A Scope**

[7 CFR 770.1] This part contains the Agency's policies and procedures for making and servicing loans to assist a Native American Tribe or tribal corporation with the acquisition of land interests within tribal reservation or Alaskan community.

B Program Objective

ITLAP:

- extends credit to Indian tribes or tribal corporations that do not qualify for standard commercial loans
- benefits Native American tribes by providing credit to acquire land interests within the Federally recognized tribal reservation or Alaskan community.

12 Eligibility Requirements**A Eligibility**

--Applicants must meet the requirements addressed in subparagraphs B through I to be--
eligible for an ITLAP loan.

B Submitting FSA-2620

[7 CFR 770.3 (a)] Submit a completed Agency application form;

The application will be submitted on FSA-2620 and will be signed by the tribe's or tribal corporation's authorized representative.

C Purchase Agreement

[7 CFR 770.3 (b)] Except for refinancing activities authorized in 770.4 (c) (subparagraph 21 A), obtain an option or other acceptable purchase agreement for land to be purchased with loan funds;

Such an agreement shall be included with the application for loan funds.

--12 Eligibility Requirements (Continued)*D Adequate Tribal Funds Not Available**

[7 CFR 770.3 (c)] Be a Native American tribe or tribal corporation of a Native American tribe without adequate uncommitted funds based on Generally Accepted Accounting Principals, or another financial accounting method acceptable to the Secretary of Interior to acquire lands or interests therein within the Native American tribe's reservation for the use of the Native American tribe or tribal corporation or the members of either;

The applicant must provide the Agency with the following:

- a financial statement that meets generally accepted accounting principles standards
- a cash flow statement that documents that all funds from all sources are committed
- the past 3 years of financial statements and cash flows budget.

E Inability to Obtain Other Credit

[7 CFR 770.3 (d)] Be unable to obtain sufficient credit elsewhere at reasonable rates and terms for the purposes established in 770.4; (paragraph 21)

The applicant must provide letters from at least 3 lenders, 1 of which will be BIA, that outlines the following:

- amount and terms requested by the tribe or tribal corporation
- reason for denying the request.

Note: Reasonable rates and terms are those normally offered in the lending area for similar purposes.

F Ability to Repay Loan

[7 CFR 770.3 (e)] Demonstrate reasonable prospects of success in the proposed operation of the land to be purchased with funds provided under this part by providing;

- (1) a feasibility plan for the use of the Native American tribe's land and other enterprises and funds from any other source from which payment will be made;**
- (2) a satisfactory management and repayment plan; and**
- (3) a satisfactory record for paying obligations.--***

12 Eligibility Requirements (Continued)

G Delinquency on Federal Debt

[7 CFR 770.3 (f)] Unless waived by the FSA Administrator, not have any outstanding debt with any Federal Agency (other than debt under the Internal Revenue Code of 1986) which is in a delinquent status.

H Outstanding Recorded Judgements

[7 CFR 770.3 (g)] Not be subject to a judgement lien against the tribe's property arising out of a debt to the United States.

*--I Write-down

[7 CFR 770.3(h)] Have not received a write-down as provided in 770.10(e) (paragraph 41) within the preceding 5 years.--*

13 Application Processing

A Agency Official Responsibilities

Agency official must review the application for completeness and ensure that the applicant meets all eligibility requirements. Specific responsibilities are addressed in subparagraphs B through H.

B Reviewing FSA-2620

Agency official shall review FSA-2620 for completeness. All information necessary for the type of application, such as loan making and loan servicing, must be provided to consider the application complete. FSA-2621, FSA-2622, and FSA-2623 do not have to be provided to consider an application for a loan complete but must be provided before any loan closing. An option or purchase according to subparagraph 12 C must be included with the application to consider it complete.

C Verifying Tribal Status and Unavailability of Funds

Agency official must:

- contact the local BIA office to verify the Federal status of an applicant and document the contact in the case file running record

Example: Is the applicant on the list of Federally recognized tribes.

- review financial, budgetary, and cash flow information and document that the tribe has demonstrated that all income is being used for purposes other than real estate purchases.

Example: All funds generated by the tribe are used to meet the social and debt repayment needs of tribe or tribal corporation and not to the purchase of lands.

--13 Application Processing (Continued)*D Reviewing Credit Denials**

Agency official must review the credit denials provided to ensure that:

- 1 of the 3 denials is from BIA, and 2 are from commercial lenders
- the denial letters adequately document the amount, terms requested, and reason for denial.

E Determining Prospects of Success

Agency official shall:

- ensure that loan application documentation contains a pro forma financial statement and cash flow budget for the current period that demonstrates that the proposed loan or loans can be repaid and that the most recent 3 years of audited financial statements and cash flows have been provided
- review and ensure that the application file:
 - is adequately documented with the tribe's record of payment on all payment obligations
 - includes a management plan of the tribal operations about the land to be purchased.

Note: The management plan should include all income producing activities to be derived off of the land to be purchased and the ability of the land to provide enough revenue to make the proposed loan payments.

F Outstanding Judgements

Agency officials shall ensure that loan applicants provide evidence that all Federal judgments have been released or paid in full. Loans will **not** be approved for applicants with unresolved Federal judgements. Loan funds shall not be used to pay Federal judgments. Direct questions about outstanding judgements to the Regional Attorney.--*

13 Application Processing (Continued)

G Subsequent Loans

A subsequent loan may be made to a borrower for the same purposes and under the same conditions as the initial loan made to the borrower under this part. In addition to the requirement of subparagraphs B through F, the Agency official must ensure the following:

- that the tribe has demonstrated it has complied with past requests for financial information
- that the existing loans are current.

H Delinquent Federal Debt

--Agency officials shall use the automated DNP portal in determining whether the applicant-- is delinquent on any Federal debt.

14-20 (Reserved)

Section 2 Loan Purposes, Terms, and Security Requirements

21 Loan Purposes and Limitations

A Loan Purposes

[7 CFR 770.4] Loan funds may only be used to:

- (a) Acquire land and interests therein (including fractional interests, rights-of-way, water rights, easements, and other appurtenances (excluding improvements) that would normally pass with the land or are necessary for the proposed operation of the land) located within the Native American tribe's reservation which will be used for the benefit of the tribe or its members.
- (b) Pay costs incidental to land acquisition, including but not limited to, title clearance, legal services, land surveys, and loan closing.
- (c) Refinance non-United States Department of Agriculture preexisting debts the applicant incurred to purchase the land provided the following conditions exist:
 - (1) Prior to the acquisition of such land, the applicant filed a loan application regarding the purchase of such land and received the Agency's approval for the land purchase;
 - (2) The applicant could not acquire an option on such land;
 - (3) The debt for such land is a short term debt with a balloon payment that cannot be paid by the applicant and that cannot be extended or modified to enable the applicant to satisfy the obligation; and
 - (4) The purchase of such land is consistent with all other applicable requirements of this part.

[7 CFR 770.4 (d)] Pay for the costs of any appraisal conducted pursuant to this part.

--Appraisals must be completed according to 1-FLP, Part 6.--

Note: Although these costs may be included in a loan, the cost of the appraisal and land may not exceed the present market value of the property.

21 Loan Purposes and Limitations (Continued)**B Loan Limitations**

[7 CFR 770.5 (a)] Loan funds may not be used for any land improvement or development purposes, acquisition or repair of buildings or personal property, payment of operating costs, payment of finder's fees, or similar costs, or for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agriculture commodity as further established in exhibit M of subpart G of part 1940 of this title.

[7 CFR 770.5 (b)] The amount of loan funds used to acquire land may not exceed the market value of the land (excluding the value of any improvements) as determined by a current appraisal.

[7 CFR 770.5 (c)] Loan funds for a land purchase must be disbursed over a period not to exceed 24 months from the date of loan approval.

Note: The 24-month period begins from the date of the loan or loans approval. Sixty days before the end of the 24-month period, a letter shall be mailed to the tribal office responsible for land purchases providing notification that if the funds are not used before the end of this period, the remaining obligation will be canceled.

22 Interest Rates and Terms**A Terms**

[7 CFR 770.6(a)] Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note.

B Interest Rate

[7 CFR 770.6(b)] The interest rate charged by the Agency will be the lower of the interest rate in effect at the time of the loan approval or loan closing, which is the current rate available in any FSA office. Except as provided in section 770.10(b) (paragraph 39), the interest rate will be fixed for the life of the loan.

--The interest rate is published in 1-FLP, Exhibit 17.--

***--23 Security Requirements**

**A
Applicant
Responsibilities**

[7 CFR 770.7 (a)] The applicant will take appropriate action to obtain and provide security for the loan. However small the parcel purchased, the tribe or tribal corporation will provide the legal description of the parcel purchased for future loan servicing requests or actions.

Note: A legal description of the parcel purchased shall be included in the case file position relating to real estate

Example: A real estate mortgage and or assignment of income.

**B
Mortgage/ Deed
of Trust**

[7 CFR 770.7 (b)] A mortgage or deed of trust on the land to be purchased by the applicant will be taken as security for a loan, except as provided in paragraph (c) of this section.

- (1) If a mortgage or deed of trust is to be obtained on trust or restricted land and applicant’s constitution or charter does not specifically authorize mortgage of such land, the mortgage must be authorized by tribal referendum.**
- (2) All mortgages or deeds of trust on trust or restricted land must be approved by the Department of the Interior.**

Ordinarily, security will be a first lien on the real estate plus an assignment of income. However, the filing of a mortgage or deed of trust may be waived if the Agency determines that an assignment of income from the applicant provides as good or better security. The Agency shall first look to determine whether the filing of a real estate mortgage would be more advantageous to its security position and repayment of the loan.

If the purchase is for a fractionated interest, in addition to any real estate collateral, income assignments shall be used to secure the loan.--*

Continued on the next page

***--23 Security Requirements (Continued)**

C**Assignment of Income**

[7 CFR 770.7 (c)] The Agency may take an assignment of income in lieu of a mortgage or deed of trust provided:

- (1) the Agency determines that an assignment of income provides as good or better security; and**
- (2) prior approval of the Administrator has been obtained.**

Note: See subparagraph 25 A for information about loan closing on assignments of income.

24 Approval or Denial Decision

A**Evaluating Loan Requirements**

The loan request will be approved if:

- all eligibility requirements have been met
 - loan funds will be used for an authorized purpose
 - all security requirements have been met, or will be met at closing
 - DD has reviewed and signed FSA-2620
 - SED has reviewed and signed FSA-2620.
-

B**Loan Approval**

SED's are authorized to approve all loans of \$500,000 or less. Loans greater than \$500,000 will be approved by the Administrator. Information to be provided to the National Office includes the following:

- the completed loan docket
- a proposed letter of conditions to be met by the applicant
- a copy of any comments from OGC
- SED's recommendations.

After approval, SED will forward a copy of the executed FmHA 1940-1 to the St. Louis finance office for each loan approved.

Note: If approval was authorized by the National Office, SED shall sign FmHA 1940-1 and attach a copy of the memorandum authorizing approval to FmHA 1940-1.--*

Continued on the next page

--24 Approval or Denial Decision (Continued)*C Loan Denial**

The Agency shall not approve a loan if it determines that:

- the applicant is not creditworthy, or that the applicant has knowingly provided incomplete, false, or misleading information
- the applicant, the applicant's operation, or other circumstances surrounding the loan are inconsistent with the authorizing statutes, other Federal laws, or Federal credit policies, except as modified by published regulations
- a feasible plan cannot be developed, except for loans of \$30,000 or less with adequate net worth, which do not require a plan; see subparagraph 92 B
- for loan requests greater than \$30,000, there is inadequate security for the loan requested.

Denial letters shall be sent according to 1-APP and any other applicable Agency directives. All letters shall include the nondiscrimination statement in 1-FLP, subparagraph 41 C.

The approval official must thoroughly document the reasons for denying the loan in the application file. If the approval official is not in the local office, the loan file shall be sent back to the authorized agency official for completing the loan denial process.

D Loan Funding

Loan requests shall be funded based on the date the Agency approves the application. Loan approval is subject to the availability of funds.

The obligated loan fund shall be available to the applicant at loan closing either as a check or by electronic funds transfer.

If funds are not available to fund the loan request, the authorized agency official informs the applicant that funds are not currently available. If subsequent or additional loan funds are not available within 120 calendar days of the date of the funding shortfall, the loan application shall be withdrawn.--*

24 Approval or Denial Decision (Continued)

E Appeals

A loan applicant or borrower may request an appeal or review of an adverse decision made by the Agency according to 7 CFR Parts 11 and 780.

Agency Officials making adverse determinations shall:

- inform the applicant of mediation, reconsideration, and appeal rights according to 1-APP
- follow procedure in 1-APP to process and act on appeals.

25 Closing Requirements

A Loan Closing

The following are needed for loan closing.

- The Agency's OGC must review the Tribal Constitution, Bylaws, and Tribal Resolutions authorizing the tribe to incur additional debt.
- Agency officials will ensure that the tribe or tribal corporation has signed and provided all documentation required by FSA-2620, FSA-2621, FSA-2622 and FSA-2623, before loan closing.
- The tribe must execute and deliver to the Agency a "General Assignment of Income" that is subordinated in favor of the Agency and acknowledged by BIA. The subordinated assignment agreement must be reviewed by the Agency's OGC and determined to be legally sufficient. See FSA-2622 and FSA-2623.
- Each assignment of income will be approved by BIA and recorded in the appropriate public records.
- The tribe must provide a written agreement stipulating that they will not provide assignments or pledges to other parties of income, revenue, or other property assigned or pledged to FSA without written FSA consent.
- The tribe must provide, in addition to the names already provided, the titles and addresses of all tribal officers.
- *--In addition to properly securing the loan, Agency officials will ensure that FSA-2026, as applicable, is executed at loan closing.--*

25 Closing Requirements (Continued)

B Closing Requirements

The following documentation is needed for closing requirements.

- The tribe must establish a Land Acquisition Account in which loan funds will be deposited. This shall be a “Supervised Bank Account.” If funds in this account exceed \$100,000, it will be secured by the financial institution in advance.
- Agency officials must ensure that a properly bonded official of the tribe will receive monies for each account and issue receipts thereof. The bonded official will deposit all such monies in the appropriate trust or counter-signature accounts. As a basis for withdrawals, the deposit agreement for each account will require the signatures of appropriate tribal official or officials and the Agency official or an official from DOI, BIA, depending on whether the account is a BIA trust account or an FSA supervised account in a commercial bank.

C Real Estate Trust Property

If real estate trust property is to be taken as security for the loan or loans, the following steps shall be taken as part of loan closing.

| Step | Instructions for Loan Closing |
|------|---|
| 1 | The applicant will request BIA to provide Title Status Reports to Agency Officials. |
| 2 | If all administrative closing requirements can be met, BIA will prepare the deeds *--and obtain the needed signatures. The Agency will supply BIA with FSA-2026 and FSA-2029. BIA will insert the appropriate land descriptions. The partly--* completed real estate mortgage and note will be returned to the Agency. |
| 3 | The loan check can then be ordered and the loan closed. The mortgage and note will be completed and signed, but no funds will be disbursed. A conformed copy of the note with the original mortgage and 2 copies will be forwarded to BIA. BIA will insert a certification on the mortgage and then return it to the Agency. BIA will also indicate that the deeds have been recorded and the priority of the Government’s lien in a continuation of the Title Status Report. However, the certification about the lien priority may be made on the old Status Report if BIA prefers. |
| 4 | The certified original mortgage will then be recorded by the Agency in the county where the land is located if OGC determines that such recording is necessary. Funds can be disbursed as soon as the mortgage is recorded or the determination is made that recording is not necessary. |

25 Closing Requirements (Continued)

D Non-Trust Land

Title clearance will be obtained according to 3-FLP.

E Rights-of-Way

The applicant will be responsible for obtaining adequate, continuous, and valid rights-of-way for operating and maintaining the property. The following documentation will be provided by the tribe to FSA:

- *--a copy of the form of rights-of-way instrument to be used should be attached to FSA-2061--*

Note: Rights-of-way with restrictive provisions should be accepted only in very unusual circumstances.

- whenever the form * * * contains special provisions that are required by either the applicant or the grantor, copies of these instruments will be submitted to FSA for review before accepting and recording
- either specific rights-of-way or general rights-of-way containing only a description of the tract or parcel of land affected may be used.

26-36 (Reserved)

--Section 3 Loan Servicing*37 General Servicing****A General**

[7 CFR 770.8(a)] Subject to section 770.5(d) (subparagraph 37 B) land acquired with loan funds, or other property serving as security for a loan under this part, may be leased, sold, exchanged, or subject to a subordination of the Agency's interests, provided:

- (1) the Agency provides prior written approval of the action;**
- (2) the Agency determines that the borrower's loan obligations to the Agency are adequately secured; and**
- (3) the borrower's ability to repay the loan is not impaired.**

[7 CFR 770.8(b)] Title to land acquired with a loan under this part may, with the approval of the Secretary of the Interior, be taken by the United States in trust for the tribe or tribal corporation.

B Selling Non-Renewable Assets

[7 CFR 770.5(d)] The sale of assets that are not renewable within the life of the loan will require a reduction in loan principal equal to the value of the asset sold.

Any sale of non-renewable assets must receive prior consent from the Agency. This may include the sale of timber, mineral, or other assets that generally will not be renewable within the term of the loan. The Agency will review the security for the loan or loans to determine whether after the sale of the asset, the Agency will remain well secured. If the Agency remains fully secured, the sale may be approved. All sales require prior approval of the Administrator.--*

37 General Servicing (Continued)

C Land Exchanges

[7 CFR 770.10(d)] In the cases where a borrower proposes to exchange any portion of land securing a loan for other land, title clearance and a new mortgage on the land received by the borrower in exchange, which adequately secures the unpaid principal balance of the loan, will be required unless the Agency determines any remaining land or other loan security is adequate security for the loan.

Title clearance can be accomplished through the BIA office serving that particular tribe or tribal corporation's reservation.

If an assignment of income is determined to be adequate security for the loan, see subparagraph 25 A for using income assignment. If the exchange is for land that is less valuable than the land securing the indebtedness, the Agency will approve this action if the total land base securing the loans or on which an assignment of income from land purchased with ITLAP funds has been used for repayment is greater than the amount presently owed to the Government.

To identify security for each loan, the tribe or tribal corporation must maintain a record of the tract or tracts purchased with loan funds and any transfers or exchanges that have been substituted for land originally purchased.

D Appraisals

[7 CFR 770.9(a)] The applicant or the borrower, as appropriate, will pay the cost of any appraisal required under this part.

[7 CFR 770.9(b)] Appraisals must be completed in accordance with section 761.7 of this chapter.

***--E Requests for Restructuring**

When borrowers contact FSA to inquire about or request loan servicing, they shall be advised of all of the following servicing options and sent Exhibit 20:

- loan reamortization, if the account is delinquent or the borrower is unable to make their loan payment (paragraph 38)
- interest rate reduction if a loan interest rate exceeds the current ITLAP interest rate (paragraph 39)
- deferral (paragraph 40)
- debt write-down under either the land value or rental value options (paragraph 41)
- release of reserve account funds to make the annual payment if the loan is not delinquent (paragraph 42).--*

***--38 Reamortization**

A**Eligibility**

[7 CFR 770.10(a)(1)] The Agency may consider reamortization of a loan provided:

- (i) The borrower submits a completed Agency application form; and**
- (ii) The account is delinquent due to circumstances beyond the borrower's control and cannot be brought current within 1 year; or**
- (iii) The account is current, but due to circumstances beyond the borrower's control, the borrower will be unable to meet the annual loan payments.**

Example: Circumstances beyond the borrower's control are increased expenses resulting from unfunded or partially funded Federal or State mandates, or natural disasters.

B**Term of a Loan**

[7 CFR 770.10(b)(2)] The term of a loan may not be extended beyond 40 years from the date of the original note.

- (i) Reamortization within the remaining term of the loan will be predicated on a projection of the tribe's operating expenses indicating the ability to meet the new payment schedule; and**
- (ii) No intervening lien exists on the security for the loan which would jeopardize the Government's security position.**

The interest rate will be the loan rate or the current program rate (if lower) if the borrower meets the requirements of subparagraph 39 A.

C**Consolidation
Authorized**

[7 CFR 770.10(b)(3)] If one or more notes are to be reamortized, consolidation of the notes is authorized.

The term of the consolidated note cannot exceed 40 years from the date of the most recently closed loan.

The interest rate will be the rate charged on the most recently closed loan or the current program rate (if lower) if the borrower meets the requirements of subparagraph 39 A.--*

***--39 Interest Rate Reduction**

A**Requirements**

[7 CFR 770.10(b)] The Agency may consider a reduction of the interest rate for an existing loan to the current interest rate as available from any Agency office provided:

- (1) the borrower submits a completed Agency application form;**
 - (2) the loan was made more than 5 years prior to the application for the interest reduction; and**
 - (3) the Department of the Interior and the borrower certify that the borrower meets at least one of the criteria contained in paragraph (e)(2) of this section (subparagraph 41 B).**
-

40 Deferral

A**Requirements**

[7 CFR 770.10(c)] The Agency may consider a full or partial deferral for a period not to exceed 5 years provided:

- (1) the borrower submits a completed Agency application form;**
- (2) the borrower presents a plan which demonstrates that due to circumstances beyond their control, they will be unable to meet all financial commitments unless the Agency payment is deferred; and**
- (3) the borrower will be able to meet all financial commitments including the Agency payments, after the deferral period has ended.**

The tribe or tribal corporation must provide a cash flow projection that indicates that there will be enough income to meet all expense and payment obligations after the deferral period ends.--*

41 Debt Write-down**A Application**

[7 CFR 770.10(e)(1)] The Agency will consider debt write-down under either the land value option or rental value option, as requested by the borrower.

- (i) The borrower must submit a completed Agency application form;**
- (ii) If the borrower applies and is determined eligible for a land value and a rental value write down, the borrower will receive a write-down based on the write-down option that provides the greatest debt reduction.**

B Eligibility

[7 CFR 770.10(e)(2)] To be eligible for a debt write down, the borrower (in the case of a tribal corporation, the Native American Tribe of the borrower) must:

- (i) be located in a county which is identified as a persistent poverty county by the United States Department of Agriculture, Economic Research Service pursuant to the most recent data from the Bureau of Census; and**
 - (ii) have a socio-economic condition over the immediately preceding 5-year period that meets the following two factors as certified by the Native American tribe and the Department of the Interior:**
 - (A) The Native American Tribe has a per capita income for individual enrolled tribal members which is less than 50 percent of the Federally established poverty income rate established by the Department of Health and Human Services;**
- *--Note: If tribal income information is not available, State or county per capita income data may be used.--***
- (B) The tribal unemployment rate exceeds 50 percent.**

*** * ***

41 Debt Write-down (Continued)

C Land Value Write-down

[7 CFR 770.10(e)(3)] The Agency may reduce the unpaid principal and interest balance on any loan made to the current market value of the land that was purchased with loan funds provided;

- (i) The market value of such land has declined by at least 25 percent since the land was purchased as established by a current appraisal;**

Note: The tribe must identify the lands purchased and account for any trade, substitution, or exchange made since the loan or loans were first made to complete an appraisal and document the loss in value.

The cost of the appraisal will be paid by the tribe or tribal corporation.

- (ii) Land value decrease is not attributed to the depletion of resources contained on or under the land;**

Example: The harvesting of timber, strip mining, or any other action that would reduce the value of land by removal of resources contributing to the value of the land.

- (iii) The loan was made more than 5 years prior to the application for land value writedown;**

- (iv) The loan has not previously been written down under paragraph (e)(4) (subparagraph D) of this section and has not been written down within the last 5 years under this paragraph; and**

- *--(v) The borrower must meet the eligibility requirements of paragraphs (a)(1)(ii) or (iii) (subparagraph 38 A) of this section.--***

The decrease in value must be attributable to outside economic forces; natural disaster, including flood and insect damage; or other factors beyond the borrower's control for which they are unable to mitigate the negative effects. Agency officials will document the reason attributable to the decrease in value before land value write-down approval.

41 Debt Write-Down (Continued)

D Rental Value Write-Down

[7 CFR 770.10(e)(4)] The Agency may reduce the unpaid principal and interest on any loan, so the annual loan payment for the remaining term of each loan equals the average of annual rental value of the land purchased by each such loan for the
--immediately preceding 5-year period provided:--

- (i) The loan was made more than 5 years prior to the rental value writedown;**
- (ii) The description of the land purchased with the loan funds and the rental values used to calculate the 5-year average annual rental value of the land have been certified by the Department of the Interior;**

Note: To support the determination of the 5-year average annual rental value, the tribe or tribal corporation must provide and identify the number of acres that were purchased with FSA loan funds. DOI's BIA must certify in writing as to the validity of the figures used by the tribe requesting the write-down.

***--(iii) The borrower provides a record of any actual rents received for the land for the preceding 5 years, which will be used to calculate the average rental value. This record must be certified by the Department of the Interior. For land that has not been leased or has not received any rental income, the borrower must provide a market value rent study report for the preceding 5 years, which identifies the average annual rental value based on the market data. The market value rent study report must be prepared by a certified general appraiser and meet the requirements of USPAP;**

Note: The rental value of improvements on a specific parcel is not considered in the calculation of the 5 year average rental value of the land.

For a parcel of land that does not have 5 years of rental history from which to determine the 5 year average rental value, a rental value will be assigned for the years of no rental history based on the rent received for leased land of like value and purpose.

Example: A parcel of pasture land has rented for years 1, 2, and 3 for \$18 per acre, but not for years 4 and 5. Similar adjacent pasture land with a 5 year rental history has received rent in the following amount:

- year 1, \$18 per acre
- year 2, \$19 per acre
- year 3, \$21 per acre
- year 4, \$21 per acre
- year 5, \$25 per acre.

The subject parcel will be assigned a rental rate of \$21 for year 4 and \$25 for year 5. The average 5 year rental value will be the average of the 3 years of rents received and the assigned values for year 4 and 5. $\$18 + \$18 + \$18 + \$21 + \$25 = \$100 \div 5 =$ average rental rate of \$20.--*

41 Debt Write-Down (Continued)

D Rental Value Write-Down (Continued)

(iv) The borrower has not previously received a write-down under this paragraph and has not had a loan written down within the last 5 years under paragraph (e)(3) (subparagraph C) of this section; and

Note: If the loan has previously received a rental value write-down, it cannot receive another rental value write-down. If the loan received a land value write-down within the last 5 years, it cannot receive a rental value write-down.

(v) The borrower must meet the eligibility requirements of paragraph (a)(1)(ii) or (iii) (subparagraph 38 A) of this section.

42 Reserve Accounts

A Releasing Reserve Account Funds

[7 CFR 770.10(e)] Existing reserve accounts may be released for the purpose of making ITLAP loan payments or to purchase additional lands, subject to the following;

- (1) a written request is received providing detailed use of the funds;**
- (2) the loan is not delinquent;**
- (3) the loan is adequately secured by a general assignment of tribal income.**

43 Graduation

A Graduation Requirement

--FSA-2029, as applicable, and FSA-2621 contain requirements about graduation.--

B Borrower Action

If at any time it appears to FSA officials that the tribe is able to refinance the loan, in whole or in part, by obtaining a loan for such purposes from responsible cooperative or private credit sources, at reasonable rates and terms for loans for similar purpose and periods of time, the tribe will, upon request of FSA, apply for and accept such loan in sufficient amount to repay FSA.

44-54 (Reserved)

Part 3 (Reserved)

55-65 (Reserved)

--Part 4 Servicing Minor Program Loans*66 Overview****A Scope**

[7 CFR 772.1(a)] This part contains the Agency's policies and procedures for servicing Minor Program loans which include Grazing Association loans, Irrigation and Drainage Association loans, and Non-Farm Enterprise and Recreation loans to individuals.

B Objectives

The purpose is to assist borrowers of Minor Program loans to continue to meet the objectives of the loan programs, repay the loans on schedule, comply with all pertinent regulations and policies, and to protect the Agency's financial interest.

Supervision by FSA includes, but is not limited to, reviewing financial information, performing inspections, evaluating proposed actions by the borrower, and performing graduation and compliance reviews.

C Appeals

[7 CFR 772.1(b)] The regulations at 7 CFR parts 11 and 780 apply to decisions made under this part.

D Equal Opportunity and Nondiscrimination Requirements

[7 CFR 772.17] With respect to any aspect of a credit transaction, the Agency will comply with the requirements of the Equal Credit Opportunity Act as implemented in 7 CFR section 1910.2, and the Department's civil rights policy in 7 CFR part 15d.--*

67 Compliance Reviews**A Requirements**

[7 CFR 772.3(a)] No Minor Program borrower shall directly, or through contractual or other arrangement, subject any person or cause any person to be subjected to discrimination on the basis of race, color, national origin, or disability. Borrowers must comply with all applicable Federal laws and regulations regarding equal opportunity in hiring, procurement, and related matters. AMP borrowers are subject to the nondiscrimination provisions applicable to Federally assisted programs contained in 7 CFR part 15, subparts A and C, and part 15b. IMP loans are subject to the nondiscrimination provisions applicable to Federally conducted programs contained in 7 CFR parts 15d and 15e.

B Conducting Reviews

[7 CFR 772.3(b)] In accordance with Title VI of the Civil Rights Act of 1964, the Agency will conduct a compliance review of all Minor Program borrowers, to determine if a borrower has directly, or through contractual or other arrangement, subjected any person or caused any person to be subjected to discrimination on the basis of race, color, or national origin. The borrower must allow the review official access to their premises and all records necessary to carry out the compliance review as determined by the review official.

***--FLM's and SFLO's may conduct compliance reviews for IMP loans. Results will be--* recorded in the case file running record with a copy sent to DD. DD's or an Agency Review Official designated by SED, who has training or experience in completing compliance reviews, will complete reviews for AMP loans. Results will be recorded on FSA-2648.**

*--67 Compliance Reviews (Continued)

B Conducting Reviews (Continued)

When all reviews are completed, the results of all reviews using the following format will be forwarded by DD to SED according to the following format.

| | | | |
|---|--------------------|----------------------------|-----------------------|
| SUBJECT: Civil Rights Compliance Reviews | | | |
| TO: State Executive Director, FSA | | | |
| Civil Rights compliance reviews have been conducted, and each recipient listed below was found in compliance with Title VI of the Civil Rights Act of 1964. Information which led to this finding and the determination that the recipient is in compliance is in the running record of the recipient's file for IMP borrowers and FSA-2648 for AMP borrowers. | | | |
| <u>Recipient</u> | <u>Case Number</u> | <u>*Type of Assistance</u> | <u>Date of Review</u> |
| | | | |
| <p>The following recipients were found to be in noncompliance. Narrative explaining reasons for noncompliance determination and supporting documentation are attached to this report.</p> | | | |
| <u>Recipient</u> | <u>Case Number</u> | <u>*Type of Assistance</u> | <u>Date of Review</u> |
| | | | |
| <hr/> District Director | | | |
| *Indicate only loans which are subject to compliance reviews. | | | |

--*

*--67 Compliance Reviews (Continued)

C Frequency and Timing

[7 CFR 772.3(c)] Compliance reviews will be conducted no later than October 31 of every third year until the Minor Program loan is paid in full or otherwise satisfied.

*--SED will forward the results of all reviews to DAFLP through SDMS no later than November 30 of each year. A format similar to the following should be used.

Notes: See 1-AS, Exhibit 8 for guidance using SDMS.

ENTER "Civil Rights Compliance Summary" as the directive's title.--*

| | | |
|---|------------------|--------------------|
| SUBJECT: Summary Report of Civil Rights Compliance Reviews (Report FLP-5) | | |
| TO: Deputy Administrator, Farm Loan Programs, FSA | | |
| Civil Rights Compliance Reviews have been conducted and the following recipients were found in compliance with Title VI of the Civil Rights Act of 1964. | | |
| <u>Name of Borrower</u> | <u>Loan Type</u> | <u>Case Number</u> |
| 1. | | |
| 2. | | |
| 3. | | |
| The following recipients were found in noncompliance : | | |
| <u>Name of Borrower</u> | <u>Loan Type</u> | <u>Case Number</u> |
| 1. | | |
| 2. | | |
| 3. | | |
| _____ State Executive Director | | |

***--67 Compliance Reviews (Continued)**

D Violations

[7 CFR 772.3(d)] If a borrower refuses to provide information or access to their premises as requested by a review official during a compliance review, or is determined by the Agency to be not in compliance in accordance with this section or Departmental regulations and procedures, the Agency will service the loan in accordance with the provisions of section 772.16 of this part (paragraph 80).

68 Environmental Requirements

A Review

[7 CFR 772.4] Servicing activities such as transfers, assumptions, subordinations, sale or exchange of security property, and leasing of security will be reviewed for compliance with 7 CFR part 1940, subpart G and the exhibits to that subpart and 7 CFR part 799.--*

69 Security Maintenance**A General**

[7 CFR 772.5(a)] Borrowers are responsible for maintaining the collateral that is serving as security for their Minor Program loan in accordance with their lien instruments, security agreement, and promissory note.

B Inspections

[7 CFR 772.5(b)] The Agency will inspect real estate that is security for a Minor Program loan at least once every three years, and chattel security at least annually. More frequent security inspections may be made as determined necessary by the Agency. Borrowers will allow representatives of the Agency, or any agency of the U.S. Government, in accordance with statutes and regulations, such access to the security property as the agency determines is necessary to document compliance with the requirements of this section.

C Violations

[7 CFR 772.5(c)] If the Agency determines that the borrower has failed to adequately maintain security, made unapproved dispositions of security, or otherwise has placed the repayment of the Minor Program loan in jeopardy, the Agency will:

- *--(1) For chattel security, service the account according to part 765 of this chapter. If--* any normal income security as defined in that subpart secures a Minor Program loan, the reporting, approval, and release provisions in that subpart shall apply.**
- (2) For real estate security for AMP loans, contact the Regional Office of General Counsel for advice on the appropriate servicing including liquidation if warranted.**
- *--(3) For real estate security for IMP loans, service the account according to part 765 of this chapter.--***

If the violation results in a monetary or nonmonetary default, IMP loans will be serviced according to 5-FLP. AMP loans will be serviced according to paragraph 77.

--70 Subordination*A Eligibility**

[7 CFR 772.6(a)] The Agency shall grant a subordination of Minor Program loan security when the transaction will further the purposes for which the loan was made, and all of the following are met:

- (1) The loan will still be adequately secured after the subordination, or the value of the loan security will be increased by the amount of advances to be made under the terms of the subordination.**
- (2) The borrower can document the ability to pay all debts including the new loan.**
- (3) The action does not change the nature of the borrower's activities to the extent that they would no longer be eligible for a Minor Program loan.**
- (4) The subordination is for a specific amount.**
- (5) The borrower is unable, as determined by the Agency, to refinance its loan and graduate in accordance with this subpart.**
- (6) The loan funds will not be used in such a way that will contribute to erosion of highly erodible land or conversion of wetlands for the production of an agricultural commodity according to 7 CFR part 1940, subpart G.**
- (7) The borrower has not been convicted of planting, cultivating, growing, producing, harvesting or storing a controlled substance under Federal or State law. "Borrower," for purposes of this subparagraph, specifically includes an individual or entity borrower and any member of an entity borrower. "Controlled substance," for the purpose of this subparagraph, is defined at 21 CFR part 1308. The borrower will be ineligible for a subordination for the crop year in which the conviction occurred and the four succeeding crop years. An applicant must attest on the Agency application form that it, and its members if an entity, have not been convicted of such a crime.--***

70 Subordination (Continued)**B Application**

[7 CFR 772.6(b)] To request a subordination, a Minor Program borrower must make the request in writing and provide the following:

- (1) The specific amount of debt for which a subordination is needed;**
- (2) An appraisal prepared in accordance with section 761.7 (1-FLP, Part 6) of this chapter, if the request is for a subordination of more than \$10,000, unless a sufficient appraisal report, as determined by the Agency, that is less than one year old, is on file with the Agency; and**

Note: The cost of the appraisal is the responsibility of the borrower.

- (3) Consent and subordination, as necessary, of all other creditors' security interests.**

--The borrower must complete FSA-2062.--

“Borrower”, for purposes of this application, specifically includes an individual or entity borrower and any member of an entity borrower.

C Approval or Rejection

SED is authorized to approve subordination requests. If a subordination request does not meet the requirements of this paragraph, SED may reject the request and offer appeal rights or recommend it to the Administrator, FSA for approval.

Rejection of the subordination request is appealable. The regulations at 7 CFR parts 11 and 780 apply to decisions made under this paragraph. SED decision not to recommend the action to the Administrator is not appealable.

***--71 Leasing of Security**

A Eligibility

[7 CFR 772.7(a)] The Agency may consent to the borrower leasing all or a portion of security property for Minor Program loans to a third party when:

- (1) Leasing is the only feasible way to continue to operate the enterprise and is a customary practice;**
- (2) The lease will not interfere with the purpose for which the loan was made;**
- (3) The borrower retains ultimate responsibility for the operation, maintenance and management of the facility or service for its continued availability and use at reasonable rates and terms;**
- (4) The lease prohibits amendments to the lease or subleasing arrangements without prior written approval from the Agency;**
- (5) The lease terms provide that the Agency is a lienholder on the subject property and, as such, the lease is subordinate to the rights and claims of the Agency as lienholder; and**
- (6) The lease is for less than 3 years and does not constitute a lease/purchase arrangement, unless the transfer and assumption provisions of paragraph 74 are met.**

B Application

[7 CFR 772.7(b)] The borrower must submit a written request for Agency consent to lease the property. The borrower must provide a copy of the proposed lease document for Agency review and approval.

C Approval

SED is authorized to approve lease requests.--*

--72 Sale or Exchange of Security Property*A AMP Loans****[7 CFR 772.8 (a)] For AMP Loans:**

(1) Sale of all or a portion of the security property may be approved when all of the following conditions are met:

- (i) The property is sold for market value based on a current appraisal prepared in accordance with section 761.7 (1-FLP, Part 6) of this chapter.**

Note: The cost of the required appraisal is the responsibility of the borrower.

- (ii) The sale will not prevent carrying out the original purpose of the loan. The borrower must execute an Assurance Agreement as prescribed by the Agency. The covenant involved will remain in effect as long as the property continues to be used for the same or similar purposes for which the loan was made. The instrument of conveyance will contain the following nondiscrimination covenant:**

The property described herein was obtained or improved with Federal financial assistance and is subject to the non-discrimination provisions of title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and other similarly worded Federal Statutes, and the regulations issued pursuant thereto that prohibit discrimination on the basis of race, color, national origin, handicap, religion, age, or sex in programs or activities receiving Federal financial assistance. Such provisions apply for as long as the property continues to be used for the same or similar purposes for which the Federal assistance was extended, for so long as the purchaser owns it, whichever is later.

- (iii) The remaining security for the loan is adequate or will not change after the transaction.**

- (iv) Sale proceeds remaining after paying any reasonable and necessary selling expenses are applied to the Minor Program loan according to lien priority.**

(2) Exchange of all or a portion of security property for an AMP loan may be approved when:

- (i) The Agency will obtain a lien on the property acquired in the exchange;**
- (ii) Property more suited to the borrower's needs related to the purposes of the loan is to be acquired in the exchange;--***

72 Sale or Exchange of Security Property (Continued)**A AMP Loans (Continued)**

(iii) **The AMP loan will be as adequately secured after the transaction as before; and**

(iv) **It is necessary to develop or enlarge the facility, improve the borrower's debt-paying ability, place the operation on a more sound financial basis or otherwise further the loan objectives and purposes, as determined by the Agency.**

FSA-2476 will be completed by the transferor and transferee for approval by FSA.

B IMP Loans

--[7 CFR 772.8(b)] For IMP loans, a sale or exchange of real estate or chattel that is serving as security must be done as specified in part 765 of this chapter.--

73 Releases**A Security**

[7 CFR 772.9(a)] Security. Minor Program liens may be released when:

- (1) The debt is paid in full;**
- (2) Security property is sold for market value and sale proceeds are received and applied to the borrower's creditors according to lien priority; or**
- (3) An exchange in accordance with section 772.8 (paragraph 72) has been concluded.**

SED is authorized to approve releases of Minor Program security.

B Borrower Liability

[7 CFR 772.9(b)] The Agency may release a borrower from liability when the Minor Program loan, plus all administrative collection costs and charges are paid in full. IMP borrowers who have had previous debt forgiveness on a farm loan program loan as defined in 7 CFR 1951.906, however, cannot be released from liability by FSA until the previous loss to the Agency has been repaid with interest from the date of debt forgiveness. An AMP borrower may also be released in accordance with section 772.10 (paragraph 74) in conjunction with a transfer and assumption.

74 **Transfer and Assumption of AMP Loans****A Eligibility**

[7 CFR 772.10(a)] The Agency may approve transfers and assumptions of AMP loans when:

- (1) The present borrower is unable or unwilling to accomplish the objectives of the loan;**
- (2) The transfer will not harm the Government or adversely affect the Agency's security position;**
- (3) The transferee will continue with the original purpose of the loan;**
- (4) The transferee will assume an amount at least equal to the present market value of the loan security;**

Note: The market value will be determined by an appraisal according to 1-FLP, Part 6. The cost of the appraisal will be paid by the transferee or transferor.

- (5) The transferee documents the ability to pay the AMP loan debt as provided in the assumption agreement and has the legal capacity to enter into the contract;**
- (6) If there is a lien or judgment against the Agency security being transferred, the transferee is subject to such claims. The transferee must document the ability to repay the claims against the land; and**
- (7) If the transfer is to one or more members of the borrower's organization and there is no new member, there must not be a loss to the Government.**

--FSA-2489 will be completed by FSA and signed by the assuming party.--

B Transfer of Withdrawing Member's Interest

[7 CFR 772.10(b)] Withdrawal of a member and transfer of the withdrawing member's interest in the Association to a new eligible member may be approved by the Agency if all of the following conditions are met:

- (1) The entire unpaid balance of the withdrawing member's share of the AMP loan must be assumed by the new member;**
- (2) In accordance with the Association's governing articles, the required number of remaining members must agree to accept any new member; and**
- (3) The transfer will not adversely affect collection of the AMP loan.**

***--74 Transfer and Assumption of AMP Loans (Continued)**

C Requesting Transfer and Assumption

[7 CFR 772.10(c)] Requesting a transfer and assumption. The transferor/borrower and transferee/applicant must submit:

- (1) The written consent of any other lienholder, if applicable.**
- (2) A current balance sheet and cash flow statement.**

D Terms

[7 CFR 772.10(d)] The interest rate and term of the assumed AMP loan will not be changed. Any delinquent principal and interest of the AMP loan must be paid current before the transfer and assumption will be approved by the Agency.

E Release of Liability

[7 CFR 772.10(e)] Transferors may be released from liability with respect to an AMP loan by the Agency when:

- (1) The full amount of the loan is assumed; or**
- (2) Less than the full amount of the debt is assumed, and the balance remaining will be serviced in accordance with section 772.9(c) (paragraph 81).**

F Approval

SED is authorized to approve transfers and assumptions of AMP loans.--*

--75 Transfer and Assumption of IMP Loans*A Conditions**

[7 CFR 772.11] Transfers and assumptions for IMP loans are processed in accordance with 7 CFR part 1962, subpart A for chattel secured loans and 7 CFR part 1965, subpart A for real estate secured loans. Any remaining transferor liability will be serviced in accordance with section 772.9(c) (paragraph 81) of this subpart.

76 Graduation Requirements**A General**

[7 CFR 772.12(a)] This section (paragraph 76) only applies to Minor Program borrowers with promissory notes which contain provisions requiring graduation.

Agency loan programs do not supplant or compete with credit available to borrowers from non-Governmental credit sources.

Agency credit is intended to be available for a temporary period of time until the borrower has made sufficient progress to obtain credit from commercial lenders.

B Review Period

Graduation Reviews should be completed by July 1 of each year.

C Frequency and Information Required for Graduation Review

[7 CFR 772.12(b)] Borrowers shall provide current financial information when requested by the Agency or its representatives to conduct graduation reviews.

- (1) AMP loans shall be reviewed at least every two years. In the year to be reviewed, each borrower must submit, at a minimum, a year-end balance sheet and cash flow projection for the current year.**
- (2) All IMP borrowers classified as “commercial” or “standard” in accordance with 7 CFR part 1951, subpart F shall be reviewed at least every two years. In the year to be reviewed, each borrower must submit a year-end balance sheet, actual financial performance for the most recent year, and a projected budget for the current year.**

After screening out the noncommercial and nonstandard borrowers, the Agency will conduct a thorough review of the financial information provided by the borrower and request additional information as needed to determine whether borrower is able to graduate.--*

--76 Graduation Requirements (Continued)*D Graduation Criteria**

[7 CFR 772.12(c)] Borrowers must graduate from the Minor Programs as follows:

- (1) Borrowers with IMP loans that are classified as “commercial” or “standard” must apply for private financing within 30 days from the date the borrower is notified of lender interest, if an application is required by the lender. For good cause, the Agency may grant the borrower a reasonable amount of additional time to apply for refinancing.
- (2) Borrowers with AMP loans will be considered for graduation at least every two years or more frequently if the Agency determines that the borrower’s financial condition has significantly improved.

E Enforcement

The Agency will take action to enforce graduation, when the Agency has determined that commercial credit can be obtained at reasonable rates and terms.

- The Agency must inform the borrower in writing of the specific request which the borrower failed or refused to cooperate and provide appeal rights according to 7 CFR Parts 11 and 780.
- Following concurrence by OGC, the Agency will accelerate the loan of a Minor Program borrower who fails to provide requested documents, does not take positive steps to refinance the loan when commercial credit can be obtained at reasonable rates and terms, or refuses to cooperate in any way with the requirements of this subparagraph.

Note: IMP borrower’s appeal rights must be exhausted before acceleration and the notice of acceleration is not appealable.--*

***--77 Delinquent Account Servicing**

A AMP Loans

[7 CFR 772.13(a)] If the borrower does not make arrangements to cure the default after notice by the Agency and is not eligible for reamortization in accordance with section 772.14 (paragraph 78), the Agency will liquidate the account according to section 772.16 (paragraph 80).

The Agency will take the following actions on delinquent AMP borrowers.

| Step | Action |
|------|--|
| 1 | <p>First contact. The Agency will:</p> <ul style="list-style-type: none"> • attempt to contact the borrower 10 calendar days after the payment due date • advise the borrower of the amount past due • request that the payment be remitted immediately. |
| 2 | <p>Second contact. If, within 20 calendar days, the borrower has not responded to the initial contact, a delinquency letter will be sent notifying the borrower that, if the account is not brought current within 30 calendar days, the Agency will take action to protect the Government’s interest.</p> |
| 3 | <p>Third contact. If, within 30 calendar days, the borrower has not responded to the second contact delinquency letter or the borrower will not or cannot make satisfactory arrangements to bring the account current, the borrower will be:</p> <ul style="list-style-type: none"> • notified by letter of the option of selling their security property to recover any equity • advised that further collection action, including internal Agency offset and referral to the Department of Treasury Offset Program and Treasury Cross-Servicing, will be taken if payment is not received or satisfactory arrangements are not made to bring the account current within 15 calendar days, provided all appeals concerning the referral have been exhausted. |

B IMP Loans

[7 CFR 772.13(b)] Delinquent IMP borrowers will be serviced according to 7 CFR part 1951, subpart S, and parts 3 and 1951, subpart C concerning internal agency offset and referral to the Department of Treasury Offset Program and Treasury Cross-Servicing (or successor regulations).--*

***--78 Reamortization AMP Loans**

A Requirements

[7 CFR 772.14] The Agency may approve reamortization of AMP loans provided:

- (a) There is no extension of the final maturity date of the loan;**
- (b) No intervening lien exists on the security for the loan which would jeopardize the Government's security position;**
- (c) If the account is delinquent, it cannot be brought current within one year and the borrower has presented a cash flow budget which demonstrates the ability to meet the proposed new payment schedule; and**
- (d) If the account is current, the borrower will be unable to meet the annual loan payments due to circumstances beyond the borrower's control. The borrower has presented a cashflow budget that demonstrates the ability to meet the proposed new repayment schedule.**

B Approval

SED is authorized to approve reamortizations of AMP loans.--*

***--79 Protective Advances**

A Approval

[7 CFR 772.15(a)] The Agency may approve, without regard to any loan or total indebtedness limitation, vouchers to pay costs, including insurance and real estate taxes, to preserve and protect the security, the lien, or the priority of the lien securing the debt owed to the Agency if the debt instrument provides that the Agency may voucher the account to protect its lien or security.

(b) The Agency may pay protective advances only when it determines it to be in the Government's best financial interest.

(c) Protective advances are immediately due and payable.

SED is authorized to approve protective advances for AMP loans.

80 Liquidation

A Processing

[7 CFR 772.16] When the Agency determines that continued servicing will not accomplish the objectives of the loan and the delinquency or financial distress cannot be cured by the options in section 772.13 (paragraph 77), or the loan is in non-monetary default, the borrower will be encouraged to dispose of the Agency security voluntarily through sale or transfer and assumption in accordance with this part. If such a transfer or voluntary sale is not carried out, the loan will be liquidated according to 7 CFR part 1955, subpart A. For AMP loans, appeal rights under 7 CFR part 11 are provided in the notice of acceleration. For IMP loans, appeal rights must be exhausted before acceleration, and the notice of acceleration is not appealable.--*

***--81 Offset**

A Processing Remaining Federal Debt

[7 CFR 772.9(c)] Balances remaining after sale or liquidation of the security will be subject to administrative offset in accordance with 7 CFR part 3, Department of Treasury Offset Program (TOP) and Treasury Cross-Servicing regulations at 31 CFR part 285 and Federal Claims Collections Standards at 31 CFR parts 900-904. Thereafter the debt settlement provisions in 7 CFR part 1956, subpart B of chapter XVIII of the Code of Federal Regulations or successor regulation apply.

82 Exception Authority

A Approval

[7 CFR 772.18] Exceptions to any requirement in this subpart can be approved in individual cases by the Administrator if application of any requirement or failure to take action would adversely affect the Government's financial interest. Any exception must be consistent with the authorizing statute and other applicable laws.--*

83, 84 (Reserved)

Part 5 Special Apple Loan Program

***--85 Status**

A Discontinued Program

This program was for the purpose of assisting orchardists who produced apples on not less than 10 acres for sale in 1999 or 2000. FSA has no more loans requiring servicing under the specific requirements of this program.

B Regulations

7 CFR Part 773 will be removed from the Code of Federal Regulations.--*

86-99 (Withdrawn--Amend. 24)

100-109 (Reserved)

Part 6 Emergency Loan for Seed Producers Program

110 Status

A Discontinued Program

This program was for the purpose of assisting seed producers with contracts with AgriBiotech in 1999, which were adversely affected by AgriBiotech's bankruptcy. FSA has no more loans requiring servicing under the specific requirements of this program.

B Regulations

7 CFR Part 774 will be removed from the Code of Federal Regulations.

111-120 (Withdrawn--Amend. 24)

121-135 (Reserved)

Part 7 (Withdrawn--Amend. 25)

Instead of regulations, this program was published as a NOFA, which is now obsolete.

136-151 (Withdrawn--Amend. 25)

152-170 (Reserved)

--Part 8 Land Contract Guarantee Program*171 Introduction****A Purpose**

[7 CFR 763.1 (a)] The Land Contract Guaranteed Program provides certain financial guarantees to the seller of a farm through a land contract sale to beginning farmer or a socially disadvantaged farmer.

Note: Land Contract Guarantees made under the provisions of the Beginning Farmer and Rancher Land Contract Guarantee Pilot Program will be serviced according to FSA-2681 in effect at the time of execution.

B Types of Guarantee

[7 CFR 763.1 (b)] The seller may request either of the following:

- (1) The prompt payment guarantee plan. The Agency will guarantee an amount not to exceed three amortized annual installments plus an amount equal to the total cost of any related real estate taxes and insurance incurred during the period covered by the annual installment; or**
- (2) The standard guarantee plan. The Agency will guarantee an amount equal to 90 percent of the outstanding principal under the land contract.**

C Guarantee Period

[7 CFR 763.1 (c)] The guarantee period is 10 years for either plan regardless of the term of the land contract.

D Full Faith and Credit

[7 CFR 763.3 (a)] The land contract guarantee constitutes an obligation supported by the full faith and credit of the United States. The Agency may contest the guarantee only in cases of fraud or misrepresentation by the seller, in which:

- (1) The seller had actual knowledge of the fraud or misrepresentation at the time it became the seller, or**
- (2) The seller participated in or condoned the fraud or misrepresentation.--***

171 Introduction (Continued)

D Full Faith and Credit (Continued)

[7 CFR 763.3 (b)] Loss claims also may be reduced or denied to the extent that any *--negligence contributed to the loss under § 763.22 (paragraph 193).--*

For more information on loss claims, see paragraphs 192 through 194.

172 Purpose

A Authorized Purpose

[7 CFR 763.4] The Agency will only guarantee the Contract installments, real estate taxes, and insurance; or outstanding principal balance for an eligible seller of a family farm, through a land contract sale to an eligible beginning or socially disadvantaged farmer.

173 Seller Eligibility Requirements

A Eligibility Requirements

[7 CFR 763.5 (a)] The private seller, and each entity member in the case of an entity seller, must:

- (1) Possess the legal capacity to enter into a legally binding agreement;**
- (2) Not have provided false or misleading documents or statements during past or present dealings with the Agency;**
- (3) Not be ineligible due to disqualification resulting from Federal Crop Insurance violation, according to 7 CFR part 718; and**
- (4) Not be suspended or debarred under 2 CFR parts 180 and 417.**

Notes: See 7 CFR 718.11 for information on disqualifications.

Review EPLS at www.epls.gov to verify that seller is not:

- disqualified due to Federal crop insurance violations
- debarred or suspended.

Seller eligibility will be documented in the FBP “Loan Specific Eligibility” section.

***--174 Buyer Eligibility Requirements**

A General

[7 CFR 763.5 (b)] The buyer must meet the following requirements to be eligible for the Land Contract Guarantee Program:

See subparagraphs B through O for buyer eligibility requirements.

Buyer eligibility will be documented in the FBP “D-Loan Making” section.

B Beginning or Socially Disadvantaged Farmer

The buyer

[7 CFR 763.5 (b) (1)] Is a beginning farmer or socially disadvantaged farmer engaged primarily in farming in the United States after the guarantee is issued.

See Exhibit 2 for the definitions of “beginning farmer” and “SDA farmer”.--*

174 Buyer Eligibility Requirements (Continued)

C Owner and Operator Requirement

The buyer

[7 CFR 763.5 (b) (2)] Is the owner and operator of a family farm after the Contract is completed. Ownership of the family farm operation or the 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 buyer:

- (i) Each entity member’s ownership interest may not exceed the amount specified in the family farm definition in § 761.2 of this chapter (Exhibit 2)**
- *(ii) If the applicant has one or more embedded entities, at least 75 percent of the individual ownership interests of each embedded entity must be owned by members actively involved in managing or operating the family farm.**

Each embedded entity must separately meet the 75 percent test. When determining whether the individual owner is actively involved in managing or operating the family farm, consider whether the individual has a daily or weekly role in the farming operation rather than simply acting as an absentee investor. Also consider the total time the individual participates in the operation, either labor or management, and their time in comparison to others. To be considered actively involved, the entity member must provide some amount of the management, or labor and management such that if the individual did not provide these inputs, operation of the farm would be seriously impaired.

To determine if an embedded entity meets the 75 percent rule, the following steps can be used.

| Step | Action |
|------|--|
| 1 | Identify the embedded entities. |
| 2 | Identify the individual ownership interests of each embedded entity. |
| 3 | For each individual with ownership interest in the embedded entity, determine whether they are actively involved in managing or operating the family farm. |
| 4 | For each embedded entity, individuals representing 75 percent of ownership of each embedded entity must meet the test in step 3. |

See Exhibit 34 for examples of embedded entity scenarios.

- (iii) 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.---**

174 Buyer Eligibility Requirements (Continued)

C Owner and Operator Requirement (Continued)

(iv) If the entity members holding a majority interest are related by blood or marriage, at least one member of the entity must:

- *--(A) Operate the family farm and
- (B) Own the farm after the contract is completed;

(v) If the entity members holding a majority interest are not related by blood or marriage, the entity members holding a majority interest must:

- (A) Operate the family farm; and
- (B) Own the farm, or the entity itself must own the farm after the contract is completed.

(vi) 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).

(vii) All ownership may be held either directly in the individual’s name or indirectly through interest in a legal entity.

To determine if an operator-only entity meets the 50 percent rule, the following steps can be used.

| Step | Action |
|------|---|
| 1 | Identify all individuals with an ownership interest in any farm real estate operated by the family farm. |
| 2 | Identify the individuals with an ownership interest in the family farm operating entity and their percent interest. |
| 3 | Select the individual family farm owners who are also owners of the real estate. |
| 4 | The total interests from step 3 must be at least 50 percent. |

Example: Jones Farm Inc. applied for FO. The corporation is owned by Bob and Jeff Jones. Jones Farm Inc. operation includes a farm that is owned by Jones Farms, LLC, with Bob and Betty Jones, each having a 50 percent ownership interest in LLC.

| | |
|-----------------------------|--------------------------|
| Individuals owning farmland | Jones Farm Inc. |
| Bob Jones | Bob Jones (50 percent) |
| Betty Jones | Jeff Jones (50 percent). |

Jones Farm Inc. would meet the ownership rule because farmland owner (Bob Jones) owns 50 percent of the family farm (Jones Farm Inc.).--*

174 Buyer Eligibility Requirements (Continued)**C Owner and Operator Requirement (Continued)**

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

- Be recognized in the community as a farm. The farm operation must be large enough to be considered a working farm (as opposed to a “hobby farm”, garden, or residence) and provide a significant financial return.
- Members of the farm family must make all the day-to-day farm management and operational decisions. The use of outside consultants or advisors is acceptable provided that someone in the farm family is the ultimate decision-maker.
- Family or entity members must supply a substantial amount of the full-time labor. This does not preclude using seasonally hired labor, but in most instances, the family should provide most of the day-to-day labor. Exceptions may be made for enterprises that produce high value, labor-intensive crops such as fruit or vegetables.
- Credit needs. Congress established FSA’s loan limits to assist family farm operations. The loan limits generally ensure that loans are made to family farm operations.
- Loan participation agreements are acceptable when FSA farm loans cannot meet the total credit needs of the applicant. However, if the FSA loan only represents a small portion of the total credit requirements, this may be an indication that the applicant’s operation is larger than a family farm when all factors are considered.

Note: See Exhibit 2 for the definition of “family farm”.

174 Buyer Eligibility Requirements (Continued)

D Participation Requirements

The buyer:

[7 CFR 763.5 (b) (3)] Must have participated in the business operations of a farm or ranch for at least 3 years out of the last 10 years prior to the date the application is *-submitted. Of those 3 years, 1 year can be substituted with the following experience:

- **Postsecondary education in agriculture business, horticulture, animal science, agronomy, or other agricultural related fields,**
- **Significant business management experience, or**
- **Leadership or management experience while serving in any branch of the military.**

Note: To meet the substitution requirements for 1 year out of 3 years, the applicant can use any 1 of the following:

- postsecondary education, that is at least 16 semester hours in agriculture business, horticulture, animal science, agronomy, or other agriculture related fields
- significant business management: that is at least 1 year of management experience in a non-agriculture-related field where the applicant's day-to-day responsibilities include direct management experience, such as personnel decisions, payroll, and/or inventory ordering; however, would not include an individual who is a manager in title only
- military leadership or management that is, as a general rule, any officer or E5 or above will have completed an acceptable military leadership course.--*

Factors to determine participation in the business operations of a farm are similar to those for determining adequate farming experience necessary to ensure a reasonable prospect of success in the operation.

Note: The buyer need not have been the primary operator.

174 Buyer Eligibility Requirements (Continued)**D Participation Requirements (Continued)**

Significant responsibilities include, but are not limited to:

- decisions to cull livestock
- selection of seed varieties and weed control programs
- determination of whether equipment should be repaired or replaced
- selection of input suppliers
- selection of feeding programs or strategies.

Buyers must thoroughly document participation in the business operation of a farm and verify that participation was not solely as a laborer. Documentation includes but is not limited to:

- copies of farm business operation related bills or statements with buyer's name
- copies of checks with buyer's signature for payment of farm business operation related goods or services
- written statements from other parties with knowledge of buyer's role and responsibilities in the business operation of a farm.

For an individual buyer to be an operator, the buyer must have materially and substantially participated and provided day-to-day labor and management of the farm for at least 3 years, such that if the individual did not provide these inputs, operation of the farm would have been seriously impaired.

For an entity buyer to be an operator, 1 or more members constituting a majority interest must have materially and substantially participated in the operation of the farm for at least 3 years. Material and substantial participation requires that the members provided a significant amount of management or management and labor necessary for day-to-day activities, such that if the members did not provide these inputs, operation of the farm would have been seriously impaired.

--174 Buyer Eligibility Requirements (Continued)*E Agency Loss**

[7 CFR 763.5 (b) (4)] The buyer, and all entity members in the case of an entity, must not have caused the Agency a loss by receiving debt forgiveness on all or a portion of any direct or guaranteed loan made under the authority of the Act by debt write-down or write-off; compromise, adjustment, reduction, or charge off under the provisions of section 331 of the Act; discharge in bankruptcy; or through payment of a guaranteed loss claim on more than three occasions on or prior to April 4, 1996 or any occasion after April 4, 1996. If the debt forgiveness is resolved by repayment of the Agency's loss, the Agency may still consider the debt forgiveness in determining the applicant's (buyer's) creditworthiness.

Debt forgiveness does **not** include any write-down provided as part of a resolution of a discrimination complaint.

The authorized agency official will verify that the buyer and all entity members in the case of an entity have not caused previous loss to the government, or have not received debt forgiveness as follows.

- In DLS Customer Profile enter buyer's name or TIN to verify both current/past debts and any prior debt forgiveness.

Note: A list of paid codes can be found in 3-FLP, Exhibit 10.

- The View Loan Screen in GLS will be used to verify previous debt forgiveness for guaranteed loans. At the Loan List Screen, enter the random ID/account number or name of the buyer and all entity members in the case of an entity. The Loan List Screen will display previous and current loan information for the individuals entered. Detail information for a specific loan can be accessed by selecting the View Loan Screen from the "Action" drop-down box and clicking on the loan number hyperlink.

Note: See the GLS Users Guide for guidance on obtaining random ID/account number using the tax ID number.--*

174 Buyer Eligibility Requirements (Continued)

F Federal Debt

[7 CFR 763.5 (b) (5)] The buyer, and all entity members in the case of an entity, must not be delinquent on any Federal debt, other than a debt under the Internal Revenue Code of 1986, when the guarantee is issued.

Non-tax Federal debt not paid within 90 calendar days of the due date is considered delinquent. Federal debts include but are not limited to student loans, CCC loans, FSA direct loans, VA loans, and SBA loans.

FSA guaranteed loans are not Federal debts. FSA guaranteed loans become a delinquent Federal debt upon the payment of a final loss claim if the loans were made using:

- FSA-1980-25 or FSA-1980-28 with the 07-20-01 or later revision date
- FSA-2211 or FSA-2212.

Land Contract Guarantees become a delinquent Federal debt of the buyer upon FSA's notification to the buyer that a loss claim has been paid to the seller under the prompt payment plan or the standard guarantee plan.

--Verification through DNP, the credit report, DLS Current/Past Debt, Borrower Cross-- Reference Inquiry screens, and GLS View Loan Screen is sufficient. However, if it becomes known, and verified, through other means that the buyer is delinquent on a Federal debt, this information must be considered when making an eligibility determination.

Note: Delinquent Federal tax debt only affects eligibility as it relates to credit history.

G Outstanding Unpaid Judgments

[7 CFR 763.5 (b) (6)] The buyer, and all entity members in the case of an entity, may have no outstanding unpaid judgment awarded to the United States in any court. Such judgments do not include those filed as a result of action in the United States Tax Courts.

Buyers must provide evidence that all Federal judgments have been released or paid in full to be eligible for a land contract guarantee. Questions about outstanding judgments should be directed to OGC.

--174 Buyer Eligibility Requirements (Continued)*H Citizenship**

[7 CFR 763.5 (b) (7)] The buyer, and all entity members in the case of an entity, must be a citizen of the United States, United States non-citizen national, or a qualified alien under applicable Federal immigration laws. United States non-citizen nationals and qualified aliens must provide the appropriate documentation as to their immigration status as required by the United States Department of Homeland Security, Bureau of Citizenship and Immigration Services.

U.S. non-citizen nationals and qualified aliens must submit appropriate documentation to verify immigration status as provided in Exhibits 35 and 36, as applicable.

I Legal Capacity

[7 CFR 763.5 (b) (8)] The buyer, and all entity members in the case of an entity, must possess the legal capacity to enter into a legally binding agreement.

Legal capacity includes legal age, mental capacity, and authority to enter into a legally binding agreement.

J Past Dealings

[7 CFR 763.5 (b) (9)] The buyer, and all entity members in the case of an entity, must not have provided false or misleading documents or statements during past or present dealings with the Agency.

K Controlled Substances

[7 CFR 763.5 (b) (10)] The buyer, and all entity members in the case of an entity, must not be ineligible as a result of a conviction for controlled substances according to 7 CFR part 718 of this chapter.

Buyers, and all entity members in the case of an entity, certify on FSA-2683 that they are not ineligible for Federal benefits based on a conviction of any Federal or State controlled substance offense.--*

--174 Buyer Eligibility Requirements (Continued)*K Controlled Substances (Continued)**

Notwithstanding any other provision of law, any person convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance in any crop year will be ineligible for any payment made under any Act, with respect to any commodity produced during the crop year of conviction and the 4 succeeding crop years, by such person.

Buyers convicted of any Federal or State offense consisting of the distribution (trafficking) of a controlled substance will, at the discretion of the court, be ineligible for any or all program payments and benefits:

- for up to 5 years after the 1st conviction
- for up to 10 years after the 2nd conviction
- permanently for a 3rd or subsequent conviction.

Buyers convicted of Federal or State offense for the possession of a controlled substance will be ineligible, at the discretion of the court, for any or all program benefits, as follows:

- up to 1 year upon the 1st conviction
- up to 5 years after a 2nd or subsequent conviction.

Note: Consult with the Regional OGC Attorney before initiating any actions on cases involving controlled substance violations.

L Credit History

[7 CFR 763.5 (b) (11)] The buyer, and all entity members in the case of an entity, must have an acceptable credit history demonstrated by satisfactory debt repayment.

(i) A history of failures to repay past debts as they came due when the ability to repay was within their control will demonstrate unacceptable credit history.

(ii) Unacceptable credit history will not include:

(A) Isolated instances of late payments, which do not represent a pattern and were clearly beyond their control; or

(B) Lack of credit history.--*

174 Buyer Eligibility Requirements (Continued)

M Test for Credit

[7 CFR 763.5 (b)] (12) The buyer is unable to enter into a contract unless the seller obtains an Agency guarantee to finance the purchase of the farm at reasonable rates and terms.

The seller certifies unwillingness to sell the farm on a land contract basis without an FSA guarantee by signing FSA-2680.

The buyer certifies inability to obtain other credit by signing FSA-2683.

N Federal Crop Insurance Violation

[7 CFR 763.5 (b) (13)] The buyer, and all entity members in the case of an entity, must not be ineligible due to disqualification resulting from Federal Crop Insurance violation, according to 7 CFR part 718.

The buyer certifies compliance with Federal crop insurance requirements by signing FSA-2683.

Notes: See 7 CFR 718.11 for additional information on disqualifications.

--Guidance on generating reports on individuals and entities disqualified can be found in 1-FLP, Exhibit 15.6. Searchable databases relating to DNP can be found in 1-FLP, paragraph 53.--

O Debarment or Suspension

[7 CFR 763.5 (b) (14)] The buyer, and all entity members in the case of an entity, must not be suspended or debarred under 2 CFR parts 180 and 417.

--Guidance on generating reports on individuals and entities suspended or debarred can be found in 1-FLP, Exhibit 15.6. Searchable databases relating to DNP Policy can be found in 1-FLP, paragraph 53.--

*--175 Application Requirements

A Obtaining Land Contract Guarantee Program Forms

Forms applicable to the Land Contract Guarantee Program may be obtained from:

- any FSA office
- FSA's web site at www.fsa.usda.gov
- eGov's web site at www.sc.egov.usda.gov.

Agency officials will:

- not refuse to provide Land Contract Guarantee Program forms to any person
- not discourage prospective sellers or buyers to apply for the Land Contract Guarantee Program even when loan funds are limited or unavailable
- not make oral or written statements that would discourage any individual from applying for a Land Contract Guarantee 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)
- provide Exhibit 37 to buyer and/or seller expressing interest in the Land Contract Guarantee Program

Note: Exhibit 37 is available in a fillable format at <http://intranet.fsa.usda.gov>. CLICK "FFAS Employee Forms/Publications Site" and CLICK "Find Current Forms Using Our Form Number Search". For "Form Number", ENTER "6-FLP Exhibit 37".

- advise potential sellers and buyers that an application is not complete until all information required in subparagraphs B and C is received
- provide assistance as necessary to help sellers and buyers complete the Land Contract Guarantee request.--*

--175 Application Requirements (Continued)*B Seller Application Requirements**

[7 CFR 763.7 (a)] A seller who contacts the Agency with interest in a guarantee under the Land Contract Guarantee Program will be sent the land contract letter of interest (FSA-2680) outlining specific program details. To formally request a guarantee on the proposed land contract, the seller, and each entity member in the case of an entity, must:

- (1) Complete, sign, date, and return the land contract letter of interest to the Agency, and**
- (2) Provide the name, address, and telephone number of the chosen servicing or escrow agent.**

C Buyer Application Requirements

[7 CFR 763.7 (b)] A complete application from the buyer will include:

- (1) The completed Agency application form;**

The buyer must initial, sign, and date FSA-2683. An unsigned FSA-2683 will be considered an incomplete application.

Notes: FSA-2683 with missing initials only will not be considered incomplete; however, initials will be obtained before closing.

- [7 CFR 763.7(b)] (2) A current financial statement (not older than 90 days);**

The buyer will provide the information either by completing FSA-2037 or a similar format containing the same information.

[7 CFR 763.7(b) (3)] If the buyer is an entity:

- (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;--***

175 Application Requirements (Continued)

C Buyer Application Requirements (Continued)

- (ii) **A current * * * financial statement for each member of the entity** (not older than 90 days);
- (iii) **A current financial statement for the entity itself** (not older than 90 days);
- (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 (in 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 land contract guarantee and execute required debt, security and other instruments and agreements; and**
- (v) **In the form of a married couple applying as a joint operation, items in paragraphs (b)(3)(i) and (b)(3)(iv) of this section 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. The information specified in paragraphs (b)(3)(ii) and (iii) of this section are only required to the extent needed to show the individual and joint finances of the husband and wife without duplication;**

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

If entity documents require more than 1 member to apply, then all identified members must sign FSA-2683.

For a married couple, FSA will accept any of the following to verify existence of a joint operation:

- applicable CCC-902
- jointly filed tax return
- marriage license
- prenuptial agreement
- similar documentation.

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. SED will issue a State supplement, if applicable, to provide additional guidance and information requirements for a married couple applying as a joint operation.

--175 Application Requirements (Continued)*C Buyer Application Requirements (Continued)****[7 CFR 763.7(b) (4)] A brief written description of the buyer's proposed operation;**

The buyer provides this information on FSA-2683.

[7 CFR 763.7(b) (5)] A farm operating plan;

The buyer will supply most of this information on FSA-2038 or similar document containing the same information.

[7 CFR 763.7(b) (6)] A brief written description of the buyer's farm training and experience;

The buyer may provide this information on FSA-2302.

[7 CFR 763.7(b) (7)] Three years of income tax and other financial records acceptable to the Agency, unless the buyer has been farming less than 3 years;

The buyer will provide financial information primarily on FSA-2002. 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.

Note: The buyer may submit alternate documents if they contain all information collected on FSA-2002. If tax returns are not available, the authorized agency official must make a notation in the running record.

[7 CFR 763.7(b) (8)] Three years of farm production records, unless the buyer has been farming less than 3 years;

The buyer will provide production information 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.

Note: The buyer may submit alternate documents, if they contain all information collected on FSA-2003.--*

--175 Application Requirements (Continued)*C Buyer Application Requirements (Continued)****[7 CFR 763.7(b) (9)] Verification of income and off-farm employment if relied upon for debt repayment;**

A self-employed buyer's income may be verified by 3 years of tax returns.

A buyer employed off the farm will submit either of the following:

- FSA-2004 authorizing FSA to send FSA-2014 to the buyer's employer
- 2 most recent earning statements.

Notes: The amount and dependability of income from other sources, including the buyer's spouse, will be verified as provided above.

If the buyer's spouse will be providing information and will sign FSA-2681 or FSA-2682, the spouse will complete FSA-2683, Part C. If a spouse's income will only be used to cover family living expenses/owner's withdrawal but is not a buyer, the spouse must sign FSA-2004 and FSA-2007; however, the spouse will not be required to sign FSA-2681 or FSA-2682.

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

[7 CFR 763.7(b) (10)] Verification of all debts;

Buyers 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 buyer'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--*

175 Application Requirements (Continued)

C Buyer Application Requirements (Continued)

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

[7 CFR 763.7(b) (11) Payment of the credit report fee;

The agency official will order the credit report using FBP.

[7 CFR 763.7(b) (12) Documentation of compliance with the environmental regulations *--in part 799 of this chapter.--*

A buyer must have AD-1026 on file for all real estate operated.

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

Some applications will require additional information from other USDA agencies or organizations to fulfill NEPA or other special law requirements. Land contract guarantees that involve highly erodible land, wetlands, historical, or archaeological sites require information from other organizations. In these cases, the authorized agency official must notify the buyer, with a copy to the seller, regarding the additional information required and request the information from the organization or agency. A copy of the request will be maintained in the file.

The need for this information will indicate an incomplete application.

--175 Application Requirements (Continued)*C Buyer Application Requirements (Continued)**

[7 CFR 763.7(b) (13)] A copy of the proposed land contract; and

[7 CFR 763.7(b) (14)] 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).

176 Processing Applications**A Application Tracking**

Applications for the Land Contract Guarantee Program will be entered into GLS as they are received.

In GLS:

- In the place of borrower, enter the buyer's information.
- Enter escrow or servicing agent's information in the place of lender, with lender type of "broker". Escrow or servicing agents must provide TIN. Escrow or servicing agents may obtain a Level 2 eAuthentication to access LINC. See 2-FLP, Exhibit 5 for additional information.

Note: The seller's information will **not** be entered in GLS at this time. Guidance on entering seller's information will be provided in a forthcoming amendment.

B Notification of Complete Application

After determining that the application is complete, the authorized agency official will notify the buyer, with a copy to the seller, using FSA-2688.--*

--176 Processing Applications (Continued)*C Notification of Incomplete Application**

[7 CFR 763.8 (a)] Within 10 calendar days of receipt of an incomplete application, the Agency will provide the seller and buyer written notice of any additional information that must be provided. The seller or buyer, as applicable, must provide the additional information within 20 calendar days of the date of the notice.

The authorized agency official must send FSA-2685 to the buyer, with a copy to the seller, within 10 calendar days after receipt of the incomplete application.

FSA-2685 must:

- identify the additional information required for a complete application
- state that the application cannot be processed until the additional information is received
- establish a deadline 20 calendar days from the date of FSA-2685 to submit the information.

[7 CFR 763.8 (b)] If the additional information is not received, the Agency will provide written notice that the application will be withdrawn if the information is not received within 10 calendar days of the date of the second notice.

If the buyer does not respond or does not supply all of the information requested within the 20-calendar-day period specified in FSA-2685, the authorized agency official will immediately send FSA-2686 to the buyer, with a copy to the seller.

FSA-2686 will:

- list the additional information needed
- state that the application cannot be processed until all required information is received and unless the required information is supplied, the application will be withdrawn
- establish a due date for receiving the information of 10 calendar days from the date of FSA-2686
- contain the ECOA statement according to 1-FLP, paragraph 41.--*

--176 Processing Applications (Continued)*C Notification of Incomplete Application (Continued)**

FSA will withdraw the application if the additional material is not provided within the timeframe established. The authorized agency official will send FSA-2687 to the buyer, with a copy to the seller, to inform them that the application has been withdrawn. FSA-2687 will be provided by regular mail or hand delivery.

Withdrawn applications cannot be reactivated. The buyer and seller will be required to provide a new application. Information considered to be current from the withdrawn application need not be resubmitted.

The withdrawn application will be maintained according to 25-AS.

177 Appraisals**A Standard Guarantee Plan**

[7 CFR 763.14(a)] For the standard guarantee plan, the value of real estate to be purchased will be established by an appraisal obtained at Agency expense and completed as specified in §761.7 (1-FLP, part 6) of this chapter. An appraisal is required prior to, or as a condition of, approval of the guarantee.

B Prompt Payment Guarantee Plan

[7 CFR 763.14(b)] The Agency may, at its option and expense, obtain an appraisal to determine value of real estate to be purchased under the Prompt Payment Guarantee plan.--*

178 Limitations**A General**

[7 CFR 763.6] (a) To qualify for a guarantee, the purchase price of the farm to be acquired through the land contract sale cannot exceed the lesser of:

- (i) \$500,000 or**
- (ii) The current market value of the property.**

(b) A guarantee will not be issued if the appraised value of the farm is greater than \$500,000.

(c) Existing land contracts are not eligible for the Land Contract Guarantee Program.

(d) Guarantees may not be used to establish or support a non-eligible enterprise.

See Exhibit 2 for the definition of “non-eligible enterprise”.

--The seller and buyer may enter into multiple land contracts, however the combined amounts cannot exceed the limits provided in this subparagraph.--

179 Downpayment, Rates, Terms, and Installments**A Downpayment**

[7 CFR 763.12(a)] The buyer must provide a minimum down payment of five percent of the purchase price of the farm.

--A 5 percent cash down payment is the minimum required. The down payment can be-- made with borrowed funds. The buyer cannot:

- use the land contract as collateral
- obtain the down payment through an FSA direct or guaranteed loan.

B Interest Rate

[7 CFR 763.12(b)] The interest rate charged by the seller must be fixed at a rate not to exceed the Agency’s direct FO loan interest rate in effect at the time the guarantee is issued, plus three percentage points. The seller and buyer may renegotiate the interest rate for the remaining term of the contract following expiration of the guarantee.

Note: Direct FO loan interest rate can be found in 1-FLP, Exhibit 17.

***--179 Downpayment Rates, Terms, and Installments (Continued)**

C Land Contract Terms

[7 CFR 763.12(c)] The contract payments must be amortized for a minimum of 20 years and payments on the contract must be of equal amounts during the term of the guarantee.

D Balloon Installments

[7 CFR 763.13(d)] Balloon payments are prohibited during the 10-year term of the guarantee.

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.

180 Reviewing and Evaluating Applications

A Timeframe

[7 CFR 763.9] Applications will be approved or rejected and all parties notified in writing no later than 30 calendar days after application is considered complete.

The authorized agency official will send FSA-2688 to the buyer, with a copy to the seller, when the application is considered complete

B Feasibility

[7 CFR 763.10] (a) The buyer's proposed operation as described in a form acceptable to the Agency must represent the operating cycle for the farm operation and must project a feasible plan as defined in §761.2(b) of this chapter (Exhibit 2).--*

--180 Reviewing and Evaluating Applications (Continued)*B Feasibility (Continued)**

- (b) The projected income, expenses, and production estimates:**
- (1) Must be based on the buyer's last 3 years actual records of production and financial management unless the buyer has been farming less than 3 years;**
 - (2) For those farming less than 3 years, a combination of any actual history and other reliable sources of information may be used. Sources must be documented and acceptable to the Agency; and**
 - (3) May deviate from historical performance if deviations are the direct result of specific changes in the operation, reasonable, justified, documented, and acceptable to the Agency.**
- (c) Price forecasts used in the plan must be reasonable, documented, and acceptable to the Agency.**
- (d) The Agency will analyze the buyer's business ventures other than the farm operation to determine their soundness and contribution to the operation.**
- (e) When a feasible plan depends on income from sources other than from owned land, the income must be dependable and likely to continue.**
- (f) When the buyer's farm operating plan is developed in conjunction with a proposed or existing Agency direct loan, the two farm operating plans must be consistent.**

Feasibility is documented in FBP. An assessment and classification will be completed according to 1-FLP, part 8.--*

***--180 Reviewing and Evaluating Applications (Continued)**

C Environmental Regulation Compliance

[7 CFR 763.16] (a)The environmental requirements contained in parts 799 and 1940, subpart G, of this title must be met prior to approval of the guarantee request.

(b) The Agency determination of whether an environmental problem exists will be based on:

- (1) The information supplied with the application;**
- (2) Environmental resources available to the Agency including, but not limited to, documents, third parties, and government agencies;**
- (3) Other information supplied by the buyer or seller upon Agency request; and**
- (4) A visit to the farm.**

The authorized agency official will complete RD 1940-22 in FBP, RD 1940-21, or a Class II Environmental Assessment. See RD Instruction 1940-G and 1-EQ.--*

181 Other Requirements**A Maximum Loss Amount**

[7 CFR 763.11 (a)] The maximum loss amount due to nonpayment by the buyer covered by the guarantee is based on the type of guarantee initially selected by the seller as follows:

(1) The prompt payment guarantee will cover:

(i) three amortized annual installments; or

(ii) An amount equal to three annual installments (including an amount equal to the total cost of any tax and insurance incurred during the period covered by the annual installments).

--This means payment of taxes and insurance could cause the total combined payments to exceed the amount of three annual installments.--

(2) The standard guarantee will cover an amount equal to 90 percent of the outstanding principal balance.

--Multiple repayment agreements created in the period covered by the annual installment is considered 1 occurrence or 1 outstanding payment (subparagraph 194 B).--

Accrued interest, protective advances, and liquidation costs are not covered by the standard guarantee.

B Guarantee Period

[7 CFR 763.11 (b)] The period of the guarantee will be 10 years from the effective date of the guarantee unless terminated earlier under §763.23 (paragraph 195).

C Conditions

[7 CFR 763.11 (c)] The seller will select an escrow agent to service a Land Contract Agreement if selecting the prompt payment guarantee plan, and a servicing agent to service a Land Contract Agreement if selecting the standard guarantee plan.

(1) An escrow agent must provide the Agency evidence of being a bonded title insurance company, attorney, financial institution or fiscally responsible institution.

(2) A servicing agent must provide the Agency evidence of being a bonded commercial lending institution or similar entity, registered and authorized to provide escrow and collection services in the State in which the real estate is located.

***--181 Other Requirements (Continued)**

D Fees

[7 CFR 763.13 (a)] The seller and the buyer will be responsible for payment of any expenses or fees necessary to process the Land Contract Agreement required by the State or County to ensure that proper title is vested in the seller including, but not limited to, attorney fees, recording costs, and notary fees.

E Taxes and Insurance

[7 CFR 763.15] (a) The seller will ensure that taxes and insurance on the real estate are paid timely and will provide the evidence of payment to the escrow agent or servicing agent.

(b) The seller will maintain flood insurance, if available, if buildings are located in a special 100-year floodplain as defined by FEMA flood hazard area maps.

(c) The seller will report any insurance claim and use of proceeds to the escrow or servicing agent.

Note: The land contract may require the buyer to make escrow payments toward the real estate taxes and property insurance premiums; however, the seller is responsible to ensure that the real estate taxes are paid current and property insurance is maintained.

182 Approval

A Approval Authority

See 1-FLP, paragraph 29, for guaranteed loan approval authorities.

B Application Approval

[7 CFR 763.17 (a)] Approval is subject to the availability of funds, meeting the requirements in this part, and the participation of an approved escrow or servicing agent, as applicable.

Approval will be documented in FBP. Funds will be obligated using FSA-2231.--*

--182 Approval (Continued)*C Approval of Escrow or Servicing Agent**

The authorized agency official will verify through EPLS at www.epls.gov that the seller selected escrow or servicing agent has not been debarred or suspended.

D Notification of Approval

The authorized agency official will make a final decision on the application and document it in FBP within 30 calendar days from the date the application is considered complete. The authorized agency official will send Exhibit 38 to advise the seller and buyer of approval.

E Executing the Guarantee

[7 CFR 763.17] (b) Upon approval of the guarantee, all parties (buyer, seller, escrow or servicing agent, and Agency official) will execute the Agency's guarantee agreement (FSA-2681 or FSA-2682).

(c) The "Land Contract Agreement for Prompt Payment Guarantee" (FSA-2681) or the "Land Contract Agreement for Standard Guarantee" (FSA-2682) will describe the conditions of the guarantee, outline the covenants and any agreements of the buyer, seller, escrow or servicing agent, and the Agency, and outline the process for payment of loss claims.

No later than 60 calendar days after the agency official sends Exhibit 38, the authorized agency official will arrange for the execution of FSA-2681 or FSA-2682 with the buyer, seller, and escrow or servicing agent.--*

***--183 Denial**

A Denial

The authorized agency official will deny a Land Contract Guarantee request if any of the following conditions exist:

- seller has knowingly provided incomplete, false, or misleading information or does not otherwise meet the eligibility requirements specified in paragraph 173
- buyer has knowingly provided incomplete, false, or misleading information or does not otherwise meet the eligibility requirements specified in subparagraphs 174 B through O
- buyer, the buyer's operation, or other circumstances surrounding the land contract guarantee are inconsistent with the authorizing statutes, other Federal laws, or Federal credit policies
- buyer cannot develop a feasible plan.

The approval official must document the reasons for denying the guarantee request in the application file.

B Notification of Denial

The buyer and seller will be notified of the denial in writing. The notification must provide:

- clear, specific reasons for the denial
- citations of requirements from CFR and handbook sections that are not met
- appeal or review rights according to 1-APP
- non-discrimination and ECOA statements according to 1-FLP, paragraph 41.--*

--184 Seller, Escrow Agent, and Servicing Agent's Responsibilities*A Seller Responsibilities**

[7 CFR 763.18 (a)] For the prompt payment guarantee plan, the seller must use a third party escrow agent approved by the Agency.

Note: Escrow agents must be bonded and may include title insurance companies, attorneys, financial institutions, or any fiscally responsible institution as determined and approved by FSA.

[7 CFR 763.18 (b)] For the standard guarantee plan, the seller must use a third party servicing agent approved by the Agency.

Note: Servicing agents must be bonded commercial lending institutions or similar entities that are registered and authorized to provide escrow and collection services in the State in which the real estate is located.

B Escrow Agent Responsibilities

[7 CFR 763.18 (a)] The escrow agent will:

- (1) Provide the Agency a copy of the recorded Land Contract;**
- (2) Handle transactions relating to the Land Contract between the buyer and seller;**
- (3) Receive Land Contract installment payments from the buyer and send them to the seller;**
- (4) Provide evidence to the Agency that property taxes are paid and insurance is kept current on the security property;**
- (5) Send a notice of payment due to the buyer at least 30 days prior to the installment due date;**
- (6) Notify the Agency and the seller if the buyer defaults;**
- (7) Service delinquent accounts as specified in §763.20(a) (subparagraph 192 A);--***

--184 Seller, Escrow Agent, and Servicing Agent's Responsibilities (Continued)*B Escrow Agent Responsibilities (Continued)**

- (8) Make demand on the Agency to pay missed payments;**
- (9) Send the seller any missed payment amount paid by the Agency under the guarantee;**
- (10) Notify the Agency on March 31 and September 30 of each year of the outstanding balance on the Land Contract and the status of payment; and**
- (11) Perform other duties as required by State law and as agreed to by the buyer and the seller.**

Escrow agents may submit status reports through LINC.

C Servicing Agent Responsibilities

[7 CFR 763.18 (b)] The servicing agent will:

- (1) Provide the Agency a copy of the recorded Land Contract;**
- (2) Handle transactions relating to the Land Contract between the buyer and seller;**
- (3) Receive Land Contract installment payments from the buyer and send them to the seller;**
- (4) Provide evidence to the Agency that property taxes are paid and insurance is kept current on the security property;**
- (5) Perform a physical inspection of the farm each year during the term of the guarantee, and provide an annual inspection report to the Agency;**
- (6) Obtain from the buyer a current balance sheet, income statement, cash flow budget, and any additional information needed, perform, and provide the Agency an analysis of the buyer's financial condition on an annual basis;**
- (7) Notify the Agency on March 31 and September 30 of each year of the outstanding balance on the Land Contract and the status of payment;--***

184 Seller, Escrow Agent, and Servicing Agent’s Responsibilities (Continued)

C Servicing Agent Responsibilities (Continued)

- (8) Send a notice of payment due to the buyer at least 30 days prior to the installment due date;**
- (9) Notify the Agency and the seller if the buyer defaults;**
- (10) Service delinquent accounts as specified in §763.20(b) (subparagraph 192 B); and**
- (11) Perform other duties as required by State law and as agreed to by the buyer and the seller.**

The servicing agent may:

- use FSA forms, a narrative, or any other format that provides the required information
- submit status reports through LINC.

The authorized agency official will review the information submitted by the servicing agent and document results in the case file. If the servicing agent fails to submit the required information, the authorized agency official will send a letter to the servicing agent, with a copy to the seller, reminding them of the required information to meet requirements of the guarantee.

185-189 (Reserved)

190 Land Contract Modification**A General**

All land contract modifications must meet FSA regulations pertaining to the Land Contract Guarantee Program, including interest rates, amortization, and equal payments.

The escrow or servicing agent will inform FSA if any modifications are being proposed between the seller and the buyer, and provide documents to FSA in support of the proposal. Authorized agency officials may approve land contract modifications within their loan approval authority.

The authorized agency official will inform the escrow or servicing agent, as well as the seller and buyer, by letter, of the decision.

B Interest Rate Reduction

[7 CFR 763.19 (a)] The seller and buyer may modify the land contract to lower the interest rate and corresponding amortized payment amount without Agency approval.

The escrow or servicing agent will inform the Agency, and provide documents when the seller and buyer modify the land contract to lower the interest rate and corresponding amortized payment amount.

C Modifications

[7 CFR 763.19 (b)] With prior written approval from the Agency, the seller and buyer may modify the land contract provided that, in addition to a feasible plan for the upcoming operating cycle, a feasible plan can be reasonably projected throughout the remaining term of the guarantee. Such modifications may include, but are not limited to:

- (1) Deferral of installments,**
- (2) Leasing or subleasing, and**
- (3) Partial releases. All proceeds from a partial release or royalties from mineral extraction must be applied to a prior lien, if one exists, and in addition, the same amount must be credited to the principal balance of the land contract.**

190 Land Contract Modification (Continued)**D Transfer and Assumption**

[7 CFR 763.19 (b) (4)] Transfer and assumption. If the guarantee is to remain in effect, any transfer of the property and assumption of the guaranteed debt must be made to an eligible buyer for the Land Contract Guarantee Program as specified in §763.5(b) (paragraph 174), and must be approved by the Agency in writing. If an eligible buyer for transfer and assumption cannot be found, the Deputy Administrator for Farm Loan Programs may make an exception to this requirement when in the Government's best financial interest.

E Assignment

[7 CFR 763.19 (b) (5)] Assignment. The seller may not assign the contract to another party without written consent of the Agency.

F Other Modifications

[7 CFR 763.19 (c)] Any contract modifications other than those listed above (subparagraphs B through E) must be approved by the Deputy Administrator for Farm Loan Programs, and will only be approved if such action is determined permissible by law and in the Government's best financial interests.

SED will forward the request to the National Office for DAFLP approval. The authorized agency official will notify the escrow or servicing agent, as appropriate, by letter with a copy to the buyer and seller.

--191 Bankruptcy*A Prompt Payment Guarantee Buyer Files Bankruptcy**

In a Chapter 7 bankruptcy, unless the buyer reaffirms the debt under the land contract, FSA will terminate the guarantee upon discharge. FSA will pay any installments, taxes, or insurance, according to the terms of the guarantee, that are due and claimed during the period covered by the bankruptcy before termination.

In reorganization bankruptcies, FSA will continue with the guarantee and pay any installments, taxes, or insurance according to the terms of the guarantee.

B Prompt Payment Guarantee Seller Files Bankruptcy

In a Chapter 7 bankruptcy, FSA will continue with the guarantee and pay any installments, taxes, or insurance according to the terms of the guarantee. If the bankruptcy discharge nullifies the contract, then the guarantee will terminate according to paragraph 195.

In reorganization bankruptcies, FSA will continue with the guarantee and pay any installments, taxes, or insurance according to the terms of the guarantee.

C Standard Guarantee Buyer Files Bankruptcy

If it is a Chapter 7 bankruptcy that leads to the buyer failing to make payments or a seller liquidating the real estate, then any loss claim will be handled according to subparagraph 192 B. The seller may choose to base the loss upon the liquidation or appraisal method. If the buyer does miss any payments and reaffirms the debt under the land contract, the guarantee may continue.

In reorganization bankruptcies, if the real estate value is crammed down by the court, FSA will pay a loss claim based upon the difference between the new value established by the court and the original value. The guarantee will remain in place for its full term unless liquidation takes place before the term expires, at which time a final loss claim will be processed.

D Standard Guarantee Seller Files Bankruptcy

In a Chapter 7 bankruptcy, FSA will continue with the guarantee until, or if, a liquidation action occurs or a discharge nullifies the contract. If upon liquidation the seller files a claim, FSA will handle any loss payment request according to subparagraph 192 B.

In reorganization bankruptcies, FSA will continue with the guarantee if the contract remains in effect. If the reorganization requires liquidation of the property under the land contract, FSA will handle a loss claim according to subparagraph 192 B.--*

192 Delinquent Servicing

A Prompt Payment Guarantee Plan

[7 CFR 763.20 (a)] If the buyer fails to pay an annual amortized installment or a portion of an installment on the contract or taxes or insurance when due, the escrow agent:

- (1) Must make a written demand on the buyer for payment of the defaulted amount within 30 days of the missed payment, taxes, or insurance and send a copy of the demand letter to the Agency and to the seller; and**
- (2) Must make demand on the Agency within 90 days from the original payment, taxes, or insurance due date, for the missed payment in the event the buyer has not made the payment.**

Escrow agents must adhere to the above time frames. Failure to do so is considered negligence and is grounds for reduction or denial of a loss claim if it contributes to the loss.

B Standard Guarantee Plan

[7 CFR 763.20(b)] If the buyer fails to pay an annual amortized installment or a portion of an installment on the contract, then the seller has the option of either liquidating the real estate, or having the amount of the loss established by the Agency by an appraisal of the real estate. For either option, the servicing agent:

- (1) Must make a written demand on the buyer for payment of the defaulted amount within 30 days of the missed payment, and send a copy of the demand letter to the Agency and to the seller; and**
- (2) Must immediately inform the Agency which option the seller has chosen for establishing the amount of the loss, in the event the buyer does not make the payment within 60 days of the demand letter.**

Servicing agents must adhere to the above time frames, as failure to comply could put at risk the guarantee of any loss payment due to negligent servicing.

[7 CFR 763.20(b) (2)] (i) If the seller chooses the liquidation method, the servicing agent will:

- (A) Submit a liquidation plan to the Agency within 120 days from the missed payment for approval prior to any liquidation action. The Agency may require and pay for an appraisal prior to approval of the liquidation plan.**
- (B) Complete liquidation within 12 months of the missed installment unless prevented by bankruptcy, redemption rights, or other legal action.**

192 Delinquent Servicing (Continued)

B Standard Guarantee Plan (Continued)

- (C) Credit an amount equal to the sale price received in a liquidation of the security property, with no deduction for expenses, to the principal balance of the land contract.**
- (D) File a loss claim immediately after liquidation, which must include a complete loan ledger.**
- (E) Base the loss claim amount on the appraisal method if the property is reacquired by the seller, through liquidation.**

The full amount of the sale price received in a liquidation of the security property must be applied to the principal balance of the land contract. Liquidation expenses are **not** authorized. Land Contract Guarantees do not cover interest because the guarantee only covers the principal.

[7 CFR 763.20 (b) (2)] (ii) If the seller chooses to have the loss amount established by appraisal rather than liquidation, the Agency will complete an appraisal on the real estate, and the loss claim amount will be based on the difference between the appraised value at the time the loss is calculated and the unpaid principal balance of the land contract at that time.

Example: At the time the loss claim is paid, the unpaid principal balance of the land contract is \$400,000, and the appraised value is \$360,000. The amount of the loss claim will be the difference between the balance of \$400,000, and the appraised amount of \$360,000, or \$40,000 times 90 percent, for a total of \$36,000. If the appraisal is equal to or more than the principal balance, there is no loss to be paid.

[7 CFR 763.20 (b) (2) (ii)] (A) The only administrative appeal allowed under § 761.6 of this chapter related to the resulting appraisal amount will be a determination of whether the appraisal is Uniform Standards of Professional Appraisal Practice (USPAP) compliant.

192 Delinquent Servicing (Continued)

B Standard Guarantee Plan (Continued)

(F) The seller will give the Agency a lien on the security property in the amount of the loss claim payment. If the property sells within 5 years from the date of the loss payment for an amount greater than the appraised value used to establish the loss claim amount, the seller must repay the difference, up to the amount of the loss claim. For purposes of determining the amount to be repaid (recapture), the market value of the property may be reduced by the value of certain capital improvements, as specified in §766.202(a)(1)-(3) of this chapter (5-FLP, paragraph 343) , made by the seller to the property in the time period from the loss claim to final disposition. If the property is not sold within 5 years from the date of the loss payment, the Agency will release the lien and the seller will have no further obligation to the Agency.

The seller will be required to execute FSA-2684, and provide FSA a mortgage against the property to secure FSA-2684. If the seller refuses to execute the documents, the loss claim will be denied.

Before FSA obtains the appraisal, the seller will identify any capital improvements that have been made to the real estate security since the execution of FSA-2684. The appraisal must specifically identify the contributory value of those capital improvements to make deductions for that value.

For calculation of recapture, the contributory value of capital improvements made during the term of the recapture agreement will be deducted from the market value of the property. Such capital improvements must also meet at least 1 of the following criteria.

- It would be considered the seller's primary residence. If the new residence is affixed to the real estate security as a replacement for the residence which existed on the security property when the recapture agreement was originally executed, or, the living area square footage of the original residence was expanded, only the value added to the real property by the new or expanded portion of the original residence (if it added value) will be deducted from the market value.

192 Delinquent Servicing (Continued)**B Standard Guarantee Plan (Continued)**

- It is an improvement to the real estate with a useful life of over 1 year and is affixed to the property, and the following conditions must be met.
 - The item must have been capitalized and not taken as an annual operating expense on the seller's Federal income tax returns. The seller must provide copies of appropriate tax returns to verify that capital improvements claimed for shared appreciation recapture reduction are capitalized.
 - If the new item is affixed to the real estate as a replacement for an item that existed on the real estate at the time the recapture agreement was originally executed, only the value added by the new item will be deducted from the market value.

C Loss Claim Processing

Standard guarantee and prompt payment guarantee must meet the following criteria for loss claim processing.

- For the standard guarantee, the servicing agent will provide documentation of the loss to the authorized agency official upon liquidation or the completion of an appraisal according to subparagraph B. The authorized agency official will complete the loss claim form. The principal loss will be shown in FSA-2254, item 19. Line through the word "balance" and replace with the word "loss." Enter the same principal loss amount on FSA-2254, item 40, enter the percent guarantee in item 41 and enter the loss payable in item 42 and again in item 46 marking through the word "Lender" and replacing with the *--word "Seller". A memorandum will be prepared for RDBCSO, Rural Development Business Center Servicing Office that will identify the loss as a standard guarantee that includes the name and TIN of the seller to whom the loss payment is to be made, and the name and address of the servicing agent who will receive the payment on behalf of the seller. The memorandum will be attached to the manually completed FSA-2254 and sent to RDBCSO, Rural Development Business Center Servicing Office.--*

192 Delinquent Servicing (Continued)**C Loss Claim Processing (Continued)**

- For the prompt payment guarantee, the escrow agent will provide documentation of the necessity for an installment, taxes, or insurance payment to the authorized agency official according to subparagraph A. The authorized agency official will complete the loss claim form. For installment payments the amount of loss claimed will be shown in FSA-2254, item 19 by lining through the word “balance” and replacing with the word “loss”. For taxes or insurance payments the amount of loss will be entered into item 23. Use item 60, “Comment”, to note whether the payment amount in item 23 is for taxes or insurance. For all losses enter the same loss amount that was entered into item 19 or 23 in item 40. Enter the percent guarantee in item 41 and enter the loss payable in item 42 and again in item 46, marking through the word “Lender” and replacing with the word, *--“Seller”. A memorandum will be prepared for RDBCSO, Rural Development Business Center Servicing Office that will identify the loss as a prompt payment guarantee and will indicate whether the payment is for an installment, taxes, or insurance. The memorandum will include the name and TIN of the seller to whom the loss payment is to be made and the name and address of the escrow agent who will receive the payment on behalf of the seller. The memorandum will be attached to the manually completed FSA2254 and sent to RDBCSO, Rural Development Business Center Servicing Office.--*
- For both the standard guarantee and the prompt payment guarantee the Finance Office will process a Lender Substitution to change the servicing lender to the seller’s name and TIN. The servicing lender’s address will remain the mailing address of the escrow or servicing agent.

193 Negligent Servicing**A Denial of Loss Claim Due to Negligence**

[7 CFR 763.22 (a)] The Agency may deny a loss claim in whole or in part due to negligence that contributed to the loss claim. This could include, but is not limited to:

- (1) The escrow or servicing agent failing to seek payment of a missed installment from the buyer within the prescribed timeframe or otherwise does not enforce the terms of the land contract;**
- (2) Losing the collateral to a third party, such as a taxing authority, prior lien holder, etc.;**
- (3) Not performing the duties and responsibilities required of the escrow or servicing agent;**
- (4) The seller’s failing to disclose environmental issues; or**
- (5) Any other action in violation of the land contract or guarantee agreement that does not terminate the guarantee.**

194 Federal Debt and Recovery of Loss Claims

A Establishing Federal Debt

[7CFR 763.21 (a)] Any amount paid by FSA as a result of an approved loss claim is immediately due and payable by the buyer after FSA notifies the buyer that a loss claim has been paid to the seller. If the debt is not restructured into a repayment plan or the obligation otherwise cured, FSA may use all remedies available, including offset as authorized by the Debt Collection Improvement Act of 1996 (DCIA), to collect the debt.

- (1) Interest on the debt will be at the FLP non-program real property loan rate in effect at the time of the first Agency payment of a loss claim.**
- (2) The debt may be scheduled for repayment consistent with the buyer's repayment ability, not to exceed 7 years. Before any payment plan can be approved, the buyer must provide the Agency with the best lien obtainable on all of the buyer's assets. This includes the buyer's ownership interest in the real estate under contract for guarantees using the prompt payment guarantee plan. When the buyer is an entity, the best lien obtainable will be taken on all of the entity's assets, and all assets owned by individual members of the entity, including their ownership interest in the real estate under contract.**

*--The Agency will take the best lien obtainable on all assets the buyer owns except when:

- taking a lien on such property will prevent the buyer from obtaining credit from other sources
- the property could have significant environmental problems or costs as described in RD Instruction 1940 G
- FSA cannot obtain a valid lien
- the property is subsistence livestock, cash, special collateral accounts the buyer uses for the farming operation, retirement accounts, personal vehicles necessary for family living, household contents, or small equipment such as hand tools and lawn mowers
- a contractor holds title to a livestock or crop enterprise, or the buyer manages the enterprise under a share lease or share agreement.--*

Under the standard guarantee plan, if a loss claim is paid, either liquidation has been or will be completed, or the seller is receiving a payment using the appraisal method. The buyer no longer has any present or future interest in the land contract property.

The buyer will be notified according to 7 CFR 762.149(m) and 2-FLP, paragraph 363.

If the buyer fails to repay the debt, FSA will offset the buyer's Federal benefits to recover the debt owed by payment of the loss claim.

194 Federal Debt and Recovery of Loss Claims (Continued)**B Repayment Plan**

Immediately after FSA has paid a loss claim, the authorized agency official will notify the buyer, through the escrow or servicing agent, of the paid claim, the requirements of repayment, and the consequences if the buyer fails to repay the claim. The authorized agency official will schedule an office meeting and request the buyer to provide the information needed to determine if an acceptable repayment plan is feasible.

[7 CFR 763.21 (b)] Annually, buyers with an Agency approved repayment plan under this section will supply the Agency a current balance sheet, income statement, cash flow budget, complete copy of Federal income tax returns, and any additional information needed to analyze the buyer's financial condition.

The authorized agency official will contact the buyer annually by letter to request the information needed to analyze the buyer's financial condition.

--FSA may use FSA-2027 when establishing a repayment agreement with the buyer after each claim payment is made by the Agency.--

C Buyer Failure to Make Payments

[7 CFR 763.21 (c)] If a buyer fails to make required payments to the Agency as specified in the approved repayment plan, the debt will be treated as a non-program loan debt, and servicing will proceed as specified in §766.351(c) of this chapter (5-FLP, subparagraph 444 B).

195 Terminating the Guarantee

A Termination of Guarantee

[7 CFR 763.23] (a) The guarantee and the Agency’s obligations will terminate at the earliest of the following circumstances:

- (1) Full payment of the land contract;
- (2) Agency payment to the seller of 3 annual installments plus property taxes and insurance, if applicable, under the prompt payment guarantee plan, if not repaid in full by the buyer. An Agency approved repayment plan will not constitute payment in full until such time as the entire amount due for the Agency approved repayment plan is paid in full;

*--Under the prompt payment guarantee, FSA will consider as 1 occurrence of a payment agreement during the annual installment period, the payment of:

- an annual installment or any portion of an annual installment
- property taxes
- insurance.

The buyer and FSA will enter into separate repayment agreements when the payment of an annual installment, property taxes, or insurance is made, but when occurring in the same year is considered as 1 payment agreement for a guarantee termination.

Example: Land contract closing date is April 1, 2012. Period covered by the annual installment is April 1, 2013, and each year thereafter. The annual installment amount of \$50,000 is due on March 1 each year. The maximum FSA payment to the seller under the prompt payment guarantee plan is \$150,000 (\$50,000 amount of annual installment x 3) plus taxes and insurance.

The following table provides the claim, amount, repayment agreement, and status of the guarantee for the buyer.

| Year | Claim for | Amount | Repayment Agreement | Repaid | Guarantee Continues |
|------|---------------------|--------|---------------------|--------|---------------------|
| 1 | Property taxes | 5,000 | 1 | No | Yes |
| | Partial installment | 40,000 | 2 | Yes | Yes |
| 2 | Full installment | 50,000 | 1 | No | Yes |
| 4 | Insurance | 3,000 | 1 | No | No |

In this example repayment of the partial installment repayment agreement that was incurred in year 1 could have occurred during any year, however the payment agreement for that year remains outstanding as long as the property tax repayment agreement from year 1 remains unpaid. Even though the maximum amount payable under the guarantee has not been reached, the land contract guarantee will terminate in year 4 as the buyer has payment agreements outstanding from years 1, 2, and 4.--*

195 Terminating the Guarantee (Continued)

A Termination of Guarantee (Continued)

- (3) Payment of a loss claim through the standard guarantee plan;**
 - (4) Sale of real estate without guarantee being properly assigned;**
 - (5) The seller terminates the land contract for reasons other than monetary default; or**
 - (6) If for any reason the land contract becomes null and void.**
- (b) If none of the events above occur, the guarantee will automatically expire, without notice, 10 years from the effective date of the guarantee.**

Reports, Forms, Abbreviations, and Redelegations of Authority

Reports

This table lists the required report of this handbook.

| Reports Control Number | Title | Reporting Period | Submission Date | Negative Reports | Reference |
|-------------------------------|---|-------------------------|--------------------------|-------------------------|------------------|
| FLP-5R | Summary Report of Civil Rights Compliance Reviews | Annually | By November 30 each year | Not required | 67 |

Forms

This table lists all forms referenced in this handbook.

| Number | Title | Display Reference | Reference |
|---------------|--|--------------------------|------------------|
| FmHA 1940-1 | Request for Obligation of Funds - Direct Loans | | 24 |
| FmHA 1940-21 | Environmental Assessment for Class I Action | | 175 |
| FmHA 1940-22 | Environmental Checklist for Categorical Exclusions | | 175 |
| FSA-440-32 | Verification of Debts and Assets | | 137, 177 |

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

Forms (Continued)

| Number | Title | Display Reference | Reference |
|-----------------------|--|-------------------|---------------|
| FSA-1980-25 | Application for Guarantee | | 172, 178, 179 |
| FSA-1980-28 <u>1/</u> | Preferred Lender Application for Guarantee | | 174 |
| FSA-2002 | Three-Year Financial History | | 178 |
| FSA-2003 | Three-Year Production History | | 178 |
| FSA-2004 | Authorization to Release Information | | 178 |
| FSA-2005 | Creditor List | | 178 |
| FSA-2007 | Statement Required by the Privacy Act for Non-Applicants | | 178 |
| FSA-2014 | Verification of Income | | 142, 178 |
| FSA-2015 | Verification of Debts and Assets | | 137, 178 |
| FSA-2026 | Promissory Note | | 25 |
| FSA-2027 | Supplemental Payment Agreement | | 194 |
| FSA-2029 | Mortgage/Real Estate Deed for | | 25, 43 |
| FSA-2037 | Farm Business Plan Worksheet Balance Sheet | | 175 |
| FSA-2038 | Farm Business Plan Worksheet Projected/Actual Income and Expense | | 175 |
| FSA-2061 | Application for Partial Release or Consent | | 25 |
| FSA-2062 | Application for Subordination of Security for Commercial Credit | | 70 |
| FSA-2211 | Application For Guarantee | | 174 |
| FSA-2212 | Preferred Lender Application For Guarantee | | 174 |
| FSA-2231 | Request For Obligation of Funds Guaranteed Loans | | 182 |
| FSA-2254 | Guaranteed Loan Report of Loss | | 192 |
| FSA-2476 | Transfer of Real Estate Security | | 72 |
| FSA-2489 | Assumption Agreement | | 74 |
| FSA-2620 | Indian Tribal Land Acquisition Program Loan Application | | 12, 24, 25 |
| FSA-2621 | Indian Tribal Land Acquisition Program Tribal Council Resolution and Certification | | 13, 25, 43 |
| FSA-2622 | Indian Tribal Land Acquisition Program Assignment of Tribal Income and Funds | | 13, 25 |
| FSA-2623 | Indian Tribal Land Acquisition Program Subordination Agreement | | 13, 25 |
| FSA-2648 | Civil Rights Compliance Review | | 67 |

1/ Form is obsolete.

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

Forms (Continued)

| Number | Title | Display Reference | Reference |
|--------------------|---|-------------------|-------------------------|
| FSA-2680 <u>2/</u> | Letter of Interest | | 177 |
| FSA-2681 <u>3/</u> | Loan Payment Guarantee Agreement and Contract Modification | | 172, 173, 174, 177, 182 |
| FSA-2680 | Notice of Interest in Land Contract Guarantee | | 174, 175 |
| FSA-2681 | Land Contract Agreement Prompt Payment Guarantee | | 171, 175, 182 |
| FSA-2682 | Land Contract Agreement For Standard Guarantee | | 175, 182 |
| FSA-2683 | Request for Land Contract Guarantee Assistance | | 174, 175, 178, 179 |
| FSA-2684 | Land Contract Recapture Agreement | | 192 |
| FSA-2685 | Notice of Incomplete Land Contract Guarantee Program Application | | 176 |
| FSA-2686 | Second Notice of Incomplete Land Contract Guarantee Program Application | | 176 |
| FSA-2687 | Notice of Land Contract Guarantee Program Application Withdrawal/Pending Withdrawal | | 176 |
| FSA-2688 | Notice of Complete Land Contract Guarantee Program Application | | 176, 180 |
| RD-440-9 | Supplementary Payment Agreement | | 184 |
| RD 1910-5 | Request for Verification of Employment | | 142, 177 |

2/ FSA-2680 dated "9-26-05" or earlier is no longer used.

3/ FSA-2681 dated "11-6-03" or earlier is no longer used.

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

Abbreviations Not Listed in 1-CM

The following abbreviations are not listed in 1-CM.

| Approved Abbreviation | Term | Reference |
|------------------------------|--|------------------|
| AMP | Association-type Minor Program | Part 4, Ex. 2 |
| DNP | Do Not Pay | 13, 174, 175 |
| IMP | Individual-type Minor Program | Part 4, Ex. 2 |
| ITLAP | Indian Tribal Land Acquisition Program | 11, 41, 42 |
| RDBCSO | Rural Development Business Center Servicing Office | 192 |
| SDMS | State Directive Management System | 67 |

Re delegations of Authority

None

Definition of Terms Used in This Handbook

Note: The programs administered according to this handbook are supported by a number of CFR parts, that was published in FR. Definitions that cite:--*

- 7 CFR Part 761 is about Part 8, Land Contract Guarantee Program
- 7 CFR Part 770 is about Part 2, Indian Tribal Land Acquisition Program
- 7 CFR Part 772 is about Part 4, Servicing of Minor Program loans, including Grazing Association, Irrigation and Drainage, Non-Farm Enterprise, and Recreation loans

* * *

Act

[7 CFR 761.2] **Act** is the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*).

* * *

Adjustment

[7 CFR 761.2] **Adjustment** is a form of settlement that reduces the financial obligation to the Agency, conditioned upon the completion of payment of a specified amount at a future time. An adjustment is not a final settlement until all payments have been made under the agreement.

Definition of Terms Used in This Handbook (Continued)

Administrative Appraisal Review

[7 CFR 761.2] Administrative appraisal review is a review of an appraisal to determine if the appraisal:

- (1) Meets applicable Agency requirements; and
- (2) Is accurate outside the requirements of standard 3 of USPAP.

Administrator

[7 CFR 770.2 (b)] Administrator is the head of the Farm Service Agency.

Agency

[7 CFR 770.2 (b)] Agency is Farm Service Agency (FSA).

* * *

[7 CFR 761.2] Agency is the FSA.

Agricultural Commodity

[7 CFR 761.2] Agricultural commodity is livestock, livestock products, grains, cotton, oilseeds, dry beans, tobacco, peanuts, sugar beets, sugar cane, fruit, vegetable, forage, tree farming, nursery crops, nuts, aquaculture species, and other plant and animal production, as determined by the Agency.

Annual Installment

Annual installment is the total amortized amount of principal and interest due to the seller on a land contract every 12 months.

Definition of Terms Used in This Handbook (Continued)

Applicant (Applies to Part 2)

[7 CFR 770.2 (b)] Applicant is a Native American tribe or tribal corporation established pursuant to the Indian Reorganization Act seeking a loan under this part.

Applicant

* * *

Applicant (Applies to Part 8)

[7 CFR 761.2] Applicant is the individual or entity applying for a loan or loan servicing under either the direct or guaranteed loan program.

Appraisal

[7 CFR 770.2 (b)] Appraisal is an appraisal for the purposes of determining the market value of land (less the value of any existing improvements that pass with the land) that meets the requirements of part 761 of this chapter.

***--Approval Official**

Approval official is an Agency official who has been delegated approval authorities within applicable loan programs.--*

* * *

AMP Loans

[7 CFR 772.2(b)] AMP loans are loans to grazing associations and irrigation and drainage associations.

Definition of Terms Used in This Handbook (Continued)

***--Assistance**

[7 CFR 761.2] Assistance is financial assistance in the form of a direct or guaranteed loan or interest subsidy or servicing action.

Assumption

[7 CFR 761.2] Assumption is the act of agreeing to be legally responsible for another party's indebtedness.

Assumption Agreement

[7 CFR 761.2] Assumption agreement is a written agreement on the appropriate Agency form to pay the FLP debt incurred by another.--*

Authorized Agency Official

The authorized agency official is the FSA official that is authorized to perform specific tasks about loan making or servicing. The appropriate official is determined by inherent authorities or delegations applicable to a particular task.

Definition of Terms Used in This Handbook (Continued)

***--Beginning Farmer (Applies to Part 8)**

[7 CFR 761.2] **Beginning farmer** is an individual or entity who:

- (1) Meets the loan eligibility requirements for a direct or guaranteed CL, FO, or OL, as applicable;**
- (2) Has not operated a farm for more than 10 years. This requirement applies to all members of an entity;**
- (3) Will materially and substantially participate in the operation of the farm:**
 - (i) In the case of a loan made to an individual, individually or with the family members, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm, consistent with the practices in the county or State where the farm is located.**
 - (ii) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm. Material and substantial participation requires that the member provide some amount of the management, or labor and management necessary for day-to-day activities, such that if the individual did not provide these inputs, operation of the farm would be seriously impaired;**
- (4) Agrees to participate in any loan assessment and borrower training required by Agency regulations;**
- (5) Except for an OL applicant, does not own real farm property or who, directly or through interests in family farm entities owns real farm property, the aggregate acreage of which does not exceed 30 percent of the median farm acreage of the farms in the county where the property is located. If the farm is located in more than one county, the median farm acreage of the county where the applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm or if the applicant is an entity, the median farm acreage of the county where the major portion of the farm is located will be used. The median county farm acreage will be determined from the most recent Census of Agriculture;**
- (6) Demonstrates that the available resources of the applicant and spouse (if any) are not sufficient to enable the applicant to enter or continue farming on a viable scale; and**
- (7) In the case of an entity:**
 - (i) All the members are related by blood or marriage; and**
 - (ii) All the members are beginning farmers.--***

Definition of Terms Used in This Handbook (Continued)**Borrower**

[7 CFR 761.2] **Borrower** (or debtor) is an individual or entity that has an outstanding obligation to the Agency or to a lender under any direct or guaranteed FLP loan, without regard to whether the loan has been accelerated. The term “borrower” includes all parties liable for such obligation, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed, sold, or conveyed, or who have been discharged of all such obligations owed to the Agency or guaranteed lender.

* * *

Cash Flow Budget (Applies to Part 8)

[7 CFR 761.2] **Cash flow budget** is a projection listing all anticipated cash inflows (including all farm income, nonfarm income and all loan advances) and all cash outflows (including all farm and nonfarm debt service and other expenses) to be incurred during the period of the budget. Advances and principal repayments of lines of credit may be excluded from a cash flow budget. Cash flow budgets for guaranteed loans under \$125,000 do not require income and expenses itemized by categories. A cash flow budget may be completed either for a 12-month period, a typical production cycle, or the life of the loan, as appropriate. It may also be prepared with a breakdown of cash inflows and outflows for each month of the review period and include the expected outstanding operating credit balance for the end of each month. The latter type is referred to as a “monthly cash flow budget.”

Definition of Terms Used in This Handbook (Continued)

***--Compromise**

[7 CFR 761.2] Compromise is the settlement of an FLP debt or claim by a lump-sum payment of less than the total amount owed in satisfaction of the debt or claim.

Controlled Substance

[7 CFR 761.2] Controlled substance is the term as defined in 21 U.S.C. 812.

Cooperative

[7 CFR 761.2] Cooperative is 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

[7 CFR 761.2] Corporation is a private domestic corporation created and organized under the laws of the state in which it will operate a farm.

County

[7 CFR 761.2] County is a local administrative subdivision of a State or similar political subdivision of the United States.--*

Definition of Terms Used in This Handbook (Continued)

Debt Forgiveness

[7 CFR 761.2] **Debt forgiveness** is a reduction or termination of a debt under the Act in a manner that results in a loss to the Agency, through:

- (1) Writing down or writing off a debt pursuant to 7 U.S.C. 2001;
- (2) Compromising, adjusting, reducing, or charging off a debt or claim pursuant to 7 U.S.C. 1981; or
- (3) Paying a loss pursuant to 7 U.S.C. 2005 on a FLP loan guaranteed by the Agency.

Debt forgiveness does not include:

- (1) Debt reduction through a conservation contract;
- (2) Any writedown provided as part of the resolution of a discrimination complaint against the Agency;
- (3) Prior debt forgiveness that has been repaid in its entirety; and
- (4) Consolidation, rescheduling, reamortization, or deferral of a loan.

Debt Writedown

[7 CFR 761.2] **Debt writedown** is the reduction of the borrower's debt to that amount the Agency determines to be collectible based on an analysis of the security value and the borrower's ability to pay.

Default

[7 CFR 761.2] **Default** is the failure of a borrower to observe any agreement with the Agency, or the lender in the case of a guaranteed loan, as contained in promissory notes, security instruments, and similar or related instruments.

Deferral

[7 CFR 761.2] **Deferral** is a postponement of the payment of interest or principal, or both.

Direct Loan

[7 CFR 761.2] **Direct loan** is a loan funded and serviced by the Agency as the lender.

*--Disabled

Disabled means mares that have become infertile or difficult to breed, and mares and foals that have become unfit for sale, reproduction, training, and riding as a result of MRLS.--*

Definition of Terms Used in This Handbook (Continued)**Disaster**

[7 CFR 761.2] **Disaster** is an event of unusual and adverse weather conditions or other natural phenomena, or quarantine, that has substantially affected the production of agricultural commodities by causing physical property or production losses in a county, or similar political subdivision, that triggered the inclusion of such county or political subdivision in the disaster area as designated by the Agency.

* * *

Downpayment Loan

[7 CFR 761.2] **Downpayment loan** is a type of FO loan made to beginning farmers and socially disadvantaged farmers to finance a portion of a real estate purchase under part 764, subpart E of this chapter.

Embedded Entity

[7 CFR 761.2] **Embedded entity** means an entity that has a direct or indirect interest, as a stockholder, member, beneficiary, or otherwise, in another entity.

Entity (Applies to Part 4)

[7 CFR 772.2(b)] **Entity** is a cooperative, corporation, partnership, joint operation, trust, or limited liability company.

Entity (Applies to Part 8)

[7 CFR 761.2] **Entity** means a corporation, partnership, joint operation, cooperative, limited liability company, trust, or other legal business organization, as determined by the Agency, that is authorized to conduct business in the state in which the organization operates. Organizations operating as non-profit entities under Internal Revenue Code 501 (26 U.S.C. 501) and estates are not considered eligible entities for Farm Loan Programs purposes.

Entity Member

[7 CFR 761.2] **Entity member** means all individuals and all embedded entities, as well as the individual members of the embedded entities, having an ownership interest in the assets of the entity.

Definition of Terms Used in This Handbook (Continued)

* * *

Family Farm

[7 CFR 761.2] **Family farm** is a business operation that:

(1) Produces agricultural commodities for sale in sufficient quantities so that it is recognized as a farm rather than a rural residence;

(2) Has both physical labor and management provided as follows:

(i) The majority of day-to-day, operational decisions, and all strategic management decisions are made by:

(A) The borrower and persons who are either related to the borrower by blood or marriage, or are a relative, for an individual borrower; or

(B) The members responsible for operating the farm, in the case of an entity.

(ii) A substantial amount of labor to operate the farm is provided by:

(A) The borrower and persons who are either related to the borrower by blood or marriage, or are a relative, for an individual borrower; or

(B) The members responsible for operating the farm, in the case of an entity.

(3) May use full-time hired labor in amounts only to supplement family labor.

(4) May use reasonable amounts of temporary labor for seasonal peak workload periods or intermittently for labor intensive activities.

Family Members

[7 CFR 761.2] **Family members** are the immediate members of the family residing in the same household with the borrower.

Definition of Terms Used in This Handbook (Continued)**Farm**

[7 CFR 761.2] **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.

Farmer

[7 CFR 761.2] **Farmer** is an individual, corporation, partnership, joint operation, cooperative, trust, or limited liability company that is the operator of a farm.

Farm Loan Programs

[7 CFR 761.2] **Farm Loan Programs** are Agency programs to make, guarantee, and service loans to family farmers authorized under the Act or Agency regulations.

Farm Ownership Loan

[7 CFR 761.2] **Farm Ownership loan** is a loan made to eligible applicants to purchase, enlarge, or make capital improvements to family farms, or to promote soil and water conservation and protection. It also includes Downpayment loans.

Feasible Plan

[7 CFR 761.2] **Feasible plan** is when an applicant or borrower's cash flow budget or farm operating 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 operating 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 operating plan must be prepared that reflects a typical cycle. If the request is for only one cycle, a feasible plan for only one production cycle is required for approval.

* * *

Definition of Terms Used in This Handbook (Continued)

* * *

Floodplains

[7 CFR 761.2] **Floodplains** are 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 is 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).

Good Faith

[7 CFR 761.2] **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.

Graduation

[7 CFR 772.2(b)] **Graduation** is the requirement contained in loan documents that borrowers pay their FSA loan in full with funds received from a commercial lending source as a result of improvement in their financial condition.

Highly Erodible Land

[7 CFR 761.2] **Highly erodible land** is land as determined by Natural Resources Conservation Service to meet the requirements provided in section 1201 of the Food Security Act of 1985.

Definition of Terms Used in This Handbook (Continued)

* * *

IMP Loans

[7 CFR 772.2(b)] IMP loans are nonfarm enterprise or recreation loans to individuals.

Joint Operation

[7 CFR 761.2] 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.

Land Contract

[7 CFR 761.2] Land contract is an installment contract drawn between a buyer and a seller for the sale of real property, in which complete fee title ownership of the property is not transferred until all payments under the contract have been made.

Lien

[7 CFR 761.2] 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.

Liquidation

[7 CFR 761.2] Liquidation is the act of selling security for recovery of amounts owed to the Agency or lender.

Definition of Terms Used in This Handbook (Continued)**Liquidation Expenses**

[7 CFR 761.2] **Liquidation expenses** are the costs of an appraisal, due diligence evaluation, environmental assessment, outside attorney fees, and other costs incurred as a direct result of liquidating the security for a direct or guaranteed loan. Liquidation expenses do not include internal Agency expenses for a direct loan or in-house expenses for a guaranteed loan.

Livestock

[7 CFR 761.2] **Livestock** is a member of the animal kingdom, or product thereof, as determined by the Agency.

Loan Funds

[7 CFR 770.2 (b)] **Loan Funds** refers to money loaned under this part. Loan funds include protective advances.

Loss Claim

[7 CFR 761.2] **Loss claim** is a request made to the Agency by a lender to receive a reimbursement based on a percentage of the lender's loss on a loan covered by an Agency guarantee.

* * *

Majority Interest

[7 CFR 761.2] **Majority interest** is more than a 50 percent interest in an entity held by an individual or group of individuals.

Member

[7 CFR 772.2(b)] A **member** is any individual who has an ownership interest in the entity which has received the Minor Program loan.

Minor Program

[7 CFR 772.2(b)] **Minor Program** is a nonfarm enterprise, individual recreation, grazing association, or irrigation and drainage loan program administered or to be administered by FSA.

Definition of Terms Used in This Handbook (Continued)

Mortgage

[7 CFR 761.2] **Mortgage** is a legal instrument giving the lender a security interest or lien on real or personal property of any kind. The term “mortgage” also includes the terms “deed of trust” and “security agreement.”

* * *

Natural Disaster

[7 CFR 761.2] **Natural disaster** is unusual and adverse weather conditions or natural phenomena that have substantially affected farmers by causing severe physical or production, or both, losses.

Native American Tribe

[7 CFR 770.2 (b)] **Native American tribe** is:

- (1) An Indian tribe recognized by the Department of the Interior; or
- (2) A community in Alaska incorporated by the Department of the Interior pursuant to the Indian Reorganization Act.

Negligent Servicing

[7 CFR 761.2] **Negligent servicing** is servicing that fails to include those actions that are considered normal industry standards of loan management or comply with the lender's agreement or the guarantee. Negligent servicing includes failure to act or failure to act in a timely manner consistent with actions of a reasonable lender in loan making, servicing, and collection.

Definition of Terms Used in This Handbook (Continued)**Non-Eligible Enterprise**

[7 CFR 761.2] **Non-eligible enterprise** is a business that meets the criteria in any one of the following categories:

- (1) Produces exotic animals, birds, or aquatic organisms or their products which may be agricultural in nature, but are not normally associated with agricultural production, e.g., there is no established or stable market for them or production is speculative in nature.**
- (2) Produces non-farm animals, birds, or aquatic organisms ordinarily used for pets, companionship, or pleasure and not typically associated with human consumption, fiber, or draft use.**
- (3) Markets non-farm goods or provides services which might be agriculturally related, but are not produced by the farming operation.**
- (4) Processes or markets farm products when the majority of the commodities processed or marketed are not produced by the farming operation.**

Non-Program Loan

[7 CFR 761.2] **Non-program loan** is a loan on terms more stringent than terms for a program loan that is an extension of credit for the convenience of the Agency, because the applicant does not qualify for program assistance or the property to be financed is not suited for program purposes. Such loans are made or continued only when it is in the best interest of the Agency.

Operator

[7 CFR 761.2] **Operator** is the individual or entity that provides the labor, management, and capital to operate the farm. The operator can be either an owner-operator or tenant-operator. Under applicable State law, an entity may have to receive authorization from the State in which the farm is located to be the owner and/or operator of the farm. Operating-only entities may be considered owner-operators when the individuals who own the farm real estate own at least 50 percent of the family farm operation.

* * *

Definition of Terms Used in This Handbook (Continued)**Participated In the Business Operations of a Farm**

[7 CFR 761.2] **Participated in the business operations of a farm** requires that an applicant has:

- (1) Been the owner, manager or operator of a farming operation for the year's complete production cycle as evidenced by tax returns, FSA farm records or similar documentation;
- (2) Been employed as a farm manager or farm management consultant for the year's complete production cycle; or
- (3) Participated in the operation of a farm by virtue of being raised on a farm or having worked on a farm (which can include a farm-related apprenticeship, internship, or similar educational program with applied work experience) with significant responsibility for the day-to-day decisions for the year's complete production cycle, which may include selection of seed varieties, weed control programs, input suppliers, or livestock feeding programs or decisions to replace or repair equipment.

Partnership

[7 CFR 761.2] **Partnership** is any entity consisting of two or more individuals who have agreed to operate a farm as one business unit. The entity must be recognized as a partnership by the laws of the State in which the partnership will operate a farm. It also must be authorized to own both real and personal property and to incur debt in its own name.

Production Cycle

[7 CFR 761.2] **Production cycle** is the time it takes to produce an agricultural commodity from the beginning of the production process until it is normally disposed of or sold.

Protective Advance

[7 CFR 761.2] **Protective advance** is an advance made by the Agency or a lender to protect or preserve the collateral from loss or deterioration.

* * *

Definition of Terms Used in This Handbook (Continued)

***--Redemption Rights**

[7 CFR 761.2] **Redemption right** is a Federal or state right to reclaim property for a period of time established by law, by paying the amount paid at the involuntary sale plus accrued interest and costs.

Related by Blood or Marriage

[7 CFR 761.2] **Related by blood or marriage** is being connected to one another as husband, wife, parent, child, brother, sister, uncle, aunt, or grandparent.

Relative

[7 CFR 761.2] **Relative** is the spouse and anyone having one of the following relationships to an applicant or borrower: parent, son, daughter, sibling, stepparent, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, uncle, aunt, nephew, niece, cousin, grandparent, grandson, granddaughter, or the spouses of the foregoing.--*

Rental Value

[7 CFR 770.2(b)] **Rental value** for the purpose of rental value write-down's, equals the average actual rental proceeds received from the lease of land acquired under ITLAP. If there are no rental proceeds, then rental value will be based on market data according to Sec. 770.10(e)(4).

Reservation

[7 CFR 770.2 (b)] **Reservation** is lands or interest within:

- (1) The Native American tribe's reservation as determined by the Department of the Interior; or
- (2) A community in Alaska incorporated by the Department of the Interior pursuant to the Indian Reorganization Act.

Reserve

[7 CFR 770.2 (b)] **Reserve** is an account established for loans approved in accordance with regulations in effect prior to February 8, 2001, which required that an amount equal to 10 percent of the annual payment be set aside each year until at least one full payment is available.

Note: Regulations in effect before February 8, 2001, were published in 7 CFR 1823, Subpart N. Further guidance was contained in FmHA Instruction 442.11.

Definition of Terms Used in This Handbook (Continued)

Review Official

[7 CFR 772.2(b)] **Review official** is an Agency employee, contractor, or designee who is authorized to conduct a compliance review of a Minor Program borrower under this part.

Security

[7 CFR 761.2] **Security** is property or right of any kind that is subject to a real or personal property lien. Any reference to “collateral” or “security property” will be considered a reference to the term “security.”

* * *

Security Instrument

[7 CFR 761.2] **Security instrument** includes any document giving the Agency a security interest on real or personal property.

Security Value

[7 CFR 761.2] **Security value** is the market value of real estate or chattel property (less the value of any prior liens) used as security for an Agency loan.

* * *

Definition of Terms Used in This Handbook (Continued)**Socially Disadvantaged Applicant or Farmer**

[7 CFR 761.2] **Socially disadvantaged applicant or farmer** is an individual or entity who is a member of a socially disadvantaged group. For an entity, the majority interest must be held by socially disadvantaged individuals. For married couples, the socially disadvantaged individual must have at least 50 percent ownership in the farm business and make most of the management decisions, contribute a significant amount of labor, and generally be recognized as the operator of the farm.

Socially Disadvantaged Group

[7 CFR 761.2] **Socially disadvantaged group** is a group whose members have been subject to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. These groups consist of: American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, Hispanics, and women.

* * *

Transfer and Assumption

[7 CFR 761.2] **Transfer and assumption** is the conveyance by a debtor to an assuming party of the assets, collateral, and liabilities of a loan in return for the assuming party's binding promise to pay the debt outstanding or the market value of the collateral.

Tribal Corporation

7 CFR 770.2 (b) **Tribal Corporation** is a corporation established pursuant to the Indian Reorganization Act.

Trust

[7 CFR 761.2] **Trust** is an entity that under applicable state law meets the criteria of being a trust of any kind but does not meet the criteria of being a farm cooperative, private domestic corporation, partnership, or joint operation.

Uniform Standards of Professional Appraisal Practice

[7 CFR 761.2] **Uniform Standards of Professional Appraisal Practice** are standards governing the preparation, reporting, and reviewing of appraisals established by the Appraisal Foundation pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

Definition of Terms Used in This Handbook (Continued)

United States

[7 CFR 761.2] **United States** is any of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, Republic of Palau, Federated States of Micronesia, and the Republic of the Marshall Islands.

* * *

Wetlands

[7 CFR 761.2] **Wetlands** are those lands or areas of land as determined by the Natural Resources Conservation Service to meet the requirements provided in section 1201 of the Food Security Act of 1985.

State Supplements

| Subparagraph | State Supplement |
|---------------------|---|
| * * * | * * * |
| 175 C | Additional guidance on information requirements when a married couple applies as a joint operation for a land contract guarantee. |

***--Sample Indian Tribal Land Acquisition Loan Program (ITLAP) Restructuring Options Letter**

(Use agency letterhead format with local return address)

Indian Tribal Land Acquisition Loan Program (ITLAP) Restructuring Options

Dear

You have inquired about servicing for your Indian Tribal Land Acquisition Loan (ITLAP) with FSA. This letter is to inform you about other servicing options for which you may qualify subject to agency regulations at 7 CFR Part 770.

1. Reamortization if the account is delinquent or current but you are unable to make your loan payment because of circumstances beyond your control.
2. An interest rate reduction if the loan interest rate exceeds the current ITLAP interest rate, and the loan is over 5 years old, and the Department of Interior certifies your eligibility.
3. Loan deferral up to 5 years.
4. Debt write-down under either the land value or rental value options.
5. Release of reserve account funds to make the annual payment if the loan is not delinquent and is adequately secured.

Please do not hesitate to contact your local FSA office if you wish to further inquire about any of these servicing options.

Sincerely,

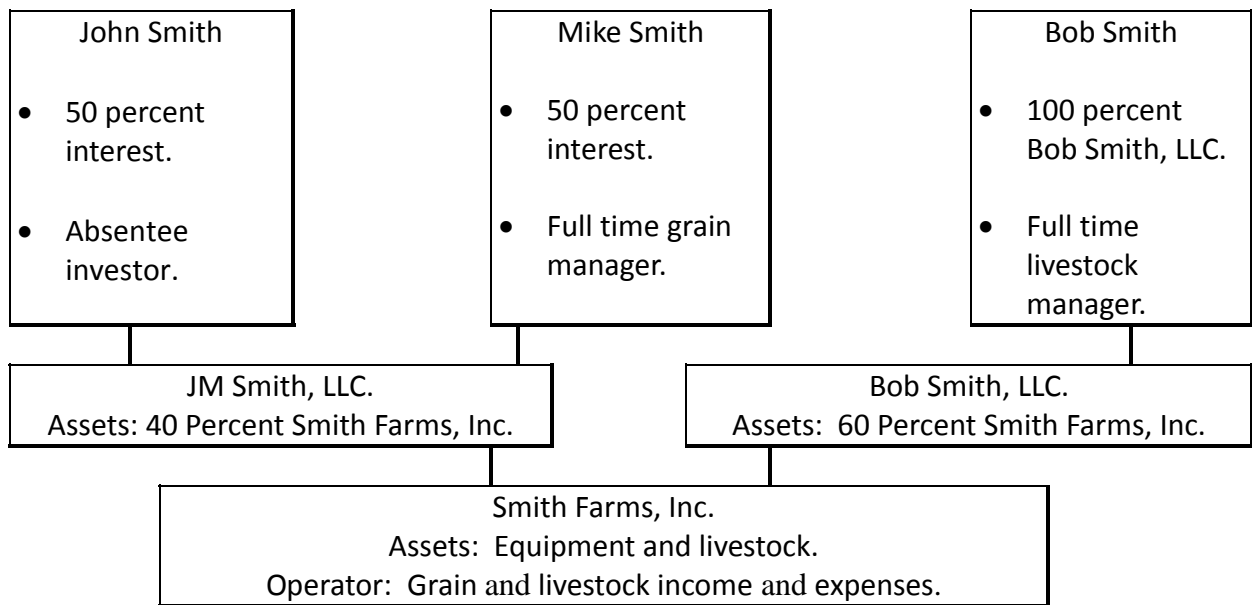
--*

***--Embedded Entity Examples**

A Determining Embedded Entities

Subparagraphs B and C have been provided to help in determining whether embedded entities meet 7 CFR 762.120 FLP rules.

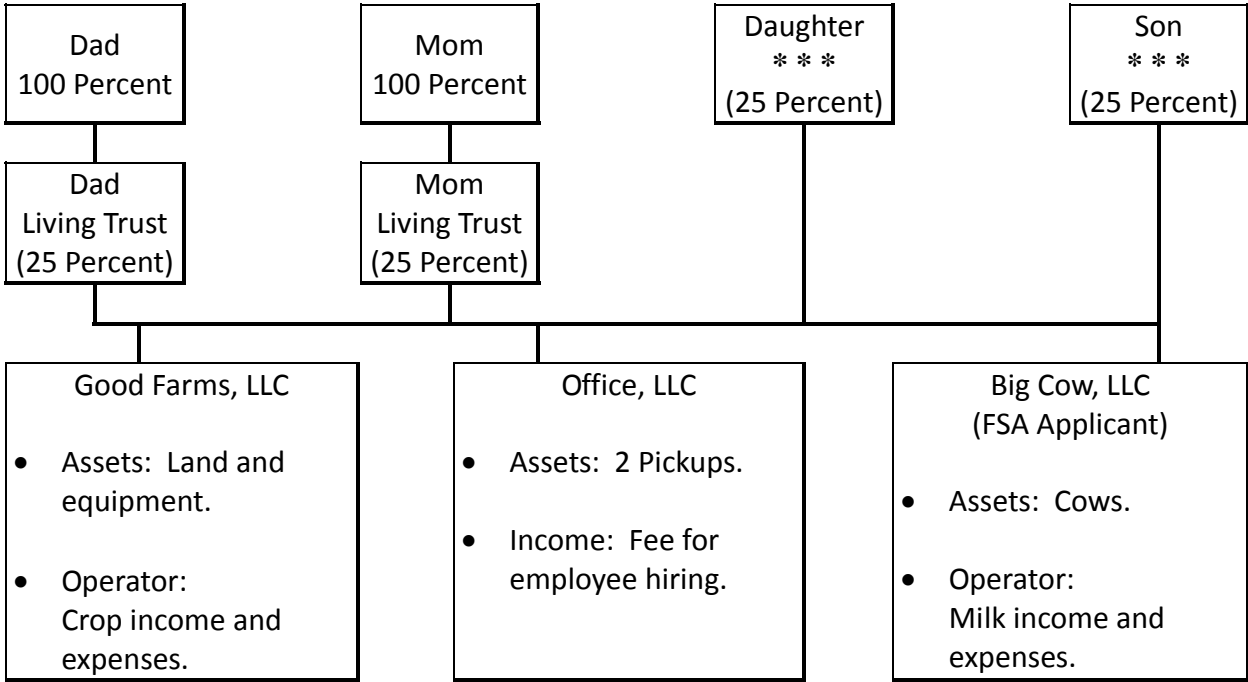
B Embedded Entity Example 1



JM Smith, LLC, fails the 75 percent test because only Mike is actively involved in the operation and he owns only 50 percent of the embedded entity, JM Smith, LLC. If Mike Smith owned 75 percent of JM Smith, LLC, then the application would meet the embedded entity test.--*

Embedded Entity Examples (Continued)

C Embedded Entity Example 2



Both Mom and Dad must be actively involved in managing or operating the family farm. Daughter and Son are not involved in embedded entities, so they are not subject to the 75 percent rule.

Either Good Farms, LLC, or Big Cow, LLC, could be the FSA applicant depending on the purpose of the loan.

***--Interim Guidance for Documentary Evidence of Status as a Qualified Alien Qualified Alien**

A qualified alien is, as defined under PRWORA (8 U.S.C. 1641):

1. an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA);
2. an alien who is granted asylum under INA, Section 208;
3. a refugee who is admitted to the U.S. under section 207 of such Act;
4. an alien who is paroled into the U.S. under INA, Section 212(d)(5) for a period of at least 1 year;
5. an alien whose deportation is being withheld under INA, Section 243(h);
6. an alien who is granted conditional entry pursuant to INA, Section 203(a)(7) as in effect before April 1, 1980;
7. an alien who is a Cuban/Haitian Entrant as defined by Refugee Education Assistance Act of 1980, Section 501(e);
8. an alien who has been battered or subjected to extreme cruelty under Immigration and Nationality Act, Section 431. PRWORA (8 U.S.C. 1641) contains more on aliens battered or subjected to extreme cruelty.

The following documents will, when combined with satisfactory proof of identity that will come from the document itself if it bears a photograph of the person to whom it relates, establish that an applicant falls within 1 of the categories of “qualified alien” for purposes of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Title IV, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Under INA, all aliens over the age of 14 who remain in the U.S. for longer than 30 calendar days are required to register with the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) and obtain an alien registration documents. All aliens over the age of 18 who receive a registration document are required to carry it with them at all times. With certain exceptions (for example, Canadian visitors), aliens entering the U.S. are normally issued a registration document (for example, USCIS Form I-94) at the time of entry.--*

***--Interim Guidance: Documentary Evidence of Status as a Qualified Alien Qualified Alien
(Continued)**

The following documents that are registration documents are indicated with an asterisk (“*”). Each of the following documents will demonstrate lawful status, and employees should not require presentation of a registration document if the applicant presents 1 of the other legally acceptable documents that reasonably appears on its face to be genuine and to relate to the person presenting it. However, if the document presented is not a registration document and does not on its face reasonably appear to be genuine or to relate to the person presenting it, it is appropriate to ask the applicant to produce his or her registration document as additional evidence of immigration status, so long as the request is not made for a discriminatory reason.

Presentation of any of the following registration documents that reasonably appears on its face to be genuine and to relate to the person presenting it, or to satisfy a higher applicable standard, will often obviate the need to verify the applicant’s immigration status with USCIS. If the applicant presents a registration document that does not meet this standard, sending USCIS a copy of the document will assist it in verifying the applicant’s status quickly and accurately.

| Category | Documentary Evidence |
|---|---|
| Alien Lawfully Admitted for Permanent Residence | Either of the following: <ul style="list-style-type: none"> • *USCIS Form I-551 (Alien Registration Receipt Card, commonly known as a “green card”) • unexpired temporary I-551 stamp in foreign passport or on *USCIS Form I-94. |
| Asylee | Any of the following: <ul style="list-style-type: none"> • *USCIS Form I-94 annotated with stamp showing grant of asylum under INA, Section 208 • *USCIS Form I-688B (Employment Authorization Card) annotated “274a.12(a)(5)” • *USCIS Form I-766 (Employment Authorization Document) annotated “A5” • grant letter from the Asylum Office of USCIS • order of an immigration judge, granting asylum. |

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***--Interim Guidance: Documentary Evidence of Status as a Qualified Alien Qualified Alien
(Continued)**

| Category | Documentary Evidence |
|---|--|
| Refugee | <p>Any of the following:</p> <ul style="list-style-type: none"> • *USCIS Form I-94 annotated with stamp showing admission under INA, Section 207 • *USCIS Form I-688B (Employment Authorization Card) annotated “274a.12(a)(3)” • *USCIS Form I-766 (Employment Authorization Document) annotated “A3” • USCIS Form I-571 (Refugee Travel Document). |
| Alien Paroled Into the U.S. for a Least 1-Year | *USCIS Form I-94 with stamp showing admission for at least 1 year under INA, Section 212(d)(5). (Applicant cannot aggregate periods of admission for less than one year to meet the one-year requirement.) |
| Alien Whose Deportation or Removal Was Withheld | <p>Any of the following:</p> <ul style="list-style-type: none"> • *USCIS Form I-688B (Employment Authorization Card) annotated “274a.12(a)(10)” • *USCIS Form I-766 (Employment Authorization Document) annotated “A10” • Order from an immigration judge showing deportation withheld under INA, Section 243(h) as in effect before April 1, 1997, or removal withheld under INA, Section 241(b)(3). |
| Alien Granted Conditional Entry | <p>Any of the following:</p> <ul style="list-style-type: none"> • *USCIS Form I-94 with stamp showing admission under INA, Section 203(a)(7) • *USCIS Form I-688B (Employment Authorization Card) annotated “274a.12(a)(3)” • *USCIS Form I-766 (Employment Authorization Document) annotated “A3”. |

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***--Interim Guidance: Documentary Evidence of Status as a Qualified Alien Qualified Alien
(Continued)**

| Category | Documentary Evidence |
|---|---|
| Cuban/Haitian Entrant | <p>Any of the following:</p> <ul style="list-style-type: none"> • *USCIS Form I-551 (Alien Registration Receipt Card, commonly known as a “green card”) with the code CU6, CU7, or CH6 • unexpired temporary I-551 stamp in foreign passport or on *USCIS Form I-94 with the code CU6 or CU7 • USCIS Form I-94 with stamp showing parole as “Cuba/Haitian Entrant” under INA, Section 212(d)(5). |
| Alien Who Has Been Battered or Subjected to Extreme Cruelty | <p>Guidance as to the requirements that must be met for an alien to fall within this category of qualified alien is set forth in DOJ’s Notice of Interim Guidance.</p> <p>Note: Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Title IV, as amended, contains provisions requiring that, on the effective date of the new affidavit of support (required under INA, Section 213A), when determining eligibility for Federal means-tested public benefits and the amount of such benefits to which an alien is entitled, the income and resources of the alien be deemed to include those of any person executing an affidavit of support on behalf of the alien and that person’s spouse. Certain exceptions are made for indigent qualified aliens and for qualified aliens who (or whose children) have been battered or subjected to extreme cruelty in the U.S. by a spouse, parent. or member of the spouse or parent’s family. and for qualified alien children whose parents have been subjected to such abuse.</p> |
| Expired or Absent Documentation | <p>If an applicant presents expired documents or is unable to present any documentation evidencing his or her immigration status, refer the applicant to the local USCIS office to obtain documentation of status. In unusual cases involving applicants who are hospitalized or medically disabled, or who can otherwise show good cause for their inability to present documentation, and for whom securing such documentation would constitute an undue hardship, if the applicant can provide an alien registration number, employees may file USCIS Form G-845 and Supplement, along with the alien registration number, and a copy of any expired USCIS document presented, with the local USCIS office to verify status. As with any documentation of immigration status, employees should confirm that the status information the employee receives back from USCIS pertains to the applicant whose identity the employee has verified.</p> |

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***--Interim Guidance: Documentary Evidence of Status as a Qualified Alien Qualified Alien
(Continued)**

| Category | Documentary Evidence |
|--|--|
| Receipt for Replacement Document | If an applicant presents a receipt indicating that he or she has applied to USCIS for a replacement document for 1 of the documents identified in this exhibit, file USCIS Form G-845 and Supplement along with a copy of the receipt with the local USCIS office to verify status. On return receipt of information from USCIS, confirm that it pertains to the applicant whose identity you have verified. Employees should ask to see the replacement document at a later date. |
| Applicants With Disabilities and Nondiscrimination | If an applicant has a disability that limits the applicant's ability to provide the required evidence of immigration status (for example, mental retardation, amnesia, or other cognitive, mental, or physical impairment), employees should make every effort to assist the individual to obtain the required evidence. In addition, employees should not discriminate against applicants on the basis of race, national origin, gender, religion, age or disability. |

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Interim Guidance for Documentary Evidence of Status as a U.S. Non-Citizen National

U.S. Non-Citizen National means a person born in America Samoa or Swains Island on or after the date the U.S. acquired America Samoa or Swains Island, or a person whose parents are U.S. non-citizen nationals. Typical evidence of the relatively uncommon status as a non-citizen national includes a birth certificate or passport with a document bearing a photograph of the person.

Copies of the following documents will, when combined with satisfactory proof of identity that will come from the document itself if it bears a photograph of the person to whom it relates, demonstrate that a person is a U.S. citizen or non-citizen national for purposes Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Title IV, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

Note: To the extent citizenship or nationality of a child is relevant to a benefit eligibility determination, the documents should demonstrate the child's status rather than that of the parent.

The following documents for:

- “Primary Evidence” and “Secondary Evidence” are drawn from existing guidance published by the Social Security Administration (“SSA”) and regulations issued by the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) about determination of U.S. citizenship and nationality
- “Collective Naturalization”, “Derivative Citizenship”, and “All Other Situations...” are drawn solely from SSA guidance.--*

**Interim Guidance for Documentary Evidence of Status as a U.S. Non-Citizen National
(Continued)**

This table is not exhaustive. Employees should see guidance issued by FSA or USDA overseeing FLP to determine if it accepts documents or other evidence of citizenship not listed in this table.

| Category | Documentary Evidence |
|------------------|--|
| Primary Evidence | <p>Any of the following:</p> <ul style="list-style-type: none"> • a birth certificate showing birth in 1 of the 50 States, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, Swain’s Island, or the Northern Mariana Islands, unless the person was born to foreign diplomats residing in the U.S. <p>Note: If the document shows that the individual was born in Puerto Rico, the U.S. Virgin Islands, or the Northern Mariana Islands before these areas became part of the U.S., the individual may be a collectively naturalized citizen, see “Collective Naturalization” in this table.</p> <ul style="list-style-type: none"> • U.S. passport, except limited passports that are issued for periods of less than 5 years) • report of birth abroad of a U.S. citizen (FS-240) (issued by the Department of State to U.S. citizens) • Certificate of Birth (FS-545) (issued by a foreign service post) or Certification of Report of Birth (DS-1350) (issued by the Department of State), copies of which are available from the Department of State • Certificate of Naturalization (N-550 or N-570) (issued by USCIS through a Federal or State court, or through administrative naturalization after December 1990, to individuals who are individually naturalized <p>Note: N-570 is a replacement certificate issued when N- 550 has been lost or mutilated or the individual’s name has been changed.</p> <ul style="list-style-type: none"> • Certificate of Citizenship (N-560 or N-561) (issued by USCIS to individuals who derive U.S. citizenship through a parent <p>Note: N-561 is a replacement certificate issued when N-560 has been lost or mutilated or the individual’s name has been changed.</p> |

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**Interim Guidance for Documentary Evidence of Status as a U.S. Non-Citizen National
(Continued)**

| Category | Documentary Evidence |
|---------------------------------|--|
| Primary Evidence (Continued) | <ul style="list-style-type: none"> • U.S. Citizen Identification Card (I-197) (issued by USCIS until April 7, 1983, to U.S. citizens living near the Canadian or Mexican border who needed it for frequent border crossings) (formerly Form I-179, last issued in February 1974) • Northern Mariana Identification Card (issued by USCIS to a collectively naturalized citizen of the U.S. who was born in the Northern Mariana Islands before November 3, 1986) • statement provided by a U.S. consular officer certifying that the individual is a U.S. citizen (this is given to an individual born outside the U.S. who derives citizenship through a parent but does not have an FS-240, FS-545, or DS-1350) • American Indian Card with a classification code “KIC” and a statement on the back (identifying U.S. citizen members of the Texas Band of Kickapoos living near the U.S./Mexican border). |
| Secondary Evidence | <p>If the applicant cannot present 1 of the documents listed “Primary Evidence” in this table, the following may be relied on to establish U.S. citizenship or nationality:</p> <ul style="list-style-type: none"> • religious record recorded in 1 of the 50 States, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, Swain’s Island, or the Northern Mariana Islands (unless the person was born to foreign diplomats residing in such a jurisdiction) within 3 months after birth showing that the birth occurred in such jurisdiction and the date of birth or the individual’s age at the time the record was made • evidence of civil service employment by the U.S. Government before June 1, 1976 • early school records (preferably from the first school) showing the date of admission to the school, the child’s date and place of birth, and the names and places of birth of the parents • census record showing name, U.S. citizenship or a U.S. place of birth, and date of birth or age of applicant |

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**Interim Guidance for Documentary Evidence of Status as a U.S. Non-Citizen National
(Continued)**

| Category | Documentary Evidence |
|-----------------------------------|--|
| Secondary Evidence (Continued) | <ul style="list-style-type: none"> • adoption finalization papers showing the child’s name and place of birth in 1 of the 50 States, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, Swain’s Island, or the Northern Mariana Islands (unless the person was born to foreign diplomats residing in such a jurisdiction), or where or adoption is not finalized and the State or other jurisdiction listed in this bullet in which the child was born will not release a birth certificate before final adoption, a statement from a State-approved adoption agency showing the child’s name and place of birth in 1 of such jurisdictions <p>Note: The source of the information must be an original birth certificate and must be indicated in the statement.</p> <ul style="list-style-type: none"> • any other document that establishes a U.S. place of birth or in some way indicates U.S. citizenship (for example, a contemporaneous hospital record of birth in that hospital in 1 of the 50 States, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, Swain’s Island, or the Northern Mariana Islands (unless the person was born to foreign diplomats residing in such a jurisdiction)). |
| Collective Naturalization | <p>If the applicant cannot present 1 of the documents listed in “Primary Evidence” and “Secondary Evidence” in this table, the following will establish U.S. citizenship for collectively naturalized individuals:</p> <ul style="list-style-type: none"> • evidence of birth in Puerto Rico on or after April 11, 1899, and the applicant’s statement that he or she was residing in the U.S., a U.S. possession, or Puerto Rico on January 13, 1941; or evidence that the applicant was a Puerto Rican citizen and the applicant’s statement that he or she was residing in Puerto Rico on March 1, 1917, and that he or she did not take an oath of allegiance to Spain • evidence of birth in the U.S. Virgin Islands, and the applicant’s statement of residence in the U.S., a U.S. possession or the U.S. Virgin Islands on February 25, 1927; the applicant’s statement indicating residence in the U.S. Virgin Islands as a Danish citizen on January 17, 1917, and residence in the U.S., a U.S. possession or the U.S. Virgin Islands on February 25, 1927, and that he or she did not make a declaration to maintain Danish citizenship; or evidence of birth in the U.S. Virgin Islands and the applicant’s statement indicating residence in the U.S., U.S. possession or territory or the Canal Zone on June 28, 1932 |

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**Interim Guidance for Documentary Evidence of Status as a U.S. Non-Citizen National
(Continued)**

| Category | Documentary Evidence |
|--|--|
| <p>Collective Naturalization (Continued)</p> | <ul style="list-style-type: none"> • evidence of birth in the Northern Mariana Islands, formerly part of the Trust Territory of the Pacific Islands, or Trust Territory of the Pacific Islands citizenship and residence in Northern Mariana Islands, the U.S., or a U.S. territory or possession on November 3, 1986 (Northern Mariana Islands local time), and the applicant’s statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (Northern Mariana Islands local time); • evidence of Trust Territory of the Pacific Islands citizenship, continuous residence in Northern Mariana Islands since before November 3, 1981 (Northern Mariana Islands local time), voter registration before January 1, 1975, and the applicant’s statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (Northern Mariana Islands local time) • evidence of continuous domicile in Northern Mariana Islands since before January 1, 1974, and the applicant’s statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (Northern Mariana Islands local time). <p>Note: If a person entered Northern Mariana Islands as a nonimmigrant and lived in Northern Mariana Islands since January 1, 1974, this does not constitute continuous domicile and the individual is not a U.S. citizen.</p> |
| <p>Derivative Citizenship</p> | <p>If the applicant cannot present 1 of the documents listed in “Primary Evidence” and “Secondary Evidence” in this table, employees should make a determination of derivative U.S. citizenship in the following situations:</p> <ul style="list-style-type: none"> • applicant born abroad to two U.S. citizen parents, evidence of the U.S. citizenship of the parents and the relationship of the applicant to the parents, and evidence that at least 1 parent resided in the U.S. or an outlying possession prior to the applicant’s birth • applicant born abroad to a U.S. citizen parent and a U.S. non-citizen national parent, evidence that 1 parent is a U.S. citizen and that the other is a U.S. non-citizen national, evidence of the relationship of the applicant to the U.S. citizen parent, and evidence that the U.S. citizen parent resided in the U.S., a U.S. possession, American Samoa or Swain’s Island for a period of at least 1 year before the applicant’s birth |

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Interim Guidance for Documentary Evidence of Status as a U.S. Non-Citizen National
(Continued)

| Category | Documentary Evidence |
|---------------------------------------|--|
| Derivative Citizenship (Continued) | <ul style="list-style-type: none"> • applicant born out of wedlock abroad to a U.S. citizen mother, evidence of the U.S. citizenship of the mother, evidence of the relationship to the applicant, and for births on or before December 24, 1952, evidence that the mother resided in the U.S. before the applicant’s birth or, for births after December 24, 1952, evidence that the mother had resided, before the child’s birth, in the U.S. or a U.S. possession for a period of 1 year • applicant born in the Canal Zone or the Republic of Panama, a birth certificate showing birth in the Canal Zone on or after February 26, 1904, and before October 1, 1979, and evidence that 1 parent was a U.S. citizen at the time of the applicant’s birth; or a birth certificate showing birth in the Republic of Panama on or after February 26, 1904, and before October 1, 1979, and evidence that at least 1 parent was a U.S. citizen and employed by the U.S. Government or the Panama Railroad Company or its successor in title. |
| All Other Situations | <p>All other situations where an applicant claims to have a U.S. citizen parent and an alien parent, or claims to fall within 1 of the categories in this table, but is unable to present the listed documentation:</p> <ul style="list-style-type: none"> • if the applicant is in the U.S., refer him or her to the local USCIS office for determination of U.S. citizenship • if the applicant is outside the U.S., refer him or her to the State Department for a U.S. citizenship determination • for adoption of a foreign-born child by U.S. citizen, if the birth certificate shows a foreign place of birth and the applicant cannot be determined to be a naturalized citizen under any of the criteria in this table, obtain other evidence of U.S. citizenship <p>Note: Because foreign-born adopted children do not automatically acquire U.S. citizenship by virtue of adoption by U.S. citizens, refer the applicant to the local USCIS district office for a determination of U.S. citizenship, if the applicant provides no evidence of U.S. citizenship.</p> |

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Interim Guidance for Documentary Evidence of Status as a U.S. Non-Citizen National
(Continued)

| Category | Documentary Evidence |
|----------|---|
| | <ul style="list-style-type: none"> <li data-bbox="459 331 1409 474">• for U.S. citizenship by marriage, if a woman acquired U.S. citizenship through marriage to a U.S. citizen before September 22, 1922, ask for evidence of U.S. citizenship of the husband, and evidence showing the marriage occurred before September 22, 1922 <p data-bbox="505 512 1463 688">Note: If the husband was an alien at the time of the marriage, and became naturalized before September 22, 1922, the wife also acquired naturalized citizenship. If the marriage terminated, the wife maintained her U.S. citizenship, if she was residing in the U.S. at that time and continued to reside in the U.S.</p> <ul style="list-style-type: none"> <li data-bbox="459 737 1463 913">• for applicants with disabilities and nondiscrimination, if an applicant has a disability that limits the applicant’s ability to provide the required evidence of citizenship or nationality (for example, mental retardation, amnesia, or other cognitive, mental, or physical impairment), employees should make every effort to assist the individual to obtain the required evidence. <p data-bbox="505 951 1446 1056">Note: Employees should not discriminate against applicants on the basis of race, national origin, gender, religion, age or disability. See Nondiscrimination Advisory, Attachment 2 to Interim Guidance.</p> |

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***--Information Needed to Request a Land Contract Guarantee**

Note: Exhibit 37 is available in a fillable format at <http://intranet.fsa.usda.gov>. CLICK “FFAS Employee Forms/Publications Site” and CLICK “Find Current Forms Using Our Form Number Search”. For “Form Number”, ENTER “6-FLP Exhibit 37”.

[Name and Address]

[Date]

Dear _____:

Thank you for your interest in the Farm Service Agency’s (FSA) Land Contract Guarantee Program. This program provides certain financial guarantees to the seller of a farm through a land contract sale to a beginning or socially disadvantaged farmer.

To apply for a Land Contract Guarantee:

A. The Seller must complete and submit the enclosed FSA-2680, “Interest in Land Contract Guarantee.”

B. The Buyer must complete and submit the following enclosed forms:

1. FSA-2683, “Request for Land Contract Guarantee Assistance”

2. If the Buyer is an entity:

a. a copy of the entity’s charter or entity agreement (e.g. Articles of Incorporation, Bylaws, certificate or evidence of registration)

b. a resolution adopted by the Board of Directors or entity members authorizing specified officers to apply for and obtain the land contract and execute required debt, security, and other instruments and agreements

3. FSA-2037, “Balance Sheet”, or similar form that provides a current financial statement.

Notes: If the Buyer is an entity a current financial statement is required for each entity member and the entity itself. If there are no individually owned assets, then a husband and wife joint operation may submit a consolidated financial statement.

A current financial statement is not older than 90 days.

4. FSA-2038, “Income and Expenses”, or similar form that provides a farm operating plan.

5. FSA-2002, “Three-Year Financial History”, or similar form that provides the same information. In addition, tax returns for the past three years or each year the Buyer has been in business. If needed, we may ask for supporting documents or more detailed information. If the financial history has been previously provided, complete only for those years not previously provided.

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Information Needed to Request A Land Contract Guarantee (Continued)

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6. FSA-2003, "Three-Year Production History", or similar form that provides the same information, for the past three years or each year the Buyer has been in business. If production history has been previously provided, complete only for those years not previously provided.
7. FSA-2004, "Authorization to Release Information".
8. FSA-2005, "Creditor List".
9. FSA-2302, "Description of Farm Training and Experience".
10. Most recent account statement for credit cards, loans, and other bank accounts. Original documents will be returned to the Buyer.
11. Verification of non-farm income.
12. Credit report fee made payable to the Farm Service Agency for the type of Buyer:
Individual \$ _____ Joint \$ _____ or Commercial \$ _____
13. RD-1940-20, "Request for Environmental Information".
14. AD-1026, "Highly Erodible Land Conservation and Wetland Conservation Certification" for all real estate to be operated.
15. A copy of the proposed land contract.
16. Other

It is not necessary for the Buyer and Seller to submit their forms at the same time; however, the request for a Land Contract Guarantee will not be complete until all the needed forms have been received, and we approve the Seller's choice of the escrow or servicing agent.

Thank you for your interest in the Land Contract Guarantee Program. Please contact this office if you need help. We can help you complete the required forms, explain what information is needed, and answer any questions you may have about the Land Contract Guarantee Program. If we cannot assist you by phone, we will schedule an appointment to meet with you.

Sincerely,

Enclosures

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***--Notification of Application for Land Contract Guarantee Approval and Obligation of Funds**

Note: Exhibit 38 is available in a fillable format at <http://intranet.fsa.usda.gov>. CLICK “FFAS Employee Forms/Publications Site” and CLICK “Find Current Forms Using Our Form Number Search”. For “Form Number”, ENTER “6-FLP Exhibit 38”.

[Buyer's name and address]

[Date]

Dear _____:

This letter notifies you that your application for a Land Contract Guarantee has been approved and funds have been obligated.

Enclosed is a copy of the “Land Contract Agreement for *(insert applicable type of guarantee)* Guarantee” for your review. Please read it carefully as it contains specific conditions and agreements that you will need to abide by.

We will schedule a meeting with you, the seller and the *(escrow/servicing – select as applicable)* agent for *(insert date not to exceed 60 days from the date of approval)* to execute the documents required.

If you have any questions, please contact this office at *(insert address and telephone number)*.

Sincerely

Enclosure

cc: Seller
Escrow/servicing agent

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