

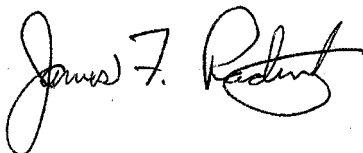
UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

**Special Programs
6-FLP**

Amendment 17

Approved by: Acting Deputy Administrator, Farm Loan Programs



Amendment Transmittal

A Reasons for Amendment

Subparagraph 2 A has been amended to update the list of related handbooks.

Subparagraph 171 D has been amended to update the paragraph reference.

Subparagraph 175 C has been amended to clarify ordering the credit report through FBP.

Subparagraph 178 A has been amended to provide instructions for multiple land contract guarantees.

Subparagraph 179 A has been amended to clarify that the down payment must be cash.

Subparagraph 181 A has been amended to clarify that the maximum loss amount for the prompt payment guarantee can be in excess of 3 annual installments.

Paragraph 190 has been added to provide land contract modification provisions previously in paragraph 191.

Paragraph 191 has been amended to add bankruptcy provisions.

Subparagraph 192 C has been added to provide loss claim processing provisions.

Paragraph 193 has been changed to paragraph 194, and subparagraph B has been amended to reference FSA-2027.

Paragraph 194 has been changed to paragraph 193.

Subparagraph 195 A has been amended to include an example for determining when termination of guarantee can occur.

Exhibit 37 has been amended to update reference to RD 1940-20.

Amendment Transmittal (Continued)

Page Control Chart		
TC	Text	Exhibit
3, 4	1-3, 1-4 5-9, 5-10 [see Note] 8-1, 8-2 8-17, 8-18 8-21, 8-22 8-25, 8-26 8-31 through 8-50 8-51 8-52 (add) 8-53, 8-54 (add)	1, pages 1-4 37, pages 1, 2

Note: This page has been included in this amendment to correct the handbook reference at the bottom of the page. There are no changes to the text.

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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	25-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.
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.
direct loan special servicing and inventory property management	5-FLP.
* * *	* * *
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.

Notes: See RD Instruction 1951-C for information on administrative offset.

RD Instruction 1940-G must be used along with 1-EQ.

B Helpful Links

The Helpful Links web site at

<https://arcticoccean.sc.egov.usda.gov/flp/InformationalLinks?Action=HelpfulLinks&caller=index> provides links to useful web sites.

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)

89 Environmental Requirements (Continued)**D Emergencies**

When emergency circumstances arise that prevent implementing the provisions of this section, follow the provisions in RD Instruction 1940-G, Section 1940.332.

E Monitoring

FSA staff, who normally have responsibility for the post-approval inspection and monitoring of approved projects, shall ensure that mitigation measures that were identified in the approval stage and required to be undertaken to reduce adverse environmental impacts are effectively implemented.

FSA staff shall review the action's approval documents and consult with the preparer of the action's environmental review document before making site visits or requesting project status reports to determine whether there are environmental requirements to be monitored.

- The preparer will directly monitor actions containing difficult or complex environmental special conditions.
- Before certifying that conditions within offers of financial assistance have been fully met, the responsible monitoring staff will obtain the opinion of the preparer for those conditions developed as a result of the environmental review. Satisfactory completion of required mitigation measures will be documented as an addendum to Exhibit 12 of FSA-850 on file with initials of the reviewing official on the addendum.
- Whenever noncompliance with an environmental special condition is detected by FSA, State Environmental Coordinator will be informed immediately and take appropriate steps, in consultation with the responsible program office, to bring the action into compliance.

89 Environmental Requirements (Continued)

F Due Diligence

[7 CFR 773.9(e)] In order to minimize the financial risk associated with contamination of real property from hazardous waste and other environmental concerns, the Agency will complete an environmental risk evaluation of the environmental risks to the real estate collateral posed by the presence of hazardous substances and other environmental concerns.

(1) The Agency will not accept real estate as collateral which has significant environmental risks.

(2) If the real estate offered as collateral contains significant environmental risks, the Agency will provide the applicant with the option of properly correcting or removing the risk, or offering other non-contaminated property as collateral.

The release or presence of a hazardous substance, hazardous waste, or leaking underground storage tank on a property could affect the value of the property that is offered as security for a loan. Furthermore, a borrower with substantial liability associated with hazardous waste contamination or a leaking underground storage tank may indicate a severely diminished ability to repay. Therefore, due diligence will be performed for all new loans involving real estate as security, including real estate offered as additional security. Due diligence will be completed by the County Office by completing the Transaction Screen Questionnaire, which is available from all State Environmental Coordinators.

If FSA determines that the property being offered as security contains possible hazardous waste contamination based on the completion of a Transaction Screen Questionnaire, FSA shall notify the applicant that no further processing of the loan application can take place until 1 of the following occurs:

- the applicant provides an environmental site assessment completed by a qualified environmental professional that shows the property offered for security is not contaminated
- new non-contaminated property is offered as security for the loan or loans
- the contaminated property being offered as security has been fully remediated according to a plan approved by the appropriate regulatory agency
- the contaminated property can be subdivided, thus leaving a non-contaminated property to offer as security.

--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.

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
 - CAIVRS
 - 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 1940, subpart G, of this title;

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

See RD Instruction 1940-G and 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.--*

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).--*

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.--*

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 one 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 FLOO that will identify the loss as a standard guarantee which 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 FLOO.
- 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 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 FLOO 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 FSA-2254 and sent to FLOO.--*

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

- 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
AD-1026	Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification (Assembled as a component with AD-1026 Appendix)		91, 115
CCC-2651	Request for Special Apple Loan Program Assistance		88, 91, 97
CCC-2652	Special Apple Program Promissory Note and Security Agreement		97
FmHA 1940-1	Request for Obligation of Funds - Direct Loans		24, 97, 118, 149
FmHA 1940-21	Environmental Assessment for Class I Action		140, 175
FmHA 1940-22	Environmental Checklist for Categorical Exclusions		140, 175
FSA-440-4	Security Agreement (Chattels and Crops)		150
FSA-440-4A	Security Agreement (Chattels and Crops)		150
FSA-410-1	Request for Direct Loan Assistance		137, 142, 143
FSA 431-2	Farm and Home Plan		142, 145
FSA-440-2 <u>1</u> /	Eligibility Certification or Recommendation		149
FSA-440-32	Verification of Debts and Assets		91, 137, 177
FSA-850	Environmental Evaluation Checklist		89
FSA-1927-1	Real Estate Mortgage for (State)		25, 43, 150
FSA-1927-1M	Mortgage for _____		150

1/ Form is obsolete.

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

Forms (Continued)

Number	Title	Display Reference	Reference
FSA-1927-ID	Real Estate Deed of Trust for _____		150
FSA-1940-38	Request for Lender's Verification of Loan Application		137
FSA-1965-13	Assumption Agreement (Farm Loan Programs)		74
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		91, 137, 178
FSA-2027	Supplemental Payment Agreement		194
FSA-2037	Farm Business Plan Worksheet Balance Sheet		175
FSA-2038	Farm Business Plan Worksheet Projected/Actual Income and Expense		175
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-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
FSA-2661	Request for Emergency Loan for Seed Producers Program		115
FSA-2662	Emergency Loans for Seed Producers Promissory Note and Security Agreement		118

1/ Form is obsolete.

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

Forms (Continued)

Number	Title	Display Reference	Reference
FSA-2663	Subordination Agreement in Favor of the Government Emergency Loans for Seed Producers		117
FSA-2664	Emergency Loans for Seed Producers Program Notice of Claim Assignment		115
FSA-260	Horse Breeder Loan Program Promissory Note		150
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
G-845	Verification Request		86, 111
I-94	Arrival - Departure Record		137
I-151	Alien Registration Receipt Card		86, 111, 137
I-551	Alien Registration Receipt Card		86, 111, 137
I-571	Refugee Travel Document		137
I-688B	Employment Authorization Card		137
I-765	Employment Authorization Document		137
RD-440-9	Supplementary Payment Agreement		184
RD 440-15	Security Agreement (Insured Loans to Individuals)		150
RD 440-22	Promissory Note (Association or Organization)		25

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 Delegations of Authority (Continued)

Forms (Continued)

Number	Title	Display Reference	Reference
RD 442-20	Right-of-Way Easement		25
RD-465-1	Application for Partial Release, Subordination, or Consent		70
RD-465-5	Transfer of Real Estate Security		72
RD 1910-5	Request for Verification of Employment		142, 177
UCC-1	Financing Statement		94, 118

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
HB	Horse Breeder	136, 137, 144
HBL	Horse Breeder Loan	1, Part 7, Ex. 4
IMP	Individual-type Minor Program	Part 4, Ex. 2
INS	Immigration and Naturalization Service	86, 111, 137
ITLAP	Indian Tribal Land Acquisition Program	11, 41, 42
MRLS	Mare Reproductive Loss Syndrome	136, 138, 144, Ex. 16
NHPA	National Historic Preservation Act	89, 114, 115
NOFA	Notice of Funds Availability	1, Part 7
SALP	Special Apple Loan Program	1, 2, 86-88, 97
SDMS	State Directive Management System	67
WLS	workload scheduling	142, 143, 149

Delegations of Authority

None

***--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.

--*

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

--*