

Part 11 General Servicing Responsibilities**Section 1 General Servicing Requirements****262 Relationships and Responsibilities (7 CFR 762.140(a))****A Lender Role**

Lenders are responsible for servicing the entire loan in a reasonable and prudent manner, protecting and accounting for collateral, and remaining the mortgagee or secured party of record.

The lender cannot enforce the guarantee to the extent that a loss results from a violation of usury laws or negligent servicing.

The lender is responsible for:

- servicing their guaranteed loans as they service any other loan in their portfolio
- complying with all FSA program requirements.

FSA servicing regulations are designed to accommodate standard agricultural lending practices, so lenders can be assured they meet program regulations if they:

- service guaranteed loans in a prudent, traditional manner
- comply with specific program eligibility guidelines and loan limits.

B FSA Role

FSA is responsible for working with lenders to ensure that all servicing and reporting requirements are met. FSA shall:

- concur on feasible servicing requests made by the lender
- collect all necessary servicing reports required of the lender
- review a percentage of the lender's loan files annually to assess program compliance.

FSA will work closely with SEL's in loan servicing. SEL's may be new to the FSA guaranteed loan program and, therefore, may require additional assistance and guidance. CLP lenders will be monitored less, since these lenders have working knowledge of the program and should need minimal guidance and oversight. PLP lenders have proven experience with the guaranteed loan program and servicing guaranteed loans. PLP lenders will be provided maximum flexibility to service guaranteed loans and minimal supervision by FSA.

262 Relationships and Responsibilities (7 CFR 762.140(a)) (Continued)**B FSA Role (Continued)**

--When a lender attains PLP status, the lender will service its existing guarantee portfolio under the provisions of its CMS summary and FSA-1980-38. Servicing requirements that were included in FSA-1980-15's for loans made before the lender was a PLP lender may be retained upon mutual agreement between the lender and FSA.--

263 Borrower Supervision (7 CFR 762.140(b))**A Overview**

Lenders must supervise guaranteed loan borrowers in a manner similar to their supervision of regular loan customers. Lenders are expected to apply standard, agricultural loan servicing principles to their guaranteed customers.

Examples of standard borrower supervision include the following:

- maintaining regular contact with the farmer
- periodically discussing the farmer's goals and monitoring progress in meeting these goals
- accounting for loan proceeds by monitoring expenditures and discussing how these will facilitate the achievement of the operator's expressed goals
- monitoring collateral and tracking the sale of security.

B Lender Supervision of Borrowers

The lender's responsibilities regarding borrower supervision include, but are not limited to the following:

- **ensuring loan funds are not used for unauthorized purposes**
- **ensuring borrower compliance with the covenants and provisions contained in the promissory note, loan agreement, mortgage, security instruments, any other agreements, and this part**

Note: Any violations which indicate non-compliance on the part of the borrower, must be reported, in writing, to both the Agency and the borrower.

- **ensuring the borrower is in compliance with all laws and regulations applicable to the loan, the collateral, and the operations of the farm**

263 Borrower Supervision (7 CFR 762.140(b)) (Continued)

B Lender Supervision of Borrowers (Continued)

- receiving all payments of principal and interest on the loan as they fall due and promptly disbursing to any holder its pro-rata share according to the amount of interest the holder has in the loan, less only the lender's servicing fee
- performing an annual analysis of the borrower's financial condition to determine the borrower's progress.

--(7 CFR 762.140(d)) When a lender receives a payment from the sale of encumbered property, loan installments will be paid in the order of lien priority. When a payment is received from the sale of unencumbered property or other sources of income, loan installments will be paid in order of their due date. Agency approval is required for any other proposed payment plans.--

The loan application and other loan specific documents, including FSA-1980-15, will detail the purposes and conditions for the loan. Lenders must inform FSA of any changes in the use of loan funds. SEL's must first receive FSA concurrence before allowing a change in the use of loan funds. If a borrower uses loan funds improperly, the lender must take steps to correct the violation. If improper use of loan funds results in a loss claim, lenders must make every effort to collect the loan's remaining outstanding debt and minimize loss to FSA.

Failure by the lender to report a borrower violation to FSA in a timely manner could result in the reduction or denial of a loss claim.

Borrower's progress is demonstrated by an annual improvement in balance sheets and the meeting of any interim goals. See paragraph 265.

The lender shall obtain a perfected security interest in the loan collateral. Lenders must obtain secure liens on all collateral as outlined in FSA-1980-15. A loss claim may be reduced if a lender failed to perfect the loan security.

C FSA Monitoring of Borrower Supervision

If FSA discovers that a lender does not have adequate procedures in place to ensure sound borrower supervision, the Authorized Agency Official should inform the lender in writing of the deficiency and, if necessary, require the lender to submit a plan outlining the actions they will take to correct the deficiency. Failure on the part of the lender to submit a plan or take action to correct the deficiency may result in denial of future loan applications or revocation of status.

For CLP and PLP lenders, any finding of a major deficiency should be forwarded to SED for action.

264 Servicing Collateral (7 CFR 762.142(a))

A Lender Servicing of Collateral

The lender's responsibilities regarding servicing collateral include, but are not limited to, the following:

- **obtain income and insurance assignments when required**
- **ensure the borrower has or obtains marketable title to the collateral**
- **inspect the collateral as often as deemed necessary to properly service the loan**
- **ensure the borrower does not convert loan security**
- ***--ensure the proceeds from the sale or other disposition of collateral are accounted--*
for and applied in accordance with the lien priorities on which the guarantee is
based or used for the purchase of replacement collateral**
- **ensure the loan and the collateral are protected in the event of foreclosure,
bankruptcy (Part 13), receivership, insolvency, condemnation, or other litigation**
- **ensure taxes, assessments, or ground rents against or affecting the collateral are
paid**
- **ensure adequate insurance is maintained**
- **ensure that insurance loss payments, condemnation awards, or similar proceeds are
applied on debts in accordance with lien priorities on which the guarantee was
based, or used to rebuild or acquire needed replacement collateral.**

These requirements spell out the standard servicing of collateral responsibilities for every FSA-guaranteed loan; however, the lender and the Authorized Agency Official should refer to the specific loan documents, such as FSA-1980-15, for additional servicing requirements on a loan-by-loan basis.

264 Servicing Collateral (7 CFR 762.142(a)) (Continued)**B FSA Responsibilities**

Authorized Agency Officials can offer assistance to lenders in this area of servicing. Assistance may include the following:

- advising the lender when there is concern that the lender is overestimating or underestimating the value of collateral
- regularly asking the lender about the condition of the borrower's collateral, especially security that is particularly valuable or volatile
- performing cross checks to verify that UCC filings have been made for all collateral
- informing the lender of deficiencies discovered during the annual review and proposing modifications in procedures to resolve the deficiencies.

C FSA Monitoring of Collateral Servicing

If FSA discovers that a lender does not have adequate procedures in place to ensure that the collateral is being serviced to FSA standards, the Authorized Agency Official should inform the lender in writing of the deficiency and, if necessary, require the lender to submit a plan outlining the actions they will take to correct the deficiency. Failure on the part of the lender to submit a plan or take action to correct the deficiency may result in denial of future loan applications or revocation of status until the deficiency is resolved.

For CLP and PLP lenders, any finding of a major deficiency should be forwarded to SED for action.

265 Annual Analysis of Borrower's Financial Condition (7 CFR 762.140(b)(5))**A Overview**

The lender must perform an annual financial analysis of the borrower within 90 calendar days of the end of the borrower's operating cycle. SEL's and CLP lenders must submit documents to FSA in support of this analysis. PLP lenders must perform a financial analysis and report on a borrower's financial progress according to the terms of their FSA-1980-38. This paragraph describes the specific requirements for SEL's and CLP lenders.

PLP lenders will perform an annual analysis in accordance with the requirements established in the Lender's Agreement.

B Financial Analysis of Borrower by SEL

The annual analysis will include:

- **for loans secured by real estate only, the analysis for standard eligible lenders must include a balance sheet**
- **for loans secured by chattels, all lenders will review the borrower's progress regarding business goals, trends, and changes in financial performance, and compare actual to planned income and expenses for the past year**
- **an account of the whereabouts or disposition of all collateral**
- **a discussion of any observations about the farm business with the borrower.**

265 **Annual Analysis of Borrower's Financial Condition (7 CFR 762.140(b)(5)) (Continued)**

C Documents Submitted to FSA by SEL in Support of Annual Analysis

[7 CFR 762.141(d)] SEL shall provide the following to FSA:

- **borrower's Balance Sheet and Income and Expense Statement for the previous year, *--if applicable--***
- **for lines of credit, the cash flow for the borrower's operation that projects a feasible plan or better for the upcoming operating cycle**

Note: The standard eligible lender must receive approval from the Agency before advancing future years' funds.

- **an annual farm visit report or collateral inspection.**

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Submission Summary	
Real Estate	Balance Sheet and Farm Visit Report Income and Expense Statement from previous year only if loan was also secured by chattels
Term Chattels	Balance Sheet and Farm Visit Report Income and Expense Statement
Lines of Credit	Balance Sheet and Farm Visit Report Income and Expense Statement Projected Cash Flow

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These documents should be submitted to the Authorized Agency Official within 30 calendar days of the completion of the annual financial analysis.

D Annual Analysis of Borrower by CLP Lender

*** * * CLP lenders will determine the need for the annual analysis based on the financial strength of the borrower and document the file accordingly.**

For loans secured by chattels, all lenders will review the borrower's progress regarding business goals, trends and changes in financial performance, and compare actual to planned income and expenses for the past year.

CLP lenders shall maintain an account of the whereabouts or disposition of all collateral.

--The accounting will occur in the form of a documented annual farm visit report or collateral inspection report for all chattel loans.--

CLP lenders shall document a discussion of any observations about the farm business with the borrower.

265 Annual Analysis of Borrower's Financial Condition (7 CFR 762.140(b)(5)) (Continued)

D Annual Analysis of Borrower by CLP Lender (Continued)

If the lender determines that an analysis should be performed, the analysis may be based on a comparison of current and past balance sheets. If a balance sheet analysis is not performed by the lender, information that confirms the borrower is strong financially and reasons why the lender is confident of the borrower's progress must be provided by the lender. Examples of information that would indicate the financial strength of the borrower would include deposit or investment accounts with the lender.

E Documents Submitted to FSA by CLP in Support of Annual Analysis

[7 CFR 762.141(c)] CLP lenders shall submit the following to FSA in support of their annual analysis:

- a written summary of the lender's annual analysis of the borrower's operation

Note: This summary should describe the borrower's progress and prospects for the upcoming operating cycle. This annual analysis may be waived or postponed if the borrower is financially strong. The summary will include a description of the reasons an analysis was not necessary.

- for lines of credit, an annual certification stating that a cash flow projecting at least a feasible plan has been developed, that the borrower is in compliance with the provisions of the line of credit agreement, and that the previous year income and loan funds and security proceeds have been accounted for.

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Submission Summary	
Real Estate	Either a summary of lender's analysis or summary as to why financial strength makes analysis unnecessary.
Term Chattels	Either a summary of lender's analysis or summary as to why financial strength makes analysis unnecessary.
Lines of Credit	Certification that cash flow was obtained Borrower in compliance with lender's agreement Lender has accounted for previous year's income and loan funds and security proceeds are accounted.

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These documents must be submitted to the Authorized Agency Official within 30 calendar days of the completion of the annual financial analysis.

265 **Annual Analysis of Borrower's Financial Condition (7 CFR 762.140(b)(5)) (Continued)****F FSA Review of Annual Financial Analyses**

Upon receiving the annual borrower financial analysis supporting documentation from SEL, the Authorized Agency Official should review the documentation for the following:

- indications of borrower financial distress or major changes in the borrower's financial status from the previous year
- changes in the appearance of the operation or collateral. If the Authorized Agency Official notices any problems, he or she should call the lender to discuss these concerns.

For borrowers with LOC, FSA must determine at this time whether or not LOC should be renewed for the next year.

Upon receiving the annual borrower financial analysis supporting documentation from a CLP lender, the Authorized Agency Official should review the documentation of the borrower's progress on loan payback. The narrative should summarize factors of financial strength which support the lender's determination that further analysis is unnecessary, if applicable.

--After reviewing the annual financial analyses submitted by the SEL and CLP lender, the Authorized Agency Official must document their review of the annual financial analysis by making an entry in the borrower's County Office guaranteed loan file. To the extent the-- Authorized Agency Official has concerns about a specific borrower or lender's management and supervision of FSA-guaranteed loans in general, the Authorized Agency Official should communicate these concerns to the lender in writing.

Copies of correspondence, including authorization to advance LOC funds, will be placed in the borrower's Agency guaranteed loan file. A copy of any correspondence sent to a lender regarding their management of a loan will be placed in the lender's file and, if the deficiency is major, a copy forwarded to SED. The borrower's file will be marked for necessary follow up actions.

266 Lender Reporting Requirements (7 CFR 762.141)**A Overview**

This section covers the general reporting requirements for all lenders. These reporting requirements are not tied to any specific servicing action. Many servicing actions require additional reports and updates from lenders, which this paragraph does not cover. See Exhibit 15 for a checklist of all lender reporting requirements.

B General Reporting Requirements

Lenders are responsible for providing the local Agency credit officer with all of the following information on the loan and the borrower:

- **When the guaranteed loan becomes 30 days past due, and following the lender's meeting or attempts to meet with the borrower, all lenders will submit the appropriate Agency form showing guaranteed loan borrower default status. The form will be resubmitted every 60 days until the default is cured either through restructuring or liquidation.**
- **All lenders will submit the appropriate guaranteed loan status reports as of March 31 and September 30 of each year.**
- **PLP lenders will submit additional reports as required in their Lender's Agreement.**
- **A lender receiving a final loss payment must complete and return an annual report on its collection activities for each unsatisfied account for 3 years following payment of the final loss claim.**

Lenders shall submit FSA-1980-44 to comply with the requirement to report borrower defaults. This report is used first to notify FSA that a loan is in default, second, as a progress report on the lender's attempt to make the loan current again, and third, once a loan is brought current, as a means to notify FSA of the new loan terms and conditions. See Part 12 for more details on this reporting requirement.

Lenders should submit FSA-1980-41 to comply with the requirement to submit a semi-annual loan status report. This report provides an update on the borrower's progress on loan payback and the loan's terms and conditions.

266 Lender Reporting Requirements (7 CFR 762.141) (Continued)**B General Reporting Requirements (Continued)**

Lenders should submit FSA-1980-26 to satisfy the requirement for an annual report on collection activities. See Part 14 for more details on this reporting requirement.

C FSA Monitoring of Lender Reports

The Authorized Agency Official should carefully review reports received from lenders, noting changes from previous reports. If the lender is not sending these reports in a timely manner, the Authorized Agency Official should document attempts to obtain the reports and communicate problems to SED.

--The Authorized Agency Official will enter information from FSA-1980-41 into GLS when FSA-1980-41 is received from the lender. The first FSA-1980-41 for a loan will be completed for the second semi-annual reporting cycle after the loan was closed. FSA-1980-41 will not be required on a loan that was closed within the past 6 months.--

The Authorized Agency Official should review the lender's semi-annual FSA-1980-41 to see if it indicates that the loan is in good standing. If the principal balance has not been reduced in over a year, the accrued interest balance appears inordinately large, the interest rate does not comply with the promissory note, or other concerns, the issue should be discussed with the lender. If necessary, the discussion should be followed by a letter requesting that the account be corrected and a new FSA-1980-41 submitted.

An indication on FSA-1980-41 that the loan is past due will not place the account in default in FSA's records. If the lender has indicated that an account is past due, and FSA-1980-44 has not been submitted, the Authorized Agency Official shall contact the lender and request that FSA-1980-44 be submitted if the account will not be brought current within a few days.

*--Entering information from FSA-1980-44, which shows a loan has been brought to a current status, will remove that loan from a delinquency status; however, it will not change the amount the loan payments are shown as Ahead/Behind. The Authorized Agency Official will prepare an updated FSA-1980-41, using the information from FSA-1980-44, and process into GLS. If the information on FSA-1980-41 shows the loan as current, and the amount Ahead/Behind is shown as zero, the management reports will reflect the correct status of the loan.

See Part 12 for other FSA actions regarding FSA-1980-44.--*

See Part 14 for FSA actions regarding FSA-1980-26.

267 FSA Loan Servicing Responsibilities

A Overview

Authorized Agency Officials will be FSA's primary point of contact with lenders on a day-to-day basis. Authorized Agency Officials must ensure that lenders are appropriately managing their guaranteed loans, and submitting all required reports on time. In cases where lenders may have deficiencies in loan servicing, the Authorized Agency Official should provide loan servicing guidance and assistance.

The purpose of performing lender file reviews is to protect the guarantee, preserve lender status, and minimize losses and the need for adjustments to loss claims.

B Lender Loan Files Review Priorities

--For each SEL, FSA will annually review the files of 40 percent of the lender's outstanding guaranteed OL and/or OL-LOC borrowers, unless the 40 percent requirement would result in borrowers being reviewed who were reviewed the previous year. If the 40 percent requirement would result in some of the same borrowers being subject to review, then, for those borrowers, the review will be every other year. SEL files for FO-only borrowers will be reviewed within 3 years of the date the loan is closed and subsequently if the loans become nonperforming. For each CLP and PLP lender, FSA must annually review the-- files of 20 percent of the lender's outstanding guaranteed loan borrowers. If the file reviews for a PLP lender have found no major deficiencies during the first 3 years of reviews, the frequency of file reviews may be reduced to biennially, and the number of files reviewed may be reduced to a minimum of 5 files, or 10 percent of the lender's loans, whichever is greater. For lenders processing guaranteed loans in more than 1 State, the file reviews should be done in the State where the lender is headquartered, and other States in the lender's service area may send personnel to assist in the review.

Loans are selected for review according to the following priorities:

- loans receiving consideration for rescheduling, deferral, writedown, transfer and assumption, or substitution of lender
- delinquent loans or loans which the lender or FSA has identified as high risk
- loans in which the funds were used to refinance the lender's own debt
- the most recent loans closed by the lender and not yet reviewed
- other loans.

267 FSA Loan Servicing Responsibilities (Continued)

B Lender Loan Files Review Priorities (Continued)

FSA-1980-03 and FSA-1980-04 may be used to document the lender file reviews. All questions on each FSA-1980-03 and FSA-1980-04 do not require completion for each file reviewed, as long as reviews are sufficient to document that lenders are meeting the underwriting, origination, and servicing requirements of their FSA-1980-38's and this handbook. In addition to the lender's loan file, a copy of the loan account ledger should be obtained and reviewed. Additional information may be requested and reviewed by FSA, if necessary, based on deficiencies noted in the file, in loss claim reviews, or as suggested by other parties. SED shall determine how the file review requirement will be met in their State.

C Multi-State PLP Lender File Review

Where PLP lenders are approved to make and service loans in multiple States, it may be beneficial to both FSA and the lender to conduct a multi-State file review to meet the file review requirement. This review can benefit:

- FSA by:
 - helping to lead toward a more consistent handling of the reviews and the associated findings
 - having an opportunity to identify and correct inconsistent practices of the lender or FSA
- lenders by:
 - gaining a better understanding of across-the-board FSA expectations of the lender
 - having minimal disruption to their State operations as a result of FSA file reviews.

To ensure that multi-State reviews are given full consideration, the following procedures will be followed.

- *--In January of each year, the National Office will contact each lender that has PLP status in a minimum of 3 States and the appropriate States in which that lender has PLP status. This contact will determine, based upon the lender and the States' opinion, whether a multi-State review is necessary. If it is determined that a multi-State review is necessary, the National Office will take the lead in contacting the lender and coordinating the review. Multi-State reviews may be scheduled at any time during the year.--*

267 FSA Loan Servicing Responsibilities (Continued)**C Multi-State PLP Lender File Review (Continued)**

- In January of each year, the National Office will provide a list of lenders that have PLP status in only 2 States to appropriate Farm Loan Chiefs. Farm Loan Chiefs will be responsible for contacting each other to determine whether a multi-State review is necessary. State Offices will take the lead in coordinating the reviews. Farm Loan Chiefs will determine review participants.

The multi-State review will not alleviate the lender of their responsibility to provide Authorized Agency Officials access to any particular file or files of the lender if in the Authorized Agency Official's opinion an additional review is necessary.

D Authorized Agency Official Review of PLP Lender Loan Files

--PLP loan file reviews will be documented by completing either FSA-1980-04 or a review checklist based on the individual lender's CMS. All review checklists will be either prepared or approved by the National Office. The review of PLP loan files will be based on the-- terms and conditions specified in FSA-1980-38. The following questions should be considered during the loan file review.

- Do the files contain sufficient information to document that the underwriting and servicing was consistent with FSA-1980-38?
- Were servicing actions implemented in a manner consistent with FSA-1980-38?
- Was servicing prudent and reasonable?

E Authorized Agency Official Response to Loan File Review

During the lender loan file reviews, the Authorized Agency Official shall hold an entrance and exit conference with the lender. At the entrance conference, the Authorized Agency Official will outline the purpose of the review and request any information that will be required to complete the review. At the exit conference, the Authorized Agency Official will discuss with the lender any deficiencies as well as the lender's accomplishments. The Authorized Agency Official will forward a letter to the lender outlining the findings of the loan file review. Letters or reports from lender visits and loan file reviews must be filed according to 25-AS, Exhibit 40.5, with copies forwarded to DD. If the review reveals frequent deficiencies, a report should be forwarded to SED.

267 FSA Loan Servicing Responsibilities (Continued)**F Authorized Agency Official Review of Loan Servicing Reports Provided by Lender**

The Authorized Agency Official is responsible for obtaining all required information from lenders regarding the servicing of guaranteed loans. This includes the annual financial analysis performed to determine the borrower's progress on loan payback and goal achievement (paragraph 265), loan status reports (paragraph 266), and all other materials submitted to FSA, including requests by lenders to perform certain servicing actions.

G Authorized Agency Official Approval Authority

Authorized Agency Officials can approve the following servicing actions:

- alterations in loan conditions that do not prejudice the government's interest
- replacement of collateral
- the use of proceeds from the disposition of collateral.

H DD Servicing Responsibilities

DD servicing responsibilities include:

- providing guidance and assistance to the Authorized Agency Official in monitoring guaranteed loans
- reviewing a sample of lender visit reports and loan reviews, making recommendations or comments, and forwarding reports of deficiencies to SED
- make recommendations to the Authorized Agency Official on all delinquent loans
- conducting other servicing actions as directed by SED.

267 FSA Loan Servicing Responsibilities (Continued)**I SED Servicing Responsibilities**

SED's have broad management responsibilities for the guaranteed loan program. SED servicing responsibilities include, but are not limited to, the following:

- review deficiencies identified by the Authorized Agency Official and provide recommendations for resolution
- perform an annual review of each lender's CLP and PLP status, and if the lender is found to be deficient in meeting the minimum criteria, then upon notification to the lender, remove the status

***--Note:** For PLP lenders, the decision to remove PLP status must be made in the National Office after reviewing SED's recommendation.

- perform appraisal reviews according to 1-FLP, paragraph 143

Note: See 1-FLP, Part 6 for additional guidance on appraisal review issues.--*

- maintain a lender file for each guaranteed lender in the State Office.

J Addressing Deficiencies

If deficiencies in loan servicing are detected by FSA, the Authorized Agency Official will work with the lender to correct any problems. If the lender fails to correct a major loan servicing deficiency, and the deficiency results in a loss, the loss claim may be reduced or denied.

Subparagraph 52 H contains the definition of major and minor deficiencies. Refer to paragraphs 48 and 54 for follow-up actions and consequences of not correcting deficiencies for SEL's and PLP lenders, respectively.

K MOU Between FSA and FDIC

If a lender who participates in FSA's Guaranteed Farm Loan Programs fails, FDIC may, as Receiver, assume responsibility for FSA-1980-15, FSA-1980-27, and/or FmHA-449-34 for all guaranteed loans to which the closed bank was a party.

Exhibit 16 outlines the responsibilities of FSA and FDIC in such cases.

268-277 (Reserved)

Section 2 General Servicing Actions

278 Subordination of Guaranteed Loan Security (7 CFR 762.142)

A Overview

*** * * The lender may not subordinate its interest in property which secures a
*--guaranteed loan except as follows:--***

- **the lender may subordinate its security interest in crops, feeder livestock, livestock offspring, or livestock products when no funds have been advanced from the guaranteed loan for their production, so a lender can make a loan for annual production expenses**
- ***--the lender may, with written Agency approval, subordinate its interest in basic security in cases where the subordination is required to allow another lender to refinance an existing prior lien, no additional debt is being incurred, and the lender's security position will not be adversely affected by the subordination--***
- **the Agency's National Office may provide an exception to the subordination prohibition if such action is in the Agency's best interest.**

However, in no case can the loan made under the subordination include tax exempt financing.

B Lender Request for Subordination of Guaranteed Loan Security

The local Authorized Agency Official may approve a lender's request to subordinate crops, feeder livestock, livestock offspring, milk, produce, and other normal income security that were not produced through advances made under the guaranteed loan, to allow a borrower to obtain unguaranteed annual operating credit. Multi-year assignments of FSA program payments will not be subordinated. However, in those cases where normal income security is being subordinated so another lender can make a loan for annual production expenses, any amount that exceeds the guaranteed loan payment for that year may be released.

278 Subordination of Guaranteed Loan Security (7 CFR 762.142) (Continued)

B Lender Request for Subordination of Guaranteed Loan Security (Continued)

FSA discourages subordination of real estate, equipment, and other basic security and will ~~not~~ provide regulatory approval authority at levels lower than DAFLP, except in cases where the subordination is required to allow another lender to refinance an existing prior lien the local authorized agency official will approve the subordination, provided:

- no additional debt is being incurred
- the lender's security position will not be adversely affected by the subordination.

When SED determines that the subordination of basic security for any other purpose is in the best interest of the Agency and the borrower, the request shall be forwarded to the National Office for DAFLP approval. Subordination of basic security will not be approved simply--* to allow the operation to expand, or to allow a lender to secure an operating loan with basic security. The request should contain:

- a description of the transaction including the use of the funds to be obtained through the subordination
- explanation of the borrower's cash flow before and after the proposed subordination documenting the improvement to be attained
- certification that the guaranteed loan will still be secured after the subordination based on a current appraisal

Note: If the subordination request is to refinance existing real estate debt and no additional funds are provided, an appraisal is not required.

- an explanation of how the subordination is necessary to keep the borrower in business, or otherwise how the Government will benefit from the subordination, other than through conservation of loan funds.

Agency refusal to grant an exception to published regulations is not appealable.

279 Subordination of Direct Loan Security (7 CFR 762.142(c))

A Direct Loan Subordination When Guaranteed Loan Is Being Made

The Agency may subordinate its security interest on a direct loan when a guaranteed loan is being made if, as appropriate, the requirements of the regulations § 1962.30 of FmHA Instruction 1962-A of this chapter and § 1965.12 of FmHA Instruction 1965-A governing Agency direct loan subordinations are met and only in the following circumstances:

- **to permit a guaranteed lender to advance funds and perfect a security interest in crops, feeder livestock, livestock offspring, or livestock products, such as milk, eggs, wool, etc.**
- **when the lender requesting the guarantee needs the subordination of the Agency's lien position to maintain its lien position when servicing or restructuring**
- **when the lender requesting the guarantee is refinancing the debt of another lender and the Agency's position on real estate security will not be adversely affected**
- **to permit a Line of Credit to be advanced for annual operating expenses.**

B Direct Loan Subordination to Secure LOC

The Agency may subordinate its basic security in a direct loan to permit guaranteed line of credit only when both of the following additional conditions are met.

- **The total unpaid balance of the direct loans is less than or equal to 75 percent of the value of all of the security for the direct loans, excluding the value of growing crops or planned production, at the time of the subordination. The direct loan security value will be determined by an appraisal. The lender requesting the subordination and guarantee is responsible for providing the appraisal and may charge the applicant a reasonable appraisal fee.**
- **The applicant cannot obtain sufficient credit through a conventional guaranteed loan without a subordination.** Before approving a combination guaranteed loan and subordination, the local loan approval official will document that the applicant requested a Contract of Guarantee - LOC through at least 1 participating lender. If the local loan approval official has information available that supports a conclusion that credit is not available without a subordination, documentation in the case file will be sufficient to verify that other credit is not available.

280 Partial Releases (7 CFR 762.142(b))

A Overview

A partial release is the release of a portion of security used as collateral for a loan.

B Lender Request for Partial Release

A lender may release guaranteed loan security without FSA concurrence as follows:

- **when the security item is being sold for market value and the proceeds will be applied to the loan in accordance with lien priorities**

Note: In the case of term loans, proceeds will be applied as extra payments and not
*--as a regular installment on the loan. Security will not be released for the
purposes of providing collateral for another loan.--*

- **the security item will be used as a trade-in or source of down payment funds for a like item that will be taken as security**

Note: Agency input may be requested when there is a question of whether a reasonable value is being obtained for the security.

- **the security item has no present or prospective value.**

Note: Older security items that are now junk or obsolete may be left off of the security agreement when it is updated. Regardless, proceeds from the sale of such items as scrap or salvage should be applied to the loan as an extra payment.

A partial release of security may be approved in writing by the Agency upon the lender's request when:

- **proceeds will be used to make improvements to real estate that increase the value of the security by an amount equal to or greater than the value of the security being released**

Example: A borrower may sell a parcel of real estate to provide funds for construction of a dwelling.

280 Partial Releases (7 CFR 762.142(b)) (Continued)

B Lender Request for Partial Release (Continued)

- **--security, other than significant income generating property, will be released outright,--* with no consideration, but the total unpaid balance of the guaranteed loan is less than or equal to 75 percent of the value of the security for the loan after the release, excluding the value of growing crops or planned production, based on a current appraisal of the security**
- **significant income generating property will not be released unless it is being replaced, and business assets will not be released for use as a gift or any similar purpose**

Note: The release must serve a purpose other than to simply allow a borrower to obtain clear title to security items. Cropland, significant machinery, and business assets will not be released, unless it is being replaced, proceeds are being used for authorized loan purposes, or the borrower's cash flow or security position is being improved.

- **Agency concurrence is provided in writing to a lender's written request.**

Note: Standard eligible lenders and CLP lenders will submit the following to the Agency:

- **a current balance sheet on the borrower**
- **a current appraisal of the security**

Note: Unless specifically requested by the Agency, the lender will not be required to provide an appraisal of any real estate security being released. **Based on the level of risk and estimated equity involved, the Agency shall determine what security needs to be appraised. Any required security appraisals must meet the requirements of § 762.127.**

- **a description of the purpose for the release**
- **any other information requested by the Agency to evaluate the proposed servicing action.**

280 Partial Releases (7 CFR 762.142(b)) (Continued)**C FSA Response to Request for Partial Release**

Written consent of any prior or junior lien holder must be obtained and delivered to FSA if any proceeds are not applied according to lien priority.

A partial release will not be allowed if it would result in the borrower being released from loan liability.

D Reviewing Requests for Partial Releases

FSA shall review and approve or reject the request and notify SEL within 30 calendar days, and CLP and PLP lenders within 14 calendar days, from receipt of a complete request for servicing.

When reviewing a lender's request for a partial release, the Authorized Agency Official should carefully consider any partial release intended as a gift. In all instances, the Authorized Agency Official should assess whether or not the release of land will affect the overall value of the remaining security. In addition, the Authorized Agency Official shall determine whether an appraisal of security is necessary based on risk and perceived equity involved in the release. If there is a question on the value of the security, the Authorized Agency Official should request an appraisal. The appraisal must be paid for by the lender or borrower and meet the requirements of Part 8, Section 4, Subsection 3.

The lender will provide the Agency copies of any agreements executed to carry out the servicing action. PLP lenders will request servicing approval in accordance with their
***--agreement with the Agency at the time of PLP status certification.** Approval of requests forwarded to DAFLP for special consideration may be delayed beyond 30 calendar days.--*

281 Transfers and Assumptions (7 CFR 762.142(d))**A Overview**

A transfer and assumption is an action whereby a new, eligible guaranteed loan applicant assumes an existing guaranteed loan. The transfer and assumption process is very similar to the application and approval of a new loan.

B Lender Request for a Transfer and Assumption

For standard eligible and CLP lenders, the servicing action must be approved by the Agency in writing. For standard eligible and CLP lenders, the transferee must apply for a loan in accordance with § 762.110 (Part 5), including a current appraisal, unless the lien position of the guaranteed loan will not change, and any other information requested by the Agency to evaluate the transfer and assumption.

PLP lenders may process transfers and assumptions in accordance with their agreement with the Agency.

Any required security appraisals must meet the requirements of § 762.127 (Part 8, Section 4, Subsection 3).

Lenders must also submit a request to release the transferor, guarantor, or any third party from liability according to paragraph 285.

C Conditions and Requirements for a Transfer and Assumption

The following limitations apply to transfers and assumptions.

- **The transferee must meet the eligibility requirements and loan limitations for the loan being transferred, all requirements relating to loan rates and terms, loan security, feasibility, and environmental and other laws applicable to a loan applicant under this subpart.**
- **The lender will use its own assumption agreements or conveyance instruments providing they are legally sufficient to obligate the transferee for the total outstanding debt.**

281 Transfers and Assumptions (7 CFR 762.142(d)) (Continued)

C Conditions and Requirements for a Transfer and Assumption (Continued)

- **The lender must give any holder notice of the transfer. If the rate and terms are changed, written concurrence from the holder is required.**

Additional limitations that apply to transfers and assumptions are as follows:

- the market value of the security being acquired, plus any additional security the transferee proposes to give, must be adequate to secure the balance of the guaranteed loan plus any prior liens
- at the time of the assumption, the indebtedness of the transferee may not exceed the limits outlined in subparagraph 244 A.

D FSA Response to Request for Transfer and Assumption

The Agency will review, approve or reject the request in accordance with the time frames in § 762.130 of this part (Part 6).

The Agency approves the transfer and assumption by executing a modification of the guarantee to designate the party that assumed the guaranteed debt, the amount of the debt at the time of the assumption, including interest that is being capitalized, and any new loan terms, if applicable.

The Authorized Agency Official will execute FSA-1980-84 and provide it to the lender for attachment to the original FSA-1980-27.

The Agency will agree to releasing the transferor or any guarantor from liability only if
--the requirements of § 762.146(b) (paragraph 285) are met.--

The Authorized Agency Official should treat a request for a transfer as an application for a new guaranteed loan. If all of the program requirements are met the transfer and assumption should be approved by FSA.

The Authorized Agency Official will attach the assumption agreement to FSA-1980-27 or
 --FmHA-449-34. To notify KCFO, St. Louis of the assumption, complete and forward--
 FSA-1980-86. Guaranteed loan fees are not required for transfer and assumption.

The lender will provide the Agency copies of any agreements executed to carry out the servicing action.

282 Additional Loans or Advances (7 CFR 762.146(a))**A Additional Loans or Advances**

SEL and CLP lenders must not make additional loans or advances without prior written approval of the Agency, except as provided in the borrower's Loan or Line of Credit Agreement.

The PLP lender may make additional loans or advances in accordance with the lender's agreement with the Agency.

283 Emergency Advances (7 CFR 762.146(a))**A Issuance of an Emergency Advance Under LOC**

In cases of a guaranteed line of credit, lenders may make an emergency advance when a line of credit has reached its ceiling. The emergency advance will be made as an advance under the line and not as a separate note. The lender's loan documents must contain sufficient language to provide that any emergency advance will constitute a debt of the borrower to the lender and be secured by the security instrument. The following conditions apply:

- **the loan funds to be advanced are for authorized operating loan purposes**
- **the financial benefit to the lender and the Government from the advance will exceed the amount of the advance**
- **the loss of crops or livestock is imminent unless the advance is made.**

B Lender Request for an Emergency Advance

SEL's and CLP lenders must obtain written permission from the Authorized Agency Official before an emergency advance on LOC can be made.

Emergency advances are authorized for ongoing operations and may be used for OL's with a *--1-year term, or in any year of LOC. Where liquidation is imminent, advances will be made as protective advances according to Part 14.--*

To request an emergency advance, SEL's and CLP lenders must submit the following to the Authorized Agency Official:

- **a narrative explaining that the loss of crops and/or livestock is imminent and can be prevented by an infusion of cash**

283 Emergency Advances (7 CFR 762.146(a)) (Continued)**B Lender Request for an Emergency Advance (Continued)**

- cash flow projections
- if necessary, a copy of the modified loan note that reflects the additional cash advanced.

PLP lenders may make emergency advances according to their FSA-1980-38.

C FSA Response to Request for Emergency Advance

The Authorized Agency Official:

- shall review a SEL's and CLP lender's request for an emergency advance and notify the lender of FSA's decision in a timely manner
- should make every effort to respond to a request for an emergency advance within several days of receiving the lender's request.

284 Interest Rate Changes (7 CFR 762.146(d))**A Overview**

The lender may change the interest rate on a performing (nondelinquent) loan only with the borrower's consent.

B Procedures Lender Must Follow to Change Interest Rate

If the loan has been sold on the secondary market, the lender must repurchase the loan or obtain the holder's written consent.

To change a fixed rate of interest to a variable rate of interest or vice versa, the lender and the borrower must execute a legally effective amendment or allonge to the existing note.

If a new note is taken, it will be attached to and refer to the original note.

The lender will inform the Agency of the rate change.

The lender shall inform FSA of the rate change by completing RD-1980-47 and forwarding it to the County Office.

Lenders do not need to seek FSA concurrence to change an interest rate.

285 Release of Liability Upon Withdrawal (7 CFR 762.146(b))

A General Requirements

An individual who is obligated on a guaranteed loan may be released from liability by a lender with the written consent of the Agency provided the following conditions have been met.

- **The individual to be released has withdrawn from the farming or ranching operation.** The lender must submit a narrative outlining who is to be released and why.
- **A divorce decree and final property settlement does not hold the withdrawing party responsible for the loan payments.** A copy of the divorce decree must be submitted with the lender's request. The lender must document that release of divorced borrowers is a common practice carried out in their nonguaranteed loan portfolio.
- **The withdrawing party's interest in the security is conveyed to the individual or entity with whom the loan will be continued.**
- **The ratio of the amount of debt to the value of the remaining security is less than or equal to .75, or the withdrawing party has no income or assets from which collection can be made.**
- **Withdrawal of the individual does not result in legal dissolution of the entity to which the loans are made. Individually liable members of a general or limited partnership may not be released from liability. Partners, parents, cosigners, stockholders, and entity members may often be released from liability.** However, when the guaranteed loan is made to individuals farming as a partnership, and each partner is fully liable, release of 1 partner would terminate the partnership and the existence of the entity to which the loans were made. The lender must document that release of withdrawing members is common in their unguaranteed portfolio and all other conditions in this paragraph are met.
- **The remaining liable party projects a feasible plan (see § 762.102(b)).** The lender must submit a cash flow projection for the remaining liable party with the request for release. A release will not be approved when a loss is probable.

285 Release of Liability Upon Withdrawal (7 CFR 762.146(b)) (Continued)**B Lender Request for Release of Borrower From Liability Upon Withdrawal**

PLP lenders shall submit documentation to the Authorized Agency Official in support of a release from liability, as specified in FSA-1980-38.

C FSA Actions to a Request for Release of Liability Upon Withdrawal

Upon review of the request, the Authorized Agency Official must forward the request and a recommendation to SED for action. SED shall notify the lender of the decision in a timely manner either by notifying the lender directly or by instructing the County Office to inform the lender of whether the borrower may be released from liability.

D Annual Review of Lender Loan Files in Cases of Release Liability Upon Withdrawal

During the annual FSA lender loan file review, for loans that received a release of liability, the Authorized Agency Official must ensure that the lender proceeded with the release according to the documents provided when seeking FSA approval. In addition, Authorized Agency Officials should ensure that the original loan note has been amended or a new note that is tied to the original has been issued to reflect the release of liability. If anomalies in process or documentation are noted, the Authorized Agency Official should discuss the shortcomings with the lender.

286 Consolidation of Debt (7 CFR 762.146(e))**A Overview**

Only OL may be consolidated.

Existing lines of credit may only be consolidated with a new line of credit if the final maturity date and conditions for advances of the new line of credit are made the same as the existing line of credit. OL loan note guaranteed loans may only be consolidated with other OL loan note guarantees.

The borrower must project a feasible plan after the consolidation. See § 762.102(b) for definition of feasible plan.

Guaranteed OL may not be consolidated with a line of credit, even if the line of credit has been rescheduled.

286 Consolidation of Debt (7 CFR 762.146(e)) (Continued)**A Overview (Continued)**

The combining of outstanding principal and interest balances of 2 or more OL's or LOC's constitutes a consolidation of debt.

The following FSA loans cannot be consolidated:

- FO's
- **OL's or lines of credit secured by real estate**

Note: The statute prohibits consolidation for loans secured by real estate.

- **OL's or lines of credit with outstanding Interest Rate Buydown Agreement, IA Agreement, or SAA**
- non-FSA loans.

The following conditions also apply to consolidation:

- **guaranteed loans made before October 1, 1991, cannot be consolidated with those loans made on or after October 1, 1991**
- when 2 or more OL's or LOC's are consolidated the combined principal and interest must be kept separate; capitalization of interest is not allowed when loans are only being consolidated.

***--Note:** When a loan is consolidated with a loan that was made using FSA-1980-25 or FSA-1980-28 with the July 20, 2001, or later revision date, the consolidated debt is eligible for offset.--*

B Request for Consolidation

SEL's must submit a feasible plan to FSA for concurrence before consolidating loans. CLP and PLP lenders may consolidate loans as long as the requirements of this paragraph are met.

286 Consolidation of Debt (7 CFR 762.146(e)) (Continued)

C Lender Actions to Consolidate Loans

A new note or line of credit agreement will be taken. The new note or line of credit agreement must describe the note or line of credit agreement being consolidated and must state that the indebtedness evidenced by the note or line of credit agreement is not satisfied. The original note or line of credit agreement must be retained.

The interest rate for a consolidated OL loan is the negotiated rate agreed upon by the lender and the borrower at the time of the action, subject to the loan limitations for each type of loan.

--The Agency approves the consolidation by executing a modification of guarantee. The modification will indicate the consolidated loan amount, new terms, and percentage of guarantee, and will be attached to the originals of the guarantees being consolidated. If loans with a different guarantee percentage are consolidated, the new guarantee will be at the lowest percentage of guarantee being consolidated.--

Any holders must consent to the consolidation, or the guaranteed portion must be repurchased by the lender.

D FSA Response to Consolidation Request

The Authorized Agency Official must approve of a SEL request for consolidation. When SEL submits a request for a loan consolidation, the Authorized Agency Official should verify the following:

- only OL's and LOC's are being considered for consolidation
- the consolidation does not cause the loan principal to exceed program loan limitations
- the consolidation does not adversely affect the value of the security and the lender's security position.

The Authorized Agency Official must complete RD-1980-19 based on the information received from SEL and submit it to the Finance Office, along with a memorandum describing which loans were consolidated.

If a PLP or CLP lender consolidates loans:

- copies of documents will be obtained
- compliance with regulations will be verified through annual file reviews.

287 Substitution of Lender (7 CFR 762.105)

A Overview

When a borrower wishes to move their guaranteed loan from 1 lender to another, or a lender wishes to sell a guaranteed loan to another lender, with or without the borrower's consent, FSA must process a substitution of lender.

B Lender Requirements

A new eligible lender may be substituted for the original lender, if the original lender concurs, under the following conditions.

- **The Agency approves of the substitution in writing by executing a modification of the guarantee to identify the new lender, the amount of debt at the time of the substitution and any new loan terms if applicable. The new lender agrees in writing to:**
 - **assume all servicing and other responsibilities of the original lender and to acquire the unguaranteed portion of the loan**
 - **execute a lender's agreement if one is not in effect**
 - submit a request to the Authorized Agency Official that the new lender be approved as a substitute lender for the loan
 - **give any holder written notice of the substitution. If the rate and term are changed, written concurrence from the holder or repurchase is required.** The Authorized Agency Official shall review the FSA file and determine if the loan has been sold. If the loan has been sold, the Authorized Agency Official shall remind the lender of special considerations warranted by its sold status.
- The Authorized Agency Official shall review the borrower and lender's substitution request as follows:
 - determine whether the requirements of this section are met
 - determine whether the new lender possesses the ability to service agricultural loans and, if necessary, discuss the loan with the lender and ensure that they are aware of their responsibilities
 - notify the Finance Office of the substitution by completing and submitting

--FSA 1980-42.--

287 Substitution of Lender (7 CFR 762.105) (Continued)

B Lender Requirements (Continued)

- **The original lender will assign their promissory note, lien instruments, loan agreements, and other documents to the new lender. The guarantee documents will then be assigned to the new lender. The original lender must:**

* * *

- **assign their promissory note, lien instruments, loan agreements, and other documents to the new lender**
- **if the loan is subject to an existing IA Agreement, submit a request for subsidy for the partial year that they have owned the loan**

Note: FSA-1980-64 can then be transferred to the new lender. When a substitution is being processed, Authorized Agency Officials should review the file to determine whether the loan has IA. If so, they should remind the:

- original lender of the need for a subsidy request
- new lender of special servicing requirements of a loan with IA.
- if the original lender does not concur, the substitution cannot take place. If the borrower still wants to move their loan, the new lender may refinance the debt of the original lender.

C Lender Name or Ownership Changes

When a lender begins doing business under a new name or, undergoes an ownership change, the lender will notify the Agency. If the lender simply changes their name and there is no change in ownership, location, or tax ID numbers, the Authorized Agency Official shall:

- submit a request to the Finance Office to change the lender name
- attach a printout of the lender cross-reference screen from GLS with marks to explain the change.

287 Substitution of Lender (7 CFR 762.105) (Continued)

C Lender Name or Ownership Changes (Continued)**The lender's CLP or PLP status is subject to reconsideration when ownership changes.**

If a status lender is merged with or purchased by a nonstatus lender, and the original lender's management, operating policies, CMS, and personnel are changed as a result, the lender's CLP or PLP status should be revoked. If the newly merged or purchased lender will continue to operate the status lender substantially as it has been managed in the past, revocation may

--not be necessary. The nonstatus lender will apply for status or their present status will be revoked. If a lender sells any guaranteed loans in their entirety, SED shall determine-- whether volume requirements of subparagraph 52 D are still being met.

The lender will execute a new Lender's Agreement.

The new lender must provide FSA with:

- its new tax ID number
- a list of all its branches where they will service guaranteed loans, their addresses, and responsible contacts.

Note: An interim request for subsidy payment from the original lender is not required when the entire lender has changed.

FSA 1980-42 must be completed and submitted to the Finance Office. One FSA 1980-42 may be completed with a list of the names, FSA case numbers, and loan numbers for the entire guaranteed loan portfolio of the lender attached.

Although guaranteed lenders are responsible for informing FSA when ownership changes occur, acquiring lenders are often unaware of this responsibility. If the Authorized Agency Official becomes aware that a lender with FSA-guaranteed loans has been purchased by or merged with another lender, the Authorized Agency Official shall contact the new management and remind them of their responsibilities under existing FSA-1980-38's and the need to process a substitution. If Authorized Agency Officials learn that a lender has been closed or placed in receivership by a financial institution regulatory agency, they shall contact their SED for guidance.

288 Servicing SAA's (7 CFR 762.147)**A Overview**

When receiving a debt writedown, a borrower is required to execute FSA-1980-89 that entitles the lender to future payments if the real estate used to secure the written down loan appreciates in value. FSA-1980-89 gives both the lender and FSA the possibility of recapturing money that was written off as a result of a debt writedown.

Before executing FSA-1980-89, the lender must obtain an appraisal of the real estate that is used to secure the written down loan. The appraisal figure will be recorded on FSA-1980-89. * * * The appraisal must be dated within 1 year of FSA-1980-89 execution to be valid.

All servicing requirements apply to all existing SAA's that were entered into before SAA becoming FSA-1980-89. For purposes of this handbook, wherever FSA-1980-89 is referred to, it will also pertain to existing SAA's.

All requirements in this paragraph apply to all lender types, unless otherwise noted.

B Lender Responsibilities When Servicing FSA-1980-89

The lender is responsible for:

- **monitoring the borrower's compliance with the Shared Appreciation Agreement**
- **notifying the borrower of the amount of recapture due**
- **beginning October 1, 1999, a notice of the agreement's provisions not later than 12 months before the end of the agreement**
- **reimbursing the Agency for its pro-rata share of recapture due.**

C Events That Trigger Recapture

Recapture of any appreciation of real estate security will take place at the end of the term of the Agreement, or sooner, if the following occurs:

- **on the conveyance of the real estate security (or a portion thereof) by the borrower**

Note: If only a portion of the real estate is conveyed, recapture will only be triggered against the portion conveyed. Partial releases will be handled in accordance with § 762.141(b) (paragraph 280); and transfer of title to the spouse of the borrower on the death of such borrower, will not be treated as a conveyance under the agreement.

- **on the repayment of the loans**
- **if the borrower ceases farming operations.**

Recapture may also occur in either of the following cases:

- the note FSA-1980-89 is attached to is accelerated
- the borrower dies and there is no spouse to whom the property will be conveyed.

After FSA-1980-89 has been executed, the lender must monitor the borrower's compliance with FSA-1980-89. This includes determining when an event that activates FSA-1980-89 occurs.

When the borrower performs an action that triggers the collection under FSA-1980-89, the lender will obtain an appraisal of the collateral, determine the recapture due, if any, and notify the borrower of the amount due in writing. **Security values will be determined by appraisals obtained by the lender and meeting the requirements listed in 7 CFR 762.127** (paragraphs 181 through 183). The lender will pay for the appraisal or recapture the appraisal expense from the borrower. If the sale of security triggers recapture and the price received for the security is higher than its appraised value, then the sale price will serve as the upper limit when calculating incremental increase in the appreciation of security.

288 Servicing SAA's (7 CFR 762.147) (Continued)

C Events That Trigger Recapture (Continued)

After recapture, the lender will give FSA its pro-rata share of the proceeds or service the account according to subparagraph F.

To help lenders monitor a borrower's compliance with FSA-1980-89, authorized Agency Officials may encourage lenders to use the letter in subparagraph D to remind the borrower of the FSA-1980-89 commitment.

D Example of Letter Reminding Loan Borrowers of Potential Writedown Recapture

The following is an example of a letter for reminding loan borrowers of potential writedown recapture.

*--

Borrower's Address

Dear (Borrower):

On Month, Day, Year, Name of Lender, wrote down \$_____ of a debt that you owed in connection with a guarantee that was provided by the Farm Service Agency (FSA). In consideration for receiving this writedown, you executed a ___10-year___5-year Shared Appreciation Agreement (Agreement) in connection with the real estate that you pledged as collateral for this loan. We have enclosed a copy of the Agreement for your reference.

This letter is to remind you of the possibility that you may have to repay all or a portion of the amount of your loan that was written down. The Agreement that you signed requires you to repay all or a portion of the debt written down if the real estate that secured the loans increased in value and one of the following occurs:

- ___10 years___5 years have passed since you signed the Agreement;
- Title of the real estate security (or a portion thereof) was conveyed (with certain exceptions);
- The remainder of the loan has been repaid; or
- You have quit farming.

If you believe the value of your property has increased, you will need to consider this potential liability when you make future plans. The amount of repayment cannot exceed the amount written down.

If you would like any additional information on how this Agreement can affect you and what actions you need to take, please contact this office.

Sincerely,

Lender's Representative
Enclosure

--*

288 Servicing SAA's (7 CFR 762.147) (Continued)**E Calculating Recapture**

The amount of recapture will be based on the difference between the value of the security at the time recapture is triggered and the value of the security at the time of write down as shown on the Shared Appreciation Agreement.

- If recapture is triggered within 4 years of the date of the Shared Appreciation Agreement, the lender shall recapture 75 percent of any positive appreciation in the market value of the property securing the loan or line of credit agreement.**
- If recapture is triggered after 4 years from the date of the Shared Appreciation Agreement, the lender shall recapture 50 percent of any positive appreciation in the market value of the property securing the loan or line of credit agreement.**

The amount of recapture will not exceed the amount of writedown shown on the Shared Appreciation Agreement.

F Servicing Recapture Debt

If recapture is triggered under the Shared Appreciation Agreement and the borrower is unable to pay the recapture in a lump sum, the lender may do 1 of the following.

- **Reschedule the recapture debt with the consent of the Agency, provided the lender can document the borrower's ability to make amortized payments on the recapture debt plus pay all other obligations. In such case, the recapture debt will not be covered by the Guarantee.** The lender will send FSA its share of every payment when it's received.
- **Pay the Agency its pro rata share of the recapture due. In such case, the recapture debt of the borrower will be covered by the Guarantee.**

***--Note:** RD-1980-47 will be completed and submitted to the Finance Office to indicate the new maturity date, if applicable, including the amortization period of the recapture. If the guaranteed loan has matured, complete FSA-1980-49 and submit it to the Finance Office indicating that the termination will be reversed and the loan reinstated.--*

- **Service the account in accordance with § 762.149.**

If recapture is triggered, and the borrower is able, but unwilling to pay the recapture in a lump sum, the lender will service the account in accordance with § 762.149.

Any shared appreciation recaptured by the lender will be shared on a pro-rata basis between the lender and the Agency.

All appraisal fees will be paid by the lender. The lender may pass the fee on to the *--borrower. The borrower has 30 calendar days to repay the debt in a lump sum after receiving a notice of the appreciation due to the lender.--*

The Authorized Agency Official shall process recapture payments by completing RD-449-30 and forwarding it with payment to the Finance Office.

288 Servicing SAA's (7 CFR 762.147) (Continued)**G Basis for the Amount of Recapture**

Because of 2 consecutive years of drought that destroyed crops, a farmer and lender devised a restructuring plan where \$200,000 of remaining debt was written down to \$100,000 and FSA-1980-89 was executed. FO had been guaranteed by FSA at 90 percent. An appraisal at the time of the writedown valued the farmer's security at \$75,000.

One year later the farmer sells his farm for \$85,000. The Basis for the Amount of Recapture is equal to:

Value of real estate security (appraisal or sale price, whichever one is higher) at the time of a recapture triggering event minus value of real estate security when FSA-1980-89 was executed.

Basis for the Amount of Recapture: $\$85,000 - \$75,000 = \$10,000$.

Since Basis for the Amount of Recapture is positive, the borrower will be required to pay the lender a percentage of the recaptured monies. The percentage to be paid to the lender within the first 4 years of FSA-1980-89 execution is 75 percent (the percentage drops to 50 percent 4 years after FSA-1980-89 execution). Therefore, the farmer owes his lender the following:

$\$10,000 \times 75\% = \$7,500$ due the lender.

FSA is entitled to the portion of the shared appreciation equal to the rate of the guarantee on the loan. Therefore, in this case, FSA's pro-rata share is equal to:

$\$7,500 \times 90\% = \$6,750$ due FSA.

At least annually, the Authorized Agency Official will contact all lenders with active FSA-1980-89's to determine whether any FSA-1980-89 monies have been collected. To help lenders in their FSA-1980-89 monitoring responsibilities, a copy of the letter in subparagraph H may be used by FSA employees when performing this annual lender contact.

288 Servicing SAA's (7 CFR 762.147) (Continued)

H Example of Servicing Recapture Debt Reminder Letter

This is an example of a letter for reminding lenders of guaranteed loan accounts that received a writedown.

*--

Lender's Address

Dear (Lender's Representative or Sir/Madam):

Our records indicate that the Farm Service Agency (FSA), paid your institution \$ ____ on Month, Day, Year, to reimburse it for the guaranteed portion of a \$ ____ loss that you suffered by writing down the account of your borrower Borrower's Name. This letter is to remind you that the borrower signed a Shared Appreciation Agreement (SAA) in connection with this writedown and you are obligated to monitor that agreement. We have enclosed a copy of SAA for your reference and provided you with a letter that you may use to remind your borrower of the potential for recapture under SAA.

SAA requires the borrower to repay all or a portion of the debt written down as a result of an increase in value of the real estate that secured the loans written down. This recapture is triggered by any of the following events:

- ____10 years ____5 years have passed since the borrower executed SAA;
- Title to the real estate security (or a portion thereof) was conveyed by the borrower to someone other than the borrower's spouse upon the death of the borrower;
- The loans have been repaid; and
- The borrower quits farming.

Please review your records, consult with the borrower, review land records, or take other actions to determine whether any of the triggering actions have occurred in this case. If so, you should inform the borrower of the amount that they owe your institution under the terms of their agreement. If SAA has not been triggered, you may still wish to remind the borrower of the terms of this agreement, to allow sufficient time for them to plan for this possibility. You are responsible for obtaining any appraisals necessary to document the amount of appreciation; however, you may pass the expense to the borrower.

I sincerely appreciate your efforts to meet the credit needs of the farmers in our area. If you would like any additional information or assistance on this subject, please contact this office.

Sincerely,

Loan Servicing Official
Enclosure

--*

288 Servicing SAA's (7 CFR 762.147) (Continued)**I FSA Monitoring of FSA-1980-89**

If an FSA employee suspects a recapture triggering event has occurred, and the lender has not taken action, the Authorized Agency Official should discuss appropriate servicing actions with the lender.

Beginning October 1, 1999, the lender must provide a borrower notice of the agreement's provisions not later than 12 months before the end. The Authorized Agency Official must send a note to lenders reminding them of FSA-1980-89 and their responsibilities at the time of recapture triggering.

289-299 (Reserved)

