

# FSA HANDBOOK

## Direct Loanmaking

To access the transmittal page click on the short reference.

For State and County Offices

SHORT REFERENCE

**3-FLP**  
**(Revision 2)**

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

**UNITED STATES DEPARTMENT OF AGRICULTURE**

Farm Service Agency  
Washington, DC 20250

<b>Direct Loan Making 3-FLP (Revision 2)</b>	<b>Amendment 52</b>
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**Approved by:** Deputy Administrator, Farm Loan Programs



**Amendment Transmittal**

**A Reasons for Amendment**

Subparagraphs 42 A, 45 A, 67 A, 68 A, and 373.5 C have been amended to replace CAIVRS and SAM with DNP.

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UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency  
441 S. Salina St., Suite 536  
Syracuse, New York 13202

Direct Loan Making  
3-FLP

NY Amendment 15

Approved by:



ACTING SED

Amendment Transmittal

A Reasons for Amendment

NY Exhibit 5 was updated to provide Emergency Loan Program Average Prices.

B Page Control Chart

The following table provides instruction to replace, add, or remove pages within this handbook.

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## Part 1 Introduction and Purpose

### 1 Purpose and Sources of Authority

#### A Handbook Purpose

This handbook is designed to assist FSA in understanding:

- direct loanmaking regulations governing FLP
- roles and responsibilities in implementing those regulations and other direct loanmaking responsibilities.

#### B Sources of Authority

The sources of authority for this handbook include:

- 7 CFR Part 764 and other regulations that may be referenced throughout this handbook
- various laws and statutes passed by Congress, including CONACT.

#### C Regulation References

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

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

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

**\*--Example:** Subparagraph 43 C provides “[7 CFR 764.51(d)(4)(6)] **Submit items (1), (2), (3), (7), (11) and 15 of paragraph (b) of this section** (paragraph 42).”

**Note:** The text “**items (1), (2), (3), (7), (11) and 15 of paragraph (b)--\* of this section**” refers to 7 CFR 764.51(b)(1), (2), (7), (9), and (11). The nonbold reference indicates that 7 CFR 764.51(b) is included in paragraph 42.

## 2 Related References

### A Related FSA Handbooks

The following FSA handbooks concern FLP.

<b>IF the area of concern is about...</b>	<b>THEN see...</b>
State and county organization and administration policies, procedures, principles, and standards, such as work organization	16-AO.
civil rights compliance and administration for FSA programs	18-AO.
appeals and mediation	1-APP.
State and county records management	32-AS.
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highly erodible land and wetland conservation compliance	6-CP.
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general and administrative regulations governing FLP	1-FLP.
guaranteed loan making and servicing	2-FLP.
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direct loan special servicing and inventory property management	5-FLP.
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procedures for making records available to the public, other Federal agencies, and Congress	2-INFO.
procedures for collecting, maintaining, or disclosing data or information about an individual	3-INFO.
personnel management, such as employee conflict of interest	3-PM.
employee development and training	6-PM.

**Notes:** See 1-DIS for information on the disaster designation process.

### B Helpful Links

The Helpful Links web site at <https://inside.fsa.usda.gov/program-areas/daflp/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
- ~~submit for prior approval, State supplements that require using State-modified national forms and State-created forms~~

**Exception:** State-specific FSA-2029's do not require issuing a State supplement.

- follow guidance in subparagraph 3 H for clearing State-modified national forms and State-created forms. ~~submit for prior approval~~

3 FLP Forms

A Form References

\*--Except as provided in this paragraph, this handbook references forms according to the forms numbering system that became effective December 31, 2007. Forms executed before December 31, 2007, may have a number different from than referenced. See 1-FLP,--\* Exhibit 5 for a comparison of form numbers before and after December 31, 2007.

**Note:** See Exhibit 1 for titles of forms referenced in this handbook.

With the exception of FSA-2510, FSA-2512, and FSA-2514, form numbers are not referenced in CFR (**bold**) text. CFR refers to forms by either:

- the common name of the form

**Example:** CFR may state, “a promissory note”, instead of stating, “FSA-2026”.

- purpose or the information collected.

**Example:** CFR may state, “a conservation contract”, instead of stating, “FSA-2535”.

This handbook may reference forms by title and/or form number, as follows.

Form Number	Form Title
FSA-2026	Promissory Note
FSA-2543	Shared Appreciation Agreement

B FSA-2029

All references to FSA-2029 within this handbook are intended as a reference to the applicable State-specific Mortgage or Deed of Trust. State-specific Mortgages or Deeds of Trust are available on the FFAS Employee Forms/Publications Online Website at

\*--<http://intranet.fsa.usda.gov/dam/ffasforms/forms.html> and are numbered--\* FSA 2029 “ST”.

**Notes:** “ST” represents the appropriate State acronym.

SED is not required to issue a State supplement for the State-specific version of FSA-2029.



**3 FLP Forms (Continued)**

**C Notary Acknowledgement**

\*--See 1-FLP, subparagraph 3 C.

**D Applicant Signatures**

See 1-FLP, subparagraph 3 D.

**E State-Modified National Forms**

See 1-FLP, subparagraphs 3 F and 3 H.

**F State-Created Forms**

See 1-FLP, subparagraphs 3 F and 3 H.

**G Other Sources of Forms**

See 1-FLP, subparagraph 3 G.--\*

**3 FLP Forms**

**C Notary Acknowledgement**

Refer to Exhibit 1 of this NY 3-FLP Amendment for guidance on the proper notary acknowledgement and signature requirements.

**D Applicant Signatures**

Applications from an entity must be signed by the authorized individual for the entity and by each member of the entity. Refer to Exhibit 2 of this NY 3-FLP Amendment for guidance on the proper signature requirements for individuals, entities and trusts.

3 FLP Forms (Continued)

\*--H Clearance of State-Modified National Forms and State-Created Forms

The following provides guidance on obtaining approval of State-modified and State-created forms.

Instrument	State Office Action	National Office Action
New State-modified and State-created forms.	<p>In SDMS, submit the following for prior approval:</p> <ul style="list-style-type: none"> <li>• State supplement that requires using the form</li> </ul> <p><b>Note:</b> Submit separately all the State supplements for forms in the 2000 series.</p> <ul style="list-style-type: none"> <li>• electronic or scanned copy of National or State-created form, providing modifications needed</li> <li>• revised instructions for completion for National form, if applicable; or instructions for completion for State-created form.</li> </ul> <p><b>Notes:</b> Include margins, font size, and any other specific requirements for forms that will be filed.</p> <p>State-obtained OGC approval of form may be requested during National Office review.</p>	<ul style="list-style-type: none"> <li>• Coordinate the development of the form with the appropriate National Office area.</li> <li>• Review and ensure nondiscrimination, privacy act, and public burden statements are included, as needed.</li> <li>• Send proposal to State for approval.</li> <li>• Coordinate uploading form and instructions for completion to <a href="http://intranet.fsa.usda.gov/dam/ffasforms/forms.html">http://intranet.fsa.usda.gov/dam/ffasforms/forms.html</a> when state supplement is approved.</li> </ul>
Existing State-modified and State-created forms	<p>In SDMS, submit the following for prior approval:</p> <ul style="list-style-type: none"> <li>• electronic or scanned copy of form indicating needed changes</li> <li>• electronic or scanned copy of instructions for completion, as needed</li> <li>• State supplement that requires using the form, <b>only</b> if changes are needed.</li> </ul>	<ul style="list-style-type: none"> <li>• Review and ensure that current nondiscrimination, privacy act, and public burden statements are included, as needed.</li> <li>• Send proposal to State for approval.</li> <li>• Coordinate uploading form and instructions for completion to <a href="http://intranet.fsa.usda.gov/dam/ffasforms/forms.html">http://intranet.fsa.usda.gov/dam/ffasforms/forms.html</a>.</li> </ul>

--\*

**4 Introduction to Direct FLP's**

**A FSA Loan Programs**

**[7 CFR 764.1(a)] This part describes the Agency's policies for making direct FLP loans.**

**[7 CFR 764.1(b)] The Agency makes the following types of loans:**

**\*--(1) FO, including ML and Down payment loans (Part 7);--\***

**(2) OL, including \* \* \* ML and Youth loans (Part 9);**

**(3) EM (Part 10); and**

**(4) CL (Part 8).**

**5-20 (Reserved)**

**Part 2 (Reserved)**

**21-40 (Reserved)**

## Part 3 Loan Application

### 41 Obtaining and Filing a Loan Application

#### A Obtaining a Loan Application

A loan application may be obtained from:

- any FSA office
- FSA's web site at [www.fsa.usda.gov](http://www.fsa.usda.gov)
- eGov's web site at [www.sc.egov.usda.gov](http://www.sc.egov.usda.gov).

\*--Applicants may choose to apply using the FSA Online Loan Application (OLA).--\*

An agency official will:

- not refuse to provide a requested application to any person
- not discourage the prospective applicant to apply for a direct loan even when loan funds are limited or unavailable

**Note:** On Friday, May 13, 2011, FR notice was published to inform the public that, because of a lack of funding for the CL program, direct CL applications will not be accepted until further notice. Agency officials should advise prospective applicants of the availability of other FSA loan programs.

- not make oral or written statements that would discourage any individual from applying for assistance based on any ECOA prohibited basis (race, color, religion, national origin, sex, marital status, age, applicant's income deriving from public assistance, or because the applicant has in good faith exercised any right under the Consumer Protection Act)

**Note:** Additional information, as necessary, may be requested; however, information that would create unapproved paperwork burden will not be requested. Specifically, anything that asks the applicant to provide information to FSA is not allowed by the State without approval from the National Office.

- provide assistance as necessary to help applicants complete the application

**Note:** Information about race, national origin, sex, and marital status is collected on a voluntarily basis on FSA-2001, FSA-2301, and FSA-2314.

#### B Filing a Loan Application

**[7 CFR 764.51(a)] A loan application must be submitted in the name of the actual operator of the farm. Two or more applicants applying jointly will be considered an entity applicant. The Agency will consider tax filing status and other business dealings as indicators of the operator of the farm.**

## 41 Obtaining and Filing a Loan Application (Continued)

### B Filing a Loan Application (Continued)

Generally, requiring a non-applicant's spouse signature on loan documents is a violation of ECOA regulations. Therefore, unless required by State law, FSA will not require the signature of an applicant's spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies under FSA's standards of creditworthiness for the amount and terms of the credit requested. FSA will **not** consider the submission of a joint financial statement or other evidence of jointly held assets, such as a joint bank account, as an application for joint credit. See Exhibit 6 for guidance on submitting documents in compliance with ECOA as required by this handbook.

Upon receiving an application for direct loan assistance, the authorized agency official and DD shall follow 1-PL to ensure that the type of operation reflected on FSA-2001 is consistent with any representations previously made by the applicant for FP benefits.

If any difference in representations of the farming operation is identified, notify the applicant \*--using FSA-2304 and insert the following reason why the application is incomplete.--\*

“A review of your FSA records revealed inconsistent representations in how your farming operation is conducted. (Provide details of different representations identified by FSA records.) Documentation must be provided to resolve the inconsistencies identified prior to your application for assistance to be considered complete.”

**Note:** See subparagraph 45 B for notification of incomplete application guidance.

**Exception:** An application will not be considered incomplete if the difference in representation is the result of either of the following:

- \*--married persons representing themselves as a joint operation for FLP--\* assistance but combined as a single person for FP
- producer participating in 2 separate and distinct operations.

\* \* \*

When receiving an application from married persons, FSA cannot treat a married couple applying together the same way as 1 person applying individually. A married person may apply according to 1 of the following, depending on how the farm is operated.

- “As an individual” – A married person should apply as an individual when they are the operator of the farm, and the spouse has minimal involvement in the farm operation, particularly the day-to-day management and operations. In such cases, the nonfarming spouse will not be required to sign the application, except when required by State law to perfect a lien on marital or jointly owned property.

## 41 Obtaining and Filing a Loan Application (Continued)

### B Filing a Loan Application (Continued)

- “As a joint operation” – Married persons should apply as a joint operation if they share the responsibilities of the farm including day-to-day management and operations, they wish to apply for the loan together, and they have not formed some other operating entity such as a partnership, LLC, trust, or corporation. When a married couple does apply as a joint operation, both parties must meet the eligibility requirements in Part 4.
- “As an entity” – If married persons have formed a legal entity (partnership, LLC, etc.), which operates the farm, the entity must apply for the loan.

**\*--Notes:** Forming or changing the structure of an entity can have significant tax and legal consequences. Agency officials should not advise applicants whether or not to form an entity, or what type of entity to form. It is appropriate to explain the impact of any proposed change to applicant structure on loan eligibility and on any existing FSA loans. Applicants considering entity formation or a change in operating structure should be strongly encouraged to seek guidance from qualified professionals such as a tax accountant or attorney.

An application from married persons as a joint operation for FLP assistance, but who are combined as a single person for FP benefits, shall be considered the same type of operation, and therefore requires no corrective action.

All applicants, including an entity, should ordinarily file their loan application with the FSA FLP office serving the area where the headquarters of the farm operation is located. In situations where an operation is spread out between multiple county or State jurisdictions, the operation headquarters will typically be the location where the majority of operational and production activities occur. Once an FLP servicing office is assigned, efforts should be taken to maintain account activities with that servicing office providing significant farming activities are likely to continue within the jurisdiction of the FLP servicing office originally assigned.

If the authorized agency official is not present in the office where the application is filed,--\* the receiving office must immediately contact the office where the authorized agency official is located to determine whether the application needs to be forwarded to that office for processing.

**Exceptions:** For applications from:

- FSA employees and relatives of employees, see 3-PM
- applicants who have either filed a new discrimination complaint or have an outstanding discrimination complaint, contact DD and SED for direction on application processing.

## 41 Obtaining and Filing a Loan Application (Continued)

### B Filing a Loan Application (Continued)

In unclear cases, the authorized agency official should contact SED for a determination on where the applicant should file the loan application.

\*--Electronic applications, including those submitted through OLA, may be accepted from--\* applicants who have Level 2 eAuthentication credentials. FAXed and emailed applications are acceptable. See 1-FLP for a list of forms that must be signed with an original pen and ink signature, or a digital signature completed with an approved 2-factor authentication process.

### C Notification of Targeted Funding and Limited Resource Interest Rates

To determine whether an applicant is a member of an SDA group, the applicant must voluntarily provide the applicant's ethnicity, race, and gender on FSA-2001 or FSA-2301. If the applicant will not voluntarily provide the ethnicity, race, or gender information, targeted funding will not be available.

FSA-2001, FSA-2301, and FSA-2314 provide applicants notification, as applicable, that a portion of FO, CL, and OL funds are targeted for SDA and beginning farmer assistance. In addition, FSA-2001 and FSA-2314 provide notification of the availability of limited resource interest rates for FO's and OL's.

See Exhibit 2 for definitions of beginning farmer, limited resource interest rates, SDA applicant or farmer, and SDA group.

**Note:** Targeted SDA farmer funding is available for youth loans, but targeted beginning farmer assistance and limited resource interest rates are not available for youth loans.



**41 Obtaining and Filing a Loan Application (Continued)****D Technical Assistance**

Agency officials are required to:

- inform applicants that FSA will provide technical assistance, if needed, to complete FSA forms and gather information necessary for a complete application
- explain the application procedure, process, and the requirements for a complete application
- assist applicants in completing FSA forms and identifying sources of information needed for a complete application, if assistance is requested
- inform applicants of other technical assistance providers who may be of assistance at minimal or no charge; examples include, but are not limited to the Cooperative Extension Service, institutions and organizations providing assistance under Section 2501 or other USDA outreach grants, Intertribal Agriculture Council, Service Corp of Retired Executives, and other similar organizations
- advise applicants of alternatives that would help overcome barriers to being determined eligible, but caution that significant changes may have tax, estate planning, or other legal implications that may require consultation with an accountant, legal counsel, or other qualified expert.

**\*--Note:** Applicants utilizing OLA for submission may require technical assistance or have questions about the OLA process. Although FSA staff will not have access to the customer's OLA, guidance and information for assisting applicants can be found in the FSA Online Loan Application User Guide.--\*

**E SED Action**

SED's will prepare and publicize, at least semi-annually, through newspaper articles, radio announcements, and television broadcasts, that FSA targets direct and guaranteed loan funds to beginning and SDA farmers.

These required outreach efforts are in addition to information provided in State or Service Center newsletters.

**Note:** Outreach to assist these potential applicants will include maintaining and documenting close liaison and attending meetings with local, State, and national organizations serving beginning and SDA farmers.

**42 Complete Loan Application**

**A Requirements**

**[7 CFR 764.51(b)] A complete loan application, except as provided in paragraphs (c) through (f) of this section (paragraphs 43 and 44), will include:**

**[7 CFR 764.51 (b)(1)] The completed Agency application form;**

The application must be initialed, signed, and dated by the applicant. An unsigned \*--FSA-2001, FSA-2301, or FSA-2314 will be considered an incomplete application.

**Notes:** FSA-2001 or FSA-2314, with missing initials only, will not be considered--\* incomplete; however, initials shall be obtained before loan closing.

Youth loan applications should be filed according to paragraph 44.

The authorized agency official shall consider if an application can be ML or Streamlined before requiring a regular, full documentation application. See paragraphs 216 and 217. ML and streamlined OL applications should be filed according to paragraph 43.

Streamlined OL applications should be filed according to paragraph 43, but a qualified applicant needs to only submit additional information necessary to make their application complete when added to the information already in the applicants file.

## 42 Complete Loan Application (Continued)

## A Requirements (Continued)

**[7 CFR 764.51 (b)(2)] If the applicant is an entity:**

**[7 CFR 764.51 (b)(2)(i)] A complete list of entity members showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or stock held in the entity by each member, or the percentage of interest in the entity held by each member;**

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

**[7 CFR 764.51 (b)(2)(ii)] A current financial statement from each member of the entity;**

**[7 CFR 764.51 (b)(2)(iii)] A current financial statement from the entity itself;**

**Note:** A completed AD-3030 must be submitted each time a corporation applies for assistance. This does not include LLC's and trusts.

**[7 CFR 764.51(b)(2)(iv)] A copy of the entity's charter or any entity agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (good standing), and a resolution adopted by the Board of Directors or entity members authorizing specified officers of the entity to apply for and obtain the desired loan and execute required debt, security and other loan instruments and agreements;**

**Note:** If entity documents require more than 1 member to apply, then all identified \*--members, including members in embedded entities, must sign FSA-2001, Part J.--\*

**[7 CFR 764.51(b)(2)(v)] In the form of married couples applying as a joint operation, items (i) and (iv) will not be required. The Agency may request copies of the marriage license, prenuptial agreement or similar documents as needed to verify loan eligibility and security. Items (ii) and (iii) are only required to the extent needed to show the individual and joint finances of the husband and wife without duplication.**

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

- applicable CCC-502/CCC-902
- jointly filed tax return
- marriage license
- prenuptial agreement
- similar documentation.

## 42 Complete Loan Application (Continued)

## A Requirements (Continued)

Ordinarily, individual financial statements are not required from a married couple applying as a joint operation. However, in States without community property laws and in some other States, individual financial statements may be necessary to obtain a complete picture of the financial situation. A State supplement will be issued when applicable to provide additional guidance and related information requirements for a married couple applying as a joint operation.

**[7 CFR 764.51(b)(3)] A written description of the applicant's farm training and experience, including each entity member who will be involved in managing or operating the farm. Farm experience of the applicant, without regard to lapse of time between the experience and the new application, may be included in the applicant's written description. If farm experience occurred more than 5 years prior to the date of the application, the applicant must demonstrate sufficient on-the-job training or education within the last 5 years to demonstrate managerial ability.**

**Note:** See subparagraph 69 A for additional guidance if farm experience occurred more than 5 years before application.

A complete description of the applicant's farm training and experience is required for new applicants and when significant changes to an existing borrower's operation have occurred.

**[7 CFR 764.51(b)(4)] The last 3 years of farm financial records, including tax returns, unless the applicant has been farming less than 3 years;**

\* \* \* Existing borrowers do not need to resubmit historical financial information already on file. Additional financial records, such as balance sheets, may be requested, if necessary, for the last 3 years.

The authorized agency official may request up to 2 additional years of farm financial records in extenuating circumstances, such as natural disasters or adverse economic conditions.

**\*--Note:** If tax returns are not available or do not exist, the application will not be considered incomplete for that reason. The authorized agency official must make a notation in FBP of the reason tax returns are not available. A lack of tax returns may be taken into consideration when making credit history determinations as it relates to the applicant fulfilling obligations to other parties (subparagraph 65 A), managerial ability determination (paragraph 69), or feasibility (paragraph 351).--\*

## 42 Complete Loan Application (Continued)

## A Requirements (Continued)

**[7 CFR 764.51(b)(5)] The last 3 years of farm production records, unless the applicant has been farming less than 3 years;**

The authorized agency official may request up to 2 additional years of farm production records in extenuating circumstances, such as natural disasters or adverse economic conditions.

**\*--Notes:** Applicants are responsible for providing production records in a readable and understandable format, including sales receipts, warehouse certificates, insurance records, or other similar documents. Upon request from the applicant, FSA-2003 will be provided if an applicant is unable to submit production records in an alternative acceptable format. This form must not be provided as a standard part of an application for direct loan assistance.--\*

Existing borrowers do not need to resubmit historical production information already on file.

For cash basis operations, such as farmers who sell produce at farmer markets, it may not be possible or useful to determine yield. In those cases, income and expenses may be substituted for yields to determine production.

**[7 CFR 764.51(b)(6)] Except for CL, documentation that the applicant and each member of an entity applicant cannot obtain sufficient credit elsewhere on reasonable rates and terms, including a loan guaranteed by the Agency;**

Applicants provide documentation that they are unable to obtain credit elsewhere by signing FSA-2001 or FSA-2314. However, after reviewing the financial information and type of loan requested (EM's have a different credit elsewhere requirements), FSA may require written evidence to support the applicant's inability to obtain credit elsewhere. FSA will use the Market Placement Program to assist qualified applicants in obtaining a guaranteed farm loan from a commercial lender, where applicable.

**[7 CFR 764.51(b)(7)] Documentation of compliance with the Agency's environmental regulations contained in 7 CFR Parts 12 and 799.**

An applicant must have AD-1026 on file for all real estate owned or rented. From an environmental compliance perspective, an application is considered complete upon receipt of:

- a current AD-1026
- information within the applicant's ability to control about the specific location and nature of the proposed action so that the appropriate level of environmental review can be completed.

**42 Complete Loan Application (Continued)****A Requirements (Continued)**

**Notes:** Applications may not be approved “subject to” completion of the requisite level of environmental review, including, but not limited to, obtaining and providing to FSA copies of all permits and plans. In addition, the time needed to process or obtain permits, plans, approvals, or complete environmental assessments does not constitute a basis for withdrawing an application as incomplete.

A new AD-1026 is not required for each subsequent loan if there has been no change to the applicant’s farming operation.

See 1-EQ and 6-CP for additional information on environmental regulations and requirements.

**[7 CFR 764.51(b)(8)] Verification of all non-farm income.**

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

An applicant employed outside of the farm may submit any of the following:

- \*--FSA-2014 sent by FSA the applicant’s employer--\*
- 2 most recent earning statements
  - Tax forms such as 1099 or W-2
  - Bank statements verifying income.

**Notes:** The amount and dependability of income from a cosigner will be verified using the listed format. See subparagraph 371 C for information about cosigner signature and eligibility requirements.

If a nonapplicant’s income will only be used to cover family living/owner withdrawal, the nonapplicant must not be required to sign FSA-2004, FSA-2007, FSA-2026, or any other loan documents. See Exhibit 6 for guidance on submitting documents in compliance with ECOA as required by this handbook.

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

42 Complete Loan Application (Continued)

A Requirements (Continued)

**[7 CFR 764.51(b)(9)] A current financial statement and the operation's farm operating plan, including the projected cash flow budget reflecting production, income, expenses, and loan repayment plan;**

\*--The applicant will supply most of this information on FSA-2001, Parts H and I. Documents containing similar information from outside sources may be considered as suitable substitutes for these parts.--\*

**[7 CFR 764.51(b)(10)] A legal description of the farm property owned or to be acquired and, if applicable, any leases, contracts, options, and other agreements with regard to the property;**

An application will not typically be considered complete without a full legal description for property to be purchased or used as primary security for a loan. Partial or abbreviated descriptions are not typically adequate for these circumstances. Applications to purchase only a portion of a larger parcel will not be complete unless the Agency is provided a legal description of the specific property to be purchased.

\* \* \*

## 42 Complete Loan Application (Continued)

### A Requirements (Continued)

This information will be used to determine:

- FSA security
- value of security
- eligibility
- potential income affecting cash flow.

#### **[7 CFR 764.51(b)(11)] Payment to the Agency for ordering a credit report on the applicant;**

The agency official will record the date the credit report fee is received in DLS.

#### **[7 CFR 764.51(b)(12)] Verification of all debts;**

The authorized agency official:

- must verify the status of debts over \$5,000
- must confirm the balance of the debt, the applicant's payment history on the debt including any delinquency and the payment schedule including the amount and date of the next scheduled installment
- may obtain this information with any of the following as long as the required information is provided:
  - credit report
  - FSA-2310 (EM's)
  - \*--DNP--\*
  - completed FSA-2015
  - most recent billing statement for the debt (e.g., credit card debt)
  - any other form of verification, including phone calls, that provides the required information.



## 42 Complete Loan Application (Continued)

## A Requirements (Continued)

**[7 CFR 764.51(b)(13)] 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)
- \*--payment to complete required State and county lien searches (many States and counties offer certified searches free of charge).--\*

**[7 CFR 764.51(b)(14)] For EM loans, a statement of loss or damage on the appropriate Agency form (FSA-2309).**

**[7 CFR 764.51(b)(15)] For CL only, a conservation plan or Forest Stewardship Management Plan as defined in 761.2 of this chapter; (see Exhibit 2 for definition of conservation plan and Forest Stewardship Management Plan) and**

**Note:** NRCS CPA-1155 or Tool Kit is considered sufficient documentation.

**[7 CFR 764.51(b)(16)] For CL only, and if the applicant wishes to request consideration for priority funding, plans to transition to organic or sustainable agriculture when the funds requested will be used to facilitate the transition.**

**Note:** For all FLP loans involving construction, according to 1-FLP, Part 5.

## B Existing Information in Applicant's File

**[7 CFR 764.51(f)] The applicant need not submit any information under this section (subparagraph A) that already exists in the applicant's Agency file and is still current.**

Information less than 90 calendar days old, unless noted otherwise, is considered current.

**\*--Notes:** Information that does not change, such as college transcripts, will be considered current and should be used as part of any future application.

If not already in the applicant's file, obtain SF-3881 according to 63-FI, if needed to establish an account to for Electronic Funds Transfer. This item is not required for a complete application, but can be requested early in the application process.--\*

## 43 Streamlined OL, ML (FO and OL), and Streamlined CL Requests

### A Complete Streamlined OL Application

A complete streamlined OL application includes:

- completed FSA-2314
- environmental information
- farm operating plan (updated to current production year)
- payment of credit report fee
- balance sheet
- prior year or years financial and production records.

**Notes:** An applicant is qualified for loan processing under streamlined OL provisions when all the streamlined OL requirements in subparagraph 217 A-E are met.

The Farm Business Plan information, (cash flow, balance sheet, financial records, production records, and Credit Presentation) shall be updated only as necessary to complete information added to the records.

### B Complete DOL-ML Applications

**[7 CFR 764.51(c)(2)] The applicant must submit the following:**

**[7 CFR 764.51(c)(2)(i)] items (1), (2), (3), (6), (7), (9), and (11) of paragraph (b) of this section (paragraph 42)**

**[7 CFR 764.51(c)(2)(ii)] Financial and Production records for the most recent production cycle if available, and practicable to project the cash flow of the operating cycle;**

**[7 CFR 764.51(c)(2)(iv)] Verification of all non-farm income relied upon for repayment; and**

**[7 CFR 764.51(c)(3)] The Agency may require an ML applicant to submit any other information listed in paragraph (b) of this section upon request when specifically needed to make a determination on the loan application.**

A complete DOL-ML application includes:

- \*--completed FSA-2001
- entity information, if applicable
- written description of applicant's farm training and experience, included on FSA-2001
- environmental information
- credit elsewhere requirements
- farm operating plan, included on FSA-2001
- payment of credit report fee
- balance sheet, included on FSA-2001.--\*

**Note:** An applicant is qualified for loan processing under DOL-ML provisions when all DOL-ML requirements in subparagraph 216 B are met.

## 43 Streamlined OL, ML (FO and OL), and Streamlined CL Requests (Continued)

**C Complete DFO-ML Applications**

**[7 CFR 764.51(d)(2) The applicant must submit the following:**

**[7 CFR 764.51(d)(2)(i) items (1), (2), (3), (6), (7), (9), (10), (11) of paragraph (b) of this section (paragraph 42)**

**[7 CFR 764.51(d)(2)(ii) Financial and Production records for the most recent production cycle if available and practicable to project the cash flow of the operating cycle, and**

**[7 CFR 764.51(d)(2)(iv) Verification of all non-farm income relied upon for repayment, and**

**[7 CFR 764.51(d)(2)(v) Verification of applicant's farm experience.**

**[7 CFR 764.51(d)(3) The Agency may require an DFO-ML applicant to submit any other information listed in paragraph (b) of this section upon request when specifically needed to make a determination on the loan application.**

A complete DFO-ML application includes:

- \*--completed FSA-2001
- entity information, if applicable
- written description of the applicant's farm training and experience (included on FSA-2001)--\*
- legal description of the farm property owned or to be acquired and if leases, contracts options, and other agreements with regard to the property
- verification of applicant's farm experience.

**Note:** Additional information may only be required on a case-by-case basis when essential for an eligibility or credit decision. The basis for the request for additional information shall be documented in FBP. State and County Offices may not establish blanket requirements for additional information without prior approval of the National Office.

## \*--43 Streamlined OL, ML (FO and OL), and Streamlined CL Requests (Continued)--\*

**D Complete Streamlined CL Applications**

[7 CFR 764.51(d)(6)] **Submit the following items:**

- (i) Items identified in paragraphs (b)(1), (b)(2), (b)(3), (b)(7), (b)(11), (b)(15), and (b)(16) of this section (paragraph 42),**
- (ii) A current financial statement less than 90 calendar days old, and,**
- (iii) Upon Agency request, other information specified in paragraph (b) of this section necessary to make a determination on the loan application.**

A complete Streamlined CL application includes the following:

- completed FSA-2001
- entity information
- written description of farm training and experience
- environmental information
- payment of credit report fee
- approved conservation plan

**Note:** FSA considers either NRCS CPA-1155 or the Tool Kit proof the applicant has an NRCS-approved conservation plan.

- if desired, request for priority funding with plan to transition to organic or sustainable agriculture
- current financial statement.

**Note:** An applicant is qualified for loan processing under Streamlined CL provisions when all Streamlined CL requirements in subparagraph 191 B are met.

**44 Youth Loan Requests****A Complete Youth Loan Application**

A youth loan application is submitted by using FSA-2301, which includes the majority of information for a youth loan application. See Part 9, Section 3 for more information on youth loans.

**[7 CFR 764.51(e)] For a youth loan request:**

**(1) The applicant must submit items (1), (7), and (9) of paragraph (b) of this section (paragraph 42).**

These items are the following:

- completed FSA-2301
- environmental information
- farm operating plan (when FSA-2301 is not considered sufficient).

**(2) Applicants 18 years or older, must also provide items (11) and (12) of paragraph (b) of this section (paragraph 42).**

These items are the following:

- payment to FSA for ordering a credit report
- verification of all debts.

**(3) The Agency may require a youth loan applicant to submit any other information listed in paragraph (b) of this section (paragraph 42) as needed to make a determination on the loan application.**

## 45 Processing Loan Applications

### A Application Review

Upon receiving a loan application, the agency official shall:

- insert date application was received on FSA-2001, FSA-2301, or FSA-2314

**Note:** DLS is the official loan application date record.

- determine whether application is complete
- enter loan application information into DLS
- assemble loan application according to 32-AS
- obtain credit report
- \*--obtain DNP report--\*
- complete FSA-850, or Environmental Assessment, whichever is applicable, as provided by 1-EQ.

If an application is received and the applicant has not completed the section that identifies race, ethnicity, or gender of the applicant or members of the entity, the application will be processed as a non-SDA.

**Exception:** An application from an existing SDA, who has previously provided the documentation needed to qualify as SDA, does not need to resubmit qualifying information.

**Note:** Race, ethnicity, and gender determinations completed as observed by a FSA employee will not be used to qualify an applicant for SDA funding.

### B Notification of Incomplete Application

**[7 CFR 764.52(a)] Within 7 calendar days of receipt of an incomplete application, the Agency will provide the applicant written notice of any additional information which must be provided. The applicant must provide the additional information within 15 calendar days of the date of this notice.**

**Note:** If the 15<sup>th</sup> calendar day is a Saturday, Sunday, Federal holiday, or any other day the office is closed, FSA will accept the applicant's additional application information the next business day.

## 45 Processing Loan Applications (Continued)

**B Notification of Incomplete Application (Continued)**

\*--The authorized agency official must notify the applicant in writing within 7 calendar days, after receiving the incomplete application, by using FSA-2304. FSA-2304 will:

- list the additional information needed
- state that the application cannot be processed until all required information is received
- offer assistance to the applicant if they do not understand what is required or are having difficulty obtaining the required information
- establish a due date for receiving the information of 15 calendar days from the date of FSA-2304.

**Exception:** An EM application will not be withdrawn if the information required under 7 CFR 764.51(b)(14) (see subparagraph 42 A) is the only information that has not been received. Specifically, if accurate disaster year production information is not available, because of the producer having not completed harvest, the application will be held for a reasonable time to allow for the information to become available.

**Note:** FSA has determined that a reasonable time period is 3 months after the normal conclusion of harvest.

For EM's, insert the following on FSA-2304 for disaster year production information only.

\*--“We must receive the following information by (add 15 calendar days to the date the authorized agency official determines to be 3 months after the normal conclusion of harvest) so that we can continue processing your request for assistance.”

If information is needed from other USDA agencies, the agency official will inform those agencies and the applicant of the information needed, and note the date of the request in FBP. For OL applications, the agency official will request that the information be returned within 15 calendar days of receiving the request.

**Note:** If it is clear that the application will be rejected for obvious eligibility reasons, the authorized agency official shall provide an application rejection letter with appropriate appeal or review rights.

## 45 Processing Loan Applications (Continued)

**B Notification of Incomplete Application (Continued)**

**[7 CFR 764.52(b)] If the additional information is not received, the Agency will provide written notice that the application will be withdrawn if the information is not received \*--within 15 calendar days of the date of this second notice.**

If the 15<sup>th</sup> calendar day is a Saturday, Sunday, Federal holiday, or any other day the office is closed, FSA will accept the applicant's additional application information the next business day.

If the applicant does not respond or does not supply all of the information requested within the 15 calendar day period specified on FSA-2304, the authorized agency official must immediately provide FSA-2305 by regular mail or hand delivery. FSA-2305 will:

- list the additional information needed
- state that the application cannot be processed until all required information is received and unless the applicant supplies the required information, the application will be withdrawn
- establish a due date for receiving the information of 15 calendar days from the date of--\* FSA-2305
- contain the ECOA statement according to 1-FLP, paragraph 41.

The authorized agency official must notify DD weekly, by e-mail, the names, dates, and reasons FSA-2305 was sent to applicants.

FSA will withdraw the application if the additional material is not provided.

Applicants will be sent FSA-2306 to inform them that their application has been withdrawn. FSA-2306 will be provided by regular mail or hand delivery.

The withdrawn application will be maintained according to 32-AS.



## 45 Processing Loan Applications (Continued)

**C Processing of Complete Application**

[7 CFR 764.53] Upon receiving a complete loan application, the Agency will:

[7 CFR 764.53(a)] Consider the loan application in the order received, based on the date the application was determined to be complete; and

[7 CFR 764.53(b)] Provide written notice to the applicant that the application is complete.

\*--The authorized agency official must notify the applicant in writing within 7 calendar days--\* after receiving the complete application using FSA-2307.

**Note:** Use DLS to record the date the application was determined to be complete.

[7 CFR 764.53(d)] Except for CL requests, if based on the Agency's review of the application, it appears the applicant's credit needs could be met through the guaranteed loan program, the Agency will assist the applicant in securing guaranteed loan assistance under the market placement program as specified in 762.110(h) of this chapter (2-FLP, paragraph 72).

**D Applicant Withdraws Application**

The applicant may request that a loan application be withdrawn at any time during the loan making process.

If the applicant makes the request:

- in writing, the authorized agency official will send FSA-2306 and withdraw the application
- by phone, the authorized agency official will send FSA-2306 to the applicant that, per their request, the loan application will be withdrawn unless the applicant contacts the County Office within 10 calendar days of the date of FSA-2306.

**Note:** The authorized agency official shall maintain withdrawn applications according to 32-AS.

**E Reactivating Withdrawn Application**

A withdrawn application may not be reactivated. The applicant must file a new application.

**Notes:** Any information in the withdrawn file that is still current may be included with the new application. Information less than 90 calendar days old, unless noted otherwise, is considered current.

Information that does not change, such as college transcripts, will be considered current and should be used as part of any future application.

**45 Processing Loan Applications (Continued)**

**F Loan Processing When Civil Rights Complaint Has Been Filed**

The filing of a civil rights complaint does not stop loan processing activity. If an application for assistance has been filed, that request must be processed according to FSA instructions.

Because failure to advise an applicant of their ineligibility may be considered an adverse action in itself, the authorized agency official should timely process all applications, in those instances where a discrimination complaint is filed, and notify the applicant of the decision. The authorized agency official must fully explain to the applicant the basis for the unfavorable eligibility or feasibility decision according to paragraph 356.

**G Priority Consideration for Prevailing Claimants**

\*--See Exhibit 14 for guidance on processing loan applications for claimants.--\*

**46-60 (Reserved)**

**Part 4 General Eligibility and Loan Limitations**

**Section 1 Eligibility Requirements**

**61 Overview**

**A General**

**[7 CFR 764.101] The following requirements must be met, unless otherwise provided in the eligibility requirements for the particular type of loan.**

See:

- paragraphs 62 through 72 for eligibility requirements
- subparagraph 371 C for loan document signature requirements.

**62 Controlled Substances****A Controlled Substance Convictions Except Possession and Trafficking**

**[7 CFR 764.101(a)] The applicant and anyone who will sign the promissory note must not be ineligible for loans as a result of a conviction for controlled substances according to 7 CFR 718 of this chapter.**

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

**B Convictions for Drug Trafficking and Possession**

\*--FSA-2001, FSA-2301, and FSA-2314 require applicants to certify that they are not ineligible for Federal benefits based on a conviction of any Federal or State controlled substance offense. Self-certifications on FSA-2001, FSA-2301, and FSA-2314 will be the only--\* documentation required involving convictions of controlled substances.

**63 Legal Capacity****A General Requirements**

**[7 CFR 764.101(b)] The applicant, and anyone who will sign the promissory note, must \*--possess the legal capacity to incur the obligation of the loan.**

**Note:** By Statute, CONACT Section 311(b)(2), A person receiving a loan under this section who executes a promissory note; therefore, shall incur full personal liability for the indebtedness evidence by such note in accordance with its terms free of any disability of minority.--\*

The applicant must be of legal age, mental capacity, and have authority to enter into a legally binding agreement. If the applicant is an entity, all members must meet this requirement.

The authorized agency official must review documentation provided by entity applicants to ensure that the entity members meet legal capacity requirements.

**Note:** An entity that has members who have not reached the age of majority is ineligible for assistance because of the requirement that all entity members must sign FSA-2026 as an individual.

## 64 Citizenship

## A General Requirement

**[7 CFR 764.101(c)] The applicant and anyone who will sign the promissory note must be a citizen of the United States, United States non-citizen national, or a qualified alien under applicable Federal immigration laws.**

See:

- Exhibit 2 for the definition of U.S. noncitizen national and qualified alien
- Exhibits 8 and 9 for guidance about documentary evidence of U.S. noncitizen national citizenship and qualified alien status.

**Notes:** The loan term to a qualified alien may not exceed the number of years of residency which they have been formally granted by the documents described in Exhibit 8.

If an applicant presents a valid I-551, showing the applicant has permanent resident status, the expiration date on I-551 has no bearing on the loan term. Therefore, the maximum loan terms may be extended beyond the I-551's expiration date.

## 65 Credit History

## A General Requirement

**[7 CFR 764.101(d)] The applicant must have acceptable credit history demonstrated by debt repayment.**

In the case of an entity, the applicant and all members of the entity must have an acceptable credit history.

**\*--Note:** All factors addressed in this paragraph must be analyzed by the Loan Approval Official when considering an applicant's credit history. With the exception of previous debt forgiveness, each credit history factor shall be assessed as a part of an applicant's comprehensive credit history, rather than a single disqualifying factor.

**Example 1:** Applicant A makes a new application for a farm loan and discloses they had previous loans with FSA 10 years ago. Upon further review, the Loan Official finds documentation that 10 years ago the borrower provided false information on FSA financial documents necessary for a classification review, which ultimately led to a determination that the applicant did not act in good faith. However, that loan was paid in full on or before the due date with all payments as agreed and all history since that time shows repayment of debts as agreed. This applicant is likely eligible when determining credit worthiness.--\*

## 65 Credit History

## A General Requirement (Continued)

**\*--Example 2:** Applicant B's credit report shows a mixture of on-time and late payments. Notations include: three 90-day late payments in the last year, past-due accounts still outstanding, and a charged off credit card later sent for collection within the last 12 months. However, prior to the last 12 months, accounts were paid as agreed. While the derogatory history may result in an ineligibility determination, the Loan Official must review the history with the applicant to determine if the recent issues have been caused by circumstances beyond their control.--\*

**[7 CFR 764.101(d)(1)] As part of the credit history the Agency will determine whether the applicant will carry out the terms and conditions of the loan, and deal with the Agency in good faith. In making this determination, the Agency may examine whether the applicant has properly fulfilled its obligations to other parties, including other agencies of the Federal Government.**

The authorized agency official may determine that an applicant has not acted in good faith if the applicant:

- deliberately falsifies information
- intentionally omits information relevant to the loan decision
- does not make every reasonable effort to meet the conditions and terms of any previous FSA loan
- failed to make reasonable effort to resolve delinquencies with other lenders
- failed to file Federal tax returns when it appears that sufficient income was generated to require a tax filing.

**\*--Notes:** Applicants who provide false information may also be subject to civil and/or criminal prosecution and should be referred by the authorized agency official to OIG.

A lack of good faith determination requires OGC concurrence for each new application package submitted. Previous lack of good faith determinations must be reevaluated by OGC and an updated determination provided. If the previous OGC lack of good faith determination occurred more than 10 years prior to the date of a new application, National Office concurrence is required before final disposition. Loan approval officials will refer these cases through the State Office

**Example:** Twenty years ago, a direct farm loan borrower failed to report all livestock sales to the Agency, resulting in a formal lack of good faith determination. That same producer submits a new loan request today, in which the loan approval official plans to deny the request, citing the producer's prior lack of good faith from this incident as a contributing factor in the denial. National Office concurrence to deny the loan request must be obtained prior to final disposition.--\*

## 65 Credit History (Continued)

## A General Requirement (Continued)

**[7 CFR 764.101(d)(2)] When the applicant caused the Agency a loss by receiving debt forgiveness, the applicant may be ineligible for assistance in accordance with eligibility requirements for the specific loan type. If the debt forgiveness is cured by repayment of the Agency's loss, the Agency may still consider the debt forgiveness in determining the applicant's creditworthiness.**

\*--FSA will not consider the following as debt forgiveness for loan making purposes:--\*

- debt reduction through a conservation easement or contract
- any debt written off as part of the resolution of a discrimination complaint against FSA, including debt written off in conjunction with the *Pigford Consent Decree or Keepseagle* settlement.

**Notes:** This includes any debt forgiveness on eligible loans that occurred before the Keepseagle Settlement Agreement signed on October 29, 2010.

See Exhibit 14 for guidance on processing loan applications for claimants.

- prior debt forgiveness that has been repaid in its entirety
- prior debt forgiveness on a youth loan, if circumstances were beyond the applicant's control.

\* \* \*

\*--**Notes:** Debt forgiven on any non-Youth Loan debt will still be considered in determining applicant's credit worthiness. Determination that debt forgiveness was beyond the applicant's control should have been made and documented at the time of debt forgiveness approval.

Debts and receivables established by Farm Programs will be reviewed for compliance with this subparagraph. Established debts that are forgiven or granted relief will not hinder eligibility for Farm Loan Programs but should be considered when assessing credit worthiness.--\*



**65 Credit History (Continued)****A General Requirement (Continued)**

**Notes:** In the majority of cases under Chapter 11 of the Bankruptcy Code, the debt is discharged when the plan is confirmed (see 11 U.S.C. § 1141 (d) for exceptions to automatic discharge). In Chapter 12 and 13 cases, the discharge normally occurs, in 3 to 5 years, by court order. Debt forgiveness occurs when an applicant has completed all payments according to the plan and the unsecured FLP claim is written off. At that point, the applicant will be ineligible for most additional loans according to paragraphs 132, 172, 202, and 242. Specifically, according to paragraphs 132, 172, 202, and 242, the applicant may be eligible for annual production loans, but no other type of assistance.

An applicant who has successfully completed a bankruptcy reorganization plan will be considered to be current on the plan. Therefore, as long as the applicant remains current on the plan they may be eligible to receive annual production loans as outlined above. However, this status changes if the applicant subsequently becomes delinquent on any loans covered by the plan, including non-FSA loans. The denial for failure to comply with an approved bankruptcy plan is appealable. See 1-APP for further instruction.

65 Credit History (Continued)

**B Verifying Direct Loan Losses**

An agency official shall use the customer profile in DLS to enter TIN for the applicant and each individual who will sign FSA-2026.

IF...	THEN...
the applicant’s TIN is not found in DLS	a screen print of the page will be placed in position 3 of the case file.
the applicant’s TIN shows a previous debt in DLS	refer to the list of paid codes provided in Exhibit 10.
the paid code indicates debt forgiveness	use the customer profile in DLS to determine the type, date, and amount of the debt forgiveness and if the debt forgiveness has been paid in full. History is available from 1989 to present. If the debt forgiveness was a write-down, determine the type, date, amount of the debt forgiveness, and if the debt forgiveness has been paid in full. If an equity record exists, the online history should be reviewed for partial write-downs.
it is determined that the applicant or any individual who will sign FSA-2026 has received debt forgiveness that has not been paid in full	review appropriate program regulations to determine if the type and date of the debt forgiveness makes the applicant ineligible for the type of assistance requested.  <b>Note:</b> Exceptions for EM’s still apply.  The authorized agency official should document all *--findings in FBP.--*

**C Verifying Guaranteed Loan Losses**

\*--The authorized agency official shall access the View Loan Screen in GLS to verify previous debt forgiveness on guaranteed loans. At the GLS Loan List Screen, click on the ID Cross Reference button. At the ID Cross Reference screen, enter the Tax ID/SSN of the applicant and each individual who will sign the FSA-2026 and submit. If no information is found, print the screen and place in the case file. If the Tax ID/SSN is associated with any existing or prior guaranteed loans, clicking on the ID Number link provided will display previous and current loan information for the individuals entered. Detailed information for a specific loan can be accessed by selecting the View Loan Screen from the “Action” drop-down box and clicking on the loan number hyperlink.--\*

**D Assessing Past Repayment Problems**

**[7 CFR 764.101(d)(3)] A history of failures to repay past debts as they came due when the ability to repay was within the applicant’s control will demonstrate unacceptable credit history. The following circumstances, for example, do not automatically indicate an unacceptable credit history.**

## 65 Credit History (Continued)

**D Assessing Past Repayment Problems (Continued)**

**(i) Foreclosures, judgments, delinquent payments of the applicant which occurred, more than 36 months before the application, if no recent similar situations have occurred, or Agency delinquencies that have been resolved through loan servicing programs available under 7 CFR Part 766 (5-FLP).**

**(ii) Isolated incidents of delinquent payments which do not represent a general pattern of unsatisfactory or slow payment.**

**(iii) “No history” of credit transactions by the applicant.**

**(iv) Recent foreclosure, judgment, bankruptcy, or delinquent payment when the applicant can satisfactorily demonstrate that the adverse action or delinquency was caused by circumstances that were of a temporary nature and were beyond the applicant’s control; or was the result of a refusal to make full payment because of defective goods or services or other justifiable dispute relating to the purchase or contract for goods or services.**

**\*--Important:** The loan approving official’s authority to make exceptions is the most important tool for addressing creditworthiness. Exceptions can be used to justify payment history problems as long as the exception is clearly documented in the farm business plan. The only exception that cannot be made is that of an outside judgement obtained by the United States in a Federal court, other than the United States Tax Court.

In cases where an exception cannot be justified, the loan official will explain FSA creditworthiness requirements, the importance of paying accounts as agreed, and provide guidance on how the applicant can improve their credit history.--\*

Isolated delinquent payments because of unforeseen medical expenses are considered beyond the applicant’s control.

**Example:** Applicant had a baby born prematurely and incurred large, unpaid accounts because of medical bills. The applicant should demonstrate that they have made payments on other debts as agreed.

Nonpayment of a debt because of circumstances within an applicant’s control may be used as an indication of unacceptable credit history. The mere fact that an applicant filed bankruptcy will not be used as an indication of unacceptable credit history. The circumstances causing the nonpayment of debt must be considered.

## 65 Credit History (Continued)

**D Assessing Past Repayment Problems (Continued)**

\*--In some cases, credit reports for applicants may have been negatively impacted by delays in healthcare reimbursements, slow interaction with other agencies and organizations, or by other circumstances beyond the applicant's control. Therefore, extra diligence should be taken to review the credit reports to determine if the circumstances were beyond the control of the applicant. Loan officials should consider if problems identified on the credit report have been corrected or will be corrected if the requested loan is approved. This is especially true of credit reports for microloan applicants who may have been operating using personal credit cards or high interest non-agricultural loans before applying with FSA.--\*

When an applicant's credit history includes an adverse or delinquent account status, the authorized agency official shall meet with the applicant to discuss the questionable account. The objectives of the meeting are to gather information to determine whether the adverse account status was caused by circumstances beyond the applicant's control and to explain FSA creditworthiness requirements to the applicant. In addition, the applicant will be counseled about the importance of paying accounts as agreed and provided guidance on improving their credit history. The meeting shall be documented in FBP. If additional information is to be provided by the applicant as a result of the meeting, this will be confirmed with the applicant in writing.

**Note:** Credit scores will not be:

- used as an indicator of poor credit history
- used as a basis of denial
- cited as an indicator of unacceptable credit in a denial letter.

## 66 Credit Elsewhere

## A General Requirement

**[7 CFR 764.101(e)] Except for CL, the applicant, and all entity members in the case of an entity, must be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms. The Agency will evaluate the ability to obtain credit based on factors including, but not limited to:**

**(1) Loan amounts, rates, and terms available in the marketplace; and**

\*--The applicant must certify in writing on FSA-2001 or FSA-2314 that the applicant is--\* unable to obtain sufficient credit, with or without a guarantee, to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in, or near, where the applicant resides for loans for similar purposes and periods of time.

**(2) Property interests, income, and significant non-essential assets.**

## 66 Credit Elsewhere

**B Documentation Requirements for FO and OL (Including DFO-ML and DOL-ML)**

No applicant will be required to obtain credit denial letters from a lender, when obtaining an FO or OL, until the application has been reviewed and a determination made that the applicant has a reasonable potential to obtain financing from other credit sources.

Some areas of the nation do not have a significant number of lenders who are making agricultural loans (credit desert). In addition, even if lenders are making agricultural loans, there are particular areas where loans are less likely to be made (such as Indian Reservations) or history indicates the applicant's chance of obtaining financing from a lender is low, regardless of meeting the lenders underwriting standards. Some lenders appear willing to make loans in these areas but only at rates and terms that are unreasonable compared to rates and terms offered outside these areas.

Consequently, when FSA loan officers are considering the "test for credit", they must not only consider the financial strength of the applicant, but also if other lenders are "actively" making agricultural loans in the applicant's area at reasonable rates and terms in comparison to areas where credit is readily available.

If based on evaluation of the application, the authorized agency official determines there is a reasonable possibility that the applicant can obtain credit elsewhere, the authorized agency official:

- may request the applicant apply for credit from a commercial lender and obtain a letter of denial
- may request applicant apply to additional lenders outside of local community
- may pursue market placement according to 2-FLP, paragraph 72
- must document results.

If based on the evaluation of the application, the authorized agency official determines the applicant will not qualify for credit elsewhere, the authorized agency official must document the reasons in the applicant's file.

**Note:** Applicants will be encouraged to supplement FO's and OL's with credit from other credit sources to the extent economically feasible and according to sound financial management practices.

## 66 Credit Elsewhere (Continued)

**B Documentation Requirements for FO and OL (Including DFO-ML and DOL-ML)  
(Continued)**

The fact that an applicant has obtained credit for farm purposes through credit cards, finance companies, or other “sub-prime” lenders does not constitute failure to meet the test for credit unless the rates and terms for that credit are similar to the rates and terms offered on loans for the same purpose by other farm lenders in the community.

**C Documentation Requirements for EM**

An applicant for EM has different credit elsewhere requirements. To meet the requirements, applicants must supply documentation according to subparagraph 242 F.

## 67 Delinquent Federal Debt and Unpaid Federal Judgments

**A General Requirement**

**[7 CFR 764.101(f)] As provided in 31 CFR Part 285, except for EM loan applicants, the applicant and anyone who will sign the Promissory Note must not be in delinquent status on any Federal debt, other than a debt under the Internal Revenue Code of 1986 at the time of loan closing. All delinquent debts, however, will be considered in determining credit history and ability to repay under this part.**

The applicant must not be delinquent on any nontax Federal debt (not paid within 90 calendar days of the due date) according to 31 CFR §285.13. Verification through \*--DNP, the credit report, DLS screens, and GLS View Loan Screen is sufficient.--\*

However, if it becomes known, and verified, through other means that the applicant is delinquent on a Federal debt, this information must be considered when making an eligibility determination.

**Note:** An FSA-Guaranteed Loan is not considered a Federal debt unless a final loss claim has been paid on a guaranteed loan made using 1 of the following:

- FSA-1980-25 or FSA-1980-28 with the July 20,2001, or later revision date
- FSA-2211 or FSA-2212.

Delinquent Federal tax debt only affects eligibility as it relates to credit history according to paragraph 65.

Debts and receivables established by Farm Programs will be reviewed for compliance with this subparagraph. Established debts that are forgiven or granted relief will not hinder eligibility for Farm Loan Programs, but should be considered when assessing credit history.

## 67 Delinquent Federal Debt and Unpaid Federal Judgments (Continued)

### A General Requirement (Continued)

**[7 CFR 764.101(g)] The applicant and anyone who will sign the promissory note must have no outstanding unpaid judgments obtained by the United States in any court. Such judgments do not include those filed as a result of action in the United States Tax Courts.**

The authorized agency official shall review debt verification obtained according to subparagraph 65 B.

### B Resolving Delinquent Federal Debt and Judgments

Applicants who pay their delinquent Federal debt or judgment in full or otherwise resolve the delinquency or judgment before or at loan closing may be eligible.

**Note:** FSA will consider such debts as part of the creditworthiness eligibility requirement and in determining cash flow during the loan evaluation process.

## 68 Federal Crop Insurance Violations

### A General Requirement

**[7 CFR 764.101(h)] The applicant, and all entity members in the case of an entity, must not be ineligible due to disqualification resulting from Federal Crop Insurance violation, according to 7 CFR Part 718.**

Federal Crop Insurance Act, Section 515(h) provides that a person who willfully and intentionally provides any false or inaccurate information to FCIC or to an approved insurance provider with respect to a policy or plan of FCIC insurance after notice and an opportunity for a hearing on the record, will be subject to 1 or more sanctions that may change the applicant's eligibility for all Federal assistance.

Applicants, as well as individual entity members, will self-certify on FSA-2001, FSA-2301, or FSA-2314 that they have not been disqualified. Additionally, RMA will notify the National Office of individuals and entities that have been disqualified as a result of crop insurance violations. The National Office will notify the State Office. State Offices shall notify the appropriate County Office.

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

\*--See paragraph 53 of 1-FLP for DNP database search requirements to verify eligibility of program benefits to individuals and entities. See Exhibit 15.6 of 1-FLP for guidance on obtaining DNP search reports on disqualified individuals and entities.--\*



69 **Managerial Ability****A General Requirement**

For an entity to meet the requirements in this subparagraph, either the individual holding the majority interest in the entity or the individual responsible for the day-to-day operations of the entity must demonstrate sufficient managerial ability as described in this paragraph.

**[7 CFR 764.101(i)] The applicant must have sufficient managerial ability to assure reasonable prospects of loan repayment, as determined by the Agency. The applicant must demonstrate this managerial ability by:**

The applicant may satisfy the managerial ability requirement with **any** combination of education, on-the-job training and farm experience, or by meeting **just 1** of these criteria. The level of management ability required will depend on the complexity of the operation and the amount of the loan request. The authorized agency official will consider each application on a case-by-case basis.

**(1) Education. For example, the applicant obtained a 4-year college degree in agricultural business, horticulture, animal science, agronomy, or other agricultural-related field.**

To meet the managerial requirement through education alone, the applicant has completed or is completing an educational program in agriculture. Acceptable educational programs include any of the following:

- a 4-year college degree or graduate degree in agriculture business, horticulture, animal science, agronomy, or other agricultural related fields
- a 2-year degree from a technical college in agriculture business, horticulture, animal science, agronomy, or other agricultural related fields
- successful completion of farm management curriculum offered by the Cooperative Extension Service, a community college, adult vocational agriculture program, or land grant university

**Examples:** The Small Farm Program, University of Arkansas-Pine Bluff.

\*--Specialty Crops Program, Colorado State University.--\*

Cultivating Success, University of Idaho Extension, Washington State University Small Farms and Rural Roots.

- successful completion of a community-based, nationally based, non-profit, or similar farm workshop programs

## 69 Managerial Ability (Continued)

## A General Requirement (Continued)

**Examples:** Annie's Project.

Alcorn State University Small Farm Outreach Training and Technical Assistance Program.

Michigan State University Organic Farmer Program.

- other comprehensive agricultural programs that include the following or similar topics:
  - financial records and budget analysis; developing farm business plans; asset management; cost of production and benchmarking
  - risk management; developing a risk management strategy; strengths, weaknesses, opportunities, and threats analysis; business and strategic planning
  - marketing plans and strategy; advertising; product and enterprise diversification.

**Note:** Applicants may meet the managerial requirement through education in conjunction with farm experience or on-the-job training.

**Example:** Vocational or general agriculture classes in high school, provided that the applicant also has experience working on a farm and participated in and \*--successfully completed applicable projects in 4-H, FFA, tribal youth organizations, or another agriculture affiliated group.--\*

**(2) On-the-job training. For example, the applicant is currently working on a farm as part of an apprenticeship program.**

To meet the managerial ability requirement through on-the-job training alone, the applicant is currently:

- working, or has recently worked, as hired farm labor with management responsibilities

**Example:** A hired hand or farm labor team leader who makes independent day-to-day farm management decisions.

- completing, or recently completed, a farm mentorship or internship program with an emphasis on management requirements and day-to-day farm decisions, such as those offerings found through:
  - Rogue Farm Corps
  - Cultivating Success
  - Many Hands Farm Corps

69 **Managerial Ability (Continued)****A General Requirement (Continued)**

- The Samuel Roberts Noble Foundation
- Midwest Organic and Sustainable Education Service Farmer-to-Farmer Mentoring Program
- Georgia Organics Mentoring Program
- participating, or recently participated, in urban or community-supported agriculture programs which incorporate basic agricultural training, such as:
  - Agriculture Training Institute
  - Refugee Agriculture Partnership Programs
  - Columbia Center for Urban Agriculture
  - Growing Power, Inc.
  - Center for Urban Agriculture at Fairview Gardens
  - Mary Queen of Vietnam Community Development Corporation, Inc., and the Viet Village Aquaponic Park Project.

**[7 CFR 764.101(i)(3)] Farming experience. For example, the applicant has been an owner, manager, or operator of a farm business for at least one entire production cycle or for ML's the applicant may have obtained and successfully repaid one FSA youth OL; and**

**Farm experience of the applicant, without regard to lapse of time between the farm experience and the new application, will be taken into consideration in determining loan eligibility. If farm experience occurred more than 5 years prior to the date of the new application, the applicant must demonstrate sufficient on-the-job training or education within the last 5 years to demonstrate managerial ability.**

If relying solely on farm experience that occurred more than 5 years before the application, the applicant may supplement that experience with:

- recent on-the-job training, such as a mentorship
- recent education, such as extension courses or courses that meet the borrower training requirements established in Part 18.

The on-the-job training or education does not have to be fully completed, provided the training or education meets the requirements of this subparagraph. When an applicant is determined eligible subject to completion of borrower or on-the job training or education, completion of the action shall be listed as a loan approval condition on FSA-2313.

69 **Managerial Ability (Continued)****A General Requirement (Continued)**

To meet the managerial ability requirement through farming experience alone, the applicant may have:

- been an owner of a farm business with management and operator responsibilities for at least 1 entire production and marketing cycle
- been employed as a migrant farm worker and has been elevated to a leadership or foreperson position for at least 1 entire production and marketing cycle and whose responsibilities include crop and field management, livestock health, breeding supervision, labor management or hiring, or general farm management
- been employed as a farm manager or farm management consultant for at least 1 entire production and marketing cycle
- raised on a farm and held significant responsibility for day-to-day management decisions for at least 1 entire production and marketing cycle
- obtained and successfully repaid one FSA Youth-OL.

The applicant may document this experience through FSA farm records or similar documentation.

Applicants should be able to demonstrate that they have carried out their operation according to standard farming practices \* \* \* including keeping accurate records of income and expenses, income tax records, and breeding statistics, as applicable.

**[7 CFR 764.101(i)(4)] Alternatives for ML's made for OL purposes. Applicants for ML's made for OL purposes, also may demonstrate managerial ability by one of the following:**

**[7 CFR 764.101(i)(4)(i)] Certification of a past participation with an agriculture-related organization, such as, but not limited to, 4-H Club, FFA, Beginning Farmers and Rancher Development Programs, Community Based Organizations, or Tribal Youth Organizations that demonstrates experience in a related enterprise, or**

**[7 CFR 764.101(i)(4)(ii)] A self-directed apprenticeship combined with either prior sufficient experience working on a farm or significant small business management experience. As a condition of receiving the loan, the self-directed apprenticeship requires that the applicant seek, receive, and apply guidance from a qualified person during the first cycle of production and marketing typical for the applicant's operation, and agree to form development partnership with the applicant to share knowledge, skills, information, and perspective of agriculture to foster the applicant's development of technical skills and management ability.**

## 69 Managerial Ability (Continued)

## A General Requirement (Continued)

**Example:** An application seeking DOL-ML financing to produce tomatoes to sell at a farmers market knows a local farmer that produces salad green and this farmer is willing to mentor the applicant during the first production cycle. The farmer's mentorship of the applicant can include advice and applied knowledge on crop planning, supply sources, pest and disease management, and outlets for marketing and sales. The applicant is the responsible party throughout the mentorship for obtaining guidance from the mentor.

**Note:** The mentor does not have to have the exact same type of operation as the applicant, but should be related, i.e. the applicant for a tomato DOL-ML should not have a dairy farmer as his mentor unless he also has produce experience.

## 70 Borrower Training

## A General Requirement

**[7 CFR 764.101(j)]** The applicant must agree to meet the training requirements in **subpart K of this part** (Part 18, Section 1). Borrower training requirements for Streamlined CL applicants will be automatically waived without further documentation. All other applicants are required to complete FSA-2370 according to subparagraph 472 B, only if they are requesting a borrower training waiver.

## 71 Owner/Operator of a Family Farm

## A General Requirement

**[7 CFR 764.101(k)(1)]** Except for CL, the applicant must be the operator of a family farm after the loan is closed.

**[7 CFR 764.101(k)(2)]** For an entity applicant, if the entity members holding a majority interest are:

(i) Related by blood or marriage, at least one member must be the operator of a family farm;

\*--(ii) Not related by blood or marriage, the entity members holding at least 50%--\* interest must be the operators of a family farm.

**[7 CFR 764.101(k)(3)]** Except for EM loans, the collective interests of the members may be larger than a family farm only if:

- (i) Each member's ownership interest is not larger than a family farm;
- (ii) All of the members of the entity are related by blood or marriage; and
- (iii) All of the members are or will become operators of the family farm; and

**71 Owner/Operator of a Family Farm**

**A General Requirement**

Exhibit 3 of NY 3-FLP Amendment is an “Example” for information purposes only of what a shared facility agreement might look like when one operator is sharing a facility with another farm operator.

## 71 Owner/Operator of a Family Farm (Continued)

**B Factors for Consideration**

**[7 CFR 764.101(k)(4)] If the entity applicant has an operator and ownership interest for farm ownership loans and emergency loans for farm ownership loan purposes, in any other farming operation, that farming operation must not exceed the requirements of a family farm.**

See Exhibit 2 for the definition of family farm.

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

- \*--Produces agricultural commodities for sale in sufficient quantities so that it is recognized as a farm. Primarily, is the farm operated in a business-like manner, does the operation have records, and is the operator changing methods to try and make a profit?--\*
- Members of the farm family must make all the day-to-day farm management and operational decisions. The use of outside consultants or advisors is acceptable provided that someone in the farm family is the ultimate decision-maker.
- Family or entity members must supply a substantial amount of the full-time labor. This does not preclude using seasonally hired labor, but in most instances, the family should provide most of the day-to-day labor. Exceptions may be made for enterprises that produce high value, labor-intensive crops such as fruit or vegetables.
- Credit needs. Congress established FSA's loan limits to assist family farm operations. The loan limits generally ensure that loans are made to family farm operations.
- Loan participation arrangements are acceptable when FSA farm loans cannot meet the total credit needs of the applicant. However, if the FSA loan only represents a small portion of the total credit requirements, this may be an indication that the applicant's operation is larger than a family farm when all factors are considered. The authorized agency official must also fully consider if credit is available from another source, including a guaranteed loan.

To make a determination about the family farm requirement, the authorized agency official must judge the factors individually and also weigh and consider how the factors relate to each other. If the authorized agency official determines that the applicant's farm does not satisfy the definition of a family farm, the reasoning behind the authorized agency official's decision must be documented in the loan file.

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**72 Entity Composition****A General Requirement**

**[7 CFR 764.101(l)] If the applicant has 1 or more embedded entities, at least 75 percent of the individual ownership interests of each embedded entity must be owned by members actively involved in managing or operating the family farm.**

**B Married Persons**

Married persons applying together shall be treated as a joint operation unless they form or have formed a legal entity before application for assistance. If they apply as a joint operation, both parties must meet the general and program specific eligibility requirements for the loan requested.

**C Joint Operations**

In the case of an informal joint operation, where no formal tax ID number has been assigned by a taxing authority, the persons requesting the assistance will designate which TIN will be used as primary to assign the case number.

**\*--Note:** IRS requires an EIN for all operations identified and required to register as a partnership with their respective State. States shall consult with their regional OGC to determine under what circumstances an operation is required to register as a partnership with their State.--\*

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**72 Complete Loan Application**

**D Treatment of Trusts**

When an office receives an application from a trust, they will request assistance from OGC through the State Office to address the items of Par 72 D of 3-FLP. Provide the State Office with a complete copy of the trust documents and a summary of the assets owned by the trust.

## 72 Entity Composition (Continued)

**D Treatment of Trusts**

SED's, after consultation with the Regional OGC, shall issue a State supplement about the following for trusts:

- security requirements when lending to trusts
- unique characteristics of State trust statutes.

In trusts cases, SED shall consult with the Regional OGC to determine if:

- nonparticipant beneficiaries, third party trustees, beneficiaries of a revocable trust, and beneficiaries with only a future interest need to sign on behalf of the trust and as individuals
- submitted trust documents demonstrate valid organization under State law
- trustee has authority to mortgage trust property for the planned farming purposes.

**E Life Estates**

An FO involving a life estate may be made under certain circumstances to:

- both the life estate holder and the remainderman, if both:
  - have a legal right to occupy and operate the farm
  - are eligible for the loan independently
  - parties sign the note and lien instrument
- just the remainderman, if the remainderman has a legal right to operate the farm
- just the life estate holder, if:
  - there is no restriction placed on a life estate holder who occupies and operates a farm
  - the lien instrument is signed by the life estate holder, remainderman, and any other party having any interest in the security.

72 Entity Composition (Continued)

F NPO's

NPO's are not eligible to receive FSA loan assistance. Eligible entities must be comprised of members who have an individual ownership interest in the entity and can assume personal liability on FSA-2026, as required by subparagraph 371 C.

73 (Withdrawn--Amend. 37)

**73 Final Eligibility Determination**

**A Eligible Applicants**

In New York State, to insure continuity between the program eligibility decision and the loan approval, we are requiring that when the loan request exceeds the Loan Official's approval authority, the loan official processing the loan request will obtain the Approval Official's concurrence of the Final Eligibility Determination.

This process will help to eliminate any potential unauthorized assistance issues due to an applicant's eligibility determination being inaccurately evaluated.

74 **Limitations**

**A Program Limitations**

**[7 CFR 764.102(a)] Limitations specific to each loan program are contained in subparts D through I of this part (Parts 7 through 10).**

**B Maximum Loan Limits**

**[7 CFR 764.102 (b)] The total principal balance owed to the Agency at any one time by the applicant, or anyone who will sign the promissory note, cannot exceed the limits established in § 761.8 of this chapter (1-FLP, paragraph 29).**

**C Loan Funds Used in the United States**

**[7 CFR 764.102(c)] The funds from the FLP loan must be used for farming operations located in the United States.**

## 74 Limitations (Continued)

**D Highly Erodible Soil and Wetlands Conversion**

**[7 CFR 764.102(d)] The Agency will not make a loan if the proceeds will be used:**

- (1) For any purpose that contributes to excessive erosion of highly erodible land, or to the conversion of wetlands;**
- (2) To drain, dredge, fill, level, or otherwise manipulate a wetland; or**
- (3) To engage in any activity that results in impairing or reducing the flow, circulation, or reach of water, except in the case of activity related to the maintenance of previously converted wetlands as defined in the Food Security Act of 1985.**

**Notes:** The above includes HEL and wetland provisions administered by NRCS and the Army Corp of Engineers. The Corp may issue permits for specific agriculture and related wetland activities which they determine to be permissible.

See 6-CP and 1-EQ for guidance if NRCS has determined that the applicant committed any of the above violations.

**E Construction**

**[7 CFR 764.102(e)] Any construction financed by the Agency must comply with the standards established in § 761.10 of this chapter (1-FLP, Part 5).**

**F Non-eligible Enterprise**

**[7 CFR 764.102(f)] Loan funds will not be used to establish or support a non-eligible enterprise, even if the non-eligible enterprise contributes to the farm. Notwithstanding this limitation, an EM loan may cover qualified equine losses as specified in subpart I of this part.**

See Exhibit 2 for the definition of noneligible enterprise.

**75-90 (Reserved)**



## Part 5 Loan Security

## 91 Security Requirements

## A General

**[7 CFR 764.103(a)] Security requirements specific to each loan program are outlined in subparts D through I of this part (Parts 7 through 10), and**

For the specific requirements for each direct loan program, see:

- paragraph 135 for FO security
- \*--paragraph 154 for Down Payment loan security--\*
- paragraph 175 for CL security
- paragraph 205 for OL security
- paragraph 230 for youth loan security
- paragraph 246 for EM security.

Advice on obtaining security will be obtained from OGC when necessary, especially on obtaining security when a life estate is involved.

## B Adequate Security

**[7 CFR 764.103(b)] All loans must be secured by assets having a security value of at least 100 percent of the loan amount, except for EM loans as provided in subpart I of this part (Part 10). If the applicant's assets do not provide adequate security, the Agency may accept:**

**[7 CFR 764.103(b)(1)] A pledge of security from a third party; or**

In cases where non-applicants will pledge the full value of chattel security, the authorized agency official will obtain CCC-10 and FSA-2028 from the nonapplicant authorizing FSA to file the required instrument to perfect FSA's lien.

In unique situations, such as areas where land is held in communal rather than fee simple title, or where DOJ lacks jurisdiction, it may be necessary for SED, with advice from OGC, to issue a State supplement.

See subparagraph 416 C for further guidance on chattel security pledged by multiple owners.

**[7 CFR 764.103(b)(2)] Interests in property not owned by the applicant (such as leases that provide a mortgageable value, water rights, easements, mineral rights, and royalties).**

The value of adequate security is established according to subparagraph 95 A.

**91 Security Requirements****B Adequate Security**

Loan officials are required to determine what security is available and if adequate security is available to secure the loan being approved. To assist in making this determination a broad NYS Dept. of State search will be completed. Refer to Exhibit 7 of NY 3-FLP Amendment for guidance on how to search broadly on the NY DOS website.

**If the applicant's assets do not provide adequate security, FSA may accept:**

**[7 CFR 764.103(b)(1)] A pledge of security from a third party;**

When property being pledged as security is owned by a third party, security instruments are to be signed by all individuals or entities that have an ownership interest in the property.

With regard to chattel security, the signature of a married borrower's spouse is required on the Security Agreement to perfect FSA's interest in personal property.

When a loan is secured by property owned by someone other than Borrower, you will "Refer to the Exhibit 2 of NY 3-FLP Amendment for the correct language and signature requirements that need to be incorporated into the Security Instrument"

Financing statements will be filed on the individual or entity using the exact legal name.

For real estate security – all deed owners must sign the mortgage. It is important for the Agency to make sure that the borrower has properly executed the mortgage. The signature must also be acknowledged in accordance with New York law. Tax Map Number(s) will be obtained for each tract or parcel and incorporated into the beginning of the description for each tract or parcel.

## 91 Security Requirements (Continued)

### B Adequate Security (Continued)

With regard to real estate security, it is very important that the Agency make sure that the borrower has properly executed the mortgage. The signature must also be acknowledged in accordance with New York law. Tax Map Number(s) will be obtained for each tract or parcel and incorporated into the beginning of the description for each tract or parcel.

If the borrower is not the sole “owner” of the property, then FSA should require all third parties that have an interest in the real property to sign the mortgage for the mortgage to be enforceable. Third parties who may have an interest in the land would include: (1) the borrower’s spouse (if the spouse will not be obligated on the loan), (2) other individuals who hold the property jointly with the borrower and (3) individuals who have a life estate interest in the property. \*\*In the case of newly married borrowers, the spouse will sign the security agreements, etc. unless there is a prenuptial agreement.

When obtaining a third party’s signature on the mortgage, it is not necessary to add any additional language to the mortgage. This situation is already covered by Paragraph 24 of the mortgage, which deals specifically with co-signers who are not obligated on the Promissory Note. Paragraph 24 currently provides that when a person signs the mortgage but is not obligated on the debt, that person: (a) is co-signing this instrument only to mortgage, grant and convey that Borrower's interest in the property under this instrument; (b) is not personally obligated to pay the sums secured by this instrument; and (c) agrees that the Government and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this instrument or the note without that Borrower's consent.

Although third parties may be required to sign a mortgage, it is not necessary to require the third party to sign the promissory note. Only the borrower(s) and co-signors of the borrower are required to sign the note.

FSA should not permit a third party to sign the note on behalf of the borrower or co-signer unless FSA has received a “Power of Attorney” executed in accordance with New York law that specifically authorizes the third party to act on behalf of the borrower or co-signer. The Form FSA-211 is not sufficient for these purposes. The actual format of the Power of Attorney should correspond with the format spelled out in McKinney’s General Obligations Law § 5-1501. Here is a link to a good example of a Power of Attorney that meets the requirements of New York law: <http://www.nylawfund.org/pubs/power.shtml>. Power of Attorney documents do not typically have to be filed anywhere, unless the Power of Attorney is being used in connection with a Real Estate closing/transaction. In this case the Power of Attorney document is required to be on file with the County Clerk in the county where the real estate is located.

## 91 Security Requirements (Continued)

## C Additional Security

**[7 CFR 764.103(c)] An additional amount of security up to 150 percent of the loan \*--amount will be taken when available, except for down payment loans, ML's made for--\* purposes other than annual operating, and youth loans.**

In the case of an entity, when all the security held by the entity does not meet the requirement for additional security up to 150 percent of the loan amount, FSA will take liens on personal assets held by individual members, as security to the extent that the members have suitable personal assets. The entity will select and notify FSA which asset it prefers to offer as security for the loan.

The authorized agency official will take security with a value that exceeds 150 percent of the loan amount if it is not practical to separate the property. Notably, real estate is often not practical to separate because of extensive and costly processes at the local level. Additionally, it is recognized that a blanket lien on all livestock or all equipment will also result in a security margin exceeding 150 percent as it is typically not practical to separate these types of chattels as livestock replacements and equipment turnover are common on many operations. Loan approval officials need to take steps to ensure the Agency is not taking more than 150 percent security when avoidable. Standard chattel lien statements providing a blanket lien on all chattels should be altered if necessary.

**Example 1:** An annual operating loan of \$100,000 is secured primarily by crops. The applicant has equity in livestock valued at \$30,000 and equity in equipment valued at \$60,000. The loan approval official should perfect the Agency's lien on crops and equipment, and ensure livestock is not taken as security for the Agency loan.

**Example 2:** A term operating loan of \$200,000 is secured primarily by equipment with equity valued at \$350,000. The loan approval official should perfect the Agency's lien on equipment only, and ensure other chattels, including crops, are not taken as security.

The value of additional security is established according to subparagraph 95 B.

## 91 Security Requirements (Continued)

**D Choice of Security**

**[7 CFR 764.103(d)] The Agency will choose the best security available when there are several alternatives that meet the Agency's security requirement.**

When there are several alternatives available, any 1 of which will meet the security requirements for the loan, the authorized agency official has the discretion to select the best alternative for obtaining adequate security. The choice of security will be included on FSA-2313.

FSA primarily chooses between like types of security. For example, FSA will not choose chattel over real estate if real estate is the appropriate security for the loan and other real estate is available. FSA will also consider lien position when choosing security.

**E Requirement to Obtain Liens on all Non-essential Assets**

**[7 CFR 764.103(e)] The Agency will take a lien on all assets that are not essential to the farming operation and are not being converted to cash to reduce the loan amount when each such asset, or aggregate value of like assets (such as stocks), has a value in excess \*--of \$15,000. The value of this security is not included in the Agency's additional--\* security requirement stated in paragraph (c) of this section (subparagraph C). This requirement does not apply to down payment loans, CL, ML, or youth loans.**

This requirement is intended to provide FSA with a security interest in assets that are not essential to the farming operation, but which the applicant cannot or will not convert to cash to reduce credit needs or outstanding obligations. This requirement applies to individual applicants, entity applicants, as well as all individual members of the entity.

For FO, OL, and EM, the value of nonessential assets is:

- not included as part of the 150 percent additional security requirement, except CL

**Note:** The value of the nonessential asset may be included in the adequate security value calculation, if necessary for the applicant to meet the 100 percent collateral requirement.

- established according to subparagraph 95 B.

For CL, the applicant is only required to pledge enough nonessential assets to meet the 150 percent requirement.

**91 Security Requirements (Continued)**

**F Securing Multiple Loans**

**[7 CFR 764.104(d)] The same real estate may be pledged as security for more than one direct or guaranteed loan.**

**[7 CFR 764.105] The same chattel may be pledged as security for more than one direct or guaranteed loan.**

## 92 Real Estate Security

### A Overview

Real estate security includes land and permanent structures, including fixtures that can be described on the security instrument, such as bins, silos, and gutter cleaners. It also includes items that are considered part of the farm and ordinarily pass with the title to the farm. These items include assignments of leases and leasehold interests having mortgageable value, water rights, easements, rights-of-way, revenues, mineral rights, and royalties from mineral rights.

Different lien positions on real estate are considered separate and identifiable security.

### B Agency Lien Position

**[7 CFR 764.104(a)] If real estate is pledged as security for a loan, the Agency must obtain a first lien, if available. When a first lien is not available, the Agency may take a junior lien under the following conditions:**

Each prior lienholder must sign FSA-2319 before loan closing, when real estate will serve as security necessary to meet the adequate security requirement in subparagraph 91 B.

**Note:** The lien will be taken on real estate to be pledged as additional security even if FSA-2319 is not obtained.

**[7 CFR 764.104(a)(1)] The prior lien does not contain any provisions that may jeopardize the Agency's interest or the applicant's ability to repay the FLP loan;**

**[7 CFR 764.104(a)(2)] Prior lienholders agree to notify the Agency prior to foreclosure;**

In some States, a prior lienholder may be able to foreclose the security instrument without providing junior lienholders notice of the foreclosure proceedings. In that case, any prior lienholder must complete FSA-2319.

**[7 CFR 764.104(a)(3)] The applicant must agree not to increase an existing prior lien without the written consent of the Agency; and**

**\*--Note:** In cases where FSA will have a junior lien position on real estate that secures the prior lienholder's LOC, advances up to the existing LOC ceiling are authorized. However, in no case can the LOC ceiling be increased without written Agency consent.--\*

The applicant agrees on FSA-2029 to obtain permission from FSA before granting any additional security interest in the real estate.

**[7 CFR 764.104(a)(4)] Equity in the collateral exists.**

**\*--Note:** When taking a junior lien behind a prior lienholder's LOC, the LOC ceiling will be used to determine available equity.--\*

## 92 Real Estate Security

### A Overview

#### Forms of Title for Real Estate in New York:

**Fee Simple** – Fee simple ownership means absolute and unqualified legal title to real property. The owner(s) has unconditional power of disposition during his or her lifetime. Upon his or her death, property held in fee simple can always pass to the owner's heirs.

**Less than Fee Simple** – Other types of property interests also exist which are limited to some degree. Due to the complexities involved, loan officials should contact STO if it is determined that any of the following circumstances apply:

**Life Estate** – A life estate is a form of legal ownership which confers upon a person(s) certain rights in a property for his or her lifetime. Typically, the person holding the life estate interest has a right to the exclusive use and possession of the property for the rest of his or her life, after which the property vests in the person or persons with the “remainder” interest. In most cases, it is necessary to obtain the signatures of both the life estate holder(s) and all of the remaindermen in order to obtain a valid mortgage against this type of property.

**Equitable Interest** – An equitable ownership interest is a form of ownership that exists without legal title to the property. Examples of this type of interest include: (a) individuals who are heirs of an unprobated estate, (b) beneficiaries of a trust, (c) easement holders, (d) persons with a land purchase contract, and (e) individuals with future interests such as reverter interests.

**Leasehold Interests** – Leases convey rights of possession and use but not ownership. Typically, leases run for a period of years. However, leases can also run from week to week or month to month, and do not always have to have any type of specific duration.

#### Types of Property Ownership

**Sole Ownership (1 person)** – Sole ownership is characterized as ownership by an individual or entity (such as a partnership, corporation, trust, etc.) that is legally capable of holding title.

**Joint Estates**. Joint estates allow two (or more) parties to own title to real property at the same time. However, there are different types of joint estates, each of which have distinguishing characteristics:

(1) **Tenants in Common** – If the Deed is silent as to the form of ownership, then it is presumed that the parties own the real property as tenants in common. When title to



## 92 Real Estate Security (Continued)

### A Overview (Continued)

- (2) The real property is held by one or more persons as tenants in common, each person owns a specific percentage interest in the real property, which does not need to be equal. With this type of ownership, each owner has the right to transfer his or her interest during their lifetime, without obtaining the permission of any of the owners. Each owner also has the right to mortgage his or her interest in the property without obtaining the consent of the other co-owners. Upon the owner's death, his or her interest passes to the owner's estate.
- (3) **Joint Tenants with the Right of Survivorship** – This form of ownership arises when the words, “as joint tenants with rights of survivorship” appear immediately after the names of the grantees in the Deed. With this type of ownership, each owner has an undivided right to possess the whole property, and a proportionate right of equal ownership interest. Upon the death of one of the joint tenants, that tenant's interest automatically vests in the surviving joint tenant(s) by operation of law, instead of passing to the deceased tenant's estate. Therefore, any mortgage that was not signed by all of the joint tenants is not enforceable if the borrower dies before any of the other joint tenants.
- (4) **Tenants by the Entirety** -- This type of ownership is a form of joint tenancy with a right of survivorship that is only available to a married couple. Like joint tenants with a right of survivorship, each spouse owns an undivided interest in the whole property, and when one spouse dies, the surviving spouse automatically becomes the sole owner. Therefore, any mortgage that was not signed by both spouses is not enforceable if the borrower dies before his or her spouse. Moreover, this form of ownership makes it more difficult for a creditor to force a sale of the property without both spouse's consent.

### B Agency Lien Position

**When a first lien is not available, the Agency may take a junior lien under the following conditions:**

FSA regulations allow FSA to take a junior lien on real estate when making a direct loan. New York State law provides lenders the authority to use an “open-ended” mortgage. This type of mortgage secures all the indebtedness owed by a borrower up to a stated level. Such indebtedness might have been incurred when the mortgage was granted or at any point thereafter. In order to insure that FSA's lien position is protected from future advances made in accordance with an “open-ended” mortgage, a copy of any prior lien holder's mortgage must be obtained when a loan secured by real estate is made.

The closing agent must prepare, complete, approve and record releases, subordinations, and other curative documents that are necessary in order to provide

**92 Real Estate Security (Continued)**

**B Agency Lien Position (Continued)**

FSA with its desired lien position. In New York State, the NY version of Form FSA- 2319 NY (OPM Approved 9/20/12) will be used. The Form FSA-2319 NY (OPM Approved 9/20/12) "Agreement with Prior Lien holder" in provision 4b states that the lienholder must notify FSA not less than 45 days. Once executed, this document will be recorded in the County Clerk's Office in the mortgage section.

Note: The lien will be taken on the security even if FSA-2319 is not obtained. When real estate will serve as additional security, the loan official will request the prior lienholder to sign FSA-2319 NY. If prior lienholder signature cannot be obtained, then the lien will be taken on the real estate security regardless.

**92 Real Estate Security (Continued)****C Liens on Real Estate Held Under a Purchase Contract**

In a land purchase contract, the seller of the land, or contract holder, acts as a lender and continues to hold the title for the land. The purchaser of the land is essentially obtaining financing of a portion of the purchase price of the land from the seller. The property may be used for adequate or additional security for all types of direct loans.

**[7 CFR 764.104(b)] If the real estate offered as security is held under a recorded purchase contract:**

- (1) The applicant must provide a security interest in the real estate.**
- (2) The applicant and the purchase contract holder must agree in writing that any insurance proceeds received for real estate losses will be used only for one or more of the following purposes:**
  - (i) To replace or repair the damaged real estate improvements which are essential to the farming operation;**
  - (ii) To make other essential real estate improvements; or**
  - (iii) To pay any prior real estate lien, including the purchase contract.**

**[7 CFR 764.104(b)(3)] The purchase contract must provide the applicant with possession, control and beneficial use of the property, and entitle the applicant to marketable title upon fulfillment of the contract terms.**

**[7 CFR 764.104(b)(4)] The purchase contract must not:**

- (i) Be subject to summary cancellation upon default;**
- (ii) Contain provisions which jeopardize the Agency's security position, or the applicant's ability to repay the loan.**

## 92 Real Estate Security (Continued)

## C Liens on Real Estate Held Under a Purchase Contract (Continued)

[7 CFR 764.104(b)(5)] The purchase contract holder must agree in writing to:

- (i) Not sell or voluntarily transfer their interest without prior written consent of the Agency;
- (ii) Not encumber or cause any liens to be levied against the property;
- (iii) Not take any action to accelerate, forfeit, or foreclose the applicant's interest in the security property until a specified period of time after notifying the Agency of the intent to do so;
- (iv) Consent to the Agency making the loan and taking a security interest in the applicant's interest under the purchase contract as security for the FLP loan;
- (v) Not take any action to foreclose or forfeit the interest of the applicant under the purchase contract because the Agency has acquired the applicant's interest by foreclosure or voluntary conveyance, or because the Agency has subsequently sold or assigned the applicant's interest to a third party who will assume the applicant's obligations under the purchase contract;
- (vi) Notify the Agency in writing of any breach by the applicant; and
- (vii) Give the Agency the option to rectify the conditions that amount to a breach within 30 calendar days after the date the Agency receives written notice of the breach.

The authorized agency official must ensure that conditions are met before closing a loan secured by a land purchase contract. The contract holder must agree to these conditions, in writing, either on a form:

- obtained from the regional OGC
- that includes all items listed in this subparagraph and has been approved by the regional OGC.--\*

[7 CFR 764.104(b)(6)] If the Agency acquires the applicant's interest under the purchase contract by foreclosure or voluntary conveyance, the Agency will not be deemed to have assumed any of the applicant's obligations under the contract, provided that if the Agency fails to perform the applicant's obligations while it holds the applicant's interest is grounds for terminating the purchase contract.

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**92 Real Estate Security (Continued)****D Fixtures and Equipment**

Sometimes FSA must obtain a security interest in fixtures such as buildings that can be moved, including silos, modular buildings, and grain bins, or certain equipment. An item is generally considered a fixture if it is attached to:

- a building or other structure in such a way that it cannot be removed without defacing or dismantling the structure, or substantially damaging the fixture
- land, in such a way that it cannot be removed without substantially damaging the fixture.

**Note:** When determined necessary by OGC, a State supplement will be issued to further explain taking a security interest in fixtures.

Generally, a security interest taken in goods:

- before they become fixtures has priority over real estate interest holders
- after they become fixtures is valid against all person's subsequently acquiring an interest in the real estate. However, it is not valid against persons who had an interest in the real estate when the goods became fixtures, unless they execute FSA-2317.

Liens on fixtures can be obtained in the following 2 ways, and some States require that both be done:

- the fixture may be described on the mortgage, which FSA prefers
- the lien may be filed on UCC-1.

FSA requires a 1<sup>st</sup> lien on equipment or fixtures purchased or refinanced with direct OL funds.

A 1<sup>st</sup> lien is preferred, but a junior lien is acceptable if the equipment or fixtures are purchased with FO funds and secured by a mortgage on the land on which the fixtures reside. However, FSA requires a 1<sup>st</sup> lien on equipment or fixtures purchased with FO funds and secured by UCC-1. This lien is needed only when the fixture cannot be included in the real estate lien, and when the best lien obtainable on all real estate does not provide adequate security for the loan.

**92 Security Requirements****D Fixtures and Equipment**

Perfecting a Security Interest under the NYS Revised Article 9 – Refer to Exhibit 4 of NY 3-FLP Amendment for additional guidance.

Filing Requirements for Fixtures, As-Extracted Collateral, or Timber to be Cut:

If the financing statement covers fixtures, as-extracted collateral, or timber to be cut, then FSA must file the financing statement in the real property records for the county where a mortgage on the real property would be filed. A “fixture” is a piece of personal property which has been affixed to real property in such a way that it loses its identity as distinct personal property, and is instead treated as being part of the real property. The purpose of the fixture filing is to provide FSA with priority over an interest arising under real property law. In order to satisfy all of the specific filing requirements for this type of collateral, the loan official must fill out items 13, 14, and/or 15 of the Addendum to the UCC-1 and attach it to the financing statement. The information required for a fixture filing includes:

- (1) A statement that the financing statement covers collateral that is a fixture;
- (2) A description of the real estate where the item is affixed that is sufficient to give constructive notice to title searchers of the real property where the fixture is located. (A description that refers either to a previously recorded deed or mortgage describing the land or a reference to a tax map lot and block should be sufficient for these purposes).
- (3) The name of the record owner of the property if the record owner and debtor is not the same person.
- (4) Tax Map Number(s) included in the beginning of the description for each tract or parcel.

Since it can be difficult to determine whether a particular item will be classified as a fixture, OGC recommends that FSA file both a fixture filing as well as a financing statement with the New York Department of State. Filing the financing statement with the New York Department of State assures the perfection of FSA’s security interest in the property prior to its affixation to the real estate. It also protects FSA in the event that the property is later determined to be personal property rather than a fixture.

## 92 Real Estate Security (Continued)

**E Tribal Lands Held in Trust or Restricted**

**[7 CFR 764.104(c)] The Agency may take a lien on Indian Trust lands as security provided the applicant requests the Bureau of Indian Affairs to furnish Title Status Reports to the agency and the Bureau of Indian Affairs provides the report and approves the lien.**

USDA and DOI have agreed that FSA loans may be made to American Indians and secured by real estate when title is held in trust or restricted status. When security is taken on real estate held in trust or restricted status, the applicant will request that BIA furnish the Title Status reports to the authorized agency official. The BIA's approval will be obtained on FSA-2029 after the applicant and any other party whose signature is required have signed FSA-2029.

**F Leasehold Estates in Hawaii, Puerto Rico, and American Samoa**

**[7 CFR 764.104(e)] A loan may be secured by a mortgage on a leasehold, if the leasehold has negotiable value and can be mortgaged.**

FSA can secure a loan with a leasehold property if the lease has a negotiable value and can be mortgaged, subject to the following conditions.

- The term of the lease extends beyond the repayment period of the loan for a period sufficient to ensure the objectives of the loan are achieved. If the loan repayment period is equal to or greater than the period of the lease, the applicant must provide other security or the lessor must agree in writing to compensate the applicant for the value of the improvements not depreciated when the lease expires or is terminated.
- The lessor must have clear and marketable title to the real estate or the lessor must have signed a contract to purchase the real estate. The contract and the lien instruments must not contain covenants, such as short redemption periods or rights to cancel, which may jeopardize FSA's security. Any provisions that may jeopardize FSA's security must be limited, modified, waived, or subordinated in favor of FSA.
- FSA, as holder of a mortgage upon a lease or leasehold interest, must hold a position on the security equivalent to or better than a 2<sup>nd</sup> mortgage. Besides the lessor's consent to the mortgage on the leasehold interest, FSA should consider whether:
  - there is reasonable security of tenure to ensure that the applicant's interest is not subject to summary forfeiture or cancellation
  - the right to foreclose the mortgage and sell without restrictions would adversely affect the salability or market value of the security



## 92 Real Estate Security (Continued)

**F Leasehold Estates in Hawaii, Puerto Rico, and the American Samoa (Continued)**

- FSA has a right to bid at a foreclosure sale or to accept voluntary conveyance instead of foreclosure
- FSA has the right, after acquiring the leasehold through foreclosure or voluntary conveyance instead of foreclosure, or in the event of abandonment by the applicant, to occupy the property or sublet it, and to sell it for cash or credit

**Note:** In case of a credit sale, FSA should take a vendor's mortgage with rights similar to those under the original mortgage.

- the applicant has the right, in the event of default or inability to continue with the lease and the loan, to transfer the leasehold, subject to the mortgage, to an eligible transferee who assumes the debt
- advance notice will be given to FSA of the lessor's intention to cancel, terminate, or foreclose upon the lease

**Note:** The advance notice should be long enough to permit FSA to ascertain the amount of delinquencies, the total amount of the lessor's and any other prior interest, and the market value of the leasehold interest and, if litigation is involved, to refer the case with a report of the facts to the U.S. Attorney for appropriate action. At a minimum, the lessor should provide 30 calendar days notice of intent to cancel, terminate, or foreclose on the lease.

- there are express provisions covering FSA's obligation to pay unpaid rental or other charges accrued at the time it acquires possession of the property or title to the leasehold, and that become due during FSA's occupancy or ownership, pending further servicing or liquidation
- there are any provisions to assure fair compensation to the lessee for any part of the premises taken by condemnation
- any other provisions are necessary to obtain an interest that can be mortgaged.

SED will issue a State supplement providing the necessary requirements, including forms for obtaining the required security. The State supplement, forms, and any revisions must have prior National Office approval before being issued.

**G Assignment of Income from Real Estate to be Mortgaged**

FSA may secure a loan with an assignment of income, such as the selling of timber, selling of minerals, or income received from the sale of a right-of-way. The assignment will be perfected by using FSA-2044.

## 93 Other Security Requirements

### A Special Security Requirements

When OL's are made to eligible entities that consist of members who are presently indebted for OL's as individuals, or when OL's are made to eligible individuals who are members of an entity presently indebted for an OL, security must consist of chattel and/or real estate security that is separate and identifiable from the security pledged to FSA for any other direct or guaranteed loans.

**Note:** Different lien positions on real estate are considered separate and identifiable collateral.

The outstanding amount of loans made may not exceed the value of the collateral used.

### B Assignment on Income in UCC States

The authorized agency official will determine whether or not an assignment will be obtained. In UCC States, an assignment of livestock or crop income constitutes a security instrument on income. The share lease, share agreement, or contract will be described specifically as "Contract Rights" or "Contract Rights in Livestock or Crops" on UCC-1.

### C How to Secure Income from Products and Program Payments

Assignments, consents, and security interest relating to income from products and program payments will be used when necessary to protect the Government's interest according to the following.

- FSA-2041 to assign products or income in which FSA does not have a security interest under UCC. Other forms approved by OGC may be used when FSA-2041 is not adequate.
- FSA-2042 for contract products or income, except dairy products in which FSA has a security interest under UCC.
- FSA-2043 to assign dairy products in which FSA has a security interest under UCC.
- Forms provided by the FSA FP's will be used for assigning incentive and other agricultural program payments.

### D Title Held by Contractor

When the title to a livestock or crop enterprise is held by a contractor under a written contract or the enterprise is to be managed by the applicant under a share lease or share agreement, an assignment of all or part of the applicant's share of the income will be taken. A form approved by the Regional OGC will be used to obtain the assignment.

**94 Exceptions to Security Requirements****A Overview**

**[7 CFR 764.106] Notwithstanding any other provision of this part, the Agency will not take a security interest:**

See subparagraphs B through G for when FSA will not take a security interest on property.

**B Jeopardizing Operating Credit**

**[7 CFR 764.106(a)] When adequate security is otherwise available and the lien will prevent the applicant from obtaining credit from other sources;**

FSA will not take a lien on chattel property if it will prevent the applicant or members of an entity applicant from obtaining operating credit from other sources.

In some situations FSA will not take a security interest on an asset, either because of liabilities associated with the security itself, or because the financial position of the applicant would be jeopardized. FSA may take a security interest in these situations only if real estate and chattel security have not provided adequate security.

**C Environmental and Historical Impact**

**[7 CFR 764.106(b)] When the property could have significant environmental problems \*--or costs as described in 7 CFR Part 799.--\***

A lien will not be taken on property that could have significant environmental problems or costs, for example, any known or suspected:

- underground storage tanks
- hazardous wastes
- contingent liabilities
- wetlands
- endangered species
- historic properties.

See 1-EQ and 2-EQ for more information on environmental assessments and requirements.

**94 Exceptions to Security Requirements (Continued)****D Lien Position Cannot Be Perfected**

**[7 CFR 764.106(c)] When the Agency cannot obtain a valid lien;**

SED shall issue a State supplement in areas where DOJ has no jurisdiction or has advised FSA that because of the lack of a Federal District Court, DOJ will not litigate civil cases.

**E Personal Residence of Applicant**

**[7 CFR 764.106(d)] When the property is the applicant's personal residence and appurtenances and:**

**(1) They are located on a separate parcel; and**

**(2) The real estate that serves as security for the FLP loan plus crops and chattels are greater than or equal to 150 percent of the unpaid balance due on the loan;**

**Note:** The 150 percent should be the equity value, after taking prior liens into consideration.

**F Other Assets of Applicant**

**[7 CFR 764.106(e)] When the property is subsistence livestock, cash, working capital accounts the applicants 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; or**

**94 Exceptions to Security Requirements**

**D Lien Position Cannot Be Perfected**

In New York State, DOJ has jurisdiction over all civil cases. Questions concerning the ability of the DOJ to litigate civil cases will be referred to the State Office before making any decision on the loan.

**94 Exceptions to Security Requirements (Continued)**

**G ST Loans**

**[7 CFR 764.106(f) On marginal land and timber that secures an outstanding ST loan.**

FSA is statutorily prohibited from taking additional liens on property securing an ST loan.

**H Documenting Exceptions**

When security is not taken for any of the mentioned reasons, the authorized agency official  
\*--must document the decision in FBP.--\*

## 95 Appraisals and Values

## A Adequate Security

**[7 CFR 764.107(a)] The value of real estate will be established by an appraisal completed in accordance with §761.7 (1-FLP) of this chapter, except that for ML's for FO purposes, the appraisal requirement may be satisfied by an evaluation by an authorized agency official that establishes the value of the real estate.**

**Note:** Until CFR is amended, the following instructions will be followed:

When real estate is taken as security, regardless of loan type, the real estate appraisal requirement may be satisfied by an evaluation from a loan approval official when the amount of the Agency loan to be secured by the real estate does not exceed \$50,000.

A new real estate appraisal is not required if the latest appraisal report available is not over \*--18 months old, unless significant changes in the market value of real estate have occurred in the area within the 18 month period.--\*

**Note:** An acceptable evaluation for FO ML must:

- be performed by a loan approval official that the SED has delegated the authority to perform real estate evaluations after sufficient training and experience
- be included in the Farm Assessment of the FBP
- identify the location of the property
- provide a description of the property, including any improvements and its current and projected use
- provide confirmation that the property was physically inspected and the date of the inspection
- describe the analysis performed and supporting information used to determine the property's market value, including where information was obtained i.e. court house records, comparable sales, property tax assessments, etc,
- include an effective date of the evaluation and a signature of the preparer.

**Note:** See Exhibit 12 for additional guidance on how to complete an evaluation. The evaluation will be documented in FBP Farm Assessment's Type of Farming Operation.

If a DFO-ML is made in conjunction with a real estate loan from another lender, that lender's evaluation or appraisal may be used as a determination of the property's market value. A copy of the evaluation information or appraisal must be included in the loan file as documentation of the determination.

**Note:** See 1-FLP, subparagraph 141 G for additional information about using third party appraisals.

## 95 Appraisals and Values (Continued)

## A Adequate Security (Continued)

**[7 CFR 764.107(b)] The value of chattels will be established as follows:**

An appraisal will be completed to determine market value and applicant equity when:

- an initial loan is made on chattel property owned by the applicant
- properties to be acquired when the item can be specifically identified
- a subsequent loan is made to refinance debt.

**\*--Note:** A desk appraisal may be completed on livestock or equipment when video or photographs exist of the items to be purchased, negating the need to always have to complete an in-person inspection of security items.--\*

**[7 CFR 764.107(b)(1)] The security value of annual livestock and crop production is presumed to be 100 percent of the amount loaned for annual operating and family living expenses, as outlined in the approved farm operating plan.**

**[7 CFR 764.107(b)(2)] The value of livestock and equipment will be established by an appraisal completed in accordance with §761.7 (1-FLP) of this chapter.**

## B Situation When Appraisals Are Not Required

An appraisal is not required for:

- real estate or chattels taken as additional security
- nonessential assets
- loans for annual operating and family living expenses when crops are the primary security
- \*--items that are not readily and specifically identifiable.

**Note:** If property **cannot** be specifically identified (such as livestock or equipment planned to be purchased at auction), a formal chattel appraisal does **not** need to be completed. However, the estimated value of the items to be purchased must be analyzed and satisfy FSA security requirements and should be documented in the credit action of FBP. Security agreements will be updated once security items are more specifically identifiable.--\*

The authorized agency official, to whom SED delegated loan approval authority under 1-FLP, will estimate the market value. The authorized agency official must document the value in FBP, with the basis for the estimate. If the applicant disagrees with the estimated values, FSA may accept an appraisal from the applicant, obtained at the applicant's expense, if the appraisal meets all FSA requirements.

## 96-110 (Reserved)



## Part 6 Insurance

## 111 Overview

## A Adequate Insurance

**[7 CFR 764.108] The applicant must obtain and maintain insurance equal to the lesser of the value of the security at the time of loan closing or the principal of all FLP and non-FLP loans secured by the property, subject to the following:**

**(a) All security, except growing crops, must be covered by hazard insurance if it is readily available (sold by insurance agents in the applicant's normal trade area) and insurance premiums do not exceed the benefit. The Agency must be listed as loss payee for the insurance indemnity payment or as a beneficiary of the mortgagee loss payable clause.**

\*--The hazard insurance obtained by the applicant, at a minimum, should be the standard--\* insurance policy for the locality in which the property is located.

**Note:** The requirement to obtain hazard insurance does not apply to non-essential assets and additional basic security. However, crop insurance is required whenever crops are taken as either primary or additional security, as provided in subparagraph 112 C.--\*

## B Qualifications of Insurance Agents and Companies

\* \* \*

\*--The applicant is responsible for selecting the agent for hazard insurance coverage. The insurance agent and the company supplying the policy should be licensed or otherwise--\* authorized by law to transact the business in the State or other jurisdiction where the property is located. State insurance regulators can provide information about the licensing status of companies.

If the required insurance is not available at comparable rates from an insurance company licensed or otherwise authorized to do business, the authorized agency official may accept insurance from another company if:

- OGC advises that policies issued by the company will be enforceable in the State
- SED determines that the company is reputable and financially sound.

## 112 Type of Insurance Required

### A Hazard Insurance

Subparagraphs A through C contain general insurance requirements.

\*--Hazard insurance is required if the security is the applicant's dwelling, other buildings, and basic security equipment or livestock chattels that are necessary for the farm operation or that provide income to ensure the orderly repayment of the loan.

The authorized agency official may waive the insurance requirement if 1 or more of the following conditions apply:

- cost of insurance is very high in comparison to the value of the property
- property is subject to very slight hazards
- building has a depreciated value of \$2,500 or less.

The minimum amount of coverage for buildings, improvements, and chattels shall be equal to the lesser of the value of security or the cumulative principal owed on all FLP and non-FLP loans at the time of loan closing. Waivers need to be justified and documented in the credit presentation of the Farm Business Plan.--\*

### B Flood Insurance

**[7 CFR 764.108(b)] Real estate security located in flood or mudslide prone areas must be covered by flood or mudslide insurance. The Agency must be listed as a beneficiary of the mortgagee loss payable clause.**

The contents of a building must be insured separately from the building itself.

## 112 Type of Insurance Required (Continued)

**C Crop Insurance**

**[7 CFR 764.108(c)] Growing crops used to provide adequate security must be covered by crop insurance if such insurance is available. The Agency must be listed as loss payee for the insurance indemnity payment.**

**\*--Note:** This reference applies when FSA is financing crop inputs with loan funds. In these cases, the requirement for crop insurance **cannot** be waived if insurance is available. The assignment is obtained on crop insurance company's forms, provided they meet RMA requirements.

If perennial crops are used to secure loans with a term of more than 1 year, the applicant will be required to obtain crop insurance in all subsequent years until the loan is paid in full.

The specific insurance plan and amount of coverage is at the applicant's discretion if the plan meets the Catastrophic Risk Protection level for each crop. Insurance products that are based on farm revenue may be considered adequate.

**[7 CFR 764.108(d)] Prior to closing the loan, the applicant must have obtained at least the catastrophic risk protection level of crop insurance coverage for each crop which is a basic part of the applicant's total operation, if such insurance is available, unless the applicant executes a written waiver of any emergency crop loss assistance with respect to such crop. The applicant must execute an assignment of indemnity in favor of the Agency for this coverage.**

**Note:** This reference applies when FSA is not financing the crop with loan funds but is taking a lien on the crop for additional security. The assignment is obtained on crop insurance company's forms, provided they meet RMA requirements. The reason that **\*--crop insurance was not obtained must be documented in FBP and must be for a reason beyond the applicant's control.**

**Example:** The loan or farm was not obtained until after the signup period for crop--\* insurance has expired.

**D NAP**

The NAP program is an important tool in managing potential risk for individuals who raise crops not covered by standard crop insurance. The authorized agency official will discuss the NAP program with all applicants who plan to raise crops which are eligible for NAP coverage. FSA should determine if using NAP coverage is cost effective for the operation and if it will likely benefit both the applicant and the Agency as part of the overall farm plan. If NAP coverage is likely to provide benefits to the operation, applicants will be encouraged to participate in the NAP program, but under no circumstances can it be made mandatory.--\*

**113 Documentation****A General**

Before loan closing, applicants must provide the applicable documentation required according to subparagraphs B and C.

**B Documentation of Hazard and Flood Insurance**

An applicant should demonstrate hazard or flood insurance coverage by 1 or more of the following documents:

- an insurance policy showing the effective date
- an endorsement to a policy showing the effective date
- a written binder showing the effective date
- a “declaration” page furnished by the insurance company, clearly stating that it is an original declaration page, and showing the effective date
- a receipt for insurance premiums, if the receipt shows the period covered.

An applicant relying on a written binder or receipt for premiums must submit an acceptable insurance policy or endorsement to the authorized agency official within 60 calendar days after the effective date of the policy and before the expiration date of the binder.

The applicant must demonstrate, either through receipts for insurance premiums or another way, that the insurance is effective for at least 12 months following loan closing.

Coverage for a building under construction should be demonstrated by either coverage under a builder’s risk:

- policy naming the applicant as the insured
- endorsement for a policy issued to the applicant.

A policy or endorsement used to cover a building while the building is under construction must convert automatically to full coverage once the building is completed or the applicant must obtain other acceptable coverage.

The authorized agency official shall not rely upon a builder’s risk policy issued to the contractor who is constructing the building.

**113 Documentation**

**B Documentation of Hazard and Flood Insurance**

When working with Amish applicant's and borrower's, acceptable forms of documentation to demonstrate that they have adequate hazard and/or flood insurance coverage may include a copy of the "Amish Aid Society" form or a letter from their church that identifies what will be covered and is signed by the church elders.

113 Documentation (Continued)

**C Documentation of Crop Insurance**

\*--An applicant can demonstrate meeting the crop insurance requirement by evidence of 1 of the following, as applicable:

- CAT
- crop insurance policy
- FSA-570, if crops are not used as primary security.--\*

**114 Indemnity**

**A General**

The insurance provider must complete FSA-2320, attach to the insurance policy, endorsement, or binder, and provide to the authorized agency official before closing. The mandatory mortgage clause in FSA-2320 provides that loss or damage under the policy shall be payable to the FSA as mortgagee.

**B Using Mortgage Clauses and FSA-2320's**

If the standard mortgage clause in FSA-2320 has been incorporated into the language and is printed in the terms of the policy adopted for use in a State, a separate FSA-2320 is not required.

If using a mortgage clause other than the standard mortgage clause on FSA-2320 has been made mandatory by State law or insurance regulation, SED should issue a State supplement about using that mortgage clause.

**115-130 (Reserved)**

## Part 7 Farm Ownership Loan (FO) Programs

### Section 1 FO (Regular and Microloan)

#### 131 Uses

##### A General

**[7 CFR 764.151] FO loan funds may only be used to:**

See subparagraphs B through F for FO uses.

##### B Farm Purchases

FO funds may only be used to:

**[7 CFR 764.151(a)] Acquire or enlarge a farm or make a down payment on a farm.**

Examples include, but are not limited to, the purchase of easements, the applicant's portion of land being subdivided, purchase of cooperative stock, appraisal and survey fees, and participation in special FO programs. Tree-farming requires a timber management plan that promotes a sustainable annual harvest of trees. FSA will use a Forest Stewardship Management Plan as proof that the applicant has an approved plan.

**Note:** Proportionality guidance should be considered to ensure family-sized farm requirements are satisfied. See subparagraph 132 A.

Refinancing of real estate debt is not an authorized use of FO funds. When considering whether or not a request is a technical refinance, the loan approval official shall determine if the ownership structure of the property will change. Ownership changes are often signified by a change in the name of the deeded owner, but this may not always be the situation. For example, an individual buying out the interest of another entity member may constitute a ~~change~~ to the underlying ownership structure, even though the same entity name would still be reflected on the deed.

**Note:** When considering requests where the applicant, or one or more individual or entity members, has an existing ownership interest in the property to be purchased, FSA must make additional efforts to ensure test for credit eligibility criteria is satisfied. To fully assess test for credit requirements in these instances, FSA must consult with relevant creditors, including existing lien holders, to determine if commercial underwriting standards can be met.

Purchases of undivided interests are authorized in limited circumstances when the following criteria can be satisfied:

- all non-applicant owner(s) must pledge their property ownership interest as security by signing the FSA mortgage or deed of trust--\*



## 131 Uses (Continued)

**B Farm Purchases (Continued)**

- \*--all non-applicant owner(s) must have been an existing owner(s) that held interest in the property prior to the transaction (with the exception of a spouse)
- the property being purchased and pledged as primary security will be operated by the FSA applicant.

**Note:** County Offices shall contact the State Office for case-specific guidance on all applications for purchases of undivided interests. State Offices are encouraged to contact the National Office as needed for additional case-specific guidance.

Down payments are authorized as a loan purpose subject to the following:

- a deed is obtained, and the transaction is properly documented by debt and security instruments
- any prior liens meet the FO security requirements for FSA's junior lien position.

**Note:** For contract purchases, purchase contracts must properly obligate the buyer and seller to fulfill the terms of the contract, provide the buyer with possession, control, and beneficial use of the property, and entitle the buyer to marketable title upon fulfillment of the contract terms. The deed must be held in trust by a bonded agent until transferred to the buyer. Upon a buyer's default, the seller must give FSA written notice of the default and a reasonable opportunity to cure the default. The applicant must repay any sums advanced by FSA.

Acquiring farm assets by purchasing ownership interest in an entity is considered to be the same as purchasing the assets themselves. The following uses are authorized:

- individual(s) purchasing ownership interest in an existing operating entity to become the new owner(s)
- existing member(s) purchasing the shares of a withdrawing member(s).

When considering these requests:

- in all cases, the applicant must also be the operator of the farm
- all entity members must sign the promissory note providing individual liability for the debt
- the assets purchased must be an authorized FO loan purpose.--\*

## 131 Uses (Continued)

**B Farm Purchases (Continued)**

The authorized agency official should advise the applicant to have an understanding with the seller on such items as:

- land description and number of acres
- buildings and fixtures included in the transaction

**Note:** The applicant should determine the condition of property attached to the land and the working condition of any fixtures with movable parts.

- minerals and the effect any mineral reservation has on the land value and operating it as a farm
- access to the land or any part of it
- the party responsible for taxes and insurance
- the party who will receive the income from the land during the crop year of the transaction.

**C Capital Improvements**

FO funds may only be used to:

**[7 CFR 764.151(b)] Make capital improvements to a farm owned by the applicant, for construction, purchase or improvement of farm dwellings, service buildings or other facilities and improvements essential to the farming operation. In the case of leased property, the applicant must have a lease to ensure use of the improvement over its useful life or to ensure that the applicant receives compensation for any remaining economic life upon termination of the lease;**

FO funds can be used to purchase, improve, or build any type of structure, including a dwelling that either adequately meets family needs and is modest in size, cost, and design, provided the structure is related to the farming enterprise. The dwelling shall be located on the farm when FO funds are used to purchase the dwelling. However, if the applicant already owns a dwelling located close to the farm, FO funds may be used to repair or improve the dwelling.

An applicant must be the owner of the property, or hold a lease interest for the property, which has a term at least equal to the term of the proposed loan on the property, which the improvement is to be made. In the case of Indian tribal lands, trust properties, and Hawaiian homelands, the applicant's leasehold must show an ownership interest as specified by a State supplement.

**131 Uses (Continued)****D Soil and Water Conservation and Protection**

FO funds may only be used to:

**[7 CFR 764.151(c)] Promote soil and water conservation and protection;**

Examples include the correction of hazardous environmental conditions and the construction or installation of tiles, terraces, and waterways. All soil and water conservation projects are subject to the limitations in subparagraph 74 D.

**E Loan Closing Costs**

FO funds may only be used to:

**[7 CFR 764.151(d)] Pay loan closing costs;**

FO funds may not be used to pay loan packaging or consultant fees associated with applying for or obtaining a FSA loan.

**F Refinance Bridge Loan**

FO funds may only be used to:

**[7 CFR 764.151(e)] Refinance a bridge loan if the following conditions are met:**

- (1) The applicant obtained the loan to be refinanced to purchase a farm after a direct FO was approved;**
- (2) Direct FO funds were not available to fund the loan at the time of approval;**
- (3) The loan to be refinanced is temporary financing; and**
- (4) The loan was made by a commercial or cooperative lender.**

**Note:** Refinancing of a bridge loan is not guaranteed. The applicant and the lender must understand that the anticipated FO is subject to all conditions of loan approval and availability of funds. FSA personnel shall not make any commitments or imply that a bridge loan will be refinanced.

## 132 Eligibility

### A General Eligibility

[7 CFR 764.152] **The applicant:**

**(a) Must comply with the general eligibility requirements established at § 764.101** (paragraphs 62 through 72).

FO specific eligibility is addressed in this paragraph. If different from the general eligibility in paragraphs 62 through 72, the information in this paragraph is to be substituted for those portions.

\*--To ensure compliance with family farm requirements as provided in subparagraph 71 A, the gross farm income generated by the operation (the applicant's entire proposed operation, including the property to be purchased or improved) associated with the purchase or improvement, must be proportionate to the purchase price. As a guide to determine if a proposal is proportionate, typical year gross farm income should normally be at least equal to the annual installments for any debts associated with the real estate purchase or improvement.--\*

The following are entity rule basics for direct FO:

- applicant must be the operator of the farm and match farming records in Farm Programs
- all members of the operating entity, including embedded entities and individuals, must sign the application and meet eligibility requirements as outlined in Part 4
- individual members who own the farm (real estate) must own 50 percent of the farm business (operating entity)
- if the operating entity has embedded entities, the 75 percent rule applies
- loan is made to the operating entity (FLP applicant), and all entity members (from the operating entity) must sign the promissory note
- deed and/or mortgage may be made to any person or entity (in any combination) that was a party to the application as a member of the operating entity or spouses of those individuals (who do not have to be a party to the application or FSA-2026).

132 Eligibility (Continued)

A General Eligibility (Continued)

\*--Example: For this example, use the following facts.

Smith Farms, LLC,  
(operating entity)  
members are  
Bob Smith,  
Betty Smith,  
Fred Smith, and  
Ginger Smith.

Real Estate is owned as follows:

- Bob Smith and Betty Smith, as individuals, own 160 acres.
- Fred Smith and Ginger Smith, as Fred's Acres Inc., own 80 acres.

Based on these facts:

- the FLP applicant would be Smith Farms, LLC, and all the individual members of Smith Farms, LLC
- FLP would get a Credit Report and financial information on Smith Farms, LLC, and all individual members of Smith Farms, LLC
- the FLP loan would be to Smith Farms, LLC
- Smith Farms, LLC, and Bob, Betty, Fred, and Ginger must sign the Promissory Note
- deed and/or mortgage for the real estate (purchased with the FLP loan) can be to an individual (in any combination), or an entity (including a new entity) as long as the members of that entity are members of the operating entity and listed on the Promissory Note (no new members, not on the application, can be added), and allowed by State law; therefore, for this example, the deed and/or mortgage could be to:
  - Bob, Betty, Fred, or Ginger, as individuals, or in any combination; thereof
  - Fred's Acres, Inc., that is just Fred and Ginger, or any new entity created by the individuals to own the real estate purchased with the FLP loan funds, must still be properly incorporated.--\*

## 132 Eligibility (Continued)

**B No Prior Debt Forgiveness**

The applicant:

**[7 CFR 764.152(b)] And anyone who will sign the promissory note, must not have received debt forgiveness from the Agency on any direct or guaranteed loan.**

The authorized agency official shall review debt verification obtained under subparagraph 65 B to determine whether there is any prior loss by the Government.

**C FO Individual and Entity Owner and Operator Requirement**

The applicant:

**[7 CFR 764.152(c)] Must be the owner-operator of the farm financed with Agency funds after the loan is closed. Ownership of the farm operation and farm real estate may be held either directly in the individual's name or indirectly through interest in a legal entity. In the case of an entity:**

**(1) The entity is controlled by farmers engaged primarily and directly in farming in the United States, after the loan is made;**

**(2) An ownership entity must be authorized to own a farm in the state or states in which the farm is located. An operating entity must be authorized to operate a farm in the state or states in which the farm is located.**

**(3) If the entity members holding a majority interest are;**

**(i) Related by blood or marriage, at least one member of the entity must operate the family farm and at least one member of the entity or the entity must own the farm; or,**

**\*--(ii) Not related by blood or marriage, the entity member holding at least 50% interest must operate the family farm and the entity members holding at least 50% interest--\* or the entity must own the farm.**

**(4) If the entity is an operator only entity, the individuals that own the farm (real estate) must own at least 50 percent of the family farm (operating entity).**

**Note:** In circumstances where the applicant is applying to purchase property that is subject to an active lease authorizing another party to operate the property for the remainder of the crop year, the transaction may close providing the lease is terminated at the end of the crop year and the applicant can assume operatorship of the property the following crop year.

## 132 Eligibility (Continued)

**D Farm Experience**

The applicant:

**[7 CFR 764.152(d)] and in the case of an entity, one or more members constituting a majority interest, must have participated in the business operations of a farm for at least 3 years out of the 10 years prior to the date the application is submitted.**

**(1) The following experiences can substitute for up to 2 of the 3 years:**

**\*--Note:** Each item (i) through (viii) can be substituted for 1 of the 3 years required, with a maximum of 2 years of substitutions allowed.--\*

- (i) Not less than 16 credit hours of post-secondary education in an agriculture-related field;**
- (ii) \*--Successful completion of a farm management curriculum offered by a--\* cooperative extension service, community college, adult vocational agriculture program, non-profit organization, or land-grant college or university;**
- (iii) \*--One (1)-year experience as a farm laborer with substantial management--\* responsibility;**
- (iv) Successful completion of an internship, mentorship, or apprenticeship in day-to-day farm management;**
- (v) Significant business management experience;**
- (vi) Honorable discharge from the armed forces of the United States;**
- (vii) Successful repayment of an FSA financed youth loan; or**

**\*--Note:** Successful repayment of an FSA financed youth loan counts for 1 of the 3 years, regardless of the number of youth loans successfully repaid. "Successful repayment" can be youth loans that are paid in full or existing youth loans where all previous annual installments have been made in a timely manner.--\*

- (viii) Established relationship with a counselor in the Service Corps of Retired Executives (SCORE) program who has experience in farming or ranching, or with Agency-approved local individuals or organizations that are committed to providing mentorship in farming or ranching; or**

## 132 Eligibility (Continued)

**D Farm Experience (Continued)**

Local SCORE organizations provide confirmation that a valid mentoring relationship has been established. Loan approval officials will also consider as mentors local individuals or organizations that are not associated with SCORE. Those individuals or organizations must be committed to providing mentorship in farming or ranching. Applicants desiring to meet eligibility requirements using d(1)(iii) must submit a document signed by the mentor that describes the following:

- the mentor's qualifications, training, and on-the-job experience as it relates to agriculture, including the number of years of related experience
- specific skills and knowledge the mentor will provide
- intended interactions with the applicant, including frequency of meetings, discussions, and oversight.

The loan approval official will determine the adequacy of a mentor, giving specific consideration to the mentor's history related to the applicant's type of operation. A mentor does not need to have experience specifically as an operator of a farm or ranch. Ample experience in agribusiness-related fields is acceptable, including education, lending, marketing, consulting, and other fields related to agribusiness. Determinations will be documented in the eligibility section of the FBP credit presentation.

**\*--(2) The 3-year requirement in this paragraph (d) will be waived if the applicant meets the requirements of both paragraphs (d)(1)(iii) and (viii) of this section.**

**[7 CFR 764.152(e)] For an ML made for FO purposes, if an ML applicant has successfully repaid an FSA financed youth loan, the term of that loan may be used toward the 3 years of management experience required for a FO direct loan.--\***



**132 Eligibility (Continued)****D Farm Experience (Continued)**

Applicants shall document that their participation in the business operation of a farm was not solely as a laborer. Documentation may include, but is not limited to:

- written statements from other parties with knowledge of applicant's role and responsibilities in the business operation of a farm
- documents from the applicant that indicate their responsibilities in the business operation of a farm.

For an individual applicant to be an operator, the applicant must have participated and provided labor and management of the farm for at least 3 years.

For an entity applicant to be an operator, 1 or more members constituting a majority interest must have participated in the operation of the farm for at least 3 years and provided labor and management.

**Example 1:** Jane Smith applies for FO to purchase a hog farm adjacent to the hog farm currently owned by her mother. She recently graduated from law school. Her father died 4 years ago and she assumed responsibility for the farm, and continued to oversee the day-to-day operation of the farm while she attended school.

Jane Smith is eligible for FO since she has had significant responsibility for the day-to-day business operations of a farm for more than 3 years within the last 10 years.

**Example 2:** John Doe applies for FO to purchase a grain farm. He indicates on his application that he was born and raised on a farm and worked for his father until about 5 years ago. His father then turned over 40 acres of the family farm to him. For 2 years, John made all management decisions for the 40 acres. In addition, John helped make management decisions when working with his father before operating his 40 acres. For the last 3 years, John has worked in town and has not been involved with the farm.

John Doe is eligible for FO as he had management responsibility, and made day-to-day decisions on the 40 acres for 2 years, and before that, participated in the operation of a farm for more than 1 year as he made management decisions while working for his father. This combination of experience enables John to meet the requirement that he has participated in the operation of a farm for 3 out of the last 10 years.

## 132 Eligibility (Continued)

**D Farm Experience (Continued)**

**Example 3:** John Smith applies for an FO to purchase a farm. He indicates on his application that he has worked as a migrant laborer for the last 10 years. 5 years ago he was placed in a managerial position where in addition to supervising the work crew, he decides what fields are to be worked, planting rates, and the majority of daily management decisions related to the operation.

John Smith is eligible for an FO as his work as the crew leader and daily manager of the operation is sufficient to qualify for FSA assistance.

**Example 4:** Fred Farmer applies for an FO to purchase a farm. His application indicates that he has been operating a rented farm for the last 2 years, making all management decisions and provided the majority of the labor. Before that he attended college for 2 years, and even though he did not graduate, he does have 16 hours of agriculture courses.

Fred Farmer is eligible for an FO to purchase a farm because his agriculture course work can be substituted for 1 year of the 3 year requirement to purchase a farm.

**E Term Limits**

The applicant:

**\*--[7 CFR 764.152(f)] And anyone who will sign the promissory note, must satisfy at--\* least one of the following conditions:**

**(1) Meet the definition of a beginning farmer;**

**(2) Have not had a direct FO loan outstanding for more than a total of 10 years prior to the date the new FO loan is closed.**

**\*--The applicant and anyone who will sign the promissory note, may close an FO in no more than 10 calendar years, either as an individual or as a member of an entity. The years may be consecutive or non-consecutive, and there is no limit on the number of FO's closed in a year.--\***

**Note:** OGC has interpreted the CONACT to allow the use of “outstanding” in the CFR, and therefore is consistent with the statute.

**\*--Example 1:** If an applicant receives their first FO in the year 2016, this applicant has 9 additional calendar years in which they may receive FO loans. If nothing else changes the applicant could get an FO in 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, and 2025 (9 more total calendar years). This applicant would have until the last day of 2025 to close a new FO.--\*

## 132 Eligibility (Continued)

**E Term Limits (Continued)**

**\*--Example 2:** An applicant receives their first FO in 2016 and pays the loan off in 2021.--\*  
 In determining outstanding years, the exact date is not significant, no matter if it is paid off on 1/1, 6/23, or 12/31 it still counts as 1 calendar year and the applicant would have 4 additional total years to get an FO. If the applicant comes back for another FO in the year 2027, this applicant would still have 4 additional total years in which they may receive an FO.

**Note:** The following exceptions apply:

- rescheduling a loan does not count against the direct FO eligibility limitation
- ML's made for FO purposes are not exempt and count towards the FO eligibility limitation
- cosigning for a direct FO counts against the direct FO eligibility limitation
- assuming a direct FO counts against the direct FO eligibility limitation
- an entity applicant is eligible for a direct FO only if all of its individual members have not exceeded the term limits
- guaranteed FO's do not count against the direct FO eligibility limitation
- \*--an applicant shall be eligible to close an FO any time prior to the 10-year anniversary date of the day they closed their first FO.

**Example:** If an applicant closed their first FO May 30, 2019, the applicant may close a subsequent FO on or before May 29, 2029.--\*

**(3) Have never received a direct FO loan.**

## 133 Limitations

### A General

[7 CFR 764.153] **The applicant must:**

- (a) Comply with the general limitations established at § 764.102 (paragraph 74);**
- (b) Have dwellings and other buildings necessary for the planned operation of the farm available for use after the loan is made.**

The necessary buildings must be located on the applicant's farm, except when the:

- applicant already has an adequate, decent, safe, and sanitary dwelling suitable for the family's needs that is located close enough to the farm so the farm may be operated successfully
- applicant has a long-term lease on acceptable rented buildings that are adjacent to or near the farm
- applicant occupies suitable buildings that the applicant will eventually inherit or be permitted to purchase from a relative
- farm does not have an adequate dwelling and the applicant owns a suitable mobile home that will be used as the applicant's home.

**Note:** FSA can finance a manufactured home, placed on a permanent foundation; however, mobile homes, remaining on wheels, may not be financed. In both cases, FO funds can cover the cost of necessary improvements, such as anchoring the home and water and sanitary requirements.

### B Loan Limits

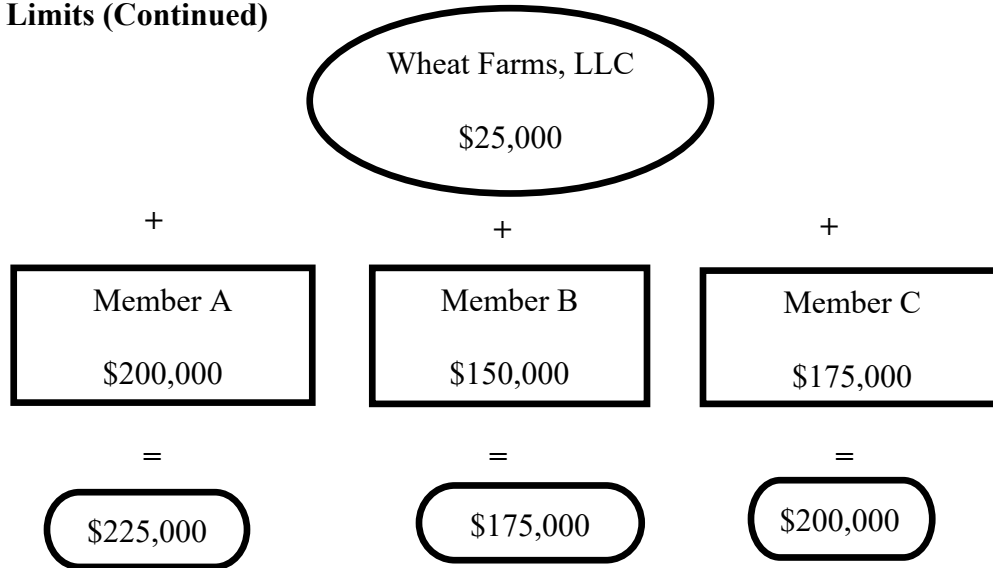
\*--The outstanding principal balances for a farm loan applicant or anyone who will sign the promissory note cannot exceed \$600,000 for a Direct FO. In the case of an entity, the--\* outstanding balance is considered separately for each individual member, it is not considered as a total of all members' outstanding Direct FO--\* principal balances.

**Example:** Wheat Farms, LLC has an outstanding Direct FO loan principal balance of \$25,000. The entity consists of 3 members, each have Direct FO loans in their own names. Member A has a Direct FO loan with a principal balance of \*--\$200,000, Member B has a Direct FO loan with a principal balance of \$150,000, and Member C has a Direct FO loan with a principal balance of \$175,000. Wheat Farms, LLC would be eligible for up to \$375,000 in Direct FO.--\*

133 Limitations (Continued)

**B Loan Limits (Continued)**

\*--



\$600,000 (Direct FO loan limit) – \$225,000 (highest combined outstanding principal)  
 = 375,000 (maximum FO amount remaining).--\*

See 1-FLP, paragraph 29 for FO limits.

**C Refinancing**

Refinancing of real estate debt is prohibited except for bridge loans according to subparagraph 131 F.

**D Compliance with Special Laws and Regulations**

Applicants will be required to comply with applicable Federal, State, and local laws and regulations governing building construction; diverting, appropriating, and using water including use for domestic purposes; installing facilities for draining land; and making changes in the use of the land affected by zoning regulations.

SED and FLP staff will consult with NRCS, U.S. Geological Survey, Army Corp of Engineers, State Geologist or Engineer, or any board having official functions relating to water use or farm drainage requirements and restrictions for water and drainage development. SED shall issue State supplements to provide guidelines which:

- state all requirements to be met, including the acquisition of water rights
- define areas where development of ground water for irrigation is not recommended
- define areas where land drainage is restricted.

**133 Limitations**

**D Compliance with Special Laws and Regulations**

Loan Officials will comply with local laws when developing loans. Refer to FmHA instruction 1940-G for environmental requirements.

New York State law requires reporting water withdrawals for any individual or industry capable of withdrawing more than 100,000 gallons per day. Any person or entity having the capability to withdraw more than 100,000 gallons per day of surface or groundwater must file an annual report with the New York State Department of Environmental Conservation (NYSDEC). Contact the FSA NY State Environmental Coordinator for more information.

**E Water and Wastewater Systems**

This handbook amendment is being added to require water testing and septic system inspections be performed and copies of the results of water and septic inspection reports are to be provided to FSA when FO loan funds are being used to purchase farm property with a farm dwelling or other facilities which require water and wastewater systems.

Farm properties financed with FO funds must have safe water and wastewater disposal systems that comply with local, county and state zoning and health standards and comply with the Safe Drinking Water Act (42 U.S.C. 300h) and the Clean Water Act (33 U.S.C. 1341).

Private companies usually perform water quality testing of individual wells and inspections of septic systems and will provide a written report of the inspection results. Inspections are not required on public water and wastewater disposal systems.

**133.5 Direct Farm Ownership - Microloan (DFO-ML)**

**A Overview**

Applicants meeting the requirements established in subparagraph 43 C may apply for DFO-ML's.

**B Requirements**

**[7 CFR 764.51(d)] For an ML request for FO purposes, all of the following criteria must be met:**

**[7 CFR 764.51(d)(1)] The loan requested is:**

**(i) To pay for any authorized purpose under the FO program**

**(ii) \$50,000 or less and;**

**(iii) the applicant's total outstanding principal Agency FO debt at the time of loan closing will be \$50,000 or less.**

**Notes:** This will be incorporated by a Farm Bill CFR change but is effective, as provided here, immediately.

\*--The loan limits allow a borrower to receive up to \$50,000 in OL Microloan funds and \$50,000 in FO Microloan funds, for a total of \$100,000. However, in no case will the loans exceed the individual loan type amount even if done in combination.

DOL – ML must be less than or equal to \$50,000.

DFO – ML must be less than or equal to \$50,000.--\*

\* \* \*

## 134 Joint Financing Arrangements

### A General

The following regulations and requirements will apply to both the regular FO and DFO-ML.

**[7 CFR 764.154(a)(3)] If the FO loan is part of a joint financing arrangement and the amount of the Agency's loan does not exceed 50 percent of the total amount financed, the interest rate charged will be the greater of the following:**

- (i) **The Agency's Direct Farm Ownership rate, available in each agency office, minus 2 percent; or**
- (ii) **2.5 percent.**

FSA encourages using joint financing arrangements. In such arrangements, an applicant obtains financing from another lender, which can be a commercial lender, a State program, or the seller of a farm. The applicant will use this financing along with FSA financing for any authorized FO purpose.

\*--The following is an example of a DFOML joint financing arrangement.

<b>Example:</b> Purchase Price	\$325,000
DFOML	\$ 50,000
Other Financing	\$275,000--*

See 1-FLP, Exhibit 17 for interest rates.

**Note:** If the regular FO interest rate is lower than the participation rate, the loan will be made as a regular FO.

Other lender's loans may be guaranteed by FSA. See 2-FLP.

### B FSA Loan Made at Same Time as Other Lenders

When an FO is made at the same time as a loan from another lender, that lender's lien will have priority over the FSA lien unless otherwise agreed. The lender's lien priority can cover payment of taxes, property insurance, reasonable maintenance to protect the security, and reasonable foreclosure costs including attorney's fees in addition to principal and interest.



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## 135 Rates, Terms, Payments, and Security

## A Rates

**[7 CFR 764.154(a)(1)] The interest rate is the Agency's Direct Farm Ownership rate, available in each Agency office.**

See 1-FLP, Exhibit 17 for interest rates.

**[7 CFR 764.154(a)(2)] The limited resource Farm Ownership interest rate is available to applicants who are unable to develop a feasible plan at regular interest rates.**

See subparagraph 351 C for more information on limited resource loans when the farm operating plan shows that installments at the higher rate, along with other debts, cannot be paid during the period of the plan.

**[7 CFR 764.154(a)(4)] The interest rate charged will be the lower of the rate in effect at the time of loan approval or loan closing.**

## B Terms

**\*--[7 CFR 764.154(b)] Except for ML's made for FO purposes, the Agency schedules--\* repayment of an FO loan based on the applicant's ability to repay and the useful life of the security. In no event will the term be more than 40 years from the date of the note.**

The FO term may not exceed the useful life of the security or 40 years, whichever is less.

When setting the term, the authorized agency official must review:

- FBP or other similar plans of operation to establish repayment ability
- the appraisal to establish the useful life of the security.

The specific term of a loan is determined by the applicant's projected ability to repay the loan as shown by FBP or other farm plan developed according to 1-FLP, Part 8.

**\*--[7 CFR 764.154(b)(1)] For ML's made for FO purposes, the Agency schedules repayment of an FO based on the applicant's ability to repay and the useful life of the security. In no event will the term be more than 25 years from the date of the note.--\***

## 135 Rates, Terms, Payments, and Security (Continued)

### B Terms (Continued)

\*--The loan term must be the minimum period of time to achieve a TDCLCR of 1.10, if possible, in a typical year plan, but shall never exceed the useful life of the security. Loan terms are considered in 5-year increments. A loan term of 40 years will only be considered if a TDCLCR of 1.10 cannot be achieved in a typical year plan using a shorter term.

**Example:** If a proposed loan term will not result in a TDCLCR of 1.10 in a typical year plan, the next 5-year term will be considered, and so on, until the projected installment results in a TDCLCR of 1.10, if possible. If a 35-year term results in a TDCLCR less than 1.10 in a typical year plan, the FO will be placed on a 40-year term provided this term does not exceed the useful life of the security.

Exceptions to this policy are authorized to be made on a case-by-case basis by the Farm Loan Chief. When considering exception requests, the Farm Loan Chief will ensure repayment terms are reasonable and equitable.--\*

Repayment terms that include balloon installments are prohibited.

**Note:** 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.

### C Payment Frequency

All notes are scheduled with annual payments. Assignments or FSA-2027 can be put in place to collect payments that correspond with the income stream of the applicant's operation.

The first installment for all FO loans must be scheduled within 12 months from the date of loan closing.

The minimum scheduled annual payment for the first 5 years must be the interest accrued on the principal balance. The applicant must be informed that no reduction will be made in principal when an interest only payment is scheduled. FSA typically considers such payments when a farming operation is new and not fully developed but will have a future income stream. One example of such an operation is establishing a new orchard.

### D Security

[7 CFR 764.155] An FO loan must be secured:

- (a) In accordance with §§ 764.103 through 764.106 (paragraphs 91 through 94);
- (b) At a minimum, by the real estate being purchased or improved.

**135 Rates, Terms, Payments, and Security (Continued)****D Security (Continued)**

**(c) In accordance with §§764.103(c) and 764.101(e), ML's are exempted from the requirements of obtaining 150% security and taking a lien on non-essential assets. Therefore, an ML made for FO purposes, while following the applicable provisions of 764.103 through 764.106, may be secured only by the real estate being purchased or improved, as long as it meets the 100% security requirement.**

**\*--Note:** The purchase price of a property may exceed the appraised value, providing adequate security is available to satisfy all security requirements.--\*

**136 Subsequent Loans****A General**

A subsequent FO is a loan made to an applicant who is currently in debt for an FO.

A subsequent loan may be made for the same purpose, under the same conditions, and processed in the same manner as an initial loan.

A new real estate mortgage will not be necessary provided:

- a new mortgage is not required by State law
- that all the land which will serve as security for the subsequent loan is described on the present real estate mortgage
- the real estate mortgage has a future advance clause and a State supplement provides authority for using such a clause
- the required lien priority is obtained with the existing mortgage and future advance clause.

SED shall issue a State supplement about when to obtain a new mortgage for a subsequent loan.

**136 Subsequent Loans**

**A General**

In New York State the law requires each subsequent loan to be secured by a new mortgage. Each mortgage will describe all loans being secured by the real estate even if described in previous mortgages.

**137 Program Outreach****A General**

In addition to outreach requirements in subparagraph 41 E, SED shall be responsible for:

- maintaining efforts to inform potential applicants and retiring farmers of FLP
- coordinating with State Beginning Farmer programs and other organizations that assist beginning farmers.

**B Relationship between FSA and a State Beginning Farmer Program**

DAFLP has the authority to execute MOU with any State Beginning Farmer program expressing an interest in coordinating financial assistance to beginning farmers. MOU must be executed within 60 calendar days of the State notifying DAFLP in writing of such interest, and will be developed according to Exhibit 16.

\*--Under MOU, FSA will agree to provide qualified beginning farmers with a down payment--\* loan under Section 2 and/or a guarantee of the balance of the purchase price provided by the State program.

This agreement will be subject to applicable law, loan approval requirements, and the availability of funds. FSA will not charge a fee to obtain or retain a guarantee in connection with any joint funding under MOU.

If any changes are made to MOU, the Regional OGC will be consulted. States will send MOU's to LMD, at the following address, to obtain the DAFLP's approval:

Director  
 USDA FSA DAFLP LMD  
 STOP 0522  
 1400 Independence Ave SW  
 Washington DC 20250-0522.

**138-150 (Reserved)**

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**Section 2 Down Payment Program**

**151 Uses**

**A General**

The following regulations and requirements will apply to both regular FO and DFO-ML.

**[7 CFR 764.201] Down payment loan funds may be used to partially finance the purchase of a family farm by an eligible beginning farmer, socially disadvantaged farmer, or veteran farmer.**

**Note:** For down payment loan purposes, the applicant must meet the definition of a beginning farmer, socially disadvantaged farmer, or veteran farmer according to Exhibit 2, at the time the application is received by FSA.



**152 Eligibility****A Requirements**

[7 CFR 764.202] **The applicant must:**

- (a) Comply with the general eligibility requirements established at § 764.101 (paragraphs 62 through 72) and the FO (including DFO-ML) eligibility requirements of § 764.152 (paragraph 132); and**
- (b) Be a beginning farmer, socially disadvantaged farmer, or veteran farmer.**

See Exhibit 2 for the definition of a beginning farmer, SDA farmer, and veteran farmer.

**B Farm Size for Beginning Farmers**

The applicant must not own more than 30 percent of the average size farm as established under the beginning farmer definition at the time of the application. The applicant may exceed the 30 percent after the loan is closed.

The average farm acreage and 30 percent of the average acreage shall be published in a State supplement. The 30 percent of the average acreage will be rounded to the closest tenth of a percent.

**\*--Note:** When an individual applicant has ownership interest in real estate as a member of an entity, the entire acreage owned by the entity will be used for the 30 percent rule determination. The applicant's pro-rated ownership share in the entity will not be used to determine the number of acres owned.--\*

**Example:** The average size farm for the county is 94 acres. 30 percent of the average, rounded to the nearest tenth, is 28.2 acres. Therefore, to meet the beginning farmer requirements, the applicant must own no more than 28.2 acres.

If the farm is located in more than 1 county, FSA uses the average farm acreage of the county where the applicant's residence is located.

If the applicant's residence is not located on the farm or if the applicant is an entity, FSA uses the average farm acreage of the county where the largest portion of the farm is located.

**Note:** Average farm size does **not** apply to SDA or veteran farmer applicants. However, the family farm requirement under § 764.101(k) (paragraph 71) does apply.

**152 Eligibility****B Farm Size for Beginning Farmers**

The average farm size for each county New York is published in NY Exhibit 10.

These figures are provided in accordance with the requirement set forth in the Exhibit 2 definition of a beginning farmer or rancher and will be used to determine if an applicant meets the land ownership limitation.

The farm size data was obtained from the 2017 Census of Agriculture. It can be found in the County Data for New York, Table 8: Farms, Land in Farms, Value of Land and Buildings, and Land Use: 2017 and 2012 of the County Data.

You may use the following website to view the New York Farm size information directly:  
[https://www.nass.usda.gov/Publications/AgCensus/2017/Full\\_Report/Volume\\_1,\\_Chapter\\_2\\_County\\_Level/New\\_York/st36\\_2\\_0008\\_0008.pdf](https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_2_County_Level/New_York/st36_2_0008_0008.pdf)

Alternatively, you may visit [www.nass.usda.gov/agcensus/index.php](http://www.nass.usda.gov/agcensus/index.php) to view the full Census of Agriculture data.

**153 Limitations**

**A General**

[7 CFR 764.203(a)] **The applicant must:**

**\*--(1) Comply with the general limitations established at § 764.102 (paragraph 74).--\***

**B Minimum Down Payment**

The applicant must:

**[7 CFR 764.203(a)(2)] Provide a minimum down payment of 5 percent of the purchase price of the farm.**

The applicant must provide the minimum down payment in cash.

**C Maximum FSA Loan Amount**

**[7 CFR 764.203(b)] Down payment loans will not exceed 45 percent of the lesser of:**

- (1) The purchase price,**
- (2) The appraised value of the farm to be acquired, or**
- (3) \$667,000; subject to the direct FO dollar limit specified in 7 CFR 761.8(a)(1)(i).**

**[7 CFR 764.203(c)] Down payment loans made as ML for FO purposes may not exceed \$50,000.**

The following is an example of a DFOML down payment loan.

<b>Example:</b> Purchase Price	\$325,000
Cash Down Payment	\$ 16,250
Down Payment DFOML	\$ 50,000
Other Financing	\$258,750

**Note:** The balance of the purchase price not covered by the down payment loan and applicant down payment may be financed by a commercial, cooperative, or private lender, including the seller.

**D Maximum Combined Loans**

**[7 CFR 764.203(d)] Financing provided by the Agency and all other creditors must not exceed 95 percent of the purchase price. Financing provided by eligible lenders may be guaranteed by the Agency under part 762 of this chapter (2-FLP).**

**154 Rates, Terms, and Security****A Rates**

\*--[7 CFR 764.204(a)] **The interest rate for Down payment loans will be the regular direct FO rate minus 4 percent, but in no case less than 1.5 percent.** See 1-FLP, Exhibit 17 for current rates.

**B FSA Terms**

[7 CFR 764.204(b)(1)] **The Agency schedules repayment of Down payment loans in equal, annual installments over a term not to exceed 20 years.**

The authorized agency official may schedule repayment over a period of less than 20 years if requested by the applicant and the farm operating plan (see 1-FLP, Part 8, Section 3) indicates that the loan can be repaid within the period requested.

**C Other Lender Terms**

[7 CFR 764.204(b)(2)] **The non-Agency financing must have an amortization period of at least 30 years and cannot have a balloon payment due within the first 20 years of the loan.**

**D Minimum Security Requirements**

[7 CFR 764.205] **A Down payment loan must:**

**(a) Be secured in accordance with §§ 764.103 through 764.106** (paragraphs 91 through 93);

**(b) Be secured by a lien on the property being acquired with the loan funds and junior only to the party financing the balance of the purchase price.**

FSA:

- requires adequate security on a down payment loan as it does for an FO--\*
- does not require additional security
- does not require a lien on nonessential assets.

**Note:** The purchase price of a property may exceed the appraised value, providing adequate security is available to satisfy all security requirements.

See Part 5 for detailed information on security requirements.

**155-170 (Reserved)**

## Part 8 Conservation Loan (CL) Program

## Section 1 CL's

## 171 Uses

## A General

**[7 CFR 764.231(a)] CL funds may be used for any conservation activities included in a \*--conservation or Forest Stewardship Management Plan, including but not limited to:--\***

- (1) The installation of conservation structures to address soil, water and related resources;**
- (2) The establishment of forest cover for sustained yield timber management, erosion control, or shelter belt purposes;**
- (3) The installation of water conservation measures;**
- (4) The installation of waste management systems;**
- (5) The establishment or improvement of permanent pasture; and**
- (6) Other purposes including the adoption of any other emerging or existing conservation practices, techniques, or technologies.**

**Note:** On Friday, May 13, 2011, FR notice was published to inform the public that, because of a lack of funding for the CL program, direct CL applications will not be accepted until further notice. Agency officials should advise prospective applicants of the availability of other FSA loan programs.

**\*--FSA's file will contain a Forest Stewardship Management Plan, NRCS CPA-1155, or--\***  
Tool Kit as proof of an approved conservation plan.

Any equipment, conservation practice, conservation project listed on the conservation plan, or anything that is required to carry out the provisions of the conservation plan, including items regularly funded with OL or FO can be funded with CL.

**\*--The completed conservation practice must meet NRCS or FS standards.**

See Exhibit 2 for definitions of conservation plan, conservation practice, conservation project, and Forest Stewardship Management Plan.--\*

172 Eligibility

**A General Eligibility**

[7 CFR 764.232(a)] **The applicant:**

[7 CFR 764.232(a)(1)] **Must comply with general eligibility requirements specified in \*--§764.101 except paragraphs (e) and (k) (paragraphs 66 and 71).--\***

**B No Prior Debt Forgiveness**

The applicant:

[7 CFR 764.232(a)(2)] **And anyone who will sign the promissory note, must not have received debt forgiveness from the Agency on any direct or guaranteed loan.**

**C CL Individual and Entity Owner and Operator Requirement**

The applicant:

[7 CFR 764.232(a)(3)] **Must be the owner-operator or tenant-operator of a farm and be engaged in agricultural production after the time the loan is closed. In the case of an entity:**

**(i) The entity is controlled by farmers engaged primarily and directly in farming in the United States;**

**(ii) The entity must be authorized to operate a farm in the State in which the farm is located.**

[7 CFR 764.232(b)] **[Reserved].**

**\*--D Term Limits**

CL's are not subject to term limits.--\*

**173 Limitations****A General**

**[7 CFR 764.233(a)] The applicant must comply with the general limitations specified in §764.102 except §764.102(f) (subparagraph 74 F) which does not apply to applicants for the CL Program.**

**Note:** A portion of the applicant's income may be derived from a noneligible enterprise source and the conservation measure may benefit the noneligible enterprise. However, the applicant must be engaged in production agriculture (an enterprise that would normally be eligible for FSA's FO or OL programs and does not meet FSA's definition of noneligible enterprise).

**B Repaying Duplicate Benefits**

**[7 CFR 764.233(b)] The applicant must agree to repay any duplicative financial benefits or assistance to CL.**

**Example:** FSA provides CL for a project that is eligible for cost-share payments at completion. The cost share payment must be applied to CL as an extra payment when received.

**\*--C Site Work Development**

When FSA approves CL on which cost share payments are planned, none of the planned CL work can proceed until after NRCS-CPA-1202, Part 60, "Contract Obligations" is electronically signed and dated, or the practice is no longer eligible for NRCS payments. A waiver must be requested from the State Conservationist, but must be approved before the start of the practice.--\*

**\*--174 Rates, Terms, and Repayment--\***

**A Rates**

**[7 CFR 764.234(a)] The interest rate:**

- (1) Will be the Agency's Direct Farm Ownership (regular) rate, available in each Agency office.**
- (2) Charged will be the lower rate in effect at the time of loan approval or loan closing.**

See 1-FLP, Exhibit 17 for interest rates.

**B Terms**

**[7 CFR 764.234(b)] The following terms apply to CL's:**

- (1) The Agency schedules repayment of a CL based on the useful life of the security.**
- (2) The maximum term for loans secured by chattels only will not exceed 7 years from the date of the note.**
- (3) In no event will the term of the loan exceed 20 years from the date of the note.**

**\*--CL's will normally be scheduled for the lesser of the following:**

- maximum loan term (7 years for chattel or 20 years real estate)
- useful life of the security.

The term can be shortened on request of the applicant.--\*

**\* \* \***



**174 Rates, Terms, and Repayment (Continued)****C Repayment**

All CL's are scheduled with annual payments. The repayment schedule may include equal, unequal, or balloon payments, as follows:

- \*--the first payment is due within 24 months--\*
- after the initial payment, payments are scheduled annually, unless the loan is repaid in a single payment
- annual installments must cover, at a minimum, the accrued interest
- annual installments may be collected by assignments and supplemental payments
- if unequal or interest only installments are scheduled for a nonstreamlined CL, the applicant must be able to show that there will be sufficient resources available to pay the loan, in full, by the final maturity date
- if a cost share payment is planned, repayment may be scheduled with the cost share portion as the balloon portion, enabling regularly scheduled payments before and after applying the cost share payment.

## 175 Security

## A Security Requirements

\*--[7 CFR 764.235(a)] The loan must be secured in accordance with requirements established in 764.103 through 764.106 (Part 5).

[7 CFR 764.235(b)] Loans to purchase chattels will be secured by a first lien on chattels purchased with loan funds. Real estate may be taken as additional security if needed.

[7 CFR 764.235(c)] Loans of \$25,000 or less for real estate purposes will be secured in the following order of priority:

(1) By a lien on chattels determined acceptable by the Agency, and then

(2) By a lien on real estate, if available and necessary. When real estate is taken as security a certification of ownership in real estate is required. Certification of ownership may be in the form of an affidavit that is signed by the applicant, names all the owners of record of the real estate in question and lists the balances due on all known debts against the real estate. Whenever the Agency is uncertain of the record owner or debts against the real estate security, a title search is required.

[7 CFR 764.235(d)] Loans greater than \$25,000 for real estate purposes will be secured in the following order of priority:

(1) By a lien on real estate, if available, and then

(2) By a lien on chattels, if needed and determined acceptable by the Agency.

[7 CFR 764.235(e)] For loans greater than \$25,000 title clearance is required when real estate is taken as security.--\*

176-190 (Reserved)

## Section 2 Streamlined CL's

## 191 Streamlined CL Process

## A Overview

Applicants meeting the requirements established in subparagraph 43 B may apply for Streamlined CL.

## B Requirements

**\*--[7 CFR 764.51(d)] For a CL Program streamlined application, the applicant must meet all of the following:--\***

**(1) Be current on all payments to all creditors including the Agency (if currently an Agency borrower);**

**(2) Have not received primary loan servicing on any FLP debt within the past five years**

**\*--Note:** Servicing under 5-FLP, Part 2 is not considered primary loan servicing.--\*

**(3) Have a debt to asset ratio that is 40 percent or less,**

**(4) Have a balance sheet that indicates a net worth of 3 times the requested loan amount or greater;**

**(5) Have a FICO score from the Agency obtained credit reports of at least 700. For entity applicants, the FICO credit score of the majority of the individual members of the entity must be at least 700;** submit all items required for a complete streamlined CL application as described in subparagraph 43 B. In FBP, the FICO score is the Experian credit score.--\*

**Note:** Streamlined CL's are automatically classified as 2. All other CL's will be classified in the normal manner according to 1-FLP.

## 192-200 (Reserved)

## Part 9 Operating Loan (OL) Program

### Section 1 OL's

#### 201 Uses

##### A General

**[7 CFR 764.251(a)] Except as provided in paragraph (b), OL and ML used for OL purposes loan funds may only be used for:** See subparagraphs B through L for OL uses.

**Note:** To conserve FSA funding, applicants will be strongly encouraged to obtain a portion of their credit needs from other sources if possible. Such arrangements may include splitting annual operating from term loan purposes, vendor credit, FSA guarantees, and subordinations. Maximizing the use of other available credit sources, especially for shorter term operating credit, will allow FSA to better meet program demand.

##### B Reorganizing a Farm

OL funds may only be used for:

**[7 CFR 764.251(a)(1)] Costs associated with reorganizing a farm to improve its profitability;**

The following requirements apply when reorganizing a farm.

- Reorganizing the farm means changing enterprises, production practices, marketing methods, or other parts of the farm business to enhance the viability of the farm.
- Examples of acceptable use of loan funds under this provision include but are not limited to:
  - purchase of equipment to convert from conventional to no-till production
  - change from stocker to cow/calf production
  - shifting from row crop to vegetable production
  - purchasing grain drying and storage equipment to facilitate better marketing
  - purchase shares in value-added processing and marketing cooperatives.

**Note:** These situations are for illustrative purposes only. Any similar operational changes are acceptable as long as a realistic farm plan indicates the changes will improve the financial viability of the farm.

##### C Chattel and Other Purchases

OL funds may only be used for:

**\*--[7 CFR 764.251(a)(2)] Purchase of livestock, including poultry, farm equipment or fixtures, quotas and bases, and cooperative stock for credit, production, processing--\* or marketing purposes;**

**201 Uses (Continued)****C Chattel and Other Purchases (Continued)**

Funds may be used only for purchases essential to the success of the farming operation.

Farm vehicles used for farm operating purposes may be purchased, repaired, or refinanced only when the following conditions apply.

- The applicant provides verification that the vehicle will be used exclusively for farm operating purposes. Examples of vehicles used for farm operating purposes include, but are not limited to, grain or livestock hauling trucks, vehicles needed to pull wagons or livestock trailers, and pick-up trucks.
  - A pick-up truck used primarily as a personal vehicle shall not be financed.
  - The income tax treatment of a vehicle is a good indication of its use. If the farm vehicle is or will be depreciated as a farm asset, FSA financing may be authorized.
- The applicant documents need for purchasing, repairing, or refinancing.
- Other credit is not available from usual sources, including dealers and banks. When a farm vehicle is being purchased, dealer and bank financing is usually readily available, often at low rates.
- The vehicle being purchased, repaired, or refinanced is modest in size, utility, and cost and meets the needs of the operation.

\*--Acquiring farm assets by purchasing ownership interest in an entity is considered to be the same as purchasing the assets themselves. The following uses are authorized:

- Individual(s) purchasing ownership interest in an existing operating entity to become the new owner(s).
- Existing member(s) purchasing the shares of a withdrawing member(s).

When considering these requests:

- in all cases, the entity must be the applicant and operator of the farm
- all entity members must sign the promissory note providing individual liability for the debt
- the assets purchased must be an authorized OL loan purpose
- the loan amount must be consistent with the interests purchased.

State Offices shall contact the National Office for guidance if needed.--\*

## 201 Uses (Continued)

**D Annual Farm Operating Expenses**

OL funds may only be used for:

**[7 CFR 764.251(a)(3)] Farm operating expenses, including but not limited to, feed, seed, fertilizer, pesticides, farm supplies, repairs and improvements which are to be expensed, cash rent and family living expenses;**

See Exhibit 2 for the definition of family living expenses.

\*--Financing multiple production cycles within a 24-month period is achievable with a direct annual OL. This can be accomplished through the release of proceeds from the sale of normal income security if previously approved by FSA. Release of proceeds from the sale of normal income security to finance future production cycles must:

- not occur for a production cycle to be marketed beyond the annual OL maturity
- be completed according to 4-FLP, paragraph 164
- described on FSA-2040
- budgeted for in the farm operating plan
- thoroughly documented in the FBP Credit Presentation “Capacity” section.

**Example:** A cattle feeder operation plans to purchase and feed six sets of calves within a 24-month period (one set every 4 months with \$125,000 of associated credit needed for each rotation). FSA approves a \$125,000 direct annual OL request to purchase and feed the initial set of cattle. When the first set of calves are sold, FSA will release the sale proceeds in accordance with the approved farm operating plan and FSA-2040. The sale proceeds will be used to purchase the second set of calves and inputs. This may continue through the sixth set of calves. The sale proceeds from the sixth set of calves would be used to pay the direct annual OL in full.

Limitations and considerations:

- can be used for both new and existing customers
- operating cycles must not exceed 24 months
- loan maturity complies with subparagraph 204 B
- monthly cash flow budgets are encouraged; at a minimum, the farm operating plan will cover the term of the loan and each production cycle should show detailed income and expenditures associated with each cycle
- servicing will be consistent with 4-FLP, paragraph 164.--\*

201 Uses (Continued)

**E Principal and Interest Payments**

OL funds may only be used for:

**[7 CFR 764.251(a)(4)] Scheduled principal and interest payments on term debt provided the debt is for authorized FO or OL purposes;**

\*--The payment must be installment(s) due within the initial plan and cannot be delinquent at the time of closing.--\*

**F Other Farm Needs**

OL funds may only be used for:

**[7 CFR 764.251(a)(5)] Other farm needs;**

Funds can be used to finance the initial processing of agricultural commodities provided that a majority of the agricultural commodities processed are produced by the applicant's farm.

**Example:** Allowable processing activities include but are not limited to canning tomatoes, packaging maple syrup, bottling milk, making cheese or yogurt, producing juice or wine, and other general value-added processes.

**G Land and Water Development**

OL funds may only be used for:

**[7 CFR 764.251(a)(6)] Costs associated with land and water development, use, or conservation;**

**201 Uses (Continued)****H Loan Closing Costs**

OL funds may only be used for:

**[7 CFR 764.251(a)(7)] Loan closing costs;**

An applicant may use OL funds to pay only for those loan closing costs that are reasonable and customary.

OL funds may not be used to pay loan packaging or consultant fees associated with applying for or obtaining a FSA loan.

**I Occupational Safety and Health Act of 1970 Compliance**

OL funds may only be used for:

**[7 CFR 764.251(a)(8)] Costs associated with Federal or State-approved standards under the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 667) if the applicant can show that compliance or non-compliance with the standards will cause substantial economic injury;**

**J Training Costs**

OL funds may only be used for:

**[7 CFR 764.251(a)(9)] Borrower training costs when required or recommended by the Agency;**

**K Refinancing Farm-Related Debts**

OL funds may only be used for:

**[7 CFR 764.251(a)(10)] Refinancing farm-related debts other than real estate to improve the farm's profitability, provided the applicant has refinanced direct or guaranteed OL loans four times or fewer and one of the following conditions is met:**

- (1) A designated or declared disaster caused the need for refinancing; or**
- (2) The debts to be refinanced are owed to a creditor other than the USDA.**

**Notes:** The debts refinanced must be held by the applicant.

Loans made for authorized direct or guaranteed OL purposes, regardless of the type of security, may be refinanced.



## 201 Uses (Continued)

**K Refinancing Farm Related Debts (Continued)**

A direct OL may be made to refinance a guaranteed OL when the following conditions are met.

- The circumstances resulting in the need to refinance were beyond the applicant's control.
- Refinancing is in the best interest of the Government and the applicant.
- The guaranteed OL must be paid in full at the time the direct OL is closed.

**L Minor Real Estate Repairs or Improvements**

OL funds may only be used for:

**[7 CFR 764.251(a)(11)] Costs for minor real estate repairs or improvements, provided the loan can be repaid within 7 years.**

OL funds may be used for limited real estate improvements, provided the loan can be repaid within 7 years, according to the following guidelines.

- Repairs and improvements to existing structures that are treated as expenses, rather than capital improvements, shall be considered an annual operating expense.
- Fixtures to a farm building may be considered farm equipment and thus financed with OL funds.
- Loans may be approved for building construction.

**Note:** Construction or improvements amortized over periods longer than 7 years are assumed to be real estate rather than operating purposes and will not be financed with OL funds.

**Example:** An \$8,000 loan for a pole barn to be repaid over 7 years could be authorized. However, a \$100,000 building financed with a 21-year amortization and a 7-year balloon payment is not permitted. The 21-year amortization period indicates this loan is for real estate rather than operating purposes.

- Any purchase of real estate is not authorized.

\* \* \*

**202 Eligibility****A General**

**\*--[7 CFR 764.252(a)] The applicant must comply with the general eligibility--\* requirements established at § 764.101 (paragraphs 62 through 72).**

See subparagraphs B through G for OL program specific eligibility. If different from the general eligibility according to paragraphs 62 through 72, the information in this paragraph is to be substituted for those portions.

**B Prior FSA Losses**

The applicant:

**\*--[7 CFR 764.252(b)] The applicant and anyone who will sign the promissory note, except as provided in paragraph (c) of this section, must not have received debt forgiveness from the Agency on any direct or guaranteed loan.**

**[7 CFR 764.252(c)] The applicant and anyone who will sign the promissory note may receive direct OL loans to pay annual farm operating and family living expenses, provided that the applicant meets all the other applicable requirements under this--\* part, if the applicant:**

- (1) Received a writedown under section 353 of the Act;**
- (2) Is current on payments under a confirmed reorganization plan under Chapter 11, 12, or 13 of Title 11 of the United States Code; or**
- (3) Received debt forgiveness on not more than one occasion after April 4, 1996, resulting directly and primarily from a Presidentially-designated emergency for the county or contiguous county in which the applicant operates. Only applicants who were current on all existing direct and guaranteed FLP loans prior to the beginning date of the incidence period of a Presidentially-designated emergency and received debt forgiveness on that debt within three years after the designation of such emergency meet this exception.**

**\* \* \***

**202 Eligibility (Continued)****B Prior FSA Losses (Continued)**

If the applicant for an OL has caused FSA or its predecessor agency, FmHA, a loss on any direct or guaranteed loan, the applicant is ineligible, except in the following 2 scenarios.

- If the applicant caused FSA a loss by receiving a write-down, the applicant may receive an OL to pay annual operating and family living expenses. See 5-FLP, Part 4 for an explanation of the write-down process.
- If the applicant caused FSA a loss, as part of a confirmed bankruptcy plan, and the applicant is now current on payments to all creditors, the applicant may receive an OL to pay annual operating and family living expenses.

The applicant may become eligible for an OL, for uses other than annual farm operating and family living expenses, only after the total amount of debt forgiveness is cured by repayment.

\*--All debt forgiveness actions that are part of 1 transaction and occur on or about the same date are normally considered 1 occasion of debt forgiveness, regardless of the number of loans involved. Since debt forgiveness on direct loans and guaranteed loans are always considered separate transactions, concurrent forgiveness on direct and guaranteed loans are separate occasions. A single loan may have debt forgiveness on more than 1 occasion, when, for example, a borrower received a write down and the loan was later liquidated at a loss.--\*

**Note:** FSA should under no circumstances inform a discharged debtor that they must repay their “loss” to regain full eligibility. If the applicant asks they may be informed that if the debt was repaid in full their eligibility would be reconsidered, however, there is no guarantee that a loan will be approved as all loan approval factors will be reviewed as part of the application process.

The authorized agency official will consider losses to other Federal agencies and the circumstances for such losses under the credit history requirement (paragraph 65).

The authorized agency official will review items obtained according to subparagraph 65 B.

**C Operator of Farm**

**[7 CFR 764.252(d)] In the case of an entity applicant, the entity must be:**

- (1) Controlled by farmers engaged primarily and directly in farming in the United States; and**
- (2) Authorized to operate the farm in the State in which the farm is located.**

**202 Eligibility (Continued)****D OL Term Limits**

**\*--[7 CFR 764.252(e)] The applicant and anyone who will sign the promissory note, may close an OL in no more than seven calendar years, either as an individual or as a member of an entity, except as provided in paragraph (e)(1) through (4) of this section. The years may be consecutive or non-consecutive, and there is no limit on the number of OL's closed in a year. Microloans made to a beginning farmer or a veteran farmer are not counted toward this limitation. Youth loans are not counted toward this limitation.**

**Note:** The following exceptions apply.--\*

- The applicant and anyone who signs FSA-2026 is eligible to close direct OL's in 7 calendar years. This does not mean that the applicant or cosigner has necessarily had loans outstanding for 7 years, but that the applicant or cosigner has closed new loans in 7 different years.
- Guaranteed OL's do not count against the direct OL eligibility limitation.
- Rescheduling a loan does not count against the direct OL eligibility limitation.
- Cosigning for a direct OL counts against the direct OL eligibility limitation.
- Assuming a direct OL counts against the direct OL eligibility limitation.
- An entity applicant is eligible for a direct OL only if all of its individual members have not exceeded the term limits.

**202 Eligibility (Continued)****D OL Term Limits (Continued)**

**[7 CFR 764.252(e)(1)] This limitation does not apply if the applicant and anyone who will sign the promissory note is a beginning farmer \* \* \*.**

\* \* \*

See Exhibit 2 for the definition of a beginning farmer \* \* \*.

The maximum number of years a beginning farmer may receive OL assistance is 10 years.

**Example 1:** If a beginning farmer receives a direct OL in their 1st year of farming, this applicant has 9 additional years in which they may receive direct OL assistance as a beginning farmer applicant. This applicant is not eligible for the 2-year waiver or any future direct OL assistance if loans were received in all 10 years as a beginning farmer.

**Example 2:** If a beginning farmer receives a direct OL in their 5<sup>th</sup> year of farming, this applicant has 5 additional years in which they may receive direct OL assistance as a beginning farmer applicant, but only 1 year remaining as a nonbeginning farmer applicant. This applicant may be considered to receive the 2-year waiver to extend eligibility as a nonbeginning farmer.

**E Indian Tribe Jurisdiction**

**[7 CFR 764.252(e)(2)] This limitation does not apply if the applicant's land is subject to the jurisdiction of an Indian tribe, the loan is secured by one or more security instruments subject to the jurisdiction of an Indian tribe, and commercial credit is generally not available to such farm operations.**

On an annual basis the authorized agency official should contact lenders in the area to determine whether commercial credit would be available on land subject to the jurisdiction of an Indian tribe. Results of these contacts will be documented in the Service Center operational files.

The authorized agency official will verify with BIA if the land or security instrument is subject to the jurisdiction of an Indian tribe.

## 202 Eligibility (Continued)

**F OL Transition Rule**

**[7 CFR 764.252(e)(3)] If the applicant and anyone who will sign the promissory note, has closed direct OL loans in 4 or more previous calendar years as of April 4, 1996, the applicant is eligible to close OL loans in any 3 additional years after that date.**

The 3 additional years will begin with the 1<sup>st</sup> loan closed after April 4, 1996. The 3 additional years of eligibility are independent of each other and do not have to be consecutive.

If the applicant or any cosigner had closed direct OL's in fewer than 4 calendar years before April 4, 1996, the 7-year eligibility requirement applies.

**G Waivers**

The applicant:

- does not need to request the waiver
- will be considered automatically for the 2-calendar year waiver.

**[7 CFR 764.252(e)(4)] On a case-by-case basis, may be granted a one-time waiver of OL term limits for a period of 2 years, not subject to administrative appeal, if the applicant:**

**(i) Has a financially viable operation;** see Exhibit 2 for the definition of a financially viable operation

**(ii) And in the case of an entity, the members holding the majority interest, applied for commercial credit from at least two lenders and were unable to obtain a commercial loan, including an Agency-guaranteed loan; and**

**\*--Note:** This requirement applies to individual applicants, entity applicants, as well as all individual members of the entity.--\*

**(iii) Has successfully completed, or will complete within one year, borrower training. Previous waivers to the borrower training requirements are not applicable under this paragraph.**

**202 Eligibility (Continued)****G Waivers (Continued)**

If the required borrower training is not completed, the applicant will not be eligible for a loan the second year. Subparagraph 65 A provides that the applicant may be determined not creditworthy if the applicant has not met the terms and conditions of a previous FSA loan.

See Part 18 for information on borrower training requirements.

**Notes:** After approval of a term limit waiver, the information is entered into DLS, which will allow the system to process OL's during the waiver period.

The maximum number of years in which a nonbeginning farmer may receive assistance is 9 years (7 years plus the 2-year waiver).

**Example 1:** A nonbeginning farmer applicant who received a direct OL beginning farmer loan in 1994 can receive direct OL assistance during 6 additional years and be granted a 1 time, 2-year waiver if certain conditions are met.

**Example 2:** A nonbeginning farmer applicant who received direct annual OL beginning farmer loans in 1990, 1994 and 1997 can receive direct OL assistance during 4 additional years and be granted a 1 time, 2-year waiver if certain conditions are met.

**Example 3:** A nonbeginning farmer applicant who received direct OL beginning farmer assistance in each year of the 10 year period may not receive additional direct OL assistance under term limitations. This applicant would not be eligible for a 1 time, 2-year waiver.

**H State Office Responsibilities**

State Offices will reissue any existing State supplements on term limit requirements to comply with the term limit provisions.

203 **Limitations**

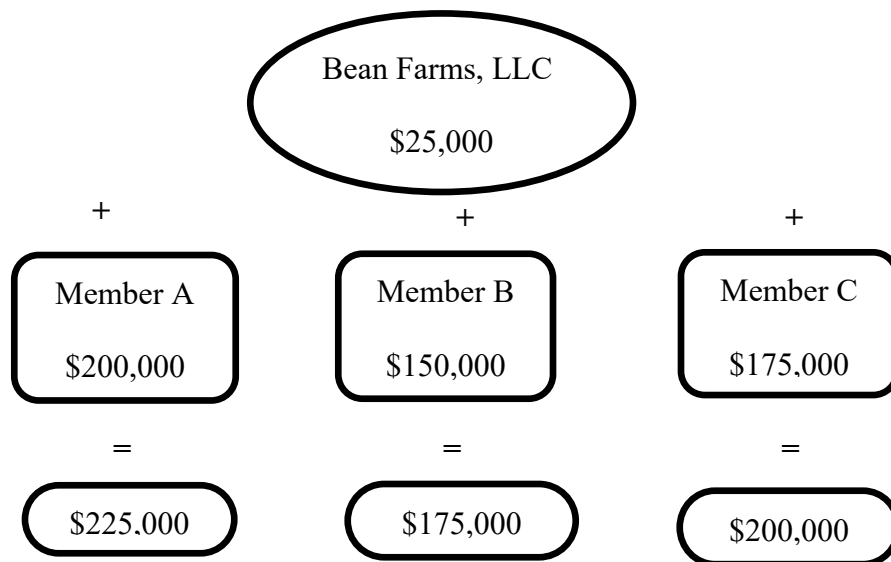
**A General Limitations**

[7 CFR 764.253] The applicant must comply with the general limitations established at § 764.102 (paragraph 74).

**B Loan Limits**

\*--The outstanding principal balances for a farm loan applicant or anyone who will sign the promissory note cannot exceed \$400,00 for a Direct OL. In the case of an entity, the--\* outstanding balance is considered separately for each individual member, it is not considered as a total of all members' outstanding Loan principal balances.

Bean Farms, LLC has an outstanding Direct OL principal balance of \$25,000. The entity consists of 3 members, each have Direct OL's their own names. Member A has a Direct OL \*--with a principal balance of \$200,000, Member B has a Direct OL with a principal balance of \$150,000, and Member C has a Direct OL with a principal balance of \$175,000. Bean Farms, LLC would be eligible for up to \$175,000 in Direct OL's.



\$400,000 (Direct OL limit) - \$225,000 (highest combined outstanding principal)  
 = \$175,000 (maximum Direct OL available).--\*

See 1-FLP, paragraph 29 for OL limits.

**C Real Estate Debt**

OL funds shall not be used for:

- purchasing real estate
- refinancing real estate debt.



## 204 Rates, Terms, and Repayment

### A Rates

**[7 CFR 764.254(a)(1)] The interest rate is the Agency's Direct Operating Loan rate, available in each Agency office.**

See 1-FLP, Exhibit 17 for interest rates.

**[7 CFR 764.254(a)(2)] The limited resource Operating Loan interest rate is available to applicants who are unable to develop a feasible plan at regular interest rates.**

See subparagraph 351 C for more information on limited resource loans when the farm operating plan shows that installments at the higher rate, along with other debts, cannot be paid during the period of the plan.

**Note:** When the regular OL interest rate is equal to or less than the limited resource rate, the limited resource rate will not be used.

**[7 CFR 764.254(a)(3)] The interest rate charged will be the lower rate in effect at the time of loan approval or loan closing.**

**[7 CFR 764.254(a)(4)] The Agency's direct ML OL interest rate on an ML to a beginning farmer or veteran rancher is available in each Agency office. ML borrowers in these groups have the option of choosing the ML OL interest rate or the Direct OL interest rate in effect at the time of loan approval, or if lower, the rate in effect at the time of closing.**

### B Annual OL Term

**[7 CFR 764.254(b)(1)] The Agency schedules repayment of annual OL loans made for family living and farm operating expenses when planned income is projected to be available.**

**(i) The term of the loan may not exceed 24 months from the date of the note.**

**(ii) The term of the loan may exceed 24 months in unusual situations such as establishing a new enterprise, developing a farm, purchasing feed while crops are being established, marketing plans, or recovery from a disaster or economic reverse. In no event will the term of the loan exceed 7 years from the date of the note. Crops and livestock produced for sale will not be considered adequate security for such loans.**

\*--The applicant repays an annual OL when income becomes available or in accordance with an approved farm operating plan when financing multiple production cycles. The repayment period will normally be within 12 months, or no more than 24 months after the date of loan closing, if necessary, when production or marketing plans extend beyond 12 months. The--\* authorized agency official, by using FSA-2027, may approve a supplemental payment agreement for applicants who receive substantial income from which payments are to be made before their installment due date.

## 204 Rates, Terms, and Repayment (Continued)

## C Other OL Terms

**[7 CFR 764.254(b)(2)] The Agency schedules the repayment of all other OL loans based on the applicant's ability to repay and the useful life of the security. In no event will the term of the loan exceed 7 years from the date of the note. Repayment schedules may include equal, unequal, or balloon installments if needed to establish a new enterprise, develop a farm, or recover from a disaster or economic reversal. Loans with balloon installments:**

**\*--Note:** If the loan official determines that a term of less than 7 years is warranted, the justification for the reduction must be fully documented in the FBP Credit Presentation, including a discussion of the collateral taken and reason the collateral is not sufficient for the full 7-year term.--\*

**(i) Must have adequate security, at the time the balloon installment comes due. Crops, livestock other than breeding stock, or livestock products produced are not adequate collateral for such loans.**

**(ii) Are only authorized when the applicant can project the ability to refinance the remaining debt at the time the balloon payment comes due based on the expected financial condition of the operation, the depreciated value of the collateral, and the principal balance on the loan.**

When the applicant's projected repayment ability will not allow normal repayment within 7 years, a 7-year loan with a 21-year balloon amortized installment schedule may be offered.

There must be adequate collateral for the loan at the time the balloon payment is due. Circumstances that warrant balloon installments include establishing a new enterprise, developing a farm, purchasing feed while feed crops are being established or during recovery from a disaster, or economic reverses. In no case will annual crops be used as the sole collateral securing balloon installment. A loan with a balloon installment must be adequately secured by basic security, which may include foundation stock, farm equipment, and/or real estate. The amount of the balloon installment should not exceed that amount which the applicant could reasonably expect to pay during a maximum additional 15-year period.

**Note:** The 21-year balloon amortized installment factor represents the minimum amount the payments would be based upon restructuring the remaining balloon payment over the maximum 15-year period.

**(iii) Are not authorized when loan funds are used for real estate repairs or improvements.**

**204 Rates, Terms, and Repayment (Continued)****D Repayment**

The farm operating plan used to project repayment ability must be completed according to 1-FLP, Part 8.

The OL repayment schedule may include equal, unequal, or balloon payments, as follows:

- \*--for annual operating loans the first payment is due when income is received or within 24 months--\*
- for all other operating loans, the first payment is due within 12 months of loan closing
- after the initial payment, payments are scheduled annually unless the loan is repaid in a single payment
- the repayment term for OL is 1 to 7 years, as determined by the applicant's projected repayment ability
- annual installments must cover, at a minimum, the accrued interest
- annual installments may be collected by assignments and supplemental payments
- if unequal or interest only installments are scheduled, the applicant must be able to show that there will sufficient resources available to pay the loan in full by the final maturity date.

## 205 Security

## A General

[7 CFR 764.255] An OL loan must be secured:

(a) In accordance with §§ 764.103 through 764.106 (paragraphs 91 through 94).

(b) Except for ML's, by a:

(1) First lien on all property or products acquired or produced with loan funds;

(2) Lien of equal or higher position of that held by the creditor being refinanced with loan funds.

\*--[7 CFR 764.255(c)] For ML's used for OL purposes:--\*

[7 CFR 764.255(c)(1)] For annual operating purpose loans must be secured by a first lien on farm property or products having a security value of at least 100 percent of the loan amount, and up to 150 percent, when available. A lien is not required on crops or livestock financed with annual operating ML's. However, the loan must be secured at least 100 percent and up to 150 percent if available, without taking a lien on personal residences or nonessential assets.

[7 CFR 764.255(c)(2)] For loans made for purposes other than annual operating \*--purposes, loans must be secured by a first lien on farm property or products--\* purchased with loan funds and having a security value of at least 100 percent of the loan amount.

**Notes:** Loans made for refinancing purposes will be secured by a lien on any farm property valued at least 100 percent of the loan amount.

In cases where livestock is the only security that will be pledged, FSA will take no more than 100 percent of the loan amount when separate and identifiable security can clearly be established.

[7 CFR 764.255(c)(3)] A lien on real estate is not required unless the value of the farm products, farm property, and other assets available to secure the loan is not at least equal to 100 percent of the loan amount.

[7 CFR 764.255(c)(4)] Notwithstanding the provisions of paragraphs (c)(1), (c)(2), and (c)(3) of this section, FSA will not require a lien on a personal residence.

206-215 (Reserved)

## Section 2 Microloan OL's and Streamlined OL's

## 216 DOL-ML Process

## A Overview

Applicants meeting the requirements established in subparagraph 43 B may apply for DOL-ML's.

## B Requirements

**[7 CFR 764.51(c)] For an ML request, all of the following criteria must be met:**

**[7 CFR 764.51(c)(1)] The loan requested for OL purposes is:**

**[7 CFR 764.51(c)(1)(i)] To pay annual or term operating expenses,**

**[7 CFR 764.51(c)(1)(ii)] \$50,000 or less and;**

**[7 CFR 764.51(c)(1)(iii)] the applicant's total outstanding principal agency OL debt at the time of loan closing will be \$50,000 or less.**

**Notes:** For ML purposes, FSA has determined that an operation with gross sales of agricultural products of at least \$1,000 annually will be recognized as a farm.

\*--The loan limits allow a borrower to receive up to \$50,000 in OL Microloan funds and \$50,000 in FO Microloan funds, for a total of \$100,000. However, in no case will the loans exceed the individual loan type amount even if done in combination.

DOL – ML must be less than or equal to \$50,000.

DFO – ML must be less than or equal to \$50,000.--\*

This will be incorporated by a Farm Bill CFR change but is effective, as provided here, immediately.

## 217 Streamlined OL Process

**\*--A Overview**

The Streamlined Operating Loan (OL) process provides existing FSA loan borrowers, meeting the requirements established in subparagraph 43 A, the opportunity to apply for direct annual operating and/or term operating loans with an abbreviated application process using FSA-2314. The Streamlined OL application eases the quantity of documentation submitted by an applicant and the underwriting performed by the authorized agency official. This does not mean priority consideration for application processing. Farm Ownership, Down Payment Loans, Conservation Loans, Microloans, and Youth Loans do not qualify to use the Streamlined OL process.

**B General Requirements for all Streamlined OL Requests**

The following are general requirements for all Streamlined OL requests.

- The applicant must not be delinquent with any creditors, including FSA.
- There have been no significant changes to the operation since the last closed direct FSA loan.

**Note:** If the operation consists of the same type of commodities and/or livestock and will not require additional labor or equipment resources beyond what is being financed using the Streamlined OL, the change will not be considered significant. However, if the operation changes commodities, enterprises, practices, management, or requires additional labor or equipment resources beyond what is being financed using the Streamlined OL, the change will be considered significant. Whenever there are significant changes to the operation, a streamlined application is not appropriate.

- The updated cash flow for the new loan is positive for repayment to FSA and all creditors.
- The loan amount for the new loan may be increased if it is supported by the cash flow and the applicant continues to meet the streamlined OL requirements.
- The applicant must not have received primary loan servicing in the previous year.
- Refinancing of any type is prohibited, because refinancing requests are not eligible for a Streamlined OL.
- All other requirements remain the same as any Direct OL exceeding the ML limit.--\*

**217 Streamlined OL Process (Continued)****\*--C Streamlined OL – Annual Operating Loans**

FSA will consider Streamlined OL requests for annual operating loan purposes that satisfy the criteria provided in subparagraph 217 B in addition to the following.

- The loan request is to cover projected annual operating and family living expenses.
- The applicant has financed the preceding crop year with an FSA direct annual operating loan.
- The loan request may be increased beyond the previously closed annual operating loan when supported by a feasible cash flow.
- Capacity increases of up to 20% are still eligible to be processed as a Streamlined OL.

**Note:** Capacity increases can be qualified by, but not limited to, documenting total crop acres, livestock head count, and total production.

**D Streamlined OL – Term Operating Loans**

FSA will consider Streamlined OL requests for certain term operating loan purposes that satisfy the criteria provided in subparagraph 217 B in addition to the following:

- The loan request is limited strictly to the purchase of livestock or equipment
- The applicant has not received a Streamlined OL Term Operating Loan in the last 12 months

**Notes:** The Agency will consider and approve Streamlined OL Annual and Term Operating Loans as part of the same application package when possible.

If there have been no significant changes, the previous FBP will be copied and brought forward as the Streamlined OL plan with minimal changes required, such as commodity price updates. The FBP date will be changed to reflect it is the Streamlined OL plan. The authorized agency official must input a new credit presentation that documents the OL is being processed as a Streamlined OL application request. All pertinent information on the previous credit presentation may be copied and brought forward. In cases where the capacity or loan amount has increased, the Agency will document the changes under the Capacity section of the credit presentation. All other typical loan making documents will be updated or prepared, as necessary.--\*

**218-225 (Reserved)**

**Section 3 Youth Loans****226 Youth Loan Application Process****A Application Requirements**

See paragraph 44 for complete youth loan application requirements.

**B Youth Loan Exceptions to Operating Loan Requirements**

The following requirements from 1-FLP, Part 8 do not apply to the Youth Loan program.

- Farm assessments are not required for youth loans.
- All new youth loans are automatically classified as a “3”.

**Note:** If a youth loan borrower reaches the age of majority and subsequently gets a direct OL and/or FO, all loans including any outstanding youth loans will be entered into FBP and classified based upon data collected.

- FSA-2037 and FSA-2038 will not be required except in complex cases where information provided on FSA-2301 is inadequate.

**C Initial Meeting with Youth Loan Applicant**

The authorized agency official should offer a preliminary meeting with the youth to discuss:

- the Youth Loan program, including authorized use of funds and eligibility requirements
- whether the youth has appropriate supervision
- the proposed plan.



**227 Uses and Limitations****A Uses**

**[7 CFR 764.301] Youth loan funds may only be used to finance a modest, income-producing, agriculture-related, educational project while participating in 4-H, FFA, Tribal youth organizations, or a similar organization.**

A youth loan provides an opportunity for a \* \* \* youth to acquire experience and education in agriculture-related skills. The approved project must be related to the business of agriculture and must not be a noneligible enterprise. See Exhibit 2. Each project must be part of an organized and supervised program of work and must produce sufficient income to repay the loan.

The applicant must use youth loan funds only to pay the expenses associated with the approved project.

**Note:** The youth must be participating in an established organization that supports agricultural projects, such as 4-H, FFA, Tribal youth organizations, or a similar organization. The organization provides the structure, the adult supervision, and the expertise to help the youth plan and complete the project.

**B Limitations**

**[7 CFR 764.303(a)] The applicant must comply with the general limitations established at § 764.102 (paragraph 74).**

Loan funds may not be used to:

- purchase real estate or make real estate improvements
- refinance debts
- pay family living expenses, except as they relate directly to the approved educational project
- finance a personal vehicle.

**Note:** The applicant may use loan funds to make only very minor repairs to real estate, for example to fix a window or repair a shed, when the repair is directly related to the approved project.

227 Uses and Limitations (Continued)

**C Maximum Loan Limit**

**[7 CFR 764.303(b)] The total principal balance owed by the applicant to the Agency on all Youth loans at any one time cannot exceed \$5,000.**

The authorized agency official should not loan more than is necessary to successfully carry out the project or more than the projections show can be repaid.

## 228 Eligibility

## A General

**[7 CFR 764.302] The applicant:**

**(a) Must comply with the general eligibility requirements established at §764.101(a) through (g) (paragraphs 62 through 67);**

See subparagraphs B through F for OL Youth Loan program specific information. If different from the general eligibility in paragraphs 62 through 67, the information in this paragraph to be substituted for those portions.

A youth loan applicant:

- does not need to demonstrate managerial ability
- will satisfy the borrower training requirement by the project advisor's supervision
- does not need to operate a farm
- is not limited in the number of years in which loans may be closed.

## B Debt Forgiveness

The applicant:

**[7 CFR 764.302(b)] And anyone who will sign the promissory note, must not have received debt forgiveness from the Agency on any direct or guaranteed loan.**

\*--As provided in subparagraph 65 A, prior debt forgiveness on a youth loan will not count as debt forgiveness for eligibility purposes if circumstances were beyond the control of the applicant. However, this paragraph is still valid in limited circumstances, when an applicant for a youth loan previously realized prior debt forgiveness with the Agency for a non-youth loan.--\*

## C Age

The applicant:

**[7 CFR 764.302(c)] Must be at least 10 but not yet 21 years of age at the time the loan is closed.**

## 228 Eligibility (Continued)

**D Project Advisor**

The applicant:

**\*--[7 CFR 764.302(d)] Must be recommended and continuously supervised by a project advisor, such as a 4-H Club advisor, a vocational teacher, a county extension agent, Tribal youth advisor, or other agriculture-related organizational sponsor; and--\***

The application for a youth loan must contain a recommendation from the project advisor and verify that:

- the project advisor:
  - will sponsor the youth
  - has training and/or experience to supervise youth
  - is available to help the youth plan the project, to review the youth's books and records, and to answer questions
- the youth is a member of an organization.

While the project advisor should supervise the youth applicant to an extent acceptable to the authorized agency official, the authorized agency official still has the primary responsibility for supervising the loan.

**E Parental Consent**

The applicant:

**\*--[7 CFR 764.302(e)] Must obtain a written recommendation and consent from a--\* parent or guardian if the applicant has not reached the age of majority under state law.**

**F Requiring Cosigners**

A cosigner will be required only if it is determined that the applicant cannot possibly meet the repayment or security requirements for the loan request.

**Note:** When a plan is feasible using realistic figures, a cosigner will not be required.

**229 Rates, Terms, and Repayment****A Rates**

**[7 CFR 764.304(a)(1)] The interest rate is the Agency's Direct Operating Loan rate, available in each Agency office.**

**[7 CFR 764.304(a)(2)] The limited resource Operating Loan interest rate is not available for Youth loans.**

**[7 CFR 764.304(a)(3)] The interest rate charged will be the lower rate in effect at the time of loan approval or loan closing.**

See 1-FLP, Exhibit 17 for interest rates.

**B Terms**

**[7 CFR 764.304(b)] Youth loan terms are the same as for an OL established at § 764.254(b) (paragraph 204).**

Payments will be tailored to the type of project for which the loan is made.

**Exception:** Balloon payments are prohibited.

**C Repayment Frequency**

Youth loan repayment schedules may include equal or unequal payments as follows:

- for annual operating youth loans, the first payment is due when income is received or \*--within 24 months--\*
- for all other operating youth loans, the first payment is due within 12 months of loan closing
- after the initial payment, payments are scheduled annually unless the loan is repaid in a single payment
- annual installments must cover, at a minimum, the accrued interest.

**230 Security**

**A Adequate Security**

**[7 CFR 764.305] A first lien will be obtained on property or products acquired or produced with loan funds.**

**B Additional Security**

The requirement that FSA take additional security, so that the total amount of security is equal to 150 percent of the loan amount, does not apply to the youth loan. FSA will take additional security only when it is not practical to separate the security. For example, if a youth owned 2 cows and was purchasing another with the youth loan, FSA would take a lien on all the cattle owned by the applicant, not just the animal acquired with the youth loan.

**C Nonessential Assets**

FSA does not require that nonessential assets be taken as security for a youth loan.

**231-240 (Reserved)**

## Part 10 Emergency Loan (EM) Program

## 241 Uses

## A Real Estate Physical Loss

**[7 CFR 764.351(a)(1)] EM loan funds for real estate physical losses may only be used to repair or replace essential property damaged or destroyed as a result of a disaster as follows:**

**(i) For any FO purpose, as specified in § 764.151 (paragraph 131), except subparagraph (e) of that section (subparagraph 131 F);**

Purchasing real estate is authorized only if:

- all or a portion of existing land has been destroyed or rendered unusable for agricultural purposes
- the parcel being purchased is comparable in size and utility
- the applicant owned the parcel that was rendered unusable
- the salvage value of the damaged parcel minus any prior liens will be applied to the FSA debt once the parcel is liquidated
- FSA takes a lien on all farm real estate that is determined to be unusable to ensure that the sales proceeds are disbursed for authorized purposes such as payment of prior liens, authorized selling expenses, and application to the FSA debt.

**(ii) To establish a new site for farm dwelling and service buildings outside of a flood or mudslide area; and**

The amount loaned must be supported by written estimates from the supplier or contractor who will provide the services.

Loan funds may be used only to pay for contracted or hired labor and materials or supplies purchased. Labor, machinery, equipment, and materials contributed by the applicant may not be treated as part of the costs for replacement.

Loan funds may not be used to repair or replace nonessential property.

**(iii) To replace land from the farm that was sold or conveyed, if such land is necessary for the farming operation to be effective.**

**Note:** Soil and water conservation, land and water resource replacement, and land and water development may be performed when existing measures were damaged or destroyed during the disaster or if needed as part of a conservation plan resulting from the purchase of land. Using FSA ECP funding, when available, will be considered in conjunction with loan funds.

## 241 Uses (Continued)

**B Chattel Physical Loss**

Chattel physical losses are divided into 2 categories. The categories, which determine the purposes the loan funds may be used for, are physical loss to:

- basic security, which consists of equipment, perennial crops, fruit and nut bearing trees, and foundation livestock, including replacements
- normal income security, which includes livestock, livestock products, nursery stock, and harvested and stored crops that would be sold or fed during the normal operating cycle.

**Note:** Loan funds from the loss of harvested and stored crops held for sale may be used for any loan purpose in this paragraph including annual operating expenses. Loan funds that result from the loss of harvested and stored crops that were intended for feed may be used only to replace those feed crops.

**[7 CFR 764.351(a)(2)] EM loan funds for chattel physical losses may only be used to repair or replace essential property damaged or destroyed as a result of a disaster as follows:**

**(i) Purchase livestock, farm equipment, quotas and bases, and cooperative stock for credit, production, processing, or marketing purposes;**

Only loan funds from the loss of normal income security may be used to purchase quotas and cooperative stock for credit, production, processing, or marketing purposes.

**(ii) Pay customary costs associated with obtaining and closing a loan that an applicant cannot pay from other sources (e.g. fees for legal, architectural, and other technical services, but not fees for agricultural management consultation, or preparation of Agency forms);**

**(iii) Repair or replace household contents damaged in the disaster;**

The amount loaned for this purpose is subject to the limitations in subparagraph 244 G.

**(iv) Pay the costs to restore perennials, which produce an agricultural commodity, to the stage of development the damaged perennials had obtained prior to the disaster;**

See Exhibit 21 for provisions for reestablishing fruit, nut bearing, and income producing trees and plants.



## 241 Uses (Continued)

**B Chattel Physical Loss (Continued)**

**(v) Pay essential family living and farm operating expenses, in the case of an operation that has suffered livestock losses not from breeding stock or losses to stored crops held for sale; and**

**Note:** In these cases the loan funds attributed to the loss of normal income security can be used to pay essential farm operating and family living expenses, while loan funds attributed to the loss of basic security can be used only to replace the property that was lost.

**Example:** An applicant suffers a loss of 100 brood cows and 90 of their calves. The brood cows are basic security and the calves would have been sold this year to produce farm income that would have been used to pay expenses. The loan funds resulting from the loss of calves may be used for any authorized operating purpose, but the funds from the loss of the brood cows must be used only to purchase suitable replacements.

**(vi) Refinance farm-related debts other than real estate to improve farm profitability, if the applicant has refinanced direct or guaranteed loans four times or fewer and one of the following conditions is met:**

- (A) A designated or declared disaster caused the need for refinancing; or**  
**(B) The debts to be refinanced are owed to a creditor other than the USDA.**

**Note:** FSA employees are prohibited from and will not guarantee repayment of advances from other credit sources, either personally or on behalf of the applicant or FSA.

The following requirements apply when refinancing debt.

- Only nonreal estate debts incurred for farm purposes may be refinanced.

**Note:** This does not preclude the payment of past due or current due payments on real estate debt.

- Loan funds must be needed as a result of a loss to normal income security.
- It is not possible to develop a feasible plan without the refinancing.

## 241 Uses (Continued)

**B Chattel Physical Loss (Continued)**

- The entire debt may not be refinanced if using loan funds to pay only the delinquent installments, current year installments, or both will result in a feasible plan.
- The applicant does not have the resources, such as cash, certificates of deposits, stored crops to be sold, to cure any delinquency.
- The lender or creditor to be refinanced is unwilling to restructure the debt at rates and terms that would permit the applicant to develop a feasible plan.

**Note:** This includes providing an FSA guarantee to a lender or creditor meeting the eligibility requirements in 2-FLP, Part 4.

The following additional requirements apply when refinancing direct and guaranteed FLP loans.

- Only direct and guaranteed FLP loans made for authorized operating loan purposes may be refinanced.
- The need to refinance the guaranteed loan is the result of the disaster and it is in the Government's best financial interest to do so.

**Note:** The authorized agency official must document that the guaranteed lender to be refinanced will not restructure the guaranteed loan at rates and terms that would permit the applicant to develop a feasible plan.

- Servicing the direct loan with Primary Loan Servicing or DSA will not result in a feasible plan.
- The applicant is the sole obligor on the loan to be refinanced.
- The entire direct or guaranteed FLP loan may not be refinanced if using loan funds to pay only the delinquent installments, current year installments, or both will result in a feasible plan.

\*--Compliance with these requirements shall be documented in FBP of the loan file.--\*

## 241 Uses (Continued)

**C Production Losses**

**[7 CFR 764.351(b)] EM loan funds for production losses to agricultural commodities (except the losses associated with the loss of livestock) may be used to:**

**(1) Pay costs associated with reorganizing the farm to improve its profitability, except that such costs must not include the payment of bankruptcy expenses;**

The following requirements apply when reorganizing a farm.

- Reorganizing the farm means changing enterprises, production practices, marketing methods, or other parts of the farm business to promote recovery from the disaster and reduce the potential impact of any future disasters.
- This provision shall not be used to justify expanding an existing enterprise unless it can clearly be shown that the expansion will promote recovery from the disaster and reduce the potential impact of any future disasters.
- Examples of acceptable use of loan funds under this provision include:
  - purchasing equipment to convert from conventional to no-till production
  - changing from stocker to cow/calf production
  - shifting from row crop to vegetable production
  - purchasing grain drying and storage equipment to facilitate better marketing
  - purchasing shares in value-added processing and marketing cooperatives.

**Note:** These situations are illustrations only. Any similar operational changes are acceptable as long as a realistic farm operating plan (see 1-FLP, Part 8, Section 3) indicates the changes will improve the financial viability of the farm.

**(2) Pay annual operating expenses, which include, but are not limited to, feed, seed, fertilizer, pesticides, farm supplies, and cash rent;**

Annual operating expenses include the purchase of livestock used for normal income, including poultry and aquatic organisms.

**(3) Pay costs associated with Federal or State-approved standards under the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 667) if the applicant can show that compliance or non-compliance with the standards will cause substantial economic injury;**

**(4) Pay borrower training costs required or recommended by the Agency;**

## 241 Uses (Continued)

## C Production Losses (Continued)

(5) Pay essential family living expenses;

(6) Refinance farm-related debts other than real estate to improve farm profitability, if the applicant has refinanced direct or guaranteed loans four times or fewer and one of the following conditions is met:

(i) A designated or declared disaster caused the need for refinancing; or

(ii) The debts to be refinanced are owed to a creditor other than the USDA; and

**Note:** FSA employees are prohibited from and will not guarantee repayment of advances from other credit sources, either personally or on behalf of the applicant or FSA.

The following requirements apply when refinancing debt.

- Only nonreal estate debts incurred for farm purposes may be refinanced.

**Note:** This does not preclude the payment of past due or current due payments on real estate debt.

- The applicant does not have the resources, such as cash, certificates of deposit, or stored crops to be sold, to cure any delinquency.
- It is not possible to develop a feasible plan without the refinancing.
- The entire debt may not be refinanced if using loan funds to pay only the delinquent installment, current year installments, or both will result in a feasible plan.
- The lender or creditor to be refinanced is unwilling to restructure the debt at rates and terms that would permit the applicant to develop a feasible plan.

**Note:** This includes providing an FSA guarantee to a lender or creditor meeting the eligibility requirements in 2-FLP, Part 4.

## 241 Uses (Continued)

**C Production Losses (Continued)**

The following additional requirements apply when refinancing direct and guaranteed FLP loans.

- Only direct and guaranteed FLP loans made for authorized operating loan purposes may be refinanced.
- The need to refinance the guaranteed loan is the result of the disaster and it is in the Government's best financial interest to do so.

**Note:** The authorized agency official must document that the guaranteed lender to be refinanced will not restructure the guaranteed loan at rates and terms that would permit the applicant to develop a feasible plan.

- Servicing the direct loan with Primary Loan Servicing or DSA will not result in a feasible plan.
- The applicant is the sole obligor on the loan to be refinanced.

The entire direct or guaranteed FLP loan may not be refinanced if using loan funds to pay only the delinquent installments, current year installments, or both will result in a feasible plan.

\*--Compliance with these requirements shall be documented in FBP of the loan file.--\*

**[7 CFR 764.351(b)(7)] Replace lost working capital.**

See Exhibit 2 for the definition of working capital.

242 Eligibility

**A General**

The applicant:

**[7 CFR 764.352(a)] Must comply with the general eligibility requirements established at § 764.101 (paragraphs 62 through 72);**

\*--See subparagraphs B through M for EM program specific eligibility. If different from the general eligibility according to paragraphs 62 through 72, the information in this paragraph will be substituted for those portions.

**B Family Farm and Non-Eligible Enterprise**

See paragraph 71, and the definition of family farm and non-eligible enterprise in--\* Exhibit 2, for more information on determining whether the applicant's farm meets the family farm definition.

**C Established Farmer**

The applicant:

**[7 CFR 764.352(b)] Must be an established farmer;**

See Exhibit 2 for the definition of established farmer.

**Note:** Estates are not considered established farmers and are therefore not eligible.

## 242 Eligibility (Continued)

**D Owner and Operator Requirements**

The applicant:

**[7 CFR 764.352(c)] Must be the owner-operator or tenant operator as follows:**

**(1) For a loan made under § 764.351(a)(1) (subparagraph 241 A), must have been:**

**(i) The owner-operator of the farm at the time of the disaster; or**

**(ii) The tenant-operator of the farm at the time of the disaster whose lease on the affected real estate exceeds the term of the loan. The operator will provide prior notification to the Agency if the lease is proposed to terminate during the term of the loan. The lessor will provide the Agency a mortgage on the real estate as security for the loan;**

**[7 CFR 764.352(c)(2)] For a loan made under § 764.351(a)(2) or (b) (subparagraphs 241 B and C), must have been the operator of the farm at the time of the disaster; and**

In addition to being the operator of the farming operation, applicants:

- must have an ownership interest in the chattel property
- who are operating under a production contract where the integrator retains ownership in the livestock or commodity are not eligible for losses on the livestock or commodity that they did not own.

**Note:** Other chattel, livestock, and commodities that the applicant did own would be eligible losses.

**[7 CFR 764.352(c)(3)] In the case of an entity, the entity must be:**

**(i) Engaged primarily and directly in farming in the United States;**

**(ii) Authorized to operate and own the farm, if the funds are used for farm ownership loan purposes, in the State in which the farm is located.**

**242 Eligibility (Continued)****E Intent to Continue Farming**

The applicant:

**[7 CFR 764.352(d)] Must demonstrate the intent to continue the farming operation after the designated or declared disaster;**

**F Availability of Credit Elsewhere**

The applicant:

**[7 CFR 764.352(e)] And all entity members must be unable to obtain sufficient credit elsewhere at reasonable rates and terms. To establish this, the applicant must obtain written declinations of credit, specifying the reasons for declination, from legally organized commercial lending institutions within reasonable proximity of the applicant as follows:**

**(1) In the case of a loan in excess of \$300,000, two written declinations of credit are required;**

When obtaining written declinations:

- 1 of these lenders must be the applicant's normal lender
- both lenders must typically make farm loans.

**(2) In the case of a loan of \$300,000 or less, one written declination of credit is required; and**

The following also apply to loans of less than \$300,000:

- the applicant's normal lender is contacted unless the lender has already denied a request to continue with the applicant, extend additional credit with or without a guarantee, or both
- the applicant may contact another lender that makes agricultural loans.



## 242 Eligibility (Continued)

**F Availability of Credit Elsewhere (Continued)**

**(3) In the case of a loan of \$100,000 or less, the Agency may waive the requirement for obtaining a written declination of credit, if the Agency determines that it would pose an undue burden on the applicant, the applicant certifies that they cannot get credit elsewhere, and based on the applicant's circumstances credit is not likely to be available;**

The authorized agency official:

- may waive the requirement for written credit denial when a review of the financial statement, credit report, and other financial information clearly indicates that other credit is not available to the applicant
- must thoroughly document this conclusion in the loan file by comparing the credit standards of local lenders that make farm loans to the applicant's financial condition and showing how the applicant does not meet those standards.

The fact that an applicant has obtained credit for farm purposes through credit cards, finance companies, or other "sub-prime" lenders does not constitute failure to meet the test for credit unless the rates and terms for that credit are similar to the rates and terms offered on loans for the same purpose by other farm lenders in the community.

**(4) Notwithstanding the applicant's submission of the required written declinations of credit, the Agency may contact other commercial lending institutions within reasonable proximity of the applicant and make an independent determination of the applicant's ability to obtain credit elsewhere;**

If the authorized agency official believes, based on a review of the applicant's financial statement, credit report, and other financial information, that other credit is available, the authorized agency official may contact lenders to determine if they are willing to extend credit to the applicant.

The following are used to verify and document the availability of other credit:

- FSA-2310
- FSA-2015
- written letters from lenders that contain all the information requested on FSA-2310.

When the applicant is an entity, all individual members must meet the requirements of this subparagraph.

## 242 Eligibility (Continued)

**G Prior Debt Forgiveness**

The applicant:

**[7 CFR 764.352(f)] And all entity members in the case of an entity must not have received debt forgiveness from the Agency on more than one occasion on or before \*--April 4, 1996, or any time after April 4, 1996. A write down associated with a restructuring action under Section 353 of the Act is not considered debt forgiveness for EM purposes.--\***

See Exhibit 2 for the definition of debt forgiveness.

If an applicant repays the forgiven debt, this restriction does not apply.

All debt forgiveness actions that are part of 1 transaction and occur on or about the same date are normally considered 1 occasion of debt forgiveness, regardless of the number of loans involved. Since debt forgiveness on direct loans and guaranteed loans are always considered separate transactions, concurrent forgiveness on direct and guaranteed loans are separate occasions. A single loan may have debt forgiveness on more than 1 occasion, when, for example, a borrower received a writedown and the loan was later liquidated at a loss.

\* \* \*

**H Timely Loan Application**

The applicant:

**[7 CFR 764.352(g)] Must submit an application to be received by the Agency no later than eight months after the date the disaster is declared or designated in the county of the applicant's operation.**

If a county has been designated or declared a disaster area, either a contiguous or primary, more than 1 time for the same disaster, applicants will have 8 months from the date of the most recent designation to submit an application.

The applicant may seek EM only with respect to a family farm that had production or physical losses as a result of a disaster in a designated or declared disaster area, either a contiguous or primary.

**Note:** See State supplements, which provide a list of current disaster designations and establish the timeframe during which applicants may apply for assistance. The State supplement shall provide the authorized agency official with sufficient information to determine if an applicant was operating in a designated disaster area, either a contiguous or primary, and that the application was received during the eligible period.

## 242 Eligibility (Continued)

**I Qualifying Losses**

For production or physical loss loans, the loss and/or damage must be directly attributable to the stated reason for the disaster designation.

The applicant:

**[7 CFR 764.352(h)] For production loss loans, must have a disaster yield that is at least 30 percent below the normal production yield of the crop, as determined by the Agency, that comprises a basic part of an applicant's total farming operation.**

See Exhibit 2 for the definition of basic part of an applicant's total farming operation.

Production losses are calculated according to subparagraph 244 C.

**Notes:** If an applicant cannot plant the usual crop or plants the crop and it is destroyed as a result of the disaster and the applicant plants a substitute crop in its place, then the applicant is not eligible for a production loss on the original crop. However, if the substitute crop suffers a qualifying loss, a loan may be made for the loss on that crop.

**\*--If an applicant's operation consists of multiple crops, and there is a qualifying loss on any single crop (that is a basic part of the applicant's operation), they can receive a loan for the total of all losses on all crops raised in the designated or contiguous county, as long as they are essential to the operation.--\***

The applicant:

**[7 CFR 764.352(i)] For physical loss loans, must have suffered disaster-related damage to chattel or real estate essential to the farming operation, or to household contents that must be repaired or replaced, to harvested or stored crops, or to perennial crops.**

## 242 Eligibility (Continued)

**J Changes in Ownership Structure**

The applicant:

**[7 CFR 764.352(j)] Must meet all of the following requirements if the ownership structure of the family farm changes between the time of a qualifying loss and the time an EM loan is closed:**

- (1) The applicant, including all owners must meet all of the eligibility requirements;**
- (2) The individual applicant, or all owners of an entity applicant, must have had an ownership interest in the farming operation at the time of the disaster; and**
- (3) The amount of the loan will be based on the percentage of the former farming operation transferred to the applicant and in no event will the individual portions aggregated equal more than would have been authorized for the former farming operation.**

**K Duplicative Federal Assistance**

The applicant:

**[7 CFR 764.352(k)] Must agree to repay any duplicative Federal assistance to the agency providing such assistance. An applicant receiving Federal assistance for a major disaster or emergency is liable to the United States to the extent that the assistance duplicates benefits available to the applicant for the same purpose from another source.**

If additional disaster benefits are expected from existing programs, but the amount is not known at loan approval, the applicant must assign the benefits to FSA.

Programs enacted after loan approval will not affect EM calculations and are not considered duplicative benefits. In such cases, however, FSA may require an assignment to ensure loan repayment according to subparagraphs 93 B and C on any subsequent payment made to the applicant after the time of loan approval.

The authorized agency official, before closing EM, must verify (through CED and Comprehensive Information Management System), if available, all disaster related compensation or insurance indemnities received or to be received for the designated loss.

## 242 Eligibility (Continued)

**\*--L Equine Losses**

The applicant:

**[7 CFR 764.352(l) Whose primary enterprise is to breed, raise, and sell horses may be eligible under this part.**

**Note:** To qualify for an equine EM, the applicant's records must indicate that the majority of farm income is derived from breeding, raising, and selling horses.--\*

**M Insurance Requirement**

**[7 CFR 764.353(e)] EM loan funds may not be used for physical loss purposes unless:**

**(1) The physical property was covered by general hazard insurance at the time that the damage caused by the natural disaster occurred. The level of the coverage in effect at the time of the disaster must have been the tax or cost depreciated value, whichever is less. Chattel property must have been covered at the tax or cost depreciated value, whichever is less, when such insurance was readily available and the benefit of the coverage was greater than the cost of the insurance; or**

**(2) The loan is to a poultry farmer to cover the loss of a chicken house for which the applicant did not have hazard insurance at the time of the loss and the applicant:**

**(i) Applied for, but was unable to obtain hazard insurance for the chicken house;**

**(ii) Uses the loan to rebuild the chicken house in accordance with industry standards in effect on the date the applicant submits an application for the loan;**

**(iii) Obtains, for the term of the loan, hazard insurance for the full market value of the chicken house; and**

**(iv) Meets all other requirements for the loan.**

All chattel, excluding livestock, and all real estate must have been covered by hazard insurance at the time of the disaster, if it was available and cost effective.

The level of hazard coverage in effect at the time of the disaster must be the tax assessed value for real estate property. The level of coverage for chattel property is the established market value (most recent appraisal/value) before the disaster.

For chattels only, if the applicant did not have an insurance policy in affect at the time of the disaster, the authorized agency official shall determine whether it was readily available, and whether the benefit of the coverage would have justified the cost had the applicant made efforts to obtain insurance.

**243 Limitations****A General**

**[7 CFR 764.353(a)] EM loans must comply with the general limitations established at §764.102 (paragraph 74).**

**B Restriction on Loan Amount**

**[7 CFR 764.353(b)] EM loans may not exceed the lesser of:**

- (1) The amount of credit necessary to restore the farming operation to its pre-disaster condition;**
- (2) In the case of a physical loss loan, the total eligible physical losses caused by the disaster; or**
- (3) In the case of a production loss loan, 100 percent of the total actual production loss sustained by the applicant as calculated in paragraph (c) of this section (subparagraph 244 C).**

See 1-FLP, paragraph 29 for EM limits.

**C Refinancing Debt**

**[7 CFR 764.353(f)] EM loan funds may not be used to refinance consumer debt, such as automobile loans, or credit card debt, unless such credit card debt is directly attributable to the farming operation.**

**\*--D Equine Losses**

**[7 CFR 764.353(g)] Losses associated with horses used for racing, showing, recreation, boarding, or pleasure, or loss of income derived from racing, showing, recreation, boarding, or pleasure, are not considered qualified losses under this section.**

**Note:** This limitation does not include operations that race, show, and have recreation or board horses, as long as verifiable records indicate that the applicant's primary income is from breeding, raising, and selling horses.--\*

244 Calculating Losses

**A Forms for Reporting and Calculating Losses**

The applicant will use FSA-2309 to report all yields and acreage information as well as physical losses to FSA.

FSA will use FSA-2311 or the automated FSA-2311 to determine the applicant’s actual production, physical losses, or both.

**B Determining Normal Production Yield**

Normal production yield is defined in Exhibit 2.

- For NAP insured crops, the NAP APH yield will be used the same as the RMA APH. NAP APH can be obtained from CCC-452 Manual in the producer's file. For all other insured crops, APH will be based upon the APH calculation worksheet completed by the applicant's crop insurance company. A copy of the APH calculation worksheet should be obtained from the crop insurance company and placed in the applicant's file.
- The FP payment yield is a proven yield based on the applicant’s production and not the established yield set by COC.

If county averages are not available, State averages will be used. Normal production yield is calculated according to the following.

<b>IF an applicant...</b>	<b>THEN...</b>
had crop insurance in the disaster year, or the crops are covered under NAP and the Risk Management Crop Insurance Report or CCC-452 lists APH	APH will be used as the normal year yield for the entire commodity, regardless of whether or not the entire crop is insured.
did not insure its crops or had individual commodities that were not insured	the applicant’s actual reliable records for the 3 years immediately before the disaster year will be averaged to determine the normal year yield.
does not have APH and their own reliable records for any or all of the 3 years are not available	*--the applicant’s yield reported to FSA for--* receiving FP payments will be used in each or any of the years that these records are not available.
does not have APH, reliable records, or has not reported yields to FSA for any or all 3 years	county or State averages will be used in any or all of the years these records are not available.

**Note:** If an applicant had crop insurance in past years but did not have crop insurance during the disaster year, APH for prior years will be ignored and have no bearing when calculating losses. Only the records listed will be used.

## 244 Calculating Losses (Continued)

## C Calculating Production Losses

**[7 CFR 764.353(c)] For production loss loans, the applicant's actual crop production loss will be calculated as follows:**

Losses to growing crops in designated and/or contiguous counties are used to calculate a production loss.

**(1) Subtract the disaster yield from the normal yield to determine the per acre production loss;**

See subparagraph D for calculating quality loss adjustments. See subparagraph F for calculation examples.

**(2) Multiply the per acre production loss by the number of acres of the farming operation devoted to the crop to determine the volume of the production loss;**

**(3) Multiply the volume of the production loss by the market price for such crop as determined by the Agency to determine the dollar value for the production loss; and**

In July of each year or sooner if information is available, SED shall:

- establish benchmark prices using the average monthly market prices for each commodity for the previous calendar year as shown in the "Agricultural Price" report published by NASS and available on the Internet at <http://usda.mannlib.cornell.edu>, ENTER "Prices" in the search box, CLICK "Search", and CLICK "Agricultural Prices"

**\*--Notes:** NASS no longer provides monthly data for some commodities on a State basis.

For commodities for which NASS only provides a national price or does not keep statistics and issue reports, SED will use the national price or other sources,--\* such as NIFA, commodity brokers, local markets, or other reliable sources.

- issue a State supplement with the unit prices for all commodities produced commercially in the State to be used in calculating all production losses for any disaster that happens in the present calendar year, January through December.

**Example:** 2010 prices will be used for disasters occurring between January 1, 2011, through December 31, 2011, and so forth for each subsequent year.



244 Calculating Losses

C Calculating Production Losses

The SED shall establish a State supplement with the prices of commodities to be used in calculating all production losses. These prices are found in NY Exhibit 5.

There are many commodities for which New York State Statistical Reporting does not keep records. For those commodities, you should consult with your local Cooperative Extension Agent, local buyers, Ag & Markets and/or other local sources to establish these prices and/or yields. Once this information is compiled, you must submit a summary of your documentation to the Farm Loan Program Staff for review and approval. Remember, if a price is being established, it must be for the year before the disaster.

The documentation to support the prices and/or yields established in accordance with this paragraph must be included in your 1-FLP & 3-FLP operational file and referenced in the running record for the borrower.

The following list of 2011 and 2012 average prices are to be used in calculating the gross dollar value of production losses for Emergency Loan applicants designated areas for disasters with an incidence period occurring as follows: (See 7 CFR 764.5)

Disaster Incidence Period	Calendar Year Price
1/ 1/ 2013 - 12/ 31/ 2013	2012
1/ 1/ 2012 - 12/ 31/ 2012	2011

244 **Calculating Losses (Continued)****C Calculating Production Losses (Continued)**

**(4) Subtract any other disaster related compensation or insurance indemnities received or to be received by the applicant for the production loss.**

\*--Disaster related compensation includes only yield and production payments related to the specific disaster designation, including but not limited to:

- crop insurance yield protection payments--\*
- CAT
- NAP
- other FSA disaster program payments, such as Emergency Feed Assistance Program, emergency conservation programs, and any other special disaster program payments
- any other disaster assistance provided through agencies such as FEMA.

The authorized agency official will verify, through CED and the Comprehensive Information Management System, where available, producer's "other disaster-related compensation or insurance indemnities received or to be received" for the loss.

**Notes:** Only compensation received specifically for the production loss for which the applicant is requesting assistance is deducted from the loss amount.

\*--Revenue protection crop insurance payments are not deducted from the amount of the disaster loan as EM disaster assistance is available only for operations that received payments for yield and production reductions.--\*

**D Quality Loss Adjustments**

Quality losses are determined by comparing the average market price for the commodity at the grade the applicant would have normally sold the product, with the average price of the grade at actual sale.

**E Losses to Native Pasture and Rangeland**

Production losses to native pastures, rangeland, and grazing permit lands are calculated by determining the average per head cost of feed purchased for 3 years before the disaster, then comparing it to the average per head cost of feed in the disaster year. If the disaster year cost per head exceeds the average cost per head in the non-disaster year by 30 percent or more, the applicant's loss is calculated by multiplying the number of head of livestock in the disaster year by the difference between the cost per head in the disaster year and the 3-year average cost.

## 244 Calculating Losses (Continued)

**F Examples of Production Loss Calculations**

The following are examples of loss calculations.

**Example 1:** The applicant provides reliable records to show that the cost per head for feed purchased in the previous 3 years was \$230. In the disaster year, the average cost per head was \$300.

- $\$300 \div \$230 = 1.30$  or 30 percent higher feed costs.
- $\$300 - \$230 = \$70$  is the production loss per head.
- The applicant had 100 head of cattle during the disaster year. Therefore,  $\$70 \times 100 = \$7,000$  feed loss is the amount of the production loss.

**Example 2:** The applicant normally produces fresh market apples, but because of the disaster, the apples were sold for processor, peeler, or juice apples.

The average price offered for fresh market apples is \$258/ton. The price the applicant received for processor apples is \$60/ton. The quality loss is calculated as follows.

- $\$60 \div \$258 = 23$  percent of the normal price.
- To make the adjustment, the applicant's quality adjusted disaster year yield would be reduced by 77 percent of the actual disaster year yield.
- To determine this adjustment, the actual disaster year yield is multiplied by .23 to get the quality adjusted disaster year yield.

**\*--Example 3:** The applicant produces multiple crops in a designated county with all being essential to the farming operation except blueberries. In the disaster year the crop losses were:

- Cotton = 70 percent loss
- Peanuts = 26 percent loss
- Blueberries = 100 percent loss
- Soybeans = 15 percent loss.

Since cotton, which is a basic part of the operation, suffered a qualifying loss, an EM loan can include all losses on crops in a designated or contiguous county which are essential to the operation (Cotton, Peanuts, and Soybeans).--\*

## 244 Calculating Losses (Continued)

**G Calculating Physical Losses**

**[7 CFR 764.353(d)] For a physical loss loan, the applicant's total eligible physical losses will be calculated as follows:**

**(1) Add the allowable costs associated with replacing or repairing chattel covered by hazard insurance (excluding labor, machinery, equipment, or materials contributed by the applicant to repair or replace chattel);**

**(2) Add the allowable costs associated with repairing or replacing real estate, covered by hazard insurance;**

**(3) Add the value of replacement livestock and livestock products for which the applicant provided:**

**(i) Written documentation of inventory on hand immediately preceding the loss;**

**(ii) Records of livestock product sales sufficient to allow the Agency to establish a value;**

The value of livestock:

- lost or destroyed as a result of the disaster is the replacement cost minus any salvage value received
- products such as calves, pigs, lambs, eggs, milk, and wool, is established using the prices published in the State commodity price list according to subparagraph C.

**[7 CFR 764.353(d)(4)] Add the allowable costs to restore perennials to the stage of development the damaged perennials had obtained prior to the disaster;**

**Note:** This is the cost of replanting the nursery stock plus all associated operating expenses to bring it back to the stage it was before being destroyed.

**[7 CFR 764.353(d) (5)] Add, in the case of an individual applicant, the allowable costs associated with repairing or replacing household contents, not to exceed \$20,000; and**

**[7 CFR 764.353(d) (6)] Subtract any other disaster related compensation or insurance indemnities received or to be received by the applicant for the loss or damage to the chattel or real estate.**

**Note:** Any salvage value received will also be subtracted.

## 244 Calculating Losses (Continued)

**H Examples of Physical Loss Calculations**

The following are examples for calculating physical losses to livestock products.

**Example 1:** The applicant lost 50 bred cows in a flood. The normal 3-year average calving rate is 90 percent and the State-established price for calves weighing 300 to 500 lbs. is \$275. The cost to replace bred cows is \$1,000.

The applicant's physical loss would be calculated as follows.

- $50 \times 90 \text{ percent} = 45 \text{ calves}$
- $45 \times \$275 = \$12,375$
- $50 \times \$1,000 = \$50,000$
- Total physical loss = \$62,375.

**Example 2:** The applicant lost 20 dairy cows in a storm. The average milk production based on the 3-year average is 18,000 lbs. per cow or 1,500 lbs. per month. The State-established price for milk is \$12.25 per cwt. The cost to replace the cows is \$1,200 per cow. The applicant was not able to replace the cows for 3 months.

The loss will be calculated as follows.

- $20 \times 1,500 \text{ lbs.} = 30,000 \text{ lbs.} \times 3 \text{ months} = 90,000 \text{ lbs. or } 900 \text{ cwt}$
- $900 \text{ cwt.} \times \$12.25/\text{cwt.} = \$11,025$
- $20 \text{ cows} \times \$1,200 = \$24,000$
- Total physical loss = \$35,025.

**Note:** In both examples the loan funds resulting from the physical loss to cows may only be used to replace those cows, while the loan funds resulting from the loss of calves or milk production is considered loss of normal income and can be used for any authorized operating loan purpose.

## 245 Rates, Terms, and Repayment

### A Rates

**[7 CFR 764.354(a)(1)] The interest rate is the Agency's Emergency Loan Actual Loss rate, available in each Agency office.**

**[7 CFR 764.354(a) (2)] The interest rate charged will be the lower rate in effect at the time of loan approval or loan closing.**

See 1-FLP, Exhibit 17 for interest rates.

### B Terms

**[7 CFR 764.354(b)(1)] The Agency schedules repayment of EM loans based on the useful life of the security, the applicant's repayment ability, and the type of loss.**

The applicant's ability to repay the loan is a critical factor in determining the repayment term of the loan.

### C Minimum Repayment Requirement

**[7 CFR 764.354(b)(2)] The repayment schedule must include at least one payment every year.**

The payment must be at a minimum the amount of interest accrued on the principal balance at the time the installment is scheduled to be paid.

If unequal or interest only installments are scheduled, the applicant must be able to show the availability of resources to pay the loan in full by the final maturity date.

### D Repayment of Loans for Annual Operating Expenses

**[7 CFR 764.354(b)(3)] EM loans for annual operating expenses, except expenses associated with establishing a perennial crop that are subject to paragraph (b)(4), must \*--be repaid within 12 months. The Agency may extend this term to not more than 24 months to accommodate the production cycle of the agricultural commodities.**

Annual operating loans must be scheduled for repayment at the time income will be available to make the payment, but not later than 24 months from the date of the note.--\*

## 245 Rates, Terms, and Repayment (Continued)

**E Repayment of Loans for Production or Physical Losses to Chattels**

**[7 CFR 764.354(b)(4)] EM loans for production losses or physical losses to chattel (including but not limited to assets with an expected life between one and seven years) may not exceed seven years. The Agency may extend this term up to a total length not to exceed 20 years, if necessary to improve the applicant's repayment ability and real estate security is available.**

The usual repayment term for a loan secured by chattel is 1 to 7 years. The specific term of a loan shall be determined by the applicant's projected ability to repay the loan based on the farm operating plan.

When the applicant's projected repayment ability does not permit repayment within 7 years, a 10-year term may be considered. If repayment is not possible in 10 years, then a longer term may be considered in 2-year increments. At no time will the maximum term exceed 20 years.

Real estate security is required in addition to chattel security when the repayment term will exceed 7 years.

\*--The first installment, which may be interest only, will be scheduled within 12 months of loan closing.--\*

Repayment terms with balloon installments are prohibited.

**Note:** 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.

## 245 Rates, Terms, and Repayment (Continued)

**F Repayment of Loans for Physical Losses to Real Estate**

**[7 CFR 764.354(b)(5)] The repayment schedule for EM loans for physical losses to real estate is based on the applicant's repayment ability and the useful life of the security, but in no case will the term exceed 40 years.**

The specific term of a loan is determined by the applicant's projected ability to repay based on the farm operating plan.

\*--The loan term must be the minimum period of time to achieve a TDCLCR of 1.10, if possible, in a typical year plan, but shall never exceed the useful life of the security. Loan terms are considered in 5-year increments. A loan term of 40 years will only be considered if a TDCLCR of 1.10 cannot be achieved in a typical year plan using a shorter term.

**Example:** If a proposed loan term will not result in a TDCLCR of 1.10 in a typical year plan, the next 5-year term will be considered, and so on, until the projected installment results in a TDCLCR of 1.10, if possible. If a 35-year term results in a TDCLCR less than 1.10 in a typical year plan, the FO will be placed on a 40-year term, provided this term does not exceed the useful life of the security.

Exceptions to this policy are authorized to be made on a case-by-case basis by the Farm Loan Chief. When considering exception requests, the Farm Loan Chief will ensure repayment terms are reasonable and equitable.--\*

The first installment will be scheduled within 12 months of loan closing.

Repayment terms that include balloon installments are prohibited.

**Note:** 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.



## 246 Security Requirements

## A General

**[7 CFR 764.355(a)] EM loans made under § 764.351(a)(1) (subparagraph 241 A) must comply with the general security requirements established at §§ 764.103 (paragraph 91), 764.104 (paragraph 92) and 764.155(b) (subparagraph 135 D).**

**[7 CFR 764.355(b)] EM loans made under § 764.351(a)(2) (subparagraph 241 B) and (b) (subparagraph 241 C) must generally comply with the general security requirements established at §§ 764.103 (paragraph 91), 764.104 (paragraph 92) and 764.255(b) (subparagraph 205 A). These general security requirements, however, do not apply to equine loss loans to the extent that a lien is not obtainable or obtaining a lien may prevent the applicant from carrying on the normal course of business. Other security may be considered for an equine loss loan in the order of priority as follows:**

- (1) Real estate,**
- (2) Chattels and crops, other than horses,**
- (3) Other assets owned by the applicant,**
- (4) Third party pledges of property not owned by the applicant,**
- (5) Repayment ability under paragraph (c) of this section.--\***

**\*--In the case of an entity, FSA will take personal assets held by individual members when all the security held by the entity does not meet the requirement for additional security up to 150 percent of the loan amount. The entity will select and notify FSA which assets will be offered as security for the loan.--\***

See Exhibit 2 for the definition of nonessential assets.

See Exhibit 21 for security requirements for loans made for reestablishing fruit, nut bearing, and income producing trees and plants.

## 246 Security Requirements (Continued)

**B Lack of Adequate Security**

**[7 CFR 764.355(c)] Notwithstanding the requirements of paragraph (a) and (b) of this section, when adequate security is not available because of the disaster, the loan may be approved if the Agency determines, based on an otherwise feasible plan, there is a reasonable assurance that the applicant has the ability to repay the loan provided:**

**(1) The applicant has pledged as security for the loan all available personal and business security, except as provided in § 764.106 (paragraph 94);**

If the applicant is an entity, all members also must pledge all assets, both personal and business, as collateral.

**(2) The farm operating plan, approved by the Agency, indicates the loan will be repaid based upon the applicant's production and income history; addresses applicable pricing risks through the use of marketing contracts, hedging, options, or other revenue protection mechanisms, and includes a marketing plan or similar risk management practice;**

**(3) The applicant has had positive net cash farm income in at least 3 of the past 5 years, and**

Net farm income is determined by subtracting all cash farm expenses from all farm income reported on Schedule F and other related schedules of the applicant's Federal income tax returns.

Positive net cash farm income is determined by analysis of the applicant's tax records for the 5 years immediately preceding the disaster year. If the applicant has been farming less than 5 years, a positive net cash farm income must have been achieved in 50 percent or more of the years farmed.

**Note:** If depreciation is shown on Schedule F, it is not a cash expense and must not be included as an expense.

**(4) The applicant has provided the Agency an assignment on any USDA program payments to be received.**

**247 Real Estate Security Requirements****A Title Clearance Requirements**

**[7 CFR 764.355(d)] For loans over \$25,000, title clearance is required when real estate is taken as security.**

**[7 CFR 764.355(e)] For loans of \$25,000 or less, when real estate is taken as security, a certification of ownership in real estate is required. Certification of ownership may be in the form of an affidavit which is signed by the applicant, names the record owner of the real estate in question and lists the balances due on all known debts against the real estate. Whenever the Agency is uncertain of the record owner or debts against the real estate security, a title search is required.**

**248 Appraisal and Valuation Requirements****A Establishing Values for Real Estate**

SED may issue a State supplement waiving the real estate appraisal requirement for an applicant receiving only an EM. The State supplement shall:

- establish the conditions under which the requirement to obtain an appraisal may be waived, which must apply to all applicants
- \*--require the loan approval official to establish an estimated value when the loan to be secured by the real estate does not exceeded \$50,000
- require that someone, other than the loan approval official, who has been delegated authority by SED based on adequate experience and knowledge of methods for evaluating security values, establish the estimated value of security if over \$50,000--\*
- establish procedures allowing an applicant to dispute the estimated value of security by having an appraisal completed, at their expense, by an appraiser meeting the qualification requirements in 1-FLP, paragraph 145.

248 Appraisal and Valuation Requirements (Continued)

**B Establishing Values for Assets Damaged by Disaster**

**[7 CFR 764.356(a)] In the case of physical losses associated with livestock, the applicant must have written documentation of the inventory of livestock and records of livestock product sales sufficient to allow the Agency to value such livestock or livestock products just prior to the loss.**

**[7 CFR 764.356(b)] In the case of farm assets damaged by the disaster, the value of such security shall be established as of the day before the disaster occurred.**

**[7 CFR 764.356(c)] In the case of an equine loss loan:**

**(1) The applicant's Federal income tax and business records will be the primary source of financial information. Sales receipts, invoices, or other official sales records will document the sales price of individual animals.**

**(2) If the applicant does not have 3 complete years of business records, the Agency will obtain the most reliable and reasonable information available from sources such as the Cooperative Extension Service, universities, and breed associations to document production for those years for which the applicant does not have a complete year of business records.**

**\*--Values for EM valuation must be determined by employees who have been delegated chattel appraisal authority.--\***

249-265 (Reserved)

Part 11 (Reserved)

266-285 (Reserved)

Part 12 (Reserved)

286-305 (Reserved)

Part 13 (Reserved)

306-330 (Reserved)

Part 14 (Reserved)

331-350 (Reserved)

**Part 15 Loan Decision****351 Reviewing and Evaluating Applications****A Timeframe**

**[7 CFR 764.53(c)] Within 60 calendar days after receiving a complete loan application, the Agency will complete the processing of the loan request and notify the applicant of the decision reached, and the reason for any disapproval.**

The authorized agency official must make the decision to approve or deny the loan so that the applicant can be notified in writing within 60 calendar days after the loan application is determined complete.

To ensure that a loan application is expeditiously reviewed, the State or County Office must enter a reason and, if necessary, an explanation into DLS when the loan decision has not been made within 45 calendar days after receiving a complete loan application.

SED, FLC, and DD will monitor the processing of all loan applications to ensure that loan applications are processed in a timely manner.

**B Eligibility**

To evaluate the applicant's eligibility, the following should be considered during preparation of the FBP's Credit Presentation.

- Does the applicant meet the general eligibility and specific eligibility requirements for the type of loan requested?
- Does the applicant meet the definition of beginning farmer or SDA to qualify for targeted funds?
- Are funds requested for authorized purposes?
- Will the requested loan, plus the principal balance on other FLP loans, be within the loan limits contained in 1-FLP?
- Is a plan in place or has a waiver been granted to meet applicant training needs?
- Is the applicant unable to obtain sufficient credit elsewhere? (Does not apply to CL's.)
- If the request is for EM, did the applicant have a qualifying loss?

**351 Reviewing and Evaluating Applications (Continued)****C Feasibility**

To evaluate the applicant's operating plan feasibility, the following should be considered during the preparation of the FBP Credit Presentation.

**Note:** Farm operating plans for poultry or hog contract growers must be developed according to 1-FLP, Part 8, Section 3.

- Does the farm operating plan show that the new loan, farm operating and family living expenses, and all other obligations will be repaid? The plan should first be prepared using regular rates and terms. If the plan shows repayment at regular rates, the regular rates will be used for the loan. However, if the plan does not show repayment at regular rates, limited resource rates should be substituted and the plan recalculated to see if repayment is possible.
- Are the operating and family living expenses, nonfarm income, and farm and other income included in the farm operating plan realistic?
- Is projected production realistic based on the applicant's or operation's history and the planned improvement practices?
- If non-FSA credit is planned, has documentation been obtained that the loan has been approved?
- Is the farm suitable for any planned specialized operations?
- Are the land, buildings and facilities, and water supply adequate for the planned operation?
- Is there reasonable assurance that any rented land which the applicant depends on will continue to be available?
- Is any off farm employment the applicant depends on likely to continue?

**351 Reviewing and Evaluating Applications (Continued)****D Security**

The authorized agency official must ensure that the security requirements have been met and the total debt including loans being made against the security will not exceed the market value of the security.

A loan requiring real estate or chattels for adequate security may be approved subject to obtaining an appraisal in those cases where the following conditions are met.

- The available information demonstrates that the security requirements can be met when the appraisal is completed.
- FSA will obtain an acceptable appraisal before loan closing.
- \*--FSA must promptly provide a copy of the real estate appraisal or written real estate valuation to the applicant upon FSA completion or receipt. See handbook 1-FLP paragraph 148 for applicable notification requirements.

The real estate appraisal or written real estate valuation must be provided to the applicant at least three business days prior to loan closing or other such consummation of the transaction. The applicant may waive the three-day waiting period upon written request to the Agency, but any such waiver must be provided three business days prior to loan closing or other such consummation of the transaction. The real estate appraisal or written real estate valuation completed on a withdrawn or denied application must also be provided promptly to the applicant, but in no case later than 30 days after the denial or withdrawal.--\*

**E Environmental**

The applicant has complied with or has plans in place for the proposed operation, which cover all the environmental requirements of 1-EQ and 2-EQ, and will not violate CONACT, Section 363; the Food, Security Act of 1985 (Sodbuster, Swampbuster); Executive Order 11990; or the Clean Water Acts.

See 1-EQ, paragraph 51 for guidance to identify potential wetlands that may be impacted by the proposed action.

The authorized loan official must ensure the applicant has certified that he or she will not violate HEL or WC provisions and that loan funds will not be used for a purpose that will contribute to a violation of HEL or WC provisions.





**351 Reviewing and Evaluating Applications (Continued)****E Environmental (Continued)**

According to 6-CP, applicants must certify that they will not violate HEL and WC provisions by completing and executing AD-1026 for each farming interest. If, on AD-1026, question 6, 7A, 7B, or 7C is answered “yes” by the applicant, then AD-1026 will be referred to NRCS for a HEL or wetland determination, as appropriate.

A conservation plan may be required if the property contains HEL. If a conservation plan is required, NRCS should be contacted to:

- determine what the conservation plan will contain
- evaluate if the applicant has the resources to carry out the plan.

The authorized agency official should consider the proposed use of loan funds; the contents of the conservation plan, if a conservation plan exists; and changes in land use when determining whether an applicant is likely to violate HEL and WC provisions.

**F Loan Narrative**

The authorized agency official shall document each item considered under subparagraphs B through E to support the final loan decision. The documentation shall be added to the FBP’s Credit Presentation to document the decision making process.

**Note:** If repayment ability is used as security according to subparagraph 246 B, documentation of the requirements of that section shall be included in the narrative.

## 352 Loan Approval

### A Assessment

The authorized agency official must confirm and document in FBP that the loan assessment is complete or updated, when required, and necessary supervision is planned.

### B Establishing Loan Approval Conditions

**[7 CFR 764.401(a)(2)] The Agency will place conditions upon loan approval it determines necessary to protect its interest and maximize the applicant's potential for success.**

Authorized agency officials shall not make any written or oral commitments or in any way imply that a loan will be made to any individual or entity before the closing of a loan.

The authorized agency official must specify on FSA-2313, or an attachment if necessary, any conditions that must be met including, but not limited to, the following:

- borrower training requirements as established in subparagraph 472 C
- all security requirements, including required lien position
- any agreements needed with prior lienholders
- supervised bank account according to 1-FLP, Part 4
- obtaining an appraisal that demonstrates that the security requirements can be met if the loan was approved subject to obtaining an appraisal
- any actions required of the applicant before loan closing, such as:
  - insurance and indemnity requirements
  - assignments from sale proceeds or income
  - reduction of outstanding indebtedness to meet maximum loan limits.

When a loan is approved for which funds are available and a title search is necessary, check (✓) the following statement on FSA-2313:

“Loan funds will be made available to you within 15 business days of loan approval. However, you agree that in certain circumstances the 15 business days may be exceeded when additional information, such as a lien and/or title search, an appraisal, subordination, etc. is needed prior to loan closing.”

**\*--Note:** FSA-2313 will be sent by regular mail or hand delivered to the primary applicant.--\*

## 352 Loan Approval (Continued)

## C Approval

[7 CFR 764.401(a)(1)] The Agency will approve a loan only if it determines that:

**(i) The applicant's farm operating plan reflects a feasible plan, which includes repayment of the proposed loan and demonstrates that all other credit needs can be met;**

Streamlined CL's are considered feasible when all requirements in subparagraph 191 B are met.

When FSA determines that an FO or OL applicant's financial condition justifies a reduced annual interest rate, FSA charges the applicant the limited resource rate.

FSA uses this reduced interest rate only to assist applicants who otherwise meet all requirements for a FSA direct loan, but whose farm operating plan indicates that a feasible plan cannot be achieved at the regular interest rate.

**Note:** The authorized agency official shall not approve loans at the limited resource rate when the regular interest rate is less than or equal to the limited resource rate.

**(ii) The proposed use of loan funds is authorized for the type of loan requested;**

**(iii) The applicant has been determined eligible for the type of loan requested;**

**(iv) All security requirements for the type of loan requested have been, or will be met before the loan is closed;**

**(v) The applicant's total indebtedness to the Agency, including the proposed loan, will not exceed the maximum limits established in § 761.8 (1-FLP, paragraph 29) of this chapter;**

**Note:** When the indebtedness of the applicant, or anyone who will sign the note, exceeds the maximum loan limits established in 1-FLP, paragraph 29, at the time of loan approval, the applicant's operating plan must reflect that funds will be available to reduce the indebtedness before loan closing.

**(vi) There have been no significant changes in the farm operating plan or the applicant's financial condition since the time the Agency received a complete application; and**

**(vii) All other pertinent requirements have been, or will be met before the loan is closed.**

**352 Loan Approval (Continued)****C Approval (Continued)**

The authorized agency official must determine that the appropriate environmental reviews and determinations have been completed and the loan will not violate any portion of 1-EQ, \*--2-EQ, State Environmental requirements, and any other relevant requirements.--\*

**Note:** An applicant will be advised that compliance with all applicable local, State, and Federal special laws and regulations will be required.

The authorized agency official will approve the loan by executing the electronic signature command in the credit presentation section of FBP. FSA-2313:

- will be provided to the primary applicant as notification of loan approval and conditions
- must be signed and returned by all applicants, including all entity members “within 15 business days”
- must be “returned within 15 business days” or the application will be withdrawn.

The authorized agency official must include, in the physical case file, all components of FBP that require signatures as provided in the FBP User Guide.

**Note:** See 4-FLP, Part 9 for approving assumptions.

**D Eligible Applicants**

Eligibility determinations will be made concurrently with the formal approval or denial decision of the loan request. Eligibility decisions will not be made prior to an approval or denial decision. The authorized agency official provides written notification of a favorable eligibility determination using form FSA-2313.

The authorized agency official must document in the FBP Credit Action whether the applicant meets:

- all eligibility requirements
- SDA requirements
- the beginning farmer definition.--\*

**352 Loan Approval****C Approval**

Loans requiring the SED approval will be entered into the STO Tracking database on the NYS Sharepoint FLP page and will be electronically reviewed by a STO loan official with the properly delegated SED approval.

The FBP will be reviewed by the loan approval official, and the loan decision will be made based on the documentation in the FBP. The case file will not be sent to the State Office.

If supporting electronic documents must be provided to the approval official (for example an FSA-850 for an S-Catex environmental review), the documents are to be saved to the service center's shared drive in the Farm Loan Program STO folder.

The approving loan official will execute the electronic signature command in the credit presentation section on the FBP. The approving loan official may delegate signing of the approval or denial and appeal documents to the local loan official. When doing so, the approving official will state that he/she is doing so in the comments of the electronic signature command.

**D Eligible Applicants**

In New York State, to ensure continuity between the program eligibility decision and the loan approval, we are requiring that when the loan request exceeds the loan official's approval authority, the loan official processing the loan request will obtain the Approval Official's concurrence of the final eligibility determination. This process will help to eliminate any potential unauthorized assistance issues due to an applicant's eligibility determination being inaccurately evaluated.

The approving official will document their concurrence using the electronic eligibility determination in the credit presentation section of the FBP.

## 352 Loan Approval (Continued)

### E Actions After Loan Approval

After the loan application is approved, the authorized agency official will:

- input data into DLS
- \*--notify the primary applicant of approval and any conditions using FSA-2313--\*
- prepare for loan closing.

**[7 CFR 764.402(e)(1)] Loan funds will be made available to the applicant within 15 “business” days of loan approval, subject to the availability of funding.**

Funds must be provided to the applicant within 15 workdays of when they become available unless the applicant agrees to a longer period.

Loan applications will be processed through approval subject to the availability of funds. FSA-2313 will be executed at the time of approval.

A printed copy of “Your FSA Farm Loan Compass” shall be provided to all **new** FLP customers at the time of their first loan closing.

### F Failure to Meet or Accept Loan Approval Conditions

If an applicant informs the authorized agency official that the loan approval conditions established under subparagraph B are unacceptable or cannot be met:

- the authorized agency official will meet with the applicant to discuss the condition or conditions which are unacceptable or cannot be met
- explore alternatives which are different from the condition in question but would result in compliance with the program requirements the condition addresses
- the application will be withdrawn, and the applicant notified with appropriate review rights for non-appealable decisions according to 1-APP, if an agreement cannot be reached and the applicant cannot or will not meet the conditions in question
- See 1-FLP, paragraph 144 in the case of an approved loan subject to an appraisal, where the appraisal value is less than projected.

**Note:** The loan obligation shall not be cancelled until the withdrawal decision is administratively final, as defined in 1-APP.

**353 Funding Approved Loans****A Lack of Program Funds**

**[7 CFR 764.53(e)] In the absence of funds for a direct loan, the Agency will keep an approved loan application on file until funding is available. At least annually, the Agency will contact the applicant to determine if the Agency should retain the application or if the applicant wants the application withdrawn.**

The authorized agency official will notify the applicant in writing that funds are not currently available and place the approved loan on a waiting list based on the date the loan application was received.

The authorized agency official will contact the approved loan applicant at least once a year to determine whether the applicant is still interested in receiving a FSA loan. If the applicant \*--wants the loan application to remain active, the applicant must provide FSA with a response within 30 calendar days. If the applicant does not respond or does not want the loan application to remain active, it will be withdrawn and the applicant will be notified in writing.--\*

**B Preferences When There is Limited Funding**

**[7 CFR 764.54(a)] When there is a shortage of loan funds, approved applications will be funded in the order of the date the application was received, whether or not complete.**

**[7 CFR 764.54(b)] If two or more applications were received on the same date, the Agency will give preference to:**

**(1) First, an applicant who is a veteran of any war;**

See Exhibit 2 for the definition of veteran.

**Note:** Period of war means that it was officially declared a war, with a defined beginning date, by Congress and was officially ended, with a prescribed date, by either Presidential proclamation or concurrent resolution of the Congress.

**353 Funding Approved Loans (Continued)****B Preferences When There is Limited Funding (Continued)**

[7 CFR 764.54(b)(2)] **Second, an applicant who is not a veteran, but:**

**(i) Has a dependent family;**

**\*--(ii) Is able to make a down payment; or--\***

**(iii) Owns livestock and farm implements necessary to farm successfully.**

[7 CFR 764.54(b)(3)] **Third, to other eligible applicants.**

FSA uses the secondary priorities only when funding is limited and more than 1 loan application was received on the same date.

**C When Loan Funds Become Available**

[7 CFR 764.53(f)] **If funding becomes available, the Agency will resume processing of approved loans in accordance with this part.**

When funds become available, the applicant will be notified immediately by letter, such as Exhibit 24, sent by regular mail or hand delivered. The letter will:

- advise the applicant to “contact FSA within 15 business days from the date of the letter”
- contain the statement, “if the applicant does not contact the authorized agency official within 15 business days from the date of the letter, the application will be withdrawn”.



## 354 Changes After Loan Approval

### A Changes in Loan Amount

If it becomes necessary to increase or decrease the amount of the loan before loan closing, the authorized agency official requests that all distributed loan forms be returned to FSA and reprocessed. If the change is minor and replacement forms can readily be completed and submitted, a memorandum justifying the change is attached to the revised forms and sent to the State Office.

### B Cancellation of Funds

The authorized agency official cancels obligations, advances, checks, and electronic fund \*--disbursements according to 64-FI, Exhibit 17 and other appropriate FI directives.--\*

**Note:** On September 30 of the 5<sup>th</sup> FY after the period of availability for obligation of a fixed appropriation account ends, the account shall be closed and any remaining balance (whether obligated or unobligated) in the account shall be canceled and thereafter shall not be available for obligation or expenditure for any purpose.

Before loan closing, but after the Finance Office completes de-obligation, file original FSA-2072 in the physical case file with a screen print of the ADPS Unclosed (UN) Screen. After loan closing, see 4-FLP, subparagraph 61 E.

When necessary, the authorized agency official prepares and executes FSA-2026 reflecting the revised total of the loan and the revised repayment schedule.

### C Cancellation of Loan

When a loan is canceled:

- the authorized agency official notifies the State Office and to the National Financial and Accounting Operations Center, Farm Services Branch of loan cancellation by using FSA-2072
- the authorized agency official notifies the designated closing agent that the loan has been canceled

**Note:** If the loan, based upon updated information after initial approval, is rejected because of problems with eligibility or feasibility, see paragraph 351.

- at the request of the applicant, the application will be withdrawn. See subparagraph 45 D for more information.

**354 Changes After Loan Approval (Continued)**

**D Change in Use of Funds**

The authorized agency official may approve changes in the proposed use of funds provided that:

- the loan is within the authorized agency official’s loan approval authority
- funds will be used for an authorized loan purpose
- the change will not adversely affect the feasibility of the operation or the Government’s interest
- the request is received and approved before the funds are used for new purposes
- no revisions are made to the repayment schedule or FSA-2026
- FBP is revised as necessary and the revisions initialed by the applicant and the authorized agency official.

**355 Monitoring FSA Approval****A Authorized Agency Official Responsibilities**

The authorized agency official will:

- process loan applications according to statutory and regulatory timeframes and established performance goals
- adhere to timeframes in subparagraph 45 B for notifying all applicants of any additional information required for a complete loan application
- notify all applicants of eligibility and ineligibility in a timely manner
- approve or disapprove all loan applications in a timely manner
- enter the reason, if a decision has not been made within 45 calendar days of receiving a complete application, and if necessary, an explanation in DLS
- use DLS as the official loan application data record for all direct applications.

**B DD Responsibilities**

DD:

- is responsible for:
  - overseeing the approval process
  - monitoring unprocessed applications
- shall take all steps necessary to ensure that applications are processed timely.

**Note:** Some steps DD can take include the following:

- prioritizing workloads
- providing additional training
- providing clerical help
- temporary shifting staff assignments.

## 355 Monitoring FSA Approval (Continued)

### C Designated Review Officials Action

Officials designated by SED to review applications will:

- review at least 50 percent of the rejected or withdrawn SDA loan applications for each quarter in each office of their jurisdiction
- if any improper rejections or withdrawals are found, review all rejected and withdrawn SDA loan applications in the approval official's coverage area
- notify SED of any problems detected
- with the advice of FLC, take action on improperly rejected or withdrawn SDA loan applications to correct any errors
- recommend appropriate personnel actions to SED, such as training or revocation of loan approval authority, for the approval officials responsible for rejections and withdrawals that appear to reflect a pattern or practice of discrimination against SDA
- review the reasons and explanations why decisions have not been made in a timely manner on complete loan applications
- \*--Reviews completed according to 1-FLP, subparagraph 28 D may be used towards satisfying the review requirements of this subparagraph.--\*

### D FLC Action

FLC will:

- monitor loan application processing timeframes, DLS, and performance goal accomplishments using Intranet application reports

**Note:** Offices will access reports “Direct Applications Disposition by Race and Gender” and “Direct Application Processing – Race and Gender” through the Intranet applications reporting site at <http://www.flp.fsa.usda.gov:4019/>. These reports include data on processing times and final disposition of loan applications.

- provide reports on loan application processing timeframes to SED
- provide technical advice and direction for corrective actions on improperly rejected or withdrawn loan applications.

**355 Monitoring FSA Approval (Continued)****E SED Action**

SED will:

- designate DD or other qualified State Office personnel as review officials
- be accountable for SDA loan application processing in the State, including ensuring that designated review officials:
  - conduct reviews of rejected SDA loan applications
  - take corrective action in a timely manner
- emphasize the importance of timely loan application processing for all applicants
- ensure that loan application processing data is monitored through DLS or Intranet application reports, so that applications are being processed in a timely and equitable manner in the State
- manage staff resources appropriately to minimize loan application processing delays
- when necessary, initiate or monitor appropriate personnel actions recommended by the designated review official
- review the:
  - reports on loan application processing problems submitted by the designated review officials
  - FLC reports on both SDA and non-SDA average loan application processing timeframes
- provide DD's with report findings and ensure that DD's monitor County Office SDA activity
- submit the SDA Loan Review Summary Report for affected cases, findings, corrective action, and results, by October 31 of each year through SDMS.

**Note:** See 1-AS, Exhibit 8 for guidance on using SDMS. ENTER "SDA Loan Review Summary" as the directive's title.

## 356 Loan Denial

**A Denial**

**[7 CFR 764.401(b)] The Agency will not approve a loan if it determines that:**

**[7 CFR 764.401(b)(1)] The applicant's farm operating plan does not reflect a feasible plan;**

Streamlined CL's meet feasibility requirements when all requirements in subparagraph 191 B are met.

**[7 CFR 764.401(b)(2)] The proposed use of loan funds is not authorized for the type of loan requested;**

**[7 CFR 764.401(b)(3)] The applicant does not meet the eligibility requirements for the type of loan requested;**

**[7 CFR 764.401(b)(4)] There is inadequate security for the type of loan requested;**

**[7 CFR 764.401(b)(5)] Approval of the loan would cause the applicant's total indebtedness to the Agency to exceed the maximum limits established in § 761.8 of this chapter (1-FLP);**

**[7 CFR 764.401(b)(6)] The applicant's circumstances may not permit continuous operation and management of the farm; or**

**[7 CFR 764.401(b)(7)] The applicant, the farming operation, or other circumstances surrounding the loan are inconsistent with the authorizing statutes, other Federal laws, or Federal credit policies.**

**Notes:** This includes determinations by other Federal agencies, that the applicant is not in compliance with applicable environmental regulations.

See 1-EQ, Exhibit 26 for information to be included when notifying the applicant that wetland indicators were determined to be present, as provided in 1-EQ, subparagraph 51.

**\*--B Ineligible Applicants**

Eligibility determinations will be made concurrently with the formal approval or denial decision of the loan request. Eligibility decisions will not be made prior to an approval or denial decision. If the authorized agency official determines the applicant ineligible, the authorized agency official must:

- document in FBP and DLS the specific reasons for denial
- cite CFR references as applicable
- notify the applicant in writing of the determination providing appeal rights according to 1-APP and ECOA and nondiscrimination statements according to 1-FLP, paragraph 41.--\*

## 356 Loan Denial (Continued)

**\*--B Ineligible Applicants (Continued)**

If the unfavorable decision is the result of a determination that the applicant is not creditworthy, the authorized agency official will meet with the applicant before sending a rejection letter to:

- discuss the credit report information in detail
- explain the reasons for the adverse decision
- provide the applicant with a copy of the credit report including the name and address of the credit reporting company and any other nonconfidential information used to make the creditworthiness decision
- inform the applicant that any dispute about the accuracy of the information in the credit report must be resolved between the credit reporting company and the applicant.

If the applicant fails to attend the meeting, a rejection letter will immediately be sent and the fact that the applicant failed to attend the meeting will be documented in FBP.

**Note:** If denial is based on information obtained from a source other than a credit reporting company, the applicant will be advised that the information can only be disclosed upon written request.

**C Notification of Loan Denial**

The authorized agency official notifies the applicant of loan denial by letter according to 1-APP. The letter must provide:

- clear, specific reasons for the denial
- citations of requirements from CFR and handbook sections that are not met by the applicant
- \*--a description of any loan review aspect that was not evaluated

**Example:** If the loan was denied for eligibility purposes only, it should be noted that feasibility and security requirements were not evaluated.--\*

- appeal or review rights according to 1-APP
- ECOA and nondiscrimination statement according to 1-FLP, paragraph 41.

**356 Loan Denial (Continued)****D Actions After Denial**

Once the loan application is denied, the authorized agency official will:

- input data into DLS
- close the loan application process.

FSA must maintain applications that have been rejected. See 32-AS for maintaining loan files.

See 1-APP for information on reconsideration if the applicant requests FSA reconsider the loan application for approval.

**E Counseling**

When discussing a denial decision, the authorized agency official will advise the applicant of potential actions or alternatives that might resolve or help resolve the issues that resulted in the denial of the loan request. Examples include, but are not limited to, obtaining necessary experience or training, restructuring debts, liquidating assets and paying down debts, repaying debt forgiveness, and changing the size or scope of the farm operation.

The authorized agency official should not tell the applicant what actions to take, and make it clear that what is being discussed are options; it is up to the applicant to decide what course of action to take.

Authorized agency officials shall not guarantee that loan approval is certain, especially when that guarantee is based upon an applicant taking a specific action.



**\*--357 Actions if Loan Denial is Overturned in NAD Final Determination****A Final NAD Determination**

1-APP, subparagraph 135 A requires FSA implement a final determination not later than 30 calendar days after the effective date of the notice of final determination. An appeal determination is administratively final when the provisions of 1-APP, subparagraph 135 B have been met.

**B Advising Applicant of Next Steps**

The authorized agency official will advise the applicant of the next steps to be taken in application processing according to subparagraphs C through E within 5 workdays of the date the appeal decision becomes administratively final, or the date FSA determines that it will not pursue a further review of the hearing officer's decision, whichever comes first. The contact will be by telephone or in person, with a written followup.

**C Obtaining Updated or Revised Information**

**[7 CFR 764.401(c)] If an Agency loan denial is overturned on administrative appeal, the Agency will not automatically approve the loan. Unless prohibited by the final appeal determination or otherwise advised by the Office of General Counsel, the Agency will:**

**(1) Request current financial information from the applicant as necessary to determine whether any changes in the applicant's financial condition or agricultural conditions which occurred after the Agency's adverse decision was made will adversely affect the applicant's farming operation;**

**Note:** Adversely affect means that a change unrelated to the issue resolved through appeal will result in an applicant no longer being eligible, the previously developed FBP not being feasible, or in the proposed security being inadequate for the type of loan requested.

If there have been no significant changes to the applicant's financial or farming situation since the date of the original Agency decision, the applicant will initial and date FBP, at which time FBP will be considered current. If the applicant indicates that significant changes have occurred, it is not necessary that all new financial or other information be provided. Only the information that has changed needs to be submitted or revised. Any revised or new documents must be initialed or signed, as appropriate, by both the applicant and authorized agency official.

**Note:** A significant change is a change that would materially affect the feasibility of, or the eligibility or security for, the proposed loan. Examples include incurring a debt for purchasing livestock, equipment, or planting a crop, loss of livestock or crops because of disaster, material increases or decreases in off-farm income, and entry into or loss of a production, marketing, or lease contract, or other events that effect potential income, expenses, or production capacity.--\*

**357 Actions if Loan Denial is Overturned in NAD Final Determination (Continued)****D Additional Considerations Applicable to Annual Production Loans**

When evaluating the impact of the NAD final determination and any new or revised information according to subparagraph E, the loan approval official will only:

**[7 CFR 764.401(c) (2)] Approve a loan for crop production:**

**(i) Only if the Agency can determine that the applicant will be able to produce a crop in the production cycle for which the loan is requested; or**

**(ii) For the next production cycle, upon review of current financial data and a farm operating plan for the next production cycle, if the agency determines the loan can be repaid. The new farm operating plan shall reflect any financial issues resolved in the appeal.**

**E Evaluating Impact NAD Decision and New or Revised Information**

The authorized agency official shall:

**[7 CFR 764.401(c) (3)] Determine whether the applicant's farm operating plan, as modified based on the appeal decision, reflects a feasible plan, which includes repayment of the proposed loan and demonstrates that all other credit needs can be met.**

After completing the review and evaluating any necessary revisions, the loan approval official will:

- approve the loan if the requirements of subparagraph 353 C have been met and notify the applicant accordingly
- deny the loan according to paragraph 356, if the requirements of subparagraph 353 C are not met.

**Note:** Any denial of a loan request after a receipt of a final NAD determination will be considered a new decision and new appeal rights will be provided, as appropriate.

**F Monitoring Implementation**

The State appeals coordinator will monitor receipt and implementation of final NAD determinations to ensure that they are properly and timely implemented.

See the DLS manual for further information about calculating application processing time in appeal situations.

**358-370 (Reserved)**

## Part 16 Loan Closing

## Section 1 General

## 371 Overview

## A Closing Different Kinds of Loans

See:

- paragraphs 396 through 400 for loan closing requirements for real estate
- paragraphs 416 through 419 for loan closing requirements for chattel.

All other paragraphs in this section apply to loan closings for both kinds of security.

A loan is closed either by FSA or a closing agent based on:

- type of loan
- type of security:
  - real estate
  - chattel
- adequate security
- additional security
- nonessential assets
- amount of loan.

**Note:** In most cases, authorized agency officials typically will close operating loans and will  
 \*--use either an attorney or a title company for all loans involving real estate as primary  
 security.--\*

## B Reconfirming Loan Requirements

**[7 CFR 764.402(e)(2)] If the loan is not closed within 90 calendar days of loan approval or if the applicant's financial condition changes significantly, the Agency must reconfirm the requirements for loan approval prior to loan closing. The applicant may be required to provide updated information for the Agency to reconfirm approval and proceed with loan closing.**

## 371 Overview (Continued)

**B Reconfirming Loan Requirements (Continued)**

The authorized agency official will review with the applicant the financial statement which was prepared at the time the docket was developed. If there have been significant changes in the applicant's financial condition, the financial statement will be revised and initialed by the applicant and the authorized agency official. When an applicant's financial condition has changed to the extent that it appears that the loan would be unsound or improper, the loan \*--will not be closed. If any such revisions are needed to meet loan requirements or determine loan soundness, an updated financial statement will be developed and submitted to the authorized agency official.

No significant changes have been made in the development plan or have occurred to the property that could negatively affect the appraised value. If the authorized agency official determines there are significant changes that have occurred, an updated appraisal will be required prior to closing.--\*

When real estate will be taken as security, a review should be made to determine that no significant changes have been made in the development plan considered by the appraiser.

If the authorized agency official determines that the applicant is no longer eligible for the loan or that the farm operating plan is no longer feasible, the authorized agency official will decline to close the loan and the applicant will be notified according to paragraph 356.

**C Loan Document Signatures**

**[7 CFR 764.402(a)] Signatures on loan documents are required as follows:**

**(1) For individual applicants, only the applicant is required to sign the promissory note.**

In the case of an individual applicant, only the applicant will be required to sign FSA-2026 unless State law requires otherwise. SED shall, with approval of regional OGC and National Office, issue a State supplement outlining signature requirements.

Generally, requiring a non-applicant's spouse signature on loan documents is a violation of ECOA regulations. Therefore, unless required by State law, FSA will not require the signature of an applicant's spouse or other person, on FSA-2026 if the applicant qualifies under FSA's standards of creditworthiness for the amount and terms of the credit requested. FSA will **not** consider the submission of a joint financial statement or other evidence of jointly held assets, such as a joint bank account, as an application for joint credit. See Exhibit 6 for guidance on submitting documents in compliance with ECOA as required by this handbook.

In the case of an FO involving a life estate to:

- both the life estate holder and the remainderman, the note and lien instrument is signed by both
- just the remainderman, the lien instrument is signed by the remainderman, life estate holder, and any other party having an interest in the security

**371 Overview**

**C Loan Document Signatures**

Signature requirements for Promissory Notes, Security Agreements and mortgages will be found in Exhibit 2 of NY 3-FLP Amendment.

## 371 Overview (Continued)

## C Loan Document Signatures (Continued)

- just the life estate holder, the lien instrument is signed by the life estate holder, remainderman, and any other party having any interest in the security.

**(2) For entity applicants, the promissory note will be executed to evidence the liability of the entity, any embedded entities, and the individual liability of all entity members.**

Required signatures:

- in the case of an entity applicant will include:
  - each individual required to obligate the entity
  - each individual member of the entity
  - cosigner if required
  - other signatures as required in State supplements
- in the case of a partnership or joint operation will include:
  - both the partner or joint operator authorized to sign for the entity
  - all partners in the partnership or joint operators in the joint operation, as individuals

**\*--Note:** Married persons informal joint operations will only sign FSA-2026 as--\* individuals.

- in the case of a cooperative or corporation will include:
  - both the individual authorized to sign for the entity
  - all members or stockholders, as individuals
- in the case of a trust or entities, including LLC's, SED will, after consultation with the Regional OGC, issue a State supplement for trusts outlining signature requirements on FSA-2026's and security instruments.

**(3) Despite minority status, a youth executing a promissory note for a Youth Loan will incur full personal liability for the debt.**

- in the case of a youth applicant will include:
  - youth applicant individually
  - cosigner, if required.

**Note:** A cosigner will be required only if it is determined that the applicant cannot possibly meet the repayment or security requirements for the loan request. When a plan is feasible using realistic figures, a cosigner will not be required.

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## 371 Overview (Continued)

**C Loan Document Signatures (Continued)**

**(4) A cosigner will be required to sign the promissory note if they assist the applicant in meeting the repayment requirements for the loan requested.**

**Note:** ECOA allows FSA to require a cosigner when the applicant does not qualify for credit alone, but FSA cannot require that the cosigner be the applicant's spouse. A cosigner is required to complete FSA-2007 to provide necessary information, including self-certifications.

**Examples:** In the case of a married couple, when 1 spouse of the couple applies individually, if the spouse that is not party to the application has off farm income that:

- pays only family living expenses and does not contribute to the farm operation, then neither the off farm income nor the family living expenses will be included in FBP and the spouse will not be required to sign FSA-2026
- is needed to contribute to a feasible farm operating plan and applicant selects his/her spouse as the cosigner, then both the off farm income--\* and family living expenses will be included in FBP and the spouse will be required to sign FSA-2026 as a cosigner and would therefore, be required to be eligible under certain requirements according to paragraphs 62 through 72.

**\*--Example 1:** Tom has applied for a term operating loan as an individual.--\* Mary's salary for her job as a teacher is \$35,000. FBP indicates that family living would total \$35,000 and would all be paid from Mary's salary. After removing Mary's income and the family living from FBP, the ending cash remains positive. Mary must not be required to sign FSA-2026 and must not be considered a cosigner.

**Example 2:** Bruce has applied for a term operating loan. Camille's salary as a nurse at the local hospital is \$60,000. FBP indicates that family living would total \$40,000. The ending cash on hand is -\$10,000 if Camille's salary is not included. In this case, if Bruce selects Camille as his cosigner, her income will be included to show positive ending cash on hand. Camille would be required to sign FSA-2026 as a cosigner and would therefore, be required to be eligible under certain requirements under paragraphs 62 through 72.



## 371 Overview (Continued)

**C Loan Document Signatures (Continued)**

**(5) All signatures needed for the Agency to acquire the required security interests will be obtained according to State law.**

Signature requirements on the mortgage or deed of trust will be sufficient to obtain the required lien, and to make the property being offered as security available to satisfy the debt in the event of default.

SED shall issue a State supplement to provide requirements according to State real property law. SED will obtain the advice of the Regional OGC before issuing the State supplement.

**D Waiver of Title Clearance and Legal Services**

**[7 CFR 764.402(d)(1)] The Agency will close a real estate loan only when it determines that the Agency requirements for the loan have been satisfied and the closing agent can issue a policy of title insurance or final title opinion as of the date of closing. The title insurance or final title opinion requirement may be waived:**

**\*--(i) For loans of \$25,000 or less;--\***

FSA may accept the best lien obtainable without title clearance or legal service provided the authorized agency official believes from a search of the county records that the applicant can give a mortgage on the property. This exception to title clearance will not apply when:

- the loan is made simultaneously with that of another lender
- land is being purchased
- this provision conflicts with program regulations of any other FSA loan being made simultaneously with the loan.

**(ii) As provided in 764.235 (paragraph 175) for CL's and 764.355 (paragraph 247) for EM;**

**(iii) When the real estate is considered additional security by the Agency; or**

**(iv) When the real estate is a non-essential asset.**

**E Additional Security and Nonessential Assets Requirements**

FSA does not require a search of public records to verify the available lien position or insurance for additional security or nonessential assets.

**372 Using a Closing Agent****A Applicant's Selection of Closing Agent**

If a closing agent is required, the applicant will select the closing agent, which may be a title insurance company or an attorney. The applicant will select the closing agent by using FSA-2340.

\* \* \*

The authorized agency official may provide the applicant with the names of agents who can be contacted to conduct the closing. Any such list must include the names of all FSA-approved agents in the relevant jurisdiction. FSA employees will not recommend using any particular closing agent or title insurance company. In addition, the authorized agency official must inform the applicant that they may not select someone with whom the applicant has a business or family relationship.

**B Closing Agent Responsibilities**

FSA relies on a closing agent to prepare, complete, or approve documents, including deeds, necessary for title clearance and closing of a loan where real estate serves as primary security. The authorized agency official must be assured that the applicant has, or will have, clear title to any real estate taken as security. FSA also must have the lien position necessary to adequately secure the loan. The closing agent must provide FSA with the title insurance policy or title opinion that provides the lien priority required by FSA.

**C Certification of Closing Agent**

The closing agent must be approved according to paragraph 373.5 or paragraph 373.6 by using FSA-2341 or FSA-2342.

The authorized agency official will send either:

- FSA-2341 to the closing attorney
- FSA-2342 to the closing agent.

**373 Payment of Fees****A Fees for Filing and Recording**

**[7 CFR 764.402(b)] The applicant, or in the case of a real estate purchase, the applicant and seller, must pay all filing, recording, notary, lien search, and any other fees necessary to process and close a loan.**

The applicant generally pays all fees for filing or recording UCC-1's, mortgages, and lien search fees.

The applicant, the seller, or both, in compliance with the terms of the sales contract or option, are responsible for paying all costs of title clearance and closing of the transaction and must arrange for payment before the transaction is closed. These costs include:

- abstracts of title
- land surveys
- attorney's fees
- owner's and lender's title insurance
- notary fees
- documentary stamps
- recording costs
- tax monitoring service
- \*--DMV filings and UCC activity where third party processors are required--\*
- other expenses necessary to complete the transaction.

**373 Payment of Fees**

**A Fees for Filing and Recording**

- **Water Quality Testing (Well or Spring)**
- **Wastewater System (Septic)**

### 373.5 Approving Closing Agents

#### A FSA Approval of the Closing Agent

**[7 CFR 764.402(d)(3)] The Agency must approve agents who will close FLP loans. Closing agents must meet all of the following requirements to the Agency's satisfaction:**

The approval official has the authority to approve the closing agent, which may be either an attorney or title insurance agent selected by the applicant. If a loan must be approved at a higher approval authority level, the initiating office may still approve the closing agent.

See subparagraphs B through I for requirements for a closing agent.

#### B Licensing Requirements

A closing agent must:

**[7 CFR 764.402(d)(3)(i)] Be licensed in the state where the loan will be closed;**

An attorney must be duly licensed to practice law in the State in which the real estate security is located.

A title insurance company must be licensed to do business in the State, if a license is required.

#### C Not Debarred or Suspended

A closing agent must:

**[7 CFR 764.402(d)(3)(ii)] Not be debarred or suspended from participating in any Federal programs;**

No attorney, title insurance company, or title company closing agent, currently debarred or suspended from participating in Federal programs may participate in any aspect of FSA loan \*--closing and title clearance process. The authorized agency official will search DNP for suspended and debarred individuals and companies according to 1-FLP, Exhibit 15.6. A copy of the search results must be placed in the applicant's case file.--\*

**\*--373.5 Approving Closing Agents (Continued)****D Liability Insurance**

A closing agent must:

**[7 CFR 764.402(d)(3)(iii)] Maintain liability insurance;**

All closing agents must protect FSA against damage, loss, fraud, theft, or injury as a result of negligence by the closing agent, approved attorney, or title company when title clearance is done by means of a policy of title insurance.

FSA will require either a closing protection letter issued by an approved title insurance company to cover the closing agent or liability insurance. A closing protection letter is often an American Land Title Association form closing protection letter. Depending upon the area, closing protection letters may also be known as “Insured Closing Letters,” “Indemnification Agreements,” “Insured Closing Service Agreements,” or “Statements of Settlement Service Responsibilities.” This protection letter must include a certification that the company has the ability to cover losses. A title company can submit a list of attorneys in their firm to FSA and these attorneys will be approved if covered by the company’s closing protection letters.

An attorney who will be providing title clearance where the certificate of title will be an attorney’s opinion must certify to professional liability insurance coverage on FSA-2341. The minimum amount of coverage required for the attorney is \$300,000 per occurrence. The insurance coverage may include a deductible, but this may not be more than \$25,000.

**E Fidelity Bond**

The closing agent must:

**[7 CFR 764.402(d)(3)(iv)] Have a fidelity bond that covers all employees with access to loan funds;**

FSA-2341 and FSA-2342 provide certification that the closing agent meets the fidelity bond requirement. SED shall issue a State supplement based on the fidelity bond State practice.

**Note:** When covered by a protection letter, closing agents will not be required to obtain liability insurance or a fidelity bond.--\*

**\*--373.5 Approving Closing Agents (Continued)****F Current Knowledge of State Requirements**

The closing agent must:

**[7 CFR 764.402(d)(3)(v)] Have current knowledge of the requirements of State law in connection with the loan closing and title clearance;**

Closing agents are responsible for having current knowledge of the requirements of State law in connection with loan closing and title clearance and should advise FSA of any changes in State law that necessitate changes in FSA's State mortgage forms and State supplements.

**G Conflict of Interest**

The closing agent must:

**[7 CFR 764.402(d)(3)(vi)] Not represent both the buyer and seller in the transaction;**

**[7 CFR 764.402(d)(3)(vii)] Not be related as a family member or business associate with the applicant; and**

A closing agent who has, or whose spouse, child, or business associate has, a financial interest in the real estate that will secure the FSA debt shall not be involved in the title clearance or loan closing process.

Financial interest includes having an equity, creditor, or debtor interest in any corporation, trust, or partnership with a financial interest in the real estate that will secure the FSA debt.

**H Prompt Services**

The closing agent must:

**[7 CFR 764.402(d)(3)(viii)] Act promptly to provide required services.**

A closing agent's delay in providing services without justification may be a basis for not approving the closing agent in future cases.

**I Declining the Closing Agent**

If the authorized agency official cannot approve the closing agent, the authorized agency official, within 5 workdays from receiving FSA-2341 or FSA-2342, will send the agent a letter, with a copy to the applicant, explaining the reasons for disapproval. FSA does not provide appeal rights to the agent.

The applicant will be provided a new FSA-2340 to select a different closing agent. The applicant may identify the same agent if that agent can meet the requirements that they had previously not met.--\*

**\*--373.6 Approval of Title Insurance Companies****A Approval Conditions**

The approval official will approve any title insurance company that issues policies of title insurance in the State where the security property is located if all of the following conditions are met.

- The form of the lender's policies of title insurance, including required endorsements to be used in closing FSA loans, are acceptable to FSA and contain only standard types of exceptions and exclusions approved in advance by FSA with the advice of the Regional OGC.
- The title insurance company is licensed to do business in the State, if a license is required.
- The title insurance company is regulated by a State insurance commission or similar regulator or, if not, the title insurance company will submit copies of audited financial statements or other approved financial statements satisfactory to FSA that show that the company has the financial ability to cover losses both:
  - arising out of its activities as a title insurance company
  - under any closing protection letters issued by the title insurance company
  - caused by fraud, dishonesty, or failure to comply with FSA closing instructions.

**Note:** If the title insurance company is not regulated by the State, the approval process will be repeated at least every 5 years, or more often if adverse information becomes available.

- The company has not delayed in providing services without justification in prior loan closings with FSA.

If the title insurance company is not approved, it will be notified in writing of the specific reasons.--\*



## **374 State Supplement**

### **A Liens**

\*--SED shall issue a State supplement regarding State requirements about filing liens for:--\*

- chattels of all types, including owned or to be purchased equipment, livestock, farm products, goods, etc., as provided in UCC Article 9
- land under a purchase contract
- fixtures
- tribal lands held in trust or restricted
- leasehold estates
- chattel closings by FSA or closing agent.

**375-395 (Reserved)**

**374 State Supplement**

**A Liens**

Refer to Exhibits 4 and 7 of NY 3-FLP Amendment for further guidance on searching, obtaining and perfecting liens.

**Section 2 Preparing for and Completing Loan Closing for Real Estate**

**396 Title Clearance Requirements**

**A Title Clearance**

\*--Title clearance will be obtained when required by FSA in accordance with subparagraph 247 A.--\*

**B Using Closing Agents or FSA**

See:

- paragraphs 397 through 399 when a closing agent is being used
- paragraph 400 if FSA will close the loan.

**397 Preliminary Title Opinion/Title Commitment****A Requesting Preliminary Title Opinion**

\* \* \*

\*--Upon approval of FSA-2341 or FSA-2342 will be sent along with the following documents and information will be sent:

- FSA-2343
- FSA-2344, if applicable--\*
- real estate contract
- legal description of the property

\* \* \*

- any other relevant forms that the closing agent must complete for the preliminary title opinion.

**B Reviewing Preliminary Title Opinion**

The closing agent must provide the authorized agency official the preliminary title opinion on FSA-2344 or provide the preliminary insurance binder on the agent's standard form. After receiving the preliminary title opinion or preliminary title insurance binder, the authorized agency official will:

- check the legal description to ensure that it covers all property taken as security
- review all exceptions to the title to determine which must be modified, eliminated, or waived. In doing this, the authorized agency official will work with the title company, the applicant, and, in the event of a land purchase, the seller to fully understand and resolve any exceptions.

SED shall issue a State supplement about securing loans with:

- land held under a purchase contract
- fixtures.

If the loan cannot be closed because of failure to obtain correct lien position, the applicant will be notified according to 1-APP of their review rights. The notification will include:

- clear, specific reasons the loan cannot be closed
- citations of requirements from CFR and handbook sections that are not met by the applicant
- review rights according to 1-APP.

**397 Preliminary Title Opinion/Title Commitment****A Requesting Preliminary Title Opinion**

Title insurance will be required for all farm loan closings (and subsequent loan closings) involving real estate as primary security. There are two types of title insurance policies – a Lender’s Policy and an Owner’s Policy. FSA must obtain the Lender’s Policy. Since the Lender’s Policy does not insure the interests of the borrower, the loan official may want to encourage the borrower to purchase an Owner’s Policy. The costs of both policies should be considered eligible loan costs.

Unless the closing will be conducted by the title insurance company itself, the Agency should require the closing agent to submit an “approved agency letter” which is New York’s equivalent to the “closing protection letter”. The purpose of this letter is to provide FSA with assurance that the closing attorney is authorized to act on the title insurance company’s behalf. By issuing the “approved agency letter”, the title insurance company has agreed that it is liable for and will protect FSA against loss caused by the closing attorney in performing those duties that are specifically listed in the “approved agency letter”. Refer to Exhibit 6 of NY 3-FLP Amendment for further guidance.

**B Reviewing Preliminary Title Opinions**

When FSA liens are to be secured by real estate being purchased with the use of a purchase contract, advice from OGC will be obtained on a case by case basis.

## 398 Requesting Loan Closing

### A Loan Closing

If the preliminary title opinion reflects that FSA can obtain the required lien, the authorized agency official shall:

- order the funds for closing

**Notes:** Use EFT unless circumstances warrant an exception.

\*--See Exhibit 27 for guidance on wire transfer requests.--\*

- send a closing package to the closing agent with the following forms and documents, as needed:
  - FSA-2026
  - FSA-2029
  - assignment of income documents, as appropriate
  - FSA-2350
  - FSA-2351
  - FSA-2352
  - UCC-1, if applicable
  - supervised bank account documents
  - loan check, if funds not provided by EFT.
  - RD 3550-28.

**Note:** FSA neither requires nor will provide HUD-1 for loan closings. As provided in 24 CFR 3500.5(b)(1) and (2), loans on property of 25 acres or more and loans for agricultural purposes are exempt from the Real Estate Settlement Procedures Act requirement to provide applicants HUD-1. If closing agents include HUD-1 in the loan closing package, it is their responsibility to complete it, including signature requirements.

A printed copy of “Your FSA Farm Loan Compass” shall be provided to all **new** FLP customers at the time of their first loan closing.

If exceptions or newly recorded items arise between the date of the preliminary title opinion and date of closing, the transaction will not be closed until these entries can be cleared or approved by FSA. The closing agent will advise the authorized agency official of the nature of such intervening instruments and the effect on obtaining a valid mortgage of the priority required or the title insurance policy to be issued.

**398 Requesting Loan Closing**

**A Loan Closing**

Preparation of Mortgages

New York law permits a lender to include a clause in its mortgage to protect itself against claims filed pursuant to a mechanic's lien. Any conveyance document (including a mortgage) filed subsequent to the commencement of a construction project or other type of work of improvement on the land may be subject to a validly filed mechanic's lien unless it contains a covenant similar to the following:

Borrower, in compliance with Section 13 of the Lien Law, covenants that the Borrower will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

This provision has been reviewed with OGC's National Office and permission was granted to amend the FSA mortgage to take advantage of the protections afforded by this statute. Accordingly, paragraph #31 was added to the mortgage form and the New York version of the FSA mortgage form (Form FSA- 2029 NY) is posted on the FSA intranet at <http://fsaintranet.sc.egov.usda.gov/dam/ffasforms/forms.html>

Mortgages will be prepared to show that they are being "made and entered into by" the landowner.

Describing Notes in Mortgages

When preparing a mortgage on a subsequent loan, FSA should include a list of all of the prior notes that are still outstanding at the time of the new loan.

**398 Requesting Loan Closing (continued)**

**A Loan Closing (continued)**

Affidavit Regarding Work of Improvement

Form FSA-2351 “Affidavit Regarding Work of Improvement” is legally sufficient for use in New York and should be required in all loan closings. The appropriate period of time to be inserted in the blank in Paragraph 1 is eight (8) months.



**399 Closing Agent Responsibilities****A Scheduling Loan Closing**

The closing agent should schedule the loan closing within 3 workdays of receiving notification from FSA that the loan should be closed. FO's are considered closed when the mortgage is filed for record.

**B Execution of Documents**

The closing agent must ensure that all closing forms are properly executed and must file and record all documents as required by law.

SED shall issue a State supplement, subject to the Regional OGC's approval, providing guidance in correcting errors in recorded security instruments.

**C Documents**

The authorized agency official must:

- document that the loan file contains satisfactory evidence that all applicable requirements have been met or will be met before loan closing
- confirm and document that the applicant has obtained or will obtain any required insurance before loan closing
- make the borrower aware of PAD option. See Exhibit 26 for the guidance.

**D Disbursing Loan Funds**

\*--Loan funds will be disbursed according to paragraph 431. See Exhibit 27 for guidance on wire transfer requests.--\*

**E Taxes and Assessments**

The closing agent must ensure that all taxes and assessments are paid.

**399 Closing Agent Responsibilities**

**B Execution of Documents**

A new security instrument will be prepared using the correct information when errors resulted due to typographical errors including but not limited to misspelled names, inaccurate legal description(s), parcel numbers, tax numbers, etc. A notation will be typed on the instrument stating the reason it is being redone and reference the document number and date of the original recorded instrument.

All other cases involving errors other than typographical by either FSA or a closing agent will be forwarded to the STO Farm Loan Team who will obtain the advice of OGC on how to correct the error.

**400 Real Estate Secured Loans Closed by FSA**

**A Title Clearance**

For loan closings requiring the agency to take the “best lien obtainable”, there will be no title clearance provided by either a title insurance company or attorney. Loan officials will need to complete a lien search of the public records (county clerk and Landata) to determine all property owned by applicants/borrowers, legal descriptions associated with all parcels owned, tax maps and all liens outstanding (mortgages, taxes, judgments, etc.) Loan officials will follow the instruction for the preparation of mortgages in perfecting the “best lien obtainable”.

Copies of all outstanding real estate mortgages will be included in the case file along with a map identifying the parcels owned and FSA lien position on each.

**400 Real Estate Secured Loans Closed by FSA**

**A Title Clearance**

Title clearance is not required for:

- additional security
- nonessential assets.

**B Preparing and Filing Lien Instruments**

The authorized agency official must:

- prepare the lien instrument
- obtain the necessary signatures
- file the lien instrument.

**Note:** See paragraph 94 for when a lien should not be obtained.

**401-415 (Reserved)**

## Section 3 Preparing for and Completing Loan Closing for Chattels

### 416 Overview

#### A General

A lien search is required on all chattels taken to adequately secure the loan. A lien search is not required on:

- additional security
- nonessential assets
- youth loans, unless the applicant has reached the age of majority, there is evidence that the applicant obtained other credit, or they have assets which may be subject to a lien.

See:

- paragraphs 417 through 419 for obtaining lien searches and filing liens on adequate security
- paragraph 419 for filing a lien on additional security or nonessential assets.

**\*--Note:** Agency officials are encouraged to complete a lien search upon the receipt of an application by searching State and county records when no fee is assessed for searches. Receipt of this information may assist the Agency in determining additional application requirements. However, in States where certified searches are only obtainable by a fee, the Agency should ensure only one fee is assessed and the certified search ensures the required lien position is obtained.--\*

#### B Performing Lien Searches and Closings

Lien searches and closings may be completed by the authorized agency official or approved closing agent as required by State law.

#### C Security Pledged by Multiple Owners

FSA obtains a lien on the full value of the security, when the chattel security is held by more than 1 owner as follows.

- If all owners are applicants, the authorized agency official must ensure that all owners execute FSA-2028.
- If all owners are not applicants, the authorized agency official will obtain CCC-10 and FSA-2028 from the owners who did not sign FSA-2001.

**416 Overview (Continued)****C Security Pledged by Multiple Owners (Continued)**

When chattel security is jointly held by the applicant and nonapplicant who will not pledge their interest in the property, the authorized agency official will obtain FSA-2318.

**Note:** FSA-2318:

- acknowledges that the nonapplicant is joint owner of the property being offered as security for the loan
- provides nonapplicant certain rights about partial ownership on the property
- is not a security agreement or an obligation to pay the applicant's loan should the applicant default.

**417 Preparing for Loan Closing****A Conducting and Reviewing Lien Search**

The authorized agency official or closing agent will file UCC-1 and complete a lien search to show that FSA has the required lien position on:

- all chattel property taken to adequately secure a loan
- property to be acquired when the item can be specifically identified, unless the item is to be purchased from a manufacturer or dealer.

The following records shall be searched:

- Federal and State tax liens
- judgments
- UCC-1 records.

Use FSA-2360 to complete a report of the results of the lien search.

**B Establish Loan Closing Conditions**

The authorized agency official or closing agent may have to:

- terminate satisfied liens
- satisfy judgments
- terminate liens to be paid off with loan funds
- subordinate other lender's liens by using FSA-2361 or other acceptable lender's forms.

**417 Preparing for Loan Closing (continued)****A Conducting and Reviewing Lien Searches (continued)**

- When there is a lien of record that will not be paid in full and the lien instrument will not be satisfied, the loan closing must be postponed until a determination is made by reviewing the financing statement or receiving Form FSA 2015 or similar verification in order to determine that the lien does not contain a future advance or an after-acquired property clause.
- FSA loan funds will not be disbursed until a properly completed lien search assures that the loan and security requirements will be met. If there are any liens that would prevent obtaining the required security for the loan, and if the Loan Manager/Officer cannot obtain the necessary releases, termination statements, subordination agreements and so forth, the applicant's security instrument, statement of lien holder's security instrument, statement of the facts, and recommendations will be forwarded to the State Office for advice.
- If the applicant has lived at their present address for a period of less than six years, an additional lien search will be made in the county of the former address.
- If a borrower has moved to their present address from another county within the previous four months, an additional lien search will be made in the county in which the borrower previously resided.
- When the security includes:
  - Livestock, machinery, equipment and crops growing or to be grown within New York, search for secured transactions (UCC's) at the NY Department of State, UCC Division, web site at:  
[http://appsext7.dos.ny.gov/pls/ucc\\_public/web\\_search.main\\_frame](http://appsext7.dos.ny.gov/pls/ucc_public/web_search.main_frame)
  - Real estate and Fixtures, search the "Index of Secured Transactions" in the Office of the Recorder of Deeds in the county where the real estate is located.
  - Non-farm inventory, recreation or non-farm equipment, tools, boats, accounts receivable non-farm items, search for secured transactions (UCC's) at the NY Department of State (DOS), UCC –Other Debtor Search Option found at:  
[http://appsext8.dos.state.ny.us/pls/ucc\\_public/web\\_search.main\\_frame](http://appsext8.dos.state.ny.us/pls/ucc_public/web_search.main_frame)
- If there is a Tax Lien, the loan funds will not be disbursed until the tax lien is satisfied.
- Perform lien searches as necessary to assure that liens paid with FSA loan funds or liens to be satisfied as part of the loan approval conditions have been satisfied of legal record.

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**418 Perfecting Liens****A Perfecting a Lien on an Undivided Interest**

An applicant obtaining a loan to finance an undivided interest in security or to refinance debts on an undivided interest in such property must secure the loan with a lien on the undivided interest. All individuals having an undivided interest in the security shall execute FSA-2318 unless a written agreement to the same effect is signed.

**B Perfecting a Lien on Income from Products or Program Payments**

The authorized agency official shall obtain assignments, consents, and security interests relating to income from products and program payments whenever possible to protect FSA's interest.

The following FSA forms are used for taking assignments:

- FSA-2041 to obtain assignment of proceeds from the sale of products when FSA does not have perfected lien under UCC
- FSA-2042 to obtain consent to payment of proceeds from the sale of products when FSA has a perfected lien on the products
- FSA-2043 to obtain assignment of proceeds from the sale of dairy products and release of security interest
- CCC-36 and CCC-37 to assign incentive and other agricultural program payments.

**C Perfecting a Lien on Milkbase and Grazing Permits**

SED shall issue a State supplement about perfecting a security interest when milkbase or grazing permits are financed or taken as security.

**D Perfecting a Lien on Stock in Cooperative Associations**

FSA may take a security interest, in the form of an assignment pledge or other instrument, in stock or other evidence of association membership if it has value. FSA also may take a security interest in dividends to be paid on stock, memberships, or patronage or in undivided profits and other retainages.

SED shall issue a State supplement about perfecting liens on stock in cooperative associations.

**418 Perfecting Liens****C Perfecting a Lien on Milkbase and Grazing Permits**

Per advice obtained from OGC (4/1/2008), no State supplement is necessary at this time.

To the extent that a milk base or grazing permit is pledged as collateral for a loan in New York, the Agency must obtain an assignment of the milk base or grazing permit. In New York, if such a case occurs, the FLP Office will contact the State Office for guidance from OGC on how to proceed in order to obtain the required lien perfection.

**D Perfecting a Lien on Stock in Coop Associations**

Per advice obtained from OGC (5/5/06), and Article 9 of the Uniform Commercial Code, the Agency is permitted to perfect a security interest in investment property by filing a UCC-1 financing statement with the NY Department of State. However, in order to ensure absolute priority over all other creditors, the Agency would need to take "control" or "delivery" of the investment property by actually taking possession of the stock or bond certificates.

Stated another way, a secured party who perfects their security interest by a UCC filing takes the risk that the debtor has granted or will grant a security interest in the same collateral to another party who obtains control. Obviously, if the stocks/bonds are an essential component of the security being pledged for a loan, then FSA may want to take the extra step and obtain possession and control over the stock/bond certificates. Ultimately, it is up to the Agency to decide whether the risk is acceptable in light of the increased costs that would be required to store the stock and/or bond certificates.

Questions or special situations should be submitted to the STO Farm Loan Team for referral to OGC for advice.

**418 Perfecting Liens (Continued)**

**E Perfecting a Lien on Motor Vehicles**

SED shall issue a State supplement about perfecting liens on motor vehicles.

**F Perfecting a Lien on Fixtures and Equipment**

SED shall issue a State supplement about perfecting liens on equipment or fixtures purchased, refinanced, or taken as security with loan funds for real estate purposes, whenever such property is not included in the real estate lien.

**418 Perfecting Liens**

**E Perfecting a Lien on Motor Vehicles**

Refer to Exhibits 4, 7, 8 and 9 of NY 3-FLP Amendment for further guidance. Or you can click on the link below and go directly to the NYS DMV website for information on perfecting a DMV Lien.

<http://www.dmv.ny.gov/forms/mv909.pdf>

**F Perfecting a Lien on Fixtures and Equipment**

Refer to Exhibits 4 and 7 of NY 3-FLP Amendment for further guidance.

## 419 Closing Chattel Secured Loans

## A General

[7 CFR 764.402(c)] The following requirements apply to loans secured by chattel:

**(1) The Agency will close a chattel loan only when it determines the Agency requirements for the loan have been satisfied;**

The authorized agency official or closing agent shall take the following steps:

- check the security description to ensure it covers all property taken as security and includes the legal description if so required by State supplement
- review all prior liens and encumbrances on the security to determine which must be modified, eliminated, or waived. In doing so, the authorized agency official will work with the applicant to fully understand and resolve any exceptions
- \*--prepare FSA-2040 according to 4-FLP, subparagraph 20 A--\*
- make the borrower aware of PAD option. See Exhibit 26 for the guidance.

**(2) A financing statement is required for every loan except when a filed financing statement covering the applicant's property is still effective, covers all types of chattel property that will serve as security for the loan, describes the land on which crops and fixtures are or will be located, and complies with the law of the jurisdiction where filed;**

## 419 Closing Chattel Secured Loans (Continued)

**B Using FSA-2028's**

**[7 CFR 764.402(c)(3)] A new security agreement is required for new loans, as necessary to secure the loan under State law, prior to the disbursement of loan funds.**

FSA requires a new FSA-2028 whenever filing UCC-1.

The authorized agency official should describe on FSA-2028 all of the chattel property that will serve as security. The authorized agency official will identify security specifically as follows:

- for ML's, only those items being specifically taken as security

**Note:** See 1-FLP, Exhibit 15 for specific guidance on filling out the security agreements for ML's.

- crop production by describing the real estate on which the crops are grown and by the landowner's name
- livestock by type and exact number
- equipment by manufacturer, model, year, and serial number, where possible

**Note:** If this information is not available, a written description of the equipment should be provided.

- all accounts, goods, supplies, and inventory by an appropriate description by item or type of property.

**\*--Note:** It is not acceptable simply to rely on blanket statements in FSA-2028 referring to a lien on all livestock and equipment. Security items must be specifically identified as described in this subparagraph. Updates to FSA-2028 will occasionally be required, and should be signed by all individuals required to perfect the required Agency security interest.--\*

When security is held by more than 1 owner who wishes to pledge the full value of the property as security, the authorized agency official must ensure that all owners execute FSA-2028's pledging the security.

**420-430 (Reserved)**

**419 Closing Chattel Secured Loan****B Use of FSA-2028**

The FSA-2028 is completed within the FBP automated program. This form specifically describes, by item all security property that is pledged and is used by FSA to perfect and obtain its lien on chattels, crops and property to be secured as fixtures. It is usually signed at loan closing, or before the delivery of any loan funds.

The servicing office will maintain the original signed FSA-2028 in a fire-proof safe and work copy of the signed original will be maintained in the borrower's case file.

Retention and use of FSA-2028:

- The original executed FSA-2028 will not be altered or destroyed, and will be secured in a fire-proof safe.
- Changes in the security property pledged to FSA will only be noted on the work copy of the FSA-2028 that is maintained in the borrower's case file.
- An additional FSA-2028 is not needed if the existing FSA-2028 covers all types of chattels that will serve as collateral for the subsequent loan, and it describes the land on which the crops and/or fixtures will be located.
- An FSA-2028 is required for all initial loans, including previously paid-in-full borrowers.
- Additional language will be inserted in the space following paragraph 2(e) of FSA-2028: "All rights to payment under any program or contract administered by an agency of the United States Department of Agriculture. All proceeds derived from the production or sale of livestock and farm products whether produced pursuant to contract or for the borrower's own account. The government does not hereby consent to any such sales by the borrower."
- An additional FSA-2028 may also need to be executed to reflect significant changes in security pledged once the loan closes and new chattels are purchased with the loan funds.

**Section 4 Actions After Loan Closing****431 Disbursing Funds****A When and How Loan Funds are Disbursed**

**[7 CFR 764.402(e)(3)] The Agency or closing agent will be responsible for disbursing loan funds. The electronic funds transfer process, followed by Treasury checks, is the Agency's preferred methods of loan funds disbursement. The Agency will use these processes to disburse loan proceeds directly to creditors being refinanced with loan funds, to sellers of chattel property being acquired with loan funds, or directly to the borrower's personal bank account. A supervised bank account will be used according to Subpart B of part 761 of this chapter (1-FLP, Part 4) only when these processes are not practicable.**

**\*--Note:** FSA has added the applicant as an approved recipient of loan proceeds through EFT or Treasury checks for loan disbursements. This practice may be implemented immediately and will be included in an upcoming CFR update. In rare instances where a wire transfer is required, officials will follow Exhibit 27.--\*

The authorized agency official or closing agent may disburse loan funds in a lump sum or in multiple disbursements. CL's that are for a project taking multiple years will be funded by multiple disbursements.

The authorized agency official or closing agent normally will not disburse loan funds before filing and recording the security instruments. The authorized official or closing agent may disburse loan funds for real estate loans after all documents are signed but before actual recording of the mortgage.

Loan funds may be placed in escrow until necessary instruments are recorded; however, development funds may be placed in escrow only with the approval of the authorized agency official.

Loan funds for payment of a lien may be disbursed only upon the recording of a discharge, satisfaction, or releasing prior lien interests or assignment where necessary to protect FSA's interests.

Closing agents should provide FSA an itemized accounting of loan proceeds using any format that provides all required information necessary to fully account for loan proceeds.

**B Handling Loan Funds**

If loan funds are received and the loan cannot be closed within 20 workdays from the date the funds were received, the authorized agency official will return or cancel the funds according to 64-FI. The authorized agency official will document the new closing date to which the applicant has agreed in FBP.



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## 432 Review Closing Documents

### A General

The authorized agency official must review the closing documents to ensure accuracy and completeness, and if necessary, to take corrective action.

**Note:** This does not relieve the closing agent from their legal responsibilities.

### B DLS

Once the loan is closed, the authorized agency official will enter the final information about the loan making process into DLS, including:

- borrower training information
- loan closing date
- loan installment information.

Within 10 calendar days of loan closing, the DLS Loan Servicing Dashboard will be updated to establish the following workflows:

- \*--Operational Review
- Farm Visits--\*
- Security Instruments including financing statement and/or mortgages

See 1-FLP for general information and detailed instructions on DLS and the DLS Users Guide.

### C Loan Classification

The authorized agency official must classify a new loan by completing a post-closing loan classification, including CL's. Within 10 calendar days of loan closing in DLS, the \*--Operational Review workflow in DLS, must be input in to the DLS dashboard.--\*

**433 Distribution of Loan Documents After Closing****A Closing Agent Responsibilities for Documents**

Within 1 workday after loan closing, the closing agent must return completed and executed copies of the loan closing instructions, the executed original FSA-2026, and all other documents required for loan closing, except the recorded instruments, to the authorized agency official. If the recorded instruments are customarily returned to the closing agent after recording, those instruments must be forwarded to the authorized agency official immediately.

**[7 CFR 764.402(d)(2)] The title insurance or final title opinion must show title vested as required by the Agency, the lien of the Agency's security instrument in the priority required by the Agency, and title to the security property, subject only to those exceptions approved in writing by the Agency.**

The final title opinion or title insurance policy will be provided to the authorized agency official as soon as possible after loan closing. Issuing the final title opinion or title insurance should not be held up pending the return of recorded instruments. If the final title opinion does not show the book and page of recording of the FSA security instrument, the words "and is recorded" on FSA-2352 may be deleted and the blank space completed to show the filing office and the filing instrument number, if available. The closing agent will attach the available documents, including any that the authorized agency official has furnished to the closing agent that were not previously returned, to the final title opinion.

**\*--Note:** If the final title opinion or policy has not been received within 60 days, the authorized agency official should contact the closing agent.--\*

**433 Distribution of Loan Documents After Closing (Continued)**

**B FSA Responsibilities for Documents**

The authorized agency official should review the forms and closing actions and take corrective action when necessary. FLP documents will be handled according to the following.

- Retain essential documents in the safe and place a copy in the applicant's loan file.

**\*--Note:** See 32-AS, subparagraph 166 E for a list of essential documents.--\*

- Place UCC-1's and any other lien documents in FSA-2008.
- Place all other loan documents in the applicant's loan file.

**\*--See the State supplement for specific guidance. See 32-AS for instructions on assembling--\***  
and maintaining the loan file.

**434-450 (Reserved)**

Part 17 (Withdrawn—Amend. 34)

451, 452 (Withdrawn--Amend. 34)  
453-470 (Reserved)

**451 Approving Closing Agents****A FSA Approval of the Closing Agent**

In almost all cases, an attorney will act as the closing agent to close FSA real estate loans, provide necessary title clearance, and perform other duties required in connection with the loan closing. Among other things, the closing agent is responsible for obtaining title and security position as required by FSA.

Since the loan closing will typically involve the disbursement of agency funds, FSA must make sure that the “approved agency letter” authorizes the closing attorney to collect title premiums, recording/filing fees and otherwise handle funds (for purposes of paying off prior mortgages and curing title objections) on behalf of the title insurance company. If the closing attorney is covered by an acceptable “approved agency letter,” then no separate fidelity bond coverage or professional liability insurance is required. If, however, the closing attorney cannot provide FSA with sufficient proof that he/she is authorized to disburse funds at the closing, then the attorney will have to provide professional liability insurance, as well as a fidelity bond that covers both the attorney and any employee having access to the funds. At a minimum, insurance and bond coverage must be for an amount at least equal to or greater than the amount of the FSA loan. See NY Exhibit 6 for an example of the approved agency letter.

Approval of Title Companies

If a title or abstract company will be issuing a policy on the title insurance company’s behalf, then the title company must either be covered by an “approved agency letter” issued by the title insurance company, or must certify that it has fidelity coverage to cover all employees having access to loan funds.

**B Licensing Requirements**

FSA must make sure that the attorney is licensed to practice law in the State of New York and execute Form FSA-2341 NY as appropriate.

Evidence that the title insurance company is licensed to do business by the State of New York Insurance Department should be sufficient to approve the title insurance company to close FSA loans requiring title clearance.

**Part 18 Borrower Training**

**Section 1 Borrower Training Requirements**

**471 Overview**

**A Scope**

\*--FSA requires initial direct loan applicants to complete training in production, financial--\* management, or both unless FSA waives the training requirement.

**Note:** Streamlined CL's will initially have borrower training requirements waived. The waiver remains in effect as long as the loan is performing as planned.

**B Purpose**

**[7 CFR 764.451] The purpose of production and financial management training is to help an applicant develop and improve skills necessary to:**

**(a) Successfully operate a farm;**

**(b) Build equity in the operation; and**

**(c) Become financially successful and prepared to graduate from Agency financing to commercial sources of credit.** CL's are exempt from graduation requirements, but are subject to training requirements.

**472 Assessing an Individual's Need for Training****A Individuals Required to Complete Training**

**[7 CFR 764.452(a)] The applicant must agree to complete production and financial management training, unless the Agency provides a waiver in accordance with § 764.453 (subparagraph B), or the applicant has previously satisfied the training requirements. In the case of an entity:**

**(1) Any individual member holding a majority interest in the entity or who is operating the farm must complete training on behalf of the entity, except as provided in paragraph (a)(2) of this section;**

**(2) If one entity member is solely responsible for production or financial management, then only that member will be required to complete training.**

**[7 CFR 764.452(d)] An applicant who applies for a loan to finance a new enterprise, such as a new crop or a new type of livestock, must agree to complete production training with regard to that enterprise, even if production training requirements were waived or satisfied under a previous loan request, unless the Agency provides a waiver in accordance with § 764.453 (subparagraph B).**

**Notes:** Applicants who have previously satisfied training requirements will have their need  
\*--for additional training assessed by using FSA-2370 previously completed and already on file.--\*

FSA-2370's title has been changed to reflect usage.



## 472 Assessing an Individual's Need for Training (Continued)

**B Determining Whether to Waive Training Requirements**

**[7 CFR 764.453(a)] The applicant must request the waiver in writing.**

FSA-2370 should not be obtained until a review of borrower training requirements is completed. FSA-2370 is not considered part of a complete application. Approving official must make a determination on training requirements for each loan in the package.

**[7 CFR 764.453(b)] The Agency will grant a waiver for training in production, financial management, or both, under the following conditions:**

**(1) The applicant submits evidence of successful completion of a course similar to a course approved under section § 764.457 (paragraph 492) and the Agency determines that additional training is not needed; or**

**(2) The applicant submits evidence, which demonstrates to the Agency's satisfaction the applicant's experience and training necessary for a successful and efficient operation.**

After the applicant has been determined eligible, and before loan closing, the authorized agency official will determine whether to waive training.

If an applicant is applying for additional FSA assistance or benefits, such as a subsequent loan, the authorized agency official must reassess whether to waive a borrower's training requirements even if FSA waived training for the applicant's initial loan. Borrower training is determined on a per loan basis.

The authorized agency official will:

- determine whether to waive financial management training based on the applicant's:
  - \*--financial history and training/experience provided with the application
  - practical experience
  - demonstrated ability to keep records
  - education and training
- consider the complexity of the applicant's operation and amount of loan requested
- determine whether to waive the production training requirement based on a review of their production history and training/experience provided with the application.--\*

If the applicant does not have a 3-year production history, the authorized agency official will consider any similar practical experience the applicant might have.

## 472 Assessing an Individual's Need for Training (Continued)

**B Determining Whether to Waive Training Requirements (Continued)**

**[7 CFR 764.453(c)] If the production and financial functions of the operation are shared among individual entity members, the Agency will consider the collective knowledge and skills of the individuals when determining whether to waive training requirements.**

**\*--[7 CFR 764.453(d)] When considering subsequent loan actions, previous training requirements that have not yet been satisfied may be waived by the Agency should the borrower submit satisfactory evidence in accordance with § 7 CFR 764.453(b).--\***

**[7 CFR 764.452(f)] The Agency cannot reject a request for a direct loan based solely on an applicant's need for training.**

However, as described in paragraph 69, an applicant must demonstrate managerial ability through education, training, or experience to be eligible to receive a direct loan.

**C Notifying Applicant of the Training Decision**

**[7 CFR 764.452(g)] The Agency will provide written notification of required training or waiver of training.**

**[7 CFR 764.452(e)] Even if a waiver is granted, the borrower must complete borrower training as a condition for future loans if and when Agency supervision provided in 7 CFR 761 subpart C (1-FLP, Part 8) reflects that such training is needed.**

**D Production Training Requirements**

**[7 CFR 764.452(b)] When the Agency determines that production training is required, the applicant must agree to complete course work covering production management in each crop or livestock enterprise the Agency determines necessary.**

FSA will require an applicant to complete production management training only in crop or livestock enterprises that are relevant to the applicant's operation.

Items to be included in the training are those production management requirements found in subparagraph 492 C.

472 Assessing an Individual's Need for Training (Continued)

**E Financial Management Training Requirements**

**[7 CFR 764.452(c)] When the Agency determines that financial management training is required, the applicant must agree to complete course work covering all aspects of farm accounting and integrating accounting elements into a financial management system.**

Items to be included in the training are those financial management requirements found in subparagraph 492 C.

**473 Actions That Borrower Must Take When Training is Required****A Deadline for Completion of Training**

**[7 CFR 764.454(a)(1)] If the Agency requires an applicant to complete training, at loan closing the applicant must agree in writing (FSA-2371) to complete all required training within two years.**

**Note:** Applicants required to take training as a result of a 2-year OL term limit waiver must complete the required training within 1 year according to subparagraph 202 G.

**[7 CFR 764.454(a)(2)] The Agency will grant a one-year extension to complete training if the applicant is unable to complete training within the 2-year period due to circumstances beyond the applicant's control.**

**[7 CFR 764.454(a)(3)] The Agency will grant an extension longer than one year for extraordinary circumstances as determined by the Agency.**

FLC or designee must approve extensions in excess of 1 year in writing.

The authorized agency official may waive an applicant's previously required training requirements if the applicant has received multiple extensions for unusual circumstances. To waive the requirements, the authorized agency official must determine, based on the criteria outlined in subparagraph 472 B, that the applicant has acquired sufficient financial management or production experience since the training was 1<sup>st</sup> required.

**B Arranging Training With a Vendor**

**[7 CFR 764.454(b)] The borrower must select and contact an Agency approved vendor and make all arrangements to begin training.**

\*--SED's shall compile a list of all approved vendors and issue a State supplement.--\*

**C Payment of Training Fees**

**[7 CFR 764.454(c)(1)] The applicant is responsible for the cost of training and must include training fees in the farm operating plan as a farm operating expense.**

**[7 CFR 764.454(c)(2)] The payment of training fees is an authorized use of OL funds.**

**[7 CFR 764.454(c)(3)] The Agency is not a party to fee or other agreements between the applicant and the vendor.**

474 Training Progress

**A Monitoring Training Progress**

During farm visits and analysis, FSA will monitor applicant progress in understanding and applying the knowledge to be gained from the training. FSA will contact the applicant to follow up on unsatisfactory training progress reports from the training vendor.

The applicant must include the training requirements in FBP as planned improvements.

**B Requests for Additional FSA Assistance**

An applicant that has been required to meet training requirements is eligible for additional FLP assistance or benefits, such as a subsequent loan, according to the following.

<b>IF the applicant...</b>	<b>AND...</b>	<b>THEN, to be eligible for assistance, the applicant...</b>
requests assistance within the 2-year period allowed to complete the borrower training requirement		must be enrolled in and attending an approved training course or be able to complete an approved training course within the 2-year period.
agrees to complete training and has enrolled in approved classes or makes an honest effort to enroll	the applicant was unable to actually attend training because of cancellation, postponement, or other unforeseen circumstances	has met the “enrolled in and attending” rule. However, the applicant must still complete the required training as soon as possible.
is unable to complete the required training courses within the 2-year period because of circumstances beyond the applicant’s control		must receive an approved extension of the time period to complete training.
requests assistance after the 2-year period has expired	FSA has not granted the applicant an extension	must have successfully completed an approved training course.
*--pays off a loan that required training courses be completed	loan pay-off is within the 2-year period allowed to complete the borrower training requirement	no longer needs to complete the training course that was required for the paid-off loan.
pays off a loan that required training courses be completed	loan pay-off is after the 2-year period allowed to complete the borrower training requirement	must have successfully completed an approved training course.
is granted a 1-time waiver of OL term limits for a period of 2 years and is required to complete borrower training within 1 year	does not complete the training within 1 year required completion period	will not be eligible for a loan the second year.--*

474 Training Progress

**C Failure to Complete Training in Specific Time Period**

**[7 CFR 764.454(a)(4)] An applicant who does not complete the required training within the specified time-period will be ineligible for additional direct FLP loans until the training is completed.**

**\*--Note:** Borrower training determinations are made for each loan; each training requirement will have a deadline. The requirement for an applicant to complete borrower training as a condition of receiving a previous loan expires when that loan has been paid-in-full before the deadline that the training was to be completed.

<b>IF...</b>	<b>THEN the...</b>
a new loan is approved in the future and it is determined that the applicant still needs training	borrower training can be made a requirement for the new loan.
the loan is repaid after the training deadline passes and borrower did not complete training	the applicant will be ineligible for future loans until the training is completed.

Training requirement for loans approved with the OL term limit waived will apply regardless of the date these loans are paid off.

**Note:** Applicants required to take training as a result of a 2-year OL term limit waiver must complete the required training within 1 year according to subparagraph 202 G.--\*

475-490 (Reserved)

**Section 2 Vendor Requirements**

**491 Vendor Applications**

**A Identifying Potential Training Vendors**

**[7 CFR 764.455] The Agency will contract for training services with State or private providers of production and financial management training services.**

\*--State Offices are encouraged to work with the Beginning Farmer Programs operating in their States.--\*

These services may include correspondence or Web courses.

\* \* \* A vendor may be approved in more than 1 State. \* \* \*

**B Submitting Vendor's Applications**

**[7 CFR 764.456(a)] A vendor for borrower training services must apply to the Agency for approval.**

\* \* \*

\*--FSA will contract vendors to provide services to specified State or States. A vendor may be approved for more than 1 State by submitting a complete Borrower Training vendor application to their primary State along with a list of additional States for which they would like to be considered. Additional guidance for approving vendors for multiple States is provided in subparagraph 493 A.--\*

**491 Vendor Applications (Continued)****C Vendor Application Requirements**

**[7 CFR 764.456(b)] The vendor application must include:**

- (1) A sample of the course materials and a description of the vendor's training methods;**
- (2) Specific training objectives for each section of the course;**
- (3) A detailed course agenda specifying the topics to be covered, the time devoted to each topic, and the number of sessions to be attended;**
- (4) A list of instructors and their qualifications;**
- (5) The criteria by which additional instructors will be selected;**
- (6) The proposed locations where training will take place;**
- (7) The cost per participant, including cost for additional members of a farm operation;**
- (8) The minimum and maximum class size;**
- (9) The vendor's experience in developing and administering training to farmers;**
- (10) The monitoring and quality control methods the vendor will use;**
- (11) The policy on allowing Agency employees to attend the course for monitoring purposes;**
- (12) A plan of how the needs of applicants with physical, mental or learning disabilities will be met; and**
- (13) A plan of how the needs of applicants who do not speak English as their primary language will be met.**



**492 Reviewing a Vendor's Application****A Required Experience**

**[7 CFR 764.457(a)] The vendor must demonstrate a minimum of 3 years of experience in conducting training courses or teaching the subject matter.**

See subparagraphs B and C for requirements for reviewing a vendor application.

**B Required Training Objectives**

**[7 CFR 764.457(b)] The courses provided by a vendor must enable the applicant to accomplish one or more of the following objectives:**

**(1) Describe the specific goals of the farming operation, any changes required to attain the goals, and outline how these changes will occur using present and projected cash flow budgets;**

**(2) Maintain and use a financial management information system to make financial decisions;**

The information system must include:

- financial and production records
- household budget
- statement of financial condition
- accrual adjusted income statement.

**(3) Understand and use an income statement;**

The applicant must:

- understand the structure and major components of an income statement and its role in analyzing the performance of a business
- be familiar with the cash and accrual methods of determining net farm income
- understand the relationship between a balance sheet and an income statement.

**492 Reviewing a Vendor’s Application (Continued)**

**B Required Training Objectives (Continued)**

**[7 CFR 764.457(b)(4)] Understand and use a balance sheet;**

The applicant must:

- understand the major components of a balance sheet and its role in analyzing a business
- be familiar with the categories of assets and liabilities and be able to provide examples of entries under each
- be familiar with the cost and market methods of valuing assets and liabilities and the advantages of each method.

**[7 CFR 764.457(b)(5)] Understand and use a cash flow budget; and**

The applicant must be able to:

- explain and justify estimates for production and expenses
- analyze the cash flow to identify potential problems.

**[7 CFR 764.457(b)(6)] Use production records and other production information to identify problems, evaluate alternatives, and correct current production practices to improve efficiency and profitability.**

**492 Reviewing a Vendor's Application (Continued)****C Required Curriculum**

[7 CFR 764.457(c)] **At least one of the following subjects must be covered:**

**(1) Business planning courses, covering general goal setting, risk management, and planning.**

Goal setting includes identifying:

- personal and family goals
- business goals
- short- and long-term goals.

Risk management concepts include:

- sources of risk
- magnitude and frequency of risk
- risk tolerance
- risk-taking ability of the business
- strategies for managing risk.

The course must guide the applicant through the formulation of a long-term business plan for the farm and presentation of this plan to a lender.

**(2) Financial management courses, covering all aspects of farm accounting and focusing on integrating accounting elements into a financial management system.**

The course must cover:

- instruction in financial recordkeeping
- preparing a household budget
- developing and analyzing:
  - accrual adjusted income statements
  - balance sheets
  - cash flow budgets.

**492 Reviewing a Vendor's Application (Continued)**

**C Required Curriculum (Continued)**

**(3) Crop and livestock production courses focusing on improving the profitability of the farm.**

Crop and production courses must address:

- keeping and analyzing production records
- identifying problems in current production practices
- identifying sources of production information and assistance
- using production information to analyze alternatives and identify the most profitable solution.

**D Instructor Requirements**

**[7 CFR 764.457(d)] All instructors must have:**

- (1) Sufficient knowledge of the material and experience in adult education;**
- (2) A bachelor's degree or comparable experience in the subject area to be taught; and**
- (3) A minimum of 3 years experience in conducting training courses or teaching.**

**493 Vendor Approval****A Approving Vendors for a Single State**

After reviewing a vendor application, SED may approve the vendor. However, SED must submit a recommended vendor application to DAFLP for concurrence before final approval when the vendor is not an accredited college, including community college or university.

**B Approving Vendors for Multiple States**

Vendor shall submit a complete application to the State Office that is considered their primary base of operation. The application shall include, in addition to all required information, a list of additional States for which the vendor wants to be an approved vendor.

SED's may approve vendors for their respective State, if the vendor is an accredited college, including community college or university. However, in cases where the vendor is not an accredited college or university, SED of the State considered the primary base of operations for the vendor must submit the vendor application, along with their recommendation, to DAFLP for concurrence before final approval.

In all cases where the vendor applicant is requesting approval for multiple States, the State Office shall submit a complete copy of the vendor's application to DAFLP. For vendor applicants receiving DAFLP approval, DAFLP will then send a complete copy of the application, to any additional States requested by the applicant, with a recommendation for approval. SED's shall add that vendor to their approved vendor list, unless they provide DAFLP with a reason why they should not be added to their State list, and DAFLP concurs. Each SED will prepare the required vendor approval for their State and maintain the file as outlined in subparagraph 494 C.

**C Cases of Delayed Instructor Selection**

If the vendor has not selected all of the instructors at the time FSA intends to approve the vendor, the vendor may be approved with the condition that the instructors must meet the criteria of subparagraph 492 D.

**D Agreement to Conduct Training**

**[7 CFR 764.458(a)(1)] Upon approval, the vendor must sign an agreement to conduct training for the Agency's borrowers.**

**[7 CFR 764.458(a)(2) The agreement to conduct training is valid for 3 years.**

**[7 CFR 764.458(a)(3)] Any changes in curriculum, instructor, or cost require prior approval by the Agency.**

**[7 CFR 764.458(a)(4)] The vendor may revoke the agreement by giving the Agency a written 30-calendar-day notice.**

**493 Vendor Approval (Continued)****D Agreement to Conduct Training (Continued)**

**[7 CFR 764.458(a)(5)] The Agency may revoke the agreement if the vendor does not comply with the responsibilities listed in the agreement by giving the vendor a written 30-calendar-day notice.**

The vendor and SED must sign FSA-2375.

**E Renewing an Agreement to Conduct Training**

**[7 CFR 764.458(b)(1)] To renew the agreement to conduct training, the vendor must submit in writing to the Agency:**

- (i) A request to renew the agreement,**
- (ii) Any changes in curricula, instructor, or cost; and**
- (iii) Documentation that the vendor is providing effective training.**

Documentation may include:

- course evaluations
- test scores
- statistics on the improvement of applicants who have completed the course.

**[7 CFR 764.458(b)(2)] The Agency will review renewal requests in accordance with § 764.457 (paragraph 492).**

\*--Vendors submit renewal requests to SED of the State where the vendor is approved. For multi-state renewal request, the vendor will send the request to the SED of the State where the vendor is headquartered. The SED will forward the multi-State vendor renewal request to DAFLP for review and distribution to appropriate States.--\*

**F Updating Vendor Lists**

SED shall update the approved vendor list annually. The list shall include:

- approved State vendors
- contact person for each vendor
- terms of the vendor agreements
- subject matter in which vendor is approved to conduct training.

State and County Offices must make this list available to applicants, such as by posting it in the office or including a list of recently added vendors in the newsletter.

A copy of the approved vendor list must be e-mailed to DAFLP, LMD Director as identified in 1-FLP.

494 Monitoring and Evaluation

**A Vendor Monitoring of Borrower Progress**

[7 CFR 764.459(a)] The vendor must provide the Agency with a periodic progress report for each borrower enrolled in training in accordance with the agreement to complete training. The reports will indicate whether the borrower is attending sessions, completing the training program, and demonstrating an understanding of the course material.

[7 CFR 764.459 (b)] Upon borrower completion of the training, the vendor must provide the Agency with an evaluation of the borrower’s knowledge of the course material and assign a score. The following table lists the possible scores, the criteria used to assign each score, and Agency consideration of each score:

Score	Criteria Used To Determine Score	Agency Consideration
1	<p><b>If the applicant:</b></p> <ul style="list-style-type: none"> <li>• Attended sessions as agreed,</li> <li>• Satisfactorily completed all assignments, and</li> <li>• Demonstrated an understanding of the course material.</li> </ul>	<p><b>Training requirement associated with course is complete.</b></p>
2	<p><b>If the applicant:</b></p> <ul style="list-style-type: none"> <li>• Attended sessions as agreed, and</li> <li>• Attempted to complete all assignments, but</li> <li>• Does not demonstrate an understanding of the course material.</li> </ul>	<p><b>Training requirement associated with course is complete. Additional Agency supervision may be necessary.</b></p>
3	<p><b>If the applicant did not:</b></p> <ul style="list-style-type: none"> <li>• Attend sessions as agreed, or</li> <li>• Attempt to complete assignments, or</li> <li>• Otherwise make a good faith effort to complete the training.</li> </ul>	<p><b>Training requirement associated with course is not complete. The borrower is ineligible for future direct loans until training is completed.</b></p>

**B Borrower Evaluation of a Vendor**

[7 CFR 764.454(d)] Upon completion of the required training, the applicant will complete an evaluation of the course and submit it to the vendor. The vendor will forward the completed evaluation forms to the Agency.

The instructor will provide each applicant with FSA-2376 upon completing a course. A vendor must forward the completed FSA-2376 to SED for review.

**494 Monitoring and Evaluation (Continued)****C FSA Monitoring of a Vendor**

To ensure that the vendor is correctly and effectively implementing the training, SED or designee will monitor the vendor. At a minimum, FSA's monitoring will include the following.

- Attending selected training sessions for each vendor and verify that the agreed-upon subject matter is being covered in sufficient detail and assess the effectiveness of the training.
- Reviewing each FSA-2376 that is completed by a trained applicant, summarize FSA-2376, and place the summary in the operational file of the vendor.
- Monitoring applicants' improvement upon completing a course. SED or the National Office will analyze statistics about applicant performance, such as the graduation and delinquency of applicants who have completed the required training course.

Each State Office will maintain an operational file for each approved vendor in that State. This file must include:

- vendor application
- National Office concurrence, if required
- signed FSA-2375
- documentation of FSA's monitoring of the vendor
- any further documentation to determine the success of the vendor's program.



## Reports, Forms, Abbreviations, and Redelegations of Authority

### Reports

This table lists the required reports in this handbook.

Reports Control Number	Title	Reporting Period	Submission Date	Negative Reports	Reference
RPT-1-00-FLP 09-2	SDA Loan Review Summary	Annually	By October 31 each year	Required	355

### Forms

This table lists all forms referenced in this handbook.

Number	Title	Display Reference	Reference
AD-1026	Appendix to Form for AD-1026 Highly Erodible Land Conservation (HELIC) and Wetland Conservation (WC) Certification		42
AD-3030	Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants		42
CCC-10	Representations for Commodity Credit Corporation or Farm Service Agency Loans and Authorization to File a Financing Statement and Related Documents		91, 416, Ex. 6
CCC-36	Assignment of Payment		418
CCC-37	Joint Payment Authorization		418
CCC-452	NAP Production and Yield Report		244
CCC-452 Manual	NAP Actual Production History and Approved Yield Record		244
CCC-502A	Farm Operating Plan for Payment Eligibility Review for an Individual		42
CCC-502B	Farm Operating Plan for Payment Eligibility Review for a Joint Venture or General Partnership		42
CCC-502C	Farm Operating Plan for Payment Eligibility Review for Corporations, Limited Partnerships or Other Similar Entities		42
CCC-502D	Farm Operating Plan for Payment Eligibility Review for an Estate or Trust		42
CCC-502EZ	Farm Operating Plan for Payment Eligibility Review for an Individual		42
CCC-902E	Farm Operating Plan for an Entity 2009 and Subsequent Program Year		42
CCC-902I	Farm Operating Plan for an Individual 2009 and Subsequent Program Years		42
DS-1350	Certification of Report of Birth		Ex. 9

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

## Forms (Continued)

Number	Title	Display Reference	Reference
FS-240	Consular Report of Birth		Ex. 9
FS-545	Certificate of Birth		Ex. 9
FSA-570	Waiver of Eligibility for Emergency Assistance		113
FSA-850	Environmental Screening Worksheet		45
FSA-2001	Request for Direct Loan Assistance		33, 41, 42, 43, 45, 62, 66, 68, 416, Ex. 6
FSA-2003	Three-Year Production History		42
FSA-2006	Property Owned and Leased		42
FSA-2007	Cosigner Application and Agreement		42, 371, Ex. 6
FSA-2008	Recorded Security Instruments (Chattel)		433
FSA-2014	Verification of Income		42
FSA-2015	Verification of Debts and Assets		42, 242
FSA-2026	Promissory Note		Text, Ex. 6
FSA-2029	Real Estate Mortgage or Deed of Trust		3, 92, 398, Ex. 4
FSA-2037	Farm Business Plan Worksheet (Balance Sheet)		42, 226
FSA-2038	Farm Business Plan Worksheet (Projected/Actual Income and Expense)		42, 226
FSA-2040	Agreement for the Use of Proceeds/Release of Chattel Security		419, Ex. 6
FSA-2041	Assignment of Proceeds from the Sale of Products		93, 418
FSA-2042	Consent to Payment of Proceeds from the Sale of Products		93, 418
FSA-2043	Assignment of Proceeds from the Sale of Dairy Products and Release of Security Interest		93, 418
FSA-2044	Assignment of Income From Real Estate Security		92
FSA-2072	Cancellation of U.S. Treasury Check and/or Obligation		354

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

## Forms (Continued)

Number	Title	Display Reference	Reference
FSA-2301	Request for Youth Loan		41, 42, 44, 45, 62, 226, Ex. 6
FSA-2304	Notice of Incomplete Application		41, 42, 45
FSA-2305	Second Notice of Incomplete Application		45
FSA-2306	Notice of Application Withdrawal/Pending Withdrawal		45
FSA-2307	Notice of Complete Application		45
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## Reports, Forms, Abbreviations, and Redelegations of Authority (Continued)

## Forms (Continued)

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FSA-2370	Request for Waiver of Borrower Training Requirements / Borrower Training Assessment		70, 472
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FSA-2375	Agreement to Conduct Production or Financial Management Training		493, 494
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FSA-2510	Notice of Availability of Loan Servicing to Borrowers Who Are 90 Days Past Due		3
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FSA-2514	Notice of Availability of Loan Servicing to Borrowers Who are in Non-Monetary Default		3
FSA-2535	Conservation Contract		3
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HUD 1	Uniform Settlement Statement		398
I-94	Arrival/Departure Record		Ex. 8
I-179	Certificate of Birth Abroad		Ex. 9
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N-550	Certificate of Naturalization		Ex. 9
N-560	Certificate of U.S. Citizenship		Ex. 9
N-561	Certificate of U.S. Citizenship		Ex. 9
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NRCS CPA-1155	Conservation Plan/Schedule of Operations		42, 43, 171, Ex. 2
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## Reports, Forms, Abbreviations, and Redelegations of Authority (Continued)

## Abbreviations Not Listed in 1-CM

The following abbreviations are not listed in 1-CM.

<b>Approved Abbreviation</b>	<b>Term</b>	<b>Reference</b>
BCIS	Bureau of Citizenship and Immigration Services	Ex. 8, 9
CONACT	Consolidated Farm and Rural Development Act	1, 69, 132, Ex. 16
CAT	Catastrophic Risk Protection Endorsement	113, 244
CL	Conservation Loans	Text, Ex. 2
CMCB	Cash Management Collections Branch	Ex. 26
DFO	Direct Farm Ownership	Text
DNP	Do Not Pay	42, 45, 15.5, 15.6, 373.5
DOL	Direct Operating Loan	4, 43, 66, 69
FFA	Future Farmers of America	69, 227
FI	financial institution	Ex. 26
FICO	Fair Isaac Corporation	191
FmHA	Farmers Home Administration	2, 94, 202
FP	Farm Program	41, 93, 244, Ex. 2
INA	Immigration and Nationality Act	Ex. 8
LOC	line of credit	92
ML	Microloan	Text
NPO	nonprofit organization	72
OLA	Online Loan Application	41
PAD	Preauthorized Debit	399, 419, Ex. 26
PRWORA	Personal Responsibility and Work Opportunity Reconciliation Act of 1996	Ex. 2, 8
SAM	System for Award Management	67, 373.5
SDMS	State Directive Management System	3, 355
ST	softwood timber	94, Ex. 2
TDCLCR	Term Debt and Capital Lease Coverage Ratio	135, 245

## Re delegations of Authority

None



**Notary Signature Requirements**

When a certificate of subscribing witness is used the witness must state their own place of residence (to include street and street number if in a city) and that the witness knows the person described in and who signed the document. The notary public must be personally acquainted with the witness or have satisfactory evidence that the witness was the subscribing witness to the document. The subscribing witness then is signing the document in the presence of the notary public.

**CERTIFICATE OF SUBSCRIBING WITNESS**

State of New York )  
                          ) ss.:  
County of ..... )

On the ..... day of ..... in the year ... before me, the undersigned, a Notary Public in and for said State, personally appeared ....., the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he/she/they reside(s) in ..... (if the place of residence is in a city, include the street and street number, if any, thereof); that he/she/they know(s) ..... to be the individual described in and who executed the foregoing instrument; that said subscribing witness was present and saw said ..... execute the same; and that said witness at the same time subscribed his/her/their name(s) as a witness thereto.

My commission expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public  
(Signature and office of individual taking acknowledgment)

## Notary Signature Requirements

### **B Acknowledgments for all Individuals and Entities including Corporations Taken Outside of New York (used when documents are being signed outside of the boundaries of the state of New York)**

Qualified notaries in the place where the acknowledgment is being taken can use any form that has been acceptable in the past under New York law or a form that conforms to the law of the place where the acknowledgment is taken. Do not use the new uniform acknowledgment outlined above.

### **C A certificate or acknowledgment of proof by persons in or with the armed forces of the United States**

Certificates or acknowledgments of proof by persons in or with the armed forces of the United States must include the additional information set forth in Section 300 of the Real Property Law. Loan officials will need to consult with State Office and OGC on these cases.

### **D Additional Guidance**

For additional information about New York State Notary Acknowledgements, click on the following websites:

<http://www.dos.ny.gov/cnsl/npforms.html>

<http://www.firstamny.com/detail.aspx?id=6&mid=3568>

<http://buffalonotary.com/definitions.html>



## Definition of Terms Used in This Handbook (7 CFR 761.2(b))

### Act

Act means **the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.)**.

### Additional Security

Additional security means **property that provides security in excess of the amount of security value equal to the loan amount.**

### Adequate Security

Adequate security means **property which is required to provide a security value at least equal to the loan amount.**

### Agency

Agency means **FSA.**

### Agency Official

Agency official means any employee with FSA. This term is used when the action does not require inherent or delegated authority.

### Agreement for the Use of Proceeds

Agreement for the use of proceeds means **an agreement between the borrower and the Agency that reflects how, when, and to whom the borrower will sell, exchange, or consume chattel security and the planned use of any proceeds during a specific production cycle.**

### Agricultural Commodity

Agricultural commodity means **livestock, livestock product, grains, cotton, oilseeds, dry beans, tobacco, peanuts, sugar beets, sugar cane, fruit, vegetable, forage, tree farming, nursery crops, nuts, aquacultural species, and other plant or animal production as determined by the Agency.**

### Allowable Costs

Allowable costs means **costs for replacement or repair that are supported by acceptable documentation, including but not limited to written estimates, invoices, and bills.**

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

**Applicant**

Applicant means **the individual or entity applying for a direct loan or direct loan servicing under either the direct or guaranteed loan program.**

**\*--Apprentice**

Apprentice means individual who receives applied guidance and input from an individual with the skills and knowledge pertinent to the successful operation of the farm enterprise being financed.--\*

**Approval Official**

Approval official means the specific employee who has the authority to approve or deny the described action.

**Aquaculture**

Aquaculture means **the husbandry of any aquatic organisms, including fish, mollusks, crustaceans or other invertebrates, amphibians, reptiles, or aquatic plants, raised in a controlled or selected environment of which the applicant has exclusive rights to use.**

**Authorized Agency Official**

Authorized agency official means an employee who has either inherent or delegated authority to complete the described action.

**Basic Part of an Applicant's Total Farming Operation**

Basic part of an applicant's total farming operation means **any single agricultural commodity or livestock production enterprise of an applicant's farming operation, which normally generates sufficient income to be considered essential to the success of such farming operation.**

**Basic Security**

Basic security means **all farm machinery, equipment, vehicles, foundation and breeding livestock herds and flocks, including replacements, and real estate that serves as security for a loan made or guaranteed by the Agency.**

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

**Beginning Farmer**

Beginning farmer means **an individual or entity who:**

- (1) Meets the loan eligibility requirements for a direct or guaranteed OL or FO loan, as applicable;**
- (2) Has not operated a farm for more than 10 years. This requirement applies to all members of an entity;**

**\*--Note:** Experience obtained through agriculture education programs when the applicant was not the primary owner or operator of the farm or ranch is not included when calculating the 10 year period.--\*

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

**Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)****Cash Flow Budget**

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

**Chattel or Real Estate Essential to the Farming Operation**

Chattel or real estate essential to the farming operation means chattel or real estate that would be necessary for the applicant to continue operating the farm after the disaster in a manner similar to the manner in which the farm was operated immediately prior to the disaster, as determined by the Agency.

**Chattel Security**

Chattel security means property that may consist of, but is not limited to: crops; livestock; aquacultural species; farm business and recreational equipment; inventory; accounts; contract rights; general intangibles; and supplies that are covered by financing statements and security agreements, chattel mortgages, and other security instruments.

**Closing Agent**

Closing agent means the attorney or title insurance company selected by the applicant and approved by the Agency to provide closing services for the proposed loan or servicing action. Unless a title insurance company provides loan closing services, the term “title company” does not include “title insurance company”.

**Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)****Conservation Loan (CL)**

CL means a loan made to eligible applicants to cover the costs to the applicant of carrying out a qualified conservation project.

**Conservation Plan**

Conservation plan means **an NRCS-approved written record of the land user's decisions and supporting information, for treatment of a land unit or water as a result of the planning process, that meets NRCS Field Office Technical Guide (FOTG) quality criteria for each natural resource (soil, water, air, plants, and animals) and takes into account economic and social considerations. The conservation plan describes the schedule of operations and activities needed to solve identified natural resource problems and takes advantage of** \*--**opportunities at a conservation management system level. This definition only applies to the direct loans and guaranteed loans for the Conservation Loan Program.**

**Note:** FSA will use a Forest Stewardship Management Plan, NRCS CPA-1155, or Tool Kit provided by NRCS as proof that the applicant has an approved conservation plan.

**Conservation Practice**

Conservation practice means **a specific treatment, such as a structural or vegetative measure, or management technique, commonly used to meet specific needs in planning and implementing conservation, for which standards and specifications have been developed. Conservation practices are contained in the appropriate NRCS Field Office Technical Guide (FOTG), which is based on the National Handbook of Conservation Practices (NHCP).**

**Conservation Project**

Conservation project means **conservation measures that address provisions of a conservation plan or Forest Stewardship Management Plan.--\***

**Construction**

Construction means **work such as erecting, repairing, remodeling, relocating, adding to, or salvaging any building or structure, and the installing, repairing, or adding to heating and electrical systems, water systems, sewage disposal systems, walks, steps, and driveways.**

**Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)****Controlled**

Controlled means when a director or an employee has more than a 50 percent ownership in an entity or, the director or employee, together with relatives of the director or employee, have more than a 50 percent ownership.

**Controlled Substance**

Controlled substance means the term as defined in 21 U.S.C. 812.

**Cooperative**

Cooperative means an entity that has farming as its purpose, whose members have agreed to share the profits of the farming enterprise, and is recognized as a farm cooperative by the laws of the state in which the entity will operate a farm.

**Corporation**

Corporation means a private domestic corporation created and organized under the laws of the State in which it will operate a farm.

**Cosigner**

Cosigner means a party, other than the applicant, who joins in the execution of a promissory note to assure its repayment. The cosigner becomes jointly and severally liable to comply with the repayment terms of the note, but is not authorized to severally receive loan servicing available under 7 CFR parts 765 and 766. In the case of an entity applicant, the cosigner cannot be a member of the entity.

\* \* \*

**County**

County means a local administrative subdivision of a State or similar political subdivision of the United States.

**County Average Yield**

County average yield means the historical average yield for an agricultural commodity in a particular political subdivision, as determined or published by a government entity or other recognized source.

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

### Debt Forgiveness

Debt forgiveness means a reduction or termination of a debt under the Act in a manner that **\*--results in a loss to the Agency.**

**(1) Debt forgiveness may be through:**

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

**(2) Debt forgiveness does not include:**

- (i) Debt reduction through a conservation contract;**
- (ii) Any write down provided as part of the resolution of a discrimination complaint against the Agency;**
- (iii) Prior debt forgiveness that has been repaid in its entirety; and**
- (iv) Consolidation, rescheduling, reamortization, or deferral of a loan, or**
- (v) Forgiveness of YL debt, due to circumstances beyond the borrower's control.**

**The Agency will use the criteria in 7 CFR 766.104(a)(1) to determine if the circumstances were beyond the borrower's control.--\***

### Debt Service Margin

Debt service margin means **the difference between all of the borrower's expected expenditures in a planning period (including farm operating expenses, capital expenses, essential family living expenses, and debt payments) and the borrower's projected funds available to pay all expenses and payments.**

### Direct Loan

Direct loan means **a loan funded and serviced by the Agency as the lender.**

### Disaster

Disaster means **an event of unusual and adverse weather conditions or other natural phenomena or quarantine, that has substantially affected the production of agricultural commodities by causing physical property or production losses in a county, or similar political subdivision, that triggered the inclusion of such county or political subdivision in the disaster area** declared, by the President or designated by the Secretary of Agriculture, for physical losses only, the FSA Administrator may authorize emergency loan assistance.

### Disaster Area

Disaster area means **the county or counties declared or designated as a disaster area for EM loan assistance as a result of disaster related losses. This area includes counties contiguous to those counties declared or designated as disaster areas.**

**Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)****Disaster Yield**

Disaster yield means **the per-acre yield of an agricultural commodity for the farming operation during the production period when the disaster occurred.**

**Down Payment Loan**

Down payment loan means **a type of FO loan made to beginning farmers and socially disadvantaged farmers to finance a portion of a real estate purchase under Part 764, Subpart E of this chapter (Part 7, Section 2).**

**EM**

EM means **a loan made to eligible applicants who have incurred substantial financial losses from a disaster.**

**Embedded Entity**

Embedded entity means **an entity that has a direct or indirect interest, as a stockholder, member, beneficiary, or otherwise, in an entity.**

**Entity**

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

**Entity Member**

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

**\*--Equitable Relief**

Equitable relief means **waiving a requirement for Direct Farm Ownership, Direct Farm Operating, or Direct Emergency loans when the borrower is not in compliance with loan program requirements but acted in good faith and relied on a material action, advice, or non-action from an Agency official to the detriment of the borrower's operation.--\***



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

**Essential Family Living and Farm Operating Expenses**

Essential family living and farm operating expenses:

- (1) Are those that are basic, crucial, or indispensable.**
- (2) Are determined by the Agency based on the following considerations:**
  - (i) The specific borrower's operation;**
  - (ii) What is typical for that type of operation in the area; and**
  - (iii) What is an efficient method of production considering the borrower's resources.**
- (3) Include, but are not limited to essential: household operating expenses; food, including lunches; clothing and personal care; health and medical expenses, including medical insurance; house repair and sanitation; school and religious expenses; transportation; hired labor; machinery repair; farm building and fence repair; interest on loans and credit or purchase agreement; rent on equipment, land, and buildings; feed for animals; seed, fertilizer, pesticides, herbicides, spray materials and other necessary farm supplies; livestock expenses, including medical supplies, artificial insemination, and veterinarian bills; machinery hire; fuel and oil; taxes; water charges; personal, property and crop insurance; auto and truck expenses; and utility payments.**

**Established Farmer**

Established farmer means a farmer who operates the farm (in the case of an entity, its members as a group) who meets all the following conditions:

- (1) Actively participated in the operation and the management, including but not limited to, exercising control over, making decisions regarding, and establishing the direction of, the farming operation at the time of the disaster;**
- (2) Spends a substantial portion of time in carrying out the farming operation;**
- (3) Planted the crop, or purchased or produced the livestock on the farming operation;**
- (4) In the case of an entity, is primarily engaged in farming and has over 50 percent of its gross income from all sources from its farming operation based on the operation's projected cash flow for the next crop year or the next 12-month period, as mutually determined;**
- (5) Is not an integrated livestock, poultry, or fish processor who operates primarily and directly as a commercial business through contracts or business arrangements with farmers, except a grower under contract with an integrator or processor may be considered an established farmer, provided the farming operation is not managed by an outside full-time manager or management service and Agency loans shall be based on the applicant's share of the agricultural production as set forth in the contract; and**
- (6) Does not employ a full time farm manager.**

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

### False Information

False information means information provided by an applicant, borrower, or other source to the Agency that the applicant or borrower knows to be incorrect.

### Family Farm

Family Farm means a business operation that:

- (1) Produces agricultural commodities for sale in sufficient quantities so that it is recognized as a farm rather than a rural residence;
- (2) Has both physical labor and management provided as follows:
  - (i) The majority of day-to-day, operational decisions, and all strategic management decisions are made by:
    - \*--(A) The borrower, with input and assistance allowed from persons who are either related to the borrower by blood or marriage, or are a relative, for an individual borrower; or
    - (B) The members responsible for operating the farm, in the case of an entity.
  - (ii) A substantial amount of labor to operate the farm is provided by:
    - (A) The borrower, with input and assistance allowed from persons who are either--\* related to the borrower by blood or marriage, or are a relative, for an individual borrower; or
    - (B) The members responsible for operating the farm, in the case of an entity.
- (3) May use full-time hired labor in amounts only to supplement family labor.
- (4) May use reasonable amounts of temporary labor for seasonal peak workload periods or intermittently for labor intensive activities.

### Family Living Expenses

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

### Family Members

Family members mean the immediate members of the family residing in the same household with the individual borrower.

**Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)****Farm**

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

**Farm Income**

**Farm income means the proceeds from the sale of agricultural commodities that are normally sold annually during the regular course of business, such as crops, feeder livestock, and other farm products.**

**Farm Loan Programs (FLP's)**

**FLP's means Agency programs to make, guarantee, and service loans to family farmers authorized under the Act or Agency regulations.**

**Farm Program (FP) Payments**

**FP payments are benefits received from FSA for any commodity, disaster, or cost share programs.**

**FO**

**FO means a loan made to eligible applicants to purchase, enlarge, or make capital improvements to family farms, or to promote soil and water conservation and protection.**

**\*--It also includes Down payment loans.--\***

**Farmer**

**Farmer means an individual, corporation, partnership, joint operation, cooperative, trust, or limited liability company that is the operator of a farm.**

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

**Feasible Plan**

**Feasible plan means when an applicant or borrower's cash flow budget or farm operation plan indicates that there is sufficient cash inflow to pay all cash outflow. If a loan approval or servicing action exceeds one production cycle and the planned cash flow budget or farm operation plan is atypical due to cash or inventory on hand, new enterprises, carryover debt, atypical planned purchases, important operating changes, or other reasons, a cash flow budget or farm operation plan must be prepared that reflects a typical cycle. If the request is for only one cycle, a feasible plan for only one cycle is required for approval.**

Streamlined CL's are considered feasible when all requirements in subparagraph 191 B are met.

Situations may arise in which an applicant/borrower cannot develop a feasible plan because of open accounts or judgment debts that are considered fully due and payable.

In such cases, when the applicant/borrower indicates that a creditor is willing to extend terms which would enable a feasible plan to be developed, the approval official must obtain written documentation that an agreement has been reached.

Acceptable documentation will be any of the following:

- promissory note reflecting the rates and terms of the agreement
- dated and signed allonge or attachment to existing promissory note or judgment, which states the new rate and terms

**Note:** Any revision of terms in a court-ordered judgment must be approved by the court with guidance from OGC.

- written agreement between the creditor and the applicant/borrower clearly stating the rates and terms and signed by the borrower and the creditor.

**Financially Viable Operation**

**Financially viable operation, for the purposes of considering a waiver of OL term limits under §764.252 of this chapter, means a farming operation that, with Agency assistance, is projected to improve its financial condition over a period of time to the point that the operator can obtain commercial credit without further Agency assistance. Such an operation must generate sufficient income to:**

- (1) Meet annual operating expenses and debt payments as they become due;**
- (2) Meet essential family living expenses to the extent they are not met by dependable non-farm income;**
- (3) Provide for replacement of capital items; and**
- (4) Provide for long-term financial growth.**

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

**Fixture**

Fixture means an item of personal property attached to real estate in such a way that it cannot be removed without defacing or dismantling the structure, or damaging the item itself.

**Floodplains**

Floodplains means lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year. The base floodplain shall be used to designate the 100-year floodplain (one percent chance floodplain). The critical floodplain is defined as the 500-year floodplain (0.2 percent chance floodplain).

**Forest Stewardship Management Plan**

Forest Stewardship Management Plan means a property-specific, long-term, multi-resource plan that addresses private landowner objectives while recommending a set and schedule of management practices designed to achieve a desired future forest condition developed and approved through the USDA Forest Service or its agent.

**Good Faith**

Good faith means when an applicant or borrower provides current, complete, and truthful information when applying for assistance and in all past dealings with the Agency, and adheres to all written agreements with the Agency including, but not limited to, loan agreement, security instruments, farm operating plans, and agreements for use of proceeds. The Agency considers a borrower to act in good faith, however, if the borrower's inability to adhere to all agreements is due to circumstances beyond the borrower's control. In addition, the Agency will consider fraud, waste, or conversion actions, when substantiated by a legal opinion from OGC, when determining if an applicant or borrower has acted in good faith.

**Graduation**

Graduation means the payment-in-full of all direct FLP loans, **except** CL's, made for operating and/or real estate, by refinancing with other credit sources with or without an Agency guarantee.

**Hazard Insurance**

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

**Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)****Household Contents**

Household contents means essential household items necessary to maintain viable living quarters. Household contents exclude all luxury items such as jewelry, furs, antiques, paintings, etc.

**Inaccurate Information**

Inaccurate information means incorrect information provided by an applicant, borrower, lender, or other source without the intent of fraudulently obtaining benefits.

**Indian Reservation**

Indian reservation means all land located within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; trust or restricted land located within the boundaries of a former reservation of a Federally recognized Indian Tribe in the State of Oklahoma; or all Indian allotments the Indian titles to which have not been extinguished if such allotments are subject to the jurisdiction of a Federally recognized Indian Tribe.

**Joint Operation**

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

**Leasehold**

Leasehold means a right to use farm property for a specific period of time under conditions provided for in a lease agreement.

**Lien**

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

**Limited Resource Interest Rate**

Limited resource interest rate means an interest rate below the Agency's regular interest rate available to farmers who are unable to develop a feasible plan at regular rates and are requesting:

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

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

**Livestock**

Livestock means a member of the animal kingdom, or product thereof, as determined by the Agency.

**Majority Interest**

Majority interest means more than a 50 percent interest in an entity held by an individual or group of individuals.

**Market Value**

Market value means the amount that an informed and willing buyer would pay an informed and willing, but not forced, seller in a completely voluntary sale.

**Microloan (ML)**

\*--ML means a type of OL or FO of \$50,000 or less made using a reduced loan application. Direct ML's are made under modified eligibility and security requirements. Guaranteed ML's are processed using a separate underwriting method to determine financial feasibility.--\*

**Mortgage**

Mortgage means a legal instrument giving the lender a security interest or lien on real or personal property of any kind. The term "mortgage" also includes the terms "deed of trust" and "security agreement".

**Natural Disaster**

Natural disaster means unusual and adverse weather conditions or a natural phenomenon that has substantially affected farmers by causing severe physical or production, or both, losses.

**Non-Eligible Enterprise**

Non-eligible enterprise means a business that meets the criteria in any one of the following categories:

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

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

### Non-Essential Asset

Non-essential asset means **assets in which the borrower has an ownership interest, that:**

**(1) Do not contribute to:**

**(i) Income to pay essential family living expenses, or**

**(ii) The farming operation; and**

**(2) Are not exempt from judgment creditors or in a bankruptcy action.**

### Normal Income Security

Normal income security means **all security not considered basic security, including crops, livestock, poultry products, other property covered by Agency liens that is sold in conjunction with the operation of a farm or other business, and FSA Farm Program payments.**

### Normal Production Yield

Normal production yield means **used in 7 CFR Part 764 for EM's, means:**

**(1) The per-acre actual production history of the crops produced by the farming operation used to determine Federal Crop Insurance payments or payment under the Noninsured Crop Disaster Assistance Program for the production year during which the disaster occurred;**

**(2) The applicant's own production records or the records of production on which FSA farm program payments are made contained in the applicant's farm program file for the previous three years, when the actual production history is not available;**

**(3) The county average production yield, when the production records outlined in (1) and (2) above are not available.**

### OL

OL means **a loan made to an eligible applicant to assist with the financial costs of operating a farm. The term also includes a Youth loan.**

### Operator

Operator means **the individual or entity that provides the labor, management, and capital to operate the farm. The operator can be either an owner-operator or tenant-operator.**

**Under applicable State law, an entity may have to receive authorization from the State in which the farm is located to be the owner and/or operator of the farm. Operating-only entities may be considered owner-operators when the individuals who own the farm real estate own at least 50 percent of the family farm operation.**

### Owner-Operator

Owner-operator means **the individual or entity that owns the land on which a farm is located and provides the labor, management, and capital to operate the farm. An entity may have to receive authorization from the State in which the farm is located to be the owner-operator of the farm.**



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

**Participated in the Business Operations of a Farm**

Participated in the business operations of a farm requires that an applicant has:

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

**Partnership**

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

**Physical Loss**

Physical loss means verifiable damage or destruction with respect to real estate or chattel, excluding annual growing crops.

**Presidentially-Designated Emergency**

Presidentially-designated emergency means a major disaster or emergency designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

**Primary Loan Servicing**

Primary loan servicing programs include: (1) loan consolidation and rescheduling, or reamortization; (2) interest rate reduction, including use of the limited resource rate program; (3) deferral; (4) write-down of the principle or accumulated interest; or (5) any combination of the above.

**Production Cycle**

Production cycle means the time it takes to produce an agricultural commodity from the beginning of the production process until it is normally disposed of or sold.

**Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)****Production Loss**

Production loss means **verifiable damage or destruction with respect to annual growing crops.**

**Program Loans**

Program loans **include FO, OL, and EM. In addition, for loan servicing purposes the term includes existing loans for the following programs no longer funded: SW, RL, EE, ST, and RHF.**

**Promissory Note**

Promissory note means **a written agreement to pay a specified sum on demand or at a specified time to the party designated. The terms “promissory note” and “note” are interchangeable.**

**Qualified Alien**

Qualified Alien, as defined under PRWORA (8 U.S.C. 1641), means:

- An alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act.
- An alien who is granted asylum under section 208 of PRWORA.
- A refugee who is admitted to the United States under section 207 of PRWORA.
- An alien who is paroled into the United States under section 212(d)(5) of PROWRA for a period of at least 1 year.
- An alien whose deportation is being withheld under section 243(h) of PROWRA.
- An alien who is granted conditional entry according to section 203(a)(7) of PROWRA as in effect before April 1, 1980.
- An alien who is a Cuban/Haitian Entrant as defined by section 501(e) of the Refugee Education and Assistance Act of 1980.
- An alien who has been battered or subjected to extreme cruelty under section 431 of the Immigration and Nationality Act.

**Note:** See Exhibit 8 for documentary evidence necessary to satisfy this definition.

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

### Quarantine

Quarantine means a quarantine imposed by the Secretary under the Plant Protection Act or animal quarantine laws (as defined in Section 2509 of the Food Agriculture, Conservation, and Trade Act of 1990).

### Reasonable Rates and Terms

Reasonable rates and terms means those commercial rates and terms that other farmers are expected to meet when borrowing from a commercial lender or private source for a similar purpose and similar period of time. The “similar period of time” of available commercial loans will be measured against, but need not be the same as, the remaining or original term of the loan.

### Related by Blood or Marriage

Related by blood or marriage means being connected to one another as husband, wife, parent, child, brother, sister, uncle, aunt, or grandparent.

### Relative

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

### \*--Youth

Youth means a person who has reached the age of 10 but has not reached the age of 21 at the time the loan is closed.

**Note:** This definition is being amended to remove “rural” by the 2014 Farm Bill and is effective immediately. This change will be incorporated in a Farm Bill CFR, but is effective, as provided here, immediately.--\*

### Security

Security means property or right of any kind that is subject to a real or personal property lien. Any reference to “collateral” or “security property” will be considered a reference to the term “security”.

### Security Instrument

Security instrument means any document giving the Agency a security interest on real or personal property.

**Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)****Security Value**

Security value means **the value of real estate or chattel property (less the value of any prior liens) used as security for an Agency loan.**

**SDA Applicant or Farmer**

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

**SDA Group**

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

**Softwood Timber (ST) Loans**

ST loan means **a loan that was available to eligible financially distressed borrowers who would take marginal land, including highly erodible land, out of production of agricultural commodities other than the production of softwood timber. ST loans are no longer available, however, such outstanding loans are serviced by the Agency.**

**Streamlined Conservation Loan (CL)**

Streamlined CL means **a direct or guaranteed CL made to eligible applicants based on reduced documentation.**

**Supervised Bank Account**

Supervised bank account means **an account with a financial institution established through a deposit agreement entered into between the borrower, the Agency, and the financial institution.**

**United States (U.S.)**

U.S. means **any of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, Republic of Palau, Federated States of Micronesia, and the Republic of the Marshall Islands.**

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

### U.S. Noncitizen National

A U.S. noncitizen national means a person born in American Samoa or Swains Island on or after the date the U.S. acquired American Samoa or Swains Island, or a person whose parents are U.S. noncitizen nationals. Typical evidence of the relatively uncommon status as a noncitizen national includes a birth certificate or passport with a document bearing a photograph of the person.

**Note:** See Exhibit 9 for further documentary requirements to meet this definition.

### Veteran

Veteran means **any person who served in the military, naval, or air service during any war as defined in section 101(12) of title 38, United States Code.** For a National Guard member to be eligible for Veteran status, they must have served for 20 years or more and been discharged other than dishonorably or been deployed on active duty for at least 180 consecutive days during their service commitment.

### Veteran Farmer

Veteran farmer is a farmer who has served in the Armed Forces (as defined in **38 U.S.C. 101(10)** and, the term “Armed Forces” means the U.S. Army, Navy, Marine Corps, Air Force, and Coast Guard, including the reserve components, **who:**

- \*--has not operated a farm;
- has operated a farm but for not more than 10 years; or
- regardless of their previous farming experience, is a veteran who served in the active military, naval, or air service, and who was discharged or released from that service under conditions other than dishonorable and who first obtained status as a veteran during the most recent 10-year period.--\*

For entity applicants, the majority interest must be held by veteran farmers. For married couples, the veteran farmer must have at least 50 percent ownership in the farm business and make most of the management decisions, contribute a significant amount of labor, and generally be recognized as the operator of the farm.

**Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)****Working Capital**

Working capital means **cash available to conduct normal daily farming operations including but not limited to feed, seed, fertilizer, pesticides, farm supplies, cooperative stock, and cash rent.**

**Youth Loan**

Youth loan means **an operating type loan made to an eligible rural youth applicant to finance a modest income-producing agricultural project.**

**Note:** This definition is being amended to remove “rural” by the 2014 Farm Bill and is effective immediately. This change will be incorporated in a Farm Bill CFR, but is effective, as provided here, immediately.

## Signature Requirements for Promissory Notes, Security Agreements and Mortgages

### General Provisions – Loan Documents and Security Instruments

Security instruments include security agreements, financing statements, real estate mortgages, etc. It is extremely important that loan officials insure that all loan documents and security instruments are executed properly. The borrower/debtor that is shown on the face of a security instrument will be the individual or entity to whom the loan is being made. Any other person or entity that has an ownership interest in the collateral that is being pledged as security for the loan (including minor children with an ownership interest in cows in the herd) will be required to sign the security instruments in order to perfect FSA's lien on the collateral. Loan officials need to determine who has an ownership interest in the collateral in order to select the proper signature requirements (i.e., what assets are owned by the entity, what does each member own individually, etc.) All joint operators, partners, and entity members who have an ownership interest in collateral must sign the security instruments as individuals. Also, when securing a loan by a pledge of collateral from a third party (3-FLP Para 91B), the owner(s) of the collateral being pledged as security will be required to sign the real estate mortgage/security agreement as applicable, and will need to be listed on the UCC filing in order to perfect the agency's security interest.

Although third parties may be required to sign a mortgage, it is not necessary to require the third party to sign the promissory note. Only the borrower(s) and co-signors of the borrower are required to sign the note.

Loan officials should not permit a third-party to sign the note on behalf of the borrower or co-signer unless FSA has received a "Power of Attorney" executed in accordance with New York law that specifically authorizes the third party to act on behalf of the borrower or co-signer. The Form FSA-211 is not sufficient for these purposes. Here is a link to a good example of a power of attorney that meets the requirements of New York law:

[http://www.nyc.gov/html/dhs/downloads/pdf/poa\\_ny\\_short\\_form1\\_%20082010.pdf](http://www.nyc.gov/html/dhs/downloads/pdf/poa_ny_short_form1_%20082010.pdf). Power of attorney documents do not typically need to be filed anywhere, unless the power of attorney is being used in connection with a real estate closing/transaction. In that case, the power of attorney document must be filed with the county clerk in the county where the real estate is located.

**Signature Requirements for Promissory Notes, Security Agreements and Mortgages  
(Continued)**

**Cosigners**

**Promissory Notes – Cosigners**

If the signature of a co-signer(s) is needed for feasibility, the signature box on the promissory note will contain the following statement to obligate the cosigner(s) (in addition to the other required signatures):

We agree that we shall be jointly and severally liable with the Borrower. We also agree that the Government may defer, reschedule, re-amortize or consolidate the Note or release any person liable hereunder without our consent; and that we shall remain liable hereunder. We agree that our liability hereunder shall be direct and not secondary or as sureties.

\_\_\_\_\_  
Cosigner

This section on co-signors applies to all sections below when co-signors are needed.

**Property Pledged by Third Parties**

When a loan is secured by chattel property owned by someone other than the Borrower, insert the following statement in the Security Agreement:

Although this Security Agreement indicates that the person signing the document is "indebted" to the Secured Party, the property described by this Security Agreement is being pledged in consideration of a loan made to [insert borrower's name]. It is the intention that this instrument secures that obligation.

\_\_\_\_\_  
[type name of Individual]



## Signature Requirements for Promissory Notes, Security Agreements and Mortgages (Continued)

### Individuals/Joint Operations/General Partnerships

New York is one of the few states that chose not to enact the Revised Uniform Partnership Act of 1997. Consequently, New York still follows the Uniform Partnership Act of 1917, which does not recognize a general partnership as a separate legal “entity”. Here is a link to a website that keeps track of which states enacted the Revised Uniform Partnership Act. <http://www.uniformlaws.org/Act.aspx?title=Partnership%20Act>

### Promissory Notes – Individuals/Joint Operations/General Partnerships:

The signature box on the promissory note for loans made to **individuals** will be signed by the individual applicant. If a loan is made on the basis of income from the applicant only, signatures of the other household members, including the applicant’s spouse will not be obtained.

Since joint operations/general partnerships are not legal entities, the signature box on the promissory note for loans made to joint operations/general partnerships will be signed by all members of the joint operation/general partnership as individuals. **For general partnerships**, a copy of the Certificate of Assumed Name that must be filed in the county in which the farming business will be conducted, as well as a copy of the partnership agreement (if applicable) must be reviewed in order to determine the identity of all of the members of the general partnership. For accounting purposes, the partnership name and partnership tax identification number will be used to identify the account. **For joint operations**, one of the member’s names will be used to identify the name of the account, and that member's individual social security number will be used as the account number.

### Security Agreements – Individuals/Joint Operations/General Partnerships:

When the loan is made to an **individual** and the personal property being pledged as collateral is owned by individuals, the Security Agreement must be signed by the individual applicant as well as any other persons who may have an ownership interest in the property.

When the loan is being made to a **joint operation/general partnership** (which is not a legal entity in New York) and the personal property being pledged as collateral is owned by the individual members of the joint operation/general partnership, the Security Agreement must be signed by all persons who have an ownership interest in the property.

For **married individuals** in New York, the spouse of the individual applicant should be asked to sign the Security Agreement in order to perfect FSA’s interest in the personal property being pledged as collateral.

**If any member(s) of the joint operation/general partnership (are) married**, the spouse of the member/partner should be asked to sign the Security Agreement in order to perfect FSA’s interest in the personal property being pledged as collateral.

**Signature Requirements for Promissory Notes, Security Agreements and Mortgages  
(Continued)**

**Financing Statements – Individuals/Joint Operations/General Partnerships:**

A UCC Financing Statement will be filed with respect to the **individual** applicant, all **individual members of a joint operation/general partnership and all other persons who sign the Security Agreement (including spouses, pledged by third party, etc.)** The New York Governor signed the bill into law implementing the 2010 Amendments to UCC Article 9 on 12/17/14. This law change was to provide greater guidance on what name needs to be listed on a UCC to make it legally sufficient. The rationale behind the law change and in choosing the driver's license name to be legally sufficient on the UCC is that in most cases it is offered as a form of identification when debtors are seeking secured financing. The new law adopts the "Alt A" approach for legal sufficiency which means that the individual debtor's name listed on the UCC must match exactly to the unexpired driver's license or non-driver photo identification card issued by New York. This is the "only-if" rule, i.e. the debtor's name on the financing statement will be sufficient "only-if" the name matches what is listed on the New York unexpired driver's license or non-driver photo identification card.

In cases when the individual debtor does not have a driver's license or non-driver photo identification card issued by the State of New York, the "safe harbor" rule applies, which means that either of the following names for the debtor would be sufficient as the debtor's name on the UCC: (1) the individual name of the debtor, or (2) the debtor's surname and first personal name. In order to determine the correct name that should be listed on the UCC, loan officials should review other forms of valid identification of the debtor such as the debtor's original birth certificate, a valid unexpired U.S. Passport, a U.S. Active Duty, Retiree, or Reservist Military ID card, or the debtor's Social Security Card.

If the individual debtor holds a driver's license from outside of New York State the name listed on the driver's license will be irrelevant for the purpose of perfecting a security interest with a filing in New York. For these cases, loan officials will need to follow the "safe harbor" rule as stated above.

The driver's license may expire, or the debtor may exchange the current driver's license for a new driver's license (i.e. change of name with marital status). Either event could constitute a change of name that Article 9 would require an amendment to a filed UCC. The responsibility is upon the secured party (USDA-Farm Service Agency) to keep filings current with regard to the debtor's name and location (address) - changes are to be filed within 4 months of the change of name or location to remain perfected.

There may be instances where the unexpired New York driver's license lists only the first letter of the first name, middle initial and only a portion of the last name because the individual's name is too long. In these cases the UCC will still need to match the name on the driver's license and an additional debtor name will also need to be included on the UCC stating the individual's exact full legal name (surname and first personal name and middle name/initial).

**Signature Requirements for Promissory Notes, Security Agreements and Mortgages  
(Continued)**

New York's law did not include any transition rule for UCCs that were already on file prior to the 12/17/14 law change. This could affect perfecting a security interest in after acquired property but will be unknown until the issue is litigated in court. At this time the policy will be to review and amend UCC filings that were filed prior to 12/17/14 at the time of the renewal, or before the renewal date if the borrower is applying for a new loan or loan servicing, or if the loan official becomes aware of a change in the debtor's name or location.

Field offices need to obtain copies of current driver's licenses/non-driver photo identification from all direct loan borrowers that have loans secured by chattels in accordance with this section. Copies of the current driver's licenses/non-driver photo identification cards should be scanned and kept in an electronic file on the office shared drive - paper copies should be filed in the yellow UCC folder in the paper file along with the original UCC filings. Driver's license expiration dates will need to be added in each borrower's Direct Loan System (DLS) Office Management Reminder. Loan officials will need to review the documents and determine if the license is current, the state that issued the license or photo ID card and if the "only if" or "safe harbor" rule applies as discussed above to remain legally sufficient and if an additional debtor name needs to be added to the filing to remain legally sufficient.

The cost for filing the UCC amendment will be paid by the debtors in accordance with their signed Security Agreement (FSA-2028) 3 (c) and in accordance with NY Exhibit 7 to 3-FLP.

Loan officials also need to be sure that the names that appear on the UCCs and Security Agreements match (i.e. if there are 2 names on the UCC-1 which matches the driver's license and the additional legal name of the debtor then a revised Security Agreement will need to be executed to list both names also).

**Signature Requirements for Promissory Notes, Security Agreements and Mortgages  
(Continued)**

**Real Estate Mortgages – Individuals/Joint Operations/General Partnerships:**

It is important for loan officials to make sure that the Real Estate Mortgage is properly executed. All signatures must be acknowledged in accordance with New York law. Tax Map Number(s) will be obtained for each tract or parcel, and will be incorporated into the beginning of the description for each tract or parcel.

The Mortgage must be signed by all persons that are listed on the Deed. If the individual applicant is not the sole “owner” of the property, then the loan official should require all third-parties that have an interest in the real property to sign the Mortgage. Third parties who may have an interest in the land would include: (1) the borrower’s spouse (if the spouse will not be obligated on the loan), (2) other individuals who hold the property jointly with the borrower, and (3) individuals who have a life estate interest in the property.

When obtaining a third-party’s signature on the Mortgage, it is not necessary to add any additional language to the Mortgage. This situation is already covered by Paragraph 24 of the Mortgage, which deals specifically with co-signers who are not obligated on the Promissory Note. Paragraph 24 specifically provides that when a person co-signs the Mortgage but is not obligated on the debt, that person: (a) is co-signing this instrument only to mortgage, grant and convey that Borrower's interest in the property under this instrument; (b) is not personally obligated to pay the sums secured by this instrument; and (c) agrees that the Government and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this instrument or the note without that Borrower's consent.

**Signature Requirements for Promissory Notes, Security Agreements and Mortgages  
(Continued)**

**Corporations/Cooperatives**

**If the borrower is a corporation or cooperative, it is important for loan officials to determine that the individuals that are signing the loan documents on behalf of the corporation/cooperative have the authority to do so, by reviewing copies of corporate resolutions, etc.**

**Promissory Notes – Corporations/Cooperatives**

Cooperatives are a type of corporation. The signature box on the Promissory Note for loans made to corporations/cooperatives will be signed by the officer authorized to sign on behalf of the corporation/cooperative. The Promissory Note will also be signed by all members or stockholders as individuals. The signature block on the Promissory Note will be as follows to obligate all necessary person(s) as co-borrower(s):

IN WITNESS WHEREOF, the Borrower has caused this Promissory Note to be executed by its (insert title of person named in the corporate resolution that is authorized to sign on behalf of the corporation or cooperative – i.e. President) and has also caused its corporate seal to be affixed hereto and attested to by its Secretary, all as of the date first written above.

(Corporate Seal)\* X, Y, Z FARMS CORPORATION

Attest: \_\_\_\_\_ By: \_\_\_\_\_  
ANNA ZELLA, Secretary BLUE FOX, (Title of person in corporate resolution)

\* If the corporation/cooperative does not have a seal, it will suffice if the Secretary writes the word “SEAL”.

**[Individual shareholders/members are required to be co-borrowers and must sign using the format below]**

We agree that we shall be jointly and severally liable with Borrower. We also agree that the Government may defer, reschedule, re-amortize, modify in any way or consolidate the Note or release any person liable hereunder without our consent; and that we shall remain liable hereunder. We agree that our liability hereunder shall be direct and not secondary or as sureties.

\_\_\_\_\_  
[type name of Individual], as Co-Borrower

\_\_\_\_\_  
[type name of Individual], as Co-Borrower

**Signature Requirements for Promissory Notes, Security Agreements and Mortgages  
(Continued)**

**Security Agreements -- Corporations/Cooperatives**

IN WITNESS WHEREOF, the Debtor has caused this Security Agreement to be executed by its (insert title of the person named in the corporate resolution that is authorized to sign on behalf of the corporation or cooperative – i.e. President) and has also caused its corporate seal to be affixed hereto and attested to by its Secretary, all as of the date written above.

(Corporate Seal) X, Y, Z FARMS CORPORATION

Attest: \_\_\_\_\_ By: \_\_\_\_\_  
ANNA ZELLA, Secretary BLUE FOX, (Title of person in corporate resolution)

**[Required signatures if some or all of the chattel property is owned by individual shareholders/members of the corporation/cooperative]**

Although the word "Debtor" as used herein refers to the person named above, it is understood that this instrument is given in consideration of a loan or loans made to [insert borrower entity name] in which the undersigned holds an interest as owner, shareholder, member, partner, or beneficiary or in some other fashion.

\_\_\_\_\_  
[type name of Individual]

\_\_\_\_\_  
[type name of Individual]

**Financing Statements – Corporations/Cooperatives:**

A UCC Financing Statement will be filed with respect to the corporation/cooperative by using the exact legal name of the entity as reflected on the "public organic record" of the corporation/cooperative. In most cases, the "public organic record" is the publically available record filed with the New York Department of State, which would include both the initial public filing (such as the Articles of Incorporation), as well as any subsequent amendments to the corporation/cooperative's name. All individual shareholders/members who sign the Security Agreement must also be listed as debtors on the UCC by using the individual's exact legal name as listed on an unexpired New York State driver's license. (If the driver's license does not state the exact legal name, then the financing statement will also include the exact legal name as an additional debtor). See Financing Statements – Individuals/Joint Operations/General Partnerships for UCC filing.

**Signature Requirements for Promissory Notes, Security Agreements and Mortgages  
(Continued)**

**Real Estate Mortgages – Corporations/Cooperatives:**

It is important for loan officials to make sure that the Real Estate Mortgage is properly executed. All signatures must be acknowledged in accordance with New York law. Tax Map Number(s) will be obtained for each tract or parcel, and will be incorporated into the beginning of the description for each tract or parcel.

IN WITNESS WHEREOF, the Borrower has caused this Mortgage to be executed by its (insert title of the person named in the corporate resolution that is authorized to sign on behalf of the corporation or cooperative – i.e. President) and has also caused its corporate seal to be affixed hereto and attested to by its Secretary, all as of the date written above.

(Corporate Seal)

X, Y, Z FARMS CORPORATION

Attest: \_\_\_\_\_  
ANNA ZELLA, Secretary

By: \_\_\_\_\_  
BLUE FOX, (Title of person in corporate resolution)

When obtaining a third-party's signature on the Mortgage, it is not necessary to add any additional language to the Mortgage. This situation is already covered by Paragraph 24 of the Mortgage, which deals specifically with co-signers who are not obligated on the Promissory Note. Paragraph 24 specifically provides that when a person co-signs the Mortgage but is not obligated on the debt, that person: (a) is co-signing this instrument only to mortgage, grant and convey that Borrower's interest in the property under this instrument; (b) is not personally obligated to pay the sums secured by this instrument; and (c) agrees that the Government and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this instrument or the note without that Borrower's consent.



**Signature Requirements for Promissory Notes, Security Agreements and Mortgages  
(Continued)**

**Limited Liability Companies (LLCs) or Limited Partnerships (LPs)**

**If the borrower is an LLC or LP, it is important for loan officials to determine that the individuals that are signing the loan documents on behalf of the LLC/LP have the authority to do so, by reviewing copies of the organizational documents such as operating agreements or partnership agreements, etc.**

**Promissory Notes – LLCs/LLPs**

The signature box on the Promissory Note for loans made to an LLC/LP will be signed by the member/partner authorized to sign on behalf of the LLC/LP. The Promissory Note will also be signed by all members or partners as individuals. The signature block on the Promissory Note will be as follows to obligate all necessary person(s) as co-borrower(s):

IN WITNESS WHEREOF, the Borrower has caused this Promissory Note to be executed by its [Manager] [Member(s)] [Partner(s)]\* who hereunto sets [his] [her] [their] hand(s) and seal(s) as of the date first written above.

[X, Y, Z Farms LLC/LP]

By: \_\_\_\_\_  
JAMES FISHER, [Manager][Member][Partner]\*

By: \_\_\_\_\_  
JULIE FISHER, [Manager][Member][Partner]\*

\* Select appropriate title

**[Individual member(s) or partner(s) are required to be co-borrowers and must sign using the format below]**

We agree that we shall be jointly and severally liable with Borrower. We also agree that the Government may defer, reschedule, re-amortize, modify in any way or consolidate the Note or release any person liable hereunder without our consent; and that we shall remain liable hereunder. We agree that our liability hereunder shall be direct and not secondary or as sureties.

\_\_\_\_\_  
[type name of Individual], as Co-Borrower

\_\_\_\_\_



**Signature Requirements for Promissory Notes, Security Agreements and Mortgages  
(Continued)**

[type name of Individual], as Co-Borrower  
**Security Agreements – LLCs/LPs**

IN WITNESS WHEREOF, the Debtor has caused this Security Agreement to be executed by its (insert title of person named in the operating agreement or limited partnership agreement that is authorized to sign on behalf of the LLC or LP – i.e., the Managing Member or General Partner) who hereunto sets his/her/their hand and seal as of the date written above.

[X, Y, Z Farms LLC/LP]

By: \_\_\_\_\_  
JAMES FISHER, [Manager][Member][Partner]\*

By: \_\_\_\_\_  
JULIE FISHER, [Manager][Member][Partner]\*

\* Select appropriate title

**[Required signatures if some or all of the property is owned by individual members or partners of the LLC/LP]**

Although the word "Debtor" as used herein refers to the person named above, it is understood that this instrument is given in consideration of a loan or loans made to [insert borrower entity name] in which the undersigned holds an interest as owner, shareholder, member, partner, or beneficiary or in some other fashion.

\_\_\_\_\_  
[type name of Individual]

\_\_\_\_\_  
[type name of Individual]

**Financing Statements – LLCs/LPs:**

A UCC Financing Statement will be filed with respect to the LLC/LP by using the exact legal name of the entity as reflected on the "public organic record" of the corporation/cooperative. In most cases, the "public organic record" is the publically available record filed with the New York Department of State, which would include both the initial public filing (such as the Certificate of Limited Partnership, or Articles of Organization), as well as any subsequent amendments to the LLC or LP's name. All individual members or partners who sign the Security Agreement must also be listed as debtors on the UCC by using the individual's exact legal name as listed on an unexpired New York State driver's license. (If the driver's license does not state the exact legal name, then the financing statement will also include the exact legal name as an additional

**Signature Requirements for Promissory Notes, Security Agreements and Mortgages  
(Continued)**

debtor). See Financing Statements – Individuals/Joint Operations/General Partnerships for UCC filing.

**Real Estate Mortgages – LLCs/LPs:**

It is important for loan officials to make sure that the Real Estate Mortgage is properly executed. All signatures must be acknowledged in accordance with New York law. Tax Map Number(s) will be obtained for each tract or parcel, and will be incorporated into the beginning of the description for each tract or parcel.

IN WITNESS WHEREOF, the Borrower has caused this Mortgage to be executed by its (insert title of person stated in the operating agreement or limited partnership agreement that is authorized to sign on behalf of the LLC or LP – i.e., the Managing Member or General Partner) who hereunto sets his/her/their hand and seal as of the date written above.

[X, Y, Z Farms LLC/LP]

By: \_\_\_\_\_  
                   JAMES FISHER, [Manager][Member][Partner]\*

By: \_\_\_\_\_  
                   JULIE FISHER, [Manager][Member][Partner]\*

\* Select appropriate title

When obtaining a third-party’s signature on the Mortgage, it is not necessary to add any additional language to the Mortgage. This situation is already covered by Paragraph 24 of the Mortgage, which deals specifically with co-signers who are not obligated on the Promissory Note. Paragraph 24 specifically provides that when a person co-signs the Mortgage but is not obligated on the debt, that person: (a) is co-signing this instrument only to mortgage, grant and convey that Borrower's interest in the property under this instrument; (b) is not personally obligated to pay the sums secured by this instrument; and (c) agrees that the Government and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this instrument or the note without that Borrower's consent.

**Signature Requirements for Promissory Notes, Security Agreements and Mortgages  
(Continued)**

**Trusts**

**Promissory Notes – Trusts**

A trust is a device for holding or managing property for the benefit of specific persons or a specific purpose. The settlor of the trust is the person (including a testator) who conveys property to the trust. In a farming context, the property is typically managed by one or more trustees who have the responsibility for carrying out the purposes of the trust, and who will distribute the current net farm income to certain named persons who are hereafter referred to as beneficiaries. The settlor(s) and the trustee(s) will sign all security instruments on behalf of a trust. As a general rule, adult beneficiaries who are entitled to receive a portion of current net farm income will also be required to sign as co-borrowers (individuals). Since trusts can take an infinite variety of forms, the STO and OGC must be consulted in every case as to whether the trust owns the farm and the trustee has the power to operate it. They must also be consulted to determine whether any other adult beneficiary should be required to sign as a co-borrower. The signature blocks on the Promissory Note will be set forth as shown below:

IN WITNESS WHEREOF, the Borrower has caused this Promissory Note to be executed by the Trustee who hereunto sets [his] [her] [their] hand(s) and seal(s) as of the date first written above.

X, Y, Z Farms Trust

By: \_\_\_\_\_  
JAMES FISHER, Trustee

By: \_\_\_\_\_  
JULIE FISHER, Settlor

**[Adult beneficiaries who are required to be co-borrowers must sign using the format below]**

We agree that we shall be jointly and severally liable with Borrower. We also agree that the Government may not defer, reschedule, re-amortize, modify in any way or consolidate the Note or release any person liable hereunder without our consent; and that we shall remain liable hereunder. We agree that our liability hereunder shall be direct and not secondary or as sureties.

\_\_\_\_\_  
[type name of Individual], as Co-Borrower

\_\_\_\_\_  
[type name of Individual], as Co-Borrower

**Signature Requirements for Promissory Notes, Security Agreements and Mortgages  
(Continued)**

**Security Agreements – Trusts**

IN WITNESS WHEREOF, the Debtor has caused this Security Agreement to be executed by its (insert name of trustee(s) and any adult beneficiaries) who hereunto sets his/her/their hand and seal as of the date written above.

X, Y, Z Farms Trust

By: \_\_\_\_\_  
JAMES FISHER, Trustee

By: \_\_\_\_\_  
JULIE FISHER, Settlor

**[Required signatures if some or all of the property is owned by individuals]**

Although the word "Debtor" as used herein refers to the person named above, it is understood that this instrument is given in consideration of a loan or loans made to [insert borrower entity name] in which the undersigned holds an interest as owner, shareholder, member, partner, or beneficiary or in some other fashion.

\_\_\_\_\_  
[type name of Individual]

\_\_\_\_\_  
[type name of Individual]

**Financing Statements – Trusts:**

A UCC Financing Statement will be filed with respect to the trust. If collateral is held in a trust that is a registered organization, the name of the trust on the financing statement must match the exact legal name as provided in the public organic record of the trust (i.e., the "Declaration of Trust" or "Trust Agreement"). If collateral is held in a trust that is not a registered organization, the name of the trust on the financing statement must be the name of the trust itself or, if the trust has no name, the name of the settlor or testator as indicated on the trust document. All individuals (including beneficiaries) who sign the Security Agreement must also be listed as debtors on the UCC by using the individual's exact legal name as listed on an unexpired New York State driver's license. (If the driver's license does not state the exact legal name, then the

**Signature Requirements for Promissory Notes, Security Agreements and Mortgages  
(Continued)**

financing statement will also include the exact legal name as an additional debtor). See Financing Statements – Individuals/Joint Operations/General Partnerships for UCC filing.

**Real Estate Mortgages – Trusts:**

It is important for loan officials to make sure that the Real Estate Mortgage is properly executed. All signatures must be acknowledged in accordance with New York law. Tax Map Number(s) will be obtained for each tract or parcel, and will be incorporated into the beginning of the description for each tract or parcel.

IN WITNESS WHEREOF, the Borrower has caused this Mortgage to be executed by its (insert name of trustee(s) and any adult beneficiaries) who hereunto sets his/her/their hand and seal as of the date written above.

X, Y, Z Farms Trust

By: \_\_\_\_\_  
JAMES FISHER, Trustee

By: \_\_\_\_\_  
JULIE FISHER, Settlor

When obtaining a third-party's signature on the Mortgage, it is not necessary to add any additional language to the Mortgage. This situation is already covered by Paragraph 24 of the Mortgage, which deals specifically with co-signers who are not obligated on the Promissory Note. Paragraph 24 specifically provides that when a person co-signs the Mortgage but is not obligated on the debt, that person: (a) is co-signing this instrument only to mortgage, grant and convey that Borrower's interest in the property under this instrument; (b) is not personally obligated to pay the sums secured by this instrument; and (c) agrees that the Government and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this instrument or the note without that Borrower's consent.

*The following is an EXAMPLE of a Shared Facility Agreement between parties of interest. This example was not drafted by the United States of America, Farm Service Agency nor is it to be construed as approved by the Farm Service Agency for financing. Parties interested in entering into a Shared Facility Agreement may find this example agreement helpful in the creation of a Shared Facility Agreement for their own purposes in meeting the needs of an agreement being sought.*

## SHARED FACILITY AGREEMENT

This Agreement is entered into this [Number of Day] day of [Month], [Year] by and between [Party Name(s)] hereinafter [Short Description of Name] and [Party Name(s)], hereinafter [Short Description of Name], and collectively referred to as “parties”.

The parties enter into this Shared Facility Agreement as required by Farm Service Agency as an inducement and prerequisite for the qualification of certain financing to allow beginning farmers access to favorable financing to begin farming.

THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. ORGANIZATION: The parties agree that [Applicable Party Name(s)] is the owner of the farm facilities located at [Address], consisting of dairy barn, outbuildings and 0 acres of tillable land. In addition, [Applicable Party Name(s)] are the owners of the farm machinery necessary to maintain and operate the farm facilities. For purposes of this Agreement, [Applicable Party Name(s)] authorizes and allows all parties the use of the facility for purposes of housing and raising livestock, milk production, and storage of farm machinery.
2. INDIVIDUAL ASSETS: [Applicable Party Name(s)] are the individual and sole owners of farm machinery which shall be used for dairy operation and production of feed pursuant to the terms of this Shared Facility Agreement. [Applicable Party Name(s)] shall maintain individual ownership of these assets during the term of this Agreement. The individually owned beef livestock are not considered part of this agreement.
3. INDIVIDUAL MANAGEMENT: Each of the parties shall manage their business as a separate entity and nothing in this Agreement shall be construed to be a partnership or joint venture. Each of the parties shall maintain separate bookkeeping entries, accounts and each shall file their own income tax returns.
4. SERVICES: Each of the parties shall contribute full-time work to the success of this relationship including but not limited to, field work, milking chores, maintenance of equipment and maintenance and care of livestock. No Party shall receive any compensation for their work other than the compensation described in Paragraph 9 of this Agreement.
5. MANAGEMENT RESPONSIBILITIES: The management and responsibilities shall be shared by the parties and the parties shall act in good faith to operate under a mutually agreed management plan.

6. VACATION: Each of the parties shall be allowed 2 weeks vacation annually at a time mutually agreed by the parties. During the vacation of one of the parties, the other shall assume full responsibility for the operation of the entire farm operation.
  
7. EXPENSES: [Applicable Party Name(s)] at 50% each shall be responsible for all expenses related to the maintenance and care of the facilities including all repairs and maintenance to the farm machinery, milking parlor, outbuildings and all items related to the facilities and equipment necessary to operate the dairy business. In addition, each Party shall be responsible for all expenses related to the management and care of the livestock including veterinary bills, insemination expense and general care and maintenance of the livestock. [Applicable Party Name(s)] shall be responsible to pay all insurance on the buildings, both parties shall be responsible for insurance coverage on personal property and farm machinery including loss coverage for all livestock in the herd including the livestock owned by both parties. The parties shall agree to the level and extent of insurance coverage. All bills will be sent to [Applicable Party Name(s)]. Both parties will meet twice monthly to reconcile accounts and pay bills.
  
8. FEED: [Applicable Party Name(s)] shall be responsible to provide all necessary crop input expenses to produce all shelled corn, corn silage, and other forage. [Applicable Party Name(s)] will purchase crops from [Applicable Party Name(s)]. Both parties shall pay for any and all necessary expenses to properly maintain the feed and supplements for the livestock. Any income or benefits related to any governmental crop program shall be payable to [Applicable Party Name(s)] and [Applicable Party Name(s)] shall have no claim to said income.
  
9. COMPENSATION: In recognition of the Shared Facility Agreement and the responsibilities assigned to each Party to this Agreement, the compensation to the parties shall be payable as follows:
  - A. [Applicable Party Name(s)] shall receive 50 percent (50%) and [Applicable Party Name(s)] shall receive 50 percent (50%) of the income generated from this Shared Facility Agreement including, but not limited to, milk income, livestock sales and any income generated from the MILC program.
  
  - B. Both parties shall pay 50% (\$XXX.00) of the rent to [Applicable Party Name(s)] total of Xxx Xxxx Dollars (\$XXX.00) per month payable on the [Number of Day] day of each month commencing [Start Date] to [End Date]. Payment will be made by dairy assignment.
  
10. OWNERSHIP OF ASSETS: [Applicable Party Name(s)] shall retain ownership of all real estate assets. [Applicable Party Name(s)] shall retain ownership of farm machinery, supplies, inventory, feed and all other assets necessary to implement this Agreement other than the livestock. Upon the execution of this Agreement and continuing thereafter [Applicable Party Name(s)] shall own fifty percent (50%) of all dairy livestock located at the facility and [Applicable Party Name(s)] shall own fifty percent (50%) of all dairy livestock located at the facility.
  
11. FINANCING: The parties agree to cooperate and execute any and all documents necessary to obtain the necessary financing through the Farm Service Agency, an agency of the United States Department of Agriculture.



12. **VOLUNTARY TERMINATION:** It is agreed that neither Party shall voluntarily terminate this Agreement for a period of two (2) years. Thereafter, either Party may terminate this Agreement by providing six (6) months written notice to the other Party of their intention to terminate the Agreement. In the event of voluntary termination, [Applicable Party Name(s)] and shall receive fifty percent (50%) of the then existing dairy livestock and [Applicable Party Name(s)] shall receive fifty percent (50%) of the then existing dairy livestock. The parties agree that the dairy livestock shall be distributed equitably based upon age, production and quality of the dairy livestock.

13. **INVOLUNTARY SALE:** In the event either Party is determined to be insolvent, is adjudicated a bankrupt, makes an assignment for the benefit of creditors, is adjudged to being mentally incompetent, or is determined to be permanently disabled by his personal physician, the non-affected Party shall have the option of purchasing the interest of the Party affected by the happening of such event. If the non-affected Party shall choose to purchase the interest of the affected Party, he shall give written notice of his intention to purchase said interest to the affected Party or his representative within thirty (30) days of the happening of the event. The sale shall be closed sixty (60) days after the date of the notice of intention to purchase. The interest of the affected Party shall consist of the relative percentage of the livestock owned by the affected Party. The purchase price and payment shall be made pursuant to Paragraphs 15 and 16 of this Agreement. If the non-affected Party does not choose to purchase the affected Party's interest, then the parties shall divide the livestock based upon the proportioned ownership and in the same method as in Paragraph 12.

14. **DEATH OF A PARTY:** in the event of the death of a Party the surviving Party shall have the option to purchase the livestock owned by the deceased Party by providing a written notice to the deceased Party's representative within thirty (30) days following the date of death. The purchase price and method of payment shall be as defined in Paragraphs 15 and 16 of this Agreement.

15. **PURCHASE PRICE:** For the purposes of determining the purchase price for the livestock, the continuing Party and the affected Party or their representatives shall select an appraiser to determine the fair market value of the livestock owned by the affected Party. The appraiser will determine the fair market value of the entire herd and the value of each Party's interest shall be determined by multiplying their relative percentage by the total value of the herd.

16. **METHOD OF PAYMENT OF PURCHASE PRICE:**

- A. **Term of Payment -** In the event of purchase, payment of the purchase price shall be as follows: At the election of the purchasing Party, payment shall be in cash of not less than twenty-five percent (25%) of the total purchase price with the balance to be paid by the execution of a Promissory Note by the purchaser with interest as provided in the next subparagraph payable in equal monthly installments of principal and interest with payment amortized over a period of ten (10) years with the full balance due and payable within five (5) years. Said Promissory note shall provide for a prepayment without penalty, and the same shall be secured by a Security Agreement on all of the livestock owned by the purchasing Party.
- B. **Interest on Payments -** The aforesaid Promissory Note shall bear a variable interest at a rate equal to the "Wall Street Journal Prime Rate" of interest.



17. **ARBITRATION:** Any dispute arising under this Agreement as to any problem which must be mutually agreed upon to be binding will be submitted to arbitration if any Member, or a legal representative of a Member, so requests. Such a request must be in writing, must be signed by one Member, must be delivered to the other Member, and must state the problem to be settled. Within one (1) week after such request has been so delivered, the Members, or their legal representatives, will each appoint one person to act as arbiter, and these two will appoint a third; the three thus appointed will decide the problem. The decision of two of these arbiters will be binding on the Members.

If any Member refuses to arbitrate or to appoint an arbiter as provided above, he hereby agrees to reimburse the other Party for all expenses incurred and damages suffered as a result of such refusal.

18. **ENTIRE AGREEMENT:** The Shared Facility Agreement represents the entire agreement between the signees, [Applicable Party Name(s)]. Any and all prior discussions, negotiations, commitments and understandings relating thereto are hereby merged herein.

19. **BENEFIT:** The Shared Facility Agreement will be binding upon and inure to the benefit of the heirs, personal representatives, successors, and assigns of all parties to this Agreement.

20. **INITIAL CONTRIBUTIONS:** [Applicable Party Name(s)] will contribute \$ XXX,XXX and will contribute \$ XXX,XXX of livestock to this "Shared Facility Dairy Herd". Upon completion of these contributions, [Applicable Party Name(s)] will own 50% of the entire dairy herd (hereafter acquired), [Applicable Party Name(s)] and will own 50% of the entire dairy herd (hereafter acquired). All livestock will be commingled in this shared facility.

21. **GOVERNING LAWS:** This Agreement, and the application or interpretation thereof, will be governed exclusively by its terms and by the laws of the State of New York. To the extent not specifically or expressly addressed by this Agreement, the provisions of the Act shall apply.

\_\_\_\_\_  
Date [Signature of Applicable Party]

\_\_\_\_\_  
Date [Signature of Applicable Party]

State Supplements

The following lists required State supplements.

Subparagraph	State Supplements
3 C	<p><b>Notary Acknowledgement</b></p> <ul style="list-style-type: none"> <li>To provide the appropriate State required text.</li> </ul>
*--3 F	<p><b>State Created Forms--*</b></p> <ul style="list-style-type: none"> <li>Address the use of all State created forms, except the State specific FSA-2029, which does not need to be included.</li> </ul>
3 D and 371 C	<p><b>Signature Requirements</b></p> <ul style="list-style-type: none"> <li>As required by State law for individuals, entities, and trusts.</li> </ul>
42 A	<p><b>Married Couples Applying as a Joint Operation</b></p> <ul style="list-style-type: none"> <li>Issued when applicable to provide guidance on married couples applying as a joint operation.</li> </ul>
*--72 D--*	<p><b>Trust Issues</b></p> <ul style="list-style-type: none"> <li>Security requirements.</li> <li>* * *</li> <li>Unique State statutes.</li> </ul>
91 B	<p><b>Adequate Security - 3rd Party Pledge</b></p> <ul style="list-style-type: none"> <li>In States where property is not held in fee simple or where DOJ lacks jurisdiction a State supplement may be necessary upon the advice of OGC.</li> </ul>
92 D	<p><b>Real Estate Security - Fixtures and Equipment</b></p> <ul style="list-style-type: none"> <li>A State supplement may be necessary upon the advice of OGC, to further explain taking a security interest in fixtures.</li> </ul>
92 F and 131 C	<p><b>Leasehold Estates in Hawaii, Puerto Rico, and American Samoa</b></p> <ul style="list-style-type: none"> <li>Unique State/territory statutes.</li> </ul> <p>*--Note: Must be submitted for preapproval.--*</p>
94 D	<p><b>DOJ Jurisdiction Issues: When FSA Cannot Obtain a Valid Lien</b></p> <ul style="list-style-type: none"> <li>Where DOJ has no jurisdiction or has advised FSA that because of the lack of a Federal District Court, DOJ will not litigate civil cases.</li> </ul>
*--114 B--*	<p><b>Mortgage Clause, for Required States Only</b></p> <ul style="list-style-type: none"> <li>If using a mortgage clause other than the standard mortgage clause on FSA-2320 has been made mandatory by State law or insurance regulation.</li> </ul>

State Supplements (Continued)

Subparagraph	State Supplements
133 D	<p><b>State Water Rights, Irrigation Issues, and Restrictions on Land Drainage</b></p> <ul style="list-style-type: none"> <li>• State all requirements to be met, including the acquisition of water rights.</li> <li>• Define areas where development of ground water for irrigation is not recommended.</li> <li>• Define areas where land drainage is restricted.</li> </ul>
136 A	<p><b>Mortgage Requirements for Subsequent Loans</b></p> <ul style="list-style-type: none"> <li>• A State supplement shall be issued about when to obtain a new mortgage for a subsequent loan.</li> </ul>
152 B	<p><b>Median Size Farm</b></p> <ul style="list-style-type: none"> <li>•*--Guidance addressing what constitutes a median size farm for each county in the State.--*</li> </ul>
202 H	<p><b>Term Limit Requirements</b></p> <ul style="list-style-type: none"> <li>• If needed to reissue any existing State supplements on term limit requirements to comply with the term limit provisions.</li> </ul>
244 C	<p><b>Unit Price on Commodities</b></p> <ul style="list-style-type: none"> <li>• Guidance on unit prices for all commodities produced commercially in the State.</li> </ul>
248 A	<p><b>Waiver of Real Estate Appraisal Requirements for EM</b></p> <ul style="list-style-type: none"> <li>• Guidance about waiving the real estate appraisal requirements for an applicant receiving <b>only</b> EM.</li> </ul>
*--374 A--*	<p><b>State Requirements for Filing Liens</b></p> <ul style="list-style-type: none"> <li>• Forms to use, directions for completion, and correct way to make the lien a matter of public record.</li> </ul>
397 B * * *	<p><b>Purchase Contracts and Fixtures</b></p> <ul style="list-style-type: none"> <li>• Forms to use, directions for completion, and correct way to make the lien a matter of public record.</li> </ul>

**State Supplements (Continued)**

<b>Subparagraph</b>	<b>State Supplements</b>
399 B	<p><b>Correcting Errors in Recorded Security Instruments</b></p> <ul style="list-style-type: none"> <li>• SED shall issue a State supplement, subject to OGC’s review and approval, providing guidance in correcting errors in recorded security instruments.</li> </ul>
418 C	<p><b>Milkbase or Grazing Permits Financed or Taken as Security</b></p> <ul style="list-style-type: none"> <li>• Forms to use, directions for completion, acknowledgement by the payor, and correct way to make the form a matter of public record.</li> </ul>
418 D	<p><b>Perfecting Liens on Stock in Coop Associations</b></p> <ul style="list-style-type: none"> <li>• Forms to use, directions for completion, and correct way to make the form a matter of public record.</li> </ul>
418 E	<p><b>Perfecting Liens on Motor Vehicles</b></p> <ul style="list-style-type: none"> <li>• Forms to use, directions for completion, and correct way to make the form a matter of public record.</li> </ul>
418 F	<p><b>Liens on Fixtures and Equipment</b></p> <ul style="list-style-type: none"> <li>• Forms to use, directions for completion, and correct way to make the form a matter of public record.</li> </ul>
433 B	<p><b>FSA Responsibilities for Documents</b></p> <ul style="list-style-type: none"> <li>• States shall issue directions on how documents are to be handled in their respective State.</li> </ul>
*--473 B	<p><b>Training Vendors</b></p> <ul style="list-style-type: none"> <li>• States shall issue a list of approved training vendors.--*</li> </ul>

**Note:** SED’s shall:

- issue supplements according to 1-AS, paragraph 216
- obtain approval of State supplements according to 1-AS, paragraph 220.

**REVISED ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE**  
**(Training Manual Prepared for New York) (Continued)**

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**REVISED ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE**  
**(Training Manual Prepared for New York) (Continued)**

**I. Introduction**

Revised Article 9 of the Uniform Commercial Code (UCC) deals with “secured transactions.” The UCC contains the unified and comprehensive scheme for regulation and control of the sale, creation and priority of all liens and security interests in personal property. A security interest gives the secured party the right to foreclose and apply the sale proceeds towards the secured obligation if the debtor defaults on his or her loan obligations.

The main purpose of the UCC is to provide “notice” to other creditors when particular assets are taken as collateral and are encumbered by a lien. By “perfecting” a security interest in the collateral, a creditor may obtain superior rights to the collateral vis-a-vis other creditors. However, a creditor’s failure to properly “perfect” its security interest does not invalidate the security interest altogether. It simply means that a creditor who properly perfected a security interest in the same collateral will have lien priority over the “unperfected” creditor.

The validity and extent of the creditor’s security interest is governed by the terms of the security agreement signed by the debtor. Since a creditor cannot “perfect” a security interest in property that was not pledged as security by the debtor, the creditor’s financing statement should correspond with the description of the collateral that is listed in the security agreement.

The UCC was recently revised in 1998, and those revisions became effective in New York as of July 1, 2001. The following materials will help to provide Farm Service Agency (FSA) employees with an understanding of their responsibilities and requirements under Revised Article 9 of the UCC. This training packet will outline the provisions of Revised Article 9 that are particularly important to security interests in agricultural personal property, raise potential problems that FSA employees may encounter when trying to attach and perfect security interests under Revised Article 9, and discuss the best ways to avoid these problems.

Note: The New York Department of State’s Office has implemented an online filing and online lien search system. FSA employees should visit the Department of State’s website at <http://www.dos.state.ny.us/corp/ucc.html> to view general information regarding the changes to Article 9 of the UCC, and to keep current on information concerning filing information, forms, online filing and the online lien search system.

**II. Brief Overview of the Major Revisions to Article 9 of the UCC**  
(Each of these issues will be discussed in more detail later in this outline)

A. Filing Location:

The filing location (jurisdiction) of a financing statement is now determined by the location of the debtor and **not** the location of the collateral. An individual debtor is located at the individual’s primary residence. A registered organization is located in the state in which it is organized. A non-registered organization is located at its chief executive office, or its place of business (if it has one).

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In the event that the debtor changes its location to another state, FSA has **four months** from the time the debtor moved to file a financing statement in the debtor's new location. If a financing statement is filed within the four-month period, then FSA's security interest will remain perfected continuously for a period determined according to the law of the state where the debtor moved. If FSA fails to file its financing statement within the four-month period, then there may be a gap in perfection as against purchasers of value (including buyers and secured parties) but not against donees or lien creditors. *See Official Comment #3 to Revised § 9-316.*

**B. Centralized Filing:**

New York has moved to a centralized filing system (which means that most financing statements can now be filed at one statewide location). In order to perfect a security interest in "goods," FSA must file a financing statement with the New York Department of State. The only exceptions to this rule are: (1) timber to be cut; (2) fixtures; or (3) extracted collateral filings. In order to perfect a security interest in these types of items, FSA must file its financing statement in the real property records for the county where a mortgage on the real property would be filed.

**C. Signatures:**

No signatures are required on the financing statement. This change was made to facilitate electronic filing. Please note, however, that FSA is still required to obtain authorization from the potential borrower prior to filing the financing statement.

**D. Collateral Description:**

The financing statement can now describe collateral very broadly. "All assets or personal property" is now an acceptable description. However, we recommend that FSA's description be more detailed than that, unless the debtor has, in fact, pledged ALL assets as security for the loan. If the debtor has not pledged all of its assets, then the collateral description should refer to all of the different categories of collateral pledged by the debtor (such as crops, livestock, farm equipment, accounts, general intangibles, stock certificates, etc.)

**E. The Debtor's Name:**

The debtor's full legal name must be used on the financing statement. This is a very important requirement and it is the FSA employee's responsibility to ensure the accuracy of the debtor's name.

**F. "In Lieu of" Financing Statements:**

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In cases where the proper place for filing a particular financing statement changed as a result of the revisions to the UCC, a “transition” or “in lieu of” filing was required to extend the perfection of the original financing statement. This requirement only affected financing statements for in-state or out-of-state debtors that were filed prior to July 1, 2001. By law, the deadline for filing “in lieu of” filings was **June 30, 2006**. Consequently, all pre-2001 financing statements that were not continued via an “in lieu of” filing have lapsed and must be re-perfected by filing a new financing statement with the appropriate filing office.

G. Crops:

Financing statements that name crops as collateral should now be filed with the New York Department of State (and not with the county clerk’s office). It is no longer necessary to include a real estate description in the security agreement or financing statement in order to validate a security interest in crops.

H. Agricultural Liens:

Agricultural liens are now within the scope of Revised Article 9; therefore, holders of statutory agricultural liens may perfect their lien by filing a financing statement. By definition, an agricultural lien is generally a non-possessory, statutory lien created in favor of a person or entity which provided goods, services or land to a debtor in connection with the debtor’s farming operation. **Please note that FSA’s liens are “security interests” not “agricultural liens.”**

**III. Preliminary Issues to Consider:**

A. Introduction:

It will be helpful for FSA employees to identify several key pieces of information about the potential debtor at the start of the loan making process. It is vitally important for FSA employees to identify the debtor’s correct legal name, identity and location as part of the loan-making process. This information is significant when determining the proper place to conduct a lien search and file the financing statement.

B. Determine and Verify the Debtor’s Identity:

- (1) The first piece of information the loan official must determine is the identity of the debtor. Is the debtor an individual or an organization (such as a partnership, joint venture, corporation, limited liability company, limited partnership, etc.)?
- (2) To verify the identity of the debtor, the loan official should do the



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following:

- (a) Obtain a picture identification of each person who signs the loan documents. Make a copy of the picture identification for your records. Ordinarily, a driver's license will be sufficient to verify the identity of an individual borrower, since it will provide a picture, date of birth and address. Use the date of birth to verify that the person is at least 18 years of age and has the legal capacity to contract (except in cases involving youth loans).
  
- (b) Obtain the tax identification number for the debtor. For individuals, the debtor should provide his or her Social Security number. Although you should note the Social Security number for the debtor's loan file, the number **should not** be disclosed in any of the loan documents. For organizational debtors, the loan official should obtain the debtor's tax identification number, as well as the Social Security numbers for the individual members of the organization.
  
- (c) Obtain proof of creation and existence for organizational debtors. Some organizations (such as corporations, limited partnerships and limited liability companies) are created by filing organizational documents with the New York Department of State. Other organizations (such as general partnerships) are not legally required to file their organizational documents with the Department of State.
  - (1) If the organization is required by law to file with the state of New York, then the loan official should obtain a copy of the organizational documents which were filed with the state. Generally speaking, corporations file "articles of incorporation"; limited partnerships file a "certificate of limited partnership"; and limited liability companies file "articles of organization." The loan official should also obtain a certificate of good standing that shows that the organization was created and is still in existence.
  
  - (2) If the loan applicant is a general partnership (which includes joint ventures), then they may not have a separate tax identification number. For this type of organization, the loan official should obtain a copy of the partnership agreement (or other document creating the entity) as well as a statement signed by all partners which confirms that the partnership is still in existence at the time the loan is being made. In addition, the loan official should request a

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copy of the “Assumed Name Certificate” that was filed with the clerk of the county or counties in which the partnership does business.

- (3) If the applicant was organized under the laws of another state, then the applicant must file an “Application for Authority” with the New York Department of State in order to be authorized to do business in the state of New York. Consequently, the loan official should obtain evidence that the “Application for Authority” to do business in New York was accepted by the Department of State.

C. Determine and Verify the Debtor’s Name:

In order to ensure that FSA is able to perfect its security interests, it is necessary to determine the debtor’s full name and enter it correctly on all of the loan documents. This is especially important when filling out the debtor’s name on the financing statement. This section will briefly identify these requirements.

- (1) All of the loan documents must use the debtor’s complete, official legal name. To verify this, it may be necessary to see the debtor’s birth certificate, Social Security card, driver’s license or other form of identification that states the debtor’s formal, legal name. **It is very important that the debtor’s name be spelled correctly.** If FSA misspells the debtor’s name on the financing statement, the financing statement may be invalid under New York law. The legal standard is whether a mistake renders the financing statement “seriously misleading.” Obviously, a financing statement is “seriously misleading” if the error or misspelling precludes discovery of the financing statement when using the standard search logic on the New York Department of State’s website. Even if the search would pull up the filing despite the misspelling or error, however, there is no guarantee that the court would overlook the error. At least one court has ruled that a creditor failed to perfect its security interest simply because the creditor misspelled the debtor’s name. *See Pankratz Implement Co. v. Citizens Nat’l Bank*, 281 Kan. 209, 130 P.3d 57 (2006). Other rules to keep in mind include:

- (a) Do not abbreviate words in the name, and do not substitute initials for parts of the name.
- (b) Do not include prefixes, titles, or designations such as “Mr.”, “Mrs.”, “Dr.”, or “CPA”.
- (c) Personal name suffixes such as “Jr.”, “Sr.”, and “III” **may be used**, since they are part of the debtor’s exact name and are useful in

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distinguishing the debtor from a relative.

- (2) Nicknames and trade names alone are not acceptable. If a debtor uses several variations of his or her name, or uses a “d/b/a designation,” the loan official should collect all of the names and document them in the loan file. When preparing notes and security agreements, the loan official may use the debtor’s complete legal name followed by name variations. **When preparing financing statements, however, it is important that FSA use the debtor’s exact legal name. It is not acceptable to include additional information such as trade names or other descriptive information on the financing statement.**
- (3) If the debtor is an organization, its name must be written precisely as is stated in the entity’s organizational documents. If the name includes a business ending such as “Company,” “Corporation,” “Inc.,” “Associates,” “P.C.,” “Limited Partnership,” “LLC,” etc., the loan official must include the ending as part of the organization’s name on the loan documents.

**IV. Creation and Attachment of a Security Interest under Revised Article 9**

(A) General Requirements:

Generally speaking, the revisions to Article 9 did not change the prior rules regarding the creation of a security interest. In order for a security interest to attach to the collateral, it must be enforceable against the debtor. For a security interest to be enforceable, three requirements must be met:

- (1) Value must be given (which is satisfied if FSA has made a loan);
- (2) The debtor must have rights in the collateral or the power to transfer rights in the collateral to a secured party. (FSA’s security interest can only attach to the extent of the debtor’s rights in the collateral. If the property is held jointly by a third-party, then it will be necessary for FSA to obtain the third party’s signature on the security agreement in order to obtain a security interest in the entire property.)
- (3) There is evidence that the debtor intended to create a security interest in the collateral. (The best and most common way to satisfy this requirement is by having the debtor sign a Form FSA 2028, security agreement that provides an accurate description of the collateral.)

(B) Description of the Collateral:

In order to be valid, both the security agreement and the financing statement must “reasonably identify” the collateral. Although it is now permissible to list “all

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debtor’s assets” as the description in the financing statement, the description in the security agreement must be more specific. In the security agreement, the collateral description should single out and identify the particular collateral that is being pledged in the transaction. Collateral in the security agreement is reasonably identifiable if it is described by a specific listing, quantity, category, or type of collateral defined in the UCC.

Some examples include:

- \* For equipment, the Form FSA 2028 has blank spaces for describing the quantity, kind (such as a tractor or French plow), manufacturer, size, type, condition, year of manufacture, and serial or motor number.
- \* For livestock, the Form FSA 440-4 has blank spaces for describing the quantity, kind, sex, breed, color, weight, age, brand or other identification of the debtor’s cattle. A description of the ear tags is not required in order for the security interest to be valid; however, having such information is helpful in the event the cattle are commingled with other people’s property.

(C) Real Estate Descriptions:

Although Revised Article 9 no longer requires a land description for crop filings, it is still necessary to include a land description if the security interest covers timber to be cut, as-extracted collateral or minerals, or fixtures.

**V. Perfection of a Security Interest under Revised Article 9**

(A) General Background:

One purpose of the UCC is to provide “notice” to other creditors when particular assets are taken as collateral and are encumbered by a lien. By “perfecting” a security interest in the collateral, the creditor may obtain superior rights to the collateral vis-a-vis other creditors. A security interest is perfected when it attaches (see Section IV), and when the steps required for perfection under Revised Article 9 are taken. Generally, a perfected security interest in collateral attaches to any identifiable proceeds of the collateral. In most cases, a security interest is perfected by filing a properly completed financing statement in the appropriate filing office. However, in other cases it may be necessary to actually obtain possession or control over the collateral in order to perfect the security interest.

(B) What Needs to Be Filed?

In New York, a financing statement should be filed on the UCC Financing

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Statement (Form UCC-1). It is necessary for FSA to file a new financing statement with each loan, **unless a previously-filed financing statement covering the same property is still effective.**

(C) Where Should It Be Filed?

(1) The location of the debtor determines the proper place to file a financing statement.

\* An individual debtor is located at the individual's primary residence. If there is any question as to which state the debtor considers to be his or her primary residence, then FSA should file a financing statement in both states.

\* If the debtor is a registered organization (i.e., an organization that was required to file something in order to come into existence), then its location for filing purposes is the state in which it was organized.

\* If the debtor is an unregistered organization, and has only one place of business, then that is the location for filing purposes. If the organization has more than one place of business, then the organization is located at its chief executive office.

(2) Since New York has established a centralized filing system, the vast majority of financing statements may be filed with the New York Department of State. The only types of collateral that require a local filing with the county clerk's office are fixtures, timber to be cut, and as-extracted collateral.

(D) When to File?

Since lien priority is generally established by the date of filing, it is very important that FSA file its financing statement **as soon as possible**. However, it is important to remember that a financing statement cannot be filed without authorization from the potential borrower. Moreover, the financing statement should not be filed until the FSA employee reasonably believes that the loan will be approved. The FSA employee may present a financing statement (Form UCC-1) and a request for information simultaneously by checking box 7 on the financing statement. (By doing so, the FSA employee will have an updated listing of all competing financing statements as of the time FSA's financing statement is filed).

(E) Authorization to File:

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Neither the signature of the debtor, nor of the secured party, is required to file a financing statement. However, the financing statement is not valid unless the debtor has authorized the filing. By signing the Form FSA 2028 security agreement, the debtor **automatically** authorizes FSA to file a financing statement covering the collateral described in the security agreement. Moreover, the FSA loan application (FSA Form 410-1) has now been revised to provide authorization for the filing of the financing statement prior to loan closing.

(F) Filling Out the Financing Statement:

A financing statement must contain the debtor's name, the secured party's name, and a description of the collateral. Mailing addresses for the debtor and for the secured party should also be included on the financing statement. FSA **should not** list the debtor's Social Security number in the financing statement.

- \* As discussed in section III, it is extremely important that FSA provide the debtor's exact full legal name. A nickname or trade name **is not sufficient**. The FSA employee must know the precise form and spelling of the debtor's name and must ensure that the financing statement bears the correct name. If the debtor's exact legal name is not entered correctly on the financing statement, **there is a high probability that FSA will lose its lien priority**.
- \* Do not use prefixes (Mr., Mrs., Ms.). Use the suffix box only for titles of lineage (Jr., Sr., III) and not for other suffixes or titles (M.D., Esq., etc.). Use a married woman's personal name (Mary Smith, not Mrs. John Smith). The loan official should enter an individual debtor's family name (surname) in the Last Name box; first given name in the First Name box; and all additional given names in the Middle Name box.
- \* Do not use a debtor's trade name, nickname, DBA, AKA, FKA, division name, etc., in place of or combined with the debtor's legal name. (For example, do not use "Simpson Motor Inc. d/b/a Cornelia Car City." The correct name is simply "Simpson Motor Inc."). The name of an organizational debtor must be written precisely as stated on the entity's organizational documents.
- \* If it is necessary to list additional names for the debtor (such as a nickname, trade name or alias), those other names should be added as additional debtors in item 2, or in the financing statement addendum (UCC-1Ad). If the debtor is a partnership, it is not necessary to enter the names of the partners as additional debtors (although you may need to file separate financing statements for each partner if they are pledging their own property as security for the loan).

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- \* If the debtor is an organization, the loan official should take extra care to make certain that the name of the organization is correct. The organization may have changed its name, or used its name with slight variations at different times. If there is confusion or a discrepancy, the loan official may need to obtain a certificate of good standing from the New York Department of State in order to verify the debtor's correct name.
  
- \* If the debtor is an organization, the loan official should include the type of organization, the jurisdiction of the organization, and its organizational identification number (if known) that was assigned to the entity when its organizational or charter documents were filed. If the organizational identification number is not known, New York law permits the financing statement to be filed without this information.
  
- \* If the debtor is a trust or a trustee acting with respect to property held in trust, the financing statement must provide the name specified for the trust in its organic documents or, if no name is specified, provide the name of the person who created the trust (settlor) and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors.

**VI. Special Requirements for Fixtures and Other Types of Collateral**

(A) Filing Requirements for Fixtures, As-Extracted Collateral, or Timber to be Cut:

If the financing statement covers fixtures, as-extracted collateral, or timber to be cut, then FSA must file the financing statement in the real property records for the county where a mortgage on the real property would be filed. A "fixture" is a piece of personal property which has been affixed to real property in such a way that it loses its identity as distinct personal property, and is instead treated as being part of the real property. The purpose of the fixture filing is to provide FSA with priority over an interest arising under real property law. In order to satisfy all of the specific filing requirements for this type of collateral, the loan official must fill out items 13, 14, and/or 15 of the Addendum to the UCC-1 and attach it to the financing statement. The information required for a fixture filing includes:

- (1) A statement that the financing statement covers collateral that is a fixture;
  
- (2) A description of the real estate where the item is affixed that is sufficient to give constructive notice to title searchers of the real property where the fixture is located. (A description that refers either to a previously recorded deed or mortgage describing the land or a reference to a tax map lot and block should be sufficient for these purposes).



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- (3) The name of the record owner of the property if the record owner and debtor are not the same person.

Since it can be difficult to determine whether a particular item will be classified as a fixture, OGC recommends that FSA file both a fixture filing as well as a financing statement with the New York Department of State. Filing the financing statement with the New York Department of State assures the perfection of FSA's security interest in the property prior to its affixation to the real estate. It also protects FSA in the event that the property is later determined to be personal property rather than a fixture.

**(B) Special Requirements for Motor Vehicles:**

Perfection of security interests in motor vehicles is governed by the law of the state that issued the certificate of title. Under New York law, a security interest in a motor vehicle is perfected by delivering the following documentation to the New York State Department of Motor Vehicles: (1) the existing certificate of title (if any), (2) an application for a certificate of title containing the name and address of the lienholder, and (3) the required fee. *See McKinney's Vehicle and Traffic Law* § 2118(b)(1)(A). Although New York law does not require a creditor to file a financing statement in order to perfect its security interest in a motor vehicle, FSA's regulations require the loan official to obtain both a security agreement and a financing statement when obtaining a security interest in a motor vehicle. *See 7 C.F.R. § 1941.60(a).*

**(C) Lien Perfection on a Vessel:**

If the boat is registered with the New York State Department of Motor Vehicles, then FSA would follow the same procedure described above in Paragraph B in order to perfect a security interest in the vessel.

If the boat is registered with the U.S. Coast Guard, then the loan official must follow the directions for filing Form CG-5542 with the Coast Guard. Essentially, the loan official needs to check the box for a "preferred mortgage" and fill out all of the other information required by the form. In addition, FSA must attach a copy of the promissory note and security agreement evidencing FSA's security interest with regard to the vessel.

**(D) Special Requirements for Deposit Accounts:**

Supervised bank accounts and some certificates of deposit used by FSA are "deposit accounts" as defined by the Revised Article 9. Security interests in deposit accounts may only be perfected by control. For FSA and other non-depository institution creditors, control occurs either when:



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- (1) The depository institution has agreed with the secured party that it will follow directions from the secured party without further consent from the debtor, or
- (2) The secured party becomes the depository institution's customer.

In order to satisfy these requirements, FSA must either get a subordination from, or a control agreement with, the depository institution that covers the particular supervised bank account. An example of the type of control agreement that FSA may use for these purposes is RD's Deposit Agreement form (Form RD 402-1)

(E) Special Requirements for Stocks, Bonds, and Other Investment Property:

FSA is permitted to perfect a security interest in stocks, bonds and other investment property by filing a UCC-1 financing statement with the New York Department of State. *See McKinney's Uniform Commercial Code § 9-312(a)*. In order to insure absolute priority over all other creditors, however, FSA would need to take "control" or "delivery" of the investment property by actually taking possession of the stock or bond certificates. Stated another way, a secured party who perfects by filing runs the risk of losing priority vis-a-vis another creditor who perfected its security interest in the same collateral by taking possession of the actual stock or bond certificates.

Obviously, if the stocks/bonds are an essential component of the security being pledged for a loan, then FSA may want to take the extra step and obtain possession and control over the stock/bond certificates. Ultimately, it is up to FSA to decide whether the risk of priority loss is acceptable in light of the increased costs that would be incurred for storing the stock and/or bond certificates.

**VII. Filing Amendments to the Financing Statement**

In order to change or add information to a financing statement that was previously filed on the UCC-1 form, FSA official should file the UCC-3 Amendment form. This amendment form may be used to: (1) add or delete collateral, (2) add or delete debtors and secured parties, or (3) amend the information previously contained in the financing statement. **It is especially important for FSA to file a UCC-3 Amendment whenever the debtor changes his or her legal name.** Obviously, an amendment would be necessary if the debtor changed his or her name due to marriage or divorce. It would also be necessary if an organization changes its legal name. As discussed in section III, it is extremely important that FSA amend its financing statement as soon as it learns about the name change. A failure to do so may result in the invalidation of FSA's financing statement.

**VIII. Remaining Perfected**

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(A) General Information:

- (1) A financing statement is generally effective for a period of **five years** after the date of filing. One exception is that an initial financing statement filed in connection with a public-financed transaction or manufactured home is generally effective for a period of 30 years after the date of filing.
- (2) When the period of effectiveness of a financing statement expires, the financing statement lapses unless a continuation statement has been filed. A financing statement may be continued for an additional five years by filing a continuation statement with the filing office within the six month period prior to the expiration of the period of effectiveness. If continued properly, the financing statement will remain in effect for an additional five-year period beginning with the day the financing statement would have lapsed in the absence of filing.
- (3) The continuation statement is ordinarily filed on Form UCC-3. The continuation statement should identify the original financing statement by date and file number, and state that the original financing statement is continued.

(B) Effect of Borrower's Bankruptcy:

Under Former Article 9, the lapse of a financing statement was tolled if the borrower entered bankruptcy. **However, this tolling period was deleted when the UCC was revised.** The rule now is that the bankruptcy filing **does not** prevent a creditor's security interest from lapsing during the course of the bankruptcy case. Consequently, FSA must make sure that the UCC financing statement does not lapse by filing a continuation statement when necessary, even if the borrower is in bankruptcy. FSA is permitted to do this without obtaining relief from the automatic stay. *See* 11 U.S.C. § 362(b)(3).

(C) Loss of Perfection:

If the financing statement lapses, it ceases to be effective and any security that was perfected becomes unperfected. As a result, FSA's lien priority may be lost due to the existence of intervening creditors. The lapse in perfection does not, however, invalidate FSA's rights against the debtor. In the event that a financing statement does lapse and FSA wishes to re-perfect its security interest in the same collateral, FSA must file a new financing statement. FSA cannot "revive" a financing statement once it has lapsed.

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**IX. Lien Priority**

(A) General Rules:

Revised Article 9 sets forth the general rules governing priority among conflicting interests of secured parties and other third parties. More than one secured party or agricultural lien holder may “perfect” its interest in the same collateral. Generally speaking, lien priority is determined on a “first to file or perfect” basis. As explained below, however, there are some exceptions to this rule.

Example: On February 1, FSA files a financing statement covering an individual debtor’s tractor. On March 1, a private lender files a financing statement covering the same tractor. On April 1, the private lender makes a loan to the debtor and obtains a security interest in the tractor. On May 1, FSA makes its loan to the debtor and obtains a security interest in the tractor. In this example, **FSA has priority since it was the first to file a financing statement**, even though the private lender’s loan was made earlier and was perfected when it was made.

(B) Purchase Money Security Interests

A security interest is a “purchase money security interest” (“PMSI”) to the extent that it is either: (1) taken or retained by the seller of collateral to secure all or a part of its price, or (2) taken by a creditor who loaned the debtor money to purchase particular property. A creditor who has a properly perfected PMSI can assert priority over prior creditors (such as a creditor holding a security interest in after-acquired property) by complying with the provisions of Revised Article 9. In a non-consumer goods transaction, the secured party claiming the PMSI has the burden of proving that its interest qualifies as a PMSI.

(1) Creation of a PMSI in Farm Equipment, Machinery and Other Personal Property:

A PMSI in goods **other than livestock and inventory** will be afforded priority over conflicting security interests in the same goods if the PMSI is perfected when the debtor receives possession of the collateral or within twenty (20) days thereafter. In other words, FSA must perfect its security interest in farm equipment or machinery by filing a financing statement describing the equipment/machinery as collateral with the New York Department of State within the 20 day period in order to obtain a PMSI.

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(2) Creation of a PMSI in Livestock:

Under New York law, a PMSI in livestock that are farm products will have priority over a conflicting security interest in such livestock (and its identifiable proceeds and identifiable products in their unmanufactured states) if the following requirements are met:

- (a) The PMSI is perfected when the debtor receives possession of the livestock;
- (b) The secured party seeking to claim the PMSI in livestock sends an authenticated notification to the holder of the conflicting security interest;
- (c) The holder of the conflicting security interest receives the notification within **six (6) months** before the debtor receives possession of the livestock; and
- (d) The notification states that the person sending the notification has or expects to acquire a PMSI in livestock of the debtor and describes the livestock. *See McKinney's Uniform Commercial Code* § 9-324(d).

Compliance with all four requirements is necessary in order to establish purchase-money security interest priority over a conflicting security interest both in livestock and in their identifiable proceeds and products. *See Zink v. Vanmiddlesworth*, 300 B.R. 394, 401 (N.D.N.Y. 2003). Consequently, if FSA wants to obtain a PMSI in livestock, FSA must comply with the written notice requirements and the six month time period stated above, as well as file a financing statement describing the livestock as collateral with the New York Department of State prior to the debtor receiving possession of the livestock.

(3) Creation of a PMSI in Inventory:

A PMSI in inventory can achieve priority over an earlier-filed security interest in the same collateral; however, it must be perfected when the debtor receives possession of the inventory. The 20-day grace period allowed for perfection of other types of PMSI's does not apply to PMSI's in inventory. In order to achieve priority, the PMSI holder must give notification to the holder of a conflicting security interest who filed a financing statement covering the same item or type of inventory before the PMSI holder filed its financing statement. The holder of the conflicting security interest must receive notification within five years before the debtor receives possession of the purchase-money collateral.

**REVISED ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE**  
**(Training Manual Prepared for New York) (Continued)**

(4) Conflicting PMSI's:

If collateral is subject to multiple PMSI's, the PMSI created to secure the "price" of the collateral will have priority over a PMSI taken by a creditor who loaned the debtor money to purchase particular property.

(5) PMSI Status Is Not Lost:

Revised Article 9 expressly provides that a security interest will not lose its "purchase money" status if: (1) the obligation is also secured by non-purchase money collateral; and (2) the purchase money collateral also secures non-purchase money obligations; or (3) the PMSI is renewed, refinanced, consolidated or restructured.

(6) Can a Creditor Obtain a PMSI by Refinancing the Loan?

In order to obtain a PMSI, the creditor must provide the debtor with a means to obtain "new rights" in the property. Consequently, if the debtor already owns the property, FSA cannot obtain a PMSI in refinanced equipment.

(C) Buyer in the Ordinary Course of Business:

Revised Article 9 provides that a buyer of goods in the ordinary course of business takes those goods free of any security interest created by the seller, provided that the buyer actually receives delivery of the goods. What this means is that even if FSA has a perfected security interest in certain goods, the buyer would prevail over FSA if the goods were purchased and received by the debtor in the ordinary course of business. Although in this case FSA may not be able to recover the collateral, FSA would have a claim against the proceeds from the sale.

(D) Agricultural Liens:

An agricultural lien is an interest (other than a security interest) in farm products that meets certain specified conditions. Generally, an agricultural lien is created by statute in favor of a person or entity which provided goods, services or land to a debtor in connection with the debtor's farming operation. It is not entirely clear whether the holder of an agricultural lien also has a lien on the proceeds from the collateral. Although the statute creating the lien governs when the lien is effective, Revised Article 9 still governs the perfection and priority of the lien. An agricultural lien is perfected if it has become effective under the statute that created it **and** if the perfection requirements of Revised Article 9 (which include filing a financing statement/notice of claim of lien) have been satisfied.

**REVISED ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE****(Training Manual Prepared for New York) (Continued)**

Usually, if a perfected security interest and a perfected agricultural lien are in conflict, priority is given to whichever creditor filed first. In some cases, however, a perfected agricultural lien will have priority over a conflicting pre-existing perfected security interest if the statute that created the agricultural lien “so provides.” Obviously, this means that the particular statute creating the lien would need to be examined to determine whether it has an “express priority rule.” In New York, there are only three statutes that qualify as an “agricultural lien.” At last check, it does not appear to us that any of those statutes grant “super priority” to the agricultural lien holder. This may change in the future, however, if new statutes are enacted or old statutes are amended to include an “express priority rule.” Consequently, FSA should be aware that agricultural liens exist, and that there is a possibility that the agricultural lien could take priority over FSA’s lien if the statute creating the agricultural lien “so provides.”

**(E) Possessory Liens:**

A possessory lien is an interest (other than a security interest or agricultural lien) that secures the payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person’s business, which is created by statute, and whose effectiveness depends upon the person’s possession of the goods. In many cases, it will be difficult for FSA to be aware of possessory liens, since there is no requirement that possessory lienholders file financing statements to perfect their liens. FSA just needs to be aware that these types of liens exist, and that **FSA’s security interest will be junior to an existing possessory lien.**

**(F) Production-Money Security Interest in Crops:**

Under the old version of the UCC, a creditor supplying credit for the purchase of crop inputs (such as seed, fertilizer and chemicals) was permitted to obtain a PMSI and super-priority over a prior perfected security creditor. When the UCC was revised, however, this provision was intentionally omitted. Some states, such as Maine, have adopted a “model provision” that creates super-priority for this type of security interest. **New York has not adopted this provision.** As a result, neither FSA nor any other creditor in New York that advances funds to produce a crop can obtain super-priority over a prior perfected secured creditor.

**(G) Priority in Proceeds:**

Upon the sale, exchange or other disposition of collateral, FSA’s security interest continues in any identifiable proceeds.

**(H) Priority in Deposit Accounts:**

If competing security interests in deposit accounts are each perfected by control,



**REVISED ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE****(Training Manual Prepared for New York) (Continued)**

lien priority is determined according to the time that control over the account was obtained. Being first in time does not, however, allow a secured party to maintain priority over a security interest subsequently granted to the bank itself. The bank's security interest in the debtor's account is trumped only by a secured party who obtains control by becoming the bank's customer with respect to that account.

(I) Subordination Agreements:

Secured creditors may agree on their relative priorities by signing a subordination agreement. Once signed, the subordination agreement (and not the UCC) will establish which of the parties that signed the agreement has priority in the named collateral. **It is not necessary to file the subordination agreement with the New York Department of State.**

**X. The Special Case of Commingled Dairy or Cattle Herds**

FSA's secured lien on existing and after-acquired livestock may be vulnerable if other cows are added to the borrower's herd. For example, if the borrower buys additional cows on credit, or leases cows from leasing company, then FSA's lien may be subordinate to a lien on cows or offspring which are collateral under a perfected PMSI held by another creditor who sold the cows to the borrower. Furthermore, FSA's lien would not attach to cows which are leased to the borrower but owned by the lessor. This section will discuss some of these issues in more detail so that FSA can take steps to avoid litigation in this area.

(A) Lease vs. Security Interest:

In a "lease" situation, the debtor does not hold title to the cattle, but merely holds a possessory interest in the cattle. As a result, a creditor that has a perfected security interest in after-acquired cattle **would not have a security interest in cattle leased to the debtor, since the cattle are not owned by the debtor.** In other words, a creditor's security interest cannot attach to cattle owned by somebody else, even if the cattle are used by the debtor.

The mere fact that the creditor refers to its agreement as a "lease" does not necessarily make it so, however. If the "lease" actually meets the UCC definition of a security interest, then the creditor would have to perfect its PMSI in the cattle in order to have priority over a prior perfected security interest in after-acquired cattle.

It is often very difficult to differentiate between a "lease" and a "security interest." Whether a lease is intended as security is determined by the facts of the case. By the terms of § 1-201(37) of the UCC, the intention of the parties to the agreement is the key factor in determining whether a lease creates a security

**REVISED ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE****(Training Manual Prepared for New York) (Continued)**

interest. Although the existence of an “option to purchase” does not, in and of itself, make a lease intended for security, a provision that provides the lessee the option to become the owner of the property for no additional or nominal consideration is normally sufficient to bring the lease within the purview of the UCC.

In most cases, it will not be possible to know whether a court would consider a “lease” a security interest without litigating the issue. Because these cases are so fact-specific and difficult to argue, we normally recommend accepting a cattle dealer’s claim that the cattle are only being leased to the debtor.

**(B) Bailments:**

In some cases, the debtor may claim that certain cows belong to another party and are just being kept on the debtor’s farm property pursuant to a bailment. Essentially, a bailment is the act of placing property in the custody and control of another, in which the holder (bailee) is responsible for the safekeeping and return of the property. In cases like this, FSA should require the debtor to provide a copy of the written bailment agreement.

**(C) Practical Tips:**

- (1) If possible, FSA should not make a loan to a borrower if the herd is commingled at the time of the loan application. In these cases, it is very difficult to prove the priority and extent of FSA’s lien. Moreover, there may be potential disputes as to who is entitled to milk check assignments or creamery payments, because the milk cannot be identified effectively.
- (2) After a loan is made, FSA should keep a record of the cows and offspring that are liened to FSA. Make any changes to the working copy of the security agreement – not to the original security agreement that was executed by the borrower. If available, identify the livestock liened to FSA by their ear tag numbers.
- (3) Obtain copies of pertinent documents such as leases, financing statements and PMSI interests claimed by other creditors, written bailment agreements (if such exist), bills for feed and expenses. Obtain records of the borrower’s purchase or lease of additional cows, as well as records for the sale of the borrower’s livestock.
- (4) If FSA made any initial or subsequent loans that were used by the borrower to purchase livestock, FSA should immediately take steps to perfect a PMSI interest in the livestock. By doing so, FSA can protect its lien against other creditors, including those who may also claim a PMSI in the same livestock. To document this, FSA should maintain a copy of the



**REVISED ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE**

**(Training Manual Prepared for New York) (Continued)**

receipt showing when the cows were purchased. FSA must also make sure that it complies with the “notice” requirements explained in Section IX.(B)(2) above.

- (5) To keep track of the situation, FSA may want to create tables to identify cows, who has a lien or interest in them, what their interest is (for example, PMSI of seller, lease, bailment, etc.), and their current status (have they been sold or transferred?). Also, FSA should note when cows are sold or culled so that it can keep track of what happened to the proceeds from the sale. If the proceeds were not remitted to FSA, were the proceeds validly released to the borrower for farm and living expenses pursuant to the regulations?
- (6) If cows that serve as security for FSA’s loans are sold to third parties without its knowledge or consent and the proceeds are not provided to FSA, the local office should discuss with FSA’s State Office whether it would be appropriate to issue a demand letter or pursue a third-party conversion action against the purchaser.

**XI. Default and Enforcement**

(A) Default:

Revised Article 9 does not define the term “default.” Instead, the definition is left up to the agreement of the parties. For FSA’s purposes, events of default are defined in FSA’s promissory notes, security agreements and mortgages.

(B) Notice to Debtor:

If FSA determines that an event of default has occurred, the loan official should follow Handbook 4-FLP and the New York Handbook.

(C) Secured Party’s Options After Default:

After a debtor defaults, FSA may exercise the remedies available to it under Revised Article 9. These remedies are not exclusive, and FSA may use any remedy without losing its right to resort to other remedies. FSA’s options are as follows:

- (1) FSA may, without judicial process, take possession of or control over the collateral – **but only if doing so will not result in a breach of the peace.**
- (2) Once FSA obtains possession of the collateral, it may, subject to certain debtor and third-party protections, retain the property or sell the collateral and apply the proceeds to the satisfaction of the secured debt. (Please note

**REVISED ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE**

**(Training Manual Prepared for New York) (Continued)**

that FSA’s option to retain the collateral in satisfaction of the secured debt is limited under FSA Instruction 1955-A, Section 1955.20).

- (3) Without removing the collateral, FSA may render equipment unusable and dispose of collateral on a debtor’s premises – **but only if doing so is “commercially reasonable.”**
- (4) FSA may require the debtor to assemble the collateral and make it available to FSA at a place to be designated by FSA which is reasonably convenient to both parties.
- (5) If the debtor will not turn over possession peacefully, FSA may refer the matter to OGC for judicial foreclosure.

(D) What Constitutes a “Breach of the Peace”:

Revised Article 9 does not define what constitutes a “breach of the peace.” However, caselaw suggests that the following actions would constitute a “breach of the peace”:

- (1) If the debtor is present and objects to the repossession;
- (2) If it is necessary to remove the collateral from a restricted area;
- (3) If a confrontation between the creditor and debtor occurs when a peace officer is present during the repossession. This is true even if the peace officer is present at the secured party’s request to prevent any potential violence, because the peace officer’s presence may “chill” the debtor’s right to object to the repossession.
- (4) If the secured party engages in any act of intimidation, violence, actual or potential force, fraud or trickery, abusive language, or breaking and entering to gain possession.

When entering the debtor’s property and taking possession of collateral, FSA employees should not proceed with repossession when to do so could be construed by a court as a “breach of the peace.” If there is any question whether a planned repossession would constitute a “breach of the peace,” we recommend that FSA postpone the repossession. If a repossession constitutes a “breach of the peace,” the FSA employee may be held personally liable for wrongful repossession.

(E) Special Enforcement Rules for Fixtures:

FSA has the option of either exercising its UCC rights and remedies against

**REVISED ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE****(Training Manual Prepared for New York) (Continued)**

fixtures, or opting out and being governed by the applicable real estate law. After default, FSA may remove the fixture from the property, so long as the fixture can be removed without a “breach of the peace,” and FSA has priority over the competing interest of any owner or other encumbrancer of the real property. As a general rule, FSA’s policy is to liquidate the fixtures (such as dairy milking equipment) with the liquidation of the real estate. For more guidance, review FSA Handbook 3-FLP and New York Handbook 3-FLP regarding these issues.

**(F) Disposition of Collateral:**

After default and repossession, FSA may sell or otherwise dispose of the collateral. FSA may dispose of the collateral by “public sale” or “private sale” so long as the sale is “commercially reasonable.”

**(G) Notice of Sale or Disposition:**

Unless the collateral is perishable, threatens to decline speedily in value, or is of the type customarily sold on a recognized market, FSA must give notice regarding the proposed disposition of collateral. To be sufficient, the notice should contain:

- (1) The name of the debtor(s);
- (2) The name, address and telephone number of FSA;
- (3) A description of the collateral that is being disposed;
- (4) The method of intended disposition (i.e., whether the sale is public or private);
- (5) A statement that the debtor is entitled to an accounting of unpaid indebtedness, and the cost charged for providing the accounting;
- (6) The time and place of a public disposition, or the time after which any other disposition is to be made.

FSA is not required to give a “public notice” of the sale. The notice required is only a notice to the debtor and other interested parties that FSA intends to sell the property via public or private sale. The UCC requires that FSA send the notice of disposition to: (1) the debtor(s), (2) any secondary obligor of the debtor, and (3) any other person claiming an interest in the collateral. Obviously, this means that FSA needs to conduct a search of the proper UCC recording office prior to the sale in order to obtain a list of other interested creditors. To be safe, the notice should be sent at least **10 days** prior to the date of the intended sale or disposition.

**(H) Effect of Non-Compliance:**

Revised Article 9 provides that the secured party is generally liable to the debtor for any loss caused by the secured party’s failure to comply with the enforcement provisions of Revised Article 9.

**REVISED ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE**  
**(Training Manual Prepared for New York) (Continued)**

**XII. UCC Terminations**

Revised Article 9 places certain requirements upon a secured party to file a termination statement. The requirements differ depending upon whether the financing statement covers “consumer goods” or other types of collateral. Since FSA deals almost exclusively with non-consumer goods, the requirements of NY UCC § 9-513(c) apply to FSA.

Essentially, FSA is required to either file a termination statement or send a termination statement to the debtor if: (1) FSA has received an “authenticated demand” from the debtor; (2) there is no longer any obligation secured by the collateral covered by the financing statement; and (3) FSA has made no further commitment to make an advance, incur an obligation or otherwise give new value to the debtor. If those requirements are met, then FSA is required to comply with the debtor’s request **within 20 days of receiving the demand from the debtor**. If FSA fails to comply with the termination requirement within the 20-day period, then Revised Article 9 permits another creditor to file a termination statement on behalf of the debtor, if the debtor authorized the filing, and the termination statement indicates that the debtor authorized it to be filed. *See* NY UCC § 9-509(d)(2).

In cases where FSA decides to refinance another lender’s debt, FSA may need to invoke its right to file a termination statement with regard to the other lender’s financing statement. Before doing so, however, FSA must verify with the other lender that the lender has been paid in full and that the debtor sent the other lender an “authenticated demand” that the termination statement be filed. Unless the debtor actually requested that the termination statement be filed, FSA may not rely upon NY UCC § 9-509(d)(2) as authorization for filing a termination statement with regard to the other lender’s financing statement. By failing to verify that all of the statutory requirements have been met, FSA could run the risk of incurring sanctions (such as a \$500 penalty) for filing an unauthorized amendment to the lender’s financing statement. *See* NY UCC § 9-625(e).

7

**EMERGENCY LOAN PROGRAM – 2022 AVERAGE PRICES**

There are many commodities for which New York State NASS does not keep statistics and issue reports. For those commodities, loan officials will first consult the FSA National Crop Table Report in Handbook 2-CP (Exhibit 10.5 explains the crop codes used), then with local Cooperative Extension Agents, Commodity Brokers, Local Markets or other reliable sources to establish prices for the year before the disaster. Once the information is compiled, loan officials must document in the comments or footnotes sections of the FBP of the applicant a summary of the documentation and the calculations used to establish the prices and yields being used. This documentation to support the prices established must be filed in the office 3-FLP operational file and a copy of the documentation sent to the STO FLP Staff for tracking purposes.

There are resources available on the New York State Share Point Site at <https://fsa.sc.egov.usda.gov/states/newyork/default.aspx> under NY Amendments/Farm Loans/3-FLP to assist with weights, measures and conversion factors.

The following list of average prices is to be used in the calculation of the gross dollar value of production losses for emergency loans in designated disaster areas with an incidence period occurring as follows:

<u>Disaster Incidence Period</u>	<u>Calendar Year Price</u>
1/ 1/ 2023 – 12/ 31/ 2023	2022

Crop	UNIT	2022
<b>Field Crops</b>		
Corn for Grain	Bushel	\$ 6.62
Corn for Silage	Ton	\$ 57.87
High Moisture Corn (refer to conversion information on NYS Share Point)		
Wheat	Bushel	\$ 7.90
Oats	Bushel	\$ 5.48
Barley	Bushel	\$ 5.90
Dry Beans	CWT	\$ 39.91
Soybeans	Bushel	\$ 14.40
Alfalfa Hay (Dry)	Ton	\$ 243.00
All Hay (Dry) (alfalfa grass mixtures)	Ton	\$ 182.00
Other Hay (Dry) (all hay except alfalfa)	Ton	\$ 182.00
Alfalfa Haylage	Ton	\$ 70.00
All Haylage (alfalfa grass mixtures)	Ton	\$ 70.00
Other Haylage (all haylage except alfalfa)	Ton	\$ 55.00
<b>Fruits</b>		
Apples - Fresh Market	Cents/lb.	\$ 0.31
- Processing	Dollars per Ton	\$ 316.00
- Juice	Dollars per Ton	\$ 220.00
Peaches	Dollars per Ton	\$ 1,800.00



**EMERGENCY LOAN PROGRAM – 2022 AVERAGE PRICES  
(Continued)**

Pears	Dollars per Ton	\$ 550.00
Tart Cherries	Cents/lb.	\$ 0.47
Sweet Cherries	Dollars per Ton	\$ 4,070.00
Blueberries	Dollars per lb.	\$ 2.45
Strawberries	Dollars per CWT	\$ 204.00

Vegetables for Processing

Snap Beans	Ton	\$ 225.00
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Fresh Market Vegetables

Cauliflower - Fall Fresh & Processed	CWT.	\$ 50.10
Sweet Corn	CWT.	\$ 32.20
Snap Beans - Summer	CWT.	\$ 178.00
Cabbage - Statewide	CWT.	\$ 17.40
Tomatoes - Summer	CWT.	\$ 105.00
Cucumbers - Summer	CWT.	\$ 23.80
Onions (Storage) - Summer	CWT.	\$ 32.20
Potatoes	CWT.	\$ 12.20
Squash	CWT.	\$ 31.70
Pumpkin	CWT.	\$ 21.10

Grapes by Variety

Concord	Ton	\$ 360.00
Niagra	Ton	\$ 373.00
Catawba	Ton	\$ 363.00
Delaware	Ton	\$ 442.00
Elvira	Ton	\$ 310.00
Aurora	Ton	\$ 412.00
Baco Noir	Ton	\$ 635.00
Cayuga White	Ton	\$ 607.00
Dechaunac	Ton	\$ 485.00
Rougeon	Ton	\$ 458.00
Seyval	Ton	\$ 650.00
Vitis Vinifers, All	Ton	\$ 850.00
Processing - Juice and All Processing	Ton	\$ 380.00

SPECIALITY

Maple Syrup	Per Gallon	\$ 37.50
Honey	Per lb.	\$ 3.61

**EMERGENCY LOAN PROGRAM – 2022 AVERAGE PRICES  
(Continued)**

1/ Not Published at the time this amendment was issued.

2/ New York Livestock Prices were discontinued due to program changes.

**NOTE: For prices not published or discontinued refer to the first paragraph of this Exhibit for guidance on establishing prices.**

ECOA Compliance Guide

Submission Requirements

The following table is being provided as an ECOA compliance guide that lists the authorized documents for submission based on applicant/party types. This list is not an all-inclusive processing list. Agency officials must still comply with other applicable regulations for eligibility and feasibility determinations.

Authorized Documents for Submission	Applicant(s)	Cosigner(s)	Non-Applicant Spouse Covering Family Living Expenses Only <sup>1</sup>	Non-Applicant(s) Signing Security Instruments Only
Application (FSA-2001, * * * or FSA-2301)	Y	N	N	N
Cosigner Application and Agreement (FSA-2007)	N	Y	N	N
Credit Report	Y	Y	N	N
Authorization to Release Information (FSA) * * *	Y	Y	N	N
Verification of Debts	Y	Y	N	N
Verification of Income	Y	Y	N	N
Promissory Note (FSA-2026)	Y	Y	N	N
Security Instruments (FSA-2028, FSA-2040, and/or other security documents if applicable)	Y/N <sup>2</sup>	Y/N <sup>2</sup>	N	Y
Community Property State or Other State-Specific Requirements per OGC (if applicable) <sup>3</sup>	Y	Y	Y	Y
Authorization to File a Financing Statement and Related Documents (CCC-10)	N	Y/N <sup>2</sup>	N	Y

<sup>1/</sup> If the non-applicant spouse has off farm income that pays only family living expenses and does not contribute to the farm operation, then neither the off farm income nor the family living expenses will be included in FBP. If family living expenses/owner withdrawals do not appear reasonable, the loan official must provide an explanation in FBP as justification.

<sup>2/</sup> Yes, if applicant/co-signer has a security interest in the collateral pledged for the loan. No, if applicant/co-signer does not have a security interest in the collateral pledged for the loan.

<sup>3/</sup> States must consult its local OGC for State-specific guidance. For example, a joint marital asset State may require both spouses to sign all security instruments.



**ECOA Compliance Guide (Continued)**

**Note:** Generally, FSA may not require the signature of another person unless FSA has first determined the applicant alone does not qualify for the credit requested. ECOA regulations state that a creditor may not request information about an applicant's spouse or former spouse except under the following circumstances:

- the non-applicant spouse will be a joint obligor on the account; and/or
- the non-applicant spouse will be contractually liable on the account; and/or
- the applicant is relying on the spouse's income, at least in part, as a source of repayment; and/or
- the applicant resides in a community property state, or the property upon which the applicant is relying as a basis for repayment of the credit requested is located in such a state; and/or
- the applicant is relying on alimony, child support, or separate maintenance income as a basis for obtaining the credit.

Improperly requiring an applicant who is individually creditworthy to obtain the signature of a spouse or other person to be considered for credit approval is an ECOA violation.

ECOA:

- permits a spouse or non-applicant to sign security instruments where the collateral pledged for the loan is at least partially owned by the spouse or non-applicant, as is often the case in community property States
- allows creditors to require a co-borrower or guarantor where the applicant does not qualify for the credit alone

**Note:** Creditors cannot require that the co-borrower or guarantor be the applicant's spouse.

- permits spouses or non-applicants to sign security instruments if necessary to perfect FSA's security interest.

Example of Approved Agency Authorization Letters

£ ABC Title Insurance

Date

United State Department of Agriculture  
Farm Service Agency  
441 S. Salina Street  
Syracuse, NY 13202

Attention: James Brown

RE: Authorization of Michael Jackson, Esq.  
of AC/DC Law Offices to represent ABC  
Title Insurance Company (the "Company")

Borrower. Paris Hilton  
Lender: USDA, FSA  
Premises 12345 Therapy Lane  
Cicero, New York 10000

Dear Mr. Brown:

Attorney Michael Jackson is an Examining Counsel for the Company. In that capacity, he is authorized to issue the title commitment, attend closing, collect curatives, collect title premium, collect recording/filing fees, and handle funds (for purposes of paying off prior mortgages and curing title objections), mark up the title commitment, and bind coverage, all on behalf of the Company. The Examining Counsel's representations at closing will bind the Company, and the final title policy will be issued in the form that the Examining Counsel represents at the closing.

Payment of title premium to the Examining Counsel shall constitute payment to the Company pursuant to Section 1(H) of the TIRSA Rate Manual.

If you have any questions, please do not hesitate to call.

Very truly yours,  
ABC Title Insurance Company

Elizabeth M. Taylor  
Vice President & District Counsel

Cc: Jerry Steinfield , Esq.

ABC Title Insurance  
201 East Jefferson Street, 4<sup>th</sup> Floor, Anywhere, NY 13202 (315) 474-0000

## INSTRUCTIONS FOR SEARCHING, FILING AND REQUESTING COPIES OF FILED UCC'S FOR FARM LOAN PROGRAMS

Revisions to Article 9 of Uniform Commercial Code (UCC) have altered how States conduct UCC lien searches and file UCC documents. FSA must comply with each State's implementation of Article 9 to protect the financial interest of the Federal Government. Revised Article 9 eliminated the need for signatures and allowed for signature authentication, which facilitates electronic searching and filing. New York State adopted the revisions to Article 9 effective July 1, 2001 - the New York State UCC rules, laws, forms, search link, etc. can be found on the NYS Dept of State website at [www.dos.ny.gov/corps/bus\\_entity\\_search.html](http://www.dos.ny.gov/corps/bus_entity_search.html)

The NY State Office has entered into a Blanket Purchase Agreement (BPA) with CT Lien Solutions to process UCC-1's and UCC-3's (continuations and terminations) and obtain copies of filed UCCs as needed. In using this third-party processor to file UCC forms the cost is \$44.17. The charge as of January 1, 2021, to FSA Farm Loan Program (FLP) Borrowers will be **\$44.17** for the NYS Dept of State electronic filing. Although the NYS Dept. of State website can be utilized to perform searches free of charge, not all filed UCCs can be viewed; therefore copies of filed UCCs can also be obtained through CT Lien Solutions as needed – Cost is **\$27.98 for each variation of the name searched** (it is important to understand the search logic and search broadly) and then **\$3.00/page** for the copy of each page requested. Self filing fee and Alert Messages is **\$0.00**. All credit teams should check to be sure they are set up to receive email messages and not mailed paper notices for an extra charge.

The BPA with CT Lien Solutions can also be utilized for obtaining searches and performing filings of UCCs in states other than New York if needed. Loan officials should first see if the ability to complete searches in other states is available for no charge on the particular state's Department of State website and understand the search logic that is used on that state's website (i.e. particular name to search/options/use of wildcards/etc.). Need to search broadly to obtain name variations and then may also need to request copies of filed UCCs to see particular filings – discussed further in this exhibit for New York filings. If there is a charge for the UCC search and copies of filings, then CT Lien Solutions can be used to order the search (again understand the search logic so that the correct search results can be obtained and limit the cost to the applicant). For loan making, the charge of the search will be paid for the by applicant as outlined in 3-FLP Para 373.

This exhibit:

- Explains the process for filing Financing Statements, Amendments, Continuations and Releases.
- Explains the process for requesting copies of filed UCCs; \$27.98/variation of name searched, \$3.00/page
- Provides a list of people designated to order services under the BPA.
- Applies to Farm Loan Programs only
- Provides a log to be used to track UCC's ordered through CT Lien Solutions IlienOnline (Exhibit A).

### **FLM Action**

FLMs will review all UCC-1s for all borrowers in their service areas to determine if the collateral description on the UCC-1 is the current in the UCC Guide and what is automatically populated in the UCC by iLien.

For those borrowers who are members of a Cooperative, where the members have equity that will be paid to them upon leaving the Cooperative (ie. a dairy cooperative) that do not have the current collateral description in their UCC-1, or amendments there to:

A UCC-3 Amendment must be filed no later than June 30, 2021 to change the collateral description to the current version.

For those borrowers who are not members of cooperatives:

A UCC-3 Amendment will be filed to change the collateral description to the current version at the time of their next renewal.

The borrower will be contacted to inform them of the need to amend their UCC and advise that they will be required to pay for the Amendment.

Questions should be referred to the Farm Loan Chief or a member of his staff.

**County Office Action**

**Ordering**

When FLP wants to file a UCC-1 or UCC-3, an order will be completed on-line using the CT Lien Solutions iLienOnline at [www.woltersklower.com/en/solutions/lien-solutions](http://www.woltersklower.com/en/solutions/lien-solutions)

UCC-1's and UCC-3's must be ordered against the Blanket Purchase Agreement (BPA) established by the State Office. Each office must maintain a log showing the UCC's ordered using Exhibit A to this Notice. The log must show which PAC code was used from Table 1 or Table 2. When a UCC-3 continuation is filed and the borrower does not provide the requested funds, the log will also include the borrower's complete case number and loan number – In all cases the amount collected or not collected relative to each filing should be stated on the log. Each Credit team must submit a copy of this log to FSA-FLP-PLCE by the 5<sup>th</sup> of each month. Negative reports are required.

**Table 1 (When funds are collected):**

<b>ACTION</b>	<b>RECOVERABILITY</b>	<b>ACCT</b>	<b>PAC</b>
Loan Making	Recoverable	R	1NE
Loan Servicing ( <i>If loan obligated FY92 or after</i> )	Recoverable	R	2NE
Loan Servicing ( <i>If loan obligated before FY92</i> )	Recoverable	L	2NE

**Table 2 (see note under #1 below):**

<b>ACTION</b>	<b>RECOVERABILITY</b>	<b>ACCT</b>	<b>PAC</b>
Loan Servicing ( <i>If loan obligated FY92 or after</i> )	Recoverable	R	2N5
Loan Servicing ( <i>If loan obligated before FY92</i> )	Recoverable	L	2N5

Processing steps:

1. For both Loan making and Loan Servicing the County Office will collect \$44.17 from the Applicant/Borrower and process this payment through their normal banking system using collection code 36 or 38. Refer to 64-FI, Exhibit 17 for determining the correct collection code.

Note: If the borrower does not submit the required payment, the COF will request a protective advance, using Table 2 to determine the correct PAC code.

Log on to iLienOnline at [www.wolterskluwer.com/en/solutions/lien-solutions](http://www.wolterskluwer.com/en/solutions/lien-solutions)

Complete the required fields on the Financing Statement including the name of the FLP Credit team and submit. The collateral section of the UCC-1 form for new filings will be automatically populated with the description for a blanket lien on all chattels **“This financing statement covers the following types of collateral now owned or hereafter acquired (including proceeds and products thereof): all harvested or growing crops, other farm products, farm and other equipment, contract rights, livestock or other animals produced for commercial purposes, accounts, deposit accounts, goods, supplies, vehicles, inventory, supporting obligations, investment property, certificates of title, payment intangibles, general intangibles, crop insurance indemnity payments, and all entitlements, benefits and payments from all state and federal farm programs. Disposition of the collateral is not hereby authorized.”** The collateral description can be changed if applicable to the particular loan request.

2. Once submitted, you will receive an efile acknowledgement from IlienOnline on the same day. This acknowledgement will provide the filing date, time and number. Print and retain a copy in the borrower’s file.
3. On occasion the NYS Dept of State website may be down and iLienOnline may file the UCC by paper with the NYS Dept of State. This paper filing increases the filing cost to a total of \$84.17 (\$44.17 for iLienOnline and \$40.00 for the NYS Dept of State. Employees are to check the Hot News section on the welcome page after logging in to determine if there are any alerts to the NYS Dept of State electronic filing system being down to possibly avoid the extra charge. If the additional charge is incurred because of the immediate need to do a paper filing, an email will be sent to the FLC explaining the situation and the FLC may approve the use of A funds on a case by base basis to cover the cost. The approval will be noted on the UCC Log and copy of the approval will be filed with the UCC log in the county office records.
4. CT Lien Solutions offers on-line tutorials, FLP employees can register to attend these sessions at any time free of charge. Check their website for classes and times.
5. Both iLienOnline and DLS will be used to track all UCCs filed with the NYS Dept of State. DLS will also contain UCCs filed in county clerk offices for fixture filings. If by chance a UCC was filed with the NYS Dept of State directly and was not filed through iLienOnline, the filing will need to be added to the iLienOnline database by entering a historical filing.
6. FLMs should review iLienOnline and DLS reports monthly for UCCs needing continuation, have expired, rejected filings, etc.

7. On occasion a filing may be rejected because of an employee error, should this happen an email will be sent to the FLC explaining the situation and the FLC may approve the use of A funds on a case by base basis to cover the cost of refileing. The approval will be noted on the UCC Log and copy of the approval will be filed with the UCC log in the county office records.
8. The free search capability on the NYS Dept. or State website should be used as the first source for searching for filed UCCs and determining lien positions. However, not all filed UCCs can be viewed and therefore copies of filed UCCs can be obtained through the borrower, other lienholders, ordered from the NYS Dept of State on a UCC-11 form at **\$5.00 each filing** or through CT Lien Solutions as needed – Cost is **\$27.98 for each variation of the name searched** and then **\$3.00/page** for the copy of each page requested. It is important to understand the search logic for both the NYS Dept of State website and iLienOnline and search broadly to identify the many variations of the name as possible with one search. The cost for searches and copies will be paid for by the borrower and if ordered through iLienOnline the search and copy requests should be listed separately on the UCC log.
9. UCC terminations can be filed also through iLienOnline as needed, again with the cost being paid for by the borrower and these listed separately on the UCC log.

### **Authority**

Authority is granted to all FSA FLP personnel to place orders against this BPA in order to file UCC's with Department of State using the IlienOnline system. This authority applies to FLP accounts only.

### **Contact**

Questions relative to interpretation of the contract terms, technical questions with regard to the lien file process and questions relative to payment for services or billing inquires should be directed to Donna Price, Farm Loan Program Support Specialist at 315-477-6313.





## **Interim Guidance for Documentary Evidence of Status as Qualified Alien**

*Qualified Alien as defined under PRWORA (8 U.S.C. 1641):*

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

The following documents will, when combined with satisfactory proof of identity (which will come from the document itself if it bears a photograph of the person to whom it relates), establish that an applicant falls within 1 of the categories of “qualified alien” for purposes of title IV of PRWOR, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

Under INA, all aliens over the age of 14 who remain in the U.S. for longer than 30 calendar days are required to register with the United States Department of Homeland Security, BCIS and obtain an alien registration document.

All aliens over the age of 18 who receive a registration document are required to carry it with them at all times. With certain exceptions (e.g., Canadian visitors), aliens entering the U.S. are normally issued a registration document (e.g., BCIS Form I-94) at the time of entry. The following documents that are registration documents are indicated with an asterisk (“\*”). Each of the following documents will demonstrate lawful status, and should not require presentation of a registration document if the applicant presents 1 of the other legally acceptable documents that reasonably appears on its face to be genuine and to relate to the person presenting it. However, if the document presented is not a registration document and does not on its face reasonably appear to be genuine or to relate to the person presenting it, it is appropriate to ask the applicant to produce his or her registration document as additional evidence of immigration status, so long as the request is not made for a discriminatory reason. Presentation of a listed registration document that reasonably appears on its face to be genuine and to relate to the person presenting it (or to satisfy a higher applicable standard) will often obviate the need to verify the applicant’s immigration status with BCIS; if the applicant presents a registration document that does not meet this standard, sending BCIS a copy of the document will assist it in verifying the applicant’s status quickly and accurately.

**Interim Guidance for Documentary Evidence of Status as Qualified Alien (Continued)**

**A Alien Lawfully Admitted for Permanent Residence**

- \*BCIS Form I-551 (commonly known as a “green card”)
- Unexpired Temporary I-551 stamp in foreign passport or on \*BCIS Form I-94.

**B Asylee**

- \*BCIS Form I-94 annotated with stamp showing grant of asylum under section 208 of INA
- \*BCIS Form I-688B annotated “274a.12(a)(5)”
- \*BCIS Form I-766 (Employment Authorization Document) annotated “A5”
- Grant letter from the Asylum Office of BCIS
- Order of an immigration judge, granting asylum.

**C Refugee**

- \*BCIS Form I-94 annotated with stamp showing admission under Sec. 207 of INA
- \*BCIS Form I-688B annotated “274a.12(a)(3)”
- \*BCIS Form I-766 annotated “A3”
- BCIS Form I-571.

**D Alien Paroled Into the U.S. for a Least 1 Year**

- \*BCIS Form I-94 with stamp showing admission for at least 1 year under Section 212(d)(5) of INA. (Applicant cannot aggregate periods of admission for less than 1 year to meet the 1 year requirement.)

**E Alien Whose Deportation or Removal Was Withheld**

- \*BCIS Form I-688B annotated “274a.12(a)(10)”
- \*BCIS Form I-766 annotated “A10”
- Order from an immigration judge showing deportation withheld under Section 243(h) of INA as in effect prior to April 1, 1997, or removal withheld under Section 241(b)(3) of INA.

**F Alien Granted Conditional Entry**

- \*BCIS Form I-94 with stamp showing admission under Section 203(a)(7) of INA
- \*BCIS Form I-688B annotated “274a.12(a)(3)”
- \*BCIS Form I-766 annotated “A3”.

## **Interim Guidance for Documentary Evidence of Status as Qualified Alien (Continued)**

### **G Cuban/Haitian Entrant**

- \*BCIS Form I-551 (commonly known as a “green card”) with code “CU6”, “CU7”, or “CH6”
- Unexpired temporary BCIS I-551 stamp in foreign passport or on \*BCIS Form I-94 with code “CU6” or “CU7”
- BCIS Form I-94 with stamp showing parole as “Cuba/Haitian Entrant” under Section 212(d)(5) of INA.

### **H Alien Who Has Been Battered or Subjected to Extreme Cruelty**

Guidance as to the requirements that must be met for an alien to fall within this category of qualified alien is set forth in DOJ’s Notice of Interim Guidance. Note that Title IV, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, contains provisions requiring that, upon the effective date of the new affidavit of support (required under section 213A of the Act), when determining eligibility for federal means-tested public benefits and the amount of such benefits to which an alien is entitled, the income and resources of the alien be deemed to include those of any person executing an affidavit of support on behalf of the alien and that person’s spouse. Certain exceptions are made for indigent qualified aliens and for qualified aliens who (or whose children) have been battered or subjected to extreme cruelty in the U.S. by a spouse, parent or member of the spouse or parent’s family and for qualified alien children whose parents have been subjected to such abuse.

### **I Expired or Absent Documentation**

If an applicant presents expired documents or is unable to present any documentation evidencing his or her immigration status, refer the applicant to the local BCIS office to obtain documentation of status. In unusual cases involving applicants who are hospitalized or medically disabled, or who can otherwise show good cause for their inability to present documentation, and for whom securing such documentation would constitute an undue hardship, if the applicant can provide an alien registration number, you may file BCIS Form G-845 and Supplement, along with the alien registration number and a copy of any expired BCIS document presented, with the local BCIS office to verify status. As with any documentation of immigration status, you should confirm that the status information you receive back from BCIS pertains to the applicant whose identity you have verified.

### **J Receipt for Replacement Document**

If an applicant presents a receipt indicating that he or she has applied to BCIS for a replacement document for one of the documents identified above, file BCIS Form G-845 and Supplement along with a copy of the receipt with the local BCIS office to verify status. Upon return receipt of information from BCIS, confirm that it pertains to the applicant whose identity you have verified. You should ask to see the replacement document at a later date.

**Interim Guidance for Documentary Evidence of Status as Qualified Alien (Continued)**

**K Applicants With Disabilities and Nondiscrimination**

If an applicant has a disability that limits the applicant's ability to provide the required evidence of immigration status (e.g. mental retardation, amnesia, or other cognitive, mental or physical impairment), you should make every effort to assist the individual to obtain the required evidence. In addition, you should not discriminate against applicants on the basis of race, national origin, gender, religion, age or disability.



United States  
Department of  
Agriculture

Farm  
Service  
Agency

**NY Exhibit 8**

Ag. Center  
Any Street  
Any Town, NY 10000  
(000)000-0000 (000)000-0000 fax

**April 12, 2005**

**Title Bureau  
NYS Dept. of Motor Vehicles  
PO Box 2604  
Albany, New York 12220-0604**

**ATT: Title Exceptions**

**RE:**

**Dear Sir or Madam:**

**Enclosed please find Notice of Lien form and original title to be filed.**

**Please be advised that as an agency of the United States of America, acting through the Farm Service Agency, USDA, the U.S. attorney, along with representatives from your office, have advised us that we are not subject to lien filing fees. Therefore, the filing fee for inclusion of the United States of America on this title is waived. If you have questions concerning this, you should check with your legal services division.**

**Sincerely,**

**Farm Loan Manager**

**XXX/xxx**

**Enclosures**

The United States Department of Agriculture (USDA) prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited basis apply to all programs). Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (800)795-3272 (voice) or (202)720-6382 (TDD). USDA is an equal opportunity provider and employer.

## **Interim Guidance for Documentary Evidence of Status as a U.S. Noncitizen National**

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

Copies of the following documents will, when combined with satisfactory proof of identity (which will come from the document itself if it bears a photograph of the person to whom it relates), demonstrate that a person is a U.S. citizen or noncitizen national for purposes of Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. To the extent citizenship or nationality of a child is relevant to a benefit eligibility determination, the documents should demonstrate the child's status rather than that of the parent.

The lists in "A" and "B" are drawn from existing guidance published by SSA and regulations issued by the U.S. Department of Homeland Security, BCIS, about determination of U.S. citizenship and nationality; the lists in "C" through "F" are drawn solely from the SSA guidance. These lists are not exhaustive; refer to guidance issued by the agency or department overseeing the program to determine if it accepts documents or other evidence of citizenship not listed.

### **A Primary Evidence**

- (1) A birth certificate showing birth in 1 of the 50 States, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, Swain's Island or the Northern Mariana Islands, unless the person was born to foreign diplomats residing in the U.S.

**Note:** If the document shows that the individual was born in Puerto Rico, the U.S. Virgin Islands or the Northern Mariana Islands before these areas became part of the U.S., the individual may be a collectively naturalized citizen. See "C".

- (2) U.S. passport except limited passports, which are issued for periods of less than 5 years.
- (3) Report of birth abroad of a U.S. citizen (FS-240) issued by the Department of State to U.S. citizens.
- (4) Certificate of birth (FS-545) issued by a foreign service post or Certification of Report of Birth (DS-1350) issued by the Department of State, copies of which are available from the Department of State.
- (5) Certificate of Naturalization (N-550 or N-570) issued by BCIS through a Federal or State court, or through administrative naturalization after December 1990 to individuals who are individually naturalized. N-570 is a replacement certificate issued when N-550 has been lost or mutilated or the individual's name has been changed.

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

**A Primary Evidence (Continued)**

- (6) Certificate of Citizenship (N-560 or N-561) issued by BCIS to individuals who derive U.S. citizenship through a parent. N- 561 is a replacement certificate issued when N-560 has been lost or mutilated or the individual's name has been changed.
- (7) United States Citizen Identification Card (I-197) issued by BCIS until April 7, 1983, to U.S. citizens living near the Canadian or Mexican border who needed it for frequent border crossings, formerly Form I-179, last issued in February 1974.
- (8) Northern Mariana Identification Card issued by BCIS to a collectively naturalized citizen of U.S. who was born in the Northern Mariana Islands before November 3, 1986.
- (9) Statement provided by a U.S. consular officer certifying that the individual is a U.S. citizen. This is given to an individual born outside U.S. who derives citizenship through a parent but does not have FS-240, FS-545, or DS-1350.
- (10) American Indian Card with a classification code "KIC" and a statement on the back identifying U.S. citizen members of the Texas Band of Kickapoo living near the U.S./Mexican border.

**B Secondary Evidence**

If the applicant cannot present 1 of the documents listed in "A", the following may be relied upon to establish U.S. citizenship or nationality.

- (1) Religious record recorded in 1 of the 50 States, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, Swain's Island or the Northern Mariana Islands (unless the person was born to foreign diplomats residing in such a jurisdiction) within 3 months after birth showing that the birth occurred in such jurisdiction and the date of birth or the individual's age at the time the record was made.
- (2) Evidence of civil service employment by the U.S. Government before June 1, 1976.
- (3) Early school records (preferably from the 1<sup>st</sup> school) showing the date of admission to the school, the child's date and place of birth, and the name(s) and place(s) of birth of the parent(s).
- (4) Census record showing name, U.S. citizenship or a U.S. place of birth, and date of birth or age of applicant.

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

**B Secondary Evidence (Continued)**

- (5) Adoption Finalization Papers showing the child's name and place of birth in 1 of the 50 States, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, Swain's Island or the Northern Mariana Islands (unless the person was born to foreign diplomats residing in such a jurisdiction) or, where adoption is not finalized and the State or other jurisdiction listed in which the child was born will not release a birth certificate before final adoption, a statement from a State-approved adoption agency showing the child's name and place of birth in one of such jurisdictions. The source of the information must be an original birth certificate and must be indicated in the statement.
- (6) Any other document that establishes a U.S. place of birth or in some way indicates U.S. citizenship (e.g. a contemporaneous hospital record of birth in that hospital in 1 of the 50 States, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, Swain's Island, or the Northern Mariana Islands (unless the person was born to foreign diplomats residing in such a jurisdiction)).

**C Collective Naturalization**

If the applicant cannot present 1 of the documents listed in "A" or "B", the following will establish U.S. citizenship for collectively naturalized individuals.

- (1) **Puerto Rico.** Evidence of birth in Puerto Rico on or after April 11, 1899, and the applicant's statement that he or she was residing in U.S., a U.S. possession or Puerto Rico on January 13, 1941; or evidence that the applicant was a Puerto Rican citizen and the applicant's statement that he or she was residing in Puerto Rico on March 1, 1917, and that he or she did not take an oath of allegiance to Spain.
- (2) **U.S. Virgin Islands.** Evidence of birth in the U.S. Virgin Islands, and the applicant's statement of residence in U.S., a U.S. possession or the U.S. Virgin Islands on February 25, 1927; the applicant's statement indicating resident in the U.S. Virgin Islands as a Danish citizen on January 17, 1917, and residence in U.S., a U.S. possession or the U.S. Virgin Islands on February 25, 1927, and that he or she did not make a declaration to maintain Danish citizenship; or evidence of birth in the U.S. Virgin Islands and the applicant's statement indicating residence in U.S., U.S. possession or territory or the Canal Zone on June 28, 1932.



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

**C Collective Naturalization (Continued)**

- (3) Northern Mariana Islands (NMI) (formerly part of the Trust Territory of the Pacific Islands (TTPI).** Evidence of birth in NMI, TTPI citizenship, and residence in NMI, U.S., or a U.S. territory or possession on November 3, 1986, (NMI local time) and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986, (NMI local time); evidence of TTPI citizenship, continuous residence in NMI since before November 3, 1981, (NMI local time), voter registration before January 1, 1975, and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986, (NMI local time); or evidence of continuous domicile in NMI since before January 1, 1974, and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986, (NMI local time). If a person entered NMI as a nonimmigrant and lived in NMI since January 1, 1974, this does not constitute continuous domicile and the individual is not a U.S. citizen.

**D Derivative Citizenship**

If the applicant cannot present 1 of the documents listed in "A" or "B", make a determination of derivative U.S. citizenship in the following situations.

- (1) Applicant born abroad to two U.S. citizen parents.** Evidence of the U.S. citizenship of the parents and the relationship of the applicant to the parents, and evidence that at least 1 parent resided in U.S. or an outlying possession before the applicant's birth.
- (2) Applicant born abroad to a U.S. citizen parent and a U.S. noncitizen national parent.** Evidence that 1 parent is a U.S. citizen and that the other is a U.S. noncitizen national, evidence of the relationship of the applicant to the U.S. citizen parent, and evidence that the U.S. citizen parent resided in U.S., a U.S. possession, American Samoa, or Swain's Island for a period of at least 1 year before the applicant's birth.
- (3) Applicant born out of wedlock abroad to a U.S. citizen mother.** Evidence of the U.S. citizenship of the mother, evidence of the relationship to the applicant and, for births on or before December 24, 1952, evidence that the mother resided in U.S. before the applicant's birth or, for births after December 24, 1952, evidence that the mother had resided, before the child's birth, in U.S. or a U.S. possession for a period of 1 year.
- (4) Applicant born in the Canal Zone or the Republic of Panama.** A birth certificate showing birth in the Canal Zone on or after February 26, 1904, and before October 1, 1979, and evidence that 1 parent was a U.S. citizen at the time of the applicant's birth; or a birth certificate showing birth in the Republic of Panama on or after February 26, 1904, and before October 1, 1979, and evidence that at least 1 parent was a U.S. citizen and employed by the U.S. Government or the Panama Railroad Company or its successor in title.

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

**E All other situations where an applicant claims to have a U.S. citizen parent and an alien parent, or claims to fall within 1 of the listed categories but is unable to present the listed documentation:**

- (1) If the applicant is in U.S., refer him or her to the local BCIS office for determination of U.S. citizenship.
- (2) If the applicant is outside U.S., refer him or her to the State Department for a U.S. citizenship determination.
- (3) **Adoption of Foreign-Born Child by U.S. Citizen.** If the birth certificate shows a foreign place of birth and the applicant cannot be determined to be a naturalized citizen under any of the listed criteria, obtain other evidence of U.S. citizenship. Since foreign-born adopted children do not automatically acquire U.S. citizenship by virtue of adoption by U.S. citizens, refer the applicant to the local BCIS district office for a determination of U.S. citizenship if the applicant provides no evidence of U.S. citizenship.
- (4) **U.S. Citizenship By Marriage.** A woman acquired U.S. citizenship through marriage to a U.S. citizen before September 22, 1922. Ask for evidence of U.S. citizenship of the husband, and evidence showing the marriage occurred before September 22, 1922. If the husband was an alien at the time of the marriage, and became naturalized before September 22, 1922, the wife also acquired naturalized citizenship. If the marriage terminated, the wife maintained her U.S. citizenship if she was residing in U.S. at that time and continued to reside in U.S.
- (5) **Applicants With Disabilities and Nondiscrimination.** If an applicant has a disability that limits the applicant's ability to provide the required evidence of citizenship or nationality (e.g., mental retardation, amnesia, or other cognitive, mental or physical impairment), make every effort to assist the individual to obtain the required evidence. In addition, do not discriminate against applicants on the basis of race, national origin, gender, religion, age or disability. See Nondiscrimination Advisory, Attachment 2 to Interim Guidance.

WHAT LENDERS SHOULD KNOW ABOUT THE  
NEW YORK STATE

VEHICLE, BOAT, &  
MANUFACTURED HOME  
TITLE PROGRAM



NEW YORK STATE  
DEPARTMENT OF MOTOR VEHICLES  
[www.dmv.ny.gov](http://www.dmv.ny.gov)

## ***A MESSAGE FROM THE COMMISSIONER OF MOTOR VEHICLES***

*It is my hope that the Department's efforts in implementing the Uniform Vehicle Certificate (Title Act (the Title Law)) have been, and I will continue to be, beneficial to the lending industry as well as the other publics we serve.*

*This booklet is intended to provide a brief explanation of the Title Law and its impact on, and involvement with, lending institutions.*

*If you need more information, please contact any Department of Motor Vehicles District office or the Title Bureau in Albany.*

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WHAT LENDERS SHOULD KNOW

ABOUT THE

NEW YORK STATE TITLE PROGRAM

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## VEHICLES WHICH MUST BE TITLED

The following 1973 or later model vehicles must be titled:

- All manufactured homes that are model year 1995 or newer and that are at least 8 feet wide and 40 feet long when transported, or at least 320 square feet when erected on a site.
- All vehicles owned by residents of New York State.
- All vehicles owned by out-of-state residents, corporations, etc., which are required by law to be registered in New York State.
- All vehicles owned by New York State or any political subdivision of the state.
- Vehicles which do not have model year designation but which were manufactured on or after January 1, 1973.

## VEHICLES WHICH DO NOT HAVE TO BE TITLED

The following categories of vehicles do **NOT** require titles:

- All 1972 and earlier model year vehicles.
- Vehicles manufactured or assembled prior to January 1, 1973 which do not have a designated model year.
- Vehicles owned by a manufacturer or dealer and held for sale, or vehicles used by a manufacturer only for testing.
- Vehicles which are not required by law to be registered in this state, and which are owned by residents of other states.
- Vehicles owned by the United States government which are not registered in this state.
- Vehicles acquired by local authorities under the abandoned vehicle provisions of the Vehicle and Traffic Law, where such vehicles are being sold and not put into use by the local authority.
- Vehicles engaged in the interstate transportation of persons or property for which a currently valid Certificate of Title has been issued by another state.
- Vehicles registered as special purpose commercial vehicles: road rollers, tractor cranes, truck cranes, power shovels, road building machines, snowplows, road sweepers, spreaders, well drillers, well servicing rigs, feed processing machines, mobile car crushers, earth movers and tire vehicles.
- Any implement of husbandry.
- Vehicles for which no registration will be issued, such as minibikes, go-carts, bicycles, animal drawn conveyances, etc.
- Pole trailers.
- Trailers under 1,000 pounds net weight.
- Vehicles other than trailers which are not classified as motor vehicles in the Vehicle and Traffic Law, such as snowmobiles.
- All 1994 and older manufactured homes.

## **BOATS WHICH MUST BE TITLED**

- All 1987 and newer model year boats that are 14 feet in length or longer.
- Boats manufactured on or after August 1, 1986 if a model year was not designated, and that are 14 feet in length or longer.

## **BOATS WHICH DO NOT HAVE TO BE TITLED**

- All 1986 and earlier model year boats.
- Boats having a valid marine document issued by the United States or a foreign government.
- Boats registered in another state, providing such boats have not been in the State of New York for longer than 90 days at a time.
- Boats owned by residents of foreign countries.
- Boats owned by the United States, a state, or political subdivision.
- A lifeboat (cannot be dual purpose).
- Boats used exclusively for racing.
- Boats under 14 feet in length.
- Boats not equipped with a motor.

## **CERTIFICATE OF TITLE**

As required by the Title Law, the Department of Motor Vehicles issues a Certificate of Title (Form MV-999) for 1995 or newer manufactured homes that are at least 8 feet wide or 40 feet long when transported or 320 square feet when erected on a site, 1973 or newer model vehicles, and 1987 or newer model boats that are 14 feet in length or longer; when an Application for Registration and Title (MV-82); Application for a Boat Registration and/or Title (MV-82B) or Application for Title (MV-82TON) is filed with the necessary documents and fees. The title certificate is computer-generated in the name of the owner of the manufactured home, vehicle or boat and is mailed directly to the owner from the Title Bureau in Albany. The title is proof of ownership for 1973 and newer model vehicles, 1987 and newer model boats and 1995 or newer model manufactured homes.

Information on the title includes the name and address of the owner, the title number, the odometer reading, if applicable, at the time the vehicle was last transferred, the date issued, a detailed description of the manufactured home, vehicle or boat, and the lienholder's name and address, if any. As many as four lienholders can be printed on the front of the certificate.

## **PERFECTING YOUR SECURITY INTEREST**

When a lender properly records a lien on a vehicle, boat or manufactured home, the lender's (lienholder's) name and address are printed on the title. When the title is printed, a Notice of Recorded Lien (Form MV-901) is mailed to the lending institution. According to law, the \$5 recording fee must be **paid by the lienholder and cannot be charged to the borrower or the dealer.**



## **LIEN FILING CODE**

In order to obtain a lien filing code, fax your request to (518) 486-6581, attention "Title Administration". Your request must be submitted on business letterhead and indicate the address where the Notice of Recorded Lien (MV-901) should be mailed. The request must also include the name and **direct** line telephone number of a contact person.

If you already have a lien filing code and you need to amend any of the information (ie. address, phone number), send a fax with the updated information on business letterhead to (518) 486-6581, attention "Title Administration". Please include your lien filing code and a **direct** line telephone number in case it is necessary for us to contact you. **It is important to keep your records for lien filing codes up to date.**

## **CHARGE ACCOUNTS**

A lending institution can apply for an Escrow Charge Account for filing liens that are sent directly to the Title Bureau. This eliminates the need to send separate \$5 checks for each Notice of Lien (MV-900).

To apply for a charge account, call our Accounts Management Section at (518) 474-0692.

When your account is established, you will file liens using a Notice of Lien for a Charge Account Customer (MV-900.1).

## **FOUR METHODS OF RECORDING A LIEN:**

### **1. NOTIFY THE DEALER SELLING THE VEHICLE**

When a New York State registered dealer sells a 1995 or newer manufactured home, a 1973 or newer vehicle or 1987 or newer model boat, the dealer will record your lien if properly notified.

Prepare a memo-type check for \$5 more than the borrowed amount; identify both the borrower and dealer on the check. Type or stamp the following statement on the back of the check: "The filing fee required by Section 2125 of the Vehicle and Traffic Law is included in this check, and is being paid by the secured parties." Your name, address and lien filing code should be on the check or be attached to it. Be sure the dealer has your correct lien filing code.

The dealer will enter your name, address and lien filing code in the lienholder portion of the Application for Registration and Title (MV-82) (MV-82TON) (MV-82B) which will be brought to the Motor Vehicles office with other necessary documents and required fees.

### **2. NOTIFY THE TITLE BUREAU DIRECTLY WHENEVER THE VEHICLE, BOAT OR MANUFACTURED HOME IS NOT SOLD BY A REGISTERED NEW YORK STATE DEALER**

To record your security interest for a vehicle, boat or manufactured home which was sold by a private individual (a casual sale), or by an out-of-state dealer, complete a Notice of Lien (MV-900 or MV-900.1). These forms are shown on pages 7 and 8. Enter your name, address, lien filing code, the owner's name and address; the manufactured home, vehicle or boat description; the date of security agreement, and both required signatures. Do not forward the proof of ownership for a vehicle or boat because the new owner will need it to register the vehicle or boat. Send your completed MV-900 and the \$5 lien recording fee or MV-900.1 to the Title Bureau as soon as possible after the loan is made, and within 10 days after the date of registration, so the lien can be recorded before a title is issued.

Please do not use this method if the lien is recorded through a New York dealer. Also, please note that **the Department of Motor Vehicles does not record liens listed on MCOs or on the back of out-of-state titles.**

### 3. NOTIFY THE TITLE BUREAU DIRECTLY WHEN A VEHICLE, BOAT OR MANUFACTURED HOME IS USED AS COLLATERAL WHEN BORROWING MONEY

If the vehicle, boat or manufactured home is already registered and titled in New York State, and the owner wants to borrow money using the manufactured home, vehicle or boat as collateral, the Notice of Lien (MV-900) or a completed MV-900.1, the \$5 lien recording fee, **PLUS** the current title, should be sent to the Title Bureau. If the owner has lost the title, an MV-902 (Application for Duplicate Title) with proofs of identification and \$20 fee can be sent from the owner with your Notice of Lien and the \$5 lien fee.

Once a lien is recorded, it remains on record until a notice of satisfaction and the title are given to the Title Bureau. *If* a lien satisfaction and title are sent to the Title Bureau prior to ownership transfer, there is a \$20 processing charge. If a person wants to refinance a vehicle, boat or manufactured home for which no satisfaction has been given, it is not necessary to again record your lien. Just keep the original Notice of Recorded Lien (MV-901) until the second contract is satisfied.

### 4. NOTIFY DMV THROUGH THE ELECTRONIC LIEN TRANSFER PROGRAM

New York State's Electronic Lien Transfer Program provides an electronic method for the Department of Motor Vehicles and lienholders to exchange lien data. The lienholders electronically notify the DMV of a lien for a vehicle. On a nightly basis, DMV processes transactions and records the liens on our files. The next business morning, an electronic message is returned to the lienholder indicating that the lien has been processed. If the lien information is received prior to the vehicle being registered in NY, DMV will scan our files nightly for a matching record in order to record the lien.

The ELT Program eliminates the risk of lien oversight or inaccuracy since the lienholder is not relying on a dealer to file the lien. Electronic delivery of lien information results in a shorter turnaround time for lien recording, and electronic notification of recorded lien allows lending institutions to store an electronic lien record instead of a paper record.

Each lien holder participating in the program must establish a Title Escrow Account with NYS DMV. This account will be debited a \$5 lien-filing fee each time a lien is recorded on our records; that is, each time a matching VIN, YR, Make and owner's three of name is found. The escrow account is not charged until the lien has been matched with a vehicle record. Each month, a statement detailing account activity that occurred during the previous month is mailed to the lienholder from NYS DMV's Office of Revenue Accounting.

In order to participate in the ELT program, a lender must first contact one of the vendors listed below. Once they have decided on a vendor, they must submit to DMV the following paperwork:

- Form ELT-4, Memorandum of Understanding (MOU).
- Form ELT-2, Application for Electronic Lien Transfer Program.
- Form ELT-3, Title Escrow Account Application.

The applications and our ELT Business User Manual (ELT-1) can be obtained by visiting our website at [www.nysclmv.com](http://www.nysclmv.com).

Vendors working with NYS:

FDI Consulting, Inc  
A triVIN Company  
9750 Goethe Road  
Sacramento, CA 95827  
916-921-4390 ext. 118  
1-800-594-1470

VINtek, Inc.  
1735 Market Street  
Suite 900  
Philadelphia, PA 19103  
215-563-3320

For further information please contact:

Rose Ann Harris  
NYS DMV  
Room 331  
6 Empire State Plaza  
Albany, New York 12228

### **TO INSURE PROPER RECORDING OF LIEN**

To reduce the number of rejected Notices of Lien, please include all the mandatory data. The following list specifies what information is essential on the MV-900 or MV-900.1:

- 1) year, make and vehicle identification number (or hull ID number for a boat)
- 2) lienholder's complete name and address
- 3) borrower's complete name and address
- 4) original lienholder's signature
- 5) original borrower's signature
- 6) the charge account number on both the notice and the receipt sections of the MV-900.1.
- 7) the lender's complete name and address (as shown on the charge account) on both the notice and receipt sections of the MV-900.1.
- 8) date of security agreement

**NOTE:** Remember to enclose a \$5.00 check or money order from the lienholder, made out to the Commissioner of Motor Vehicles, for each MV-900.

All information (*other than signature*) must be typed. Use caution when entering Vehicle, Hull or Manufactured Home 10 number. Liens will not be recorded if information is illegible, incorrect or incomplete. Your proper completion and timely submission (within 10 days of the date of vehicle sale) of the MV-900, MV-900.1 will help ensure that your security interest is properly recorded before the title is issued.

For a 1995 or newer manufactured home, the lender must complete form MV-900 or MV-900.1. **To assure proper recording of the lien, the application for title and the Notice of Lien must be submitted together.**

### **TITLE/LIEN STATUS CHECK**

You can use the on-line service on the DMV web site ([www.nysdmv.com](http://www.nysdmv.com)) to check title and lien status. To check the status on-line, you must have the vehicle identification number (VJN), the model year of the vehicle and the make of the vehicle. The status check will show:

- the title issue date,
- the number of liens,
- the names of any lienholders,
- the names of any lienholders "Pending" to be recorded on the title.

The status check does not provide other information about the vehicle or the vehicle owner.

## RELEASING YOUR LIEN

A Notice of Recorded Lien (MV-901), containing the name of the lienholder, is printed at the same time a title certificate is printed. The MV-901 is mailed to the lienholder, who keeps it until the security interest is terminated. Before the notice is released, **one of the three boxes** must be checked, and the bottom line dated and signed by one of your authorized personnel. "PAID" stamps are not acceptable. Photocopies of the MV-901 are acceptable; however, the date and signature of the authorized person must be an **ORIGINAL OR A FACSIMILE**.

### BOX 1 - SATISFACTION

If the borrower fully pays the loan, the law requires the lender to release the Notice of Recorded Lien **IMMEDIATELY**. The first box should be checked and the notice forwarded to the owner, who should hold it with the title until ownership of the vehicle, boat or manufactured home is transferred.

### BOX 2 - REPOSSESSION

The second box is used when a vehicle, boat or manufactured home is repossessed and sold to another party. The Notice of Recorded Lien is given to the purchaser, along with a completed Affirmation of Repossession and Bill of Sale (*See: Titles for Repossessed Vehicles and Boats*).

### BOX 3 - ASSIGNMENT

The third box is checked when the security interest in the vehicle, boat or manufactured home is sold or in any way reassigned, and the new lienholder wants to change the lienholder name printed on the Notice of Recorded Lien and Certificate of Title. The Notice of Recorded Lien is signed and dated by the lienholder printed on the recorded lien, and the name and address of the new lienholder are entered in the appropriate space. This notice, together with the Certificate of Title from the owner and a \$5 lien fee, is sent to the Title Bureau in Albany.

## USE OF LETTER TO REPLACE MV-901

When Form MV-901 (Notice of Recorded Lien) is not available for any reason, the lending institution should provide a statement, **on its letterhead**, containing the following:

1. name and address of the borrower.
2. a complete description of the vehicle, boat or manufactured home, including year, make and identification number.
3. information to the effect that the loan was paid in full, including the date of loan satisfaction.
4. an original signature (ink or stamp) of an officer of the lending institution, and the officer's job title.
5. if the lienholder is an individual, the statement must be notarized.

## TRANSFER OF TITLE CONTAINING LIEN

The Vehicle and Traffic Law does not prohibit the owner from selling the vehicle, boat or manufactured home, even if there is an unsatisfied lien against it. If a vehicle titled in New York State with a lienholder recorded is sold or transferred without the lien release, the lending institution will receive a new Notice of Recorded Lien listing the new owner. However, in this situation the seller (borrower) is not relieved of the responsibility to repay the loan. The lienholder has recourse against the individual who signed the original contract or, if that person has sold the vehicle, boat or manufactured home, the lienholder can repossess the vehicle, boat or manufactured home from the owner.

## LIEN PRIORITY

The Department of Motor Vehicles acts only administratively with respect to security interest, recording and filing liens and releases, and noting liens on Title Certificates. The Department does not determine priority of interests between lienholders or the disposition of proceeds upon sale of a vehicle, manufactured home or boat after foreclosure or repossession. Such matters are subject to determination in civil judicial proceedings.

Therefore, because it is not the responsibility of the Department to determine priority of interests, liens are not listed in priority sequence on the Title Certificate. The numbers on the title and Notice of Recorded Lien are reference numbers for Title Bureau use.

## REPLACEMENT MV-901s

A replacement MV-901 (Notice of Recorded Lien) can be obtained by submitting a written request and a \$10 fee to the Title Bureau in Albany.

## TITLES FOR REPOSSESSED VEHICLES, BOATS AND MANUFACTURED HOMES

### Manufactured Homes, Vehicles and Boats Titled in New York

When repossessing a vehicle, manufactured home or boat titled in New York, you are required by law to:

1. immediately following such repossession, personally appear at the police agency in the locality where the repossession occurred, and notify the police agency of the repossession.
2. within 24 hours, notify the Commissioner of Motor Vehicles of such repossession by completing Form MV-327 in duplicate, and delivering both copies, either in person or by first class-special delivery mail, with the registration plates and sticker, if applicable, to the Department of Motor Vehicles District Office serving the county in which the vehicle, manufactured home or boat owner resides.
3. Within 24 hours, notify the owner of the vehicle, manufactured home or boat of such repossession, either personally or by registered or certified mail, sent to such owner at the last-known address.

When you sell the vehicle, give the purchaser a completed Form MV-950, "Affirmation of Repossession and Bill of Sale", Form MV-901 "Notice of Recorded Lien", and the previous owner's title, if available. Computer-generated facsimiles of the Form MV-950 are acceptable but **must** follow the DMV format exactly. The completed affirmation must be an original; photocopies will not be accepted.

If you are selling the vehicle in a state other than New York and that state will not accept your repossession papers, you can apply for a repossession title in your name by sending the following directly to the Title Bureau:

1. a completed MV-82TON (Application for Title) in your name.
2. the previous owner's title, if available.
3. a completed Form MV-950 showing you as purchaser.
4. the MV-901 indicating that your lien has been satisfied.
5. a \$50 title fee; \$125 for a manufactured home title.
6. a lien release for any other lien listed.

**NOTE: If there are any other open prior liens on the vehicle, and a lien release is not obtained, you MUST advise the purchaser of the outstanding lien(s) on the vehicle. These liens will be carried forward on the purchaser's title when it is issued.**

## **Vehicles, Boats and Manufactured Homes Titled in a State Other Than New York**

If you repossess a vehicle, manufactured home or boat that was titled in a state other than New York, you should obtain a title from that state in your name or in the new owner's name.

However, if the former owner's title lists you as the sole lienholder, you can sell the vehicle by using an Affirmation of Repossession, a Bill of Sale **and** the former owner's title. The Affirmation should include the following:

- A. information concerning the contract, including the name and address of the borrower and the lender, the date of the contract, the year, make and identification number of the vehicle, manufactured home or boat, the last registration plate number and the state in which it was last registered.
- B. a statement that the borrower was in default.
- C. the date of repossession, and the name and address of the person from whom it was repossessed.
- D. a statement that the reposessor complied with all applicable laws in the state in which the vehicle was repossessed.
- E. when applicable, a statement indicating the right of an auctioneer to sell or transfer the vehicle or boat.
- F. a statement that proper notice was given to all parties who were entitled to such notice.

## **OBTAINING ABSTRACTS**

To obtain an abstract of a vehicle's, boat's or manufactured home's title and/or lien record, fill out the Request For Driver and/or Vehicle Record Information (MV-15), available from the Data Sales Unit or from any Motor Vehicles office, including most county offices. The Certified Document Center (formerly The Public Services Bureau) will provide a certified abstract of the owner's title and lien record upon receipt of the MV-15 and a search fee, required by law, of \$10 for each record. In the future you will be able to obtain abstracts immediately at your local Motor Vehicles office. Please contact them for details. Application for a certified abstract can be addressed to:

Div. of Data Preparation  
NYS—Department of Motor Vehicles  
6 Empire State Plaza  
Albany NY 12228-0430

## **THE TITLE SERVICES SECTION**

In an effort to promptly and properly resolve exceptions resulting from implementation of the Title Law, the Title Services Section of the Title Bureau is staffed with employees with special expertise to cope with these problems.

**Correspondence** regarding the recording of liens, duplicate titles, correction of titles or title records, etc., should be addressed to:

Div. of Document Production — Title Bureau  
NYS — Department of Motor Vehicles  
6 Empire State Plaza  
Albany NY 12228-0330

Mail completed forms **MV-900 or MV-900.1** with the lien filing fee and title (if applicable) to:

NYS Department of Motor Vehicles  
PO Box 2604  
Albany NY 12220-0604

When appropriate, telephone calls can also be made to the Title Services Section. The phone number is (518) 486-4714.

A \$10 fee is required by law for a search of our files.



FORM MV-900 (REDUCED)

NOTICE OF LIEN

The Notice of Lien (Form MV-900) is completed by a bank, credit union, finance company or other lender to notify the Department of Motor Vehicles that an individual or company has borrowed money to purchase a specific vehicle, manufactured home or boat, or if a vehicle, manufactured home or boat is being used as collateral. This form must be used when the lending institution wants to perfect its security interest in the vehicle, manufactured home or boat which has been purchased from someone other than a registered New York State dealer (a casual sale or an out-of-state dealer). The MV-900 is mailed directly to the Title Bureau in Albany, together with the \$5 lien filing fee, which cannot be charged to the borrower.

Individuals can access this form through our web site at www.dmv.ny.gov or obtain it from any Motor Vehicles office. Lending institutions can print their own supply using the exact size (8 1/2 x 11") and format required by the Department of Motor Vehicles, or may access the form from our web site.

New York State Department of Motor Vehicles  
 NOTICE OF LIEN www.dmv.ny.gov

*All information on this form must be typed. Use caution when entering Vehicle, Hull or Manufactured Home 10 number. Liens will not be recorded if information is illegible, incorrect or incomplete.*

**VEHICLE/SOAT/MANUFACTURED HOME INFORMATION**

Identification #		
Year	Vehicle type (e.g., "MPV", "Hull")	Registration/Plate No. of borrower, if any
Title as: <input type="checkbox"/> "As is" <input type="checkbox"/> "On"		<input type="checkbox"/> Manufactured home

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**OWNER INFORMATION**

Owner's Last Name	First Name	M.I.
Owner's Last Name	First Name	M.I.
Street Address (including Apt. No.)		
City	State	Zip Code

Check here if this is a new address.

**NOTE:** Lien will be recorded only if the name of the borrower is EXACTLY the same as the name of the owner recorded on the Certificate of Title. If a Certificate of Title is not issued to this borrower, print the name as it appears on the title.

**OWNER'S STATEMENT:** I understand that the lender will send this notice to the DEPARTMENT OF MOTOR VEHICLES. If a title was previously issued in my name for a vehicle, boat, trailer or manufactured home or unit to the holder, I hereby certify that I understand and that a new Certificate of Title will be issued with the lienholder's name. I intend to sign the title.

OWNER'S SIGNATURE HERE: \_\_\_\_\_ Date: \_\_\_\_\_  
 (copy of signature to be attached) (copy of date to be attached)

If signing for a corporation, print your name and title: \_\_\_\_\_  
 (Name) (Title)

**FINANCIAL INSTITUTION INFORMATION**

Lien Filing Code (assigned by DMV; enter only if a code has been assigned to you or your company)
Lienholder's Name
Lienholder's Name (continued)

This notice authorizes the Department of Motor Vehicles to file this notice of lien on the title of the vehicle, boat, trailer or manufactured home described in Form MV-900 and to file this notice of lien on the title of the vehicle, boat, trailer or manufactured home described in Form MV-900.

**t** \_\_\_\_\_ Date of: \_\_\_\_\_  
 (Lienholder's Signature) (Date)

IF YOU ARE A NEW YORK STATE RESIDENT, YOU MUST SIGN THIS NOTICE OF LIEN IN THE PRESENCE OF A NOTARY PUBLIC OR A COMMISSIONER OF THE DEPARTMENT OF MOTOR VEHICLES.

**LII HOLOR** (If you are not a New York State resident, you must sign this notice of lien in the presence of a notary public or a commissioner of the Department of Motor Vehicles.)

You may verify online if a lien, as recorded or filed, has been recorded on the title of a vehicle, boat, trailer or manufactured home. Go to the Lien Title Bureau website at the DMV's web site: [www.dmv.ny.gov/titlestat/default.html](http://www.dmv.ny.gov/titlestat/default.html)



FORM MV-900.1 (REDUCED)

NOTICE OF LIEN CHARGE ACCOUNT CUSTOMER

The Notice of Lien - Charge Account Customer can be completed instead of Form MY-900 by a lending institution with a Department of Motor Vehicles charge account.

New York State Department of Motor Vehicles  
**NOTICE OF LIEN - CHARGE ACCOUNT CUSTOMER**  
 www.dmv.ny.gov

All information (other than signature) must be legible. Use caution when entering Vehicle, Hull or Manufactured Home 10 number. Lenses will be recorded if information is illegible, incorrect or incomplete.

Your DMV Charge Account Number: \_\_\_\_\_

This is a:  Vehicle  Boat  Trailer  Manufactured Home

Body Type: Hull

Registration/Plate No. \_\_\_\_\_

**OWNER INFORMATION**

Owner's Last Name: \_\_\_\_\_ First: \_\_\_\_\_ MI: \_\_\_\_\_

Owner's Last Name: \_\_\_\_\_ First: \_\_\_\_\_ MI: \_\_\_\_\_

Street Address (including Apt. No.): \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

NOTE: Lien will be recorded EXACTLY as the owner's name is entered on the Certificate of Title. If a Certificate of Title has been borrowed from the manufacturer on the Internet, the owner's name must be entered EXACTLY as it appears on the Certificate of Title.

**OWNER'S STATEMENT:** I hereby certify that I am the owner of the vehicle, boat, trailer or manufactured home, I am charging the lien to the DMV with this notice. I understand that the lender will send this notice to the DEPARTMENT OF MOTOR VEHICLES. I understand that the lender will be notified if the vehicle, boat, trailer or manufactured home is sold, transferred or otherwise disposed of. I understand that the lender will be notified if the vehicle, boat, trailer or manufactured home is sold, transferred or otherwise disposed of. I understand that the lender will be notified if the vehicle, boat, trailer or manufactured home is sold, transferred or otherwise disposed of.

**OWNER(S) SIGN HERE** \_\_\_\_\_ Date: \_\_\_\_\_  
 (Must be an original signature. If a POA is used, a copy of the POA must be attached.)

**LIEN FILING INFORMATION**

Lien Filing Code (assigned by DMV; enter only if a code has been assigned to you or your company): \_\_\_\_\_

Lienholder's Name: \_\_\_\_\_

Lienholder's Name (continued): \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

This notice is being filed with the Department of Motor Vehicles to disclose to the public information about the vehicle, boat, trailer or manufactured home. The information is being filed with the Department of Motor Vehicles to disclose to the public information about the vehicle, boat, trailer or manufactured home.

\_\_\_\_\_  
 (Lienholder's Signature - Must be an original signature or a facsimile stamp)

\_\_\_\_\_  
 (Title Bureau Stamp)

IF YOU ARE THE OWNER OF TITLE, PLEASE SIGN THIS NOTICE. IF YES, SIGN YES. IF NO, SIGN NO. IF YOU ARE THE OWNER OF TITLE, PLEASE SIGN THIS NOTICE. IF YES, SIGN YES. IF NO, SIGN NO.

Lien Filing Code: \_\_\_\_\_

TITLE BUREAU, NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES PO BOX 1002, ALBANY, NY 12202-0002

You can file this notice online if a lien was recorded or if a title certificate is issued.

MV-900.1 (1/11)

**DO NOT DETACH THIS RECEIPT**

YOUR DMV CHARGE ACCOUNT NUMBER = \_\_\_\_\_

Lien Filing Code: \_\_\_\_\_

PLEASE TYPE LIEN FILING CODE, AND NAME AND ADDRESS OF THE ACCOUNT TO BE CHARGED.

Number (V\*J): \_\_\_\_\_

\_\_\_\_\_  
 Lien Filing Code: \_\_\_\_\_

\_\_\_\_\_  
 State: \_\_\_\_\_

\_\_\_\_\_  
 City: \_\_\_\_\_

**FORM MV-901 (REDUCED)**

**NOTICE OF RECORDED LIEN**

The MV-901 is a computer-printed form which is mailed to the lienholder when a title containing a lien is mailed to the owner of the vehicle, boat or manufactured home.

When ownership of a vehicle, boat or manufactured home is transferred and the (old) lien has not been satisfied by the former owner, a new MV-901 will be generated and will contain information pertaining to the former owner.

A new MV-901 is also generated when a new or additional lienholder is recorded on a vehicle, boat or manufactured home.

New York State Department of Motor Vehicles  
**NOTICE OF RECORDED LIEN**

Owner: \_\_\_\_\_  
Lienholder: \_\_\_\_\_  
Date of Assignment: \_\_\_\_\_

NOTE: If you have moved and have not yet notified this Department of your new address, cross out the address shown and print your new address in its place.

OWNER	ADDITIONAL LIENHOLDERS
The following information applies only to the lienholder shown in the box above.	
<input type="checkbox"/> Our security interest in the vehicle or boat described in this notice has been satisfied.	
<input type="checkbox"/> We have assumed ownership of the vehicle or boat. We are transferring our security interest to _____.	
<input type="checkbox"/> We have assigned our security interest in this vehicle or boat to _____.	
Lien Filing Code	

If you are the owner named on this notice, you can keep this notice with the Certificate of Title and when you sell the vehicle or boat, give the transferred Title AND this notice to the new owner. To obtain a lien-free Title before then, return your current Title, this lien notice and a \$20.00 fee to the DMV, Title Bureau, 6 Empire State Plaza, Albany NY 12228-0330. (Check or money order should be made payable to the Commissioner of Motor Vehicles.)

If you cannot locate the Title for the vehicle or boat, you must apply for a duplicate. You may apply for a duplicate by completing Form MV-902 (available at a DMV office or on our website at <http://www.nysdmv.com> <<http://www.nysdmv.com/>>) and mailing it with a \$20.00 check or money order AND this lien notice to the DMV, Title Bureau at the above address.

MV-901 (1/15/0)



FORM MV-15 (REDUCED) (See DMV Website for all pages of form)

REQUEST FOR DRIVER AND/OR VEHICLE RECORD INFORMATION



New York State Department of Motor Vehicles  
REQUEST FOR DRIVING AND/OR VEHICLE RECORD INFORMATION

Jij#fl

Federal Driver's Privacy Protection Act (DIPA) regulates access to Motor Vehicle records. You must tell us why you want the records you are requesting. Place your initials next to each permissible use you select.

Use in any civil, criminal, administrative, or arbitral proceeding in any court or agency, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders or pursuant to a court order.

by an insurer or insurance support organization or self-insurer. Involvement in claims investigation, anti-fraud activities, ruling or underwriting activities.

Use in providing notice to the owners of towed or impounded vehicles.

Use by an employer, its agent or insurer to obtain information relating to the holder of a commercial driver's license required under Chapter 313 of Title 49 of the U.S.C.

Use in preventing fraud by pursuing legal remedies against, or recovering on a debt or security interest against an individual in order to verify or correct the accuracy of personal information submitted by the individual to a credit bureau, business or its agents, employees, or contractors.

Use required under NYS Vehicle and Traffic Law, Article 19A - Specific Requirements for Bus Drivers.

Use required under NYS Vehicle and Traffic Law, Article 19B - Specific Requirements for Commercial Motor Carriers.

Use by any government agency in carrying out its functions.

Use by any private person or entity acting on behalf of a federal, state, or local agency in carrying out its functions.

Use in matters of motor vehicle or driver safety.

Use in matters of motor vehicle theft.

Use in matters of child safety.

Use in matters of child product alterations, recalls or advisories.

Use in performance testing of motor vehicles, motor vehicle parts; and dealer.

Use in motor vehicle market research activities, including survey research.

Use in removal of non-owner records from the original owner records of motor vehicle manufacturers.

Use in the operation of private toll transportation facilities.

Use by any insurer who has obtained the written consent of the motorist.

Use specifically authorized under NYS law. If such law is related to the operation of a motor vehicle or public safety.

Cite the specific NYS law here: \_\_\_\_\_

Use in research activities and in producing statistical reports, as long as the personal information is not published, disclosed or used to contact individuals.

License records without the motorist's address. These records include either the client identification number or the driver's license number and date of birth, if such information has been provided by the requester.

**(I certify that I shall use the information provided by DMV only for the use described in Step 3 of this form, and that I will comply fully with the Driver's Privacy Protection Act (18 USC Sec. 2721, et seq). I also agree to defend, hold harmless, and indemnify DMV from all actions brought against DMV, or against any employee of DMV, for my negligent, improper or unauthorized use or dissemination of the information provided by the DMV.**

REMEMBER TO ATTACH A COPY OF YOUR ID. (See Step 2 of Instructions.)

Signature \_\_\_\_\_ Date: \_\_\_\_\_

Print Name \_\_\_\_\_

I, \_\_\_\_\_, hereby certify that I shall use the information provided by DMV only for the use described in Step 3 of this form, and that I will comply fully with the Driver's Privacy Protection Act (18 USC Sec. 2721, et seq). I also agree to defend, hold harmless, and indemnify DMV from all actions brought against DMV, or against any employee of DMV, for my negligent, improper or unauthorized use or dissemination of the information provided by the DMV.

(REDUCED)

CERTIFICATE OF TITLE

This document is issued to all owners of 1973 and newer model vehicles, owners of 1987 and newer model boats, and owners of 1995 and newer model manufactured homes. It is computer-printed on security paper with a background featuring a large state seal and printed in blue and rose.

On the front, the number above the "Date Issued" is a random number- six numerals and one Jetter- which is used by the department as a document security check. The number in the lower left corner on the back of the form is the sequential document control number. The number just above the lienholder spaces on the left side of the form on the front is a print sequence number.

The owner of the vehicle or boat must pay a \$50 title fee. The owner of a manufactured home must pay a \$125 title fee. There is a \$20 fee for a duplicate title. There is no charge for a corrected title (exception: there is a \$20 fee to release a lien).

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LS- Y NY

000047

CERTIFICATE OF TITLE

NEW YORK STATE

THIS IS A DUPLICATE CERTIFICATE AND MAY BE SUBJECT TO THE RIGHTS OF A PERSON UNDER THE ORIGINAL CERTIFICATE

mv

LIENS

Title and Identification No. Year Make Model Code Day/Full Document No.

ABCDEF12345678912 1996 CHEVROLET SED 752347W

Color Wt./Sts./Lgth. Fuel Cyl./Prop. No. of Seated Type Date Issued

RD/WH 003456 GAS 8 SED VEHICLE 1/09/98

Name and Address of Owner(s)

MOTORIST, MIKE  
MOTORIST, MARY  
202 SOUTH SWAYNE ST  
ALBANY NY

IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER OR DEALER BECAUSE IT DID NOT CONFORM TO ITS WARRANTY.

\* STOLEN VEHICLE \* INSURANCE TRANSFER ONLY  
RECONSTRUCTED \* NON-USA BTD \* REBUILT SALVAGE/NJ  
NON-COMPLYING NY EMISSIONS

This document is your proof of ownership of this vehicle, boat or manufactured home. Keep it in a safe place, not with your license or registration or in your vehicle or boat. To dispose of your vehicle, boat or manufactured home, complete the transfer section on the back and give this title to the new owner.

IMPORTANT: THIS VEHICLE IS NOT EQUIPPED WITH A TAMPER-RESISTANT ODOMETER

Lienholder Lienholder

HOUSEHOLD FINANCE DEPT. C 123 BROADWAY TROY NY 12180 01

CHASE ALBANY REGIONAL OFC WOLF RD ALBANY NY 12321 02

Lienholder Lienholder

STATE BANK CONSUMER LOAN UNIT 1234 ST ALBANY NY 12111 03

KEY BANK AUTO LOAN DIVISION STATE ST ALBANY NY 12121 04

DEPARTMENT OF MOTOR VEHICLES

MV-986 (703)

FORM MV-999 - BACK  
(REDUCED)

CERTIFICATE OF TITLE

**ANY CHANGE OR ERASURE WILL VOID THIS TITLE - ANY FALSE STATEMENT IS A MISDEMEANOR**

**SECTION I - Transfer by Owner**

**ODOMETER DISCLOSURE STATEMENT**  
 Note: The vehicle cannot be registered or titled in the name of the new owner unless mileage is disclosed. Federal and State Law require that you state the mileage of the vehicle described on this certificate when transferring ownership. Failure to do so, or providing a false statement, may result in fines and/or imprisonment.  
 I certify that, to the best of my knowledge, the odometer reading (check one):  
 1. reflects the ACTUAL MILEAGE, as shown on the odometer of the vehicle described on the front.  
 2. EXCEEDS MECHANICAL LIMITS (odometer started over at zero).  
 3. not the actual mileage. WARNING - ODOMETER DISCREPANCY.

**ODOMETER READING**  
 (No letters)  
 \_\_\_\_\_  
 ODOMETER HAS SPACE FOR: (Check one)  
 Five Digits, excluding tenths  
 Six Digits, excluding tenths

**DAMAGE DISCLOSURE STATEMENT (To be Completed by Owner Named on Face of Title)**  
 I certify that, to the best of my knowledge, this vehicle  has been or  has not been wrecked, damaged or destroyed to such an extent that the total estimate or actual cost of parts and labor to rebuild or reconstruct this vehicle to the condition it was in before the accident, and for legal operation on the road or highways, is more than 75% of the retail value of the vehicle at the time of loss. (Checking the "Yes" box on this statement means the vehicle must have an anti-rust examination before being registered and that the title issued will have the statement "Rebuilt Salvage NY" on it.)  
 I or we transfer the vehicle, boat or manufactured home described on this certificate. At the time of transfer, this title is subject only to the liens or encumbrances listed on this certificate, if any. I also certify that this is the most recent title issued for this vehicle, boat or manufactured home.  
 Note: Section 2113 of the Vehicle and Traffic Law requires that application for a title must be made within 30 days of transfer.

<b>Seller</b>	Seller's Signature # _____	Seller's Name (Print in Full) _____	
	Street Address _____	City _____	State ZIP Code Date of Statement _____/_____/____
<b>Buyer</b>	Buyer's Signature # _____	Buyer's Name (Print in Full) _____	
	Street Address _____	City _____	State ZIP Code Date of Statement _____/_____/____

SAMPLE

**SECTION II - Reassignment** (Manufacturer, Dealer or Registered Boat Dealer or Out-of-State Dealer)

**ODOMETER DISCLOSURE STATEMENT**  
 Note: The vehicle cannot be registered or titled in the name of the new owner unless mileage is disclosed. Federal and State Law require that you state the mileage of the vehicle described on this certificate when transferring ownership. Failure to do so, or providing a false statement, may result in fines and/or imprisonment.  
 I certify that, to the best of my knowledge, the odometer reading (check one):  
 1. reflects the ACTUAL MILEAGE of the vehicle described on the front.  
 2. EXCEEDS MECHANICAL LIMITS (odometer started over at zero).  
 3. not the actual mileage. WARNING - ODOMETER DISCREPANCY.

**ODOMETER READING**  
 (No letters)  
 \_\_\_\_\_  
 ODOMETER HAS SPACE FOR: (Check one)  
 Five Digits, excluding tenths  
 Six Digits, excluding tenths

I or we transfer the vehicle, boat or manufactured home described on this certificate. At the time of transfer, this title is subject only to the liens or encumbrances listed on this certificate, if any. I also certify that this is the most recent title issued for this vehicle, boat or manufactured home.  
 Note: Section 2113 of the Vehicle and Traffic Law requires that application for a title must be made within 30 days of transfer.

<b>Seller</b>	Seller's Signature # _____	Seller's Name (Print in Full) _____	
	Street Address _____	City _____	State ZIP Code Date of Statement _____/_____/____
<b>Buyer</b>	Buyer's Signature # _____	Buyer's Name (Print in Full) _____	
	Street Address _____	City _____	State ZIP Code Date of Statement _____/_____/____

Agency Code: **F 1947558**

Dealer's Family # \_\_\_\_\_





**FORM MV-950 (REDUCED)**

**NOTICE OF REPOSSESSION OF MOTOR VEHICLE OR MOTORCYCLE  
BACK (REDUCED)**

MV-950 (1111)

PAGE 2 OF 2

§ 425. Repossession of motor vehicle or motorcycle; garageman's lien; notice to pollee. I. Any person, firm or corporation, or agent, in person or representative thereof, repossessing or retaking a motor vehicle or motorcycle pursuant to the provisions of article nine of the uniform commercial code, or other authority of law, or any contract or agreement, shall, immediately following such repossession or retaking, personally appear at a station house or other office of the police department, or agency or officer performing like functions, in the locality where such repossession or retaking occurred, give notice to such department, agency or officer of such repossession or retaking and thereafter and within twenty-four hours personally deliver or mail by special delivery first class mail to the nearest motor vehicle district office, (a) notice of such repossession or retaking in such form as the commissioner may require and (b) the number plates of such motor vehicle or motorcycle. Notice of such repossession or retaking, including the name and address of the person, firm or corporation repossessing or retaking the same, shall also be given within twenty-four hours thereof to the owner of such motor vehicle or motorcycle, either personally or by registered or certified mail directed to such owner at his last-known address. Unless the motor vehicle or motorcycle can be repossessed or retaken without breach of the peace, it shall be repossessed or retaken by legal process, but nothing herein contained shall be construed to authorize a violation of the criminal law.



**FORM MV-327 (REDUCED)**

**NOTICE OF REPOSSESSION OF MOTOR VEHICLE OR MOTORCYCLE**



New York State Department of Motor Vehicles

**NOTICE OF REPOSSESSION OF A  
MOTOR VEHICLE OR MOTORCYCLE**

www.dmv.ny.gov

**INSTRUCTIONS:** Vehicle and Traffic Law Section 425 requires the repossessor of a motor vehicle or motorcycle to do the following:

1. immediately following the repossession, personally appear at the police agency in the locality where the repossession occurred, and notify the police agency of the repossession;
2. within 24 hours, deliver either personally or by special delivery first class mail to any Motor Vehicle Issuing Office (not to the Title Bureau):
  - a. this completed notice of repossession; and
  - b. the license plates from the vehicle being repossessed (unless removed by registrant before the repossession).  
(NOTE: A fee of \$1.00 per set of plates may be required by some county offices.)
3. within 24 hours, notify the vehicle owner of the repossession (either personally, or by registered or certified mail sent to the owner at the owner's last-known address).
4. prepare this form, and present it and the license plates, if any, to any Motor Vehicle Issuing Office. The Motor Vehicle Issuing Office will return the Owner Copy and Repossessor Copy to the Repossessor. Once the repossessor receives the Repossessor and Owner copies of the MV-327, he must forward the owner copy immediately to the owner.

**To Commissioner of Motor Vehicles:**

This is to notify you that the vehicle described below has been repossessed and that:

- the license plates from this vehicle are enclosed.
- the registrant removed the plates from the vehicle BEFORE the vehicle was repossessed.

**NOTE:** Failure to deliver the license plates to a Motor Vehicle Issuing Office *within 24 hours* is a violation of Vehicle and Traffic Law Section 425, which is punishable by a fine of up to \$150. If you are a dealer, however, failure to deliver the license plates to a Motor Vehicle Issuing Office within 24 hours may result in a fine of up to \$1,000 and/or suspension or revocation of your dealer's license.

Year and Make of Vehicle	Model	State Last Registered	Plate Number	Month and Year of Expiration / /
Vehicle Identification Number		Body Type	Color	Date of Repossession / /
Name and Address of Registrant			Name & Address of Lienholder Authorizing Repossession	
Name and Address of Owner			Name and Address of Repossessor	
Name and Address of Police Agency Notified			Signature of Representative From Lienholder or Repossessor	
Location Where Repossession Occurred				Date Police Agency Notified / /

**FOR DMV OFFICE USE ONLY**

The Department of Motor Vehicles was notified that the vehicle described above was repossessed.

The license plates described above were not submitted with this form.

The license plates described above were received:

by mail       in person      on \_\_\_\_\_

at the \_\_\_\_\_ Motor Vehicles Office.

By \_\_\_\_\_



Questions about the Title Law, and requests for additional copies of this booklet, should be addressed to:

TITLE BUREAU  
NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES  
6 EMPIRE STATE PLAZA  
ALBANY NY 12228-0330



NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES  
Andrew M. Cuomo, Governor

**Direct Loans Fully Paid Codes**

The following table describes the fully paid codes.

<b>Code</b>	<b>Description</b>
A00	Judgment – OL’s
A03	Judgment – FO’s or RL’s
A07	Judgment – SW’s
C00	Acquired Property – OL’s
C03	Acquired Property – FO’s or RL’s
C07	Acquired Property – SW’s
D00	Defalcation – OL’s
D03	Defalcation – FO’s
D07	Defalcation – SW’s
E00	Conservation Contract – OL’s
E03	Conservation Contract – FO’s or RL’s
E07	Conservation Contract – SW’s
F05	Suspension
G00	Other Reason (Extra Payment) – OL’s
G04	Sale of Farm Outside Program – FO’s
G07	Other Reason (Extra Payment) – SW’s and FO’s
H07	Refinancing – FO’s and SW’s
I00	Lost Remittance – OL’s
I07	Lost Remittance – FO’s and SW’s
M00	3M Cancellations – OL’s
Q00	Net Recovery Buyout/Shared Appreciation Writedown – OL’s
Q03	Net Recovery Buyout/Shared Appreciation Writedown – FO’s
Q07	Net Recovery Buyout/Shared Appreciation Writedown – SW’s
R00	Any Other Reason (Regular Payment)
R07	Income and Any Other Reason (Regular Payment) – FO’s and SW’s
R10	Paid in Full – All Loans
S00	Writeoff (Other than PL 878) – OL’s (See Note)
S03	Writeoff – RL’s
S07	Writeoff – FO’s and SW’s (See Note)
T04	Credit Sale Reversal
T05	Assumption Agreement – SW’s and RL’s
T05	Sale of Farm Inside Program or Assumption Agreement – FO’s
T15	Suspension Amortization
W00	Writeoff (PL 878)

**Direct Loans Fully Paid Codes (Continued)**

<b>Code</b>	<b>Description</b>
Y01	Refinanced – FO’s, OL’s, and SW’s
Y02	Subsequent Loan (Not currently used except for reporting purposes) – FO’s
Y06	Refinanced with Direct FP Loan (Not currently used except for reporting purposes) – FO’s
Z97	Case Number Change – All Loans
Z98	Assumption Agreement, Same Rates and Terms – All Loans
Z99	Paid in Full or Returned Check

**Note:** Debt writedown or writeoff provided as part of the resolution of a discrimination complaint against FSA is coded “S00” and “S07” depending on the type of loans involved. However, these codes are not used exclusively for this purpose. Therefore, loan approval officials must determine if the writedown or writeoff was received as the result of a discrimination complaint.

Average Farm Size for Beginning Famers

County	Average Farm Acreage	30 % of Average Acreage
Albany	135	40.5
Alleghany	205	61.5
Bronx	N/A	N/A
Broome	126	37.8
Cattaraugus	174	52.2
Cayuga	267	80.1
Chautauqua	182	54.6
Chemung	168	50.4
Chenango	193	57.9
Clinton	275	82.5
Columbia	191	57.3
Cortland	212	63.6
Delaware	204	61.2
Dutchess	164	49.2
Erie	152	45.6
Essex	202	60.6
Franklin	221	66.3
Fulton	107	32.1
Genesee	365	109.5
Greene	170	51
Hamilton	67	20.1
Herkimer	198	59.4
Jefferson	312	93.6
Kings	1	0.3
Lewis	292	87.6
Livingston	287	86.1
Madison	249	74.7
Monroe	203	60.9
Montgomery	204	61.2
Nassau	28	8.4
New York	2	0.6

County	Average Farm Acreage	30 % of Average Acreage
Niagara	203	60.9
Oneida	199	59.7
Onondaga	258	77.4
Ontario	240	72
Orange	131	39.3
Orleans	260	78
Oswego	141	42.3
Otsego	176	52.8
Putnam	84	25.2
Queens	N/A	N/A
Rensselaer	176	52.8
Richmond	N/A	N/A
Rockland	41	12.3
St. Lawrence	273	81.9
Saratoga	121	36.3
Schenectady	94	28.2
Schoharie	185	55.5
Schuyler	193	57.9
Seneca	230	69
Steuben	258	77.4
Suffolk	54	16.2
Sullivan	164	49.2
Tioga	212	63.6
Tompkins	175	52.5
Ulster	140	42
Warren	126	37.8
Washington	203	60.9
Wayne	192	57.6
Westchester	61	18.3
Wyoming	622	186.6
Yates	133	39.9

Information obtained from the 2017 Census of Agriculture. See subparagraph 152 B for details.

(Use Agency Letterhead formatted with local return address)

[Name]  
[Address]  
[City, State, Zip]

**INFORMATION NEEDED FOR A COMPLETE LOAN APPLICATION DETERMINATION  
For FSA DIRECT OPERATING, FARM OWNERSHIP and EMERGENCY LOANS  
(Not for Use with Microloan, Streamlined, Youth Loan Applications)**

Dear [Name]:

Date [MM-DD-YYYY]

The FSA loan application process begins with a complete loan application. The complete loan application allows the loan officer to determine your eligibility to receive FSA farm loan assistance. Listed below are the items FSA requires to conduct its initial loan application assessment.

Any required forms listed below are enclosed/attached. Please note that in some cases you are permitted to use alternative methods of providing the same information instead of using FSA's forms as long as they provide all the information found on the associated form and are signed and dated by all applicants.

After a review of the items listed below, your FSA loan officer may request additional information not listed, if that information is considered necessary to complete processing your loan application. This can include written documentation that credit is not available elsewhere.

**NOTE:** For **Entity Applicants**, including all **Embedded Entities**, the information listed below is required for (1) the entity; (2) the embedded entity; **and** (3) each individual entity member.

1. FSA-2001, "Request for Direct Loan Assistance"
2. FSA-2002, "Three Year Financial History" or similar form acceptable to the Agency. Please do not provide only financial summaries. (**Note:** If there are no individually owned assets, husband and wife joint operations may submit a consolidated balance sheet.)
3. Completed Federal & State Tax Returns, including Schedule F if available, for the past 3 years or for each year you have been in business.
4. FSA-2003, "Three-Year Production History", or similar form acceptable to the Agency, for the past 3 years or for each year you have been in business.
5. FSA-2004, "Authorization to Release Information" (**Note:** If relying on non-farm income or other assets of a *non-applicant spouse* to generate a positive cash flow or pay family living expenses, the non-applicant spouse must execute an FSA-2004 and provide their 2 most recent earning statements.)
6. FSA-2007, "Statement Required By The Privacy Act For Non-Applicants"
7. FSA-2005, "Creditor List"
8. FSA-2006, "Property Owned and Leased"
9. Legal descriptions of all farm property owned or to be acquired



10. Copies of all leases, contracts, options, and other agreements associated with the farm property
11. FSA-2015, “Verification of Debts and Assets”, or similar documentation acceptable to the Agency, for all credit cards, loans and other bank accounts with a balance exceeding \$1,000. Any original documents you submit will be returned to you. Acceptable documents may include most recent monthly billing statements, most recent statement of accounts, most recent invoices, and most recent bank statements.
12. FSA-2037, “Farm Business Plan Worksheet Balance Sheet” and the FSA-2038, “Farm Business Plan Worksheet Projected/Actual Income and Expense” (Both Actuals and Projections for the next 12 months) Similar forms acceptable to the Agency may be used; however, *should not be more than 90 days old*.
13. Credit Report Fee, using personal or bank check, made payable to the *Farm Service Agency* for the type of applicant as shown below. Entity members should be prepared to remit payment for individual credit report in addition to the commercial report.

Individual \$ \_\_\_\_\_ Joint \$ \_\_\_\_\_ Commercial \$ \_\_\_\_\_

14. FSA-2302, “Description of Farm Training and Experience.” Please be detailed in your description. Narratives should include, and are not limited to:
  - a. Personal Life Experience/On the Job Training
  - b. Secondary Education
  - c. Webinars or Online Training Courses
  - d. Extension Service Workshops attended
  - e. Participation in agriculturally-related youth organizations, such as 4-H or FFA
  - f. Recipient of FSA Youth Loan with brief description of project
  - g. Work in Community-Based Organization Gardens or Urban Farming
  - h. Agricultural Internships or Apprenticeships
15. Verification of Non-Farm Income, such as off-farm employment, Social Security, rental income, pension plans, etc. The most recent 2 pay stubs, statements of benefits, or similar documentation will usually be sufficient.
16. AD-1026, ‘Highly Erodible Land Conservation and Wetland Conservation Certification’ for all real estate owned or rented.
17. **For Entity Applicants Only, including All Embedded Entities:** Provide all the following documents, as applicable:
  - a. Copies of any Organizational and Operation Documents (e.g., Charter, Articles of Incorporation, Bylaws, Partnership or Joint Operation Agreement, etc.).
  - b. Evidence of current registration and good standing with relevant state regulatory agencies
  - c. A duly adopted resolution to apply for and obtain financing
  - d. A balance sheet not more than 90 days old for the entity
  - e. A balance sheet not more than 90 days old for each individual entity member

18. **For Corporate Applicants Only, including All Embedded Entities**, AD-3030, “Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants”.
19. Proof of crop insurance or FSA-570 “Waiver of Eligibility for Emergency Assistance”
20. For EM Loans Only: FSA-2309 “Certification of Disaster Losses” and FSA-2310 “Lender’s Verification of Loan Application”
21. FSA-2370 “Request for Waiver of Borrower Training Requirements/Borrower Training Assessment”
22. RD 1940-20 “Request For Environmental Information”
23. SF-3881 “ACH Vendor/Miscellaneous Payment Enrollment Form”
24. Copy of unexpired drivers licenses and social security cards for all applicants and spouses.

You do need to provide those items listed above if the same information was submitted as part of a prior loan application and is still considered current (within 90 days of the previous loan application). This includes, and is not necessarily limited to, financial and production information from prior years. You will need to resubmit those items which are not current (older than 90 days) and/or items which are subject to change. Typically this includes balance sheets, creditor lists, verification of debts and income and credit reports.

Lastly, it is very important to note that **A DECISION CANNOT BE MADE ON YOUR LOAN REQUEST WITHOUT ALL INFORMATION REQUESTED IN THIS LETTER.**

Please contact this office if you need help. We can help you complete the requested forms, explain what information we need, and answer any questions about the information requested in this letter. If we cannot assist you by phone, we will schedule an appointment to meet with you.

Sincerely,

Farm Loan Officer/Manager

Enclosures

(Use Agency Letterhead formatted with local return address)

[Name]  
[Address]  
[City, State, Zip]

**INFORMATION NEEDED FOR A COMPLETE LOAN APPLICATION DETERMINATION  
For FSA MICROLOAN ASSISTANCE**

Dear [Name]:

Date [MM-DD-YYYY]

The FSA loan application process begins with a complete loan application. The complete loan application allows the loan officer to determine your eligibility to receive FSA farm loan assistance. Listed below are the items FSA requires to conduct its initial loan application assessment.

Any required forms listed below are enclosed/attached. Please note that in some cases you are permitted to use alternative methods of providing the same information instead of using FSA's forms as long as they provide all the information found on the associated form and are signed and dated by all applicants.

After a review of the items listed below, your FSA loan officer may request additional information not listed, if that information is considered necessary to complete processing your loan application. This can include written documentation that credit is not available elsewhere.

**NOTE:** For **Entity Applicants**, including all **Embedded Entities**, the information listed below is required for (1) the entity; (2) the embedded entity; **and** (3) each individual entity member.

1. FSA-2330, "Request for Microloan Assistance"
2. Completed Federal & State Tax Returns, including Schedule F if available, for the most recent year.
3. FSA-2003, "Three-Year Production History", or similar form acceptable to the Agency, for the most recent year.
4. FSA-2004, "Authorization to Release Information" (**Note:** If relying on non-farm income or other assets of a *non-applicant spouse* to generate a positive cash flow or pay family living expenses, the non-applicant spouse must execute an FSA-2004 and provide their 2 most recent earning statements.)
5. FSA-2007, "Statement Required By The Privacy Act For Non-Applicants"
6. FSA-2005, "Creditor List"
7. FSA-2006, "Property Owned and Leased"
8. Legal descriptions of all farm property owned or to be acquired
9. Copies of all leases, contracts, options, and other agreements associated with the farm property

10. FSA-2015, “Verification of Debts and Assets”, or similar documentation acceptable to the Agency, for all credit cards, loans and other bank accounts with a balance exceeding \$1,000. Any original documents you submit will be returned to you. Acceptable documents may include most recent monthly billing statements, most recent statement of accounts, most recent invoices, and most recent bank statements.
11. Credit Report Fee, using personal or bank check, made payable to the *Farm Service Agency* for the type of applicant as shown below. Entity members should be prepared to remit payment for individual credit report in addition to the commercial report.

Individual \$ \_\_\_\_\_ Joint \$ \_\_\_\_\_ Commercial \$ \_\_\_\_\_

12. Verification of Non-Farm Income, such as off-farm employment, Social Security, rental income, pension plans, etc. The most recent 2 pay stubs, statements of benefits, or similar documentation will usually be sufficient.
13. AD-1026, ‘Highly Erodible Land Conservation and Wetland Conservation Certification’ for all real estate owned or rented.
14. **For Entity Applicants Only, including All Embedded Entities:** Provide all the following documents, as applicable:
  - a. Copies of any Organizational and Operation Documents (e.g., Charter, Articles of Incorporation, Bylaws, Partnership or Joint Operation Agreement, etc.).
  - b. Evidence of current registration and good standing with relevant state regulatory agencies
  - c. A duly adopted resolution to apply for and obtain financing
  - d. A balance sheet not more than 90 days old for the entity
  - e. A balance sheet not more than 90 days old for each individual entity member
16. **For Corporate Applicants Only, including All Embedded Entities,** AD-3030, “Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants”.
17. Proof of crop insurance or FSA-570 “Waiver of Eligibility for Emergency Assistance”
18. FSA-2370 “Request for Waiver of Borrower Training Requirements/Borrower Training Assessment”
19. RD 1940-20 “Request For Environmental Information”
20. SF-3881 “ACH Vendor/Miscellaneous Payment Enrollment Form”
21. Copy of unexpired drivers licenses and social security cards for all applicants and spouses.

You do need to provide those items listed above if the same information was submitted as part of a prior loan application and is still considered current (within 90 days of the previous loan application). This includes, and is not necessarily limited to, financial and production information from prior years. You will need to resubmit those items which are not current (older than 90 days) and/or items which are subject to change. Typically this includes balance sheets, creditor lists, verification of debts and income and credit reports.

Lastly, it is very important to note that **A DECISION CANNOT BE MADE ON YOUR LOAN REQUEST WITHOUT ALL INFORMATION REQUESTED IN THIS LETTER.**

Please contact this office if you need help. We can help you complete the requested forms, explain what information we need, and answer any questions about the information requested in this letter. If we cannot assist you by phone, we will schedule an appointment to meet with you.

Sincerely,

Farm Loan Officer/Manager

Enclosures

(Use Agency Letterhead formatted with local return address)

[Name]

[Address]

[City, State, Zip]

(Use Agency Letterhead formatted with local return address)

**INFORMATION NEEDED FOR A COMPLETE LOAN APPLICATION DETERMINATION  
For FSA YOUTH LOAN APPLICATION**

Date [MM-DD-YYYY]

Dear [Name]:

The FSA loan application process begins with a complete loan application. The complete loan application allows the loan officer to determine your eligibility to receive FSA farm loan assistance. Listed below are the items FSA requires to conduct its initial loan application assessment.

Any required forms listed below are enclosed/attached. Please note that in some cases you are permitted to use alternative methods of providing the same information instead of using FSA’s forms as long as they provide all the information found on the associated form and are signed and dated by all applicants.

After a review of the items listed below, your FSA loan officer may request additional information not listed, if that information is considered necessary to complete processing your loan application. This can include written documentation that credit is not available elsewhere.

1. FSA-2301, “Request for Youth Loan”
2. Applicants 18 years or older: FSA-2004, “Authorization to Release Information”
3. Applicants 18 years or older: FSA-2005, “Creditor List”
4. Applicants 18 years or older: FSA-2015, “Verification of Debts and Assets”, or similar documentation acceptable to the Agency, for all credit cards, loans and other bank accounts with a balance exceeding \$1,000. Any original documents you submit will be returned to you. Acceptable documents may include most recent monthly billing statements, most recent statement of accounts, most recent invoices, and most recent bank statements.
5. Applicants 18 years or older: Credit Report Fee, using personal or bank check, made payable to the *Farm Service Agency* for \$ \_\_\_\_\_.
6. AD-1026, ‘Highly Erodible Land Conservation and Wetland Conservation Certification’ for all real estate owned or rented.
7. RD 1940-20 “Request For Environmental Information”
8. SF-3881 “ACH Vendor/Miscellaneous Payment Enrollment Form”

10. Copy of unexpired drivers licenses if applicable and social security card.

You do need to provide those items listed above if the same information was submitted as part of a prior loan application and is still considered current (within 90 days of the previous loan application). This includes, and is not necessarily limited to, financial and production information from prior years. You will need to resubmit those items which are not current (older than 90 days) and/or items which are subject to change. Typically this includes balance sheets, creditor lists, verification of debts and income and credit reports.

Lastly, it is very important to note that **A DECISION CANNOT BE MADE ON YOUR LOAN REQUEST WITHOUT ALL INFORMATION REQUESTED IN THIS LETTER.**

Please contact this office if you need help. We can help you complete the requested forms, explain what information we need, and answer any questions about the information requested in this letter. If we cannot assist you by phone, we will schedule an appointment to meet with you.

Sincerely,

Farm Loan Officer/Manager

Enclosures

**Evaluation of Collateral Guidelines**

The following can be used when an evaluation is appropriate appraisal.

	<b>Information Element</b>	<b>Content Description</b>
1	Location for the Evaluation	The evaluation will be entered in the FBP Farm Assessment's Type of Farming Operation.
2	Location of the Property	<p>Identify the location of the property. There are a number of methods to identify location including the following:</p> <ul style="list-style-type: none"> <li>• legal street mailing address</li> <li>• assessor's map and parcel</li> <li>• deed book and page</li> <li>• nearest intersection</li> <li>• distance from nearest town</li> <li>• latitude/longitude.</li> </ul> <p>Use any or all that are available.</p>
3	Description of the Property	Provide a description of the property including any improvements and its current and projected use. Show land mix including estimated acres of cropland, pasture, woodland, etc. as well as total acreage. For improvements show type of improvement (barn, shed, silo, etc.), size (dimensions including length, width, height), construction (frame, masonry, pole, steel), exterior wall type, and amenities (electricity, water hookup/plumbing, heating ventilation and cooling, etc.) Describe age and condition of improvements and overall condition of the property.
4	Inspection Date	Provide confirmation that the property was physically inspected and the date the property was inspected.
5	Analysis Performed and Supporting Information Used	<p>Describe the analysis performed and supporting information used to determine the property's market value including where information was obtained that is court house records, comparable sales, property tax assessments, etc. Show the steps taken to reach a conclusion of value (could be a combination of sources and methods). The following are additional potential sources:</p> <ul style="list-style-type: none"> <li>• property assessment data for subject</li> <li>• recent similar sales in the same community/neighborhood</li> <li>• information from local realtor (MLS sold data/ current similar listings, etc.)</li> <li>• annual NASS agricultural property value information</li> <li>• FSA COC members and/or other FSA employees familiar with local market.</li> </ul> <p>Once data is collected, briefly summarize the data and reconcile how you reached your opinion of value. Refer to examples on the following page.</p>
6	Effective Date of Evaluation	Include an effective date of the evaluation. This will typically be the date of inspection.
7	Signature of Evaluator and Date Signed	Include a signature of the preparer of the evaluation. Include the name and title along with the date signed. The date signed could be different from the effective date.
8	Maps and Photos (Optional)	A location map and/or aerial photo or tax map showing the property location as well as photographs of the property can be very helpful in adequately describing the property. These are very useful but are not required.



## **Evaluation of Collateral Guidelines (Continued)**

### **Examples for Evaluation of Collateral**

#### **Example 1: Farm Business Plan – Farm Assessment**

Borrower and Owner of the Property: Joe Farmer

3/1/2016 – On Monday, February 29, 2016, I visited the subject property located at the NE intersection of US Highway 301 and Rhames Road, Manning, SC. The purpose of the visit was an inspection to complete an evaluation of collateral.

The subject property contains 20 acres of pasture and is improved with a 20' x 40' metal building (800 sf) built ten years ago. It's 12' tall with a concrete floor, electric power and water hookup. It has been well maintained. The current use is agricultural. The proposed use is the same.

I established a value opinion considering three vacant pasture tracts in the surrounding neighborhood considered similar to the subject property. They ranged in acreage from 19 to 22 acres and sold from \$1,985 to \$2,100 per acre. I talked with Bill Land, a local realtor and he confirmed vacant pasture sells from \$1,800 to \$2,300 depending on location, frontage and fencing. The subject has average location and frontage, but no fencing. I have concluded a value of \$2,000 per acre for the subject land.

The county property assessor values the building at \$4,000. I have spoken to John Smith, local contractor who builds utility buildings. He said a new building would cost \$8,000.

The tax assessor's market value for taxation purposes of the land and buildings is \$41,000 as of 2015. The current sales contract is for \$44,000. The agreed price was negotiated from the listing price of \$45,000.

I have concluded a market value of \$44,000 as of the effective date of 02/29/2016.

#### **Example 2: Farm Business Plan – Farm Assessment**

Borrower: Jane Doe     Owner of the Property: John and Jane Doe

3/1/2016 – I inspected the subject property on Monday, February 29, 2016. The borrower accompanied me on the inspection. The property is located at 111 Furse Rd, Manning, SC, and it lies 5.6 miles SW of town just W of SC 261. The county tax map number is 123-00-00-001. The purpose of the inspection was to complete an evaluation of collateral.

The subject property contains 5 acres of vacant land that is roughly half open and half wooded. The current use is rural residential. The proposed use is the same.

The county property assessor's market value for taxation purposes of the land is \$15,000 (see attached tax card and tax map printed from the assessor's website). Based on my knowledge of the Clarendon County Tax Assessors Office, the assessed value for vacant land in the county is typically representative of market value. I have concluded a market value of \$3,000 per acre or \$15,000 as of the effective date of 02/29/2016.

## **Guidance on Processing Loan Applications for *Pigford I* Claimants**

**A Background:** The Consent Decree (dated April 21, 2005) entered into between the Government and plaintiffs in the class action suit *Pigford vs Glickman*, currently known as *Pigford vs. Vilsack*, and approved by the U.S. District Court specifies that certain class-wide injunctive relief in the form of priority loan processing for direct farm operating (OL) assistance, direct farm ownership (FO) assistance or inventory property assistance would be available to prevailing claimants for a specific period of time.

With the exception of one specific case, all court-ordered timeframes to exercise priority consideration for loan processing under *Pigford I* have been concluded. The state involved with the remaining case will be advised as necessary.

**B State and County Office Officials:** Pursuant to the guidance in this Exhibit, applications will be processed according to the procedures in 3-FLP, Direct Loan Handbook. Prior guidance to FSA officials included instruction on processing loan applications for prevailing claimants who sought priority consideration for an OL, FO or inventory property were issued by notice. The language in the court-ordered Consent Decree(s) not only provided for priority consideration for an FO, OL or inventory property, but also provided:

- technical assistance from an employee acceptable to the applicant,
- guidance on consideration of debts forgiven for borrowers, co-borrowers, and those otherwise legally liable on a past loan debt to the Agency.

Claimants who were awarded priority consideration under the Consent Decree are identified in the Automated Discrepancy Processing System (ADPS) “Approved Civil Rights Claim Priority Activity” database. Agency officials will use the database to determine whether an applicant is a prevailing claimant and may be subject to the guidance contained in this Exhibit. Contained in the claimant’s record is the date of the prevailing claimant’s initial decision, whether the individual exercised those rights; any debt forgiven under the Consent Decree process and the deadline for when a claimant can exercise that priority consideration for injunctive relief. Note: Please remember that the rights under the Consent Decree cannot be transferred or re-assigned to someone who was not an original claimant. Additionally, heirs of deceased prevailing claimants are not entitled to special consideration under the Consent Decree.

## Guidance on Processing Loan Applications for *Pigford I* Claimants (Continued)

The following guidelines are to be considered.

### (1) Technical Assistance with Applications

Provisions of the Consent Decree grant individuals prevailing under *Pigford I* with reasonable technical assistance in preparation and submission of any future applications submitted. Current agency guidelines included in 3-FLP, subparagraph 41 D language for providing technical assistance for all applications, regardless of their status as a class member of a settled court action. Authorized agency officials may upon request offer assistance to a prevailing claimant when a loan application has been submitted. This assistance will cover the full range of assisting with filling out the application to developing a farm plan, and locating specialist for advice on new or improved enterprises, and all other aspects of the loan application process. The authorized agency officials providing the technical assistance must be acceptable to the applicant. Prevailing claimants may request that SEDs assign a different employee to assist them if the staff in the State or County Office is not acceptable.

### (2) Prevailing Claimants with Past Debt Forgiveness Submitting New Applications

Pursuant to the requirements of 3-FLP, subparagraph 65 A, the following guidelines will be considered for prevailing claimants.

The following are exceptions to debt forgiveness limitations:

- Loans written off at the direction of the adjudicator, arbitrator, or under the Consent Decree Stipulation and Order dated February 7, 2001, are not considered debt forgiveness. County office officials shall consult the ADPS Civil Rights Claim Priority Activity Database to determine whether an applicant is a prevailing claimant and to check for a list of the claimant's loans previously written off under the Consent Decree. County officials should also check the applicant's Direct Loan System (DLS) screen, if available.

**Note:** This exception includes loan previously written off or debt settled by FSA or the former Farmers Home Administration under agency servicing procedures, but if they still existed, would have been written off at the direction of the adjudicator, arbitrator, or under the Consent Decree Stipulation and Order dated February 7, 2001.

**Example:** The applicant had a 1982 FO and 1983 and 1985 OLs, all of which were written off in 1990. The adjudicator finds in favor of the claimant on a claim that discrimination occurred in relation to the 1983 OL. However, the claimants does not prevail on the 1982 FO. Under the Consent Decree Stipulation and Order dated February 7, 2001, any OL between 1983 and 1996 would be written off. Since the 1983 and 1985 OLs were already written off, neither of these write offs will be held against the claimant. However, write off of the 1982 FO on which the claimant did not prevail will be counted against the claimant and thus may make the claimant ineligible for certain future loans.

## Guidance on Processing Loan Applications for *Pigford I* Claimants (Continued)

### (2) Prevailing Claimants with Past Debt Forgiveness Submitting New Applications (Continued)

- Such prior Consent Decree debt forgiveness also **will not** adversely affect an applicant who was a co-borrower or who was otherwise legally liable on the previously forgiven loan. The applicant's *Pigford I* status is not relevant for this purpose.

**Example 1:** The applicant is the spouse of a deceased prevailing claimant who the adjudicator found in favor of with regard to a 1983 OL. The applicant was a co-borrower with the claimant on the 1983 OL, but did **not** file a Consent Decree claim in his or her own name. In 1990, the 1983 OL was debt settled. This debt settlement will **not** be held against the applicant.

**Example 2:** The applicant was the partner of a prevailing claimant who the adjudicator found in favor of with regard to a 1982 EM. The applicant was personally liable for the 1982 EM made to the partnership, but did **not** prevail on an individual claim. In 1992, the 1982 EM was debt settled. This debt settlement will **not** be held against the applicant.

**Example 3:** The applicant is the father of a prevailing claimant who the adjudicator found in favor of with regard to a 1983 OL. This applicant was **not** the primary borrower but co-signed the 1983 OL for his son, the prevailing claimant. In 1990, the 1983 OL was debt settled. This debt settlement will **not** be held against the applicant.

- Any debt forgiven under the Consent Decree, or previously written off debt that would have been written off had it still existed, will **not** be considered in evaluating creditworthiness on future loan applications.

County Office officials will contact the State Office, Farm Loan Programs section for guidance before making an adverse eligibility decision on any application from a prevailing claimant, when prior debt forgiveness is the basis for the adverse decision.

If the County Office officials have any reason to believe that an applicant was a co-borrower with a prevailing Consent Decree claimant or was otherwise legally liable for a loan that qualified for *Pigford I* debt relief, the County Office will contact the State Office for guidance before making an adverse decision on the application.

State Office officials will contact Ann Smith, LMD, at [ann.smith@wdc.usda.gov](mailto:ann.smith@wdc.usda.gov) for guidance on this matter. Request shall include the applicant's name, claim number, and a brief explanation of the applicant's situation pertaining to their debt forgiveness.

### (3) Loan Term Limits for Prevailing Claimants

Loans received by prevailing claimants will count towards their term limits. This includes loans that were written off for those years in which discrimination was found to have occurred.

**MOU Between FSA and [Enter Name of State Beginning Farmer Program]**

The following is an example format of MOU between FSA and a State beginning farmer program.

\*--

**Memorandum of Understanding Between FSA and [Enter Name of State Beginning Farmer Program]**

**1. SUBJECT:**

Implementation of Section 309(i) of the Consolidated Farm and Rural Development Act (CONACT), as added by Section 5 of the Agricultural Credit Improvement Act of 1992 (Pub. L. 102-554, October 28, 1992).

**2. PURPOSE:**

The purpose of this Memorandum of Understanding (MOU) is to provide cooperation and participation in joint funding between FSA and (enter name of State Beginning Farm Program).

**3. BACKGROUND:**

Section 309(i) of the CONACT requires that an MOU between FSA and any State Beginning Farmer Program be entered into when the State expresses interest, in writing, to coordinate financial assistance to beginning farmers. The CONACT describes a State Beginning Farmer program as any program that is "(A) carried out by, or under contract with, a State; and (B) designed to assist persons in obtaining the financial assistance necessary to enter agriculture and establish viable farming operations".

**4. AGREEMENT:**

It is mutually agreed by the parties to this MOU that they will cooperate and participate in joint funding as specified below:

- A. If (enter name of State Beginning Farmer Program) makes a commitment to provide a qualified beginning farmer with financing to establish or maintain a viable farming operation, FSA will provide financial assistance through the use of the Down Payment Loan Program and/or the guaranteed loan programs subject to all of the following:
  1. applicable law and regulations
  2. normal loan approval criteria, and
  3. availability of funds.
- B. FSA will not provide guaranteed assistance when the funds have been derived from tax-exempt bonds.
- C. FSA will not charge a fee to obtain or retain a guarantee in connection with any joint funding under this MOU.

--\*

MOU Between FSA and [Enter Name of State Beginning Farmer Program] (Continued)

\*--

**Memorandum of Understanding Between FSA and [Enter Name of State Beginning Farmer Program]**

**5. IMPLEMENTATION**

This MOU is effective immediately upon the last signature dated below and will continue in effect until modified or revoked by agreement of both parties, or revoked by either party alone upon thirty (30) calendar days written notice. Modification to this document may be made by mutual agreement and such modifications will be in effect upon the signing of the modified document.

\_\_\_\_\_  
(NAME)  
Deputy Administrator, Farm Loan Programs  
Farm Service Agency  
Washington, DC 20250

\_\_\_\_\_  
(NAME)  
(Name of State Beginning Farmer Program)  
(City, State)

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DATE

--\*

**Rehabilitation or Reestablishment of Fruit, Nut Bearing, and Income Producing Trees and Plants**

**Rehabilitation or Reestablishment of Fruit, Nut Bearing, and Income  
Producing Trees and Plants**

**A Objectives**

EM may be made for rehabilitation and/or reestablishment of fruit, nut bearing, and income producing trees and plants subject to eligibility and general requirements of this handbook. The purpose of EM according to this exhibit is to enable the applicant to restore damaged orchards, groves, and income producing trees and plants to their normal production.

**B Policy**

Loans will be approved only if reestablishment or rehabilitation can be completed over a period not to exceed 5 years. If additional funds are needed and a longer recovery period is required, the applicant must demonstrate, from the outset, that they are able to obtain the additional financing or resources from either their own cash flow or from another lender. FSA has no authority to provide any subsequent EM funds based on the same disaster.

**C Eligible Enterprises**

Eligible enterprises are trees planted and cultivated for commercial production purposes, which have income producing potential for more than 5 years. This includes but is not limited to, citrus fruits such as oranges, grapefruit, lemons, and limes; fruits such as apples, pears, peaches, and cherries; nuts such as walnuts, pistachios, and pecans; and income producing trees such as Christmas trees, sap producing trees, and trees specifically planted, cultivated, and harvested.

**D Nonqualifying Enterprises**

Noneligible enterprises are trees and plants grown for commercial purposes which will be harvested and sold within 5 years from the date of establishment, or whose total production potential is less than 5 years. Examples of these include, but are not limited to, nursery stock, ornamental plants, bananas, plantains, raspberries, strawberries, etc.

**Note:** Fruit, nut bearing, and income producing trees and plants with commercial income potential or that will be harvested and sold within 5 years, will be processed according to the provisions established for all other EM and are not eligible for the provisions in this exhibit.

**Rehabilitation or Reestablishment of Fruit, Nut Bearing, and Income Producing Trees and Plants  
(Continued)**

**Rehabilitation or Reestablishment of Fruit, Nut Bearing, and Income  
Producing Trees and Plants (Continued)**

**E Additional Eligibility Requirements**

In addition to the eligibility requirements established in paragraph 163, applicants must:

- be the owner-operator of a citrus grove, orchard, or commercial woodlot
- be able to develop a feasible plan according to 1-FLP, for
  1. each year until the operation has been brought back to full production
  2. provide verification of income from other farming enterprises or dependable off-farm income which is sufficient to meet all family living and farm operating expenses not related to the rehabilitation or reestablishment project being financed.

**Note:** See Exhibit 2 for the definition of feasible plan.

**F Losses**

All losses to fruit, nut bearing, or income producing trees and plants which result in destruction of, or major damage to trees and plants will be calculated as physical losses.

**Note:** Advances for structures, real estate, and other chattels cannot be made under the provisions in this exhibit.

**G Loan Purposes**

Funds resulting from losses to basic security according to paragraph 162 may be used for:

- hired labor, not including the applicant's labor
- removal of destroyed or damaged trees and related debris
- preparation of land for replanting
- purchase of replacement trees or plants
- repair or replacement of damaged structures and dwellings that house nursery stock, bedding plants, and other types of plants
- expenses necessary to complete the 5-year plan for rehabilitation and reestablishment
- payment of costs associated with promoting soil and water conservation, replacement land or
- water resources, and costs for water and land development for conservation purposes



**Rehabilitation or Reestablishment of Fruit, Nut Bearing, and Income Producing Trees and Plants  
(Continued)**

**Rehabilitation or Reestablishment of Fruit, Nut Bearing, and Income  
Producing Trees and Plants (Continued)**

**G Loan Purposes (Continued)**

Funds resulting from losses to normal income security may be used for:

- current due operating expenses
- hired labor, not including the applicant's labor
- actual costs for pruning and/or top grafting trees
- fertilizer, herbicides, and spray
- costs for preparing and cultivating the land
- equipment maintenance and repairs
- miscellaneous operating expenses including taxes, accrued interest, property insurance, etc.

**H Loan Limitations**

Loan funds will not be approved or advanced for:

- amounts in excess of the costs to rehabilitate or reestablish the grove, orchard, or woodlot, or which would cause the borrower's total outstanding principal EM indebtedness to exceed \$500,000
- construction of new buildings, repair of existing buildings, or repair, replacement, or improvement of chattels
- family living expenses
- operating or real estate expenses not directly related to the rehabilitation or reestablishment of damaged or destroyed trees and plants
- refinancing real estate or chattel debt.

**I Loan Approval**

In addition to the actions required in Part 9, when a loan is being approved, the loan approval official shall:

- obligate the full amount needed to rehabilitate or reestablish the operation, as shown on the credit analysis of the Farm Business Plan
- use assistance code "060" when completing the obligation
- advance only the amount shown on Farm Business Plan each year, unless the Farm Business Plan is otherwise modified and agreed upon by the loan approval official and the borrower.

**J Interest Rate**

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

**Rehabilitation or Reestablishment of Fruit, Nut Bearing, and Income Producing Trees and Plants  
(Continued)**

**Rehabilitation or Reestablishment of Fruit, Nut Bearing, and Income  
Producing Trees and Plants (Continued)**

**K Terms**

The maximum repayment term for loans used to rehabilitate or reestablish an operation will not exceed 40 years. The applicant's ability to repay the loan once the operation is brought back to its normal production is the critical factor in determining the term of the loan.

Loan approval officials may schedule:

- equal and unequal installments based on the applicant's ability to pay.
- reduced annual payments of at least partial interest for the first 5 years

**Note:** The Farm Business Plan must show the loan will be paid in full at the maturity date of the note. Balloon installments are prohibited.

**L Security Requirements**

Rehabilitation or reestablishment loans will be secured according to paragraph 246. However, subparagraph 246 B does not apply to loans made according to this exhibit.

**M Monitoring and Supervision**

Loan approval officials are responsible for supervising and monitoring the needs and progress of the borrower in their efforts to rehabilitate and reestablish their operations.

Loan approval officials shall:

- make required visits to the operation to monitor progress
- monitor the project to ensure that the borrower is complying with all environmental regulations, conservation plans, and is following the recommendations of other Agencies about the methods for re-establishment or rehabilitation, methods for replanting, recommended varieties, and certification requirements
- thoroughly review plans annually to document servicing efforts, progress, operational needs, revisions to the original plans, and the prospect for the continued feasibility of the operation
- cancel any undisbursed loan funds at any point that it is determined that the operation is no longer feasible
- cancel any undisbursed loan funds when it is determined that the rehabilitation or reestablishment project has been completed and there is no longer a need for the additional funds.

**Note:** Before taking this action, discuss the operation and proposed action with DD and FLC. Loan approval officials should have the concurrence of the borrower before taking this action, if possible.

## Notice of Funding Availability

**Note:** Exhibit 24 is available in a fillable format at <http://intranet.fsa.usda.gov>. CLICK “FFAS Employee Forms/Publications Site”, “Find Current Forms Using Our Form Number Search”, in “Form Number” field, ENTER “3-FLP Exhibit 24”, and CLICK “Submit”.

\*--

<b>3-FLP, Exhibit 24</b>
(Use Agency Letterhead format with local return address.)
<b>NOTICE OF FUNDING AVAILABILITY</b>
[Borrower Name/Address] [Borrower Address] [City, State, Zip Code]
<Applicant's Name>
This notice is to inform you that funds may now be available for the Farm Service Agency (FSA) to resume processing your approved loan(s). As stated on FSA-2313, “Notification of Loan Approval and Borrower Responsibilities”, dated ____, FSA may request updated financial and eligibility information.
Please contact this office to schedule an appointment, so that the processing of your approved loan may continue. If you do not contact this office within 15 business days from the date of this notice your application and loan approval will be withdrawn. No review, mediation, or appeal rights will be provided.
The U.S. Department of Agriculture (USDA) prohibits discrimination against its customers, employees, and applicants for employment on the basis of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual’s income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.) Persons with disabilities, who wish to file a program complaint, write to the address below or if you require alternative means of communication for program information (e.g., Braille, large print, audiotape, etc.) please contact USDA’s TARGET Center at (202) 720-2600 (voice and TDD). Individuals who are deaf, hard of hearing, or have speech disabilities and wish to file either an EEO or program complaint, please contact USDA through the Federal Relay Service at (800) 877-8339 or (800) 845-6136 (in Spanish).
If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at <a href="http://www.ascr.usda.gov/complaint_filing_cust.html">http://www.ascr.usda.gov/complaint_filing_cust.html</a> , or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter by mail to U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at <a href="mailto:program.intake@usda.gov">program.intake@usda.gov</a> . USDA is an equal opportunity provider and employer.
For more information or if you have any questions, please contact [this office or the specific office name]at [County Office Address] or telephone [phone number].
Sincerely,

--\*

## Preauthorized Debit (PAD)

PAD payments are customer authorized transactions that allow the Rural Development Business Center to electronically collect loan payments from a customer's account at a FI. CMCB is responsible for setting up, changing, correcting, and canceling PAD agreements. PAD is being implemented for our FLP customers as an alternative way to make loan payments. There is no additional cost passed on to our customers by FSA for using PAD.

### A Using 3550-28

- PAD is initiated by the customer using RD 3550-28. (Customer use of PAD is strictly voluntary.)
- RD 3550-28 must be completed by the customer and the FI. If the customer has a filter on their FI account, they will need to provide the FI with the following information:
  - Origination ID: 1220040804
  - Agency name: USDA RD DCFO.
- A separate RD 3550-28 must be completed for each loan to which payments are to be applied.
- RD 3550-28 has no expiration date.
- The fillable form can be found at <https://formsadmin.sc.egov.usda.gov/eFormsAdmin/searchAction.do>

### B County Office Actions

The County Office will issue a letter similar to the one in subparagraph C and RD 3550-28 to applicants with approved direct loans, who are not already borrowers, when FSA-2313 is sent or hand delivered. After a transfer and assumption, new borrowers will be notified of the availability of PAD using the letter in subparagraph C and RD 3550-28. A copy of the \*--notification will be retained in the borrower's case file.--\*

When a customer returns RD 3550-28 to the County Office, the County Office will:

- review each RD 3550-28 for accuracy and completeness

**Note:** PAD may only be established for future payments. An accuracy check should be completed to ensure the customer's PAD payment goal will be met. A payment submission which will not make the annual installment requires advance notice to the authorizing borrower. The County Office will document the notice in the case file (or FBP if appropriate).

- fax a copy of each accurate and completed RD-3550-28 to CMCB at 314-457-4370; if using fax2mail, please type //FINE at the end of the subject line
- retain each original RD 3550-28 in the borrower's case file (position 2).

**Preauthorized Debit (PAD) (Continued)**

**C Sample Letter for PAD**

The following is a sample letter for PAD (print on official letterhead).

(Date)

(Account Name)

(Address)

Address)

Dear (Account Name),

We are writing to inform you that your Farm Service Agency (FSA), Farm Loan Program payments may now be made through preauthorized debit.

You may use preauthorized debit to have your payments withdrawn electronically from your financial institution and applied toward your annual loan payment. Payments may be withdrawn weekly, bi-weekly, monthly, quarterly, semi-annually or annually. You may initiate preauthorized debit by working with your financial institution to complete RD 3550-28, "Authorization Agreement for Preauthorized Payments" (attached). RD 3550-28 will need to be completed and submitted to your local service center for each loan to which payments are to be applied. If you have a "filter" on the account at your financial institution, you will need to provide the financial institution with the following information: Origination ID: 1220040804, Agency Name: USDA RD DCFO. Preauthorized debit is offered to you by FSA at no cost; you will need to discuss any potential costs with your financial institution. Preauthorized debt has no expiration date, but you may cancel it at any time by submitting a written request to your local service center. If a preauthorized debit agreement receives three payment rejections within a three month period, the preauthorized debt agreement will be cancelled by FSA. The payment amount and due date of your loan is not affected by a cancellation of preauthorized debit. You are responsible to ensure your full payment is made by the due date.

If you have questions on preauthorized debit, please contact (name and title) at (phone number).

Sincerely,

(Name)

(Title)

Attachment: RD 3550-28

**Preauthorized Debit (PAD) (Continued)**

**\*--D Rural Development Business Center Actions**

Upon receipt of RD 3550-28, CMCB will update the PAD agreement into the PAD stand-alone system. Allow up to 20 working dates for CMCB to establish a borrower in the PAD system.

PAD confirmation letters are created by CMCB when a new account is established or when a change is made to an existing account. The letters are sent to the field office and borrower.

**Note:** The local service center will also complete a thorough review of all PAD confirmation letters immediately after they are received from the Rural Development Business Center/CMCB. If an error is identified, CMCB should be contacted by FAX according to 1-FLP.

**E Generating PAD Transactions Through CMCB's Stand-Alone System**

Each day, an electronic file is generated, balanced, and approved for that day's scheduled PAD payments to be withdrawn from the borrowers' FI accounts and updated to PLAS (ADPS). CMCB applies any payments that do not automatically update to PLAS.--\*

The PAD transaction will be reflected on the statement the borrower receives from their FI. The statement is the borrower's payment receipt.

**F Dealing with Non-Payment**

When the FI cannot post the PAD transaction to the designated borrower's account, the FI is instructed by CMCB to reject the transaction.

When a PAD transaction is rejected, CMCB contacts the County Office to verify the reason for rejection (such as insufficient funds, account closed, or payment stopped) and to determine how the rejected payments will be collected. CMCB cannot proceed until the rejection is revealed; a timely reply from the CO will expedite the process.

## **Instructions for Wire Transfer Requests for FLP Activities**

DCIA requires that most federal payments be made through EFT. However, the agency is aware there may be situations where using EFT is not a viable option when a closing agent and/or title company is selected to handle funds disbursement actions for a direct loan.

**Note:** Finance Office will make determinations on wire transfers on a case-by-case basis. This guidance does not establish a blanket policy for widespread use of wire transfers for disbursement actions.

The RD Business Center – Farm Loan Branch has provided the following guidance for wire transfer requests for loan closing activities.

- Requests must be submitted to Finance Office at least 48 hours prior to loan closings to ensure funds are received timely.
- There must be an active (i.e., current fiscal year) obligation request for the wire transfer action.
- If a loan is canceled prior to disbursing a wire transfer; notify RD Business Center immediately to ensure loan funds are returned to the agency.

Submit wire transfer requests by email to all of the following RD, St. Louis MO employees:

- Kayser, Samuel at [samuel.kayser@stl.usda.gov](mailto:samuel.kayser@stl.usda.gov)
- Skaer, Zachary at [zachary.skaer@stl.usda.gov](mailto:zachary.skaer@stl.usda.gov)
- Taylor, Antoinette at [antoinette.taylor@stl.usda.gov](mailto:antoinette.taylor@stl.usda.gov).

## **Documentation Required for Wire Transfer Requests**

- **Wire transfer instructions:** The agency official will obtain the wire transfer information for the recipient institution and submit with the request package. Submit on recipient's institution official letterhead with the following information:
  - contact information for official at recipient institution, if applicable
  - recipient institution's EIN or TIN number.
- **Written wire request instructions:** Provide the following information in a Word document or email:
  - borrower's name and/or entity name noted on closing documents
  - full case number
  - loan number and amount.

**Note:** If information is being submitted using a Word document, encrypt the documents being sent to RD Business Center officials. Send the encryption password by separate email.

