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

Direct Loan Making 3-FLP (Revision 2)	Amendment 54

Approved by: Deputy Administrator, Farm Loan Programs

William D. Cobb

Amendment Transmittal

A Reasons for Amendment

Subparagraph 1 A has been amended to change the spelling of “loan making”.

Subparagraph 42 A has been amended to:

- clarify entity member signature requirements on FSA-2001
- require that the loan approval official evaluate and document a reasonable amount of cash flow margin, reserves, and savings when assessing test for credit
- clarify the requirement for any leases, contracts, options, and other agreements as part of a complete application.

Subparagraph 63 A has been amended to:

- clarify that a youth loan applicant will incur personal liability
- specify that a youth loan applicant is not required to be of legal age.

Subparagraph 65 A has been amended to:

- specify that entity members in the case of an entity must have acceptable credit history, will deal with the Agency in good faith, and must have fulfilled obligations to other parties
- state SED may determine a lack of good faith
- address previous lack of good faith determinations
- add IRA assistance to the items not considered as debt forgiveness for loan making.

Amendment Transmittal (Continued)

A Reasons for Amendment (Continued)

Subparagraph 65 D has been amended to clarify that an entity member who caused the Agency a loss may be ineligible for assistance.

Subparagraph 66 A requires that the loan approval official evaluate and document a reasonable amount of cash flow margin, reserves, and savings when assessing test for credit.

Subparagraph 69 A has been amended to:

- clarify that in the case of an entity, the majority of entity members must have sufficient managerial ability

- update the allowed years of acceptable experience toward the managerial ability requirement.

Subparagraph 70 A has been amended to address entity member borrower training requirements.

Paragraph 71 has been amended to update CFR language about owner/operator requirements of a Conservation Loan.

Subparagraph 74 F has been amended to clarify an applicant’s ability to operate a non-eligible enterprise.

Paragraph 75 has been added to provide debarment and suspension requirements.

Subparagraph 91 C has been amended to update security requirements.

Subparagraph 91 D has been amended to remove a reference about taking personal property as additional security for a real estate loan.

Subparagraph 91 E has been amended to:

- clarify the applicability of capital reserves and savings as non-essential assets
- change the additional security percentage to 125 percent.

Subparagraph 92 B has been amended to clarify using FSA-2319.

Subparagraph 94 E has been amended to:

- update the exception to additional security requirements for a personal residence
- remove the note about prior lien consideration.

Subparagraph 95 A has been amended to clarify using a real estate evaluation.

A Reasons for Amendment (Continued)

Subparagraph 95 B has been amended to clarify that an appraisal is not required for loans for annual operating and family living expenses when normal income security is the primary security.

Subparagraph 131 B has been amended to update guidance involving financing:

- ownership interest in an entity
- the purchase of undivided interests.

Subparagraph 131 C has been amended to clarify using FO funds to make capital improvements.

Subparagraph 132 A has been amended to:

- clarify exceptions to proportionality
- state that all members of the entity applicant must meet general eligibility requirements
- provide a CFR and handbook citation for the 75 percent rule
- clarify acceptable ownership of real estate purchased with FO funds.

Subparagraph 132 B has been amended to clarify that FSA will determine if there is any prior loss by the Agency.

Subparagraph 132 D has been amended to:

- state that in the case of an entity, at least one member who will be the operator of a family farm must meet the farm experience requirement

- clarify the potential substitutes for farm experience

- specify previous management as a factor of consideration for experience.

Subparagraph 132 E has been amended to clarify term limits for a direct FO applicant.

Subparagraph 133.5 B has been amended to comply with the previous version of CFR.

Subparagraphs 135 B and C have been amended to address FO terms and repayment.

Amendment Transmittal (Continued)

A Reasons for Amendment (Continued)

Subparagraph 135 D has been amended to:

- state that additional security is not required for a ML made for FO purposes

- provide that additional security will not be taken for an FO for the purchase of a farm where the applicant provides a cash down payment equal to 5 percent

- clarify required life of security.

Subparagraph 151 A has been amended to clarify the subparagraph is applicable to all Down Payment loans.

Subparagraph 153 C has been amended to clarify Down Payment loan limits.

Subparagraphs 174 B and C have been amended to state Conservation Loan terms.

Subparagraph 191 B has been amended to remove a subparagraph reference.

Subparagraph 201 C has been amended to provide guidance about the acceptable size and type of farm equipment to be purchased with OL funds.

Subparagraph 201 L has been amended to state the required term of lease for an OL used for minor real estate repairs or improvements to leased property.

Subparagraph 202 D has been amended to revise the examples applicable to OL term limits.

Subparagraph 202 G has been amended to revise an example applicable to OL term limit exceptions.

Subparagraph 204 A has been amended to revise the ML OL interest rate for a beginning farmer or veteran rancher.

Subparagraph 204 B has been amended to clarify annual OL terms.

Subparagraphs 204 C has been amended to:

- provide revised terms for OL's
- state life expectancy limitations for OL security.

Subparagraph 204 D has been amended to revise repayment requirements for OL's.

Amendment Transmittal (Continued)

A Reasons for Amendment (Continued)

Subparagraph 205 A has been amended to:

- address OL security requirements
- allow under stated circumstances for a junior lien on real estate repaired or improved with OL funds.

Subparagraph 216 B has been amended to remove reference to Farm Bill and CFR.

Subparagraph 227 C has been amended to increase the youth loan limit to $10,000.

Subparagraph 230 B has been amended to clarify that the 125 percent additional security requirement does not apply to youth loans.

Subparagraph 241 B has been amended to clarify conditions to refinance debt with personal property physical loss EM funds.

Subparagraph 241 C has been amended to clarify conditions to refinance debt with production loss EM funds.

Subparagraph 242 D has been amended to consolidate previously listed assets as personal property.

Subparagraph 242 I has been amended to remove references to EM qualifying losses.

Subparagraph 244 C has been amended to revise the calculation of production losses.

Subparagraphs 244 E and F have been amended to remove references to qualifying loss.

Subparagraph 245 B has been amended to revise the loan terms for an EM.

Subparagraph 245 C has been amended to revise the repayment requirements for all EM’s.

Subparagraph 245 D has been amended to revise repayment requirements of EM loans for annual operating expenses.

Subparagraph 245 E has been amended to:

- revise the repayment requirement of an EM loan for production losses or physical losses to personal property
- address life expectancy of common security items.

Amendment Transmittal (Continued)

A Reasons for Amendment (Continued)

Subparagraph 245 F has been amended to revise the repayment schedule for EM loans for physical losses to real estate.

Subparagraph 246 A has been amended to provide additional security requirements for an EM loan to an entity.

Subparagraph 373.5 G has been amended to clarify conflict of interest of a closing agent.

Subparagraph 419 B has been amended to reference the FBP User Guide in place of 1-FLP.

Part 18 has been amended to:

- remove the requirement for production training
- state that the authorized agency official will waive an applicant's previously required production training.

Subparagraph 474 B has been amended to clarify borrower training requirements associated with paid in full loans.

The handbook text has been amended throughout to:

- correct the spelling of " non-essential assets", "non-beginning farmer", "write-down" and "interest-only".
- replace the term "economic reverses" with "economic reversal".
- replace "chattel" with "personal property".
- correct labeling of CFR references
- change "shall" to "will" or "must" to comply with plain language guidance.

Exhibit 2 has been amended to update definitions.

Amendment Transmittal (Continued)

Page Control Chart		
TC	**Text**	**Exhibit**
1, 2	1-1 through 1-4	1, page 5
5, 6	1-7, 1-8	2, pages 1-22
	3-1, 3-2	pages 23, 24 (add)
	3-2.5, 3-2.6	page 25 (add)
	3-3 through 3-6	21, pages 1-4
	3-6.5, 3-6.6	
	3-7 through 3-12	
	3-13 through 3-18	
	4-1 through 4-6	
	4-6.5, 4-6.6	
	4-7, 4-8	
	4-8.5, 4-8.6	
	4-11, 4-12	
	4-12.5, 12.6	
	4-12.7, 4-12.8 (add)	
	4-13 through 4-20	
	4-21 (add)	
	5-1, 5-2	
	5-2.5, 5-2.6	
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	5-9 through 5-14	
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	7-7, 7-8	
	7-8.5, 7-8.6	
	7-9, 7-10	
	7-10.5, 7-10.6 (add)	
	7-11 through 7-44	
	7-45 (add)	
	8-1 through 8-30	
	8-31	

Amendment Transmittal (Continued)

Page Control Chart (Continued)		
TC	**Text**	**Exhibit**
	9-1, 9-2 9-2.3, 9-2.4 (add) 9-3 through 9-46 9-73 through 9-76 9-79 10-1 through 10-28 10-29 10-30 (add) 10-31, 10-32 (add) 15-2.5, 15-2.6 15-3 through 15-12 15-17, 15-18 15-19 16-1 through 16-6 16-9 through 16-96 18-1 through 18-44	

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Section 3 Preparing for and Completing Loan Closing for Personal Property

Section 4 Actions After Loan Closing

Part 17 (Withdrawn—Amend. 34)

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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 loan making regulations governing FLP
- roles and responsibilities in implementing those regulations and other direct loan making 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 in included in paragraph 42.

2 Related References

A Related FSA Handbooks

The following FSA handbooks concern FLP.

IF the area of concern is about…	THEN see…
State and county organization and administration policies, procedures, principles, and standards, such as work organization	16-AO.
civil rights compliance and administration for FSA programs	18-AO.
appeals and mediation	1-APP.
State and county records management	32-AS.
policies and procedures for the acquisition of supplies, equipment, and services	27-AS.
common management and operating provisions for program management activities, functions, and automated applications, such as forms that cannot be accepted by FAX	1-CM.
highly erodible land and wetland conservation compliance	6-CP.
environmental requirements	1-EQ.
environmental risk management	2-EQ.
processing collections and canceling loan checks and payments	*--64-FI.--*
general and administrative regulations governing FLP	1-FLP.
guaranteed loan making and servicing	2-FLP.
direct loan regular or routine servicing	4-FLP.
direct loan special servicing and inventory property management	5-FLP.
the Emergency Loan Seed Producers Program, Horse Breeder Loan Program, Indian Tribal Land Acquisition Program, Special Apple Loan Program, and servicing of minor loan programs	6-FLP.
procedures for making records available to the public, other Federal agencies, and Congress	2-INFO.
procedures for collecting, maintaining, or disclosing data or information about an individual	3-INFO.
personnel management, such as employee conflict of interest	3-PM.
employee development and training	6-PM.

Notes: See 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 will:**--

- 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.

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)

*--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.	In SDMS, submit the following for prior approval: • State supplement that requires using the form **Note:** Submit separately all the State supplements for forms in the 2000 series. • electronic or scanned copy of National or State-created form, providing modifications needed • revised instructions for completion for National form, if applicable; or instructions for completion for State-created form. **Notes:** Include margins, font size, and any other specific requirements for forms that will be filed. State-obtained OGC approval of form may be requested during National Office review.	• Coordinate the development of the form with the appropriate National Office area. • Review and ensure nondiscrimination, privacy act, and public burden statements are included, as needed. • Send proposal to State for approval. • Coordinate uploading form and instructions for completion to **http://intranet.fsa.usda.gov/dam/ffasforms/forms.html** when state supplement is approved.
Existing State-modified and State-created forms	In SDMS, submit the following for prior approval: • electronic or scanned copy of form indicating needed changes • electronic or scanned copy of instructions for completion, as needed • State supplement that requires using the form, **only** if changes are needed.	• Review and ensure that current nondiscrimination, privacy act, and public burden statements are included, as needed. • Send proposal to State for approval. • Coordinate uploading form and instructions for completion to **http://intranet.fsa.usda.gov/dam/ffasforms/forms.html**.

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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:

***--[7 CFR 764.1(b)(1)] FO, including ML and Downpayment loans** (Part 7);

[7 CFR 764.1(b)(2)] OL, including ML and Youth loans (Part 9)**;**

[7 CFR 764.1(b)(3)] EM (Part 10)**; and**

[7 CFR 764.1(b)(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**
- eGov's web site at **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 will 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, will 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 will be obtained before loan closing.

Youth loan applications should be filed according to paragraph 44.

The authorized agency official will 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:** Any member(s) of an entity applicant (including members of embedded entities) that entity documents require to apply for credit, must sign FSA-2001, Part J as an "Entity Representative". All individuals with ownership interest in the entity or any embedded entities must also sign FSA-2001, Part J as "Self".**--

[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. The authorized Agency official will evaluate and document whether or not rates and terms of available credit in the applicant's region will result in a reasonable amount of cash flow margin to increase working capital reserves and savings, including reasonable savings for retirement and education, to support operational stability and growth;--

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 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.

42 Complete Loan Application (Continued)

A Requirements (Continued)

--**Rates and terms available from other lenders are not expected to match those of the Agency direct loan program to be considered reasonable. However, reasonable rates and terms should allow for progress towards accumulation of reasonable working capital reserves and savings, including for retirement and education of family members, and allow progress on the short- and long-term development and growth goals of the operation.**--

[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, upon Agency request, any leases, contracts, options, and other agreements related to the operation;**

An application for the purchase of real estate will not be considered complete without a signed real estate purchase contract or similar document reflecting the transaction is agreed to by all parties. This document does not need to contain a full legal description of the property to be purchased for the application to be considered complete. If a full legal description of the property to be purchased is not provided as part of the complete application, the approval official will discuss the need to obtain a full legal description with the applicant, and formally require the receipt of the legal description in the Loan Closing and Document Requirements section of FBP and FSA-2313. FSA will also require as a loan closing and document requirement a full legal description for property not being purchased, but which will be required as security for a loan. Applications to purchase a portion of a larger parcel will be considered complete if the Agency is provided a description of the portion to be purchased (for example, a map with the parcel to be purchased adequately marked). Likewise, the legal description of a primary residence to be excluded as security per 7 CFR 764.106(d) may be informally identified before loan approval and be required as a loan closing requirement.

Note: A full legal description will be needed to complete a real estate appraisal to ensure the appropriate property is appraised. While the legal description is not needed for a complete application, an applicant must provide the information before an appraisal is ordered.--*

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(g)] 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-D 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 will be documented in FBP. State and County Offices--* may not establish blanket requirements for additional information without prior approval of the National Office.

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(f)] For a youth loan request:--

[7 CFR 764.51(f)(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).

[7 CFR 764.51(f)(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.

[7 CFR 764.51(f)(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 will:--

- 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 15th 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 will 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 15th 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 will 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 will be ineligible for any payment made under any Act, with respect to any**--*** commodity produced during the crop year of conviction and the 4 succeeding crop years, by such person.

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. A Youth loan applicant will incur full personal liability upon execution of the promissory note without regard to the applicant's minority status.--*

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 (with exception of a youth loan applicant), 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, and all entity members in the case of an entity, must have acceptable credit history demonstrated by debt repayment.--

* * *

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 will 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 approval official finds documentation that 10 years ago the applicant 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 (Continued)

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 approval official must review the history with the applicant to determine if the recent issues have been caused by circumstances beyond the applicant's control.

[7 CFR 764.101(d)(1)] As part of the credit history, the Agency will determine whether the applicant, and all entity members in the case of an entity, 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, and all entity members in the case of an entity, 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, or any entity member in the case of an entity:**--***

- 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, or any entity members in the case of an entity, 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.

SED may determine if a lack of good faith exists. OGC concurrence is not required, but can be pursued if SED determines it is warranted.**--***

65 Credit History (Continued)

A General Requirement (Continued)

--**A previous lack of good faith determination must be reevaluated when processing a new loan application. The approval official must take into consideration not only the initial lack of good faith event, but also how the applicant, and all entity members in the case of an entity, have recently fulfilled its obligations to FSA and other parties, including other agencies of the Federal Government. If the previous lack of good faith determination occurred more than 10 years before the date of a new application, National Office concurrence is required before a denial based on the previous determination is used as a basis of a loan denial. 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.

--[7 CFR 764.101(d)(2)] When the applicant, or an entity member in the case of an entity, 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 credit worthiness.--

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.

65 Credit History (Continued)

A General Requirement (Continued)

- 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

- *--direct or guaranteed assistance provided as part of the Inflation Reduction Act.--*

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.

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, or any entity member in the case of an entity, 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, or any entity member in the case of an entity, may be eligible for annual production loans, but no other type of assistance.

An applicant, or any entity member in the case of an entity, who has successfully completed a bankruptcy reorganization plan will be considered to be current on the plan. Therefore, as long as the applicant, or any entity member in the case of an entity, 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 will 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. **Note:** 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 will access the View Loan Screen in GLS to verify previous debt forgiveness on guaranteed loans. On the GLS Loan List Screen, click the "ID Cross Reference" button. On the ID Cross Reference Screen, enter the tax ID/SSN of the applicant and each individual who will sign 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, current or previous loan information will be displayed by clicking on the ID number link. 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 link.--

65 Credit History (Continued)

D Assessing Past Repayment Problems

***--[7 CFR 764.101(d)(3)] A history of failures to repay past debts as they came due will demonstrate unacceptable credit history when the ability to repay was within the control of the applicant, or entity member in the case of an entity. The circumstances in paragraphs (d)(3)(i) through (iv) of this section, for example, do not automatically indicate an unacceptable credit history:**

(i) Foreclosures, judgments, delinquent payments 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; and

(iv) Recent foreclosure, judgment, bankruptcy, or delinquent payment of the applicant, or an entity member in the case of an entity, when it can be satisfactorily demonstrated that the adverse action or delinquency was caused by circumstances that were of a temporary nature and beyond the individual's control; or 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 FBP. 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 approval 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.

65 Credit History (Continued)

D Assessing Past Repayment Problems (Continued)

***--**Nonpayment of a debt because of circumstances within the control of an applicant, or entity member in the case of an entity, may be used as an indication of unacceptable credit history. The mere fact that an applicant, or entity member in the case of an entity, filed bankruptcy will not be used as an indication of unacceptable credit history. The circumstances causing the nonpayment of debt must be considered.

In some cases, credit reports for applicants, or entity members in the case of an entity, 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, or entity member's in the case of an entity, control. Therefore, extra diligence should be taken to review the credit reports to determine if the circumstances were beyond the control of the applicant, or entity member in the case of an entity. Loan approval 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, or entity member's in the case of an entity, credit history includes an adverse or delinquent account status, the authorized agency official will 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 control of the applicant, or entity member in the case of an entity, and to explain FSA creditworthiness requirements. In addition, provide counseling about the importance of paying accounts as agreed and guidance on improving credit history. Document the meeting in FBP. If additional information will be provided by the applicant, or entity member in the case of an entity, confirm 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:

--[7 CFR 764.101(e)(1)] Loan amounts, rates, and terms available in the marketplace. The authorized Agency official will evaluate and document whether rates and terms of available credit will result in a reasonable amount of cash flow margin to increase working capital reserves and savings, including reasonable savings for retirement and education, to support operational stability and growth; 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.

***--**Rates and terms available from other lenders are not expected to match those of the Agency direct loan program to be considered reasonable. However, reasonable rates and terms should allow for progress towards accumulation of reasonable working capital reserves and savings, including for retirement and education of family members, and allow progress on the short- and long-term development and growth goals of the operation. Typically, to adequately assess test for credit requirements when the applicant has an existing agriculture lending relationship with another lender, the FSA loan approval official will consult with those creditors to determine if commercial underwriting standards can be met.

[7 CFR 764.101(e)(2)] Property interests, income, and significant non-essential assets.

***--**See the 7 CFR 761.2(b) (Exhibit 2) definition of non-essential assets, which states working capital reserves and savings that do not exceed the greater of $30,000 or 20 percent of planned typical year farm operating expenses (not including interest or depreciation) are considered essential. Working capital reserves and savings in excess of these amounts are considered non-essential assets unless a written exception is provided by SED, FLC, FLS, or DD. Additionally, essential assets include funds in IRS recognized retirement accounts or qualified tuition programs held by the applicant, borrower, or entity members in the case of an entity. As well, funds held by the applicant, borrower, or entity members in the case of an entity, which are accumulated for specific farm related capital purchases, farm operating expenses, and family living expenses, to be realized in the next operating cycle, are considered essential assets.

Applicants must satisfy the test for credit eligibility requirements in subparagraph A.

According to subparagraph 91 E, the approval official will not require an applicant to liquidate or pledge working capital reserves and savings considered reasonable and essential within this guidance, for the applicant to fully or partially self-finance, or to obtain other credit.

Note: The working capital reserves and savings thresholds reflect the accumulation of approximately 4 years of reasonable annual savings according to 1-FLP, subparagraph 242 A.**--***

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 will 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

* * *

*--**[7 CFR 764.101(i)] The applicant, and in the case of an entity, the individuals holding a majority interest in the entity, must have sufficient managerial ability to assure reasonable prospects of loan repayment, as determined by the Agency. Managerial ability must be demonstrated by:**

The applicant, or the individuals holding a majority interest in the case of an entity, 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.

***--Example:** A recently married husband and wife apply for a direct loan as a joint operation. As an entity consisting of 2 members, each holding 50 percent interest, neither member holds a majority interest, so both members must demonstrate sufficient managerial ability by meeting any combination of education, on-the-job training and farm experience. The wife has operated a farm for several years and meets the managerial ability through 764.101(i)(3), farming experience. The husband has no previous farm experience or agricultural-related education. The approval official considers the husband demonstrates sufficient managerial ability through current on-the-job training [764.101(i)(2)].

[7 CFR 764.101(i)(1)] Education. For example, the applicant or entity member 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 or entity member 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

69 Managerial Ability (Continued)

A General Requirement (Continued)

- 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

  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.

--[7 CFR 764.101(i)(2)] On-the-job training. For example, the applicant or entity member is currently working on a farm as part of an apprenticeship program;--

69 Managerial Ability (Continued)

A General Requirement (Continued)

To meet the managerial ability requirement through on-the-job training alone, the applicant ***--**or entity member 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
  - 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.

69 Managerial Ability (Continued)

A General Requirement (Continued)

***--[7 CFR 764.101(i)(3)] For example, the applicant or entity member has been a manager or operator of a farm business for at least one entire production cycle or for MLs, made for OL purposes, the applicant may have obtained and successfully repaid one FSA Youth-OL. Farm experience of the applicant, without regard to any 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 10 years prior to the date of the new application, the applicant must demonstrate sufficient on-the-job training or education within the last 10 years to demonstrate managerial ability; or**

If relying on farm experience that occurred more than 10 years before the application, the applicant or entity member 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 will be listed as a loan approval condition on FSA-2313.

To meet the managerial ability requirement through farming experience alone, the applicant or entity member 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.

69 Managerial Ability (Continued)

A General Requirement (Continued)

***--**The applicant or entity member may document this experience through FSA farm records or similar documentation.

Applicants or entity members 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 farmer and rancher development programs,** Tribal Youth Organizations, **or Community Based Organizations, that demonstrates experience in a related agricultural enterprise; or**

[7 CFR 764.101(i)(4)(ii)] A written description of 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 specific operation. The individual providing the guidance must be knowledgeable in production, management, and marketing practices that are pertinent to the applicant's operation, and agree to form a developmental 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.--*

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, for example the applicant for a tomato DOL-ML should not have a dairy farmer as his mentor unless the mentor 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).

*--**Note:** For an entity applicant, at least one member of the entity must agree to meet the training requirements of 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)] Except for CL, 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 CL or 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 (Continued)

B Factors for Consideration

***--[7 CFR 764.101(k)(4)] Except for CL, 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.

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 will 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 will consult with their regional OGC**--*** to determine under what circumstances an operation is required to register as a partnership with their State.

72 Entity Composition (Continued)

D Treatment of Trusts

*--SED's, after consultation with the Regional OGC, will 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 will 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)

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:

*--**[7 CFR 764.102(1)] For any purpose that contributes to excessive erosion of highly erodible land, or to the conversion of wetlands;**

[7 CFR 764.102(2)] To drain, dredge, fill, level, or otherwise manipulate a wetland; or

[7 CFR 764.102(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.

--Note:** In addition to the family farm, an individual or entity applicant may operate a non-eligible enterprise as defined in Exhibit 2; however, FSA loan funds will not be used to establish or support the non-eligible enterprise. The definition of farm in Exhibit 2 allows for the purchase of a tract or tracts of land which may include a non-eligible enterprise if the land, improvements, and facilities used in a non-eligible enterprise is ordinarily treated as part of the farm in the local community.**--

*--75 Debarment and Suspension

A Participation in Direct Loan Programs

The applicant, and anyone who will execute the promissory note, must not be debarred or suspended from participation in Government contracts or programs. In the case of an entity applicant, this requirement applies both to the entity itself and all members of the entity. This requirement also applies to any cosigners. See 2 CFR 180.115 or 417.10 for further regulatory guidance.

See 1-FLP, paragraph 43 for additional guidance about debarment and suspension. See 1-FLP, Exhibits 15.5 and 15.6 for additional guidance on using the DNP system.

If DNP provides no SAM Exclusion Record for the searched party(ies), then the individual(s) or entity(ies) is not debarred from participating in the Federal Government programs, and thus meets this eligibility requirement.

If search records indicate that the individual(s) or entity(ies) is excluded or debarred from participating in Federal Government programs, the applicant will not be eligible to participate in the direct loan programs.

Notes: SAM, which is searched via DNP, includes other entity records besides exclusion records. If a search result is received, then verify that it is an exclusion record. For further guidance, the County Offices are required to contact the State Office. State Offices may contact the National Office for further guidance as needed.

A copy of the returned search record will be filed in the applicant's case file.**--***

76-90 (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 personal property 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 personal property 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 (Continued)

C Additional Security

***--[7 CFR 764.103(c)] An additional amount of security will be required, if available, to reach a 125 percent security margin. Total loan security in excess of what is needed to achieve a security margin of 125 percent will only be taken when it is not practicable to separate the security, or if necessary to satisfy the requirements of § 764.254(b)(2)(i) of this chapter. Loans that do not require additional security are down payment loans, MLs, youth loans, and FOs for the purchase of a farm where the applicant provides a cash down payment equal to 5 percent or greater of the purchase price. Non-real estate assets will not be taken as additional security for any loan where real estate serves as primary security.**

Applicable additional security for a loan where real estate serves a primary security may include land, permanent structures, and fixtures that can be described on the security instrument, including but not limited to, bins, silos, and gutter cleaners. Also included are 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.

In the case of an entity, when all the security held by the entity does not meet the requirement for additional security up to 125 percent of the loan amount, FSA will take liens on assets held by individual members, as security to the extent that the members have suitable assets. The entity will select and notify FSA which asset it prefers to offer as security for the loan. Personal property held by an entity member will not be taken as additional security for any loan where real estate serves as primary security.

The authorized agency official will take security with equity that exceeds 125 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 may also result in a security margin exceeding 125 percent as it is typically not practical to separate within species of livestock in security instruments. Loan approval officials need to take steps to ensure the Agency is not taking more than 125 percent security when avoidable. Standard personal property lien statements providing a blanket lien on all chattels should be altered if necessary.

Example 1: FSA approves a loan to purchase cattle. FSA files a blanket Financing Statement (UCC-1) which includes all livestock. The applicant signs FSA-2028 (Security Agreement) which includes the description of cattle to be purchased. (Of course, FSA-2028 includes an after acquired clause.) As individual cattle would not be considered separate and identifiable, FSA will require a security interest in all cattle, even if the total value of cattle exceeds 125 percent of the loan amount.**--***

91 Security Requirements (Continued)

C Additional Security (Continued)

***--Example 2:** An annual operating loan of $100,000 is secured primarily by crops. The applicant has equity in equipment valued at $60,000 and equity in breeding livestock valued at $30,000. The loan approval official should perfect the Agency's lien on crops and breeding livestock, and ensure equipment is not taken as security for the Agency loan.

Example 3: A term operating loan of $200,000 is secured primarily by equipment with equity valued at $250,000. The loan approval official should perfect the Agency's lien on equipment only, and ensure other personal property, including crops, are not taken as security.

When analyzing security requirements and loan repayment terms, the approval official must consider any depreciable nature of proposed security relative to the projected pay-down of principal and ensure the Agency loan is projected to be fully secured for the life of the loan.

Example 1: FSA is providing a $50,000 ML OL for an applicant to purchase 20 cow/calf pairs at $2,500 per pair. It is reasonably estimated that the calf portion (which will be sold within a few months of closing) of each pair is valued at $500, while the cow value of the pair is estimated at $2,000. The purchase of 20 calves for $500 per head ($10,000) must be structured as an annual operating use and repaid when the calves are expected to be sold according to 7 CFR 764.254(b)(1) (subparagraph 204 A) unless that applicant pledges additional security which would allow the principal balance to be adequately secured over the life of the loan. Without such additional security, the first annual installment should include the $10,000 calf purchase, plus interest on the $10,000, plus scheduled term debt payment on the remaining $40,000.

Example 2: A regular FO of $200,000 is being made to finance the purchase of real estate for $200,000. The real estate consists of a specialized livestock facility which is expected to be functionally obsolete at the end of 15 years, which is valued at $150,000. The remaining real estate consists of underlying real estate valued at $50,000 (which is not assumed to be depreciable). The applicant has no other long-term assets to pledge as additional security. Rather than automatically consider a 40-year term, FSA must propose a loan repayment schedule which would allow for principal reduction adequate for the loan to remain secure for the life of the loan.

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

Note: The 125 percent should be the available equity, after taking prior liens into consideration.**--***

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. *** 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.**

***--**See the 7 CFR 761.2(b) (Exhibit 2) definition of non-essential assets, which states working capital reserves and savings that do not exceed the greater of $30,000 or 20 percent of planned typical year farm operating expenses (not including interest or depreciation) are considered essential. Working capital reserves and savings in excess of these amounts are considered non-essential assets unless a written exception is provided by SED, FLC, FLS, or DD. Additionally, essential assets include funds in IRS recognized retirement accounts or qualified tuition programs held by the applicant, borrower, or entity members in the case of an entity. As well, funds held by the applicant, borrower, or entity members in the case of an entity, which are accumulated for specific farm related capital purchases, farm operating expenses, and family living expenses, to be realized in the next operating cycle, are considered essential assets

Applicants must satisfy the test for credit eligibility requirements in subparagraph 66 A.

Note: The working capital reserves and savings thresholds provided reflect the accumulation of approximately 4 years of reasonable annual savings in 1-FLP, subparagraph 242 A.**--***

91 Security Requirements (Continued)

E Requirement to Obtain Liens on all Non-Essential Assets (Continued)

--**This requirement to obtain liens on all non-essential assets 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 non-essential assets is:

- not included as part of the 125 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 non-essential assets to meet the ***--**125 percent requirement.**--***

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:

*** * ***

[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;

***--**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.

When real estate will be required to meet additional security requirements of subparagraph 91 C, FSA-2319 will be provided to each prior lienholder for signature. However, a lien will still be obtained on the real estate to be pledged as additional security, even if a prior lienholder refuses to sign the 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 (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:

***--[7 CFR 764.104(b)(1)] The applicant must provide a security interest in the real estate.**

[7 CFR 764.104(b)(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.

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 personal property 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 personal 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 personal property 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 will 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)] Unless the applicant provides a written request for an exemption, when the property includes the primary personal residence and appurtenances of the applicant or any entity member(s) and:**

[7 CFR 764.106(d)(1)] They are located on a separate parcel of up to the greater of 10 acres or the minimum size that meets all State and local requirements for a division into a separate legal lot; and

[7 CFR 764.106(d)(2)] The security requirements of 7 CFR 764.103(b) can be satisfied without the use of the primary personal residence and appurtenances;

Note: If an applicant requests that FSA obtain a security interest in the primary personal residence and appurtenances of the applicant or any entity members, FSA will clarify in FSA-2313 that, as the applicant has requested, a security interest will be obtained in the primary personal residence and appurtenances. The applicant's written request for the exemption may be satisfied by the applicant's acceptance and signature on FSA-2313.

An FO [see § 764.155(b)] or EM for real estate physical losses [see § 764.355(a)] which is used for the purchase or improvement of the primary personal residence of the applicant or any entity member(s) will require a security interest in the personal residence and appurtenances purchased or improved with loan funds. Similarly, an OL [see § 764.255(d)] used for the improvement of the primary personal residence of the applicant or any entity member(s) will require a security interest in the personal residence and appurtenances improved with loan funds.

CFR at § 764.103(b) requires that all loans (except for EM loans meeting certain criteria) must be secured by assets having a security value of at least 100 percent of the loan amount. This may require FSA obtain a security interest in real estate not being purchased or improved with loan funds. In such a case, for the primary personal residence and appurtenances of the applicant or any entity member(s) to be excepted, remaining adequate security must meet the requirement of at least 100 percent of the loan amount.

A security interest in the primary personal residence and appurtenances of the applicant or any entity member(s) will not be required as additional security [§764.103(c)] when located on a separate parcel of up to the greater of 10 acres or the minimum size that meets all State and local requirements for a division into a separate legal lot.**--***

94 Exceptions to Security Requirements (Continued)

E Personal Residence of Applicant (Continued)

***--**CFR at § 764.106(d)(1) includes that to be excepted, the personal residence and appurtenances of the applicant or any entity member(s) must be located on a separate parcel. If the tract to be excepted is not already legally separated at the time of loan application, the applicant will be provided the opportunity to obtain an adequate legal description and meet any additional State or local requirements for separation of the residence before loan closing. The applicant will be responsible for any associated costs. Legal separation of the residence must result in the remaining security property being marketable and accessible.

A farmstead, including farm buildings and other improvements may lay within the separated parcel of up to the greater of 10 acres or the minimum size able to be parceled into a separate legal lot.**--***

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

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 ***--**total amount of the Agency debt 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 personal 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 any of the following:

- real estate or personal property taken as additional security
- non-essential assets
- loans for annual operating and family living expenses when normal income security is 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 personal property 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:

*--**[7 CFR 764.108(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 *** * *** 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 personal property will 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 will not rely upon a builder's risk policy issued to the**-- contractor who is constructing the building.

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 ***--**will 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 will 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.

131 Uses (Continued)

B Farm Purchases (Continued)

*--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 requests to purchase ownership/shares in an entity, all of the following must be met:

- 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
- the loan amount must be consistent with the interests purchased.

State Offices will contact the National Office for guidance about purchasing shares if needed.

Purchases of undivided interests are also 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
- *--all non-applicant owner(s) must be either:
  - an existing owner(s) that held interest in the property prior to the transaction (with the exception of a spouse)
  - a new owner gaining their respective ownership share in the property through their own funding source (for example, cash, FSA financing, or other creditor financing)--*

131 Uses (Continued)

B Farm Purchases (Continued)

***--**The FSA applicant(s) must operate at least a share comparable to their investment in the overall property; and to ensure the FSA applicant is a separate operator with their own farm operation and not only part of a joint operation, the applicant must satisfy all of the following for their individual operation:

- obtain financing for their operation separate from other undivided interest owners
- have separate bank accounts
- maintain separate financial and production records
- file tax returns for their individual operation
- make independent management decisions.

In addition to the requirements above, the agency official should consider other factors that may demonstrate separate operations versus a joint operation. The following list of questions represent examples of factors to consider as part of the analysis:

- Will the applicant(s) own their cattle individually and have individual brands, tags, etc. to separately identify livestock (for example, the applicant owns 25 identifiable cows rather than half of 50 cows)?

- Will the applicant(s) own their own livestock and decide when & where they sell?

- Will the applicant(s) own their own equipment?

- Will the applicant(s) obtain separate crop (RMA) / livestock (LRP) insurance policies for their own operations?

- Will the applicant(s) market and sell grain, livestock, and other products separately, or is everything sold together with revenues split equally?

- Will input suppliers maintain separate accounts for each individual instead of a single, joint account?

- Do lien search results show separate filings for each individual?

Note: County Offices will 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.

131 Uses (Continued)

B Farm Purchases (Continued)

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.

*** * ***

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;

131 Uses (Continued)

C Capital Improvements (Continued)

***--**FO funds can be used to purchase, improve, or build a structure, including a dwelling. Size, cost, and design of the structure, including a dwelling, must be recognized in the community as reasonable considering the projected farming operation or family needs. The proposed operation must meet the definition of family farm in Exhibit 2 and proportionality requirements addressed in subparagraph 132 A. The dwelling will 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.

Example 1: An applicant applies for a direct FO to construct a home located on a farm owned by the applicant. The intended home is not excessive in size, cost, and design relative to other family homes recently built in the area. The approval official determines that proportionality is met, as well as the definition of family farm, including that the property will be recognized as a farm rather than a rural residence. The approval official should determine that the requirements of this subparagraph are met.

Example 2: FSA receives a direct FO application to construct a $600,000 machine shed and shop. The planned farming operation is 30 head of beef cows. Size, cost, and design of structure exceeds that necessary for the farming operation, even after considering reasonable growth of the operation. In addition to storing and maintaining equipment for the farm operation, the applicant intends to conduct a non-eligible enterprise (vehicle repair shop) out of the structure. The size, cost, and design of structure includes features unnecessary for the farming operation, but useful to the non-eligible enterprise. The approval official should determine that the requirements of this subparagraph are not met, as the proposed structure is not essential to the farming operation.

Example 3: An applicant applies for a direct FO to construct a machine shed and shop which the loan approval official documents is proportionate in size, cost, and design for the farm operation. Without the necessary addition of significant construction cost, the applicant intends to periodically use portions of the building to store and repair equipment used in a non-eligible enterprise. The approval official should determine that the requirements of this subparagraph are met, as the proposed structure is essential to the farming operation.**--***

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:

***--[7 CFR 764.151(e)(1)] The applicant obtained the loan to be refinanced to purchase a farm after a direct FO was approved;**

[7 CFR 764.151(e)(2)] Direct FO funds were not available to fund the loan at the time of approval;

[7 CFR 764.151(e)(3)] The loan to be refinanced is temporary financing; and

[7 CFR 764.151(e)(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 must 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.

--**As a guide to assess family farm requirements provided in subparagraph 71 A, the gross farm sales generated by the operation (the applicant's entire proposed operation, including the property to be purchased or improved) should typically be proportionate to the purchase price. To assess proportionality, typical year gross farm sales should normally be at least equal to the annual installments for any debts associated with the real estate purchase or improvement. The approval official must adequately document exceptions to this consideration for applicants who otherwise meet family farm requirements, but due to circumstances do not fully meet this assessment of proportionality.**--

The following are entity rule basics for direct FO:

- applicant must be the operator of the farm and match farming records in farm programs
- *--the applicant and all members of the applicant entity, including embedded entities and individuals with ownership interests in the entities, must meet eligibility requirements 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 (§ 764.101(l), subparagraph 72 A)**--***
- loan is made to the operating entity (FLP applicant), and all entity members (from the operating entity) must sign the promissory note
- ***--**ownership may be held by the applicant, or any person or entity (in any combination) that is a party to the application as a member of the operating entity and who signs the promissory note.

  Note: A spouse of an individual applicant or of a member of the operating entity may be a co-owner without the requirement for the spouse to be a party to the application or to sign the promissory note.**--***

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
- ***--**in this example, ownership could be held by:**--***
  - 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 will review debt verification obtained under subparagraph 65 B to determine whether there is any prior loss by the Agency.**--

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:

***--[7 CFR 764.152(c)(1)] The entity is controlled by farmers engaged primarily and directly in farming in the United States, after the loan is made;**

[7 CFR 764.152(c)(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.

[7 CFR 764.152(c)(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 members 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.**

***--[7 CFR 764.152(c)(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, at least one member who will be the operator of the family farm, 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.**

[7 CFR 764.152(c)(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. The full 3-year requirement will be waived if 7 CFR 764.152(d)(2) is met.**--***

(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.

***--[7 CFR 764.152(d)(2)] The 3-year requirement in this paragraph (d) will be waived if the applicant, or in the case of an entity at least one member who will be the operator of the family farm, 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, or member(s) who will be the operator of a family farm, must document that their participation in the business operation of a farm was not solely as a laborer, but also as management. 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.

* * *

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:

*--**[7 CFR 764.152(f)(1)] Meet the definition of a beginning farmer;**

[7 CFR 764.152(f)(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.

Note: CONACT states that the applicant must not have "received" a direct FO more than 10 years before the date of the new loan. OGC has interpreted CONACT to allow the use of "outstanding" as stated in the CFR. Therefore, CFR is consistent with the statute.

The applicant is allowed the later of:

- the applicant and anyone who will sign the promissory note, may close a direct FO within the 10th calendar year that a direct FO has been outstanding; the years may be consecutive or non-consecutive, and there is no limit on the number of direct FO's closed in any of the 10 calendar years
- the applicant and anyone who will sign the promissory note, may close a direct FO any time prior to the 10-year anniversary date of the day they closed their first direct FO.--*

132 Eligibility (Continued)

E Term Limits (Continued)

***--Example 1:** An applicant receives their first FO in 2016 and pays the loan off in 2021. In determining outstanding years, the exact date within the year the loan is received or paid off is not significant, no matter if it is received or paid off on 1/1, 6/30, or 12/31, each year counts as 1 calendar year and the applicant would have 4 additional total years to get an FO. If the applicant receives another FO in the year 2027 which remains outstanding, this applicant would have until the end of 2030 to close another FO.

Example 2: If an applicant closed their first FO May 30, 2019 and the May 30, 2019 FO remains outstanding, the applicant may close subsequent FO(s) on or before May 29, 2029.

Note: The following clarifications 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.

*** * ***

--[7 CFR 764.152(f)(3)] Have never received a direct FO loan.--

133 Limitations

A General

[7 CFR 764.153] The applicant must:

*--**[7 CFR 764.153(a)] Comply with the general limitations established at § 764.102** (paragraph 74)**;**

[7 CFR 764.153(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.

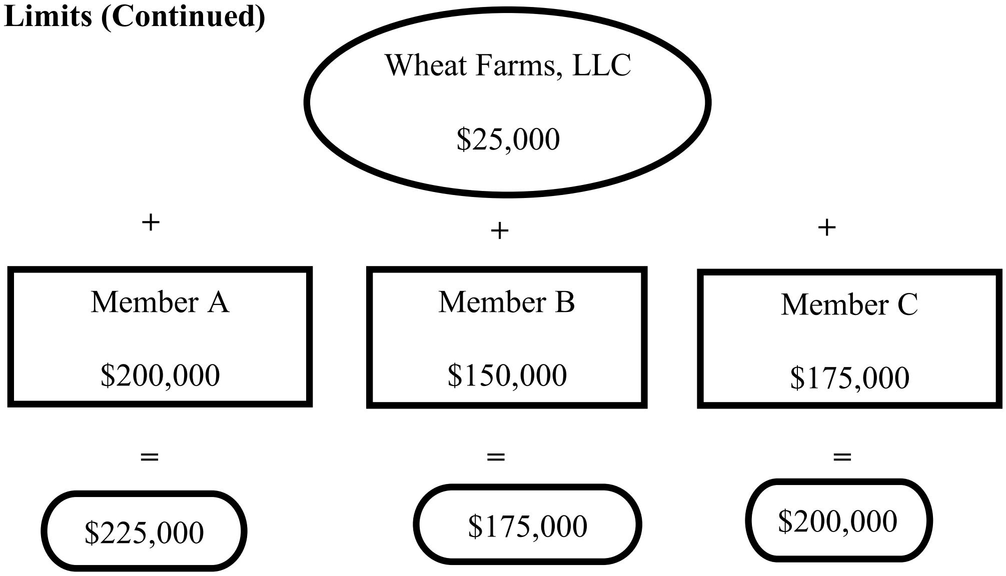
B Loan Limits

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 will 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.

133.5 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, which are specified in § 764.151; and**

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

Notes: 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 DFO-ML joint financing arrangement.

Example:	Purchase Price	$325,000
	DFO-ML	$ 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.

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)] Terms. The repayment terms** for an FO, other than a Down Payment loan described in paragraphs 151-154, **are:**

[7 CFR 764.154(b)(1)] The standard repayment term of an FO will be equal to the useful life of the security or 40 years, whichever is less. Repayment terms less than the standard term must be requested by the applicant in writing. In no event will the term be more than 40 years from the date of the note. Repayment schedules may include equal installments, or unequal installments if needed to establish a new enterprise, develop a farm, recover from a disaster or economic reversal, or reasonably increase cash flow margin to increase working capital reserves and savings, including reasonable savings for retirement and education. Notwithstanding any other provision of this section, repayment schedules must be designed to ensure the loan is fully secured for the life of the loan.

Note: If loan approval includes an applicant's selection of a repayment term less than the standard term, approval official will notate in FSA-2313 that the term offered is as requested by the applicant. The requirement of an applicant's written request for the approved term may be satisfied by the applicant's acceptance and signature of FSA-2313.**--***

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 should review the appraisal prior to loan closing to ensure loan terms are in accordance with the useful life of the security.**--

*** * ***

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.

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

B Terms (Continued)

*--**[7 CFR 764.154(b)(2)] The first installment of an FO will be an interest-only installment scheduled 12 months from the date of loan closing. An alternative repayment agreement that schedules the first installment sooner than 12 months from the date of closing, or in an amount greater than interest-only, may be provided upon written request from the applicant, or if the Agency determines it necessary to ensure the loan is fully secured for the life of the loan.**

Approval official must discuss with the applicant expected timing of income available to make scheduled payments. If a payment date scheduled 12 months from the date of loan closing and every year thereafter is not commensurate with the timing of income, the approval official will advise the applicant of the opportunity to select a first installment date sooner than 12 months from the date of closing.

Note: If loan approval includes an applicant's selection of a first installment sooner than 12 months from the date of closing or a first installment in an amount greater than interest-only, approval official will notate in FSA-2313 that the first installment date or the first installment in an amount greater than interest-only is as requested by the applicant. The requirement of an applicant's written request may be satisfied by the applicant's acceptance and signature of FSA-2313.

[7 CFR 764.154(b)(3)] The minimum scheduled installments for the first 3 years of an FO must be the interest accrued on the principal balance. Interest-only installments may be permitted for additional years, if determined necessary by the Agency, to establish a new enterprise where production income is delayed, to develop a farm, or to recover from a disaster or economic reversal.

Unequal installments are authorized during the first 3 years of an FO loan, with the exception of a Down Payment loan, which requires equal, annual installments over a term not to exceed 20 years per 7 CFR 764.204(b)(1) and subparagraph 154 B. The minimum scheduled annual installment for the first 3 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 unequal installments in the second or third year when a farming operation is new and not fully developed but will have a future income stream establishing a new enterprise, developing a farm, recovering from a disaster or economic reversal, or when necessary to provide for the accumulation of a reasonable amount of working capital reserves and savings, including savings for retirement and education of family members. Equally amortized installments will typically begin no later than the 4th installment of the loan. Unequal installments may be structured in years 4 through 6 of the loan with written concurrence of SED, FLC, FLS, or DD. Typically, this is considered when a farming operation is new and not fully developed but will have a future income stream. An example of such an operation is a farm establishing a new orchard.--*

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

B Terms (Continued)

***--**The applicant must be able to show that there will be sufficient resources available to meet scheduled amortized installments and to pay the loan in full by the final maturity date.

The approval official will calculate the equal amortized payment following any interest-only payments based on the number of years remaining.

Example: The term of the loan is 40 years and the loan will be structured with an interest-only installment in years 1 through 3. The scheduled annual payment for years 4 and beyond will be based on a 37-year amortization.

Notes: Down Payment loans are required by statute to be structured with equal, annual installments over a term not to exceed 20 years according to subparagraph 154 B. As such, Down Payment loans will only be offered with equal amortized payments, without an interest-only or unequal installment option.

Payments for new FO's, except for down payment loans, approved concurrently with primary loan servicing will be interest-only for the first year with equally amortized installments beginning year 2, unless an alternative repayment schedule is necessary to develop a feasible plan, or if the applicant requests an alternative repayment schedule as documented by the applicant's acceptance and signature of FSA-2313.**--***

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

--C Repayment--

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.

* * *

D Security

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

*--**[7 CFR 764.155(a)] In accordance with § 764.103 through 764.106** (paragraphs 91 through 94)**;**

[7 CFR 764.155(b)] At a minimum, by the real estate being purchased or improved.

[7 CFR 764.155(b)(1)] An ML made for FO purposes, may be secured only by the real estate being purchased or improved, as long as its value is at least 100 percent of the loan amount.

In accordance with 7 CFR 764.103(c) and (e), youth loans, ML's and Down Payment loans are exempted from the requirements of obtaining 125 percent security and taking a lien on non-essential assets. Therefore, a ML made for FO purposes may be secured only by the real estate being purchased or improved, as long as the 100 percent security requirement of 7 CFR 764.103(b) is satisfied. Similarly, a Down Payment loan may be secured only by the real estate being purchased, providing it satisfies the 100 percent security requirement.

7 CFR 764.103(c) states that additional security will not be taken for an FO for the purchase of a farm where the applicant provides a cash down payment equal to 5 percent or greater of the purchase price (this is different than a formal Down Payment loan described in paragraphs 151-154). As such, an FO, other than a ML or Down Payment loan, where the applicant provides a cash down payment equal to 5 percent or greater of the purchase price will not require additional security. However, the provision to obtain a security interest in applicable non-essential assets per 7 CFR 764.103(e) is required of any FO other than a ML or Down Payment loan.

Notes: The life of security must be sufficient to ensure the loan is fully secured for the life of the loan.

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 if all of the following are met:**--

- 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 will issue a State supplement about when to obtain a new mortgage for a subsequent**-- loan.

137 Program Outreach

A General

--In addition to outreach requirements in subparagraph 41 E, SED will 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)

Section 2 Down Payment Program

151 Uses

A General

--**The following regulations and requirements will apply to any Down Payment FO, including Down Payment loans made as ML for FO purposes.**--

[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:

*--**[7 CFR 764.202(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**

[7 CFR 764.202(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 will 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.

153 Limitations

A General

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

*--**[7 CFR 764.203(a)(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:

*--**[7 CFR 764.203(b)(1)] The purchase price,**
[7 CFR 764.203(b)(2)] The appraised value of the farm to be acquired, or
[7 CFR 764.203(b)(3)] $667,000; subject to the direct FO dollar limit specified in 7 CFR 761.8(a)(1)(i).

The above CFR limitations are applicable as limitations toward each Down Payment loan.

Multiple Down Payment loans can be obtained simultaneously if the purchases have separate purchase agreements for legally separate parcels.

Down Payment loans can be combined with FSA joint financing loans, subject to maximum loan limits in 1-FLP, paragraph 29. When combined with another direct FO loan, total FSA financing cannot exceed 45 percent of the lesser of the purchase price or the appraised value of the farm to be acquired.

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

153 Limitations (Continued)

C Maximum FSA Loan Amount (Continued)

Example 1: An applicant who is a beginning farmer, socially disadvantaged farmer, or veteran farmer is purchasing a 40-acre farm for $1,000,000. The property also appraises for $1,000,000. FSA could structure financing as follows:

- a minimum of $50,000 down payment in cash
- at least $500,000 financed by another lender
- a maximum of $300,150 as a Down Payment FO
- a maximum of $149,850 as a joint financing FO.

Example 2: The same borrower in Example 1 continues to be a beginning farmer, socially disadvantaged farmer, or veteran farmer. The borrower still owes the debts incurred in the above Example 1 and applies to FSA for the purchase of a ***--**separate 80 acre property. Subject to the $600,000 direct FO loan limit, FSA could consider the following options for the 80-acre purchase:

- a subsequent Down Payment FO for the maximum of 45 percent of the lesser of the purchase price or the appraised value of the 80 acres

- a combination of a subsequent Down Payment FO and joint financing FO if total FSA financing for the 80 acres does not exceed 45 percent of the purchase price or the appraised value.

[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 DFO-ML down payment loan.

Example:	Purchase Price	$325,000
	Cash Down Payment	$ 16,250
	Down Payment DFO-ML	$ 50,000**--***
	Other Financing	$258,750

* * *

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:

*--**[7 CFR 764.205(a)] Be secured in accordance with §§ 764.103 through 764.106** (paragraphs 91 through 93)**;**

[7 CFR 764.205(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 non-essential 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:

***--[7 CFR 764.231(a)(1)] The installation of conservation structures to address soil, water and related resources;**

[7 CFR 764.231(a)(2)] The establishment of forest cover for sustained yield timber management, erosion control, or shelter belt purposes;

[7 CFR 764.231(a)(3)] The installation of water conservation measures;

[7 CFR 764.231(a)(4)] The installation of waste management systems;

[7 CFR 764.231(a)(5)] The establishment or improvement of permanent pasture; and

[7 CFR 764.231(a)(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) of that section** (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 non-eligible enterprise source and the conservation measure may benefit the non-eligible 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 non-eligible 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:

***--[7 CFR 764.234(b)(1)] The Agency schedules repayment of a CL based on the useful life of the security.**

[7 CFR 764.234(b)(2)] The maximum term for loans secured by chattels only will not exceed 7 years from the date of the note.

[7 CFR 764.234(b)(3)] In no event will the term of the loan exceed 20 years from the--* date of the note.

CL's will *** * *** be scheduled for the lesser of the following:

- maximum loan term:
  - ***--**7 years for personal property
  - 20 years for real estate
- useful life of the security.

Note: If loan approval includes an applicant's selection of a repayment term less than the standard term, approval official will notate in FSA-2313 that the term offered is as requested by the applicant. The requirement of an applicant's written request for the approved term may be satisfied by the applicant's acceptance and signature of FSA-2313.**--***

174 Rates, Terms, and Repayment (Continued)

C Repayment

*--All CL's are scheduled with annual payments according to the following repayment schedule.

- The applicant repays a CL for annual operating expenses when income becomes available. The repayment period will normally be within 12 months, or no more than 24 months after the date of loan closing, if necessary, when marketing plans extend beyond 12 months; for example, when crops or livestock take longer than 12 months to mature. 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.

- The standard repayment term of a CL, for purposes other than annual farm operating, secured by personal property only, will not exceed the useful life of the security or 7 years, whichever is less.

- The standard repayment term of a CL, for purposes other than annual farm operating, secured by real estate, will not exceed the useful life of the security or 20 years, whichever is less.

- The first installment of a CL, for purposes other than annual farm operating, will be an interest-only installment scheduled 12 months from the date of loan closing. An alternative repayment agreement that schedules a first installment sooner than 12 months from the date of closing, or in an amount greater than interest-only, may be provided upon written request from the applicant, or if the Agency determines it necessary to ensure the loan is fully secured for the life of the loan.

  The approval official must discuss with the applicant expected timing of income available to make scheduled payments. If a payment date scheduled 12 months from the date of loan closing and every year thereafter is not commensurate with the timing of income, the approval official will advise the applicant of the opportunity to select a first installment date sooner than 12 months from the date of closing.

  Note: If loan approval includes an applicant's selection of a first installment sooner than 12 months from the date of closing or a first installment in an amount greater than interest-only, approval official will notate in FSA-2313 that the first installment date or the first installment in an amount greater than interest-only is as requested by the applicant. The requirement of an applicant's written request may be satisfied by the applicant's acceptance and signature of FSA-2313.

- Following the first scheduled installment, a streamlined CL must be structured with equal amortized installments over the remaining term of the loan.--*

174 Rates, Terms, and Repayment (Continued)

C Repayment (Continued)

- ***--**The minimum scheduled installments for the first 3 years of a non-streamlined CL, for purposes other than annual farm operating, 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 payment schedules when a farming operation is new and not fully developed but will have a future income stream establishing a new enterprise, developing a farm, recovering from a disaster or economic reversal, or when necessary to provide for the accumulation of a reasonable amount of working capital reserves and savings, including those for retirement and education of family members. Equally amortized installments will begin no later than year 4 of the loan. Interest-only installments may be structured in years 4 through 6 of the loan with written concurrence of SED, FLC, FLS, or DD. Typically, this is considered when a farming operation is new and not fully developed but will have a future income stream. An example of such an operation is a farm establishing a new orchard.

- Approval official will calculate the equal amortized payment following any interest-only payments based on the number of years remaining.

  Example: The term of the loan is 20 years, and the loan will be structured with an interest-only installment in years 1 through 3. The scheduled annual payment for years 4 and beyond will be based on a 17-year amortization.**--***

- 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 *** * *** interest-only installments are scheduled for a non-streamlined 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.

- ***--**Balloon installments are not authorized.**--***

*** * ***

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 of less for real estate purposes will be secured in the following order of priority:

***--[7 CFR 764.235(c)(1)] By a lien on chattels determined acceptable by the Agency, and then**

[7 CFR 764.235(c)(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:

***--[7 CFR 764.235(d)(1)] By a lien on real estate, if available, and then**

[7 CFR 764.235(d)(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(e)] 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; *** 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.

201 Uses (Continued)

***--C Personal Property and Other Purchases (Continued)**

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;

Funds may be used only for purchases essential to the success of the farming operation.

The size and type of farm equipment purchased with OL funds should be proportionate to the planned farming operation. While an applicant may intend to use machinery and equipment purchased with OL funds to obtain custom hire income in addition to the farming operation, the primary purpose of equipment purchased with OL funds must be for the applicant's own 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 will 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.

201 Uses (Continued)

--C Personal Property and Other Purchases (Continued)--

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 will contact the National Office for guidance if needed.**--

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:**

***--(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.--*

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 is made primarily for agricultural purposes and can be repaid within 7 years. 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.--

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, will 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 without a ballon over 7 years may be approved. However, a $100,000 building financed with 7-year OL and a final balloon installment is not permitted. The cash flow necessity of the balloon installment indicates this loan is for real estate rather than operating purposes, and should instead be considered as an FO loan purpose.**--

- 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:

***--[7 CFR 764.252(c)(1)] Received a write-down under section 353 of the Act;**

[7 CFR 764.252(c)(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

[7 CFR 764.252(c)(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:

***--[7 CFR 764.252(d)(1)] Controlled by farmers engaged primarily and directly in farming in the United States; and**

[7 CFR 764.252(d)(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 subsequent 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 as a non-beginning farmer if loans were received in all 9 years or more as a beginning farmer.

Example 2: If a beginning farmer receives their first direct OL in their 5th year of farming, this applicant has 5 additional subsequent years in which they may receive direct OL assistance as a beginning farmer applicant. If the applicant receives direct OL's in 6 years as a beginning farmer, the applicant has only 1 year of eligibility remaining as a non-beginning farmer applicant. This applicant may also be considered to receive the 2-year waiver to extend eligibility as a non-beginning 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 1st 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 non-beginning farmer may receive assistance is 9 years (7 years plus the 2-year waiver).

Example 1: A non-beginning 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 non-beginning 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 non-beginning farmer applicant who received direct OL beginning farmer loan in 8 years may be eligible for a 1 time, 1-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

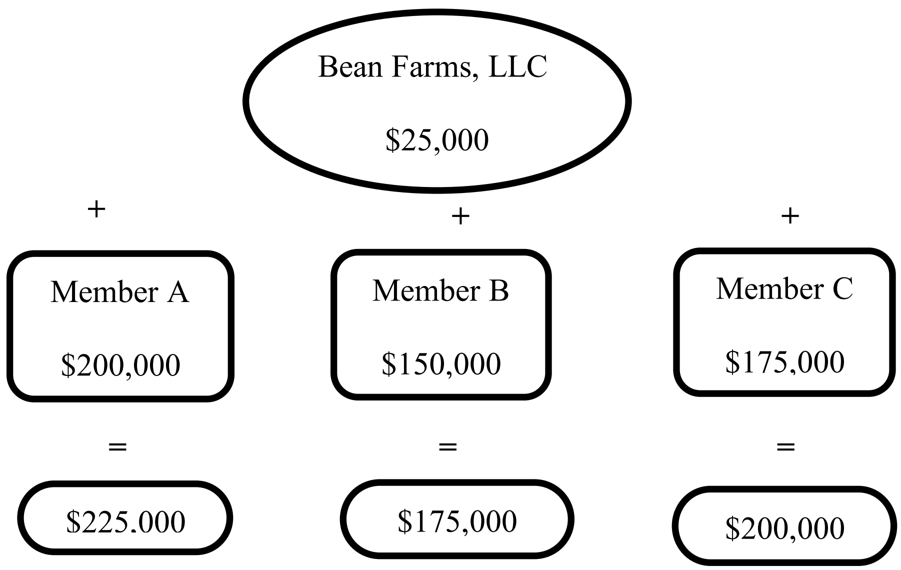
A General Limitations

[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 will 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 farmer is available in each Agency office. The interest rate will be the lower of the regular Direct OL interest rate in effect at the time of loan approval or loan closing, or 5 percent.**

B Annual OL Term

[7 CFR 764.254(b)(1)] The Agency schedules repayment of OL loans made for annual farm operating and family living 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, except as provided in paragraph (b)(1)(ii) of this section.--*

(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 standard repayment term of all other OLs must be equal to the useful life of the security or 7 years, whichever is less. Repayment terms less than the standard term must be requested by the applicant in writing. In no event will the term of the loan exceed 7 years from the date of the note. Repayment schedules may include equal installments, or unequal or balloon installments if needed to establish a new enterprise, develop a farm, recover from a disaster or economic reversal, or reasonably increase cash flow margin to increase working capital reserves and savings, including reasonable savings for retirement and education. Notwithstanding any other provision of this section, repayment schedules must be designed to ensure the loan is fully secured for the life of the loan. Loans with balloon installments:**

Notes: If loan approval includes an applicant's selection of a repayment term less than the standard term, approval official will notate in FSA-2313 that the term offered is as requested by the applicant. The requirement of an applicant's written request for the approved term may be satisfied by the applicant's acceptance and signature of FSA-2313.

If the loan approval official determines that a term of less than 7 years is warranted due to the useful life of the security, 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 be secured by an amount projected at the time of loan closing to be at least equal to the direct loan balance outstanding at the time the balloon installment comes due, which may exceed the additional security requirements of § 764.103(c) of this chapter. Total loan security in excess of the requirements of this provision (paragraph (b)(2)(i)) will only be taken when it is not practicable to separate the security. 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 or restructure 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 balloon structure may be offered. The maximum balloon structure will be an amortized installment schedule of 21 years, less the number of interest-only or partial principal scheduled installments. The total number of interest-only, partial principal scheduled installments, and years used in the amortization calculation, will not exceed the useful life of all security for the loan.--*

204 Rates, Terms, and Repayment (Continued)

C Other OL Terms (Continued)

*--There must be adequate collateral for the loan at the time the balloon payment is due. For any balloon repayment schedule, the approval official must consider the projected unpaid principal balance remaining at maturity and the estimated depreciated value of the primary security at maturity. In most cases, when both interest-only installments and a balloon is offered, this will require a primary and additional security value at the time of loan closing in excess of the loan amount (if the security is other than real estate). For any balloon repayment schedule, the loan approval official must appropriately document the projection of adequate security at loan maturity. This documentation is required to include a completed FLP Amortization Tool.

In no case will annual crops or market livestock be used as the sole collateral securing a loan with a 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 loan approval official must document expected life of all security when offering balloon installments.

Useful security life expectancy of common security types for an OL will be considered as follows:

- real estate – 40 years (unless the real estate includes significant rapidly depreciating improvements such as specialized confinement buildings, in which case a weighted life expectancy may be required)

- livestock breeding herd – 12 years, may be decreased or increased by as much as 3 years with substantiating documentation by the loan approval official (typical year cash flow must support an adequate replacement plan in place)

- machinery or equipment – 12 years, may be decreased or increased by as much as 3 years with substantiating documentation by the loan approval official

- high tunnel – 7 years, may be decreased or increased by as much as 3 years with substantiating documentation by the loan approval official.--*

204 Rates, Terms, and Repayment (Continued)

C Other OL Terms (Continued)

***--**When processing a potential OL balloon installment, the useful life expectancy of all security consisting of multiple security types should be considered:

- for machinery or equipment of varying life expectancies, the loan approval official should document and use a calculated, weighted average, considering the above machinery or equipment guidance

- for real estate including rapidly depreciating improvements, the loan approval official should document and use a calculated, weighted average

- when real estate not including the value of rapidly depreciating improvements equates to 50 percent or more of the total value of FSA security for the OL, a total life expectancy of security will be considered to be 21 years

- when real estate not including the value of rapidly depreciating improvements is at least 25 percent but less than 50 percent of the total value of FSA security for the OL, a total life expectancy of security will be considered to be 15 years.

Exceptions must be issued in writing by SED, FLC, FLS, or DD for either of the following:

- the above security useful life expectancies
- the determination of the expected life as security for assets not addressed above.

States may provide a State supplement addressing related issues including:

- deviations from the above useful life expectancy guidance for assets described above which have unique local attributes

- life of security terms for common security assets not described above.**--***

204 Rates, Terms, and Repayment (Continued)

C Other OL Terms (Continued)

***--Example 1:** Flexible repayment terms including 3 years of interest-only installments and a balloon are necessary for the applicant to project adequate working capital reserves and savings. The applicant selects a first installment due less than 365 calendar days from closing. Machinery and equipment make up 40 percent of the security for the OL, while unimproved real estate is the remaining 60 percent. The maximum amortization period for the calculation of the 4th through 7th scheduled amortized installments will be 18 years (21 years less 3 years interest-only). Since real estate is 50 percent or more of the total value of FSA security, a 21-year period is used. The loan balance will be due at maturity, 7 years from the date of closing.

Example 2: Flexible repayment terms including 3 years of interest-only installments and a balloon are necessary for the applicant to project adequate working capital reserves and savings. Security for the term OL is machinery and equipment, with a life expectancy of security of 15 years (the basis for 15 years rather than 12 years is documented by the loan approval official). The applicant does not request a first installment date sooner than 365 calendar days from closing. The maximum amortization period for the calculation of the 4th through 6th scheduled amortized installment will be 12 years (15 years less 3 years interest-only). The loan balance will be due at maturity, 7 years from the date of closing.

Notes: Regarding both example 1 and 2, due to the initial 3 years of interest-only installments and the balloon term, a total security value at closing which exceeds the loan amount may be required for the loan to be projected as adequately secured at maturity.

Payments for new term OL's approved concurrently with primary loan servicing will be interest-only for the first year with equally amortized installments beginning year 2, unless an alternative repayment schedule is necessary to develop a feasible plan, or if the applicant requests an alternative repayment schedule as documented by the applicant's acceptance and signature of FSA-2313.**--***

(iii) Are not authorized when loan funds are used for real estate repairs or improvements.

204 Rates, Terms, and Repayment (Continued)

C Other OL Terms (Continued)

*--**[7 CFR 764.254(b)(3)] The first installment of an OL, for purposes other than annual farm operating and family living expenses, will be an interest-only installment scheduled 12 months from the date of loan closing. An alternative repayment agreement that schedules the first installment sooner than 12 months from the date of closing, or in an amount greater than interest-only, may be provided upon written request from the applicant, or if the Agency determines it necessary to ensure the loan is fully secured for the life of the loan.**

Approval official must discuss with the applicant expected timing of income available to make scheduled payments. If a payment date scheduled 12 months from the date of loan closing and every year thereafter is not commensurate with the timing of income, the approval official will advise the applicant of the opportunity to select a first installment date sooner than 12 months from the date of closing.

Note: If loan approval includes an applicant's selection of a first installment sooner than 12 months from the date of closing or a first installment in an amount greater than interest-only, approval official will notate in FSA-2313 that the first installment date or the first installment in an amount greater than interest-only is as requested by the applicant. The requirement of an applicant's written request may be satisfied by the applicant's acceptance and signature of FSA-2313.

[7 CFR 764.254(b)(4)] The minimum scheduled installments for the first 3 years of an OL, for purposes other than annual farm operating and family living expenses, must be the interest accrued on the principal balance. Interest-only installments may be permitted for additional years, if determined necessary by the Agency, to establish a new enterprise where production income is delayed, to develop a farm, or to recover from a disaster or economic reversal.

Interest-only payments, beyond the first three installments must be concurred in writing by the SED, FLC, FLS, or DD.**--***

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.

***--**For annual operating loans the first payment is due when income is received or within 24 months.

The following address repayment for an OL other than annual operating.

- The repayment schedule may include equal, unequal, or balloon payments.
- The first payment is due within 12 months of loan closing.
- After the initial payment, payments are scheduled annually on the anniversary of the initial payment unless the loan is repaid in a single payment**.**
- 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, to be refinanced, or to be restructured by the final maturity date.
- Unequal installments are authorized during the first 3 years of the loan. The minimum scheduled annual payment for the first 3 installments 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 payment schedules when a farming operation is new and not fully developed but will have a future income stream establishing a new enterprise, developing a farm, recovering from a disaster or economic reversal, or when necessary to provide for the accumulation of a reasonable amount of working capital reserves and savings, including those for retirement and education of family members. Equally amortized installments will typically begin no later than the 4th installment of the loan. Unequal installments may be structured in years 4 through 6 of the loan only with written concurrence of SED, FLC, FLS, or DD. This concurrence will typically be considered when a farming operation is new and not fully developed but will have a future income stream. An example of such an operation is a farm establishing a new orchard.

Note: Unequal, interest-only, or balloon installments through the 3rd installment may be necessary to provide a reasonable amount of working capital reserves and savings according to 1-FLP, Part 8.**--***

205 Security

A General

[7 CFR 764.255] An OL loan must be secured:

*--**[7 CFR 764.255(a)] In accordance with §§ 764.103 through 764.106** (paragraphs 91 through 94)**.**

[7 CFR 764.255(b)] Except for MLs or OLs made for the purpose of minor real estate repairs or improvements, by a:

[7 CFR 764.255(b)(1)] First lien on all property or products acquired or produced with loan funds;

[7 CFR 764.255(b)(2)] Lien of equal or higher position of that held by the creditor being refinanced with loan funds.

An OL to refinance debt from another creditor will require that FSA has the same collateral that was previously held by the creditor that is being refinanced with loan funds. However, when collateral held by the creditor exceeds 125 percent of FSA's loan, FSA's required security may be reduced down to 125 percent of FSA's loan amount. In these cases, test for credit must be thoroughly documented.

Examples: FSA is refinancing a lender's $100,000 machinery loan. The lender has $400,000 of machinery securing their loan. FSA will only take $125,000 in collateral unless it is not practical to separate machinery items.

A commercial lender holds a blanket Financing Statement (UCC-1) on crops, machinery, and livestock. The lender has a crop input loan (considered by the lender as primarily secured by crops), a machinery loan (considered by the lender as primarily secured by machinery), and a livestock loan (considered by the lender as primarily secured by livestock). FSA is refinancing the lender's machinery loan. FSA must require a lien of equal or higher position of that held by the creditor on machinery.

[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. A lien is not required on crops or livestock financed with annual operating ML's.**--***

205 Security (Continued)

A General (Continued)

--[7 CFR 764.255(c)(2)] For loans made for purposes other than annual operating purposes or for the purpose of minor real estate repairs or improvements, 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.

* * * 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.

***--[7 CFR 764.255(d)] For OLs made for the purpose of minor real estate repairs or improvements, the Agency must obtain a lien on the real estate repaired or improved in accordance with the requirements of § 764.104, while also ensuring the provisions of § 764.103(b) requiring adequate security are satisfied.**

A junior lien on the real estate repaired or improved with OL funds will be acceptable if all the following are met:

- a first lien on the real estate repaired or improved is not available
- each prior lienholder signs FSA-2319 before loan closing
- the applicant agrees on FSA-2029 to obtain permission from FSA before granting any additional security interest in the real estate
- the OL made for the purpose of minor real estate repairs or improvements is secured by assets having a security value of at least 100 percent of the loan amount.

Note: Fixtures are to be secured according to paragraph 92.**--***

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.

* * *

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.**--***

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 non-eligible 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 $10,000.--*

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.

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 125 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 Non-Essential Assets

FSA does not require that non-essential 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 non-essential 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 Personal Property Physical Loss**

Personal property 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 Personal Property 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.

* * *

--Refinancing is necessary to improve farm profitability to develop a farm, reasonably increase working capital reserves and savings, or recover from a disaster or economic reversal.--

241 Uses (Continued)

***--B Personal Property 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 long-term plan adequate to improve farm profitability.**--***

* * *

- 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 long-term plan adequate to improve farm profitability.**--***

  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 long-term plan adequate to improve farm profitability.

- Servicing the direct loan with Primary Loan Servicing or DSA will not result in a long-term plan adequate to improve farm profitability.

- The applicant, and entity members in the case of an entity, are the sole obligor(s) 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 ***--**long-term plan adequate to improve farm profitability.

Compliance with these requirements will be documented in FBP.**--***

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:

***--[7 CFR 764.351(b)(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 will 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.

***--[7 CFR 764.351(b)(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.

[7 CFR 764.351(b)(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;

***--[7 CFR 764.351(b)(4)] Pay borrower training costs required or recommended by the--* Agency;**

241 Uses (Continued)

C Production Losses (Continued)

***--[7 CFR 764.351(b)(5)] Pay essential family living expenses;**

[7 CFR 764.351(b)(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.

* * *

- *--Refinancing is necessary to improve farm profitability to develop a farm, reasonably increase working capital reserves and savings, or recover from a disaster or economic reversal.--*

- 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 long-term plan adequate to improve farm profitability.

- The lender or creditor to be refinanced is unwilling to restructure the debt at rates and terms that would permit the applicant to develop long-term plan adequate to improve farm profitability.--*

  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 will 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:

***--[7 CFR 764.352(c)(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 personal 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 personal property 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:

***--[7 CFR 764.352(e)(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.

***--[7 CFR 764.352(e)(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)

***--[7 CFR 764.352(e)(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.

***--[7 CFR 764.352(e)(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 write-down 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 will 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 * * * 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--* 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.

Note: 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 *** * *** loss, a loan may be made for the loss on that crop.

*** * ***

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:

*--**[7 CFR 764.352(j)(1)] The applicant, including all owners must meet all of the eligibility requirements;**

[7 CFR 764.352(j)(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

[7 CFR 764.352(j)(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:

*--**[7 CFR 764.353(e)(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**

*--**[7 CFR 764.353(e)(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 personal property, 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 personal property is the established market value (most recent appraisal/value) before the disaster.

For personal property only, if the applicant did not have an insurance policy in affect at the time of the disaster, the authorized agency official will 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:

***--[7 CFR 764.353(b)(1)] The amount of credit necessary to restore the farming operation to its pre-disaster condition;**

[7 CFR 764.353(b)(2)] In the case of a physical loss loan, the total eligible physical losses caused by the disaster; or

[7 CFR 764.353(b)(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.

IF an applicant...	THEN...
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.

*--**[7 CFR 764.353(c)(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.

[7 CFR 764.353(c)(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;

[7 CFR 764.353(c)(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 will:--*

- 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 (Continued)

C Calculating Production Losses (Continued)

***--[7 CFR 764.353(c)(4)] Subtract any related compensation or insurance indemnities received or to be received by the applicant for the loss.**

Related compensation includes revenue, and production payments related to the specific**--*** disaster designation, including but not limited to:

- crop insurance * * * 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 * * * related compensation or insurance indemnities received or to be received for the loss.

* * *

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. * * * 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 ÷ $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 x 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 ÷ $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.

*** * ***

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:

***--[7 CFR 764.353(d)(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);**

[7 CFR 764.353(d)(2)] Add the allowable costs associated with repairing or replacing real estate, covered by hazard insurance;

[7 CFR 764.353(d)(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 x 90 percent = 45 calves
- 45 x $275 = $12,375
- 50 x $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 x 1,500 lbs. = 30,000 lbs. x 3 months = 90,000 lbs. or 900 cwt
- 900 cwt. x $12.25/cwt .= $11,025
- 20 cows x $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 EMs based on the useful life of the security and the type of loss.**--*

*** * ***

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)] EMs for annual farm operating and family living 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.**

The applicant repays an EM for annual operating expenses when income becomes available. The repayment period will normally be within 12 months, or no more than 24 months after the date of loan closing, if necessary, when marketing plans extend beyond 12 months; for example, when crops or livestock take longer than 12 months to mature. 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.--*

245 Rates, Terms, and Repayment (Continued)

***--E Repayment of Loans for Production or Physical Losses to Personal Property**

[7 CFR 764.354(b)(4)] The standard repayment term of an EM for production losses or physical losses to chattel security (including assets with an expected life between 1 and 7 years) will be equal to the useful life of the security or 7 years, whichever is less. Repayment terms less than the standard term must be requested by the applicant in writing. The Agency may extend the repayment term up to a total length not to exceed 20 years, if adequate security is available, and repayment schedules may include equal installments, or unequal installments, if needed to establish a new enterprise, develop a farm, recover from a disaster or economic reversal, or reasonably increase cash flow margin to increase working capital reserves and savings, including reasonable savings for retirement and education, and security is adequate to support the term of the loan. Notwithstanding any other provision of this section, repayment schedules must be designed to ensure the loan is fully secured for the life of the loan.

Note: If loan approval includes an applicant's selection of a repayment term less than the standard term, approval official will notate in FSA-2313 that the term offered is as requested by the applicant. The requirement of an applicant's written request for the approved term may be satisfied by the applicant's acceptance and signature of FSA-2313.

When the applicant's projected repayment ability will not allow normal repayment within 7 years, a term up to 20 years may be offered. A term exceeding 7 years, or repayment schedules including equal or unequal installments, may be needed to establish a new enterprise, develop a farm, reasonably increase working capital reserves and savings accounts, or recover from a disaster or economic reversal.

There must be adequate collateral for the term of the loan. Useful life expectancy of common security types for an EM loan for production or physical losses to personal property will be considered as follows:

- real estate – 20 years (unless the real estate includes significant rapidly depreciating improvements such as specialized confinement buildings, in which case a weighted life expectancy may be required)

- livestock breeding herd – 12 years, may be decreased or increased by as much as 3 years with substantiating documentation by the loan approval official (typical year cash flow must support an adequate replacement plan in place)

- machinery or equipment – 12 years, may be decreased or increased by as much as 3 years with substantiating documentation by the loan approval official

- high tunnel – 7 years, may be decreased or increased by as much as 3 years with substantiating documentation by the loan approval official.**--***

245 Rates, Terms, and Repayment (Continued)

***--E Repayment of Loans for Production or Physical Losses to Personal Property**

When considering security for an EM loan for production or physical losses to personal property, the useful life expectancy of all security consisting of multiple security types should typically be considered.

- For machinery or equipment of varying life expectancies, the loan approval official should document and use a calculated, weighted average, considering the above machinery or equipment guidance.

- For real estate including rapidly depreciating improvements the loan approval official should document and use a calculated, weighted average.

- When real estate not including the value of rapidly depreciating improvements equates to 50 percent or more of the total value of FSA security for the EM, a total life expectancy of security will be considered to be up to the maximum term 20 years.

- When real estate not including the value of rapidly depreciating improvements, is at least 25 percent but less than 50 percent of the total value of FSA security for the EM, a total life expectancy of security will be considered to 15 years.

Exceptions to the above security useful life expectancies, or the determination of the expected life as security for assets not addressed above, must be concurred in writing by SED, FLC, FLS, or DD. States may provide a State supplement addressing life of security terms for common security assets not provided above.

[7 CFR 764.354(b)(6)] The first installment of an EM, for purposes other than annual farm operating and family living expenses, will be an interest-only installment scheduled 12 months from the date of loan closing. An alternative repayment agreement that schedules the first installment sooner than 12 months from the date of closing, or in an amount greater than interest-only, may be provided upon written request from the applicant, or if the Agency determines it necessary to ensure the loan is fully secured for the life of the loan.

Approval official must discuss with the applicant expected timing of income available to make scheduled payments. If a payment date scheduled 12 months from the date of loan closing and every year thereafter is not commensurate with the timing of income, the approval official will advise the applicant of the opportunity to select a first installment date sooner than 12 months from the date of closing.

Note: If loan approval includes an applicant's selection of a first installment sooner than 12 months from the date of closing or a first installment in an amount greater than interest-only, approval official will notate in FSA-2313 that the first installment date or the first installment in an amount greater than interest-only is as requested by the applicant. The requirement of an applicant's written request may be satisfied by the applicant's acceptance and signature of FSA-2313.**--***

245 Rates, Terms, and Repayment (Continued)

***--E Repayment of Loans for Production or Physical Losses to Personal Property**

[7 CFR 764.354(b)(7)] The minimum scheduled installments for the first 3 years of an EM, for purposes other than annual farm operating and family living expenses, must be the interest accrued on the principal balance. Interest-only installments may be permitted for additional years, if determined necessary by Agency, to establish a new enterprise where production income is delayed, to develop a farm, or to recover from a disaster or economic reversal.

Unequal installments are authorized during the first 3 years of an EM loan for production losses or physical losses to personal property. The minimum scheduled annual payment for the first 3 installments 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 payment schedules when a farming operation is new and not fully developed but will have a future income stream establishing a new enterprise, developing a farm, recovering from a disaster or economic reversal, or when necessary to provide for the accumulation of a reasonable amount of capital reserves and savings, including those for retirement and education of family members. Equally amortized installments will begin no later than year 4 of the loan. Unequal installments may be structured in years 4 through 6 of the loan with written concurrence of SED, FLC, FLS, or DD. Typically, this is considered when a farming operation will require an extended recovery from the disaster before returning to an income stream.

Approval official will calculate the equal amortized payment following any interest-only payments based on the number of years remaining.

Example: The term of the loan is 10 years and the loan will be structured with an interest-only installment in years 1 through 3. The scheduled annual payment for years 4 and beyond will be based on a 7-year amortization.

Since repayment terms up to 20 years may be considered, schedules 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 standard repayment term of an EM for physical losses to real estate will be equal to the useful life of the security or 40 years, whichever is less. Repayment terms less than the standard term must be requested by the applicant in writing. In no event will the term be more than 40 years from the date of the note, and repayment schedules may include equal installments, or unequal installments, if needed to establish a new enterprise, develop a farm, recover from a disaster or economic reversal, or reasonably increase cash flow margin to increase working capital reserves and savings, including reasonable savings for retirement and education, and security is adequate to support the term of the loan. Notwithstanding any other provision of this section, repayment schedules must be designed to ensure the loan is fully secured for the life of the loan.**

Note: If loan approval includes an applicant's selection of a repayment term less than the standard term, approval official will notate in FSA-2313 that the term offered is as requested by the applicant. The requirement of an applicant's written request for the approved term may be satisfied by the applicant's acceptance and signature of FSA-2313.

[7 CFR 764.354(b)(6)] The first installment of an EM, for purposes other than annual farm operating and family living expenses, will be an interest-only installment scheduled 12 months from the date of loan closing. An alternative repayment agreement that schedules the first installment sooner than 12 months from the date of closing, or in an amount greater than interest-only, may be provided upon written request from the applicant, or if the Agency determines it necessary to ensure the loan is fully secured for the life of the loan.

Approval official must discuss with the applicant expected timing of income available to make scheduled payments. If a payment date scheduled 12 months from the date of loan closing and every year thereafter is not commensurate with the timing of income, the approval official will advise the applicant of the opportunity to select a first installment date sooner than 12 months from the date of closing.

Note: If loan approval includes an applicant's selection of a first installment sooner than 12 months from the date of closing or a first installment in an amount greater than interest-only, approval official will notate in FSA-2313 that the first installment date or the first installment in an amount greater than interest-only is as requested by the applicant. The requirement of an applicant's written request may be satisfied by the applicant's acceptance and signature of FSA-2313.

[7 CFR 764.354(b)(7)] The minimum scheduled installments for the first 3 years of an EM, for purposes other than annual farm operating and family living expenses, must be the interest accrued on the principal balance. Interest-only installments may be permitted for additional years, if determined necessary by Agency, to establish a new enterprise where production income is delayed, to develop a farm, or to recover from a disaster or economic reversal.--*

245 Rates, Terms, and Repayment (Continued)

F Repayment of Loans for Physical Losses to Real Estate

***--**Unequal installments are authorized during the first 3 years of an EM loan for physical losses to real estate. The minimum scheduled annual payment for the first 3 installments 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 payment schedules when a farming operation is new and not fully developed but will have a future income stream establishing a new enterprise, developing a farm, recovering from a disaster or economic reversal, or when necessary to provide for the accumulation of a reasonable amount of capital reserves and savings, including those for retirement and education of family members. Equally amortized installments will begin no later than year 4 of the loan. Unequal installments may be structured in years 4 through 6 of the loan with written concurrence of SED, FLC, FLS, or DD. Typically, this is considered when a farming operation will require an extended recovery from the disaster before returning to an income stream.

The approval official will calculate the equal amortized payment following any interest-only payments based on the number of years remaining.

Example: The term of the loan is 40 years and the loan will be structured with an interest-only installment in years 1 through 3. The scheduled annual payment for years 4 and beyond will be based on a 37-year amortization.**--***

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:**

***--[7 CFR 764.355(b)(1)] Real estate,**
[7 CFR 764.355(b)(2)] Chattels and crops, other than horses,
[7 CFR 764.355(b)(3)] Other assets owned by the applicant,
[7 CFR 764.355(b)(4)] Third party pledges of property not owned by the applicant,
[7 CFR 764.355(b)(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 125 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 non-essential 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:

*--**[7 CFR 764.355(c)(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.

[7 CFR 764.355(c)(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;**

*--**[7 CFR 764.355(c)(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.

*--**[7 CFR 764.355(c)(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 will:**--***

- 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:

***--[7 CFR 764.356(c)(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.**

[7 CFR 764.356(c)(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 ***--**personal property 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)

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 personal property 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 of May 24, 1977; 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 approval 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 will document each item considered under subparagraphs B through E to support the final loan decision. The documentation will 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 will 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 will 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 will 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 (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 copy of the most recent version of "Your FSA Farm Loan Compass" will be provided physically or electronically to all **new** FLP customers at or before 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 will 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:

***--[7 CFR 764.54(b)(1)] First, an applicant who is a veteran of any war;**

See Exhibit 2 for the definition of veteran.

Note: A war for purposes of this subparagraph must have been officially declared by Congress with a defined beginning date.**--***

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 5th FY after the period of availability for obligation of a fixed ***--**appropriation account ends, the account will be closed and any remaining balance (whether obligated or unobligated) in the account will be canceled and thereafter will 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
- ***--**will 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.

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 will 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 follow-up.

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:

*--**[7 CFR 764.401(c)(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 will:**--

[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 personal property.--*

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
  - *--personal property--*
- adequate security
- additional security
- non-essential 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:

*--**[7 CFR 764.402(a)(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 will, 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 (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.

***--[7 CFR 764.402(a)(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.

***--[7 CFR 764.402(a)(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.

371 Overview (Continued)

C Loan Document Signatures (Continued)

***--[7 CFR 764.402(a)(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)

*--**[7 CFR 764.402(a)(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 will 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 CLs 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 Non-Essential Assets Requirements**

FSA does not require a search of public records to verify the available lien position or insurance for additional security or non-essential 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.

373.5 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 will 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 a relative 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 will 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 will issue a State supplement about State requirements about filing liens for:

- personal property 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
- *--personal property closings by FSA or closing agent.--*

375-395 (Reserved)

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 will 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.

398 Requesting Loan Closing

A Loan Closing

If the preliminary title opinion reflects that FSA can obtain the required lien, the authorized ***--**agency official will:**--***

- 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 copy of the most recent version of "Your FSA Farm Loan Compass" will be provided physically or electronically to all **new** FLP customers at or before 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.

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 will 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.

400 Real Estate Secured Loans Closed by FSA

A Title Clearance

Title clearance is not required for:

- additional security
- ***--**non-essential 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 Personal Property

416 Overview

A General

A lien search is required on all personal property taken to adequately secure the loan. A lien search is not required on:

- additional security
- non-essential 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 non-essential 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 personal property 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 personal property 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 personal 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 will 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.

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 will 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 will 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 will 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 will issue a State supplement about perfecting liens on stock in cooperative-- associations.

418 Perfecting Liens (Continued)

E Perfecting a Lien on Motor Vehicles

***--**SED will issue a State supplement about perfecting liens on motor vehicles.

F Perfecting a Lien on Fixtures and Equipment

SED will 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.

*--419 Closing Personal Property Secured Loans

A General

[7 CFR 764.402(c)] The following requirements apply to loans secured by chattel:

[7 CFR 764.402(c)(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 will 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.

***--[7 CFR 764.402(c)(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;**

--**According to subparagraph 418 F, SED will issue a State supplement providing local guidance on perfecting liens, which will include guidance on financing statement requirements to perfect liens on personal property. Subject to regional OGC guidance, financing statements may include blanket lien filing language that broadly references personal property.**--

--419 Closing Personal Property 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 the personal property that**-- will serve as security. The authorized agency official will identify security specifically as follows:

* * *

- 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:** Blanket security descriptions that perfect a lien on all equipment and livestock are not authorized to be used in the FSA-2028. Security items must be specifically identified as described in this subparagraph. While blanket statements may be authorized for financing statement filings, subject to OGC regional guidance, they cannot be used in the FSA-2028. 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)

Part 18 Borrower Training

Section 1 Borrower Training Requirements

471 Overview

A Scope

FSA requires initial direct loan applicants to complete training in * * * financial management * * * 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 borrower training is to help an applicant develop and improve skills necessary to:**

[7 CFR 764.451(a)] Successfully operate a farm;

[7 CFR 764.451(b)] Build equity in the operation; and

[7 CFR 764.451(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 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:**

***--[7 CFR 764.452(a)(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;**

[7 CFR 764.452(a)(2)] If one entity member is solely responsible for production or--* financial management, then only that member will be required to complete training.

*** * ***

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 financial management under the following conditions:**

[7 CFR 764.453(b)(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**

[7 CFR 764.453(b)(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.

* * *

472 Assessing an Individual's Need for Training (Continued)

B Determining Whether to Waive Training Requirements (Continued)

*--**[7 CFR 764.453(c)] If the 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(d)] 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(e)] The Agency will provide written notification of required training or waiver of training.

[7 CFR 764.452(c)] 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 Financial Management Training Requirements

*--**[7 CFR 764.452(b)] 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 1st required.

--**The authorized agency official will waive the requirement for completion of a borrower's previously required production training.**--

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 will 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.

IF the applicant...	AND...	THEN, to be eligible for assistance, the applicant…
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 ***--**unless subsequently waived according to 764.453(d) (subparagraph 472 B).**--***
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.

IF…	THEN the…
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.

--**The authorized agency official will cancel the requirement for completion of a borrower's previously required production training.**--

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 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:

***--[7 CFR 764.456(b)(1)] A sample of the course materials and a description of the vendor's training methods;**

[7 CFR 764.456(b)(2)] Specific training objectives for each section of the course;

[7 CFR 764.456(b)(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;

[7 CFR 764.456(b)(4)] A list of instructors and their qualifications;

[7 CFR 764.456(b)(5)] The criteria by which additional instructors will be selected;

[7 CFR 764.456(b)(6)] The proposed locations where training will take place;

[7 CFR 764.456(b)(7)] The cost per participant, including cost for additional members of a farm operation;

[7 CFR 764.456(b)(8)] The minimum and maximum class size;

[7 CFR 764.456(b)(9)] The vendor's experience in developing and administering training to farmers;

[7 CFR 764.456(b)(10)] The monitoring and quality control methods the vendor will use;

[7 CFR 764.456(b)(11)] The policy on allowing Agency employees to attend the course for monitoring purposes;

[7 CFR 764.456(b)(12)] A plan of how the needs of applicants with physical, mental or learning disabilities will be met; and

[7 CFR 764.456(b)(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:

*--**[7 CFR 764.457(b)(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;**

[7 CFR 764.457(b)(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.

[7 CFR 764.457(b)(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; and

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.

The applicant must be able to:

- *--explain and justify estimates for income and expenses--*
- analyze the cash flow to identify potential problems.

* * *

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:

--[7 CFR 764.457(c)(1)] Business planning courses, covering general goal setting, risk management, and planning; or--

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.

***--[7 CFR 764.457(c)(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 and production recordkeeping**--***
- preparing a household budget
- developing and analyzing:
  - accrual adjusted income statements
  - balance sheets
  - cash flow budgets.

*** * ***

492 Reviewing a Vendor's Application (Continued)

D Instructor Requirements

[7 CFR 764.457(d)] All instructors must have:

***--[7 CFR 764.457(d)(1); Sufficient knowledge of the material and experience in adult education;**

[7 CFR 764.457(d)(2)] A bachelor's degree or comparable experience in the subject area to be taught; and

[7 CFR 764.457(d)(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 will submit a complete application to the State Office that is considered their primary base of operation. The application will 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 will 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 will 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 will update the approved vendor list annually. The list will 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.

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

Abbreviations Not Listed in 1-CM

The following abbreviations are not listed in 1-CM.

Approved Abbreviation	Term	Reference
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, 75, 373.5 Ex. 15.5, 15.6,
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, 75, 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

Redelegations of Authority

None

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, grains, cotton, oilseeds, dry beans, tobacco, peanuts, sugar beets, sugar cane, fruit, vegetable, forage, ornamental plants, nursery crops, nuts, aquacultural species, and the products resulting from: livestock, tree farming, 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 **an 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:**

(i) Meets the loan eligibility requirements for a direct or guaranteed CL, FO, or OL, as applicable;

(ii) 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.

***--(iii) Will materially and substantially participate in the operation of the farm:**

(A) 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; or

(B) 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;

(iv) Agrees to participate in any loan assessment and borrower training required by Agency regulations;

(v) 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 farm 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;

(vi) 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

(vii) In the case of an entity:

(A) All the members are related by blood or marriage; and
(B) 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".**

***--Commercially Foraged**

Commercially foraged means **the harvesting of naturally occurring plants, or plantlike material, including fungi, that develop with limited management of the resource.--***

Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

***--Conservation Loan**

Conservation Loan (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.**

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.**

Debt Forgiveness

*--Debt forgiveness means **the reduction or termination of a debt under the Act in a manner that results in a loss to the Agency:**

(i) Debt forgiveness includes:

(A) Writing down or writing off a debt pursuant to 7 U.S.C. 2001;
(B) Cancellation of remaining amounts owed after compromising, adjusting, reducing, or charging off a debt or claim pursuant to 7 U.S.C. 1981;
(C) Paying a loss pursuant to 7 U.S.C. 2005 on a FLP loan guaranteed by the Agency;
(D) Discharging a debt as a result of bankruptcy; or
(E) Releases of liability which result in a loss to the Agency.

(ii) Debt forgiveness does not include:

(A) Debt reduction through a conservation contract;
(B) Any write-down provided as part of the resolution of a discrimination complaint against the Agency;
(C) Prior debt forgiveness that has been repaid in its entirety;
(D) Consolidation, rescheduling, reamortization, or deferral of a loan; and
(E) Forgiveness of a 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.**

***--Debt Write-Down**

Debt write-down means **the reduction of the borrower's debt to that amount the Agency determines to be collectible based on an analysis of the security value and the borrower's ability to pay.--***

Direct Loan

Direct loan means **a loan funded and serviced by the Agency as the lender.**

Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

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.**

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).

***--Emergency Loan**

Emergency Loan (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.**

Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

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 **relief provided in accordance with part 7 CFR 768.1--

Essential Family Living and Farm Operating Expenses

***--**Essential family living and farm operating expenses means **those expenses that:**

(i) Are those that are basic, crucial, or indispensable;

(ii) Are determined by the Agency based on the following considerations:

(A) The specific borrower's operation;
(B) What is typical for that type of operation in the area; and
(C) What is an efficient method of production considering the borrower's resources; and

(iii) 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.--*

Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

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:**

(i) 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;

(ii) Spends a substantial portion of time in carrying out the farming operation;

(iii) Planted the crop, or purchased or produced the livestock on the farming operation;

(iv) 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;

(v) 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

(vi) Does not employ a full time farm manager.

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.**

Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

Family Farm

***--**Family farm means **a business operation that:**

(i) Produces agricultural commodities, including agricultural commodities commercially foraged on Indian land for the purposes of OLs, for sale in sufficient quantities so that it is recognized as a farm rather than a rural residence or non-eligible enterprise;

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

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

(1) The borrower, with input and assistance allowed from persons who are either related by blood or marriage to an individual borrower; or
(2) The members responsible for operating the farm, in the case of an entity; and

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

(1) The borrower, with input and assistance allowed from persons who are either related by blood or marriage to an individual borrower; or
(2) The members responsible for operating the farm, in the case of an entity;

(iii) May use full-time hired labor in amounts only to supplement family labor; and

(iv) 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**

Farm loan programs (FLP) means **Agency programs to make, guarantee, and service loans to family farmers authorized under the Act or Agency regulations.**

Farm Program Payments

Farm program payments **are benefits received from FSA for any commodity, disaster, or cost share programs.**

Farm Ownership Loan

Farm Ownership loan (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 the Down Payment loan.--***

Farmer

Farmer means **an individual, corporation, partnership, joint operation, cooperative, trust, or limited liability company that is the operator of a farm.**

Feasible Plan

*--Feasible plan means **when an applicant or borrower's cash flow budget or farm operating plan indicates that there is sufficient cash inflow to pay all cash outflow. If a loan approval or servicing action exceeds one production cycle and the planned cash flow budget or farm operating plan is atypical due to an interest-only or otherwise unequal installment, cash or inventory on hand, new enterprises, carryover debt, atypical planned purchases, important operating changes, or other reasons, a cash flow budget or farm operating plan must be prepared that reflects a typical cycle. If the request is for only one cycle, a feasible plan for only that production 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:**

(i) Meet annual operating expenses and debt payments as they become due;

(ii) Meet essential family living expenses to the extent they are not met by dependable non-farm income;

(iii) Provide for replacement of capital items; and

(iv) 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 loan agreements, security instruments, farm operating plans, and agreements for use of proceeds. If the borrower's inability to adhere to all agreements is due to circumstances beyond the borrower's control, the Agency will consider the borrower to have acted in good faith. In addition, the Agency may also consider fraud, waste, or conversion actions when determining if an applicant or borrower has acted in good faith. Such determinations of fraud, waste, or conversion that are substantiated by a legal opinion from OGC constitute an independent basis for determinations of not having acted in good faith.--

Graduation

--**Graduation means **the payment-in-full of all direct FLP loans, except for CL's, made for operating, real estate, or both purposes by refinancing with other credit sources either 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.**

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 Land**

Indian land, **for the purposes of the definition of "family farm" in this section,** means **land, or an interest therein, that is:**

(i) Owned by an Indian tribe;

(ii) Owned by an Indian tribe and is subject to restrictions against alienation or encumbrance by the United States; or

(iii) Held in trust by the United States for an Indian tribe.

Indian Tribe

Indian tribe means **any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.--***

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.**

Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

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:**

(i) FO or OL loan assistance under part 764 of this title; or
(ii) Primary loan servicing on an FO, OL, or SW loan under part 766 of this title.

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.**

Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

***--Microloan**

Microloan (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:**

***--(i) Produces exotic animals, birds, or aquatic organisms or their products that may be agricultural in nature, but are not primarily associated with agricultural production, for example, there is no established or stable market for them, or production is speculative in nature;**

(ii) Produces animals, birds, or aquatic organisms ordinarily used for pets, companionship, sport, or pleasure and not primarily associated with human consumption, fiber, or draft use;

(iii) Primarily markets goods or provides services which might be agriculturally related, but are not produced by the farming operation; or

(iv) 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:**

(i) Do not contribute to:

(A) Income to pay essential family living expenses, or
(B) The farming operation; and

(ii) Are not exempt from judgment creditors or in a bankruptcy action.

--For direct loan making, working capital reserves and savings that do not exceed the greater of $30,000 or 20 percent of planned typical year farm operating expenses (not including interest or depreciation) are considered essential. Working capital reserves and savings in excess of these amounts are considered non-essential assets unless a written exception is provided by SED, FLC, FLS, or DD. Additionally, essential assets include funds in IRS recognized retirement accounts or qualified tuition programs held by the applicant, borrower, or entity members in the case of an entity. As well, funds held by the applicant, borrower, or entity members in the case of an entity, which are accumulated for specific farm related capital purchases, farm operating expenses, and family living expenses, to be realized in the next operating cycle, are considered essential assets.--

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**, as used in 7 CFR Part 764 for EMs:**

(i) 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;

(ii) 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, if available, for the previous 3 years, when the actual production history in paragraph (i) of this definition is not available;

(iii) The county average production yield, when the production records outlined in paragraphs (i) and (ii) of this definition are not available.--*

Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

Operating Loan

Operating loan (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.

Participated in the Business Operations of a Farm

***--**Participated in the business operations of a farm means **that an individual has:**

(i) Been the 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;

(ii) Been employed as a farm manager or farm management consultant for the year's complete production cycle; or

(iii) 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, 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.**

*--Personal Property

Personal property means property that may consist of, but is not limited to, crops, livestock, aquaculture species, farm equipment, inventory, accounts, contract rights, general intangibles, and supplies that are covered by financing statements and security agreements, chattel mortgages, and other security instruments. It is property that is not real estate, and the term is generally used to replace references to the term "chattel".--*

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 Programs

Primary loan servicing programs means**:**

(i) Loan consolidation and rescheduling, or reamortization;
(ii) Interest rate reduction, including use of the limited resource rate program;
(iii) Deferral;
(iv) Write-down of the principal or accumulated interest; or
(v) Any combination of paragraphs (i) through (iv) of this definition.--*

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.

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, grandparent, son, daughter, sibling, stepparent, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, son-in-law, daughter-in-law, father-in-law, mother-in-law, nephew, niece, cousin, grandson, granddaughter, or the spouses of any of those individuals. "Related by blood or marriage" is used for consistency with a requirement in the CONACT. It has the same meaning as the word "relative" for the Farm Loan Programs regulations in this Chapter.**

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, son-in-law, daughter-in-law, father-in-law, mother-in-law, uncle, aunt, nephew, niece, cousin, grandparent, grandson, granddaughter, or the spouses of any of those individuals. Relative has the same meaning as the term "related by blood or marriage" for the Farm Loan Programs regulations in this Chapter.--***

*** * ***

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.**

***--Socially Disadvantaged Applicant or Farmer**

Socially disadvantaged applicant or farmer means **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.**

***--Socially Disadvantaged Group**

Socially disadvantaged group means **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 Program Loans**

Softwood timber program loans (ST) 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**

Streamlined conservation loan 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.**

Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

***--Undivided Ownership Interest**

Undivided ownership interest means a **common interest in the whole parcel of land that is owned by two or more people. Undivided ownership interest does not include those who own a specific piece of a parcel of land; rather they own a percentage interest in a parcel of land as a whole.**

United States

United States 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.**

U.S. Noncitizen National

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.

Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

Veteran Farmer

*--Veteran farmer means **a farmer who has served in the Armed Forces (as defined in 38 U.S.C. 101(10))** the term "Armed Forces" means the U.S. Army, Navy, Marine Corps, Air Force, and Coast Guard, including the reserve components, **and who**:--*

(i) has not operated a farm;

(ii) has operated a farm but for not more than 10 years; or

(iii) 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.

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.**

* * *

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.

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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 personal property 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

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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 personal property
- 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 personal property 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.

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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.