

promissory note cannot exceed any of the following:

(1) Farm Ownership loans, Beginning Farmer Down payment loans and Soil and Water loans:

(i) Direct—\$200,000;

(ii) Guaranteed—\$700,000 (for fiscal year 2000 and increased at the beginning of each fiscal year in accordance with paragraph (b) of this section);

(iii) Any combination of a direct Soil and Water loan, direct Farm Ownership loan, guaranteed Soil and Water loan, and guaranteed Farm Ownership loan—\$700,000 (for fiscal year 2000 and increased each fiscal year in accordance with paragraph (b) of this section);

(2) Operating loans:

(i) Direct—\$200,000;

(ii) Guaranteed—\$700,000 (for fiscal year 2000 and increased each fiscal year in accordance with paragraph (b) of this section);

(iii) Any combination of a direct Operating loan and guaranteed Operating loan—\$700,000 (for fiscal year 2000 and increased each fiscal year in accordance with paragraph (b) of this section);

(3) Any combination of guaranteed Farm Ownership loan, guaranteed Soil and Water loan, and guaranteed Operating loan—\$700,000 (for fiscal year 2000 and increased each fiscal year in accordance with paragraph (b) of this section);

(4) Any combination of direct Farm Ownership loan, direct Soil and Water loan, direct Operating loan, guaranteed Farm Ownership loan, guaranteed Soil and Water loan, and guaranteed Operating loan—the amount in paragraph (a)(1)(ii) of this section plus \$200,000;

(5) Emergency loans—\$500,000;

(6) Any combination of direct Farm Ownership loan, direct Soil and Water loan, direct Operating loan, guaranteed Farm Ownership loan, guaranteed Soil and Water loan, guaranteed Operating loan, and Emergency loan—the amount in paragraph (a)(1)(ii) of this section plus \$700,000.

(b) The dollar limits of guaranteed loans will be increased each fiscal year based on the percentage change in the Prices Paid by Farmers Index as compiled by the National Agricultural Statistics Service, USDA. The maximum loan limits for the current fiscal year

are available in any FSA office and on the FSA website at <http://www.fsa.usda.gov>.

(c) *Line of credit advances.* The total dollar amount of guaranteed line of credit advances and income releases cannot exceed the total estimated expenses, less interest expense, as indicated on the borrower's cash flow budget, unless the cash flow budget is revised and continues to reflect a feasible plan.

[66 FR 7566, Jan. 24, 2001, as amended at 67 FR 41312, June 18, 2002]

PART 762—GUARANTEED FARM LOANS

Sec.

762.1–762.100 [Reserved]

762.101 Introduction.

762.102 Abbreviations and definitions.

762.103 Full faith and credit.

762.104 Appeals.

762.105 Eligibility and substitution of lenders.

762.106 Preferred and certified lender programs.

762.107–762.109 [Reserved]

762.110 Loan application.

762.111–762.119 [Reserved]

762.120 Loan applicant eligibility.

762.121 Loan purposes.

762.122 Loan limitations.

762.123 Insurance and farm inspection requirements.

762.124 Interest rates, terms, charges, and fees.

762.125 Financial feasibility.

762.126 Security requirements.

762.127 Appraisal requirements.

762.128 Environmental and special laws.

762.129 Percent of guarantee and maximum loss.

762.130 Loan approval and issuing the guarantee.

762.131–762.139 [Reserved]

762.140 General servicing responsibilities.

762.141 Reporting requirements.

762.142 Servicing related to collateral.

762.143 Servicing distressed accounts.

762.144 Repurchase of guaranteed portion from a secondary market holder.

762.145 Restructuring guaranteed loans.

762.146 Other servicing procedures.

762.147 Servicing shared appreciation agreements.

762.148 Bankruptcy.

762.149 Liquidation.

762.150 Interest assistance program.

762.151–762.158 [Reserved]

762.159 Pledging of guarantee.

762.160 Assignment of guarantee.

AUTHORITY: 5 U.S.C. 301, 7 U.S.C. 1989.

SOURCE: 64 FR 7378, Feb. 12, 1999, unless otherwise noted.

§§ 762.1–762.100 [Reserved]

§ 762.101 Introduction.

(a) *Scope.* This subpart contains regulations governing Operating Loans and Farm Ownership loans guaranteed by the Farm Service Agency. This subpart applies to lenders, holders, borrowers, Agency personnel, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans.

(b) *Policy.* The Agency issues guarantees on loans made to qualified loan applicants without regard to race, color, religion, sex, national origin, marital status, or age, provided the loan applicant can enter into a legal and binding contract, or whether all or part of the applicant's income derives from any public assistance program or whether the applicant, in good faith, exercises any rights under the Consumer Protection Act.

(c) *Lender list and classification.* (1) The Agency maintains a current list of lenders who express a desire to participate in the guaranteed loan program. This list is made available to farmers upon request.

(2) Lenders who participate in the Agency guaranteed loan program will be classified into one of the following categories:

(i) Standard Eligible Lender under § 762.105,

(ii) Certified Lender, or

(iii) Preferred Lender under § 762.106.

(3) Lenders may continue to make loans under Approved Lender Program (ALP) agreements until they expire; however, these agreements will not be renewed when they expire. All ALP agreements with farm credit institutions will expire on February 12, 2001.

(d) *Type of guarantee.* Guarantees are available for both a loan note or a line of credit. A loan note is used for a loan of fixed amount and term. A line of credit has a fixed term, but no fixed amount. The principal amount outstanding at any time, however, may not exceed the line of credit ceiling contained in the contract. Both guarantees are evidenced by the same loan guarantee form.

(e) *Termination of loan guarantee.* The loan guarantee will automatically terminate as follows:

(1) Upon full payment of the guaranteed loan. A zero balance within the period authorized for advances on a line of credit will not terminate the guarantee;

(2) Upon payment of a final loss claim; or

(3) Upon written notice from the lender to the Agency that a guarantee is no longer desired provided the lender holds all of the guaranteed portion of the loan. The loan guarantee will be returned to the Agency office for cancellation within 30 days of the date of the notice by the lender.

§ 762.102 Abbreviations and definitions.

(a) *Abbreviations.*

ALP—Approved lender program

CLP—Certified lender program

CONACT—Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.)

EPA—Environmental Protection Agency

EIS—Environmental impact statement

EM—Emergency loans

FO—Farm ownership loans

FSA—Farm Service Agency

OL—Operating loans

PLP—Preferred lender program

SW—Soil and water

USDA—United States Department of Agriculture

(b) *Definitions.*

Additional security. Collateral in excess of that needed to fully secure the loan.

Agency. The Farm Service Agency, including its employees and state and area committee members, and any successor agency.

Allonge. An attachment or an addendum to a note.

Applicant. For guaranteed loans, the lender requesting a guarantee is the applicant. The party applying to the lender for a loan will be considered the loan applicant.

Aquaculture. The husbandry of aquatic organisms in a controlled or selected environment. An aquatic organism is any fish, amphibian, reptile, or aquatic

plant. An aquaculture operation is considered to be a farm only if it is conducted on the grounds which the loan applicant owns, leases, or has an exclusive right to use. An exclusive right to use must be evidenced by a permit issued to the loan applicant and the permit must specifically identify the waters available to be used by the loan applicant only.

Assignment of guaranteed portion. A process by which the lender transfers the right to receive payments or income on the guaranteed loan to another party, usually in return for payment in the amount of the loan's guaranteed principal. The lender retains the unguaranteed portion in its portfolio and receives a fee from the purchaser or assignee to service the loan, and receive and remit payments according to a written assignment agreement. This assignment can be reassigned or sold multiple times.

Average farm customers. Those conventional farm borrowers who are required to pledge their crops, livestock, and other chattel and real estate security for the loan. This does not include those high-risk farmers with limited security and management ability who are generally charged a higher interest rate by conventional agricultural lenders. Also, this does not include those low-risk farm customers who obtain financing on a secured or unsecured basis, who have as collateral such items as savings accounts, time deposits, certificates of deposit, stocks and bonds, and life insurance, which they are able to pledge for the loan.

Basic Security. All farm machinery, equipment, vehicles, foundation and breeding livestock herds and flocks, including replacements, and real estate which serves as security for a loan guaranteed by the Agency.

Beginning farmer or rancher. A beginning farmer or rancher is an individual or entity who:

(1) Meets the loan eligibility requirements for OL or FO assistance, as applicable, in accordance with this subpart;

(2) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years. This requirement applies to all members of an entity;

(3) Will materially and substantially participate in the operation of the farm or ranch:

(i) In the case of a loan made to an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(ii) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that the individual 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 or ranch would be seriously impaired;

(4) Agrees to participate in any loan assessment and financial management programs required by Agency regulations;

(5) Does not own real farm or ranch property or who, directly or through interests in family farm entities, owns real farm or ranch property, the aggregate acreage of which does not exceed 30 percent of the average farm or ranch acreage of the farms or ranches 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 loan 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 loan 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 or ranch acreage will be determined from the most recent Census of Agriculture developed by the U.S. Department of Commerce, Bureau of the Census or USDA;

(6) Demonstrates that the available resources of the loan applicant and spouse (if any) are not sufficient to enable the loan applicant to enter or continue farming or ranching on a viable scale; and

(7) In the case of an entity:

(i) All the members are related by blood or marriage; and

(ii) All the stockholders in a corporation are beginning farmers or ranchers.

Borrower. An individual or entity which has outstanding obligations to the lender under any Agency loan or loan guarantee program. A borrower includes all parties liable for Agency debt, including collection-only borrowers, except those whose total loan and accounts have been voluntarily or involuntarily foreclosed or liquidated, or who have been discharged of all Agency debt.

Capital leases. Agreements under which the lessee effectively acquires ownership of the asset being leased. A lease is a capital lease if it meets any one of the following criteria:

(1) The lease transfers ownership of the property to the lessee at the end of the lease term.

(2) The lessee has the right to purchase the property for significantly less than its market value at the end of the lease.

(3) The term of the lease is at least 75 percent of the estimated economic life of the leased property.

(4) The present value of the minimum lease payments equals or exceeds 90 percent of the fair market value of the leased property.

Cash flow budget. A projection listing all anticipated cash inflows (including all farm income, nonfarm income and all loan advances) and all cash outflows (including all farm and nonfarm debt service and other expenses) to be incurred by the borrower during the period of the budget. Cash flow budgets for loans under \$50,000 do not require income and expenses itemized by categories. Cash flow budgets for loans under \$125,000 do not require income and expenses itemized by categories. It may also be prepared with a breakdown of cash inflows and outflows for each month of the review period and includes the expected outstanding operating credit balance for the end of each month. The latter type is referred to as a "monthly cash flow budget".

Collateral. Property pledged as security for a loan to ensure repayment of an obligation.

Conditional commitment. The Agency's commitment to the lender that the ma-

terial it has submitted is approved subject to the completion of all conditions and requirements contained therein.

Consolidation. The combination of outstanding principal and interest balance of two or more OL loans.

Controlled. When a director or employee has more than a 50 percent ownership in the entity or, the director or employee, together with relatives of the director or employee, have more than a 50 percent ownership.

Cooperative. An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of the State in which the entity will operate a farm.

Cosigner. A party who joins in the execution of a promissory note to assure its repayment. The cosigner becomes jointly and severally liable to comply with the terms of the note. In the case of an entity applicant, the cosigner cannot be a member, partner, joint operator, or stockholder of the entity.

County average yield. The historical average yield for a commodity in a particular political subdivision, as determined or published by a government entity or other recognized source.

Debt writedown. To reduce the amount of the borrower's debt to that amount that is determined to be collectible based on an analysis of the security value and the borrower's ability to pay.

Deferral. A postponement of the payment of interest or principal or both. Principal may be deferred in whole or in part, interest may only be partially deferred.

Depreciation and amortization expenses. An annual allocation of the cost or other basic value of tangible capital assets, less salvage value, over the estimated life of the unit (which may be a group of assets), in a systematic and rational manner.

Direct loan. A loan serviced by the Agency as lender.

Entity. Cooperatives, corporations, partnerships, joint operations, trusts, or limited liability companies.

Family farm. A farm which:

(1) Produces agricultural commodities for sale in sufficient quantities so

that it is recognized in the community as a farm rather than a rural residence;

(2) Provides enough agricultural income by itself, including rented land, or together with any other dependable income to enable the borrower to:

(i) Pay necessary family living and operating expenses;

(ii) Maintain essential chattel and real property; and

(iii) Pay debts;

(3) Is managed by:

(i) The borrower when a loan is made to an individual; or,

(ii) The members, stockholders, partners, or joint operators responsible for operating the farm when a loan is made to an entity;

(4) Has a substantial amount of the labor requirement for the farm and nonfarm enterprise provided by:

(i) The borrower and the borrower's immediate family for a loan made to an individual; or

(ii) The members, stockholders, partners, or joint operators responsible for operating the farm, along with the families of these individuals, for a loan made to an entity; and

(5) May use a reasonable amount of full-time hired labor and seasonal labor during peak load periods.

Family living expenses. Any withdrawals from income to provide for needs of family members.

Family members. The immediate members of the family residing in the same household with the individual borrower, or, in the case of an entity, with the operator.

Farm. A tract or tracts of land, improvements, and other appurtenances which 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 any such land and improvements and facilities used in a nonfarm enterprise. It may also include the residence which, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.

Feasible plan. A plan is feasible when a borrower or applicant's cash flow budget indicates that there is sufficient cash inflow to pay all cash out-

flow each year during the term of the loan. If a loan approval or restructuring action exceeds one production cycle and the planned cash flow budget is atypical due to cash or inventory on hand, new enterprises, carryover debt, atypical planned purchases, important operating changes, or other reasons, a cash flow budget must be prepared that reflects a typical cycle. If the request is for only one cycle, a feasible plan for only one cycle is required for approval.

Fish. Any aquatic, gilled animal commonly known as "fish" as well as mollusks, or crustaceans (or other invertebrates) produced under controlled conditions (that is, feeding, tending, harvesting, and such other activities as are necessary to properly raise and market the products) in ponds, lakes, streams, artificial enclosures, or similar holding areas.

Fixture. 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 substantially damaging the structure itself.

Graduation. The Agency's determination that a borrower of a direct loan, is financially stable enough to refinance that loan with a commercial lender with or without a guarantee.

Guaranteed loan. A loan made and serviced by a lender for which the Agency has entered into a lenders agreement and for which the Agency has issued a loan note guarantee. This term also includes lines of credit except where otherwise indicated.

Hazard insurance. Includes fire, windstorm, lightning, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, builder's 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.

Holder. The person or organization other than the lender who holds all or a part of the guaranteed portion of an Agency guaranteed loan but who has no servicing responsibilities. When the lender assigns a part of the guaranteed loan to an assignee by way of execution of an assignment form, the assignee becomes a holder.

In-house expenses. Expenses associated with credit management and loan servicing by the lender and the lender's contractor. In-house expenses include, but are not limited to: employee salaries, staff lawyers, travel, supplies, and overhead.

Interest assistance agreement. The signed agreement between the Agency and the lender setting forth the terms and conditions of the interest assistance.

Interest assistance anniversary date. Date on which interest assistance reviews and claims will be effective. This date is established by the lender. Once established, it will not change unless the loan is restructured.

Interest assistance review. The yearly review process which includes an analysis of the borrower or applicant's farming operation and need for continued interest assistance, completion of the needs test and request for continuation of interest assistance.

Joint operation. Individuals that have agreed to operate a farm or farms together as a business unit. The real and personal property may be owned separately or jointly by the individuals.

Land development. Items such as terracing, clearing, leveling, fencing, drainage and irrigation systems, ponds, forestation, permanent pastures, perennial hay crops, basic soil amendments, and other items of land improvements which conserve or permanently enhance productivity.

Lender. The organization making and servicing the loan or advancing and servicing the line of credit which is guaranteed under the provisions of Agency regulations. The lender is also the party requesting a guarantee.

Lender's agreement. The appropriate Agency form executed by the Agency and the lender setting forth the loan responsibilities of the lender and agency when the loan guarantee is issued.

Lien. 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.

Liquidation expenses. The cost of an appraisal, due diligence evaluation, environmental assessment, outside attorney fees and other costs incurred as a

direct result of liquidating the security for the guaranteed loan. Liquidation fees do not include in-house expenses.

Loan or line of credit agreement. A document which contains certain lender and borrower agreements, conditions, limitations, and responsibilities for credit extension and acceptance in a loan format where loan principal balance may fluctuate throughout the term of the document.

Loan applicant. The party applying to a lender for a guaranteed loan or line of credit.

Loan transaction. Any loan approval or servicing action.

Loss claim. A request made to the Agency by a lender to receive a reimbursement based on a percentage of the lender's loss on a loan covered by an Agency guarantee.

Loss rate. The net amount of guaranteed OL, FO, and SW loss claims paid on loans made in the past 7 years divided by the total loan amount of OL, FO, and SW made in the past 7 years.

Major deficiency. A deficiency that directly affects the soundness of the loan.

Majority interest. Any individual or a combination of individuals owning more than a 50 percent interest in a cooperative, corporation, joint operation, or partnership.

Market value. The amount which an informed and willing buyer would pay an informed and willing, but not forced, seller in a completely voluntary sale.

Minor deficiency. A deficiency that violates Agency regulations, but does not affect the soundness of a loan.

Mortgage. A legal instrument giving the lender a security interest or lien on real or personal property of any kind.

Negligent servicing. The failure to perform those services which would be considered normal industry standards of loan management or failure to comply with any servicing requirement of this subpart or the lenders agreement or the guarantee. The term includes the concept of a failure to act or failure to act timely consistent with actions of a reasonable lender in loan making, servicing, and collection.

Net farm operating income. The gross income generated by a farming operation annually, minus all yearly operating expenses (including withdrawals from entities for living expenses), operating loan interest, interest on term debt and capital lease payments, and depreciation and amortization expenses. Net farm operating income does not include off-farm income and social security taxes, carryover debt and delinquent interest.

Net recovery value. The market value of the security property assuming that it will be acquired by the lender, and sold for its highest and best use, less the lender's costs of property acquisition, retention, maintenance, and liquidation.

Nonessential asset. Assets in which the borrower has an ownership interest that do not contribute an income to pay essential family living expenses or maintain a sound farming operation, and are not exempt from judgment creditors.

Normal income security. All security not considered basic security.

Partnership. 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 entity will operate and must be authorized to own both real estate and personal property and to incur debts in its own name.

Potential liquidation value. The amount of the lender's protective bid at the foreclosure sale. Potential liquidation value is determined by an independent appraiser using comparables from other forced liquidation sales.

Present value. The present worth of a future stream of payments discounted to the current date.

Presidentially-designated emergency. 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 security. The minimum amount of collateral needed to fully secure a proposed loan.

Principals of borrowers. Includes owners, officers, directors, entities and

others directly involved in the operation and management of a business.

Protective advances. Advances made by a lender to protect or preserve the collateral itself from loss or deterioration. Protective advances include but are not limited to:

- (1) Payment of delinquent taxes,
- (2) Annual assessments,
- (3) Ground rents,
- (4) Hazard or flood insurance premiums against or affecting the collateral,
- (5) Harvesting costs,
- (6) Other expenses needed for emergency measures to protect the collateral.

Recapture. The amount that a guaranteed lender is entitled to recover from a guaranteed loan borrower in consideration for the lender writing down a portion of their guaranteed loan debt when that loan was secured by real estate and that real estate increases in value. Also, the act of collecting shared appreciation.

Related by blood or marriage. Individuals who are connected to one another as husband, wife, parent, child, brother, or sister.

Relative. An individual or spouse and anyone having the following relationship to either: parent, son, daughter, sibling, stepparent, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, uncle, aunt, nephew, niece, grandparent, granddaughter, grandson, and the spouses of the foregoing.

Rescheduling. To rewrite the rates and terms of a single note or line of credit agreement.

Restructuring. Changing terms of a debt through either a rescheduling, deferral, or writedown or a combination thereof.

Security. Property of any kind subject to a real or personal property lien. Any reference to "collateral" or "security property" shall be considered a reference to the term "security."

Shared appreciation agreement. An agreement between a guaranteed lender and borrower that requires a borrower that has received a write down on a guaranteed loan secured by real estate to repay the lender some or all of the writedown received, based on a percentage of any increase in the value

of that real estate at some future date, if certain conditions exist.

State. The major political subdivision of the United States and the organization of program delivery for the Agency.

Subordination. A document executed by a lender to relinquish their priority of lien in favor of another lender that provides the other lender with a priority right to collect a debt of a specific dollar amount from the sale of the same collateral.

Subsequent loans. Any loans processed by the Agency after an initial loan has been made to the same borrower.

Transfer and assumption. The conveyance by a debtor to an assuming party of the assets, collateral, and liabilities of the loan in return for the assuming party's binding promise to pay the debt outstanding.

Typical plan. A projected income and expense statement listing all anticipated cash flows for a typical 12-month production cycle; including all farm and nonfarm income and all expenses (including debt service) to be incurred by the borrower during such period.

Unaccounted for security. Items, as indicated on the lender's loan application, request for guarantee, or any interim agreements provided to the Agency, that are security for the guaranteed loan that were misplaced, stolen, sold, or otherwise missing, where replacement security was not obtained or the proceeds from their sale have not been applied to the loan.

United States. The United States itself, each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Veteran. 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.

[64 FR 7378, Feb. 12, 1999, as amended at 66 FR 7567, Jan. 24, 2001; 68 FR 7695, Feb. 18, 2003; 69 FR 5262, Feb. 4, 2004; 70 FR 56107, Sept. 26, 2005]

§ 762.103 Full faith and credit.

(a) *Fraud and misrepresentation.* The loan guarantee constitutes an obligation supported by the full faith and

credit of the United States. The Agency may contest the guarantee only in cases of fraud or misrepresentation by a lender or holder, in which:

(1) The lender or holder had actual knowledge of the fraud or misrepresentation at the time it became the lender or holder, or

(2) The lender or holder participated in or condoned the fraud or misrepresentation.

(b) *Lender violations.* The loan guarantee cannot be enforced by the lender, regardless of when the Agency discovers the violation, to the extent that the loss is a result of:

(1) Violation of usury laws;

(2) Negligent servicing;

(3) Failure to obtain the required security; or,

(4) Failure to use loan funds for purposes specifically approved by the Agency.

(c) *Enforcement by holder.* The guarantee and right to require purchase will be directly enforceable by the holder even if:

(1) The loan guarantee is contestable based on the lender's fraud or misrepresentation; or

(2) The loan note guarantee is unenforceable by the lender based on a lender violation.

§ 762.104 Appeals.

(a) The loan applicant or borrower and lender must jointly execute the written request for review of an alleged adverse decision made by the Agency. However, in cases where the Agency has denied or reduced the amount of the final loss payment, the decision may be appealed by the lender only.

(b) A decision made by the lender adverse to the borrower is not a decision by the Agency, whether or not concurred in by the Agency, and may not be appealed.

(c) The lender or Agency may request updated information from the borrower to implement an appeal decision.

(d) Appeals will be handled in accordance with parts 11 and 780 of this title.

§ 762.105 Eligibility and substitution of lenders.

(a) *General.* To participate in FSA guaranteed farm loan programs, a lender must meet the eligibility criteria in

this part. The standard eligible lender must demonstrate eligibility and provide such evidence as the Agency may request.

(b) *Standard eligible lender eligibility criteria.* (1) A lender must have experience in making and servicing agricultural loans and have the capability to make and service the loan for which a guarantee is requested;

(2) The lenders must not have losses or deficiencies in processing and servicing guaranteed loans above a level which would indicate an inability to properly process and service a guaranteed agricultural loan.

(3) A lender must be subject to credit examination and supervision by an acceptable State or Federal regulatory agency;

(4) The lender must maintain an office near enough to the collateral's location so it can properly and efficiently discharge its loan making and loan servicing responsibilities or use Agency approved agents, correspondents, branches, or other institutions or persons to provide expertise to assist in carrying out its responsibilities. The lender must be a local lender unless it:

(i) Normally makes loans in the region or geographic location in which the loan applicant's operation being financed is located, or

(ii) Demonstrates specific expertise in making and servicing loans for the proposed operation.

(5) The lender, its officers, or agents must not be debarred or suspended from participation in Government contracts or programs or be delinquent on a Government debt.

(c) *Substitution of lenders.* A new eligible lender may be substituted for the original lender, upon the original lender's concurrence, under the following conditions:

(1) The Agency approves of the substitution in writing by executing a modification of the guarantee to identify the new lender, the amount of debt at the time of the substitution and any new loan terms if applicable.

(2) The new lender agrees in writing to:

(i) Assume all servicing and other responsibilities of the original lender and to acquire the unguaranteed portion of the loan;

(ii) Execute a lender's agreement if one is not in effect;

(iii) [Reserved]

(iv) Give any holder written notice of the substitution. If the rate and terms are changed, written concurrence from the holder is required.

(3) The original lender will:

(i) Assign their promissory note, lien instruments, loan agreements, and other documents to the new lender.

(ii) If the loan is subject to an existing interest assistance agreement, submit a request for subsidy for the partial year that it has owned the loan.

(d) *Lender name or ownership changes.*

(1) When a lender begins doing business under a new name or undergoes an ownership change the lender will notify the Agency.

(2) The lender's CLP or PLP status is subject to reconsideration when ownership changes.

(3) The lender will execute a new lender's agreement when ownership changes.

[64 FR 7378, Feb. 12, 1999, as amended at 66 FR 7567, Jan. 24, 2001]

§ 762.106 Preferred and certified lender programs.

(a) *General.* (1) Lenders who desire PLP or CLP status must prepare a written request addressing:

(i) The States in which they desire to receive PLP or CLP status and their branch offices which they desire to be considered by the Agency for approval; and

(ii) Each item of the eligibility criteria for PLP or CLP approval in this section, as appropriate.

(2) The lender may include any additional supporting evidence or other information the lender believes would be helpful to the Agency in making its determination.

(3) The lender must send its request to the Agency State office for the State in which the lender's headquarters is located.

(4) The lender must provide any additional information requested by the Agency to process a PLP or CLP request if the lender continues with the approval process.

(b) *CLP criteria.* The lender must meet the following requirements to obtain CLP status:

(1) Qualify as a standard eligible lender under § 762.105;

(2) Have a lender loss rate not in excess of the maximum CLP loss rate established by the Agency and published periodically in a FEDERAL REGISTER Notice. The Agency may waive the loss rate criteria for those lenders whose loss rate was substantially affected by a disaster as defined in part 1945, subpart A, of this title.

(3) Have proven an ability to process and service Agency guaranteed loans by showing that the lender:

(i) Submitted substantially complete and correct guaranteed loan applications; and

(ii) Serviced all guaranteed loans according to Agency regulations;

(4) Have made the minimum number of guaranteed OL, FO, or Soil and Water (SW) loans established by the Agency and published periodically in a FEDERAL REGISTER Notice.

(5) Not be under any regulatory enforcement action such as a cease and desist order, written agreement, or an appointment of conservator or receiver, based upon financial condition;

(6) Designate a qualified person or persons to process and service Agency guaranteed loans for each of the lender offices which will process CLP loans. To be qualified, the person must meet the following conditions:

(i) Have attended Agency sponsored training in the past 12 months or will attend training in the next 12 months; and

(ii) Agree to attend Agency sponsored training each year;

(7) Use forms acceptable to the Agency for processing, analyzing, securing, and servicing Agency guaranteed loans and lines of credit;

(c) *PLP criteria.* The lender must meet the following requirements to obtain PLP status:

(1) Meet the CLP eligibility criteria under this section.

(2) Have a credit management system, satisfactory to the Agency, based on the following:

(i) The lender's written credit policies and underwriting standards;

(ii) Loan documentation requirements;

(iii) Exceptions to policies;

(iv) Analysis of new loan requests;

(v) Credit file management;

(vi) Loan funds and collateral management system;

(vii) Portfolio management;

(viii) Loan reviews;

(ix) Internal credit review process;

(x) Loan monitoring system; and

(xi) The board of director's responsibilities.

(3) Have made the minimum number of guaranteed OL, FO, or SW loans established by the Agency and published periodically in a FEDERAL REGISTER Notice.

(4) Have a lender loss rate not in excess of the rate of the maximum PLP loss rate established by the Agency and published periodically in a FEDERAL REGISTER Notice. The Agency may waive the loss rate criteria for those lenders whose loss rate was substantially affected by a disaster as defined in part 1945, subpart A, of this title.

(5) Show a consistent practice of submitting applications for guaranteed loans containing accurate information supporting a sound loan proposal.

(6) Show a consistent practice of processing Agency guaranteed loans without recurring major or minor deficiencies.

(7) Demonstrate a consistent, above average ability to service guaranteed loans based on the following:

(i) Borrower supervision and assistance;

(ii) Timely and effective servicing; and

(iii) Communication with the Agency.

(8) Designate a person or persons, either by name, title, or position within the organization, to process and service PLP loans for the Agency.

(d) *CLP and PLP approval.* (1) If a lender applying for CLP or PLP status is or has recently been involved in a merger or acquisition, all loans and losses attributed to both lenders will be considered in the eligibility calculations.

(2) The Agency will determine which branches of the lender have the necessary experience and ability to participate in the CLP or PLP program based on the information submitted in the lender application and on Agency experience.

(3) Lenders who meet the criteria will be granted CLP or PLP status for a period not to exceed 5 years.

(4) PLP status will be conditioned on the lender carrying out its credit management system as proposed in its request for PLP status and any additional loan making or servicing requirements agreed to and documented the PLP lender's agreement. If the PLP lender's agreement does not specify any agreed upon process for a particular action, the PLP lender will act according to regulations governing CLP lenders.

(e) *Monitoring CLP and PLP lenders.* CLP and PLP lenders will provide information and access to records upon Agency request to permit the Agency to audit the lender for compliance with these regulations.

(f) *Renewal of CLP or PLP status.* (1) PLP or CLP status will expire within a period not to exceed 5 years from the date the lender's agreement is executed, unless a new lender's Agreement is executed.

(2) Renewal of PLP or CLP status is not automatic. A lender must submit a written request for renewal of a lender's agreement with PLP or CLP status which includes information:

- (i) Updating the material submitted in the initial application; and,
- (ii) Addressing any new criteria established by the Agency since the initial application.

(3) PLP or CLP status will be renewed if the applicable eligibility criteria under this section are met, and no cause exists for denying renewal under paragraph (g) of this section.

(g) *Revocation of PLP or CLP status.* (1) The Agency may revoke the lender's PLP or CLP status at any time during the 5 year term for cause.

(2) Any of the following instances constitute cause for revoking or not renewing PLP or CLP status:

- (i) Violation of the terms of the lender's agreement;
- (ii) Failure to maintain PLP or CLP eligibility criteria;
- (iii) Knowingly submitting false or misleading information to the Agency;
- (iv) Basing a request on information known to be false;
- (v) Deficiencies that indicate an inability to process or service Agency

guaranteed farm loan programs loans in accordance with this subpart;

(vi) Failure to correct cited deficiencies in loan documents upon notification by the Agency;

(vii) Failure to submit status reports in a timely manner;

(viii) Failure to use forms, or follow credit management systems (for PLP lenders) accepted by the Agency; or

(ix) Failure to comply with the reimbursement requirements of § 762.144(c)(7).

(3) A lender which has lost PLP or CLP status must be reconsidered for eligibility to continue as a Standard Eligible Lender (for former PLP and CLP lenders), or as a CLP lender (for former PLP lenders) in submitting loan guarantee requests. They may reapply for CLP or PLP status when the problem causing them to lose their status has been resolved.

[64 FR 7378, Feb. 12, 1999; 64 FR 38298, July 16, 1999, as amended at 70 FR 56107, Sept. 26, 2005]

§§ 762.107–762.109 [Reserved]

§ 762.110 Loan application.

(a) *Loans for \$125,000 or less.* All lenders except PLP lenders will submit the following items:

(1) A complete application for loans of \$125,000 or less must, at least, consist of:

- (i) The application form;
- (ii) Loan narrative;
- (iii) Balance sheet;
- (iv) Cash flow budget;
- (v) Credit report;
- (vi) A plan for servicing the loan.

(2) In addition to the minimum requirements, the lender will perform at least the same level of evaluation and documentation for a guaranteed loan that the lender typically performs for non-guaranteed loans of a similar type and amount.

(3) The \$125,000 threshold includes any single loan, or package of loans submitted for consideration at any one time. A lender must not split a loan into two or more parts to meet the threshold thereby avoiding additional documentation.

(4) The Agency may require lenders with a lender loss rate in excess of the

rate for CLP lenders to assemble additional documentation from paragraph (b) of this section.

(b) *Loans over \$125,000.* A complete application for loans over \$50,000 will consist of the items required in paragraph (a) of this section plus the following:

- (1) Verification of income;
- (2) Verification of debts over \$1,000;
- (3) Three years financial history;
- (4) Three years of production history (for standard eligible lenders only);
- (5) Proposed loan agreements; and,
- (6) If construction or development is planned, a copy of the plans, specifications, and development schedule.

(c) *Applications from PLP lenders.* Notwithstanding paragraphs (a) and (b) of this section, a complete application for PLP lenders will consist of at least:

- (1) An application form;
- (2) A loan narrative; and
- (3) Any other items agreed to during the approval of the PLP lender's status and contained in the PLP lender agreement.

(d) *Submitting applications.* (1) All lenders must compile and maintain in their files a complete application for each guaranteed loan. See paragraphs (a), (b), and (c) of this section.

(2) The Agency will notify CLP lenders which items to submit to the Agency.

(3) PLP lenders will submit applications in accordance with their agreement with the Agency for PLP status.

(4) CLP and PLP lenders must certify that the required items, not submitted, are in their files.

(5) The Agency may request additional information from any lender or review the lender's loan file as needed to make eligibility and approval decisions.

(e) *Incomplete applications.* If the lender does not provide the information needed to complete its application by the deadline established in an Agency request for the information, the application will be considered withdrawn by the lender.

(f) *Conflict of interest.* (1) When a lender submits the application for a guaranteed loan, the lender will inform the Agency in writing of any relationship which may cause an actual or potential conflict of interest.

(2) Relationships include:

(i) The lender or its officers, directors, principal stockholders (except stockholders in a Farm Credit System institution that have stock requirements to obtain a loan), or other principal owners having a financial interest (other than lending relationships in the normal course of business) in the loan applicant or borrower.

(ii) The loan applicant or borrower, a relative of the loan applicant or borrower, anyone residing in the household of the loan applicant or borrower, any officer, director, stockholder or other owner of the loan applicant or borrower holds any stock or other evidence of ownership in the lender.

(iii) The loan applicant or borrower, a relative of the loan applicant or borrower, or anyone residing in the household of the loan applicant or borrower is an Agency employee.

(iv) The officers, directors, principal stockholders (except stockholders in a Farm Credit System institution that have stock requirements to obtain a loan), or other principal owners of the lender have substantial business dealings (other than in the normal course of business) with the loan applicant or borrower.

(v) The lender or its officers, directors, principal stockholders, or other principal owners have substantial business dealings with an Agency employee.

(3) The lender must furnish additional information to the Agency upon request.

(4) The Agency will not approve the application until the lender develops acceptable safeguards to control any actual or potential conflicts of interest.

[64 FR 7378, Feb. 12, 1999, as amended at 68 FR 7695, Feb. 18, 2003]

§§ 762.111-762.119 [Reserved]

§ 762.120 Loan applicant eligibility.

Loan applicants must meet all of the following requirements to be eligible for a guaranteed OL or a guaranteed FO:

(a) *Agency loss.* (1) Except as provided in paragraph (a)(2) of this section, the applicant, and anyone who will execute the promissory note, has not caused

the Agency a loss by receiving debt forgiveness on all or a portion of any direct or guaranteed loan made under the authority of the CONACT by debt write-down or write-off; compromise, adjustment, reduction, or charge-off under the provisions of section 331 of the CONACT; discharge in bankruptcy; or through payment of a guaranteed loss claim on:

(i) More than three occasions on or prior to April 4, 1996; or

(ii) Any occasion after April 4, 1996.

(2) The applicant may receive a guaranteed OL to pay annual farm and ranch operating and family living expenses, provided the applicant meets all other requirements for the loan, if the applicant and anyone who will execute the promissory note:

(i) Received a write-down under section 353 of the CONACT;

(ii) Is current on payments under a confirmed reorganization plan under chapter 11, 12, or 13 of title 11 of the United States Code; or

(iii) Received debt forgiveness on not more than one occasion after April 4, 1996, resulting directly and primarily from a Presidentially-designated emergency for a county or contiguous county in which the applicant operates. Only applicants who were current on all existing direct and guaranteed FSA loans prior to the beginning date of the incidence period for a Presidentially-designated emergency and received debt forgiveness on that debt within three years after the designation of such emergency meet this exception.

(b) *Delinquent Federal debt.* The loan applicant, and anyone who will execute the promissory note, is not delinquent on any Federal debt, other than a debt under the Internal Revenue Code of 1986. (Any debt under the Internal Revenue Code of 1986 may be considered by the lender in determining cash flow and creditworthiness.)

(c) *Outstanding judgments.* The loan applicant, and anyone who will execute the promissory note, have no outstanding unpaid judgment 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.

(d) *Citizenship.* (1) The applicant must be a citizen of the United States, a

United States non-citizen national, or a qualified alien under applicable Federal immigration laws. For an entity applicant, the majority interest of the entity must be held by members who are United States citizens, United States non-citizen nationals, or qualified aliens under applicable Federal immigration laws.

(2) United States non-citizen nationals and qualified aliens must provide the appropriate documentation as to their immigration status as required by the United States Department of Homeland Security, Bureau of Citizenship and Immigration Services.

(e) *Legal capacity.* The loan applicant and all borrowers on the loan must possess the legal capacity to incur the obligations of the loan.

(f) *False or misleading information.* The loan applicant, in past dealings with the Agency, must not have provided the Agency with false or misleading documents or statements.

(g) *Credit history.* (1) The individual or entity loan applicant and all entity members must have acceptable credit history demonstrated by debt repayment.

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

(3) Unacceptable credit history will not include:

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

(ii) Lack of credit history.

(h) *Test for credit.* (1) The loan applicant is unable to obtain sufficient credit elsewhere without a guarantee to finance actual needs at reasonable rates and terms.

(2) The potential for sale of any significant nonessential assets will be considered when evaluating the availability of other credit.

(3) Ownership interests in property and income received by an individual or entity loan applicant, and any entity members as individuals will be considered when evaluating the availability of other credit to the loan applicant.

(i) *For OLs:*

(1) The individual or entity loan applicant must be an operator of not larger than a family farm after the loan is closed.

(2) In the case of an entity borrower:

(i) The entity must be authorized to operate, and own if the entity is also an owner, a farm in the State or States in which the farm is located; and

(ii) If the entity members holding a majority interest are related by marriage or blood, at least one member of the entity must operate the family farm; or,

(iii) If the entity members holding a majority interest are not related by marriage or blood, the entity members holding a majority interest must also operate the family farm.

(j) *For FOs:*

(1) The individual must be the operator and owner of not larger than a family farm after the loan is closed.

(2) In the case of an entity borrower:

(i) The entity must be authorized to own and operate a farm in the state or states in which the farm is located; and

(ii) If the entity members holding a majority interest are related by marriage or blood, at least one member of the entity also must operate the family farm and at least one member of the entity or the entity must own the family farm; or,

(iii) If the entity members holding a majority interest are not related by marriage or blood, the entity members holding a majority interest must operate the family farm and the entity members holding a majority interest or the entity must own the family farm.

(k) *For entity loan applicants.* Entity loan applicants must meet the following additional eligibility criteria:

(1) Each entity member's ownership interest may not exceed the family farm definition limits;

(2) The collective ownership interest of all entity members may exceed the family farm definition limits only if the following conditions are met:

(i) All of the entity members are related by blood or marriage;

(ii) All of the members are or will be operators of the entity; and,

(iii) The majority interest holders of the entity must meet the requirements of paragraphs (d), (f), (g), and (i) through (j) of this section;

(3) The entity must be controlled by farmers or ranchers engaged primarily and directly in farming or ranching in the United States after the loan is made; and

(4) The entity members are not themselves entities.

(l) Neither the applicant nor any entity member has been convicted of planting, cultivating, growing, producing, harvesting, or storing a controlled substance under Federal or state law within the last five crop years. "Controlled substance" is defined at 21 CFR 1308. Applicants must certify on the application that it and its members, if an entity, have not been convicted of such a crime within the relevant period. If the lender uses the lender's Agency approved forms, the certification may be an attachment to the form.

[64 FR 7378, Feb. 12, 1999, as amended at 68 FR 62223, Nov. 3, 2003; 69 FR 5262, Feb. 4, 2004]

§ 762.121 Loan purposes.

(a) *Operating Loan purposes.* (1) Loan funds disbursed under an OL guarantee may only be used for the following purposes:

(i) Payment of costs associated with reorganizing a farm or ranch to improve its profitability;

(ii) Purchase of livestock, including poultry, and farm or ranch equipment or fixtures, quotas and bases, and cooperative stock for credit, production, processing or marketing purposes;

(iii) Payment of annual farm or ranch operating expenses, examples of which include feed, seed, fertilizer, pesticides, farm or ranch supplies, repairs and improvements which are to be expensed, cash rent and family subsistence;

(iv) Payment of scheduled principal and interest payments on term debt provided the debt is for authorized FO or OL purposes;

(v) Other farm and ranch needs;

(vi) Payment of costs associated with land and water development for conservation or use purposes;

(vii) Refinancing indebtedness incurred for any authorized OL purpose, when the lender and loan applicant can demonstrate the need to refinance;

(viii) Payment of loan closing costs;

(ix) Payment of costs associated with complying with Federal or State-approved standards under the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 667). This purpose is limited to applicants who demonstrate that compliance with the standards will cause them substantial economic injury; and

(x) Payment of training costs required or recommended by the Agency.

(2) Loan funds under a line of credit may be advanced only for the following purposes:

(i) Payment of annual operating expenses, family subsistence, and purchase of feeder animals;

(ii) Payment of current annual operating debts advanced for the current operating cycle; (Under no circumstances can carry-over operating debts from a previous operating cycle be refinanced);

(iii) Purchase of routine capital assets, such as replacement of livestock, that will be repaid within the operating cycle;

(iv) Payment of scheduled, non-delinquent, term debt payments provided the debt is for authorized FO or OL purposes.

(v) Purchase of cooperative stock for credit, production, processing or marketing purposes; and

(vi) Payment of loan closing costs.

(b) *Farm ownership loan purposes.* Guaranteed FO are authorized only to:

(1) Acquire or enlarge a farm or ranch; examples include, but are not limited to, providing down payments, purchasing easements for the loan applicant's portion of land being subdivided, and participating in the beginning farmer downpayment FO program under part 1943, subpart A, of this title;

(2) Make capital improvements; examples include, but are not limited to, the construction, purchase, and improvement of a farm dwelling, service buildings and facilities that can be made fixtures to the real estate, (Capital improvements to leased land may be financed subject to the limitations in § 762.122);

(3) Promote soil and water conservation and protection; examples include the correction of hazardous environmental conditions, and the construc-

tion or installation of tiles, terraces and waterways;

(4) Pay closing costs, including but not limited to, purchasing stock in a cooperative and appraisal and survey fees; and

(5) Refinancing indebtedness incurred for authorized FO and OL purposes, provided the lender and loan applicant demonstrate the need to refinance the debt.

(c) *Highly erodible land or wetlands conservation.* Loans may not be made for any purpose which contributes to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity. A decision by the Agency to reject an application for this reason may be appealable. An appeal questioning whether the presence of a wetland, converted wetland, or highly erodible land on a particular property must be filed directly with the USDA agency making the determination in accordance with the agency's appeal procedures.

(d) *Judgment debts.* Loans may not be used to satisfy judgments obtained in the United States District courts. However, Internal Revenue Service judgment liens may be paid with loan funds.

§ 762.122 Loan limitations.

(a) *OL term limitations.* (1) No guaranteed OL shall be made to any loan applicant after the 15th year that a loan applicant, or any individual signing the promissory note, received a direct or guaranteed OL.

(2) Notwithstanding paragraph (c)(1) of this section, if a borrower had any combination of direct or guaranteed OL closed in 10 or more prior calendar years prior to October 28, 1992, eligibility to receive new guaranteed OL is extended for 5 additional years from October 28, 1992, and the years need not run consecutively. However, in the case of a line of credit, each year in which an advance is made after October 28, 1992, counts toward the 5 additional years. Once determined eligible, a loan or line of credit may be approved for any authorized term.

(b) *Leased land.* When FO funds are used for improvements to leased land the terms of the lease must provide

reasonable assurance that the loan applicant will have use of the improvement over its useful life, or provide compensation for any unexhausted value of the improvement if the lease is terminated.

(c) *Tax-exempt transactions.* The Agency will not guarantee any loan made with the proceeds of any obligation the interest on which is excluded from income under section 103 of the Internal Revenue Code of 1986. Funds generated through the issuance of tax-exempt obligations may not be used to purchase the guaranteed portion of any Agency guaranteed loan. An Agency guaranteed loan may not serve as collateral for a tax-exempt bond issue.

(d) *Floodplain restrictions.* The Agency will not guarantee any loan to purchase, build, or expand buildings located in a special 100 year floodplain as defined by FEMA flood hazard area maps unless flood insurance is available and purchased.

[64 FR 7378, Feb. 12, 1999; 64 FR 38298, July 16, 1999, as amended at 66 FR 7567, Jan. 24, 2001]

§ 762.123 Insurance and farm inspection requirements.

(a) *Insurance.* (1) Lenders must require borrowers to maintain adequate property, public liability, and crop insurance to protect the lender and Government's interests.

(2) By loan closing, loan applicants must either:

(i) Obtain at least the catastrophic risk protection (CAT) level of crop insurance coverage, if available, for each crop of economic significance, as defined by part 402 of this title, or

(ii) Waive eligibility for emergency crop loss assistance in connection with the uninsured crop. EM loan assistance under part 1945, subpart D, of this title is not considered emergency crop loss assistance for purposes of this waiver and execution of the waiver does not render the borrower ineligible for EM loans.

(3) Loan applicants must purchase flood insurance if buildings are or will be located in a special flood hazard area as defined by FEMA flood hazard area maps and if flood insurance is available.

(4) Insurance, including crop insurance, must be obtained as required by

the lender or the Agency based on the strengths and weaknesses of the loan.

(b) *Farm inspections.* Before submitting an application the lender must make an inspection of the farm to assess the suitability of the farm and to determine any development that is needed to make it a suitable farm.

[64 FR 7378, Feb. 12, 1999, as amended at 70 FR 56107, Sept. 26, 2005]

§ 762.124 Interest rates, terms, charges, and fees.

(a) *Interest rates.* (1) The interest rate on a guaranteed loan or line of credit may be fixed or variable as agreed upon between the borrower and the lender. The lender may charge different rates on the guaranteed and the non-guaranteed portions of the note. The guaranteed portion may be fixed while the unguaranteed portion may be variable, or vice versa. If both portions are variable, different bases may be used.

(2) If a variable rate is used, it must be tied to a rate specifically agreed to between the lender and borrower in the loan instruments. Variable rates may change according to the normal practices of the lender for its average farm customers, but the frequency of change must be specified in the loan or line of credit instrument.

(3) Neither the interest rate on the guaranteed portion nor the unguaranteed portion may exceed the rate the lender charges its average agricultural loan customer. At the request of the Agency, the lender must provide evidence of the rate charged the average agricultural loan customer. This evidence may consist of average yield data, or documented administrative differential rate schedule formulas used by the lender.

(4) Interest must be charged only on the actual amount of funds advanced and for the actual time the funds are outstanding. Interest on protective advances made by the lender to protect the security will be charged at the note rate but limited to paragraph (a)(3) of this section.

(5) The lender and borrower may collectively obtain a temporary reduction in the interest rate through the interest assistance program in accordance with § 762.150.

(b) *OL terms.* (1) Loan funds or advances on a line of credit used to pay annual operating expenses will be repaid when the income from the year's operation is received, except when the borrower is establishing a new enterprise, developing a farm, purchasing feed while feed crops are being established, or recovering from disaster or economic reverses.

(2) The final maturity date for each loan cannot exceed 7 years from the date of the promissory note or line of credit agreement. Advances for purposes other than for annual operating expenses will be scheduled for repayment over the minimum period necessary considering the loan applicant's ability to repay and the useful life of the security, but not in excess of 7 years.

(3) All advances on a line of credit must be made within 5 years from the date of the Loan Guarantee.

(c) *FO terms.* Each loan must be scheduled for repayment over a period not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure that the loan will be adequately secured, taking into account the probable depreciation of the security.

(d) *Balloon installments under loan note guarantee.* Balloon payment terms are permitted on FO or OL subject to the following:

(1) Extended repayment schedules may include equal, unequal, or balloon installments if needed on any guaranteed loan to establish a new enterprise, develop a farm, or recover from a disaster or an economical reversal.

(2) Loans with balloon installments must have adequate collateral at the time the balloon installment comes due. Crops, livestock other than breeding livestock, or livestock products produced are not sufficient collateral for securing such a loan.

(3) The borrower must be projected to be able to refinance the remaining debt at the time the balloon payment comes due based on the expected financial condition of the operation, the depreciated value of the collateral, and the principal balance on the loan.

(e) *Charges and Fees.* (1) The lender may charge the loan applicant and borrower fees for the loan provided they

are no greater than those charged to unguaranteed customers for similar transactions. Similar transactions are those involving the same type of loan requested (for example, operating loans or farm real estate loans).

(2) Late payment charges (including default interest charges) are not covered by the guarantee. These charges may not be added to the principal and interest due under any guaranteed note or line of credit. However, late payment charges may be made outside of the guarantee if they are routinely made by the lender in similar types of loan transactions.

(3) Lenders may not charge a loan origination and servicing fee greater than 1 percent of the loan amount for the life of the loan when a guaranteed loan is made in conjunction with a down payment FO for beginning farmers under part 1943, subpart A, of this title.

§ 762.125 Financial feasibility.

(a) *General.* (1) Notwithstanding any other provision of this section, PLP lenders will follow their internal procedures on financial feasibility as agreed to by the Agency during PLP certification.

(2) The loan applicant's proposed operation must project a feasible plan as defined in § 762.102(b).

(3) For standard eligible lenders, the projected income and expenses of the borrower and operation used to determine a feasible plan must be based on the loan applicant's proven record of production and financial management.

(4) For CLP lenders, the projected income and expenses of the borrower and the operation must be based on the loan applicant's financial history and proven record of financial management.

(5) For those farmers without a proven history, a combination of any actual history and any other reliable source of information that are agreeable with the lender, the loan applicant, and the Agency will be used.

(6) The cash flow budget analyzed to determine a feasible plan must represent the predicted cash flow of the operating cycle.

(7) Lenders must use price forecasts that are reasonable and defensible.

Sources must be documented by the lender and acceptable to the Agency.

(8) When a feasible plan depends on income from other sources in addition to income from owned land, the income must be dependable and likely to continue.

(9) The lender will analyze business ventures other than the farm operation to determine their soundness and contribution to the operation. Guaranteed loan funds will not be used to finance a nonfarm enterprise. Nonfarm enterprises include, but are not limited to: raising earthworms, exotic birds, tropical fish, dogs, or horses for nonfarm purposes; welding shops; boarding horses; and riding stables.

(10) When the loan applicant has or will have a cash flow budget developed in conjunction with a proposed or existing Agency direct loan, the two cash flow budgets must be consistent.

(b) *Estimating production.* (1) Standard eligible lenders must use the best sources of information available for estimating production in accordance with this subsection when developing cash flow budgets.

(2) Deviations from historical performance may be acceptable, if specific to changes in operation and adequately justified and acceptable to the Agency.

(3) For existing farmers, actual production for the past 3 years will be utilized.

(4) For those farmers without a proven history, a combination of any actual history and any other reliable source of information that are agreeable with the lender, the loan applicant, and the Agency will be used.

(5) When the production of a growing commodity can be estimated, it must be considered when projecting yields.

(6) When the loan applicant's production history has been so severely affected by a declared disaster that an accurate projection cannot be made, the following applies:

(i) County average yields are used for the disaster year if the loan applicant's disaster year yields are less than the county average yields. If county average yields are not available, State average yields are used. Adjustments can be made, provided there is factual evidence to demonstrate that the yield

used in the farm plan is the most probable to be realized.

(ii) To calculate a historical yield, the crop year with the lowest actual or county average yield may be excluded, provided the loan applicant's yields were affected by disasters at least 2 of the previous 5 consecutive years.

(c) *Refinancing.* Loan guarantee requests for refinancing must ensure that a reasonable chance for success still exists. The lender must demonstrate that problems with the loan applicant's operation that have been identified, can be corrected, and the operation returned to a sound financial basis.

[64 FR 7378, Feb. 12, 1999, as amended at 66 FR 7567, Jan. 24, 2001]

§ 762.126 Security requirements.

(a) *General.* (1) The lender is responsible for ensuring that proper and adequate security is obtained and maintained to fully secure the loan, protect the interest of the lender and the Agency, and assure repayment of the loan or line of credit.

(2) The lender will obtain a lien on additional security when necessary to protect the Agency's interest.

(b) *Guaranteed and unguaranteed portions.* (1) All security must secure the entire loan or line of credit. The lender may not take separate security to secure only that portion of the loan or line of credit not covered by the guarantee.

(2) The lender may not require compensating balances or certificates of deposit as means of eliminating the lender's exposure on the unguaranteed portion of the loan or line of credit. However, compensating balances or certificates of deposit as otherwise used in the ordinary course of business are allowed for both the guaranteed and unguaranteed portions.

(c) *Identifiable security.* The guaranteed loan must be secured by identifiable collateral. To be identifiable, the lender must be able to distinguish the collateral item and adequately describe it in the security instrument.

(d) *Type of security.* (1) Guaranteed loans may be secured by any property if the term of the loan and expected life of the property will not cause the loan to be undersecured.

(2) For loans with terms greater than 7 years, a lien must be taken on real estate.

(3) Loans can be secured by a mortgage on leasehold properties if the lease has a negotiable value and is subject to being mortgaged.

(4) The lender or Agency may require additional personal and corporate guarantees to adequately secure the loan. These guarantees are separate from, and in addition to, the personal obligations arising from members of an entity signing the note as individuals.

(e) *Lien position.* All guaranteed loans will be secured by the best lien obtainable. Provided that:

(1) Any chattel-secured guaranteed loan must have a higher lien priority (including purchase money interest) than an unguaranteed loan secured by the same chattels and held by the same lender.

(2) Junior lien positions are acceptable only if the total amount of debt with liens on the security, including the debt in junior lien position, is less than or equal to 85 percent of the value of the security. Junior liens on crops or livestock products will not be relied upon for security unless the lender is involved in multiple guaranteed loans to the same borrower and also has the first lien on the collateral.

(3) When taking a junior lien, prior lien instruments will not contain future advance clauses (except for taxes, insurance, or other reasonable costs to protect security), or cancellation, summary forfeiture, or other clauses that jeopardize the Government's or the lender's interest or the borrower's ability to pay the guaranteed loan, unless any such undesirable provisions are limited, modified, waived or subordinated by the lienholder for the benefit of the Agency and the lender.

(f) Additional security, or any loan of \$10,000 or less may be secured by the best lien obtainable on real estate without title clearance or legal services normally required, provided the lender believes from a search of the county records that the loan applicant can give a mortgage on the farm and provided that the lender would, in the normal course of business, waive the title search. This exception to title

clearance will not apply when land is to be purchased.

(g) *Multiple owners.* If security has multiple owners, all owners must execute the security documents for the loan.

(h) *Exceptions.* The Deputy Administrator for Farm Loan Programs has the authority to grant an exception to any of the requirements involving security, if the proposed change is in the best interest of the Government and the collection of the loan will not be impaired.

[64 FR 7378, Feb. 12, 1999, as amended at 70 FR 56107, Sept. 26, 2005]

§ 762.127 Appraisal requirements.

(a) *General.* The Agency may require a lender to obtain an appraisal based on the type of security, loan size, and whether it is primary or additional security. Except for authorized liquidation expenses, the lender is responsible for all appraisal costs, which may be passed on to the borrower, or a transferee in the case of a transfer and assumption.

(b) *Exception.* Notwithstanding other provisions of this section, an appraisal is not required for any additional security, or for loans of \$50,000 or less if a strong equity position exists.

(c) *Chattel appraisals.* A current appraisal (not more than 12 months old) of primary chattel security is generally required on all loans. An appraisal for loans or lines of credit for annual production purposes that are secured by crops is only required when a guarantee is requested late in the current production year and actual yields can be reasonably estimated. The appraised value of chattel property will be based on public sales of the same, or similar, property in the market area. In the absence of such public sales, reputable publications reflecting market values may be used. Appraisal reports may be on the Agency's appraisal of chattel property form or on any other appraisal form containing at least the same information. Chattel appraisals will be performed by appraisers who possess sufficient experience or training to establish market (not retail) values as determined by the Agency.

(d) *Real estate appraisals.* A current real estate appraisal is required when

real estate will be primary security. Agency officials may accept an appraisal that is not current if there have been no significant changes in the market or on the subject real estate and the appraisal was either completed within the past 12 months or updated by a qualified appraisal if not completed within the past 12 months.

(1) Appraiser qualifications. On loan transactions of \$250,000 or less, the lender must demonstrate to the Agency's satisfaction that the appraiser possesses sufficient experience or training to estimate the market value of agricultural property. On loan transactions greater than \$250,000, which includes principal plus accrued interest through the closing date, the appraisal must be completed by a State certified general appraiser.

(2) Appraisals. Real estate appraisals must be completed in accordance with the Uniform Standards of Professional Appraisal Practice. Appraisals may be either a complete or limited appraisal provided in a self-contained or summary format. Restricted reports, as defined in the Uniform Standards of Professional Appraisal Practice, are not acceptable.

[64 FR 7378, Feb. 12, 1999, as amended at 64 FR 62568, Nov. 17, 1999; 65 FR 14433, Mar. 17, 2000]

§ 762.128 Environmental and special laws.

(a) *Environmental requirements.* The requirements found in part 1940, subpart G, of this title must be met for guaranteed OL and FO. CLP and PLP lenders may certify that they have documentation in their file to demonstrate compliance with paragraph (c) of this section. Standard eligible lenders must submit evidence supporting compliance with this section.

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

(1) The information supplied with the application;

(2) The Agency Official's personal knowledge of the operation;

(3) Environmental resources available to the Agency including, but not limited to, documents, third parties, and governmental agencies;

(4) A visit to the farm operation when the available information is insufficient to make a determination;

(5) Other information supplied by the lender or loan applicant upon Agency request. If necessary, information not supplied with the application will be requested by the Agency.

(c) *Special requirements.* Lenders will assist in the environmental review process by providing environmental information. In all cases, the lender must retain documentation of their investigation in the loan applicant's case file.

(1) A determination must be made as to whether there are any potential impacts to a 100 year floodplain as defined by Federal Emergency Management Agency floodplain maps, Natural Resources Conservation Service data, or other appropriate documentation.

(2) The lender will assist the borrower in securing any applicable permits or waste management plans. The lender may consult with the Agency for guidance on activities which require consultation with State regulatory agencies, special permitting or waste management plans.

(3) The lender will examine the security property to determine if there are any structures or archeological sites which are listed or may be eligible for listing in the National Register of Historic Places. The lender may consult with the Agency for guidance on which situations will need further review in accordance with the National Historical Preservation Act and part 1940, subpart G, and part 1901, subpart F, of this title.

(4) The loan applicant must certify they will not violate the provisions of § 363 of the CONACT, the Food Security Act of 1985, and Executive Order 11990 relating to Highly Erodible Land and Wetlands.

(5) All lenders are required to ensure that due diligence is performed in conjunction with a request for guarantee of a loan involving real estate. Due diligence is the process of evaluating real estate in the context of a real estate transaction to determine the presence of contamination from release of hazardous substances, petroleum products, or other environmental hazards and determining what effect, if any,

the contamination has on the security value of the property. The Agency will accept as evidence of due diligence the most current version of the American Society of Testing Materials (ASTM) transaction screen questionnaire available from 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959, or similar documentation, approved for use by the Agency, supplemented as necessary by the ASTM phase I environmental site assessments form.

(d) *Equal opportunity and non-discrimination.* (1) With respect to any aspect of a credit transaction, the lender will not discriminate against any applicant on the basis of race, color, religion, national origin, sex, marital status, or age, provided the applicant can execute a legal contract. Nor will the lender discriminate on the basis of whether all or a part of the applicant's income derives from any public assistance program, or whether the applicant in good faith, exercises any rights under the Consumer Protection Act.

(2) Where the guaranteed loan involves construction, the contractor or subcontractor must file all compliance reports, equal opportunity and non-discrimination forms, and otherwise comply with all regulations prescribed by the Secretary of Labor pursuant to Executive Orders 11246 and 11375.

(e) *Other Federal, State and local requirements.* Lenders are required to coordinate with all appropriate Federal, State, and local agencies and comply with special laws and regulations applicable to the loan proposal.

§ 762.129 Percent of guarantee and maximum loss.

(a) *General.* The percent of guarantee will not exceed 90 percent based on the credit risk to the lender and the Agency both before and after the transaction. The Agency will determine the percentage of guarantee.

(b) *Exceptions.* The guarantee will be issued at 95 percent in any of the following circumstances:

(1) The sole purpose of a guaranteed FO or OL is to refinance an Agency direct farm loan. When only a portion of the loan is used to refinance a direct Agency farm credit program loan, a

weighted percentage of a guarantee will be provided;

(2) When the purpose of an FO guarantee is to participate in the downpayment loan program;

(3) When a guaranteed OL is made to a farmer or rancher who is participating in the Agency's down payment loan program. The guaranteed OL must be made during the period that a borrower has the down payment loan outstanding; or

(4) When a guaranteed OL is made to a farmer or rancher whose farm or ranch land is subject to the jurisdiction of an Indian tribe and whose loan is secured by one or more security instruments that are subject to the jurisdiction of an Indian tribe.

(c) *CLP and PLP guarantees.* All guarantees issued to CLP or PLP lenders will not be less than 80 percent.

(d) *Maximum loss.* The maximum amount the Agency will pay the lender under the loan guarantee will be any loss sustained by such lender on the guaranteed portion including:

(1) The pro rata share of principal and interest indebtedness as evidenced by the note or by assumption agreement;

(2) Any loan subsidy due and owing;

(3) The pro rata share of principal and interest indebtedness on secured protective and emergency advances made in accordance with this subpart; and

(4) Principal and interest indebtedness on recapture debt pursuant to a shared appreciation agreement. Provided that the lender has paid the Agency its pro rata share of the recapture amount due.

[64 FR 7378, Feb. 12, 1999, as amended at 68 FR 7695, Feb. 18, 2003]

§ 762.130 Loan approval and issuing the guarantee.

(a) *Processing timeframes.* (1) Standard Eligible Lenders. Complete applications from Standard Eligible Lenders will be approved or rejected, and the lender notified in writing, no later than 30 calendar days after receipt.

(2) CLP and PLP lenders.

(i) Complete applications from CLP or PLP lenders will be approved or rejected not later than 14 calendar days after receipt.

(ii) For PLP lenders, if this time frame is not met, the proposed guaranteed loan will automatically be approved, subject to funding, and receive an 80 or 95 percent guarantee, as appropriate.

(3) Complete applications. For purposes of determining the application processing timeframes, an application will be not be considered complete until all information required to make an approval decision, including the information for an environmental review, is received by the Agency.

(4) The Agency will confirm the date an application is received with a written notification to the lender.

(b) *Funding preference.* Loans are approved subject to the availability of funding. When it appears that there are not adequate funds to meet the needs of all approved loan applicants, applications that have been approved will be placed on a preference list according to the date of receipt of a complete application. If approved applications have been received on the same day, the following will be given priority:

- (1) An application from a veteran
- (2) An application from an Agency direct loan borrower
- (3) An application from a loan applicant who:
 - (i) Has a dependent family,
 - (ii) Is an owner of livestock and farm implements necessary to successfully carry out farming operations, or
 - (iii) Is able to make down payments.
- (4) Any other approved application.

(c) *Conditional commitment.* (1) The lender must meet all of the conditions specified in the conditional commitment to secure final Agency approval of the guarantee.

(2) The lender, after reviewing the conditions listed on the conditional commitment, will complete, execute, and return the form to the Agency. If the conditions are not acceptable to the lender, the Agency may agree to alternatives or inform the lender and the loan applicant of their appeal rights.

(d) *Lender requirements prior to issuing the guarantee.* (1) Lender certification. The lender will certify as to the following on the appropriate Agency form:

(i) No major changes have been made in the lender's loan or line of credit

conditions and requirements since submission of the application (except those approved in the interim by the Agency in writing);

(ii) Required hazard, flood, crop, worker's compensation, and personal life insurance (when required) are in effect;

(iii) Truth in lending requirements have been met;

(iv) All equal employment and equal credit opportunity and nondiscrimination requirements have been or will be met at the appropriate time;

(v) The loan or line of credit has been properly closed, and the required security instruments have been obtained, or will be obtained, on any acquired property that cannot be covered initially under State law;

(vi) The borrower has marketable title to the collateral owned by the borrower, subject to the instrument securing the loan or line of credit to be guaranteed and subject to any other exceptions approved in writing by the Agency. When required, an assignment on all USDA crop and livestock program payments has been obtained;

(vii) When required, personal, joint operation, partnership, or corporate guarantees have been obtained;

(viii) Liens have been perfected and priorities are consistent with requirements of the conditional commitment;

(ix) Loan proceeds have been, or will be disbursed for purposes and in amounts consistent with the conditional commitment and as specified on the loan application. In line of credit cases, if any advances have occurred, advances have been disbursed for purposes and in amounts consistent with the conditional commitment and line of credit agreements;

(x) There has been no material adverse change in the borrower's condition, financial or otherwise, since submission of the application; and

(xi) All other requirements specified in the conditional commitment have been met.

(2) Inspections. The lender must notify the Agency of any scheduled inspections during construction and after the guarantee has been issued. The Agency may attend these field inspections. Any inspections or review performed by the Agency, including those

with the lender, are solely for the benefit of the Agency. Agency inspections do not relieve any other parties of their inspection responsibilities, nor can these parties rely on Agency inspections for any purpose.

(3) Execution of lender's agreement. The lender must execute the Agency's lender's agreement and deliver it to the Agency.

(4) Closing report and guarantee fees.

(i) The lender must complete an Agency closing report form and return it to the Agency along with any guarantee fees.

(ii) Guarantee fees are 1 percent and are calculated as follows: $\text{Fee} = \text{Loan Amount} \times \% \text{Guaranteed} \times .01$. The non-refundable fee is paid to the Agency by the lender. The fee may be passed on to the borrower and included in loan funds.

(iii) The following guaranteed loan transactions are not charged a fee:

(A) Loans involving interest assistance;

(B) Loans where a majority of the funds are used to refinance an Agency direct loan; and

(C) Loans to beginning farmers or ranchers involved in the direct beginning farmer downpayment program.

(e) *Promissory notes, line of credit agreements, mortgages, and security agreements.* The lender will use its own promissory notes, line of credit agreements, real estate mortgages (including deeds of trust and similar instruments), and security agreements (including chattel mortgages in Louisiana and Puerto Rico), provided:

(1) The forms meet Agency requirements;

(2) Documents comply with State law and regulation;

(3) The principal and interest repayment schedules are stated clearly in the notes and are consistent with the conditional commitment;

(4) The note is executed by the individual liable for the loan. For entities, the note is executed by the member who is authorized to sign for the entity, and by all members of the entity as individuals. Individual liability can be waived by the Agency for members holding less than 10 percent ownership in the entity if the collectability of the loan will not be impaired; and

(5) When the loan purpose is to refinance or restructure the lender's own debt, the lender may continue to use the existing debt instrument and attach an allonge that modifies the terms of the original note.

(f) *Replacement of loan guarantee, or assignment guarantee agreement.* If the guarantee or assignment guarantee agreements are lost, stolen, destroyed, mutilated, or defaced, except where the evidence of debt was or is a bearer instrument, the Agency will issue a replacement to the lender or holder upon receipt of acceptable documentation including a certificate of loss and an indemnity bond.

§§ 762.131–762.139 [Reserved]

§ 762.140 General servicing responsibilities.

(a) *General.* (1) Lenders are responsible for servicing the entire loan in a reasonable and prudent manner, protecting and accounting for the collateral, and remaining the mortgagee or secured party of record.

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

(b) *Borrower supervision.* The lender's responsibilities regarding borrower supervision include, but are not limited to the following:

(1) Ensuring loan funds are not used for unauthorized purposes.

(2) Ensuring borrower compliance with the covenants and provisions contained in the promissory note, loan agreement, mortgage, security instruments, any other agreements, and this part. Any violations which indicate non-compliance on the part of the borrower must be reported, in writing, to both the Agency and the borrower.

(3) Ensuring the borrower is in compliance with all laws and regulations applicable to the loan, the collateral, and the operations of the farm.

(4) Receiving all payments of principal and interest on the loan as they fall due and promptly disbursing to any holder its pro-rata share according to the amount of interest the holder has in the loan, less only the lender's servicing fee.

(5) Performing an annual analysis of the borrower's financial condition to determine the borrower's progress. The annual analysis will include:

(i) For loans secured by real estate only, the analysis for standard eligible lenders must include an analysis of the borrower's balance sheet. CLP lenders will determine the need for the annual analysis based on the financial strength of the borrower and document the file accordingly. PLP lenders will perform an annual analysis in accordance with the requirements established in the lender's agreement.

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

(iii) An account of the whereabouts or disposition of all collateral.

(iv) A discussion of any observations about the farm business with the borrower.

(c) *Monitoring of development.* The lender's responsibilities regarding the construction, repairs, or other development include, but are not limited to:

(1) Determining that all construction is completed as proposed in the loan application;

(2) Making periodic inspections during construction to ensure that any development is properly completed within a reasonable period of time; and

(3) Verification that the security is free of any mechanic's, materialmen's, or other liens which would affect the lender's lien or result in a different lien priority from that proposed in the request for guarantee.

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

[64 FR 7378, Feb. 12, 1999, as amended at 69 FR 44579, July 27, 2004]

§ 762.141 Reporting requirements.

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

(a) When the guaranteed loan becomes 30 days past due, and following the lender's meeting or attempts to meet with the borrower, all lenders will submit the appropriate Agency form showing guaranteed loan borrower default status. The form will be resubmitted every 60 days until the default is cured either through restructuring or liquidation.

(b) All lenders will submit the appropriate guaranteed loan status reports as of March 31 and September 30 of each year;

(c) CLP lenders also must provide the following:

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

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

(d) In addition to the requirements of paragraphs (a), (b), and (c) of this section, the standard eligible lender also will provide:

(1) Borrower's balance sheet, and income and expense statement for the previous year.

(2) For lines of credit, the cash flow for the borrower's operation that projects a feasible plan or better for the upcoming operating cycle. The standard eligible lender must receive approval from the Agency before advancing future years' funds.

(3) An annual farm visit report or collateral inspection.

(e) PLP lenders will submit additional reports as required in their lender's agreement.

(f) A lender receiving a final loss payment must complete and return an annual report on its collection activities for each unsatisfied account for 3 years following payment of the final loss claim.

§ 762.142 Servicing related to collateral.

(a) *General.* The lender's responsibilities regarding servicing collateral include, but are not limited to, the following:

(1) Obtain income and insurance assignments when required.

(2) Ensure the borrower has or obtains marketable title to the collateral.

(3) Inspect the collateral as often as deemed necessary to properly service the loan.

(4) Ensure the borrower does not convert loan security.

(5) Ensure the proceeds from the sale or other disposition of collateral are accounted for and applied in accordance with the lien priorities on which the guarantee is based or used for the purchase of replacement collateral.

(6) Ensure the loan and the collateral are protected in the event of foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation.

(7) Ensure taxes, assessments, or ground rents against or affecting the collateral are paid.

(8) Ensure adequate insurance is maintained.

(9) Ensure that insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or used to rebuild or acquire needed replacement collateral.

(b) *Partial releases.* (1) A lender may release guaranteed loan security without FSA concurrence as follows:

(i) When the security item is being sold for market value and the proceeds will be applied to the loan in accordance with lien priorities. In the case of term loans, proceeds will be applied as extra payments and not as a regular installment on the loan.

(ii) The security item will be used as a trade-in or source of down payment

funds for a like item that will be taken as security.

(iii) The security item has no present or prospective value.

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

(i) Proceeds will be used to make improvements to real estate that increase the value of the security by an amount equal to or greater than the value of the security being released.

(ii) Security will be released outright with no consideration, but the total unpaid balance of the guaranteed loan is less than or equal to 75 percent of the value of the security for the loan after the release, excluding the value of growing crops or planned production, based on a current appraisal of the security.

(iii) Significant income generating property will not be released unless it is being replaced and business assets will not be released for use as a gift or any similar purpose.

(iv) Agency concurrence is provided in writing to the lender's written request. Standard eligible lenders and CLP lenders will submit the following to the Agency:

(A) A current balance sheet on the borrower; and

(B) A current appraisal of the security. Based on the level of risk and estimated equity involved, the Agency will determine what security needs to be appraised. Any required security appraisals must meet the requirements of § 762.127; and

(C) A description of the purpose of the release; and

(D) Any other information requested by the Agency to evaluate the proposed servicing action.

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

(4) PLP lenders will request servicing approval in accordance with their agreement with the Agency at the time of PLP status certification.

(c) *Subordinations.* (1) The Agency may subordinate its security interest on a direct loan when a guaranteed loan is being made if the requirements of the regulations governing Agency direct loan subordinations are met and only in the following circumstances:

(i) To permit a guaranteed lender to advance funds and perfect a security interest in crops, feeder livestock, livestock offspring, or livestock products;

(ii) When the lender requesting the guarantee needs the subordination of the Agency's lien position to maintain its lien position when servicing or restructuring;

(iii) When the lender requesting the guarantee is refinancing the debt of another lender and the Agency's position on real estate security will not be adversely affected; or

(iv) To permit a line of credit to be advanced for annual operating expenses.

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

(i) The total unpaid balance of the direct loans is less than or equal to 75 percent of the value of all of the security for the direct loans, excluding the value of growing crops or planned production, at the time of the subordination. The direct loan security value will be determined by an appraisal. The lender requesting the subordination and guarantee is responsible for providing the appraisal and may charge the applicant a reasonable appraisal fee.

(ii) The applicant cannot obtain sufficient credit through a conventional guaranteed loan without a subordination.

(3) The lender may not subordinate its interest in property which secures a guaranteed loan except as follows:

(i) The lender may subordinate its security interest in crops, feeder livestock, livestock offspring, or livestock products when no funds have been advanced from the guaranteed loan for their production, so a lender can make a loan for annual production expenses; or

(ii) The lender may, with written Agency approval, subordinate its interest in basic security in cases where the subordination is required to allow another lender to refinance an existing prior lien, no additional debt is being incurred, and the lender's security position will not be adversely affected by the subordination.

(iii) The Agency's national office may provide an exception to the subordination prohibition if such action is in the Agency's best interest. However, in no case can the loan made under the subordination include tax exempt financing.

(d) *Transfer and assumption.* Transfers and assumptions are subject to the following conditions:

(1) For standard eligible and CLP lenders, the servicing action must be approved by the Agency in writing.

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

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

(4) Any required security appraisals must meet the requirements of §762.127.

(5) The Agency will review, approve or reject the request in accordance with the time frames in §762.130.

(6) The transferee must meet the eligibility requirements and loan limitations for the loan being transferred, all requirements relating to loan rates and terms, loan security, feasibility, and environmental and other laws applicable to a loan applicant under this part.

(7) The lender will use its own assumption agreements or conveyance instruments, providing they are legally sufficient to obligate the transferee for the total outstanding debt. The lender will provide the Agency copies of any agreements executed to carry out the servicing action.

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

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

(10) The Agency will agree to releasing the transferor or any guarantor

from liability only if the requirements of § 762.146(c) are met.

[64 FR 7378, Feb. 12, 1999, as amended at 66 FR 7567, Jan. 24, 2001; 69 FR 44579, July 27, 2004]

§ 762.143 Servicing distressed accounts.

(a) A borrower is in default when 30 days past due on a payment or in violation of provisions of the loan documents.

(b) In the event of a borrower default, SEL and CLP lenders will:

(1) Report to the Agency in accordance with § 762.141.

(2) Determine whether it will repurchase the guaranteed portion from the holder in accordance with § 762.144, if the guaranteed portion of the loan was sold on the secondary market.

(3) Arrange a meeting with the borrower within 15 days of default (45 days after payment due date for monetary defaults) to identify the nature of the delinquency and develop a course of action that will eliminate the delinquency and correct the underlying problems. Non-monetary defaults will be handled in accordance with the lender's note, loan agreements and any other applicable loan documents.

(i) The lender and borrower will prepare a current balance sheet and cash flow projection in preparation for the meeting. If the borrower refuses to cooperate, the lender will compile the best financial information available.

(ii) The lender or the borrower may request the attendance of an Agency credit officer. If requested, the Agency credit officer will assist in developing solutions to the borrower's financial problems.

(iii) The lender will summarize the meeting and proposed solutions on the Agency form for guaranteed loan borrower default status completed after the meeting. The lender will indicate the results on this form for the lender's consideration of the borrower for interest assistance in conjunction with rescheduling under § 762.145(b).

(iv) The lender must decide whether to restructure or liquidate the account within 90 days of default, unless the lender can document circumstances that justify an extension by the Agency.

(v) The lender may not initiate foreclosure action on the loan until 60 days after eligibility of the borrower to participate in the interest assistance programs has been determined by the Agency. If the lender or the borrower does not wish to consider servicing options under this section, this should be documented, and liquidation under § 762.149 should begin.

(vi) If a borrower is current on a loan, but will be unable to make a payment, a restructuring proposal may be submitted in accordance with § 762.145 prior to the payment coming due.

(c) PLP lenders will service defaulted loans according to their lender's agreement.

§ 762.144 Repurchase of guaranteed portion from a secondary market holder.

(a) *Request for repurchase.* The holder may request the lender to repurchase the unpaid guaranteed portion of the loan when:

(1) The borrower has not made a payment of principal and interest due on the loan for at least 60 days; or

(2) The lender has failed to remit to the holder its pro-rata share of any payment made by the borrower within 30 days of receipt of a payment.

(b) *Repurchase by the lender.* (1) When a lender is requested to repurchase a loan from the holder, the lender must consider the request according to the servicing actions that are necessary on the loan. In order to facilitate servicing and simplified accounting of loan transactions, lenders are encouraged to repurchase the loan upon the holder's request.

(2) The repurchase by the lender will be for an amount equal to the portion of the loan held by the holder plus accrued interest.

(3) The guarantee will not cover separate servicing fees that the lender accrues after the repurchase.

(c) *Repurchase by the Agency.* (1) If the lender does not repurchase the loan, the holder must inform the Agency in writing that demand was made on the lender and the lender refused. Following the lender's refusal, the holder may continue as holder of the guaranteed portion of the loan or request that the Agency purchase the guaranteed

portion. Within 30 days after written demand to the Agency from the holder with required attachments, the Agency will forward to the holder payment of the unpaid principal balance, with accrued interest to the date of repurchase. If the holder does not desire repurchase or purchase of a defaulted loan, the lender must forward the holder its pro-rata share of payments, liquidation proceeds and Agency loss payments.

(2) With its demand on the Agency, the holder must include:

(i) A copy of the written demand made upon the lender.

(ii) Originals of the guarantee and note properly endorsed to the Agency, or the original of the assignment of guarantee.

(iii) A copy of any written response to the demand of the holder by the lender.

(iv) An account to which the Agency can forward the purchase amount via electronic funds transfer.

(3) The amount due the holder from the Agency includes unpaid principal, unpaid interest to the date of demand, and interest which has accrued from the date of demand to the proposed payment date.

(i) Upon request by the Agency, the lender must furnish upon Agency request a current statement, certified by a bank officer, of the unpaid principal and interest owed by the borrower and the amount due the holder.

(ii) Any discrepancy between the amount claimed by the holder and the information submitted by the lender must be resolved by the lender and the holder before payment will be approved by the Agency. The Agency will not participate in resolution of any such discrepancy. When there is a discrepancy, the 30 day Agency payment requirement to the holder will be suspended until the discrepancy is resolved.

(iii) In the case of a request for Agency purchase, the Agency will only pay interest that accrues for up to 90 days from the date of the demand letter to the lender requesting the repurchase. However, if the holder requested repurchase from the Agency within 60 days of the request to the lender and for any reason not attributable to the holder

and the lender, the Agency cannot make payment within 30 days of the holder's demand to the Agency, the holder will be entitled to interest to the date of payment.

(4) At the time of purchase by the Agency, the original assignment of guarantee will be assigned by the holder to the Agency without recourse, including all rights, title, and interest in the loan.

(5) Purchase by the Agency does not change, alter, or modify any of the lender's obligations to the Agency specified in the lender's agreement or guarantee; nor does the purchase waive any of the Agency's rights against the lender.

(6) The Agency succeeds to all rights of the holder under the Guarantee including the right of set-off against the lender.

(7) Within 180 days of the Agency's purchase, the lender will reimburse the Agency the amount of repurchase, with accrued interest, through one of the following ways:

(i) By liquidating the loan security and paying the Agency its pro-rata share of liquidation proceeds; or

(ii) Paying the Agency the full amount the Agency paid to the holder plus any accrued interest.

(8) The lender will be liable for the purchase amount and any expenses incurred by the Agency to maintain the loan in its portfolio or liquidate the security. While the Agency holds the guaranteed portion of the loan, the lender will transmit to the Agency any payment received from the borrower, including the pro-rata share of liquidation or other proceeds.

(9) If the borrower files for reorganization under the provisions of the bankruptcy code or pays the account current while the purchase by the Government is being processed, the Agency may hold the loan as long it determines this action to be in the Agency's interest. If the lender is not proceeding expeditiously to collect the loan or reimbursement is not waived under this paragraph, the Agency will demand payment by the lender and collect the purchase amount through administrative offset of any claims due the lender.

(10) The Agency may sell a purchased guaranteed loan on a non-recourse

basis if it determines that selling the portion of the loan that it holds is in the Government's best interest. A non-recourse purchase from the Agency requires a written request to the Agency from the party that wishes to purchase it, and written concurrence from the lender;

(d) *Repurchase for servicing.* (1) If, due to loan default or imminent loan restructuring, the lender determines that repurchase is necessary to adequately service the loan, the lender may repurchase the guaranteed portion of the loan from the holder, with the written approval of the Agency.

(2) The lender will not repurchase from the holder for arbitrage purposes. With its request for Agency concurrence, the lender will notify the Agency of its plans to resell the guaranteed portion following servicing.

(3) The holder will sell the guaranteed portion of the loan to the lender for an amount agreed to between the lender and holder.

[64 FR 7378, Feb. 12, 1999, as amended at 69 FR 44579, July 27, 2004]

§ 762.145 Restructuring guaranteed loans.

(a) *General.* (1) To restructure guaranteed loans standard eligible lenders must:

(i) Obtain prior written approval of the Agency for all restructuring actions; and,

(ii) Provide the items in paragraph (b) and (e) of this section to the Agency for approval.

(2) If the standard eligible lender's proposal for servicing is not agreed to by the Agency, the Agency approval official will notify the lender in writing within 14 days of the lender's request.

(3) To restructure guaranteed loans CLP lenders must:

(i) Obtain prior written approval of the Agency only for debt write down under this section.

(ii) Submit all calculations required in paragraph (e) of this section for debt writedown.

(iii) For restructuring other than write down, provide FSA with a certification that each requirement of this section has been met, a narrative outlining the circumstances surrounding

the need for restructuring, and copies of any applicable calculations.

(4) PLP lenders will restructure loans in accordance with their lender's agreement.

(5) All lenders will submit copies of any restructured notes or lines of credit to the Agency.

(b) *Requirements.* For any restructuring action, the following conditions apply:

(1) The borrower meets the eligibility criteria of § 762.120, except the provisions regarding prior debt forgiveness and delinquency on a federal debt do not apply.

(2) The borrower's ability to make the amended payment is documented by the following:

(i) A feasible plan (see § 762.102(b)). If interest assistance is required to achieve a feasible plan, the items required by § 762.150(d) must be submitted with a restructuring request. Feasible plan is defined in § 762.102(b).

(ii) Current financial statements from all liable parties.

(iii) Verification of nonfarm income.

(iv) Verification of all debts of \$1,000 or more.

(v) Applicable credit reports.

(vi) Financial history (and production history for standard eligible lenders) for the past 3 years to support the cash flow projections.

(3) A final loss claim may be reduced, adjusted, or rejected as a result of negligent servicing after the concurrence with a restructuring action under this section.

(4) Loans secured by real estate and/or equipment can be restructured using a balloon payment, equal installments, or unequal installments. Under no circumstances may livestock or crops alone be used as security for a loan to be rescheduled using a balloon payment. If a balloon payment is used, the projected value of the real estate and/or equipment security must indicate that the loan will be fully secured when the balloon payment becomes due. The projected value will be derived from a current appraisal adjusted for depreciation of depreciable property, such as buildings and other improvements, that occurs until the balloon payment is due. For equipment security, a current appraisal is required.

The lender is required to project the security value of the equipment at the time the balloon payment is due based on the remaining life of the equipment, or the depreciation schedule on the borrower's Federal income tax return. Loans restructured with a balloon payment that are secured by real estate will have a minimum term of 5 years, and other loans will have a minimum term of 3 years before the scheduled balloon payment. If statutory limits on terms of loans prevent the minimum terms, balloon payments may not be used. If the loan is rescheduled with unequal installments, a feasible plan, as defined in §762.102(b), must be projected for when installments are scheduled to increase.

(5) If a borrower is current on a loan, but will be unable to make a payment, a restructuring proposal may be submitted prior to the payment coming due.

(6) The lender may capitalize the outstanding interest when restructuring the loan as follows:

(i) As a result of the capitalization of interest, a rescheduled promissory note may increase the amount of principal the borrower is required to pay. However, in no case will such principal amount exceed the statutory loan limits contained in §761.8 of this chapter.

(ii) When accrued interest causes the loan amount to exceed the statutory loan limits, rescheduling may be approved without capitalization of the amount that exceeds the limit. Non-capitalized interest may be scheduled for repayment over the term of the rescheduled note.

(iii) Only interest that has accrued at the rate indicated on the borrower's original promissory notes may be capitalized. Late payment fees or default interest penalties that have accrued due to the borrower's failure to make payments as agreed are not covered under the guarantee and may not be capitalized.

(iv) The Agency will execute a modification of guarantee form to identify the new loan principal and the guaranteed portion if greater than the original loan amounts, and to waive the restriction on capitalization of interest, if applicable, to the existing guarantee documents. The modification form will

be attached to the original guarantee as an addendum.

(v) Approved capitalized interest will be treated as part of the principal and interest that accrues thereon, in the event that a loss should occur.

(7) The lender's security position will not be adversely affected because of the restructuring. New security instruments may be taken if needed, but a loan does not have to be fully secured in order to be restructured, unless it is restructured with a balloon payment. When a loan is restructured using a balloon payment the lender must take a lien on all assets and project the loan to be fully secured at the time the balloon payment becomes due, in accordance with paragraph (b)(4) of this section.

(8) Any holder agrees in writing to any changes in the original loan terms, including the approval of interest assistance. If the holder does not agree, the lender must repurchase the loan from the holder for any loan restructuring to occur.

(9) After a guaranteed loan is restructured, the lender must provide the Agency with a copy of the restructured promissory note.

(c) *Rescheduling.* The following conditions apply when a guaranteed loan is rescheduled or reamortized:

(1) Payments will be rescheduled within the following terms:

(i) FO and existing SW may be amortized over the remaining term of the note or rescheduled with an uneven payment schedule. The maturity date cannot exceed 40 years from the date of the original note.

(ii) OL notes must be rescheduled over a period not to exceed 15 years from the date of the rescheduling. An OL line of credit may be rescheduled over a period not to exceed 7 years from the date of the rescheduling or 10 years from the date of the original note, whichever is less. Advances cannot be made against a line of credit loan that has had any portion of the loan rescheduled.

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

(3) A new note is not necessary when rescheduling occurs. However, if a new note is not taken, the existing note or line of credit agreement must be modified by attaching an allonge or other legally effective amendment, evidencing the revised repayment schedule and any interest rate change. If a new note is taken, the new note must reference the old note and state that the indebtedness evidenced by the old note or line of credit agreement is not satisfied. The original note or line of credit agreement must be retained.

(d) *Deferrals*. The following conditions apply to deferrals:

(1) Payments may be deferred up to 5 years, but the loan may not be extended beyond the final due date of the note.

(2) The principal portion of the payment may be deferred either in whole or in part.

(3) Interest may be deferred only in part. Payment of a reasonable portion of accruing interest as indicated by the borrower's cash flow projections is required for multi-year deferrals.

(4) There must be a reasonable prospect that the borrower will be able to resume full payments at the end of the deferral period.

(e) *Debt writedown*. The following conditions apply to debt writedown:

(1) A lender may only write down a delinquent guaranteed loan or line of credit in an amount sufficient to permit the borrower to develop a feasible plan as defined in § 762.102(b).

(2) The lender will request other creditors to negotiate their debts before a writedown is considered.

(3) The borrower cannot develop a feasible plan after consideration is given to rescheduling and deferral under this section.

(4) The present value of the loan to be written down, based on the interest rate of the rescheduled loan, will be equal to or exceed the net recovery value of the loan collateral.

(5) The loan will be restructured with regular payments at terms no shorter than 5 years for a line of credit and OL note and no shorter than 20 years for FO, unless required to be shorter by § 762.145(c)(1)(i) and (ii).

(6) No further advances may be made on a line of credit that is written down.

(7) Loans may not be written down with interest assistance. If a borrower's loan presently on interest assistance requires a writedown, the writedown will be considered without interest assistance.

(8) The writedown is based on writing down the shorter-term loans first.

(9) When a lender requests approval of a writedown for a borrower with multiple loans, the security for all of the loans will be cross-collateralized and continue to serve as security for the loan that is written down. If a borrower has multiple loans and one loan is written off entirely through debt writedown, the security for that loan will not be released and will remain as security for the other written down debt. Additional security instruments will be taken if required to cross-collateralize security and maintain lien priority.

(10) The writedown will be evidenced by an allonge or amendment to the existing note or line of credit reflecting the writedown.

(11) The borrower executes an Agency shared appreciation agreement for loans which are written down and secured by real estate.

(i) The lender will attach the original agreement to the restructured loan document.

(ii) The lender will provide the Agency a copy of the executed agreement, and

(iii) Security instruments must ensure future collection of any appreciation under the agreement.

(12) The lender will prepare and submit the following to the Agency:

(i) A current appraisal of all security in accordance with § 762.127.

(ii) A completed report of loss on the appropriate Agency form for the proposed writedown loss claim.

(iii) Detailed writedown calculations as follows:

(A) Calculate the present value.

(B) Determine the net recovery value.

(C) If the net recovery value exceeds the present value, writedown is unavailable; liquidation becomes the next servicing consideration. If the present value equals or exceeds the net recovery value, the debt may be written down to the present value.

(iv) The lender will make any adjustment in the calculations as requested by the Agency.

[64 FR 7378, Feb. 12, 1999; 64 FR 38298, July 16, 1999, as amended at 66 FR 7567, Jan. 24, 2001; 69 FR 44579, July 27, 2004; 70 FR 56107, Sept. 26, 2005]

§ 762.146 Other servicing procedures.

(a) *Additional loans and advances.* (1) Notwithstanding any provision of this section, the PLP lender may make additional loans or advances in accordance with the lender's agreement with the Agency.

(2) SEL and CLP lenders must not make additional loans or advances without prior written approval of the Agency, except as provided in the borrower's loan or line of credit agreement.

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

(i) The loan funds to be advanced are for authorized operating loan purposes;

(ii) The financial benefit to the lender and the Government from the advance will exceed the amount of the advance; and

(iii) The loss of crops or livestock is imminent unless the advance is made.

(4) Protective advance requirements are found in § 762.149.

(b) *Release of liability upon withdrawal.* An individual who is obligated on a guaranteed loan may be released from liability by a lender, with the written consent of the Agency, provided the following conditions have been met:

(1) The individual to be released has withdrawn from the farming or ranching operation;

(2) A divorce decree or final property settlement does not hold the withdrawing party responsible for the loan payments;

(3) The withdrawing party's interest in the security is conveyed to the indi-

vidual or entity with whom the loan will be continued;

(4) The ratio of the amount of debt to the value of the remaining security is less than or equal to .75, or the withdrawing party has no income or assets from which collection can be made; and

(5) Withdrawal of the individual does not result in legal dissolution of the entity to which the loans are made. Individually liable members of a general or limited partnership may not be released from liability.

(6) The remaining liable party projects a feasible plan (see § 762.102(b)).

(c) *Release of liability after liquidation.* After a final loss claim has been paid on the borrower's account, the lender may release the borrower or guarantor from liability if;

(1) The Agency agrees to the release in writing;

(2) The lender documents its consideration of the following factors concerning the borrower or guarantors:

(i) The likelihood that the borrower or guarantor will have a sufficient level of income in the reasonably near future to contribute to a meaningful reduction of the debt;

(ii) The prospect that the borrower or guarantor will inherit assets in the near term that may be attached by the Agency for payment of a significant portion of the debt;

(iii) Whether collateral has been properly accounted for, and whether liability should be retained in order to take action against the borrower or a third party for conversion of security;

(iv) The availability of other income or assets which are not security;

(v) The possibility that assets have been concealed or improperly transferred;

(vi) The effect of other guarantors on the loan; and

(vii) Cash consideration or other collateral in exchange for the release of liability.

(3) The lender will use its own release of liability documents.

(d) *Interest rate changes.* (1) The lender may change the interest rate on a performing (nondelinquent) loan only with the borrower's consent.

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

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

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

(5) The lender will inform the Agency of the rate change.

(e) *Consolidation.* Two or more Agency guaranteed loans may be consolidated, subject to the following conditions:

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

(2) Only OL may be consolidated.

(3) Existing lines of credit may only be consolidated with a new line of credit if the final maturity date and conditions for advances of the new line of credit are made the same as the existing line of credit.

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

(5) Guaranteed loans made prior to October 1, 1991, cannot be consolidated with those loans made on or after October 1, 1991.

(6) OL secured by real estate or with an outstanding interest assistance agreement or shared appreciation agreement cannot be consolidated.

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

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

(9) The Agency approves the consolidation by executing a modification of guarantee. The modification will indi-

cate the consolidated loan amount, new terms, and percentage of guarantee, and will be attached to the originals of the guarantees being consolidated. If loans with a different guarantee percentage are consolidated, the new guarantee will be at the lowest percentage of guarantee being consolidated.

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

[64 FR 7378, Feb. 12, 1999, as amended at 66 FR 7567, Jan. 24, 2001]

§ 762.147 Servicing shared appreciation agreements.

(a) *Lender responsibilities.* The lender is responsible for:

(1) Monitoring the borrower's compliance with the shared appreciation agreement;

(2) Notifying the borrower of the amount of recapture due; and,

(3) Beginning October 1, 1999, a notice of the agreement's provisions not later than 12 months before the end of the agreement; and

(4) Reimbursing the Agency for its pro-rata share of recapture due.

(b) *Recapture.* (1) Recapture of any appreciation of real estate security will take place at the end of the term of the agreement, or sooner if the following occurs:

(i) On the conveyance of the real estate security (or a portion thereof) by the borrower.

(A) If only a portion of the real estate is conveyed, recapture will only be triggered against the portion conveyed. Partial releases will be handled in accordance with § 762.141(b).

(B) Transfer of title to the spouse of the borrower on the death of such borrower will not be treated as a conveyance under the agreement.

(ii) On repayment of the loan; or

(iii) If the borrower ceases farming.

(2) Calculating recapture.

(i) The amount of recapture will be based on the difference between the value of the security at the time recapture is triggered and the value of the security at the time of writedown, as shown on the shared appreciation agreement.

(ii) Security values will be determined through appraisals obtained by the lender and meeting the requirements of § 762.127.

(iii) All appraisal fees will be paid by the lender.

(iv) The amount of recapture will not exceed the amount of writedown shown on the shared appreciation agreement.

(v) If recapture is triggered within 4 years of the date of the shared appreciation agreement, the lender shall recapture 75 percent of any positive appreciation in the market value of the property securing the loan or line of credit agreement.

(vi) If recapture is triggered after 4 years from the date of the shared appreciation agreement, the lender shall recapture 50 percent of any positive appreciation in the market value of the property securing the loan or line of credit agreement.

(3) Servicing recapture debt.

(i) If recapture is triggered under the shared appreciation agreement and the borrower is unable to pay the recapture in a lump sum, the lender may:

(A) Reschedule the recapture debt with the consent of the Agency, provided the lender can document the borrower's ability to make amortized payments on the recapture debt, plus pay all other obligations. In such case, the recapture debt will not be covered by the guarantee;

(B) Pay the Agency its pro rata share of the recapture due. In such case, the recapture debt of the borrower will be covered by the guarantee; or

(C) Service the account in accordance with § 762.149.

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

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

§ 762.148 Bankruptcy.

(a) *Lender responsibilities.* The lender must protect the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings. The lender's responsibilities include, but are not limited to:

(1) Filing a proof of claim where required and all the necessary papers and pleadings;

(2) Attending, and where necessary, participating in meetings of the creditors and court proceedings;

(3) Protecting the collateral securing the guaranteed loan and resisting any adverse changes that may be made to the collateral;

(4) Seeking a dismissal of the bankruptcy proceeding when the operation as proposed by the borrower to the bankruptcy court is not feasible;

(5) When permitted by the bankruptcy code, requesting a modification of any plan of reorganization if it appears additional recoveries are likely.

(6) Monitor confirmed plans under chapters 11, 12 and 13 of the bankruptcy code to determine borrower compliance. If the borrower fails to comply, the lender will seek a dismissal of the reorganization plan; and

(7) Keeping the Agency regularly informed in writing on all aspects of the proceedings.

(i) The lender will submit a default status report when the borrower defaults and every 60 days until the default is resolved or a final loss claim is paid.

(ii) The default status report will be used to inform the Agency of the bankruptcy filing, the reorganization plan confirmation date and effective date, when the reorganization plan is complete, and when the borrower is not in compliance with the reorganization plan.

(b) *Bankruptcy expenses.* (1) Reorganization.

(i) Expenses, such as legal fees and the cost of appraisals incurred by the lender as a direct result of the borrower's chapter 11, 12, or 13 reorganization, are covered under the guarantee, provided they are reasonable, customary, and provide a demonstrated economic benefit to the lender and the Agency.

(ii) Lender's in-house expenses, which are those expenses which would normally be incurred for administration of the loan, including in-house lawyers, are not covered by the guarantee.

(2) Liquidation expenses in bankruptcy.

(i) Reasonable and customary liquidation expenses may be deducted from the proceeds of the collateral in liquidation bankruptcy cases.

(ii) In-house expenses are not considered customary liquidation expenses, may not be deducted from collateral proceeds, and are not covered by the guarantee.

(c) *Estimated loss claims in reorganization*—(1) *At confirmation.* The lender may submit an estimated loss claim upon confirmation of the reorganization plan in accordance with the following:

(i) The estimated loss payment will cover the guaranteed percentage of the principal and accrued interest written off, plus any allowable costs incurred as of the effective date of the plan.

(ii) The lender will submit supporting documentation for the loss claim, and any additional information requested by the Agency, including justification for the legal fees included on the claim.

(iii) The estimated loss payment may be revised as consistent with a court-approved reorganization plan.

(iv) Protective advances made and approved in accordance with § 762.149 may be included in an estimated loss claim associated with a reorganization, if:

(A) They were incurred in connection with the initiation of liquidation action prior to bankruptcy filing; or

(B) The advance is required to provide repairs, insurance, etc. to protect the collateral as a result of delays in the case, or failure of the borrower to maintain the security.

(2) *Interest only losses.* The lender may submit an estimated loss claim for interest only after confirmation of the reorganization plan in accordance with the following:

(i) The loss claims may cover interest losses sustained as a result of a court-ordered, permanent interest rate reduction.

(ii) The loss claims will be processed annually on the anniversary date of the effective date of the reorganization plan.

(iii) If the borrower performs under the terms of the reorganization plan, annual interest reduction loss claims will be submitted on or near the same

date, beyond the period of the reorganization plan.

(3) *Actual loss.*

(i) Once the reorganization plan is complete, the lender will provide the Agency with documentation of the actual loss sustained.

(ii) If the actual loss sustained is greater than the prior estimated loss payment, the lender may submit a revised estimated loss claim to obtain payment of the additional amount owed by the Agency under the guarantee.

(iii) If the actual loss is less than the prior estimated loss, the lender will reimburse the Agency for the overpayment plus interest at the note rate from the date of the payment of the estimated loss.

(4) *Payment to holder.* In reorganization bankruptcy, if a holder makes demand upon the Agency, the Agency will pay the holder interest to the plan's effective date. Accruing interest thereafter will be based upon the provisions of the reorganization plan.

(d) *Liquidation under the bankruptcy code.* (1) Upon receipt of notification that a borrower has filed for protection under Chapter 7 of the bankruptcy code, or a liquidation plan under chapter 11, the lender must proceed according to the liquidation procedures of this part.

(2) If the property is abandoned by the trustee, the lender will conduct the liquidation according to § 762.149.

(3) Proceeds received from partial sale of collateral during bankruptcy may be used by the lender to pay reasonable costs, such as freight, labor and sales commissions, associated with the partial sale. Reasonable use of proceeds for this purpose must be documented with the final loss claim in accordance with § 762.149(a)(vi).

§ 762.149 Liquidation.

(a) *Mediation.* When it has been determined that default cannot be cured through any of the servicing options available, or if the lender does not wish to utilize any of the authorities provided in this part, the lender must:

(1) Participate in mediation according to the rules and regulations of any State which has a mandatory farmer-creditor mediation program;

(2) Consider private mediation services in those States which do not have a mandatory farmer-creditor mediation program; and

(3) Not agree to any proposals to rewrite the terms of a guaranteed loan which do not comply with this part. Any agreements reached as a result of mediation involving defaults and or loan restructuring must have written concurrence from the Agency before they are implemented.

(b) *Liquidation plan.* If a default cannot be cured after considering servicing options and mediation, the lender will proceed with liquidation of the collateral in accordance with the following:

(1) Within 30 days of the decision to liquidate, standard eligible and CLP lenders will submit a written liquidation plan to the Agency which includes:

(i) Current balance sheets from all liable parties or, if the parties are not cooperative, the best information available, or in liquidation bankruptcies, a copy of the bankruptcy schedules or discharge notice;

(ii) A proposed method of maximizing the collection of debt which includes specific plans to collect any remaining loan balances on the guaranteed loan after loan collateral has been liquidated, including possibilities for judgment;

(A) If the borrower has converted loan security, the lender will determine whether litigation is cost effective. The lender must address, in the liquidation plan, whether civil or criminal action will be pursued. If the lender does not pursue the recovery, the reason must be documented when an estimated loss claim is submitted.

(B) Any proposal to release the borrower from liability will be addressed in the liquidation plan in accordance with § 762.146(c)(2);

(iii) An independent appraisal report on all collateral securing the loan that meets the requirements of § 762.127 and a calculation of the net recovery value of the security as defined in § 762.102. The appraisal requirement may be waived by the Agency in the following cases:

(A) The bankruptcy trustee is handling the liquidation and the lender has

submitted the trustee's determination of value;

(B) The lender's proposed method of liquidation rarely results in receipt of less than market value for livestock and used equipment; or

(C) A purchase offer has already been received for more than the debt;

(iv) An estimate of time necessary to complete the liquidation;

(v) An estimated loss claim if the liquidation period is expected to exceed 90 days.

(vi) An estimate of reasonable liquidation expenses; and

(vii) An estimate of any protective advances.

(2) PLP lenders will submit a liquidation plan as required by their lender's agreement.

(c) *Agency approval of the liquidation plan.* (1) CLP lender's or standard eligible lender's liquidation plan, and any revisions of the plan, must be approved by the Agency.

(2) If, within 20 calendar days of the Agency's receipt of the liquidation plan, the Agency fails to approve it or fails to request that the lender make revisions, the lender may assume the plan is approved. The lender may then proceed to begin liquidation actions at its discretion as long as it has been at least 60 days since the borrower's eligibility for interest assistance was considered.

(3) At its option, the Agency may liquidate the guaranteed loan as follows:

(i) Upon Agency request, the lender will transfer to the Agency all rights and interests necessary to allow the Agency to liquidate the loan. The Agency will not pay the lender for any loss until after the collateral is liquidated and the final loss is determined; and

(ii) If the Agency conducts the liquidation, interest accrual will cease on the date the Agency notifies the lender in writing that it assumes responsibility for the liquidation.

(d) *Estimated loss claims.* An estimated loss claim will be submitted by the lender with the liquidation plan if the liquidation is expected to exceed 90 days. The estimated loss will be based on the following:

(1) The Agency will pay the lender the guaranteed percentage of the total

outstanding debt, less the net recovery value of the remaining security, less any unaccounted for security; and

(2) The lender will discontinue interest accrual on the defaulted loan at the time the estimated loss claim is paid by the Agency. If the lender estimates that there will be no loss after considering the costs of liquidation, interest accrual will cease 90 days after the decision to liquidate or an estimated loss of zero will be submitted.

(3) Packager fees and outside consultant fees for servicing of guaranteed loans are not covered by the guarantee, and will not be paid in an estimated loss claim.

(e) *Protective advances.* (1) Prior written authorization from the Agency is required for all protective advances in excess of \$5,000 for CLP lenders and \$3,000 for standard eligible lenders. The dollar amount of protective advances allowed for PLP lenders will be specified when PLP status is awarded by the Agency or as contained in the lender's agreement.

(2) The lender may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances as allowed in this part, plus interest that accrues on the protective advances.

(3) Payment for protective advances is made by the Agency when the final loss claim is approved, except in bankruptcy actions.

(4) Protective advances are used only when the borrower is in liquidation, liquidation is imminent, or when the lender has taken title to real property in a liquidation action.

(5) Legal fees are not a protective advance.

(6) Protective advances may only be made when the lender can demonstrate the advance is in the best interest of the lender and the Agency.

(7) Protective advances must constitute a debt of the borrower to the lender and be secured by the security instrument.

(8) Protective advances must not be made in lieu of additional loans.

(f) *Unapproved loans or advances.* The amount of any payments made by the borrower on unapproved loans or advances outside of the guarantee will be deducted from any loss claim sub-

mitted by the lender on the guaranteed loan, if that loan or advance was paid prior to, and to the detriment of, the guaranteed loan.

(g) *Acceleration.* (1) If the borrower is not in bankruptcy, the lender shall send the borrower notice that the loan is in default and the entire debt has been determined due and payable immediately after other servicing options have been exhausted.

(2) The loan cannot be accelerated until after the borrower has been considered for interest assistance and the conclusion of mandatory mediation in accordance with § 762.149.

(3) The lender will submit a copy of the acceleration notice or other document to the Agency.

(h) *Foreclosure.* (1) The lender is responsible for determining the necessary parties to any foreclosure action, or who should be named on a deed of conveyance taken in lieu of foreclosure.

(2) When the property is liquidated, the lender will apply the net proceeds to the guaranteed loan debt.

(3) When it is necessary to enter a bid at a foreclosure sale, the lender may bid the amount that it determines is reasonable to protect its and the Agency's interest. At a minimum, the lender will bid the lesser of the net recovery value or the unpaid guaranteed loan balance.

(i) *Final loss claims.* (1) Lenders may submit a final loss claim when the security has been liquidated and all proceeds have been received and applied to the account.

(2) If a lender acquires title to property either through voluntary conveyance or foreclosure proceeding, the lender will submit a final loss claim after disposing of the property. The lender may pay reasonable maintenance expenses to protect the value of the property while it is owned by the lender. These may be paid as protective advances or deducted as liquidation expenses from the sales proceeds when the lender disposes of the property. The lender must obtain Agency written concurrence before incurring maintenance expenses which exceed the amounts allowed in § 762.149(e)(1). Packager fees and outside consultant fees for servicing of guaranteed loans are

not covered by the guarantee, and will not be paid in a final loss claim.

(3) The lender will make its records available to the Agency for the Agency's audit of the propriety of any loss payment.

(4) All lenders will submit the following documents with a final loss claim:

(i) An accounting of the use of loan funds;

(ii) An accounting of the disposition of loan security and its proceeds;

(iii) A copy of the loan ledger indicating loan advances, interest rate changes, protective advances, and application of payments, rental proceeds, and security proceeds, including a running outstanding balance total; and

(iv) Documentation, as requested by the Agency, concerning the lender's compliance with the requirements of this part.

(5) The Agency will notify the lender of any discrepancies in the final loss claim or, approve or reject the claim within 40 days.

(6) The Agency will reduce a final loss claim based on its calculation of the dollar amount of loss caused by the lender's negligent servicing of the account. Loss claims may be reduced or rejected as a result of the following:

(i) A loss claim may be reduced by the amount caused by the lender's failure to secure property after a default, and will be reduced by the amount of interest that accrues when the lender fails to contact the borrower or takes no action to cure the default, once it occurs. Losses incurred as a result of interest accrual during excessive delays in collection, as determined by the Agency, will not be paid.

(ii) Unauthorized release of security proceeds, failure to verify ownership or possession of security to be purchased, or failure to inspect collateral as often required so as to ensure its maintenance.

(7) Losses will not be reduced for the following:

(i) Servicing deficiencies that did not contribute materially to the dollar amount of the loss.

(ii) Unaccounted security, as long as the lender's efforts to locate and recover the missing collateral was equal to that which would have been ex-

pected in the case of an unguaranteed loan in the lender's portfolio.

(8) Default interest, late charges, and loan servicing fees are not payable under the loss claim.

(9) The final loss will be the remaining outstanding balance after application of the estimated loss payment and the application of proceeds from the liquidation of the security.

(10) If the final loss is less than the estimated loss, the lender will reimburse the Agency for the overpayment, plus interest at the note rate from the date of the estimated loss payment.

(11) The lender will return the original guarantee marked paid after receipt of a final loss claim.

(j) *Future Recovery.* The lender will remit any recoveries made on the account after the Agency's payment of a final loss claim to the Agency in proportion to the percentage of guarantee, in accordance with the lender's agreement, until the account is paid in full or otherwise satisfied.

(k) *Overpayments.* The lender will repay any final loss overpayment determined by the Agency upon request.

(l) *Electronic funds transfer.* The lender will designate one or more financial institutions to which any Agency payments will be made via electronic funds transfer.

(m) *Establishment of Federal debt.* Any amounts paid by the Agency on account of liabilities of the guaranteed loan borrower will constitute a Federal debt owing to the Agency by the guaranteed loan borrower. In such case, the Agency may use all remedies available to it, including offset under the Debt Collection Improvement Act of 1996, to collect the debt from the borrower. Interest charges will be established at the note rate of the guaranteed loan on the date the final loss claim is paid.

[64 FR 7378, Feb. 12, 1999, as amended at 67 FR 44016, July 1, 2002; 69 FR 44580, July 27, 2004]

§ 762.150 Interest assistance program.

(a) *Requests for interest assistance.* (1) To apply for interest assistance in conjunction with a new request for guarantee, the lender will submit the following:

(i) A completed cash flow budget and interest assistance needs analysis portion of the application form. Interest assistance can be applied to each loan, only to one loan or any distribution the lender selects; however, interest assistance is only available on as many loans as necessary to achieve a feasible plan.

(ii) For loans with unequal payments, a proposed debt repayment schedule which shows principal and interest payments for the subject loan, in each year of the loan.

(2) To request interest assistance on an existing guaranteed loan, the lender must submit to the Agency the following:

(i) A completed cash flow projection and interest assistance needs analysis portion of the application form. Interest assistance can be applied to each loan, only to one loan or any distribution the lender selects as required to achieve a feasible plan.

(ii) For loans with unequal payments, a proposed debt repayment schedule which shows scheduled payments for the subject loan in each of the remaining years of the loan.

(iii) Cash flow budgets and supporting justification to document that the request meets the requirements outlined in paragraph (b) of this section. This will include a typical cash flow if the projected cash flow budget is atypical.

(3) Requests for interest assistance on lines of credit or loans made for annual operating purposes must be accompanied by a projected monthly cash flow budget.

(b) *Requirements.* (1) The typical term of scheduled loan repayment will not be reduced solely for the purpose of maximizing eligibility for interest assistance. To be eligible for interest assistance, a loan must be scheduled over the maximum terms typically used by lenders for similar type loans within the limits set by § 762.124 of this part. At a minimum, loans will be scheduled for repayment over the terms listed below, but for OL not to exceed the life of the security:

(i) An OL for the purpose of providing annual operating and living expenses will be scheduled for repayment when the income is scheduled to be received

from the sale of the crops, livestock, and livestock products which will serve as security for the loan.

(ii) OL for purposes other than annual operating and living expenses (i.e. equipment, livestock, refinancing of existing debt) will be scheduled over 7 years from the effective date of the proposed interest assistance agreement.

(iii) FO and SW secured by real estate will be scheduled for 20 years from the closing date of the original note covered by the guarantee.

(2) The lender must document that a feasible plan, as defined in § 762.102(b), is not possible without reducing the interest rate on the borrower's loan and with the debt restructured over the term of repayment.

(3) The lender must determine whether the borrower, including members of an entity, owns any significant assets that do not contribute directly to essential family living or farm operations. The lender must determine the market value of these assets and prepare a cash flow budget based on the assumption that the value of these assets will be used for debt reduction. If a feasible plan can then be achieved, the borrower is not eligible for interest assistance. All interest assistance calculations will be based on the cash flow budget which assumes that the assets will be sold.

(4) A borrower's new guaranteed loan is eligible for interest assistance if all the following conditions are met:

(i) The applicant needs interest assistance in order to achieve a feasible plan.

(ii) If significant changes in the borrower's cash flow budget are anticipated after the initial 12 months, then the typical cash flow budget must demonstrate that the borrower will still have a feasible plan, following the anticipated changes, with or without interest assistance.

(iii) If a feasible plan cannot be achieved, even with other creditors voluntarily adjusting their debts and with the interest assistance, the interest assistance request will not be approved.

(5) An existing guaranteed loan is eligible for interest assistance if the borrower needs interest assistance to achieve a feasible plan as defined in

§ 762.102(b), and the borrower meets the eligibility criteria of § 762.120, except the provision regarding prior debt forgiveness. If a feasible plan cannot be achieved, even with other creditors voluntarily adjusting their debts and with the interest assistance, the interest assistance request will not be approved. If a borrower has multiple loans, interest assistance may be provided on one or each loan, as available, to the extent necessary to achieve a feasible plan.

(6) The term of the interest assistance agreement under this section shall not exceed 10 years from the date of the first interest assistance agreement signed by the loan applicant, including entity members, or the outstanding term of the loan, as limited by this section, whichever is less.

(7) The lender may charge a fixed or variable interest rate. The type of rate must be the same as the type of rate in the underlying note or line of credit agreement. The lender will reduce the interest rate charged the borrower's account by at least the amount of interest assistance.

(8) The borrower must be an operator of not larger than a family size farm.

(c) *Interest assistance closing.* (1) Initial guaranteed loans will be closed in accordance with § 762.130.

(2) The lender will then prepare and deliver to the Agency a closing report for each initial and existing guaranteed loan which has been granted interest assistance.

(3) When all requirements have been met, the lender and the Agency will execute an interest assistance agreement.

(d) *Interest assistance claims and payments.* (1) The interest assistance claim will be prepared by the lender. The following conditions apply to the claims process:

(i) No claim period can exceed 12 months. The initial and final claim periods may be less than 12 months. In such claims, the 4 percent payment will be prorated over the number of months in the claim period. The period for all other claims must be 12 months.

(ii) To permit the borrower to prepare for the upcoming year, a claim should be filed within 60 days of each anniversary date. Claims not filed within 1 year of the anniversary date

will not be paid and the amount due the lender is permanently forfeited.

(iii) If a claim is submitted without an interest assistance review in accordance with § 762.102, when it is required, the claim will not be processed until the review is submitted by the lender.

(iv) Upon full payment of the note or line of credit, the lender will immediately prepare the request for interest assistance payment and submit it to the Agency.

(v) Interest assistance payments shall cease upon the assumption and transfer of the loan if the transferee was not liable for the debt on the effective date of the interest assistance agreement. The lender shall request payment through the date of the transfer or assumption. The claim must be submitted within 1 year or it will be denied and the payment permanently forfeited.

(vi) All claims will be supported by detailed calculations of average daily principal balances during the claim period.

(vii) The Agency will review the claim and the supporting documentation. If the information and the supporting documentation is not complete and correct, the reviewing official will notify the lender in writing, of the actions needed to correct the request.

(viii) If there is a substitution of lender, a claim for the first lender's interest assistance, through the effective date of the substitution, will be submitted by the first lender and processed at the time of the substitution.

(ix) Interest assistance claims shall be submitted concurrently with the submission of estimated loss claims where interest accrual ceases, or final loss claims that are not preceded by an estimated loss claim.

(2) [Reserved]

(e) *Request for continuation of interest assistance.* (1) For all interest assistance agreements exceeding 12 months, the lender will perform an analysis of the applicant's farming operation and need for continued interest assistance. The following information will be submitted to the Agency:

(i) A summary of the operation's actual financial performance in the previous year, including a detailed income and expense statement.

(ii) A narrative description of the causes of any major differences between the previous year's projections and actual performance.

(iii) A current balance sheet.

(iv) A cash flow budget for the period being planned. A monthly cash flow budget is required for all lines of credit and operating loans made for annual operating purposes. All other loans may include either an annual or monthly cash flow budget.

(v) A copy of the interest assistance needs analysis portion of the application form which has been completed based on the planned period's cash flow budget.

(2) The loan will be eligible for continuation of interest assistance if the cash flow budget projects a feasible plan with interest assistance applied. However, interest assistance can be applied only to as many loans as necessary to achieve a positive cash flow for the plan period. If the cash flow budget indicates that the borrower requires a level of interest assistance greater than 4 percent to project a feasible plan, then the Agency will deny the continuation of interest assistance. Interest assistance will be reduced to zero during that period. See § 762.102(b) for the definition of feasible plan.

(3) The documentation listed above will be provided to the Agency concurrently with the lender's submission of its request for interest assistance payment. This information will be provided to the Agency within 60 days after the review date specified on the interest assistance agreement.

(4) A request for continuation of interest assistance will be completed for 12 month periods, effective on the anniversary date.

(5) The initial review may be submitted in conjunction with any claim within the initial 12 month period. The anniversary date and length of the review period will be stated on the interest assistance agreement. Any request for interest assistance adjustment submitted effective any time other than the review date will be denied, except for those cases where it is necessary to service the loan with rescheduling, re-amortization, deferral or writedown.

(6) If the review is not completed and submitted to the Agency within 1 year

of the review date, no claim will be paid for that period.

(f) *Notification of Adverse Action.* The lender will be notified in writing of all Agency decisions in which a request for interest assistance, a request for continuation of interest assistance or lender's claim for interest assistance are denied. The notification letter will provide specific reasons for the decision and appeals will be handled in accordance with parts 11 and 780 of this title.

(g) *Servicing of loans covered by an interest assistance agreement.* (1) Loans covered by interest assistance agreements cannot be consolidated.

(2) The loan will be transferred with the interest assistance agreement only in cases where the transferee was liable for the debt at the time interest assistance was granted. Under no other circumstances will the interest assistance be transferred. If interest assistance is necessary for the transferee to achieve a feasible plan, the lender may request such assistance, which may be approved if interest assistance funds are available and the applicant is eligible. The maximum length of the agreement will be 10 years from the date of the first agreement covering a loan for which the transferee was liable. If interest assistance is necessary for a feasible plan and funds are not available, the request for assumption of the Agency guaranteed debt will be denied.

(3) When consideration is given to using a debt writedown to service a delinquent account, the subsidy level will be recalculated prior to any writedown. If a feasible plan can be obtained using interest assistance and funds are available, then the interest assistance will be authorized and no writedown will be approved. If a feasible plan cannot be achieved using 4 percent interest assistance, all further calculations for determining debt writedown eligibility and amounts to be written down will be based on the borrower receiving no interest assistance. If debt writedown is approved, the interest assistance claim for the previous review period will be processed in conjunction with the writedown loss claim. The interest assistance agreement will not be canceled and the anniversary date can remain the same or be re-established

under the same guidelines that it was originally established. If the lender determines through its annual analysis that interest assistance is necessary for a feasible plan, a request to reinstate the subsidy in a subsequent review period may be submitted in accordance with paragraph (e) of this section.

(4) In the event of rescheduling or deferral of loans with interest assistance, interest assistance will remain available for that loan under the terms of the existing interest assistance agreement. Additional years of interest assistance and/or increases in the restructured loan amount will require additional funding. If the additional interest assistance is needed in order to produce a feasible plan throughout the life of the rescheduled loan and funds are not available for the additional interest assistance, then the rescheduling will not be approved by the Agency. In no case will the subsidy be extended more than 10 years from the effective date of the first interest assistance agreement signed by the loan applicant or by anyone who signed the note or line of credit agreement.

(5) In cases where the interest on a loan covered by an interest assistance agreement is reduced by court order in a reorganization plan under the bankruptcy code, interest assistance agreement will be terminated effective on the date of the court ordered interest reduction. The lender will file a claim due through the effective date of the court ordered interest reduction. Guaranteed loans which have had their interest reduced by bankruptcy court order are not eligible to receive interest assistance.

(6) For Loan Guarantees held by holders, Agency purchase of the guaranteed portion of a loan will stop interest assistance payments on that portion. Interest assistance payments will cease upon termination of the Loan Guarantee, upon reaching the expiration date contained in the agreement or upon cancellation by the Agency.

(7) When a borrower defaults on a loan, interest assistance may be considered in conjunction with a rescheduling action in accordance with § 762.145(b). After the meeting required by § 762.143(b)(3) and consideration of

actions to correct the delinquency, the lender will notify the Agency of the results of the meeting. If the restructuring proposal includes interest assistance, the lender will provide the items required by paragraph (d) of this section in addition to those items required by § 762.145. Liquidation must not be initiated, except in accordance with § 762.143(b)(3)(v).

(h) *Cancellation of interest assistance agreement.* The interest assistance agreement is incontestable except for fraud or misrepresentation, of which the lender and borrower have actual knowledge at the time that the interest assistance agreement is executed, or which the lender or borrower participates in or condones.

(i) *Adjustment of assistance level between review dates.* After the initial or renewal request for interest assistance is processed, no adjustments can be made until the next review or adjustment date except when necessary to service the loan with a rescheduling or deferral.

(j) *Excessive interest assistance.* Upon written notice to the lender, borrower and any holder, the Agency may amend or cancel the interest assistance agreement and collect from the lender any amount of interest Assistance granted which resulted from incomplete or inaccurate information, an error in computation, or any other reason which resulted in payment that the lender was not entitled to receive.

(k) The Deputy Administrator for Farm Loan Programs has the authority to grant an exception to any requirement involving interest Assistance if it is in the best interest of the Government.

[64 FR 7378, Feb. 12, 1999; 64 FR 38298, July 16, 1999, as amended at 66 FR 7567, Jan. 24, 2001]

§§ 762.151-762.158 [Reserved]

§ 762.159 Pledging of guarantee.

A lender may pledge all or part of the guaranteed or unguaranteed portion of the loan as security to a Federal Home Loan Bank, a Federal Reserve Bank, a Farm Credit System Bank, or any other funding source determined acceptable by the Agency.

[70 FR 56107, Sept. 26, 2005]

§ 762.160 Assignment of guarantee.

(a) The following general requirements apply to assigning guaranteed loans:

(1) Subject to Agency concurrence, the lender may assign all or part of the guaranteed portion of the loan to one or more holders at or after loan closing, if the loan is not in default. However, a line of credit cannot be assigned. The lender must always retain the unguaranteed portion in their portfolio, regardless of how the loan is funded.

(2) The Agency may refuse to execute the Assignment of Guarantee and prohibit the assignment in case of the following:

(i) The Agency purchased and is holder of a loan that was assigned by the lender that is requesting the assignment.

(ii) The lender has not complied with the reimbursement requirements of § 762.144(c)(7), except when the 180 day reimbursement or liquidation requirement has been waived by the Agency.

(3) The lender will provide the Agency with copies of all appropriate forms used in the assignment.

(4) The guaranteed portion of the loan may not be assigned by the lender until the loan has been fully disbursed to the borrower.

(5) The lender is not permitted to assign any amount of the guaranteed or unguaranteed portion of the loan to the loan applicant or borrower, or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary, or affiliate.

(6) Upon the lender's assignment of the guaranteed portion of the loan, the lender will remain bound to all obligations indicated in the Guarantee, Lender's Agreement, the Agency program regulations, and to future program regulations not inconsistent with the provisions of the Lenders Agreement. The lender retains all rights under the security instruments for the protection of the lender and the United States.

(b) The following will occur upon the lender's assignment of the guaranteed portion of the loan:

(1) The holder will succeed to all rights of the Guarantee pertaining to the portion of the loan assigned.

(2) The lender will send the holder the borrower's executed note attached to the Guarantee.

(3) The holder, upon written notice to the lender and the Agency, may assign the unpaid guaranteed portion of the loan. The holder must assign the guaranteed portion back to the original lender if requested for servicing or liquidation of the account.

(4) The Guarantee or Assignment of Guarantee in the holder's possession does not cover:

(i) Interest accruing 90 days after the holder has demanded repurchase by the lender, except as provided in the Assignment of Guarantee and § 762.144(c)(3)(iii).

(ii) Interest accruing 90 days after the lender or the Agency has requested the holder to surrender evidence of debt repurchase, if the holder has not previously demanded repurchase.

(c) Negotiations concerning premiums, fees, and additional payments for loans are to take place between the holder and the lender. The Agency will participate in such negotiations only as a provider of information.

[70 FR 56107, Sept. 26, 2005]

PART 764—EMERGENCY FARM LOANS

Sec.

- 764.1 Purpose.
- 764.2 Definitions.
- 764.3 Emergency loan funds uses.
- 764.4 Eligibility requirements.
- 764.5 Limitations.
- 764.6 Interest rate.
- 764.7 Loan terms.
- 764.8 Repayment and security requirements.
- 764.9 Appraisal and valuation requirements.
- 764.10 Insurance for loan security.
- 764.11 Charges and fees.

AUTHORITY: 5 U.S.C. 301 and 7 U.S.C. 1989.

SOURCE: 67 FR 795, Jan. 8, 2002, unless otherwise noted.

§ 764.1 Purpose.

The purpose of the Emergency Loan Program is to provide financial assistance to family farmers who have suffered losses as the result of a disaster so that they can return to normal farming operations as soon as possible after the disaster. Specifically, this