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Part III

Department of Agriculture

Farm Service Agency

**7 CFR Parts 761, 762, et al.
Regulatory Streamlining of the Farm
Service Agency's Direct Farm Loan
Programs; Proposed Rule**

DEPARTMENT OF AGRICULTURE**Farm Service Agency****7 CFR Parts 761 through 769**

RIN 0560-AF60

Regulatory Streamlining of the Farm Service Agency's Direct Farm Loan Programs**AGENCY:** Farm Service Agency, USDA.**ACTION:** Proposed rule.

SUMMARY: The Farm Service Agency (FSA) proposes to streamline regulations governing the direct Farm Loan Programs. The proposed regulatory action will enable FSA to accomplish the following: Simplify and clarify direct loan regulations; implement the recommendations of the USDA Civil Rights Action Team; meet the objectives of the Paperwork Reduction Act of 1995; meet the goals and objectives of the National Performance Review; and separate FSA's direct Farm Loan Programs regulations from Rural Development mission area loan program regulations.

DATES: Comments on this rule and on the information collections must be submitted by April 9, 2004 to be assured consideration.

ADDRESSES: Address comments on, and alternatives to, the proposed rule to: Deputy Administrator for Farm Loan Programs, USDA/FSA/DAFLP/STOP 0520, 1400 Independence Avenue SW., Washington, DC 20250-0520. Comments on the information collection requirements of this proposed rule must be sent to the Office of Management and Budget (OMB) at the address listed in the Paperwork Reduction Act section of this preamble and sent to the Department address listed after the OMB address.

FOR FURTHER INFORMATION CONTACT: William D. Cobb USDA/FSA/DAFLP/STOP 0520, 1400 Independence Avenue SW., Washington, DC 20250-0520; telephone (202) 720-1059; electronic mail: bill_cobb@wdc.usda.gov.

SUPPLEMENTARY INFORMATION:**Executive Order 12866**

This rule has been determined to be significant under Executive Order 12866 and was reviewed by OMB.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-602), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial

number of small entities. This rule does not impose any new requirements on Agency applicants and borrowers. In some cases, existing information collections and regulatory requirements have been reduced as a result of streamlining the loan making and servicing application processes.

Environmental Impact Statement

FSA is completing an Environmental Assessment (EA) in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508) and the FSA regulations for compliance with NEPA, 7 CFR part 799 and part 1940, subpart G. The draft EA will be made available for public comment under a separate notice. The final EA will be completed before this rule is published as final.

Executive Order 13132

The policies contained in this rule do not have a substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. In accordance with this Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR parts 11 and 780 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Executive Order 12372

For reasons contained in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs within this rule are excluded from the scope of E.O. 12372, which requires intergovernmental consultation with State and local officials.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, requires Federal agencies to assess the effects of their regulatory

actions on State, local, and tribal governments or the private sector of \$100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA requires FSA to prepare a written statement, including a cost benefit assessment, for proposed and final rules with "Federal mandates" that may result in such expenditures for State, local, or tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates, as defined under Title II of the UMRA, for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

Information collection requirements for the direct Farm Loan Programs are currently approved in numerous information collection dockets. Based on the proposed regulations, FSA will reduce the number of information collections by consolidating related collections in a manner that matches the organizational structure of the proposed CFR parts.

In accordance with the Paperwork Burden Act of 1995, FSA intends to request approval of the following information collections.

Title: General Program Administration.

OMB Control Number: 0560-New.
Type of Request: New Collection.

Abstract: 7 CFR 761, General Program Administration, establishes requirements within FSA's Farm Loan Programs that are applicable to both making and servicing direct loans. Information collections established by the regulation are necessary to ensure that program applicants and participants meet statutory eligibility requirements, loan funds are used for authorized purposes and the Government's interest in security is adequately protected. Specific information collection requirements include financial information in the form of a balance sheet and cash flow projection used in loan making and servicing decisions; information needed to establish joint bank accounts in which loan funds, proceeds derived from the sale of loan security or insurance proceeds may be deposited; collateral pledges from financial institutions when the balance of a supervised bank account will exceed \$100,000; and documentation that

construction plans and specifications comply with state and local building standards. Existing collections applicable to FSA's Farm Loan Programs from OMB Control Numbers 0560-0154, 0575-0042, 0575-0064, and 0575-0158 will be consolidated in this docket. Burden associated with the Rural Development Agencies' information collections will remain under Control Numbers 0575-0042, 0575-0064, and 0575-0158.

Estimate of Burden: Public reporting for this collection of information is estimated to average 51 minutes per response.

Respondents: Individuals or households, businesses or other for profit and farms.

Estimated number of respondents: 70,290.

Estimated number of responses per respondent: 2.6.

Estimated total annual burden on respondents: 214,363.

Title: Direct Loan Making.

OMB Control Number: 0560-New.

Type of Request: New Collection.

Abstract: 7 CFR 764, Direct Loan Making, establishes the requirements for FSA's direct Farm Ownership, Operating, and Emergency loan programs. Information collections established in the regulation are necessary for the Agency to evaluate the loan applicant's request and determine if eligibility, loan repayment and security requirements can be met. Existing collections pertaining to direct loan making from OMB Control Numbers 0560-0157, 0560-0159, 0560-0162, 0560-0166, 0560-0167, 0560-0178, 0575-0087, 0575-0088, and 0575-0147 will be consolidated in this docket. Burden associated with the Rural Development Agencies' information collections will remain under Control Numbers 0575-0087, 0575-0088, and 0575-0147.

Estimate of Burden: Public reporting for this collection of information is estimated to average 26 minutes per response.

Respondents: Individuals or households, businesses or other for profit and farms.

Estimated number of respondents: 128,513.

Estimated number of responses per respondent: 3.38.

Estimated total annual burden on respondents: 177,150.

Title: Direct Loan Servicing—Regular.

OMB Control Number: 0560-New.

Type of Request: New Collection.

Abstract: 7 CFR 765, Direct Loan Servicing—Regular, establishes the requirements related to routine servicing actions associated with direct

loans. Information collections established in the regulation are necessary for the Agency to monitor and account for loan security, including proceeds derived from the sale of security, and to process a borrower's requests for subordination or partial release of security. Information collections associated with the statutory requirement that borrowers be reviewed for graduation to commercial credit are also established in the regulation. Existing collections pertaining to routine direct loan servicing actions from OMB Control Numbers 0560-0158, 0560-0171, 0575-0075, and 0575-0093 will be consolidated in this docket. Burden associated with the Rural Development Agencies' information collections will remain under Control Numbers 0575-0075, and 0575-0093.

Estimate of Burden: Public reporting for this collection of information is estimated to average 38 minutes per response.

Respondents: Individuals or households, businesses or other for profit and farms.

Estimated number of respondents: 58,875.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 105,547.

Title: Direct Loan Servicing—Special.

OMB Control Number: 0560-New.

Type of Request: New Collection.

Abstract: 7 CFR 766, Direct Loan Servicing—Special, establishes the requirements for servicing financially distressed and delinquent direct loan borrowers. The information collections established in the regulation are necessary for the Agency to evaluate a borrower's request for disaster set-aside, primary loan servicing (including reamortization, rescheduling, deferral, write down and conservation contracts), and homestead protection. Existing collections pertaining to servicing financially distressed and delinquent direct loan borrowers from OMB Control Numbers 0560-0160, 0560-0161, and 0560-0164 will be consolidated in this docket.

Estimate of Burden: Public reporting for this collection of information is estimated to average 31 minutes per response.

Respondents: Individuals or households, businesses or other for profit and farms.

Estimated number of respondents: 11,595.

Estimated number of responses per respondent: 2.39.

Estimated total annual burden on respondents: 14,869.

Title: Inventory Property Management.

OMB Control Number: 0560-New.

Type of Request: New Collection.

Abstract: 7 CFR 767, Inventory Property Management, establishes the requirements for the management, lease and sale of security property acquired by the Agency. Information collections established in the regulation are necessary for the Agency to determine an applicant's eligibility to lease or purchase inventory property; and to ensure payment of the lease or purchase amount. Existing collections pertaining to the lease and sale of property acquired under FSA's Farm Loan Programs from OMB Control Number 0575-0110 will be incorporated in this docket. Burden associated with the Rural Development Agencies' information collections will remain under Control Number 0575-0110.

Estimate of Burden: Public reporting for this collection of information is estimated to average 40 minutes per response.

Respondents: Individuals or households, businesses or other for profit and farms.

Estimated number of respondents: 212.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 243.

The Agency is soliciting comments on the burden of all of the above regarding: (a) Whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. These comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to William D. Cobb, USDA/FSA/DAFLP/STOP 0520, 1400 Independence Avenue, SW., Washington, DC 20250-0520. Copies of the information collections may be obtained from Mr. Cobb at the above address. All comments will become a matter of public record.

Federal Assistance Programs

These changes affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance:
 10.404—Emergency Loans
 10.406—Farm Operating Loans
 10.407—Farm Ownership Loans

Government Paperwork Elimination Act (GPEA)

The Agency is committed to compliance with GPEA, which requires Government agencies to provide the public the option of submitting or transacting business electronically to the maximum extent possible.

Discussion of the Proposed Rule

Background

FSA proposes to move the majority of its Farm Loan Programs direct loan making and servicing rules from Chapter XVIII to Chapter VII of the Code of Federal Regulations (CFR). Prior to the Department of Agriculture Reorganization Act of 1994 (1994 Act), Chapter XVIII was assigned to the Farmers Home Administration (FmHA) and Chapter VII was assigned to the Agricultural Stabilization and Conservation Service (ASCS). Under the provisions of the 1994 Act, both FmHA and ASCS were abolished. FmHA's Farm Loan Programs and ASCS's programs were consolidated under the newly created FSA while the remaining FmHA programs were transferred to one of the following Rural Development

mission area agencies: Rural Business Cooperative Service, Rural Housing Service, and Rural Utilities Service. Chapter VII of the CFR is now assigned to FSA while Chapter XVIII is shared by FSA and the Rural Development mission area agencies.

The following policies are not addressed in this proposed rule but will be addressed in separate rulemakings:

1. Designation of Disaster Areas—The designation of disaster areas will be moved from subpart A of 7 CFR 1945 to 7 CFR 791.

2. Offset of Federal payments—The policies pertaining to the offset of Federal payments for application to outstanding Farm Loan Programs debts contained in subpart C of 7 CFR 1951 will be consolidated with 7 CFR 792.

3. Environmental Policies—The environmental policies contained in subpart G of 7 CFR 1940 will be consolidated with 7 CFR 799. This proposed rule makes reference to part 799. If part 799 is not amended prior to the rule finalizing this proposed rule, the Agency will continue to use part 1940, subpart G.

4. Debt Settlement Policies—The debt settlement policies contained in subpart B of 7 CFR 1956 will be consolidated with 7 CFR 792. This proposed rule makes reference to part 792. If part 792 is not amended prior to the rule finalizing this proposed rule, the Agency will continue to use part 1956, subpart B.

Consolidation and Reorganization

The Farm Loan Programs direct loan making and servicing rules are currently in numerous parts of Chapter XVIII, making their use difficult to all but the most well-informed user. The Agency proposes to consolidate and reorganize these rules in an orderly and logical manner. Part 761 of Chapter VII is entitled General Program Administration and contains the rules that, in general, apply either to both guaranteed and direct loans, or to both direct loan making and direct loan servicing. Part 762, which contains regulations pertaining to the Guaranteed Loan Program, was published as a final rule on February 12, 1999 (64 FR 7358–7403). Part 763 is reserved for future use. Part 764 is entitled Direct Loan Making and consists of the regulations governing the origination of direct loans. Part 765, Regular Servicing, contains the regulations related to servicing for direct loans. Regulation policies for distressed and delinquent borrowers with direct loans are contained in part 766, Special Servicing. Part 767 is entitled Inventory Property Management and contains regulations pertaining to security property that is abandoned by the borrower or acquired by the Agency. Parts 768 and 769 are reserved for future use. The table shown below illustrates how the existing CFR parts will be consolidated within the proposed parts:

Proposed CFR parts	Existing CFR subparts from which FSA provisions will be consolidated
7 CFR 761—General	7 CFR 1806–A, 1806–B, 1901–A, 1901–F, 1902–A, 1924–A, 1924–B, 1940–Q.
764—Direct Loan Making	7 CFR 1910–A, 1927–B, 1941–A, 1941–B, 1943–A, 1943–B, 1945–D.
765—Direct Loan Servicing—Regular	7 CFR 1925–A, 1950–C, 1951–A, 1951–D, 1951–F, 1951–J, 1962–A, 1965–A.
766—Direct Loan Servicing—Special	7 CFR 1951–L, 1951–S, 1951–T, 1962–A.
767—Inventory Property Management	7 CFR 1955–A, 1955–B, 1955–C.

By reorganizing the loan making and servicing rules in this manner, the general public, including loan applicants and borrowers, and the Agency can more easily find needed information. In addition, this structure helps to eliminate redundancies and, thereby, avoid inconsistencies. The proposed rule references rather than repeats other parts of the chapter, thereby, making it easier to incorporate future policy changes.

Removal of Internal and Administrative Procedures

The existing regulations often describe in detail the Agency's internal and administrative procedures for

implementing Farm Loan Programs. This approach not only contributes to a lengthy body of regulations, but also creates a barrier to quickly improving procedures which have no impact on loan applicants and borrowers. The Agency has to use the rulemaking process to modify procedures, thereby, adding time and expense to prepare and implement such changes. In contrast to the current regulations, the proposed rule focuses on Agency policies impacting loan applicants and borrowers. The Agency is moving the administrative procedures to a series of new handbooks which will parallel the topics in this proposed rule and will be

issued simultaneously with the final rule.

Streamlining of Program Requirements

While consolidating the loan making and servicing regulation parts, the Agency also is streamlining its Farm Loan Programs policies. With the aid of working groups of both Headquarters and Field staff, the Agency is proposing policy changes consistent with the existing statutory authority. The Agency also proposes to clarify certain regulations that have multiple interpretations, amend others that have led to unintended consequences, and revise policies to reduce burdens on loan applicants and borrowers. In

addition, the proposed rule initiates action toward achieving recommendation number 56 of the USDA Civil Rights Action Team Report dated August 1997, which mandated that agencies “streamline program regulations and application forms to make USDA programs easily accessible to all customers.” The substantive changes are discussed in this preamble by regulation section.

Removal of Obsolete Parts

As a result of the 1994 Act, some of the CFR subparts published by FmHA continue to be used by FSA and one or more of the Rural Development mission area agencies, while others are used exclusively by FSA. When the final rule for this proposed rule is published, FSA will remove the subparts which are used only by FSA. The following subparts will be removed in the final rule: 1910-A, 1924-B, 1941-A, 1941-B, 1943-A, 1943-B, 1951-J, 1951-L, 1951-S, 1951-T, and 1965-A.

National Performance Review Objectives

Under the National Performance Review initiative, Federal agencies were charged with “creating a government that works better and costs less.” Federal agencies were commissioned to focus on results rather than procedures, empower employees, put customers first, and cut red tape. The proposed rule responds to this challenge by eliminating unnecessary procedural or internal requirements, clarifying regulations with multiple interpretations, and adding flexibility to allow employees to address each customer’s unique needs.

Farm Security and Rural Investment Act of 2002

The proposed rule contains all the provisions from the Farm Security and Rural Investment Act of 2002 applicable to Farm Loan Programs. Those provisions were published in the proposed rule of April 9, 2003, (68 FR 17316-17320), entitled “2002 Farm Bill Regulations—Loan Eligibility Provisions,” and the final rule of February 18, 2003, (68 FR 7693-7701), entitled “2002 Farm Bill Regulations—General Credit Provisions.”

Part 761—General Program Administration

Abbreviations and Definitions (Section 761.2)

The Agency proposes to move all abbreviations and definitions applicable to Farm Loan Programs to this section. By including all abbreviations and definitions in a single section of the CFR, the Agency will eliminate the need

for the general public to search multiple CFR subparts and parts to determine if and where a term is defined. Other CFR parts applicable to Farm Loan Programs will refer the reader to this section for an explanation or definition of an abbreviation or term.

The Agency proposes to replace the term “nonfarm enterprise” with the term “non-eligible enterprise.” Existing direct loan making regulations identify authorized purposes for which loan funds may be used. While the Agency defines the term nonfarm enterprise, the regulations do not clearly state that loan funds may not be used to finance nonfarm enterprises, nor do they identify purposes for which loan funds may not be used. The proposed rule defines the term non-eligible enterprise and clearly states that loan funds may not be used to finance a non-eligible enterprise. In addition, the term non-farm enterprise has resulted in confusion as several of the enterprises listed in the definition are farm or agriculture related, but are simply not an authorized loan purpose. The Agency believes the term non-eligible enterprise more accurately reflects that enterprises identified in the definition may not be financed with Agency loans funds. Furthermore, the Agency proposes to modify the definition by categorizing the examples under the production of exotic or non-farm animals; production of non-farm goods or services; or processing of farm products.

The Agency also proposes to modify the definition of “family farm.” The definition contained in the existing regulation provides broad guidelines for determining if a farming operation is a family farm; however, this has resulted in inconsistencies in applying the definition on a nationwide basis. The proposed definition establishes that the typical year gross income of the operation cannot exceed the greater of \$750,000 in annual sales or the 95 percentile of farms in the state with sales in excess of \$10,000, based on the most recently published farm data and survey of farm economic factors published by the National Agricultural Statistics Service, USDA. This calculation will be available in each Agency Office. Consideration of the typical year annual gross farm income of the particular state involved will allow for necessary regional differences in what is considered a “family farm” but is based on objective, quantifiable criteria. The \$10,000 gross sales threshold is consistent with treatment of farms with gross sales of less than \$10,000 as hobby farms by the Economic Research Service, USDA. The definition also will be clarified to state

that daily operational and management decisions must be made and substantial labor must be provided by the applicant or borrower and persons related to the applicant or borrower by blood or marriage. “Related by blood or marriage” will be defined as connected to one another as husband, wife, parent, child, brother, or sister. The current definition of family farm refers to the applicant or borrower and “family members” of the applicant or borrower. The Agency anticipates that these proposed objective criteria will result in consistent, equitable, and sound loan making decisions across states.

In the existing regulations, the Agency utilizes the term “farm or ranch.” While this wording takes regional terminology into consideration, the Agency believes it is unnecessary. In the proposed rule, the Agency uses only the term “farm.” The definition of “farm” clearly includes “farm” or “ranch” as appropriate.

The Agency also proposes to add definitions for the following terms: basic part of an applicant’s total farming operation, chattel or real estate essential to the farming operation, crop allotment or quota, debt service margin, essential family household expenses, established farmer, false information, farm income, Farm Programs payments, foreclosed, foreclosure sale, good faith, household contents, joint financing arrangement, production cycle, and working capital.

Planning and Performing Construction and Other Development (§ 761.10)

The proposed regulations would give loan applicants more responsibility and flexibility in planning and completing construction and development projects. For example, applicants would have more freedom in choosing appropriate construction and repair design standards. The existing regulations require applicants to select from design standards that have been adopted by the Agency, including methods described in the FmHA Manual of Acceptable Practices. To ensure that Agency-financed projects have architectural and engineering integrity, the revised regulations would require that the design standard “meet or exceed any applicable local or state laws, ordinances, codes, and regulations, including building, plumbing, mechanical, electrical, water, and waste management” (proposed section 761.10(d)(3)). Moreover, the revised rules would allow the Agency to request additional technical data, tests, or engineering evaluation, or to reject proposals that do not conform with industry-accepted construction practices and standards.

The revised regulations also would increase the applicant's responsibility and flexibility in preparing construction and development plans, while decreasing the Agency's role in this task. For example, currently the Agency must visit the development site with the applicant to identify and agree upon the necessary items of development, as well as the dates by which construction will be started and completed. Under the revised regulations, the applicant would propose the scope and schedule of the development, and the Agency would visit the site while evaluating the proposal. In addition, the Agency would no longer be required to advise the applicant of "publications, plans, planning aids, engineering data, and other technical advice and assistance available through local, state, and Federal agencies, and private individuals and organizations" (7 CFR 1924.5(f)(2)(v)). While the Agency would continue to be available to advise applicants, the Agency believes that most applicants, as assisted when necessary by engineers, architects, other professionals, and state and local officials, can assemble acceptable development plans. In addition, the Agency would oversee development plans through the review process.

The proposed regulations would eliminate the Agency's responsibility to verify the architectural and engineering proficiency of proposed projects. Under current regulations, the Agency reviews a construction and development plan, drawings, and specifications to determine the technical soundness of proposed developments. In addition, the Agency must offer suggestions to the applicant, when appropriate, on how the drawings and specifications might be altered and assist the applicant in revising the drawings. Under the proposal, the Agency could ensure the soundness of proposals by requiring the applicant to provide written certification by a licensed architect, professional engineer, or other specified professionals that the "final drawings and specifications conform with the applicable development standard." Thus, the applicant and professionals hired by the applicant would be responsible for the technical soundness of the proposal, not the Agency. The Agency is proposing this policy change because it lacks the engineering and architectural staff and expertise necessary to adequately review the wide variety of construction and development plans financed with Agency funds. This change also will give the applicant greater control over the project schedule. While the need for a

professional certification may increase project costs, these costs can be covered as part of the Agency loan for the project.

Under both the existing and proposed regulations, an applicant is responsible for seeking bids and selecting contractors. The proposed rule, however, would limit the Agency's responsibilities in this process. For example, the existing rules allow the Agency to request further negotiations between the applicant and the proposed contractor when the Agency determines that the proposed contractor's price is too high or is otherwise unreasonable. In addition, the Agency may request the applicant to obtain competitive bids if the applicant is unable to negotiate a reasonable price or if the Agency considers the contractor to be unqualified. Furthermore, under the existing rules, the applicant reviews competitive bids with the Agency's assistance and must select the lowest responsible bidder (7 CFR 1924.6(a)(10)(iv)). The Agency is proposing to eliminate its role in contractor selection to give applicants additional discretion and responsibility and will only require the applicant to provide an estimate of the total cash cost for all planned development prior to loan closing. The Agency believes that applicants generally have adequate incentives and information to select qualified and reasonably priced contractors.

The existing regulations require the Agency to inspect developments "as frequently as necessary to assure that construction and land development conforms to the drawings and specifications" (7 CFR 1924.9(b)). At a minimum, the Agency must make final inspections of all projects. In many cases, additional inspections are required at certain stages of construction. Agency inspections would not be mandatory under the proposed regulations. Instead, the Agency would "inspect development work periodically, as appropriate to protect the government's security interest" (proposed Section 761.10(f)(1)). The proposal also would make the applicant responsible for inspecting development work as necessary to protect the applicant's interest. In addition, to protect the Government and applicant's interests, the proposal would require the applicant to obtain all lien waivers before the Agency would issue final payment and would allow the Agency to require a surety bond for construction contracts.

The Agency is proposing to streamline the inspection requirements and increase the responsibility of

applicants largely because the Agency staff does not have architectural and engineering expertise. Thus, the Agency cannot assure that projects conform to drawings and specifications or assure the adequacy of actual construction and development work. The Agency would increase the applicant's responsibility to obtain adequate inspections, such as those by State or local code inspectors or inspection services. These professional inspections would protect both the applicant and the Government's interests. Less Agency involvement in the inspection process may help to expedite project completion by giving the applicant more flexibility in scheduling inspections. This regulatory change may increase project costs for some applicants who obtain professional inspections, instead of relying on the Agency's inspections. However, these costs can be covered by the Agency loan for the development project.

Part 762—Guaranteed Farm Loans

The guaranteed loan regulations were published as a final rule on February 12, 1999. In this rule, changes made to part 762 are only those necessary to correct references to CFR parts or subparts that are being revised or replaced, or to remove regulatory text which will now be addressed in part 761.

Part 764—Direct Loan Making

Application Requirements (Section 764.51)

The Agency proposes to reduce the amount of historical documentation required to process loan requests. Currently, the Agency requires 5 years of financial and production documentation, while the traditional commercial lending standard is 3 years. While some additional requirements may be justified because of the additional risk inherent in a direct loan to an applicant who is unable to obtain commercial credit, the Agency does not believe the additional 2 years of data significantly improves the quality of loan making decisions; therefore, a 3-year data requirement is proposed for financial and production documentation.

The proposed rule clarifies that payment of the applicable credit report fee is required from the loan applicant for the application to be considered complete. The Agency is only responsible for obtaining the credit report after the fee has been paid. Existing regulation, published in 7 CFR 1910.4, pertaining to a complete loan application lists the credit report under the heading "FSA Responsibilities for a

Complete Application"; however, regulations published in 7 CFR 1910.51 clearly provide that "a non-refundable fee will be charged to the applicant" for ordering a credit report. This has resulted in confusion in determining the loan applicant's responsibilities regarding a complete application and will be revised accordingly.

The proposed rule also would authorize the Agency to collect additional information from an applicant that the Agency deems necessary to make a decision on the applicant's request. This provision would apply to all loan applicants. The additional information might include divorce or separation decrees, documentation regarding child support payments, or any other information necessary to evaluate the loan request. Business loans, including direct farm loans, require an assessment of each applicant's request, and there are no one-size-fits-all templates. Agency staff feels constrained by the existing regulations since the regulations do not allow the Agency to identify specific information needed for each application. Rather than attempt to identify every possible piece of information that could ever be needed and then require every applicant to provide that information, thereby increasing the burden on all applicants, the Agency proposes to allow specific information to be requested as deemed necessary.

Applicant Eligibility (Section 764.101)

The proposed rule will also set consistent rules for acceptable composition of entity applicants. Under the existing rules, an entity applicant for an emergency loan must meet the same requirements as applicants for other direct loans, except that the applicant may not be an estate or trust, or a corporation, partnership, or joint operation with over 50 percent of the ownership held by an estate, trust, another corporation, another partnership, or another joint operation. The proposed rule would extend this requirement to entity applicants for all direct loans. The Agency does not foresee that this change would have any significant impact on applicants, but it would ease program implementation by applying the same requirements across all direct loan programs.

An eligibility requirement has been added to require that the applicant, and all entity members in the case of an entity applicant, not own real estate subject to a Federal judgment lien. This change is made to comply with 28 U.S.C. 3201(e). This statutory provision, in part, prohibits debtors with Federal

judgment liens on their property from receiving any loan made or guaranteed by the United States or receiving funds directly from the Federal Government in any program, except funds to which the debtor is entitled as beneficiary. The prohibition remains until the judgment is paid in full or otherwise satisfied.

General Limitations (Section 764.102)

The proposed rule will add the limitation for all Farm Loan Programs direct loans that the tracts to be farmed must be contiguous or the distance between the tracts will not prevent an efficient farming operation. This is a current loan limitation for farm ownership loans and should be applied consistently across loan programs.

The Agency also proposes to add the clarification that loan funds may not be used to establish or support a non-eligible enterprise, even if the non-eligible enterprise contributes to the farm. The term "non-eligible enterprise" will be substituted for the current term "non-farm enterprise".

The proposed rule also would specify that loan funds are to be used for farming operations located in the United States, in accordance with the Consolidated Farm and Rural Development Act (Act). Sections 302 and 311 of the Act, in part, limit farm ownership and operating loans, respectively, to farmers "in the United States" who are United States citizens and to farm entities "engaged primarily and directly in farming or ranching in the United States" whose majority interest is held by United States citizens. Section 321 of the Act similarly limits emergency loans, in part, to established farmers who are citizens of the United States and farm entities in which a majority interest is held by United States citizens where the applicants' farm operations "have been substantially affected by a natural disaster in the United States."

The existing regulations contain eligibility requirements that an applicant be a United States citizen, or lawfully admitted alien and for entity applicants that the operation must "be controlled by farmers or ranchers engaged primarily and directly farming in the United States." The Agency will add in the proposed rule a limitation that loan funds only be used for farm operations in the United States.

Choice of Security (Section 764.103)

Sometimes an applicant has more assets available than are needed to satisfy the Agency's security requirements. The existing regulations have been construed by some to allow the applicant to choose which assets

would secure the Agency's loan. The proposed rule clarifies that the Agency has the authority and responsibility to choose the best security available when there are several options. However, under the proposal, the Agency may honor an applicant's preference that certain assets be taken as security over others provided that the quality and value of the Agency's security position would not be compromised.

Agency Lien on Non-Essential Assets (Section 764.103)

Non-essential assets are those assets that are not essential to the farming operation and do not contribute net income to pay family living expenses. The Agency prefers that an applicant sell non-essential assets and reduce the amount of the loan request. However, there are circumstances when an applicant cannot or will not convert non-essential assets to cash.

Existing regulations require that the Agency take a lien on all non-essential assets with an aggregate value exceeding \$5,000 as security only for emergency loans. The proposed rule would extend this requirement to all direct loans for consistency and would change the value of the non-essential assets from an "aggregate value exceeding \$5,000" to an individual value for each non-essential asset in excess of \$5,000. As under the existing regulations, the lien on non-essential assets would be taken in addition to the lien on assets obtained to meet the adequate or additional security requirements. These changes provide consistency between loan programs and ensure that the Agency does not invest an inordinate amount of time obtaining a lien on assets of minimal value.

Farm Ownership Loan Program (FO) (Subpart D)

The proposed regulations would clarify the benefits of a joint financing arrangement for FO loans. A joint financing agreement is an arrangement between two or more lenders that make separate loans simultaneously to supply the funds required by one applicant. Currently, the regulations describe the joint financing agreement but do not clearly state that a lower interest rate will apply. The proposed rule states that the joint financing agreement allows the Agency to establish a "more favorable interest rate. This interest rate would be at least 4 percent annually."

Operating Loan Program (OL) (Subpart F)

The OL loan eligibility requirement that the applicant and any persons signing the promissory note may not

close an OL loan in more than seven calendar years will be modified to apply only after December 31, 2002. This change is required by section 255 of the Agricultural Risk Protection Act of 2000, Pub. L. 106-224, enacted on June 20, 2000.

The Agency proposes to clarify its policy regarding the difference between the acceptable use of OL and FO funds. Prior to March 3, 1997, (62 FR 9351-9359) the authorized uses for direct OL funds included "not more than \$15,000 in a fiscal year for real estate improvements or repairs." The current regulation provides, in part, that OL funds may be used for paying costs associated with reorganizing a farm or ranch to improve its profitability; purchasing farm or ranch equipment; paying annual operating expenses; and paying farm, ranch or home needs. Under this language, the Agency permits OL funds to be used for real estate improvements or repairs, but the lack of specific guidelines has resulted in confusion regarding the intent of the regulation.

The proposed rule provides that OL funds can be used for minor repairs and improvements to buildings, provided the costs do not exceed \$15,000 per year. More substantial repairs and improvements would have to be made under a FO loan. This policy is consistent with the statutory loan purposes of OL loans in section 312 of the Act.

The Agency proposes to remove the requirement of a nonsupervised bank account for farm or home needs (7 CFR 1941.16) for OL applicants. Prior to the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104-127) (1996 Act), the Act provided that the Agency "shall reserve not more than 10 percent of any loan made under this title or \$5,000 of such loan, whichever is less, to be placed in a nonsupervised bank account which may be used at the discretion of the applicant for necessary family living needs * * *." The 1996 Act amended section 312 of the Act to provide that the Agency "may reserve a portion of any loan * * *." While the amended language maintained the maximum limit of 10 percent of the loan amount or \$5,000, it provides the Agency with some flexibility in implementation. The payment of expenses for family subsistence is an authorized use of loan funds and in many cases, loan funds are provided directly to the applicant to use as specified in the operating plan agreed to by both the applicant and the Agency without the need of a nonsupervised bank account. The proposed rule only requires the use of a supervised bank

account when "special supervision is needed." This is consistent with the Agency's policy of reducing the use of supervised bank accounts. Therefore, the Agency has determined that it is no longer necessary to require the use of a "nonsupervised bank account" in its regulations.

Youth Loan Program (Subpart G)

The Agency proposes to modify the Youth Loan Program regulations in order to make the program easier to use and more accessible. The Youth Loan Program is part of the direct OL and currently has the same regulatory requirements as other OL loans. The Agency proposes to establish a separate subpart for youth loan regulations and streamline the processing of Youth loans.

The Agency makes small loans, up to a maximum of \$5,000, to youths (age 10-21) who likely have no credit background, or at least, have less credit history than the typical adult applicant. The risk of loss to the Agency is low due to the small loan balance. Additionally, some of the information that is routinely required to process loans is generally not available. Therefore, under the proposed rule, the Agency may waive certain application requirements that will not be applicable based on the applicant's age. The Agency is soliciting comments on lowering the youth applicant's age limit to 8 years of age to coincide with the age limitation in participating in 4-H clubs. The Agency will evaluate all comments received on this issue and adopt the age limit suggested on most comments.

The proposed rule also would emphasize the Agency's intention that Youth loans support agriculture-related, educational projects. The existing regulations state that the objective of the Youth Loan Program is to provide credit for rural youths to establish and operate modest, income-producing projects in connection with 4-H clubs, FFA, and similar organizations. This provision has been interpreted to allow Youth loans for projects that are not significantly related to agriculture, therefore, a provision on authorized Youth loan users will be added.

The existing definition of "rural youth" limits the Youth Loan Program to a youth who "does not reside in any city or town with a population of more than 10,000 inhabitants." As part of the Agency's effort to make the Youth Loan Program more accessible, the proposed rule would extend the program to applicants who reside in a rural area, or city or town with a population of 50,000 or fewer people. The Youth Loan Program provides a valuable,

educational opportunity for youth to experience farming. By providing supervised loan funds for agriculture-related projects to a larger pool of youth, the Agency hopes to increase the number of motivated, educated farmers in the future.

The existing security requirements are the same for a Youth loan and an OL loan. Under the existing regulations, additional security up to 150 percent of the loan amount is required if it is available. In the case of a term OL loan, the existing regulations require security with a value that will remain relatively constant over time that is equal to 100 percent of the loan amount. Youth loan applicants generally do not have available security beyond what is purchased or produced with loan funds. The proposed rule would require the Youth loan be secured by only the asset being purchased or produced with the loan funds, unless it is impractical to separately identify the asset from the applicant's other assets or the adequate security requirement has not been met. This provision would eliminate the requirement for additional security in the case of youth loans.

Emergency Loan Program (EM) (Subpart H)

The Agency published a final rule to streamline the EM loan program on January 8, 2002, in 67 FR 791-801. This proposed rule adopts the changes addressed in the discussion of the January 8, 2002, rule. Therefore, while the Agency will accept comments regarding the EM loan program, discussion of the changes is not included in this rule.

Loan Decision and Closing (Subpart I)

The Agency proposes to clarify the actions to be taken when an adverse loan decision is overturned on appeal. Loan approval is not automatic after an Agency loan denial is overturned. The Agency must reevaluate the request based on the findings of the appeal hearing officer and take the next step toward processing the loan application. Current regulations do not specify the process that occurs after a loan denial is overturned. To avoid confusion, the proposed rule states that the Agency will consider the following prior to loan approval: (1) Satisfactory review of current financial information and determination of whether changes in the applicant's financial and agricultural conditions will adversely affect the applicant's operation; (2) determination that the applicant will be able to produce a crop in the production cycle for which the loan is requested (specifically for crop production loans);

and (3) determination that the applicant's operating plan, as modified based on the appeal decision, reflects a feasible plan. The Agency expects that this clarification would create a more efficient and consistent decision process for both the Agency and applicants.

The proposed rule states that the Agency will not approve a loan unless the applicant demonstrates an ability to satisfy its total credit needs. For example, an applicant for a FO loan must demonstrate an ability to obtain any additional credit necessary to operate the farm. This proposed change recognizes that the Agency's loan may be only a part of the applicant's financial needs. It would help ensure that the Agency makes loans only to applicants who have viable operations and are not undue credit risks.

Borrower Training (Subpart J)

Under the existing regulations, the Agency must evaluate the need for production and financial management training when considering a request for a loan or primary loan servicing. Additionally, the Agency cannot require applicants "who have previously received a waiver, or who have previously satisfied the training requirements" to complete training (7 CFR 1924.74(b)(2)). Under the proposed regulations, the Agency is eliminating the requirement to assess the need for training when a borrower requests primary loan servicing. The Agency believes that borrower training, if needed, is most helpful early in the loan process. It is of little or no benefit to a borrower who is already delinquent or in non-monetary default. The Agency, however, would be able to require direct loan applicants who have previously received a waiver or satisfied training requirements to complete training when: (1) The proposed loan is to finance a new enterprise for which the applicant has not had production training or (2) information contained in the loan assessment or obtained from year-end analyses, farm visits, or the borrower's case file indicates that additional production or financial management training is needed. This early detection of the need for additional training will help borrowers become successful and hopefully avoid later delinquencies.

Part 765— Direct Loan Servicing— Regular

Increasing Limited Resource Interest Rates (Subpart B)

Section 1951.25 of 7 CFR 1951 provides "the interest rate may not be changed more often than quarterly."

This limitation is eliminated in this proposed rule. The Agency instead will review borrowers with limited resource rates annually; however, the Agency may process a change in interest rate at any time it becomes aware of a change in the borrower's circumstances. This change will reduce unnecessary administrative burden and provide for annual limited resource rate reviews consistent with the annual process for developing farm operating plans.

Borrower Payments (Subpart D)

The existing regulations are written in a manner that allows inconsistencies in applying payments to the borrower's Agency loans. The proposed rule clarifies that payments will be applied in the following order:

- (1) Annual operating loans;
- (2) Delinquent FLP installments, paying least-secured loans first;
- (3) Non-delinquent FLP installments due in the current operating cycle in order of security priority, paying least-secured loans first; and
- (4) Any future FLP installments due.

The Agency believes these changes will assure that regular payments are applied to protect the Agency's security interest and preserve the financial viability of the borrower's operation.

Protective Advances (Section 765.203)

The existing regulations allow the Agency to make protective advances when necessary to protect its interest in security property. The regulations also provide that protective advances will be added to the outstanding principal when a loan is rescheduled or reamortized, except for advances to pay prior or junior liens other than real estate tax liens. This policy reduces the incentive for borrowers to pay costs such as real estate taxes. Under the proposed rule, the Agency would continue to make protective advances when necessary; however, the Agency will consider the payment of protective advances for reasons not beyond the borrower's control when determining eligibility for future loan and servicing requests. One general loan eligibility requirement is that the applicant will honestly endeavor to carry out the conditions of the loan. Another general loan servicing eligibility requirement is that the borrower has acted in good faith in accordance with borrower loan agreements.

Subordination of Chattel Security (Section 765.205)

Existing regulations published in § 1962.30 of 7 CFR 1962 allow for only one subordination to be outstanding "at any one time in connection with the

same security." Under the proposed rule, the Agency will consider a second subordination of chattel security to enable the borrower to obtain crop insurance when (1) the creditor with the first subordination did not provide for the payment of crop insurance and consents in writing to pay insurance premiums from crops or insurance proceeds, and (2) the borrower assigns insurance proceeds to the Agency or names the Agency in the loss payable clause of the policy. In some areas, banks typically do not lend additional money for the borrower to obtain crop insurance. In those cases, a second subordination is needed for the secured debt on an insurance provider. In addition, crop insurance may not yet be available or has not been chosen when the borrower obtains the loan requiring the first subordination of the Agency's chattel security. The proposed change would allow for second subordinations in these cases. The same requirements for initial subordinations also will apply to these second subordinations.

Unapproved Disposition of Chattel Security (Section 765.304)

A borrower cannot dispose of chattel security in a manner that is inconsistent with the borrower's agreement with the Agency. Under current regulations, when an unauthorized disposition occurs, the borrower must make restitution by paying the Agency the market value of the security, or replacing the security with property of equal or greater value. In addition, the borrower may submit information to allow the Agency to consider post-approval of the disposition, provided the funds were used in accordance with Agency regulations. However, the regulation provides that only one post-approval may be granted during the period covered by the agreement. If the borrower fails to make restitution, provide information to allow for post-approval, or commits a second transgression, the Agency may pursue civil or criminal action, or both. The proposed rule continues to allow the borrower to make restitution or submit information for post-approval; however, the requirement establishing a limit of one transgression per period of the agreement has been eliminated. The Agency believes that one warning is adequate. The proposed rule provides that subsequent violations of the agreement and uncured first violations will be considered when determining eligibility for future loan or servicing assistance. One general loan eligibility requirement is that the applicant will honestly endeavor to carry out the conditions of the loan. One general loan

servicing eligibility requirement is that the borrower has acted in good faith in accordance with borrower loan agreements.

Disposing of a Portion of Real Estate Security (Subpart H)

When the borrower proposes to sell, exchange, or otherwise dispose of a portion of real estate security, the existing regulations require that the portion of real estate security to be disposed of be appraised whenever one of several conditions are met. One of these conditions is that the estimated value of the portion of real estate security proposed for disposition exceeds \$10,000. The Agency implemented this requirement to ensure that the borrower obtains fair market value for the real estate security, and that in turn, the Agency's security interest is protected. In cases where an appraisal is not required, the Agency estimates the value of the real estate based on current real estate values for the area in which the property is located. The proposed rule would increase the maximum from an estimated value of \$10,000 to \$25,000, but as with the existing regulations, provide the Agency discretion, when in its best interest, to obtain an appraisal when the estimated value is below this limit. The Agency proposes modifying this requirement because the cost to the Agency of conducting an appraisal for portions of properties with a value of \$10,000 to \$25,000 often exceeds the benefit of the appraisal. In addition, the proposed rule would require an appraisal of the remaining real estate security only when the Agency believes the value of the remaining real estate is diminished by an amount greater than the market value of the property proposed for disposition. These modifications would reduce the administrative burden associated with handling borrower requests for disposition of real estate security. It would also expedite the Agency approval process for the disposition of real estate security by borrowers. These benefits outweigh any risk to the Agency from not appraising all remaining real estate security.

In addition, the Agency proposes to modify the regulations pertaining to the use of proceeds received from the sale of real estate security. Section 1965.13(e)(4)(iii) of 7 CFR allows the borrower to use up to \$10,000 to develop land not owned by the borrower. The Agency has eliminated this option as an authorized use of proceeds in the proposed rule. The Agency does not believe it is prudent to release proceeds from the sale of its loan

security to develop land on which it does not have a lien.

Non-Program Loan Terms (Section 765.404)

The Agency proposes to extend the term for Non-Program loans when an ineligible applicant assumes an outstanding debt or purchases inventory property. The existing regulations allow the Agency to schedule repayment over 15 years. The Agency proposes to base the term on the applicant's repayment ability, with maximum term of 25 years. This modification will allow the Agency greater flexibility to resolve delinquent accounts through assumption of the indebtedness and when selling inventory property.

Part 766 Direct Loan Servicing—Special

Notification of the Availability of Loan Servicing (Section 766.101)

Section 331D of the Act establishes requirements regarding when the Agency must notify a borrower of the availability of loan servicing and mandates that the initial notice be "contained in the regulations implementing this title." The Agency published a proposed rule (53 FR 18392-18523) announcing regulations implementing section 331D on May 23, 1988. An interim rule (53 FR 35639-35798) was published on September 14, 1988. In both rules, the Agency published the initial loan servicing notification, as well as all subsequent notices associated with the loan servicing process. The Agency chose to publish notices beyond those mandated in the Act for several reasons. First, the Agricultural Credit Act of 1987 provided for substantial changes to the Agency's loan servicing policies. Second, at the time the proposed rule was published, a significant portion of the Agency's direct loan borrowers were delinquent or in some other form of loan default. Incorporating the loan servicing notices in the regulation has resulted in the need for the Agency to go through the rulemaking process to make only minor editorial changes in the notices. Therefore, the Agency is proposing to publish only the initial loan servicing notification in its regulations as required by the Act. All other loan servicing notices will be available to the public in any Agency office.

In addition, § 1962.17(a)(2) of 7 CFR requires that a notice of the availability of loan servicing be provided to the borrower when the Agency denies a request for the release of proceeds from the sale of chattel security. This notification is not required under

§ 331D of the Act. Section 766.101 of the proposed rule, continues the Agency policy of notifying financially distressed and delinquent borrowers of the availability of loan servicing. Therefore, the Agency believes that the additional notification requirement established in § 1962.17 is unnecessary and has removed it.

Financial and Production Records (Section 766.102)

As with loan applicants, the Agency proposes to reduce the burden on borrowers applying for loan servicing by requiring the borrower to submit only 3 years of historical financial and production documentation when applying for loan servicing. Currently, the Agency requires the borrower to submit 5 years of historical financial and production records. The guaranteed loan program regulations require 3 years of financial and production records. To ensure consistency between programs and with industry standards, the Agency is proposing to change the requirement for the direct program to match the guaranteed program requirements, as well as commercial lenders.

Borrower Eligibility for Loan Servicing (Section 766.104)

Section 353 of the Act requires that to be eligible for loan restructuring, the delinquency must be "due to circumstances beyond the control of the borrower, as defined in regulations issued by the Secretary." The Agency has published the loan servicing eligibility requirements in subpart S of 7 CFR part 1951. Section 1951.909(c)(1) lists specific causes of reductions in income "beyond the control of the borrower." The Agency believes that the existing regulations do not adequately address all potential circumstances beyond the control of a borrower. Under the proposed rule, the Agency will expand the existing language which addresses "[n]atural disasters, an outbreak of uncontrollable disease, or uncontrollable insect damage," to include "adverse weather," thus clarifying that it is not required that the farming operation be located in a county designated or declared a natural disaster. In addition, the Agency will add reduction in income due to "damage or destruction of property essential to the operation" and clarify the list of examples as inexhaustive.

Agency Offer To Restructure a Delinquent Borrower (Section 766.106)

Under existing regulations, when the Agency offers to restructure the loans of a delinquent borrower, the notification

includes the right to appeal the Agency offer. If the borrower does not respond to the Agency's offer, the Agency then provides the borrower with a "Notice of Intent to Accelerate." This notification also provides the borrower with appeal rights. Under this rule, the Agency proposes to consolidate the borrower's appeal rights. The Agency's offer to restructure will no longer include appeal rights. Instead, if the borrower does not accept the offer or fails to respond within the established timeframe, the Agency will immediately provide a "Notice of Intent to Accelerate" which will provide the borrower the opportunity to appeal either the Agency's offer, notice of intent to accelerate, or both. Consolidation of the appeal rights will allow for more timely processing of a borrower's request for loan servicing and resolution of delinquent accounts.

Deferral Period (Section 766.109)

The existing regulations stipulate that a deferral period will not exceed 5 annual installments, but are unclear on how the length of a deferral is determined. As a result, the Agency has often granted borrowers 5-year deferrals. In the proposed rule, the maximum deferral term would still be 5 years, but the Agency would grant the shortest deferral term that would result in a feasible operating plan without debt writedown. The length of the deferral period affects the interest accrual and the debt payments after deferral. A longer deferral period increases the interest accrual and the post-deferral payments. The shortest deferral period necessary to generate a feasible plan benefits the borrower by minimizing interest accrual.

Appeal of a Conservation Contract Technical Decision (Section 766.110)

Current regulations are ambiguous regarding the appeal of Natural Resources Conservation Service's technical decisions on a Conservation Contract. The proposed rule would clarify how a borrower may appeal the Natural Resources Conservation Service's technical decisions by stating that such appeals will be handled in accordance with 7 CFR part 780.

This section also will be amended to consider only the present market value of the land without any structural improvements in determining the appropriate amount of debt reduction. This change is needed to prevent inflated conservation contract values based on structural improvements that do not have value in promoting conservation, recreation, or wildlife on the property.

Softwood Timber Loan Program

The Agency proposes to eliminate the Softwood Timber Loan Program regulations. The Softwood Timber Loan Program allows a borrower to convert all or a portion of their debt to a Softwood Timber loan. This conversion allows a borrower who is financially distressed or delinquent on an Agency direct loan to defer loan payments and generate income from planting and harvesting softwood timber to make future loan payments. Since the program's inception in 1983, the Agency has processed only 35 Softwood Timber loans. The Agency believes the use of the Softwood Timber program does not justify the costs associated with maintaining the program. The most significant Agency costs associated with the Softwood Timber Loan Program include costs for training Agency staff, monitoring Softwood Timber loans, maintaining automation programs, and publishing Softwood Timber regulations. It should be noted that Softwood Timber production is confined to certain limited areas within the country as a result of the marginal land requirements. Therefore, many borrowers are not eligible for assistance under this program.

Homestead Protection eligibility (Section 766.153)

The Agency proposes to add a property eligibility requirement for homestead protection. Where voluntary conveyance of the property to the Agency would be required to process homestead protection, the Agency proposes to take title to the property only if it can obtain a positive recovery after paying any outstanding liens of other creditors on the property. This is consistent with the Agency's policy to accept voluntary conveyances only if it is in the Government's best financial interest. If homestead protection is not offered prior to foreclosure, the option is still available after the Agency takes title to the property.

Homestead Protection lease (Section 766.155)

The proposed rule will clarify that homestead protection leases will not be less than 3 years and will not exceed 5 years. These limitations on terms are required by § 352(b)(3) of the Act. The current regulation does not specify the minimum lease term.

Accelerated Repayment Agreements

The existing regulations allow the Agency to enter into an accelerated repayment agreement with a borrower when the Agency considers liquidating an account due to the borrower's failure

to graduate or to use the security as agreed in the operating plan. This agreement is used in lieu of foreclosure when it is in the Agency's best financial interest and when the borrower can meet the accelerated payment schedule. The proposed rule would eliminate accelerated repayment agreements for borrowers who fail to graduate to other credit when able to do so. The Agency believes the overall impact of this change would be minimal as accelerated repayment agreements are rarely executed. Eliminating accelerated repayment agreements would allow the Agency to treat all borrowers in non-monetary default more consistently. The proposed change would encourage qualified borrowers to graduate promptly and encourage borrowers who are not farming to cure the default or voluntarily liquidate their security.

Unauthorized Assistance (Subpart F)

The Agency proposes to change its procedures regarding the resolution of unauthorized assistance cases where a portion of the loan is unauthorized. Under the current regulations, the Agency splits the loan into two accounts: one loan account for the authorized portion of the loan and a second loan account for the unauthorized portion of the loan. The Agency proposes to eliminate this requirement and by internal procedure keep one loan account to eliminate the burden on Agency staff of creating, tracking, and servicing a second loan account. Under the proposed rule, the Agency will attempt to collect the unauthorized assistance, or that portion which the borrower is able to pay within 90 days. If the borrower is unable to repay the entire amount of unauthorized assistance, the Agency may enter into an accelerated repayment plan with the borrower for such amount if the borrower did not intentionally provide incomplete or false information and such action is in the best financial interest of the Government. The debt under the accelerated repayment plan will be treated as a non-program (NP) loan with NP interest rate and terms as short as feasible, but not exceeding the remaining term of the FLP loan. The Agency will not continue with the borrower at existing rates and terms in any case as to the unauthorized portion of the debt. This change in policy is necessary to cure errors resulting in unauthorized assistance regardless of whether borrower or Agency error is involved. The unauthorized amount may be the result of a statutory or a regulatory violation, but in either case it never should have been given to the borrower. An accelerated repayment

plan will allow those borrowers who did not intentionally provide incomplete or false information to the Agency to pay unauthorized assistance over time. If the borrower is able to repay, but refuses to, the borrower will receive the primary loan servicing notices for those in non-monetary default prior to liquidation.

Part 767—Inventory Property Management

Inventory Property Classification

An interim rule published at 62 FR 44393–44404, on August 21, 1997, implemented provisions of the 1996 Act impacting the management and sale of inventory property. The revised regulation provided one method of sale of inventory property, and, thus, eliminated the need to classify inventory property as suitable or surplus. However, the interim rule did not eliminate usage of the terms “suitable” and “surplus” properties elsewhere in the CFR. The proposed rule would eliminate references to suitable and surplus property as necessary.

Chattel Inventory Property Disposition Methods (Section 767.155)

The current regulations allow the Agency to sell inventory chattel property through a sealed bid or regular sale. The proposed rule would eliminate the use of these sale methods and require sale by public auction. An auction is the most efficient and common venue for selling chattel property.

The current regulations state that “[b]eginning farmers or ranchers obtaining special OL [Operating] loan assistance * * * will receive priority in the purchase of farm equipment held in government inventory during the commitment period” (7 CFR 1955.122(a)). The proposed rule eliminates this preference as the Agency’s statutory authority for giving special Operating loan assistance was eliminated by § 616 of the 1996 Act. This change would have a minimal impact on the Agency, beginning farmers, and the general public because of the limited amount of chattels the Agency takes into inventory.

Inventory Property With Important Resources, Special Hazard Areas, and Environmental Risks (Subpart E)

The proposed rule would clarify the Agency’s obligations under the National Environmental Policy Act and other Federal environmental laws. The current regulations require the Agency to inspect all inventory property for

hazardous waste contamination and report certain underground storage tanks, but they do not specify when the Agency will undertake corrective measures. The proposed rule would clarify when the Agency is responsible for cleaning up hazardous waste contamination and removing or permanently closing underground storage tanks. It would clarify that the Agency would undertake corrective measures when: (1) Any known contamination or underground storage tank leakage presents an immediate threat to the health and safety of neighboring property owners or to potential purchasers of the property; and (2) The Agency is selling the property to a beginning farmer and providing credit assistance through a direct or guaranteed loan. Moreover, the proposed rule also states that the Agency would not undertake corrective action if the property is being sold back to a potentially responsible party. By more clearly defining the Agency’s responsibilities, the proposed rule would eliminate questions of liability and reduce the Agency’s risk of being responsible for costly cleanups.

List of Subjects

7 CFR Part 761

Administrative practice and procedure, Agriculture, Authority delegations, Credit, Loan programs—Agriculture.

7 CFR Part 762

Agriculture, Credit, Loan programs—Agriculture.

7 CFR Part 764

Agriculture, Agricultural commodities, Credit, Disaster assistance, livestock, Loan programs—Agriculture, Mortgages.

7 CFR Part 765

Agriculture, Agricultural Commodities, Credit, Livestock, Loan programs—Agriculture.

7 CFR Part 766

Agriculture, Agricultural commodities, Credit, Livestock, Loan programs—Agriculture.

7 CFR Part 767

Agriculture, Credit, Government property, Government property management, Indians—Loans, Loan Programs—Agriculture.

Accordingly, it is proposed that 7 CFR chapter VII be amended as follows:

7 CFR Chapter VII

1. Revise part 761 to read as follows:

PART 761—GENERAL PROGRAM ADMINISTRATION

Subpart A—General Provisions

Sec.

- 761.1 Introduction.
- 761.2 Abbreviations and definitions.
- 761.3 Civil rights.
- 761.4 Conflict of interest.
- 761.5 Restrictions on lobbying.
- 761.6 Appeals.
- 761.7 Appraisals.
- 761.8 Loan limitations.
- 761.9 Interest rates for direct loans.
- 761.10 Planning and performing construction and other development.
- 761.11–761.50 [Reserved]

Subpart B—Supervised Bank Accounts

- 761.51 Establishing a supervised bank account.
- 761.52 Deposits into a supervised bank account.
- 761.53 Interest bearing accounts.
- 761.54 Withdrawals from a supervised bank account.
- 761.55 Closing a supervised bank account.
- 761.56–761.100 [Reserved]

Subpart C—Supervised Credit

- 761.101 Applicability of this subpart.
- 761.102 Borrower recordkeeping, reporting, and supervision.
- 761.103 Farm assessment.
- 761.104 Year-end analysis.
- 761.105–761.200 [Reserved]

Subpart D—Allocation of Farm Loan Programs Funds to State Offices

- 761.201 Purpose.
- 761.202 Timing of the allocation of Farm Ownership and Operating loan funds.
- 761.203 National reserves for Farm Ownership and Operating loans.
- 761.204 Methods of allocating funds to State Offices.
- 761.205 Computing the formula allocation.
- 761.206 Pooling of unobligated funds that have been allocated to State Offices.
- 761.207 Distribution of Farm Ownership and Operating loan funds by State Offices.
- 761.208 Target participation rates for socially disadvantaged groups.
- 761.209 Reservation of Farm Ownership and Operating loan funds for beginning farmers.
- 761.210 Transfer of funds.
- 761.211–761.250 [Reserved]

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart A—General Provisions

§ 761.1 Introduction.

(a) Parts 761 through 767 describe the Agency’s policies for its Farm Loan Programs. The objective of these programs is to provide supervised credit and management assistance to eligible farmers to become owners or operators, or both, of family-sized farms, to continue such operations when credit is not available elsewhere, or to return to normal farming operations after

sustaining substantial losses as a result of a designated or declared disaster. These regulations apply to loan applicants, borrowers, lenders, holders, Agency personnel, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans.

(b) This part describes the Agency's general and administrative policies for its guaranteed and direct Farm Loan Programs. In general, this part addresses issues that affect both guaranteed and direct loan programs, or both direct loan making and direct loan servicing.

§ 761.2 Abbreviations and definitions.

The following abbreviations and definitions are applicable to the Farm Loan Programs policies addressed in parts 761 through 767 unless otherwise noted.

(a) Abbreviations.

ALP Approved Lender Program
CLP Certified Lender Program
DSA Disaster Set-Aside
EE Economic Emergency loan
EM Emergency loan
FLP Farm Loan Programs of the FSA
FO Farm Ownership loan
FSA Farm Service Agency, an Agency of the USDA, including its personnel and any successor Agency.
Lo-Doc Low-Documentation Operating loan
OGC Office of the General Counsel of the USDA
OL Operating loan
PLP Preferred Lender Program
RHF Rural Housing loan for farm service buildings
RL Recreation loan
SAA Shared Appreciation Agreement
SA Shared Appreciation loan
SEL Standard Eligible Lender
ST Softwood Timber loan
SW Soil and Water loan
USDA United States Department of Agriculture
USPAP Uniform Standards of Professional Appraisal Practice.

(b) Definitions.

Abandoned security property is security property that a borrower is not occupying, is not in possession of, or has relinquished control of and has not made arrangements for its care or sale.

Accrued deferred interest is unpaid interest from past due installments posted to a borrower's loan account.

Act is the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*).

Active borrower is a borrower who has an outstanding account in the Agency records, which may include an unsatisfied account balance where a voluntary conveyance was accepted

without the borrower being released from liability or where liquidation did not satisfy the indebtedness.

Additional security is property which provides security in excess of the amount of security value equal to the loan amount.

Adequate security is property which is required to provide security value at least equal to the loan amount.

Adjustment is a form of settlement that reduces the financial obligation to the Agency, conditioned upon the completion of payment of a specified amount at a future time. An adjustment is not a final settlement until all payments have been made under the agreement.

Administrative appraisal review is a review of an appraisal to determine if the appraisal:

(1) Meets applicable Agency requirements; and

(2) Is accurate outside the requirements of standard 3 of USPAP.

Agency is the FSA.

Agreement for the use of proceeds is an agreement between the borrower and the Agency that reflects how, when, and to whom the borrower will sell, exchange, or consume chattel security and the planned use of any proceeds during a specific production cycle.

Agricultural commodity is livestock, livestock products, grains, cotton, oilseeds, dry beans, tobacco, peanuts, sugar beets, sugar cane, fruit, vegetable, forage, tree farming, nursery crops, nuts, aquacultural species, and other plant and animal production, as determined by the Agency.

Allonge is an attachment or an addendum to a promissory note.

Allowable costs are those costs for replacement or repair that are supported by acceptable documentation, including but not limited to written estimates, invoices, and bills.

Applicant, as used in part 762 of this title, is the lender requesting the guarantee. Applicant as used in parts 764 through 767 is the individual or entity applying for a direct loan or direct loan servicing. Applicant as used in subpart H of part 764 is the individual or entity (including each member of the entity unless the context states that it does not apply to each member of the entity) operating the farm at the time of the disaster, who is requesting assistance from the Agency. All requirements of individual applicants apply to all members of the entity individually and collectively unless the context clearly requires otherwise.

Approval official is a field official who has been delegated approval

authorities within applicable loan programs.

Aquaculture is the husbandry of any aquatic organisms (including fish, mollusks, crustaceans or other invertebrates, amphibians, reptiles, or aquatic plants) raised in a controlled or selected environment of which the applicant has exclusive rights to use.

Assignment of guaranteed portion is a process by which the lender transfers the right to receive payments or income on a 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.

Assignment of indemnity is the transfer of rights to compensation under an insurance contract.

Assistance is financial assistance in the form of a direct or guaranteed loan or interest subsidy or servicing action.

Assumption is the act of agreeing to be legally responsible for another party's indebtedness.

Average farm customer is a conventional farm borrower who is required to pledge crops, livestock, and other chattel and real estate security for the loan. This term does not include a high-risk farmer with limited security and management ability who is generally charged a higher interest rate by conventional agricultural lenders. Also, this term does not include a low-risk farm customer who obtains financing on a secured or unsecured basis, who is able to pledge as collateral for a loan items such as savings accounts, time deposits, certificates of deposit, stocks and bonds, and life insurance.

Basic part of an applicant's total farming operation is any single agricultural commodity or livestock production enterprise of an applicant's farming operation which normally generates sufficient income to be considered essential to the success of such farming operation.

Basic security is all farm machinery, equipment, vehicles, foundation and breeding livestock herds and flocks, including replacements, and real estate that serves as security for a loan made or guaranteed by the Agency.

Beginning farmer is an individual or entity who:

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

(2) For OL's, has not operated a farm for more than 10 years. For FO's, including Beginning Farmer Downpayment loans, has operated a farm for more than three years, but not more than 10 years. These requirements apply to all members of an entity;

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

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

(ii) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm. Material and substantial participation requires that the member provide some amount of the management, or labor and management necessary for day-to-day activities, such that if the individual did not provide these inputs, operation of the farm would be seriously impaired;

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

(5) Except for a direct OL applicant, does not own real farm property or who, directly or through interests in family farm entities owns real farm property, the aggregate acreage of which does not exceed 30 percent of the average farm acreage of the farms in the county where the property is located. If the farm is located in more than one county, the average farm acreage of the county where the applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm or if the applicant is an entity, the average farm acreage of the county where the major portion of the farm is located will be used. The average county farm acreage will be determined from the most recent Census of Agriculture;

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

(7) In the case of an entity:

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

(ii) All the members are beginning farmers.

Beginning Farmer Downpayment loan is a type of FO loan made to eligible applicants to finance a portion of a real estate purchase under part 764, subpart E of this chapter.

Borrower (or debtor) is an individual or entity that has an outstanding

obligation to the Agency under any FLP loan, without regard to whether the loan has been accelerated. A borrower includes all parties liable for such obligation owed to the Agency, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed, sold, or conveyed, or who have been discharged of all such obligations owed to the Agency.

Cancellation is the final discharge or, and release of liability for, a financial obligation to the Agency on which no settlement amount has been paid.

Cash flow budget is a projection listing of all anticipated cash inflows (including all farm income, nonfarm income and all loan advances) and all cash outflows (including all farm and nonfarm debt service and other expenses) to be incurred by the borrower during the period of the budget. Cash flow budgets for guaranteed loans under \$125,000 do not require income and expenses itemized by categories. A cash flow budget may be completed either for a 12-month period, a typical production cycle, or the life of the loan, as appropriate. It may also be prepared with a breakdown of cash inflows and outflows for each month of the review period and include the expected outstanding operating credit balance for the end of each month. The latter type is referred to as a "monthly cash flow budget."

Chattel or real estate essential to the farming operation is chattel or real estate that would be necessary for the applicant to continue operating the farm after the disaster in a manner similar to the manner in which the farm was operated immediately prior to the disaster, as determined by the Agency.

Chattel security is property that may consist of, but is not limited to: crops; livestock; aquacultural species; farm equipment; inventory; accounts; contract rights; general intangibles; and supplies that are covered by financing statements and security agreements, chattel mortgages, and other security instruments.

Civil action is a court proceeding to protect the Agency's financial interests. A civil action does not include bankruptcy and similar proceedings to impound and distribute the bankrupt's assets to creditors and probate or similar proceedings to settle and distribute estates of incompetents or of decedents under a will, or otherwise, and pay claims of creditors.

Closing agent is the attorney or title insurance company selected by the applicant and approved by the Agency to provide closing services for the

proposed loan or servicing action. Unless a title insurance company provides loan closing services, the term "title company" does not include "title insurance company."

Coastal Barrier Resources Area is an area of land identified as part of the national Coastal Barrier Resources System under the Coastal Barrier Resources Act of 1980.

Commercial classified account is an Agency account of such quality that commercial lenders would likely view the loan as a profitable investment.

Compromise is the settlement of an Agency debt or claim by a lump-sum payment of less than the total amount owed in satisfaction of the debt or claim.

Conditional commitment is the Agency's commitment to a lender that the material the lender has submitted is approved subject to the completion of all listed conditions and requirements.

Conservation Contract is a contract under which a borrower agrees to set aside land for conservation, recreation or wildlife purposes in exchange for reduction of a portion of an outstanding Agency debt.

Conservation Contract review team is comprised by the appropriate offices of FSA, the Natural Resources Conservation Service, U.S. Fish and Wildlife Service, State Fish and Wildlife Agencies, Conservation Districts, National Park Service, Forest Service, State Historic Preservation Officer, State Conservation Agencies, State Environmental Protection Agency, State Natural Resource Agencies, adjacent public landowner, and any other entity that may have an interest and qualifies to be a management authority for a proposed conservation contract.

Consolidation is the process of combining the outstanding principal and interest balance of two or more loans of the same type made for operating purposes.

Construction is work such as erecting, repairing, remodeling, relocating, adding to, or salvaging any building or structure, and the installing, repairing, or adding to heating and electrical systems, water systems, sewage disposal systems, walks, steps, and driveways.

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

Cooperative is an entity that has farming as its purpose, whose members have agreed to share the profits of the farming enterprise, and is recognized as a farm cooperative by the laws of the

state in which the entity will operate a farm.

Corporation is a private domestic corporation created and organized under the laws of the state in which it will operate a farm.

Cosigner is 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 is a local administrative subdivision of a State or similar political subdivision of the United States.

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

Criminal action is the prosecution by the United States to exact punishment in the form of fines or imprisonment for alleged violation of criminal statutes.

Crop allotment or quota is a farm's share of an approved national tobacco or peanut allotment or quota.

Current market value buyout is the termination of a borrower's loan obligations to the Agency in exchange for payment of the current appraised value of the borrower's security property and nonessential assets, less any prior liens and liquidation costs.

Debt forgiveness is a reduction or termination of a debt under the Act in a manner that results in a loss to the Agency (excluding a consolidation, rescheduling, reamortization, or deferral), through:

- (1) Writing down or writing off a debt pursuant to 7 U.S.C. 2001;
- (2) Compromising, adjusting, reducing, or charging off a debt or claim pursuant to 7 U.S.C. 1981; or
- (3) Paying a loss pursuant to 7 U.S.C. 2005 on a FLP loan guaranteed by the Agency.

Debt reduction through a conservation easement or contract is not considered debt forgiveness for loan making or servicing purposes.

Debt instrument is a collective term that includes, but is not limited to, promissory notes and assumption agreements.

Debt settlement is a compromise, adjustment, or cancellation of an Agency debt.

Debt service margin is the difference between all of the borrower's expected expenditures in a planning period (including farm operating expenses, capital expenses, essential family living expenses, and debt payments) and the

borrower's projected funds available to pay all expenses and payments.

Debt writedown is the reduction in the amount of the borrower's debt to that amount that the Agency determines to be collectible based on an analysis of the security value and the borrower's ability to pay.

Default is the failure of a borrower to observe any agreement with the Agency, or the lender in the case of a guaranteed loan, as contained in promissory notes, security instruments, and similar or related instruments.

Deferral is a postponement of the payment of interest or principal, or both.

Delinquent borrower is a borrower with any portion of a payment to the Agency that is at least 30 days past due.

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

Disaster is an event of unusual and adverse weather conditions or other natural phenomena, or quarantine, that has substantially affected producers of agricultural commodities by causing physical property or production losses in a county, or similar political subdivision, that triggered the inclusion of such county or political subdivision in the disaster area as designated by the Agency.

Disaster area is the county or counties declared or designated as a disaster area for EM loan assistance as a result of disaster related losses. This area includes counties contiguous to those counties declared or designated as disaster areas.

Disaster set-aside is the deferral of payment of an annual loan installment to the Agency to the end of the loan term in accordance with part 766, subpart B of this chapter.

Disaster yield is the per-acre yield of an agricultural commodity for the farming operation during the production period when the disaster occurred.

Economic Emergency loan is a loan that was made or guaranteed to an eligible applicant to allow for continuation of the operation during an economic emergency which was caused by a lack of agricultural credit or an unfavorable relationship between production costs and prices received for agricultural commodities. EE loans are not currently funded, however, such outstanding loans are serviced by the Agency or the lender in the case of a guaranteed EE loan.

Emergency loan is a loan made to eligible applicants who have incurred substantial financial losses from a disaster.

Entity is a corporation, partnership, joint operation, cooperative, limited liability company or trust.

Essential family household expenses are the expenses associated with providing food, clothing, and shelter necessary to maintain the borrower and the immediate family of the borrower.

Essential family living and farm operating expenses:

(1) Essential expenses are those which are basic, crucial or indispensable.

(2) In determining what are essential family living and farm operating expenses for a particular family and farm, the Agency will consider the following:

(i) The individual borrower's operation;

(ii) What is typical for that type of operation in the area; and

(iii) What is an efficient method of production considering the borrower's resources.

(3) Essential family living and farm operating expenses include, but are not limited to essential: household operating expenses; food, including lunches; clothing and personal care; health and medical expenses, including medical insurance; house repair and sanitation; school and church expenses; transportation; hired labor; machinery repair; farm building and fence repair; interest on loans and credit or purchase agreement; rent on equipment, land, and buildings; feed for animals; seed, fertilizer, pesticides, herbicides, spray materials and other necessary farm supplies; livestock expenses, including medical supplies, artificial insemination, and veterinarian bills; machinery hire; fuel and oil; personal property taxes; real estate taxes; water charges; personal, property and crop insurance; auto and truck operating expenses; and utility payments.

Established farmer is a farmer who is the operator of the farming operation (in the case of a farming operation operated by an entity, its members as a group) who:

(1) Actively participated in the operation and the management, including but not limited to, exercising control over, making decisions regarding, and establishing the direction of, the farming operation at the time of the disaster;

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

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

(4) In the case of an entity, is primarily engaged in farming and has over 50 percent of its gross income from all sources from its farming operation based on the farming operation's projected cash flow for the next crop

year or the next 12-month period, as mutually determined; and

(5) Is not:

(i) An entity with an ownership interest of 50 percent or more held by one or more entities; or

(ii) An integrated livestock, poultry, or fish processor who operates primarily and directly as a commercial business through contracts or business arrangements with farmers, except a grower under contract with an integrator or processor may be considered an established farmer, provided the operation is not managed by an outside full-time manager or management service and such loans shall be based on the applicant's share of the agricultural production as set forth in the contract;

(iii) An operation which employs a full time farm manager.

False information is information provided by an applicant, borrower or other source to the Agency that the applicant or borrower knows to be incorrect.

Family farm is a farm that:

(1) Produces agricultural commodities for sale in sufficient quantities so that it is recognized as a farm rather than a rural residence, and in a typical year generates net cash income that improves the family's standard of living;

(2) Generates or will generate in a typical year annual gross farm income which does not exceed the greater of \$750,000 or 95 percent of the statistical distribution of the income of farms in the State with gross sales in excess of \$10,000 based on the farm data and survey of farm economic factors most recently published by the National Agricultural Statistics Service, USDA, or any successor agency;

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

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

(A) The borrower and persons related to the borrower by blood or marriage, for an individual borrower; or

(B) The members responsible for operating the farm, in the case of an entity.

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

(A) The borrower and persons related to the borrower by blood or marriage, for an individual borrower; or

(B) The members responsible for operating the farm, in the case of an entity.

(4) May use full-time hired labor in amounts only to supplement family labor.

(5) May use reasonable amounts of temporary labor for seasonal peak workload periods or intermittently for labor intensive activities.

Family living expenses are the costs of providing for the needs of family members.

Family members are 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 is a tract or tracts of land, improvements, and other appurtenances that are used or will be used in the production of crops, livestock, or aquaculture products for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term "farm" also includes the term "ranch." It may also include land and improvements and facilities used in a non-eligible enterprise or the residence which, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.

Farm income is the proceeds from the sale of agricultural commodities that are normally sold annually during the regular course of business, such as crops, feeder livestock, and other farm products.

Farm Loan Programs are Agency programs to make, guarantee, and service loans to family farmers authorized under the Act or Agency regulations.

Farm Ownership loan is a loan made to eligible applicants to purchase, enlarge, or make capital improvements to family farms, or to promote soil and water conservation and protection. It also includes the Beginning Farmer Downpayment loan.

Farm Programs payments are benefits received under FSA for any commodity, disaster, or cost share programs.

Farmer is an individual, corporation, partnership, joint operation, cooperative, trust, or limited liability company who is engaged in farming.

Feasible plan is when an applicant or borrower's cash flow budget indicates that there is sufficient cash inflow to pay all cash outflow 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.

Financially distressed borrower is a borrower unable to make payments as planned for the current or next business accounting period or to project a

feasible plan of operation for the next business accounting period.

Financially viable operation is an operation that, with Agency assistance, is projected to improve its financial condition over a period of time to the point that the operator can obtain commercial credit without further Agency assistance. Such an operation must generate sufficient income to:

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

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

(3) Provide for replacement of capital items; and

(4) Provide for long-term financial growth.

Fixture is an item of personal property attached to real estate in such a way that it cannot be removed without defacing or dismantling the structure, or damaging the item itself.

Floodplains are lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year. The base floodplain shall be used to designate the 100-year floodplain (one percent chance floodplain). The critical floodplain is defined as the 500-year floodplain (0.2 percent chance floodplain).

Foreclosed is the completed act of selling security either under the power of sale in the security instrument or through court proceedings.

Foreclosure sale is the act of selling security either under the power of sale in the security instrument or through court proceedings.

Good faith is the borrower's adherence to all written agreements with the Agency including, but not limited to, loan application, loan agreement, security instruments, operating plans, and agreements for use of proceeds. The Agency considers a borrower to act in good faith, however, when the borrower is unable to adhere to all agreements due to circumstances beyond the borrower's control. Good faith does not include fraud, waste, or conversion.

Graduation is the payment in full of all direct FLP loans made for operating, real estate, or both purposes by refinancing with other credit sources either with or without an Agency guarantee.

Guaranteed loan is a loan made and serviced by a lender for which the Agency has entered into a Lender's Agreement and for which the Agency has issued a Loan Guarantee. This term

also includes guaranteed lines of credit except where otherwise indicated.

Hazard insurance is insurance covering 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 Agency security or that is required by law.

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

Homestead protection is the borrower's right to lease with an option to purchase the principal residence and up to 10 acres of adjoining land which secured an FLP loan.

Homestead protection property is the principal residence that secured an FLP loan and is subject to homestead protection.

Household contents are essential household items necessary to maintain viable living quarters. Household contents exclude all luxury items such as jewelry, furs, antiques, paintings, etc.

Inaccurate information is incorrect information provided by a borrower or other source inadvertently without intent to obtain benefits fraudulently.

Indian reservation is all land located within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; trust or restricted land located within the boundaries of a former reservation of a Federally recognized Indian Tribe in the State of Oklahoma; or all Indian allotments the Indian titles to which have not been extinguished if such allotments are subject to the jurisdiction of a Federally recognized Indian Tribe.

In-house expenses are 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 is the signed agreement between the Agency and the lender containing the terms and conditions under which the Agency will make interest assistance payments to the lender on behalf of the guaranteed loan borrower.

Interest assistance anniversary date is the 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 is the yearly review process that includes an analysis of the borrower's farming operation and need for continued interest assistance, completion of the needs test, and a request for continuation of interest assistance.

Inventory property is real estate and chattel property and related rights to which the Federal Government has acquired title.

Joint financing arrangement is an arrangement in which two or more lenders make separate loans simultaneously to supply the funds required by one applicant.

Joint operation is an operation run by individuals who have agreed to operate a farm or farms together as an entity, sharing equally or unequally land, labor, equipment, expenses, or income, or some combination of these items. The real and personal property is owned separately or jointly by the individuals.

Leasehold is a right to use farm property for a specific period of time under conditions provided for in a lease agreement.

Lender is the organization making and servicing a loan, or advancing and servicing a line of credit, that is guaranteed by the Agency. The lender is also the party requesting a guarantee.

Lender's Agreement is the appropriate Agency form executed by the Agency and the lender setting forth their loan responsibilities when the Loan Guarantee is issued.

Lien is a legally enforceable hold or claim on the property of another obtained as security for the repayment of indebtedness or an encumbrance on property to enforce payment of an obligation.

Limited resource interest rate is an interest rate below the Agency's regular interest rate available to farmers who are unable to develop a feasible plan at regular rates and are requesting:

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

Line of Credit Agreement is a contract between the borrower and the lender that contains certain lender and borrower conditions, limitations, and responsibilities for credit extension and acceptance where loan principal balance may fluctuate throughout the term of the contract.

Liquidation is the act of selling all security for recovery of amounts owed to the Agency.

Liquidation expenses are the costs of an appraisal, due diligence evaluation, environmental assessment, outside attorney fees, and other costs incurred as a direct result of liquidating the security for a direct or guaranteed loan. Liquidation expenses do not include internal Agency expenses for a direct loan or in-house expenses for a guaranteed loan.

Livestock is a member of the animal kingdom, or product thereof, as determined by the Agency.

Loan Agreement is a contract between the borrower and the lender that contains certain lender and borrower agreements, conditions, limitations, and responsibilities for credit extension and acceptance.

Loan applicant is the party applying to a lender for a guaranteed loan or to the Agency for a direct loan.

Loan servicing programs include primary loan servicing programs, conservation contract, current market value buyout, and homestead protection.

Loan transaction is any loan approval or servicing action.

Loss claim is 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 is the net amount of loan loss claims paid on guaranteed OL, FO, and SW loans made in the past seven years divided by the total loan amount of all such loans made in the past seven years.

Low-Documentation Operating loan is an OL loan made to eligible applicants based on reduced documentation.

Majority interest is more than a 50 percent interest in an entity held by an individual or group of individuals.

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

Mineral right is an ownership interest in minerals in land, with or without ownership of the surface of the land.

Mortgage is a legal instrument giving the lender a security interest or lien on real or personal property of any kind. The term "mortgage" also includes the terms "deed of trust" and "security agreement."

Natural disaster is unusual and adverse weather conditions or natural phenomena that has substantially affected farmers by causing severe physical or production, or both, losses.

Negligent servicing is servicing that fails to include those actions that are considered normal industry standards of loan management or comply with the lender's agreement or the guarantee.

Negligent servicing includes failure to act or failure to act in a timely manner consistent with actions of a reasonable lender in loan making, servicing, and collection.

Negotiated sale is a sale in which there is a bargaining of price or terms, or both.

Net recovery value of security property is the market value of the security property, assuming that the lender in the case of a guaranteed loan, or the Agency in the case of a direct loan, will acquire the property and sell it for its highest and best use, less the lender's or the Agency's costs of property acquisition, retention, maintenance, and liquidation. The net recovery value of non-essential assets is the appraised market value of the assets less any prior liens and any selling costs which may include such items as taxes due, commissions and advertising costs. However, no deduction is made for maintenance of the property while in inventory.

Non-capitalized interest is interest on a loan that was not reclassified as principal at the time of restructuring. Between October 10, 1988, and November 27, 1990, the Agency did not capitalize interest that was less than 90 days past due when restructuring a direct loan.

Non-eligible enterprise is a business that meets the criteria in any one of the following categories:

(1) Production of exotic or non-farm animals. An enterprise which produces animals, birds, or aquatic organisms or their products which are not ordinarily associated with human consumption, fiber, or draft use, or for which a ready market does not exist.

(2) Production or marketing of non-farm goods or services. An enterprise which might be agriculturally related but does not produce or market products from the farm.

(3) Processing or marketing of farm products when the majority of the commodities processed or marketed are not produced by the farm operation.

Non-essential assets are assets in which the borrower has an ownership interest, that:

- (1) Do not contribute to:
 - (i) Income to pay essential family living expenses, or
 - (ii) The farming operation; and
- (2) Are not exempt from judgment creditors or in a bankruptcy action.

Non-program loan is a loan made to a borrower who does not meet the eligibility requirements for a program loan.

Normal income security is all security not considered basic security, including crops, livestock, poultry products, other

property covered by Agency liens that is sold in conjunction with the operation of a farm or other business, and Farm Program payments.

Normal production yield as used in 7 CFR 764 for EM loans, is:

(1) The per acre actual production history of the crops produced by the farming operation used to determine Federal Crop Insurance payments or payment under the Non-Insured Assistance Program for the production year during which the disaster occurred;

(2) The applicant's own production records or the records of production on which FSA farm program payments are made contained in the applicant's farm program file for the previous three years, when the actual production history is not available;

(3) The county average production yield, when the production records outlined in (1) and (2) above are not available.

Note is written evidence of indebtedness, such as a promissory note, bond, or assumption agreement.

Operating loan is a loan made to an eligible applicant to assist with the financial costs of operating a farm.

Owner-operator is the individual or entity that owns the land on which a farm is located and provides the labor, management, and capital to operate the farm. An entity may have to receive authorization from the State in which the farm is located to be the owner-operator of the farm.

Partnership is any entity consisting of two or more individuals who have agreed to operate a farm as one business unit. The entity must be recognized as a partnership by the laws of the State in which the partnership will operate a farm. It also must be authorized to own both real and personal property and to incur debt in its own name.

Physical loss is verifiable damage or destruction with respect to real estate or chattel, excluding annual growing crops.

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

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

Presidentially-designated emergency is a major disaster or emergency designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*).

Primary loan servicing programs include:

(1) Loan consolidation and rescheduling, or reamortization;

(2) Interest rate reduction, including use of the limited resource rate program;

(3) Deferral;

(4) Write-down of the principal or accumulated interest; or

(5) Any combination of the above.

Production cycle is the time it takes to produce an agricultural commodity from the beginning of the production process until it matures.

Production loss is verifiable damage or destruction with respect to annual growing crops.

Program loans include FO, OL, and EM. In addition, for loan servicing purposes the term includes existing loans for the following programs no longer funded: SW, RL, EE, ST, and RHF.

Prospectus consists of a transmittal letter, a current balance sheet and projected year's budget which is sent to commercial lenders to determine their interest in financing or refinancing specific Agency direct loan applicants and borrowers.

Protective advance is an advance made by the Agency or a lender to protect or preserve the collateral from loss or deterioration.

Quarantine is a quarantine imposed by the Secretary under the Plant Protection Act or animal quarantine laws (as defined in section 2509 of the Food, Agriculture, Conservation and Trade Act of 1990).

Reamortization is the rewriting of rates or terms, or both, of a loan made for real estate purposes.

Reasonable rates and terms are those commercial rates and terms that other farmers are expected to meet when borrowing from a commercial lender or private source for a similar purpose and similar period of time. The "similar period of time" of available commercial loans will be measured against, but need not be the same as, the remaining or original term of the loan.

Recoverable cost is a loan cost expense chargeable to either a borrower or property account.

Recreation loan is a loan that was made to eligible applicants to assist in the conversion of all or a portion of the farm they owned or operated to outdoor income producing recreation enterprises to supplement or supplant farm income. RL's are no longer funded, however, such outstanding loans are serviced by the Agency.

Redemption right is a Federal or state right to reclaim property for a period of time established by law, by paying the amount paid at the involuntary sale plus accrued interest and costs.

Related by blood or marriage is being connected to one another as husband, wife, parent, child, brother, or sister.

Relative is the spouse and anyone having one the following relationships to an applicant or borrower: Parent, son, daughter, sibling, stepparent, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, uncle, aunt, nephew, niece, grandparent, grandson, granddaughter, or the spouses of the foregoing.

Repossessed property is security property in the Agency's custody.

Rescheduling is the rewriting of the rates or terms, or both, of a loan made for operating purposes.

Restructuring see primary loan servicing programs.

Rural youth is a person who has reached the age of 10 but has not reached the age of 21 and resides in a rural area or any city or town with a population of 50,000 or fewer people.

Security is property or right of any kind that is subject to a real or personal property lien. Any reference to "collateral" or "security property" will be considered a reference to the term "security."

Security value is the value of real estate or chattel property (less the value of any prior liens) used as security for an Agency loan.

Shared Appreciation Agreement is an agreement between the Agency, or a lender in the case of a guaranteed loan, and a borrower that requires the borrower who has received a writedown on a direct or guaranteed loan to repay the Agency or the lender some or all of the writedown received, based on a percentage of any increase in the value of the real estate securing an SAA at a future date.

Socially disadvantaged applicant is an applicant who is a member of a socially disadvantaged group. For entity applicants, the majority interest must be held by socially disadvantaged individuals.

Socially disadvantaged group is a group whose members have been subject to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities.

Softwood Timber Program loan was available to eligible financially distressed borrowers who would take marginal land, including highly erodible land, out of production of agricultural commodities other than the production of softwood timber. ST loans are no longer available, however, such outstanding loans are serviced by the Agency.

Soil and Water loan is a loan that was made to an eligible applicant to

encourage and facilitate the improvement, protection, and proper use of farmland by providing financing for soil conservation, water development, conservation, and use; forestation; drainage of farmland; the establishment and improvement of permanent pasture; pollution abatement and control; and other related measures consistent with all Federal, State and local environmental standards. SW loans are no longer funded, however, such outstanding loans are serviced by the Agency.

Subordination is a creditor's temporary relinquishment of all or a portion of its lien priority in favor of another creditor, providing the other creditor with a priority right to collect a debt of a specific dollar amount from the sale of the same collateral.

Subsequent loan is any FLP loan processed by the Agency after an initial loan of the same type has been made to the same borrower.

Supervised bank account is an account with a financial institution established through a deposit agreement entered into between the borrower, the Agency, and the financial institution.

Technical appraisal review is a review of an appraisal to determine if such appraisal meets the requirements of USPAP pursuant to standard 3 of USPAP.

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

Trust is an entity that under applicable state law meets the criteria of being a trust of any kind but does not meet the criteria of being a farm cooperative, private domestic corporation, partnership, or joint operation.

Unaccounted for security is security for a direct or guaranteed loan that was misplaced, stolen, sold, or otherwise missing, where replacement security was not obtained or the proceeds from its sale have not been applied to the loan.

Unauthorized assistance is any loan, loan servicing action, lower interest rate, loan guarantee, or subsidy received by a borrower, or lender in the case of a loan guarantee, for which the borrower or lender was not eligible, or which the Agency obligated from the wrong appropriation or fund. Unauthorized assistance may result from borrower, lender, or Agency error.

Uniform Standards of Professional Appraisal Practice (USPAP) are standards governing the preparation,

reporting, and reviewing of appraisals established by the Appraisal Foundation pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

United States is 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.

U.S. Attorney is an attorney for the United States Department of Justice.

Veteran is 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.

Wetlands are those lands or areas of land as determined by the Natural Resources Conservation Service to meet the requirements provided in section 1201(18) of the Food Security Act of 1985.

Working capital is cash available to conduct normal daily farming operations including but not limited to feed, seed, fertilizer, pesticides, farm supplies, cooperative stock, and cash rent.

Youth loan is an operating type loan made to an eligible rural youth applicant to finance a modest income-producing agricultural project.

§ 761.3 Civil rights.

Part 15d of this title contains applicable regulations pertaining to civil rights and filing of discrimination complaints by program participants.

§ 761.4 Conflict of interest.

The Agency enforces conflict of interest policies to maintain high standards of honesty, integrity, and impartiality in the making and servicing of direct and guaranteed loans. These requirements are established in 5 CFR parts 2635 and 8301.

§ 761.5 Restrictions on lobbying.

A person who applies for or receives a loan made or guaranteed by the Agency must comply with the restrictions on lobbying in 7 CFR 3018.

§ 761.6 Appeals.

A direct loan applicant or borrower, or guaranteed loan applicant or borrower and lender, except as provided in 7 CFR 762, may request an appeal or review of an adverse decision made by the Agency in accordance with 7 CFR 11 and 780.

§ 761.7 Appraisals.

(a) *General.* This section describes Agency requirements for:

(1) Real estate and chattel appraisals made in connection with the making

and servicing of direct FLP and Non-program loans; and

(2) Appraisal reviews conducted on appraisals made in connection with the making and servicing of direct and guaranteed FLP and Non-program loans.

(b) *Appraisal standards.* (1) Real estate appraisals, technical appraisal reviews and their respective forms must comply with the standards contained in USPAP, as well as applicable Agency regulations and procedures for the specific FLP activity involved. A current copy of USPAP along with other applicable procedures and regulations are available for review in each Agency State Office.

(2) When a chattel appraisal is required it must be completed on an applicable Agency form (available in each Agency State Office) or other format containing the same information.

(c) *Use of an existing real estate appraisal.* When a real estate appraisal is required, the Agency will use the existing real estate appraisal to reach loan making or servicing decisions under either of the following conditions:

(1) The appraisal was completed within the previous 12 months and the Agency determines that:

(i) The appraisal meets the provisions of this section and the applicable Agency loan making or servicing requirements, and

(ii) Current market values have remained stable since the appraisal was completed; or

(2) The appraisal was not completed in the previous 12 months, but has been updated by the appraiser or appraisal firm that completed the appraisal, and both the update and original appraisal were completed in accordance with USPAP.

(d) *Appraisal reviews.* (1) With respect to a real estate appraisal, the Agency may conduct a technical appraisal review or an administrative appraisal review, or both.

(2) With respect to a chattel appraisal, the Agency may conduct an administrative appraisal review.

§ 761.8 Loan limitations.

(a) *Dollar limits.* The outstanding principal balances for a farm loan applicant or anyone who will sign the 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) *Guaranteed loan limit.* 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.

§ 761.9 Interest rates for direct loans.

Interest rates for all direct loans are set in accordance with the Act. A copy of the current interest rates may be obtained in any Agency office.

§ 761.10 Planning and performing construction and other development.

(a) *Purpose.* This section describes Agency policies regarding the planning and performing of construction and other development work performed with:

(1) Direct FLP loan funds; or
(2) Insurance or other proceeds resulting from damage or loss to direct loan security.

(b) *Funds for development work.* The applicant or borrower:

(1) Must provide the Agency with an estimate of the total cash cost of all planned development prior to loan approval;

(2) Must show proof of sufficient funds to pay for the total cash cost of all planned development at or before loan closing;

(3) Must not incur any debts for materials or labor or make any expenditures for development purposes prior to loan closing with the expectation of being reimbursed from Agency loan funds.

(c) *Scheduling, planning, and completing development work.* The applicant or borrower:

(1) Is responsible for scheduling and planning development work in a manner acceptable to the Agency and must furnish the Agency information fully describing the planned development, the proposed schedule, and the manner in which it will be accomplished;

(2) Is responsible for obtaining all necessary State and local construction approvals and permits prior to loan closing;

(3) Must ensure that all development work meets the environmental requirements established in 7 CFR 799;

(4) Must schedule development work to start as soon as feasible after the loan is closed and be completed as quickly as practicable;

(5) Is responsible for obtaining any required technical services from qualified technicians, tradespeople, and contractors.

(d) *Construction and repair standards.* (1) The construction of a new building and the alteration or repair of an existing building must conform with industry-acceptable construction practices and standards.

(2) All improvements to a property must conform to applicable laws, ordinances, codes, and regulations.

(3) The applicant or borrower is responsible for selecting a design standard that meets all applicable local and state laws, ordinances, codes, and regulations, including building, plumbing, mechanical, electrical, water, and waste management.

(4) The Agency will require drawings, specifications, and estimates to fully describe the work as necessary to protect the Government's financial interests. The drawings and specifications must identify any specific development standards being used. Such information must be sufficiently complete to avoid any misunderstanding as to the extent, kind, and quality of work to be performed.

(5) The Agency will require technical data, tests, or engineering evaluations to support the design of the development as necessary to protect the Government's financial interests.

(6) The Agency will require the applicant or borrower to provide written certification that final drawings and specifications conform with the applicable development standard as necessary to protect the Government's financial interests. Certification shall be obtained from individuals or organizations trained and experienced in the compliance, interpretation, or enforcement of the applicable development standards, such as licensed architects, professional engineers, persons certified by a relevant national model code organization, authorized local building officials, or national code organizations.

(e) *Inspection.* (1) The applicant or borrower is responsible for inspecting development work as necessary to protect their interest.

(2) The applicant or borrower must provide the Agency written certification that the development conforms to the plans and good construction practices, and complies with applicable laws, ordinances, codes and regulations.

(3) The Agency will require the applicant or borrower to obtain professional inspection services during construction as necessary to protect the Government's financial interests.

(4) Agency inspections do not create or imply any duty or obligation of the Government to the applicant or borrower.

(f) *Warranty and lien waivers.* The applicant or borrower must obtain and submit all lien waivers on any construction before the Agency will issue final payment.

(g) *Surety.* The Agency will require surety to guarantee both payment and performance for construction contracts as necessary to protect the Government's financial interests.

(h) *Changing the planned development.* An applicant or borrower must request, in writing, Agency approval for any change to a planned development. The Agency will approve a change if all of the following are met:

(1) It will not reduce the value of the Agency's security;

(2) It will not adversely affect the soundness of the operation;

(3) It complies with all applicable laws and regulations;

(4) It is for an authorized loan purpose;

(5) It is within the scope of the original loan proposal;

(6) If required, documentation that sufficient funding for the full amount of the planned development is approved and available;

(7) If required, surety to cover the full revised development amount has been provided; and

(8) The modification is certified in accordance with § 761.10(d)(6).

§ 761.11–761.50 [Reserved]

Subpart B—Supervised Bank Accounts

§ 761.51 Establishing a supervised bank account.

(a) The borrower may select the financial institution in which the account will be established, provided the institution is Federally insured. If the borrower does not select an institution, the Agency will choose one.

(b) Only one supervised bank account will be established for any borrower.

(c) When two co-borrowers sign an FLP note and security agreement, the supervised bank account will be established as a joint tenancy account with right of survivorship from which either borrower can withdraw funds.

(d) If the funds to be deposited into the account cause the balance to exceed \$100,000, the financial institution must agree to pledge acceptable collateral with the Federal Reserve Bank for the excess over \$100,000, before the deposit is made.

(1) If the financial institution is not a member of the Federal Reserve System, the institution must pledge acceptable collateral with a correspondent bank that is a member of the Federal Reserve System. The correspondent bank must inform the Federal Reserve Bank that it is holding securities pledged for the supervised bank account in accordance with 31 CFR part 202 (Treasury Circular 176).

(2) When the balance in the account has been reduced, the financial institution may request a release of part or all of the collateral, as applicable, from the Agency.

§ 761.52 Deposits into a supervised bank account.

(a) Checks or money orders may be deposited into a supervised bank account provided they are not payable:

(1) Solely to the Federal Government or any agency thereof; or

(2) To the Treasury of the United States as a joint payee.

(b) Loan proceeds may be deposited electronically.

§ 761.53 Interest bearing accounts.

(a) A supervised bank account shall, if possible, be established as an interest bearing deposit account provided that the funds will not be immediately disbursed, and the account is held jointly by the borrower and the Agency if this arrangement will benefit the borrower.

(b) Interest earned on a supervised bank account will be treated as normal income security.

§ 761.54 Withdrawals from a supervised bank account.

(a) The Agency will authorize a withdrawal from the supervised bank account for an approved purpose after ensuring that:

(1) Sufficient funds in the supervised bank account are available;

(2) No loan proceeds are disbursed prior to confirmation of proper lien position, except to pay for lien search if needed;

(3) No checks are issued to "cash"; and

(4) The use of funds is consistent with the current farm operating plan or other agreement with the Agency.

(b) A check must be signed by the borrower with countersignature of the Agency, except as provided in paragraph (c) of this section. All checks must bear the legend "countersigned, not as co-maker or endorser."

(c) The Agency will withdraw funds from a supervised bank account without borrower counter signature only for the following purposes:

(1) For application on Agency indebtedness;

(2) To refund Agency loan funds;

(3) To protect the Agency's lien or security;

(4) To accomplish a purpose for which such advance was made; or

(5) In the case of a deceased borrower, continue to pay necessary farm expenses to protect Agency security in conjunction with the borrower's estate.

§ 761.55 Closing a supervised bank account.

(a) If the supervised bank account is no longer needed and the loan account is not paid in full, the Agency will determine the source of the remaining funds in the supervised bank account. If the funds are determined to be:

(1) Loan funds and the balance is less than \$100, the Agency will provide the

balance to the borrower to use for authorized loan purposes;

(2) Loan funds and the balance is \$100 or greater, the Agency will apply the balance to the FLP loan;

(3) Normal income funds, the Agency will apply the balance to the remaining current year's scheduled payments and pay any balance to the borrower; and

(4) Basic security funds, the Agency will apply the balance to the FLP loan as an extra payment or the borrower may apply the balance toward the purchase of basic security, provided the Agency obtains a lien on such security and its security position is not diminished.

(b) If the borrower is uncooperative in closing a supervised bank account, the Agency will make written demand to the financial institution for the balance and apply it in accordance with paragraph (a) of this section.

(c) In the event of a borrower's death, the Agency may:

(1) Apply the balance to the borrower's FLP loan;

(2) Continue with a remaining borrower, provided the supervised bank account was established as a joint tenancy with right of survivorship account;

(3) Refund unobligated balances from other creditors in the supervised bank account for specific operating purposes in accordance with any prior written agreement between the Agency and the deceased borrower; or

(4) Continue to pay expenses from the supervised bank account in conjunction with the borrower's estate.

§§ 761.56–761.100 [Reserved]

Subpart C—Supervised Credit

§ 761.101 Applicability of this subpart.

This subpart applies to all direct FLP applicants and borrowers, except borrowers with only Non-program loans.

§ 761.102 Borrower recordkeeping, reporting, and supervision.

(a) A borrower must maintain accurate records sufficient to make informed management decisions and to allow the Agency to render loan making and servicing decisions in accordance with Agency regulations. These records must include the following:

(1) Production (*e.g.*, total and per unit for livestock and crops);

(2) Revenues, by source;

(3) Other sources of funds, including borrowed funds;

(4) Operating expenses;

(5) Interest;

(6) Family living expenses;

(7) Profit and loss;

(8) Tax-related information;

(9) Capital expenses;

(10) Outstanding debt; and

(11) Debt repayment.

(b) A borrower also must agree in writing to:

(1) Cooperate with the Agency and comply with all supervisory agreements, farm assessments, farm operating plans, year-end analyses, and all other loan-related requirements and documents;

(2) Submit financial information and an updated farm operating plan when requested by the Agency;

(3) Immediately notify the Agency of any proposed or actual significant change in the farming operation;

(4) Within 30 days, notify the Agency of any significant changes in family income, expenses, or the development of problem situations; and

(5) Immediately report any losses or proposed significant changes in the security for Agency loans.

(c) If the borrower fails to comply with these requirements, unless due to reasons outside the borrower's control, the non-compliance will be a factor to be considered in determining eligibility for future Agency loans, servicing, or both.

§ 761.103 Farm assessment.

(a) The Agency assesses each operation to determine the applicant's financial condition, organizational structure, management strengths and weaknesses, appropriate levels of Agency oversight, credit counseling needs, and training needs. The applicant will participate in developing the assessment.

(b) The initial assessment must evaluate, at a minimum, the:

(1) Farm organization and key personnel qualifications;

(2) Type of farming operation;

(3) Goals for the farming operation;

(4) Adequacy of real estate, including facilities, to conduct the operation;

(5) Adequacy of chattel property used to conduct the operation;

(6) Historical performance;

(7) Farm operating plan;

(8) Loan evaluation;

(9) Supervisory plan; and

(10) Training plan.

(c) An assessment update must be prepared for each subsequent loan. The update must include a farm operating plan, a loan evaluation, and any other items discussed in paragraph (b) of this section that have significantly changed since the initial assessment.

(d) The Agency reviews the assessment to determine a borrower's progress at least annually. A review will be in the form of an office visit, field visit, letter, phone conversation, or year-

end analysis, as determined by the Agency.

§ 761.104 Year-end analysis.

(a) The Agency conducts a year-end analysis at its discretion or if the borrower:

(1) Has received any direct loan, chattel subordination, or primary loan servicing action within the last year;

(2) Is financially distressed or delinquent;

(3) Has a loan deferred, excluding deferral of an installment under subpart B of part 766; or

(4) Is receiving a limited resource interest rate on any loan.

(b) To the extent practicable, the year-end analysis will be completed within 60 days after the end of the business year or farm budget planning period and must include:

(1) An analysis comparing actual income, expenses, and production to projected income, expenses, and production for the preceding production cycle; and

(2) An updated farm operating plan.

§§ 761.105–761.200 [Reserved]

Subpart D—Allocation of Farm Loan Programs Funds to State Offices

§ 761.201 Purpose.

(a) This subpart describes the methods and formulas the Agency uses to allocate FLP funds to State Offices. State funding information is available for review in any State Office.

(b) This subpart addresses:

(1) The allocation of funds for direct and guaranteed:

(i) FO loans,

(ii) OL loans;

(2) The establishment of socially disadvantaged target participation rates; and

(3) The reservation of loan funds for beginning farmers.

(c) The Agency does not allocate EM loan funds to State Offices but makes funds available following a designated or declared disaster. EM loan funds are available on a first-come first-served basis.

§ 761.202 Timing of the allocation of Farm Ownership and Operating loan funds.

The Agency's National Office allocates funds for FO and OL loans to the State Offices on a fiscal year basis, as made available by the Office of Management and Budget. However, the National Office will retain control over the funds when funding or administrative constraints make allocation to State Offices impractical.

§ 761.203 National reserves for Farm Ownership and Operating loans.

(a) *Reservation of funds.* At the start of each fiscal year, the National Office reserves a portion of the funds available for each direct and guaranteed loan program. These reserves enable the Agency to meet unexpected or justifiable program needs during the fiscal year.

(b) *Allocation of reserved funds.* The National Office distributes funds from the reserve to one or more State Offices to meet a program need or Agency objective.

§ 761.204 Methods of allocating funds to State Offices.

FO and OL loan funds are allocated to State Offices using one or more of the following allocation methods:

(a) Formula allocation, if data, as specified in § 761.205, is available to use the formula for the State.

(b) Administrative allocation, if the Agency cannot adequately meet program objectives with a formula allocation. The National Office determines the amount of an administrative allocation on a case-by-case basis.

(c) Base allocation, to ensure funding for at least one loan in each State, District, or County Office. In making a base allocation, the National Office may use criteria other than those used in the formula allocation, such as historical Agency funding information.

§ 761.205 Computing the formula allocation.

(a) The formula allocation for FO or OL loan funds is equal to:

(1) The amount available for allocation by the Agency minus the amounts held in the National Office reserve and distributed by base and administrative allocation, multiplied by

(2) The State Factor, which represents the percentage of the total amount of the funds for a loan program that the National Office allocates to a State Office.

$$\text{formula allocation} = (\text{amount available for allocation} - \text{national reserve} - \text{base allocation} - \text{administrative allocation}) \times \text{State Factor}$$

(b) To calculate the State Factor, the Agency:

(1) Uses the following criteria, data sources, and weights:

Criteria	Loan type criterion is used for	Data source	Weight for farm ownership loans (percent)	Weight for operating loans (percent)
Farm operators with sales of \$2,500–\$39,999 and less than 200 days work off the farm.	FO and OL loans	U.S. Census of Agriculture	15	15
Farm operators with sales of \$40,000 or more and less than 200 days work off farm.	FO and OL loans	U.S. Census of Agriculture	35	35
Tenant farm operators	FO and OL loans	U.S. Census of Agriculture	25	20
Three-year average net farm income	FO and OL loans	USDA Economic Research Service	15	15
Value of farm real estate assets	FO loans	USDA Economic Research Service	10	N/A
Value of farm non-real estate assets	OL loans	USDA Economic Research Service	N/A	15

(2) Determines each State's percentage of the national total for each criterion;

(3) Multiplies the percentage for each State determined in paragraph (b)(2) of this section by the applicable weight for that criterion;

(4) Sums the weighted criteria for each State to obtain the State factor.

§ 761.206 Pooling of unobligated funds that have been allocated to State Offices.

The Agency periodically pools unobligated FO and OL loan funds that have been allocated to State Offices. When pooling these funds, the Agency places all unobligated funds in the appropriate National Office reserve. The pooled funds may be retained in the national reserve or be reallocated to the States.

§ 761.207 Distribution of Farm Ownership and Operating loan funds by State Offices.

A State Office may distribute its allocation of loan funds to District or County level using the same allocation methods that are available to the National Office. State Offices may reserve a portion of the funds to meet unexpected or justifiable program needs during the fiscal year.

§ 761.208 Target participation rates for socially disadvantaged groups.

(a) *General policies.* (1) *FO and OL loan rates.* The Agency establishes target participation rates for providing FO and OL loans to members of socially disadvantaged groups.

(2) *State and County rates.* The Agency sets the target participation rates for State and County levels annually.

(3) *Indian Reservations.* When distributing loan funds in counties within Indian reservations, the Agency will allocate the funds on a reservation-wide basis.

(4) *Reservation of funds.* The Agency reserves and allocates sufficient loan funds to achieve these target participation rates. The Agency may also use funds that are not reserved and allocated for socially disadvantaged groups to make or guarantee loans to members of socially disadvantaged groups.

(b) *FO loan target participation rate for socially disadvantaged groups based on ethnicity or race.*

(1) *State participation rate.* The FO loan target participation rate for socially disadvantaged groups based on ethnicity or race in each State is equal

to the percent of the total rural population in the State who are members of such socially disadvantaged groups.

(2) *County participation rate.* The FO loan target participation rate for socially disadvantaged groups based on ethnicity or race in each county is equal to the percent of rural population in the county who are members of such socially disadvantaged groups.

(c) *OL loan target participation rate for socially disadvantaged groups based on ethnicity or race.*

(1) *State participation rate.* The OL loan target participation rate for socially disadvantaged groups based on ethnicity or race in each State is equal to the percent of the total number of farmers in the State who are members of such socially disadvantaged groups.

(2) *County participation rate.* The OL loan target participation rate for socially disadvantaged groups based on ethnicity or race in each county is equal to the percent of the total number of farmers in the county who are members of socially disadvantaged ethnic groups.

(d) *Target participation rate for women farmers.* (1) *State participation rate.* The target participation rate for

women farmers in each State is equal to the percent of farmers in the State who are women.

(2) *County participation rate.* The target participation rate for women farmers in each county is equal to the percent of farmers in the county who are women.

(3) *Consideration of women that are current and potential farmers.* In developing target participation rates for women, the Agency will consider the number of women who are current farmers and potential farmers.

§ 761.209 Reservation of Farm Ownership and Operating loan funds for beginning farmers.

Each fiscal year, the Agency reserves a portion of direct and guaranteed FO and OL loan funds for beginning farmers in accordance with section 346(b)(2) of the Act.

§ 761.210 Transfer of funds.

(a) If sufficient unsubsidized guaranteed OL funds are available, then beginning on:

(1) August 1 of each fiscal year, the Agency will use available unsubsidized guaranteed OL loan funds to make approved direct FO loans to beginning farmers under the Beginning Farmer Downpayment loan program; and

(2) September 1 of each fiscal year the Agency will use available unsubsidized guaranteed OL loan funds to make approved direct FO loans to beginning farmers.

(b) On September 1 of each fiscal year, the Agency may utilize unused EM loan funds to fund credit sales. The Agency may not transfer any EM loan funds resulting from supplemental appropriations.

§§ 761.211–761.250 [Reserved]

PART 762—GUARANTEED FARM LOANS

2. The authority citation for part 762 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, 42 U.S.C. 1480.

3. Amend § 762.101 as follows:

a. Revise paragraphs (b) and (c) introductory text;

b. Remove paragraph (c)(1) and redesignate paragraphs (c)(2) as (c)(1), (c)(2)(i) through (iii) as (c)(1)(i) through (iii) and (c)(3) as (c)(2).

The revised text reads as follows:

§ 762.101 Introduction

(b) Lender list. 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.

(c) Lender classification.

* * * * *

4. Revise § 762.102 to read as follows:

§ 762.102 Abbreviations and definitions.

Abbreviations and definitions for terms used in this part are provided in § 761.2 of this chapter.

5. Add paragraph (g) to § 762.110 to read as follows:

§ 762.110 Loan applications.

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(g) *Market Placement Program.* When the Agency determines that a direct loan applicant or borrower may qualify for guaranteed credit, the Agency may submit the applicant or borrower's financial information to one or more guaranteed lenders. If a lender indicates interest in providing financing to the applicant or borrower through the guaranteed loan program, the Agency will assist in completing the application for a guarantee.

§ 762.120 [Amended]

6. In paragraph (a) of § 762.120, remove the word "CONTACT" and add in its place the word "Act."

§ 762.121 [Amended]

7. In paragraph (b)(1) of § 762.121, remove the words "1943, subpart A, of this title" and add in their place, the words "part 764 of this chapter."

8. Amend § 762.122 by revising paragraph (a).

§ 762.122 Loan limitations.

(a) *Dollar limits.* Maximum loan limits are published in § 761.8.

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§ 762.124 [Amended]

9. In paragraph (e)(3) of § 762.124, remove the words "1943, subpart A, of this title" and add in their place, the words "part 764 of this chapter."

§ 762.128 [Amended]

10. Amend § 762.128 as follows:

a. In paragraph (a), remove the words, "1940, subpart G of this title" and add in their place, the words "part 799 of this chapter."

b. In paragraph (c)(3), remove the words, "part 1940, subpart G, and part 1901, subpart F, of this title" and add in their place, the words "part 799 of this chapter."

c. In paragraph (c)(4), remove the word "CONTACT" and add in its place the word "Act."

PART 763—[RESERVED]

11. Add and reserve part 763.

12. Revise part 764 to read as follows:

PART 764—DIRECT LOAN MAKING

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764.2 Types of loans.

764.3 Abbreviations and definitions.

764.4–764.50 [Reserved]

Subpart B—Loan Application Process

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764.52 Processing an incomplete application.

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764.251 Operating loan uses.

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764.256–764.300 [Reserved]

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764.301 Youth loan uses.

764.302 Eligibility requirements.

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Subpart H—Emergency Loan Program

764.351 Emergency loan uses.

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764.357–764.400 [Reserved]

Subpart I—Loan Decision and Closing

764.401 Loan decision.

764.402 Loan closing.

764.403–764.450 [Reserved]

Subpart J—Borrower Training and Training Vendor Requirements

764.451 Purpose.

764.452 Borrower training requirements.

764.453 Agency waiver of training requirements.

764.454 Actions that a borrower must take when training is required.

764.455 Potential training vendors.

764.456 Applying to be a vendor.

764.457 Vendor Requirements.

764.458 Vendor approval.

764.459 Evaluation of borrower progress.

764.460–764.500 [Reserved]

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart A—Overview

§ 764.1 Purpose.

This part describes the Agency's policies for making direct FLP loans.

§ 764.2 Types of loans.

The Agency makes the following types of loans:

- (a) FO, including Beginning Farmer Downpayment loans;
- (b) OL, including Youth loans; and
- (c) EM.

§ 764.3 Abbreviations and definitions.

Abbreviations and definitions for terms used in this part are provided in § 761.2 of this chapter.

§§ 764.4–764.50 [Reserved]

Subpart B—Loan Application Process

§ 764.51 Loan application.

(a) A complete loan application, except as provided in paragraphs (b) through (d) of this section, will include:

(1) The completed Agency application form;

(2) If the applicant is an entity:

(i) A complete list of entity members showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or stock held in the entity by each member, or the percentage of interest in the entity held by each member;

(ii) A current personal financial statement from each member of the entity;

(iii) A current financial statement from the entity itself;

(iv) A copy of the entity's charter or any entity agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (good standing), and a resolution adopted by the Board of Directors or entity members authorizing

specified officers of the entity to apply for and obtain the desired loan and execute required debt, security and other loan instruments and agreements;

(3) A written description of the applicant's farm training and experience, including each entity member who will be involved in managing or operating the farm;

(4) The last 3 years of farm financial records, unless the applicant has been farming less than 3 years;

(5) The last 3 years of farm production records, unless the applicant has been farming less than 3 years;

(6) Documentation that the applicant and each member of an entity applicant cannot obtain sufficient credit elsewhere on reasonable rates and terms, including a loan guaranteed by the Agency;

(7) Documentation of compliance with the Agency's environmental regulations contained in 7 CFR 799;

(8) Verification of all non-farm income of the applicant;

(9) The farm's operating plan, including the projected cash flow budget reflecting production, income, expenses, and loan repayment plan;

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

(11) Payment to the Agency for ordering a credit report on the applicant;

(12) Verification of all debts of the applicant;

(13) Any additional information deemed necessary by the Agency to effectively evaluate the applicant's eligibility and plan of operation; and

(14) For EM loans, a statement of loss or damage on the appropriate Agency form.

(b) For a Lo-Doc OL request, the applicant must:

(1) Be current on all payments to all creditors including the Agency (if an Agency borrower);

(2) Have not received primary loan servicing on any Agency debt within the past 5 years; and

(3) Meet one of the following sets of criteria:

(i) The loan requested is \$50,000 or less and the total outstanding Agency OL loan debt at the time of loan closing will be less than \$100,000; or

(ii) The loan requested is to pay annual operating expenses and the applicant is an existing Agency borrower who has received and timely repaid at least two previous annual OL loans from the Agency.

(4) Submit items (1), (2), (7), (9), and (11) of paragraph (a) of this section. The

Agency may require a Lo-Doc applicant to submit any other information listed in paragraph (a) of this section as needed to make a determination on the loan application.

(c) For a youth loan request:

(1) The applicant must submit items (1), (7), (8), (9) and (10) of paragraph (a) of this section.

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

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

(d) The applicant need not submit any information under this section that already exists in the applicant's Agency file and is still current.

§ 764.52 Processing an incomplete application.

(a) Within 10 days of receipt of an incomplete application, the Agency will provide the applicant written notice of any additional information which must be provided. The applicant must provide the additional information within 20 calendar days of the date of this notice.

(b) If the additional information is not received, the Agency will provide written notice that the application will be withdrawn if the information is not received within 10 calendar days of the date of this second notice.

§ 764.53 Processing the complete application.

Upon receiving a complete loan application, the Agency will:

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

(b) Provide written notice to the applicant that the application is complete.

§ 764.54 Acting on complete applications.

(a) Within 60 calendar days after receiving a complete loan application, the Agency will complete the processing of the loan request.

(b) If, based on the Agency's review of the application, it appears the applicant's credit needs could be met through the guaranteed loan program, the Agency will assist the applicant in securing guaranteed loan assistance under the market placement program in accordance with § 762.110(g) of this chapter.

(c) In the absence of funds for a direct loan program, the Agency will keep an approved loan application on file until funding is available. At least annually

the Agency will contact the applicant to determine if the Agency should retain the application or if the applicant wants the application withdrawn.

(d) If funding becomes available, the Agency will resume processing of approved loans in accordance with this part.

§ 764.55 Preferences when there is limited funding.

(a) *First priority.* When there is a shortage of loan funds, approved applications will be funded in the order of the date the application was received, whether or not complete.

(b) *Secondary priorities.* If two or more applications were received on the same date, the Agency will give preference to:

(1) First, an applicant who is a veteran of any war, as defined in 38 U.S.C. 101(12);

(2) Second, an applicant who is not a veteran, but:

(i) Has a dependent family;

(ii) Is able to make a down payment;

or

(iii) Owns livestock and farm implements necessary to farm successfully.

(3) Third, to other eligible applicants.

§§ 764.56—764.100 [Reserved]

Subpart C—Requirements for All Direct Program Loans

§ 764.101 General eligibility requirements.

FLP loan applicants must meet all of the following requirements, unless otherwise provided in the eligibility requirements for the particular type of loan.

(a) *No prior drug convictions.* The applicant, and all entity members, in the case of an entity applicant, must not have been convicted under Federal or state law, within the last five crop years, of planting, cultivating, growing, producing, harvesting, or storing a controlled substance, as defined at 21 CFR part 1308.

(b) *Legal capacity.* The applicant must possess the legal capacity to incur the obligation of the loan. A Youth loan applicant will incur full personal liability upon execution of the promissory note without regard to the applicant's minority status.

(c) *Citizenship.* The applicant must be a citizen of the United States, United States non-citizen national, or a qualified alien under applicable Federal immigration laws. For an entity applicant, the majority of the entity must be owned by members meeting the citizenship test or other entities that are domestically owned.

(d) *Credit history.* The applicant must have acceptable credit history demonstrated by debt repayment. A history of failures to repay past debts as they came due when the ability to repay was within the applicant's control will demonstrate unacceptable credit history. As part of the credit history the Agency will determine whether the applicant will make a sincere effort to repay the loan, devote the effort required to carry out the terms and conditions of the loan, and deal with the Agency in good faith. This includes the applicant providing current, complete, and truthful information when applying for assistance and in all past dealings with the Agency. In making this determination, the Agency may examine whether the applicant has properly fulfilled its obligations to other parties, including other agencies of the Federal Government.

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

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

(2) An applicant's property interests, income, and significant nonessential assets.

(f) *Not delinquent on Federal debt.* Except for EM loan applicants, the applicant, and anyone who will execute the promissory note, must not be delinquent on any Federal debt, other than a debt under the Internal Revenue Code of 1986 at the time of loan closing. However, debt under the Internal Revenue Code of 1986, will be considered in determining creditworthiness and ability to repay.

(g) *Outstanding judgements.* The applicant, and anyone who will execute the promissory note, must have no outstanding unpaid judgements obtained by the United States in any court. Such judgements do not include those filed as a result of action in the United States Tax Courts.

(h) *Managerial ability.* The applicant must have sufficient managerial ability to assure reasonable prospects of loan repayment, as determined by the Agency. The applicant must demonstrate this managerial ability by education, on-the-job training, or farming experience within the last five years. The farming experience must cover at least one entire production cycle.

(i) *Borrower training.* The applicant must agree to meet the training requirements in subpart J of this part.

(j) *Family farm.* Depending on the type of loan requested, the applicant must be the owner-operator or tenant-operator of a family farm after the loan is closed. For an entity applicant:

(1) All members must be involved in the operation;

(2) Any other farming operations, in which any of the members are owners, must be no larger than a family farm; and

(3) Except for EM loans, the collective interests of the members may be larger than a family farm only if:

(i) Each member's ownership interest is not larger than a family farm; and

(ii) All of the members of the entity are related by blood or marriage.

(k) *Entity composition.* If the applicant is an entity, the entity must not be:

(1) An estate or trust, unless the trust would qualify as a joint operation;

(2) A corporation, partnership, or joint operation with 50 percent or more of the ownership held solely or in a combination by another estate, trust, corporation, a partnership, or a joint operation; and

(3) An integrated livestock, poultry, or aquaculture processor who operates primarily and directly as commercial business through contracts or business arrangements with farmers.

§ 764.102 General limitations.

(a) *Program limitations.* Limitations specific to each loan program are contained in subparts D through H of this part.

(b) *General limitations.* (1) *Maximum loan limits.* The total principal balance owed to the Agency at any one time by the applicant, or any one who will sign the promissory note, cannot exceed the limits established in § 761.8.

(2) *Loan funds used in the United States.* The funds from the Agency loan must be used for farming operations located in the United States.

(3) *Highly erodible land and wetlands conversion.* The Agency will not make a loan for any purpose that contributes to excessive erosion of highly erodible land, as determined by the Agency, or to the conversion of wetlands to produce an agricultural commodity.

(4) *Construction.* Any construction financed by the Agency must comply with the standards established in § 761.10.

(5) *Noncontiguous tracts.* The Agency will not make a loan if the distance between the tracts to be farmed will prevent an efficient farming operation.

(6) *Non-eligible enterprise.* Loan funds will not be used to establish or support

a non-eligible enterprise, even if the non-eligible enterprise contributes to the farm.

§ 764.103 General security requirements.

(a) *Program security requirements.* Security requirements specific to each loan program are outlined in subparts D through H.

(b) *Security requirements.* (1) *Adequate security.* All loans must be secured by assets having a security value equal to 100 percent of the loan amount, except for EM loans as provided in subpart H of this part. If the applicant's assets do not provide adequate security, the Agency may accept:

(i) A pledge of security from a third party; or
(ii) Interests in property not owned by the applicant (such as leases that provide a mortgageable value, water rights, easements, mineral rights, and royalties).

(2) *Additional security.* An additional amount of security up to 150 percent of the loan amount will be taken when available, except for beginning farmer downpayment loans and youth loans.

(3) *Choice of security.* The Agency will choose the best security available when there are several alternatives that meet the Agency's security requirements.

(4) *Non-essential assets.* The Agency will take a lien on all assets that are not essential to the farming operation and are not being converted to cash to reduce the loan amount when each such asset has a value in excess of \$5,000. The value of this security is not included in the Agency's additional security requirement stated in paragraph (b)(2) of this section. This requirement does not apply to beginning farmer downpayment loans and youth loans.

§ 764.104 General real estate security requirements.

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

(1) The prior lien does not contain any provisions that may jeopardize the Agency's interest or an applicant's ability to repay the Agency loan;
(2) Prior lienholders agree to notify the Agency prior to foreclosure;
(3) The applicant must agree not to increase an existing prior lien without the written consent of the Agency; and
(4) Equity in the collateral exists.

(b) *Real estate held under a purchase contract.* If the real estate offered as security is held under a recorded purchase contract:

(1) The applicant must provide a security interest in the real estate.

(2) The applicant and the purchase contract holder must agree in writing that any insurance proceeds received for real estate losses will be used only for one or more of the following purposes:

(i) To replace or repair the damaged real estate improvements which are essential to the farming operation;
(ii) To make other essential real estate improvements; or
(iii) To pay any prior real estate lien, including the purchase contract.

(3) The purchase contract must provide the applicant with possession, control and beneficial use of the property, and entitle the applicant to marketable title upon fulfillment of the contract terms.

(4) The purchase contract must not:
(i) Be subject to summary cancellation upon default;

(ii) Contain provisions which jeopardize the Agency's security position, or the applicant's ability to repay the loan.

(5) The purchase contract holder must agree in writing:

(i) Not to sell or voluntarily transfer their interest without prior written consent of the Agency;

(ii) Not to encumber or cause any liens to be levied against the property;

(iii) Not to take any action to accelerate, forfeit, or foreclose the applicant's interest in the security property until a specified period of time after notifying the Agency of the intent to do so;

(iv) To consent to the Agency making the loan and taking a security interest in the applicant's interest under the purchase contract as security for the Agency loan;

(v) Not to take any action to foreclose or forfeit the interest of the applicant under the purchase contract because the Agency has acquired the applicant's interest by foreclosure or voluntary conveyance, or because the Agency has subsequently sold or assigned the applicant's interest to a third party who will assume the applicant's obligations under the purchase contract;

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

(vii) To notify the Agency in writing of any breach by the applicant; and

(viii) To give the Agency the option to rectify the conditions that amount to a

breach within 30 days after the date the Agency receives written notice of the breach.

(c) *Tribal lands held in trust or restricted.* The Agency will take security on tribal real estate held in trust or of restricted status, provided that the United States Bureau of Indian Affairs provides a title report and approves the lien.

(d) *Security for more than one loan.* The same real estate may be pledged as security for more than one direct or guaranteed loan.

(e) *Loans secured by leaseholds.* A loan may be secured by a mortgage on a leasehold, if the leasehold has negotiable value and can be mortgaged.

§ 764.105 General chattel security requirements.

The same chattel may be pledged as security for more than one direct or guaranteed loan.

§ 764.106 Exceptions to security requirements.

Notwithstanding any other provision of this part, the Agency will not take a security interest:

(a) When adequate security is otherwise available and the lien will prevent the applicant from obtaining credit from other sources;

(b) When the property could have significant environmental problems or costs as described in 7 CFR 799;

(c) When the Agency cannot obtain a valid lien;

(d) When the property is the applicant's personal residence and appurtenances and:

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

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

(e) When the property is subsistence livestock, cash, special collateral accounts the applicant uses for the farming operation, retirement accounts, personal vehicles necessary for family living, household goods, or small equipment such as hand tools and lawn mowers; or

(f) On marginal land and timber that secures an outstanding ST loan.

§ 764.107 General appraisal requirements for real estate and chattel.

(a) *Establishing value for real estate.* The value of real estate will be established by an appraisal completed in accordance with § 761.7.

(b) *Establishing value for chattels.* The value of chattels will be established as follows:

(1) *Annual production.* The security value of annual livestock and crop production is presumed to be 100 percent of the projected annual income generated from livestock and crop production.

(2) *Livestock and equipment.* The value of livestock and equipment will be established by an appraisal completed in accordance with § 761.7.

§ 764.108 General insurance requirements.

(a) The applicant must obtain and maintain insurance equal to the lesser of the value of the security at the time of loan closing, or the principal of the loan.

(b) All security, except growing crops, must be covered by hazard insurance if it is readily available (sold by insurance agents in the applicant's normal trade area) and economically feasible.

(c) Real estate security located in flood or mudslide prone areas must be covered by flood or mudslide insurance.

(d) Prior to closing the loan, the applicant must have obtained at least the catastrophic risk protection level of crop insurance coverage for the crop during the crop year for which the loan is sought for each crop which is a basic part of the applicant's total farming operation, if such insurance is available, unless the applicant executes a written waiver of any emergency crop loss assistance with respect to such crop.

(e) Growing crops used to provide adequate security must be covered by crop insurance, if such insurance is available.

(f) The applicant must:

(1) List the Agency as loss payee for the insurance indemnity payment or as a beneficiary of a mortgagee loss payable clause; and

(2) In the case of crop insurance, execute an assignment of indemnity in favor of the Agency.

§§ 764.109–764.150 [Reserved]

Subpart D—Farm Ownership Loan Program

§ 764.151 Farm Ownership loan uses.

FO loan funds may only be used to:

(a) Acquire or enlarge a farm or make a down payment on a farm;

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

economic life upon termination of the lease;

(c) Promote soil and water conservation and protection;

(d) Pay loan closing costs;

(e) Refinance a bridge loan if the following conditions are met:

(1) The applicant obtained the loan to be refinanced to purchase a farm after a direct FO was approved;

(2) Direct FO funds were not available to fund the loan at the time of approval;

(3) The loan to be refinanced is temporary financing; and

(4) The loan was made by a commercial or cooperative lender.

§ 764.152 Eligibility requirements.

The applicant:

(a) Must comply with the general eligibility requirements contained in § 764.101;

(b) And anyone who will sign the promissory note, must not have received debt forgiveness from the Agency on any direct or guaranteed loan;

(c) Must be the owner and operator of the farm after the loan is closed;

(d) Except as provided in paragraph (f) of this section, must have participated in the business operations of a farm if the applicant has:

(1) Been the owner, manager or operator of a farm business for the year's complete production and marketing cycles as evidenced by tax returns, FSA farm records or similar documentation;

(2) Been employed as a farm manager or farm management consultant for the year's complete production and marketing cycles; or

(3) Participated in the operation of a farm by virtue of being raised on a farm or having worked on a farm with significant responsibility for the day-to-day decisions for the year's complete production and marketing cycle, which may include selection of seed varieties, weed control programs, input suppliers, or livestock feeding programs or decisions to replace or repair equipment.

(e) And anyone who will sign the promissory note:

(1) Has never received a direct FO loan; or

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

(f) And anyone who will sign the promissory note had direct FO loans outstanding on April 4, 1996:

(1) For less than five years, then the applicant is eligible for FO loans through April 4, 2006.

(2) For five years or more, then the applicant is no longer eligible for direct FO loans.

§ 764.153 Limitations.

The applicant must:

(a) Comply with the general limitations contained in § 764.102;

(b) Have dwellings and other buildings necessary for the planned operation of the farm available for use after the loan is made.

§ 764.154 Rates and Terms.

(a) *Rates.* (1) The interest rate is the Agency's Direct Farm Ownership rate, available in each Agency office.

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

(3) If the FO loan is part of a joint financing arrangement and the amount of the Agency's loan does not exceed 50 percent of the total amount financed, the Agency will use the Farm Ownership participation rate, available in each Agency office.

(b) *Terms.* The Agency schedules repayment of an FO loan based on the applicant's ability to repay and the useful life of the security. In no event will the term be more than 40 years from the date of the note.

§ 764.155 Security requirements.

An FO loan must:

(a) Be secured in accordance with §§ 764.103 through 764.106;

(b) Be secured, at a minimum, by real estate being purchased or improved.

§§ 764.156–764.200 [Reserved]

Subpart E—Beginning Farmer Downpayment Loan Program

§ 764.201 Beginning Farmer Downpayment loan uses.

Beginning Farmer Downpayment loan funds may be used to partially finance the purchase of a family-sized farm by an eligible beginning farmer.

§ 764.202 Eligibility requirements.

The applicant:

(a) Must comply with the general eligibility requirements established at § 764.101;

(b) And anyone who will sign the promissory note, must not have received debt forgiveness from the Agency on any direct or guaranteed loan;

(c) Must be the owner and operator of the farm after the loan is closed;

(d) Must be a beginning farmer.

§ 764.203 Limitations.

(a) The applicant must:

(1) Comply with the general limitations established at § 764.102; and

(2) Must provide a minimum downpayment of 10 percent of the purchase price of the farm.

(b) The purchase price or appraised value of the farm, whichever is lower, must not exceed \$250,000.

(c) Beginning Farmer Downpayment loans will not exceed 40 percent of the lesser of the purchase price or appraised value of the farm to be acquired.

(d) Financing provided by the Agency and any other creditor must not exceed 90 percent of the lesser of the purchase price or appraised value of the farm and may be guaranteed by the Agency under part 762 of this chapter.

§ 764.204 Rates and terms.

(a) *Rates.* The interest rate for Beginning Farmer Downpayment loans shall be 4 percent.

(b) *Terms.* (1) The Agency schedules repayment of Beginning Farmer Downpayment loans in equal, annual installments over a term not to exceed 15 years.

(2) The non-Agency financing must have an amortization period of at least 30 years and cannot have a balloon payment due within the first 15 years of the loan.

§ 764.205 Security requirements.

A Beginning Farmer Downpayment loan must:

(a) Be secured in accordance with §§ 764.103 through 764.106;

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

§§ 764.206–764.250 [Reserved]

Subpart F—Operating Loan Program

§ 764.251 Operating loan uses.

OL loan funds may only be used for:

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

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

(c) Payment of annual farm operating expenses, including but not limited to, feed, seed, fertilizer, pesticides, farm supplies, repairs and improvements which are to be expensed, cash rent and family subsistence;

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

(e) Other farm needs;

(f) Payment of costs associated with land and water development, use, or conservation;

(g) Payment of loan closing costs;

(h) Payment of costs associated with Federal or State-approved standards

under the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 667) if the applicant can show that compliance or non-compliance with the standards will cause substantial economic injury;

(i) Payment of borrower training costs required or recommended by the Agency;

(j) Refinancing farm-related debts other than real estate to improve farm profitability, if the applicant has refinanced direct or guaranteed OL loans four times or fewer and one of the following conditions is met:

(1) A designated or declared disaster caused the need for refinancing; or

(2) The debts to be refinanced are owed to a creditor other than the USDA;

(k) Payment of costs for minor real estate repairs or improvements, not to exceed \$15,000 per year.

§ 764.252 Eligibility requirements.

The applicant:

(a) Must comply with the general eligibility requirements established at § 764.101.

(b) And anyone who will sign the promissory note, except as provided in paragraph (c) of this section, must not have 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 provision of section 331 of the CONACT; discharge in bankruptcy; or through payment of a guaranteed loss claim under the same circumstances.

(c) And anyone who will sign the promissory note may receive direct OL loans to pay annual farm operating and family living expenses, provided that the applicant meets all other eligibility requirements, if the applicant:

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

(2) Is current on payments under a confirmed reorganization plan under Chapter 11, 12, or 13 of Title 11 of the United States Code; or

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

(d) And anyone who will sign the promissory note, may close an OL loan

in no more than seven calendar years, either as an individual or as a member of an entity, except as provided in paragraph (e) of this section. The years may be consecutive or non-consecutive, and there is no limit on the number of loans closed in a year. Youth loans are not counted toward this limitation.

(e) And anyone who will sign the note who has closed direct OL loans in four or more previous calendar years as of April 4, 1996, is eligible to close direct OL loans in any three additional years after that date.

(f) On a case-by-case basis, may request a one-time waiver of OL term limits for a period of two years, not subject to administrative appeal, if the applicant:

(1) Has a financially viable operation;

(2) Applied for commercial credit from at least two lenders;

(3) Was unable to obtain a commercial loan, including an Agency-guaranteed loan; and

(4) Has successfully completed, or will complete within one year, borrower training. Previous waivers to the borrower training requirements are not applicable under this paragraph.

(g) Whose land is subject to the jurisdiction of an Indian tribe and their loan is secured by one or more security instruments subject to the jurisdiction of an Indian tribe may request a waiver of OL term limits, provided that other credit is not available at reasonable rates and terms.

§ 764.253 Limitations.

The applicant must comply with the general limitations established at § 764.102.

§ 764.254 Rates and terms.

(a) *Rates.* (1) The interest rate is the Agency's Direct Operating Loan rate, available in each Agency office;

(2) The limited resource Operating Loan interest rate is available to applicants who are unable to develop a feasible plan at regular interest rates.

(b) *Terms.* (1) The Agency schedules repayment of annual OL loans made for essential family living and farm operating expenses when planned income is projected to be available, but not to exceed 18 months from the date of the note.

(2) The Agency schedules the repayment of all other OL loans based on the applicant's ability to repay and the useful life of the security. In no event will the term of the loan exceed seven years from the date of the note.

§ 764.255 Security requirements.

An OL loan must be secured:

(a) In accordance with sections 764.103 through 764.106.

(b) By all property or products acquired, produced, or refinanced with loan funds.

§§ 764.256–764.300 [Reserved]

Subpart G—Youth Loan Program

§ 764.301 Youth loan uses.

Youth loan funds may only be used to finance a modest, income-producing, agriculture-related, educational project while participating in 4–H, FFA, or a similar organization.

§ 764.302 Eligibility requirements.

The applicant must:

- (a) Comply with the general eligibility requirements established in section 764.101, paragraphs (a) through (g);
- (b) Be at least 10 but not yet 21 years of age at the time the loan is closed;
- (c) Reside in a rural area or any city or town with a population of 50,000 or fewer people;
- (d) Be recommended and continuously supervised by a project advisor, such as a 4–H Club advisor, a vocational teacher, home economics teacher, county extension agent, or other agriculture-related organizational sponsor; and
- (e) Obtain a written recommendation and consent from a parent or guardian if an applicant has not reached the age of majority under state law.

§ 764.303 Limitations.

- (a) The applicant must comply with the general limitations established at § 764.102(b).
- (b) The total principal balance owed by the applicant to the Agency on all Youth loans at any one time cannot exceed \$5,000.

§ 764.304 Rates and terms.

- (a) *Rates.* (1) The interest rate is the Agency's Direct Operating Loan rate, available in each Agency office.
- (2) The limited resource Operating Loan interest rate is not available for Youth loans.
- (b) *Terms.* Youth loan terms are the same as for an OL established at § 764.254(b).

§ 764.305 Security requirements.

A first lien will be obtained on property or products acquired or produced with loan funds.

§§ 764.306–764.350 [Reserved]

Subpart H—Emergency Loan Program

§ 764.351 Emergency loan uses.

(a) *Physical losses.* (1) *Real estate losses.* EM loan funds for real estate physical losses may only be used to repair or replace property damaged or

destroyed as a result of a disaster as follows:

- (i) For any FO purpose, as specified in § 764.151, except paragraph (e) of that section;
- (ii) To establish a new site for farm dwelling and service buildings outside of a flood or mudslide area; and
- (iii) To replace land from the farm that was sold or conveyed, if such land is necessary for the farming operation to be effective.

(2) *Chattel losses.* EM loan funds for chattel physical losses may only be used to repair or replace property damaged or destroyed as a result of a disaster as follows:

- (i) Purchase livestock, farm equipment, quotas and bases, and cooperative stock for credit, production, processing, or marketing purposes;
- (ii) Pay customary costs associated with obtaining and closing a loan that an applicant cannot pay from other sources;
- (iii) Repair or replace essential household contents damaged in the disaster;
- (iv) Pay the costs to restore perennials, which produce an agricultural commodity, to the stage of development the damaged perennials had obtained prior to the disaster;
- (v) Pay essential family household expenses, in the case of a farming operation that has suffered livestock losses or losses to stored crops held for sale; and
- (vi) Refinance farm-related debts other than real estate to improve farm profitability, if the applicant has refinanced direct or guaranteed loans four times or fewer and one of the following conditions is met:

(A) A designated or declared disaster caused the need for refinancing; or

(B) The debts to be refinanced are owed to a creditor other than the USDA.

(b) *Production losses.* EM loan funds for production of agricultural commodities (except the losses associated with the loss of livestock) may be used to:

- (1) Pay costs associated with reorganizing the farm to improve its profitability;
- (2) Pay annual operating expenses, which include but are not limited to, feed, seed, fertilizer, pesticides, farm supplies, and cash rent;
- (3) Payment of costs associated with Federal or State-approved standards under the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 667) if the applicant can show that compliance or non-compliance with the standards will cause substantial economic injury;

(4) Pay borrower training costs required or recommended by the Agency;

(5) Pay essential family household expenses;

(6) Refinance farm-related debts other than real estate to improve farm profitability, if the applicant has refinanced direct or guaranteed loans four times or fewer and one of the following conditions is met:

- (i) A designated or declared disaster caused the need for refinancing; or
- (ii) The debts to be refinanced are owed to a creditor other than the USDA; and
- (7) Replace lost working capital.

§ 764.352 Eligibility requirements.

(a) *Eligibility requirements.* The applicant:

(1) Must comply with the general eligibility requirements established at § 764.101;

(2) Must be an established farmer;

(3) Must be the owner and operator, or operator as follows:

(i) For a loan made under § 764.351(a)(1), must be:

(A) The owner and operator of the farm at the time of the disaster; or

(B) The operator of the farm at the time of the disaster whose lease on the affected real estate exceeds the term of the loan. The operator will provide prior notification to the Agency if the lease is proposed to terminate during the term of the loan. The lessor will provide the Agency a mortgage on the real estate as security for the loan; and

(ii) For a loan made under § 764.351(a)(2) or (b), must be the operator of the farm at the time of the disaster.

(4) In the case of an entity:

(i) If the owners holding a majority interest in the entity applicant are related by blood or marriage, at least one of such related owners must operate the farm; or

(ii) If the owners holding a majority interest in the entity applicant are not related by blood or marriage, the majority interest holders must all operate the farm; and

(iii) If the entity applicant has an owner-operator or operator interest in any other farming operation, that farming operation must not be larger than a family farm;

(5) Must demonstrate the intent to continue the farm operation after the designated or declared disaster;

(6) Must be unable to obtain sufficient credit elsewhere at reasonable rates and terms. To establish this, the applicant must obtain written declinations of credit, specifying the reasons for declination, from legally organized

commercial lending institutions within reasonable proximity of the applicant as follows:

- (i) In the case of a loan in excess of \$300,000, two written declinations of credit are required;
 - (ii) In the case of a loan of less than \$300,000, one written declination of credit is required; and
 - (iii) In the case of a loan of \$100,000 or less, the Agency may waive the requirement for obtaining a written declination of credit, if the Agency determines that it would pose an undue burden on the applicant, the applicant certifies that they cannot get credit elsewhere, and based on the applicant's circumstances credit is not likely to be available;
- (7) And any entity member must not have received debt forgiveness from the Agency on more than one occasion before April 4, 1996, or any time on or after April 4, 1996.
- (b) *Additional EM loan eligibility requirements.* (1) An EM loan application must be received by the Agency not later than eight months after the date the designated or declared disaster occurred in the county of the applicant's farming operation.
- (2) For production loss loans, an applicant must have a disaster yield that is at least 30 percent below the normal production yield of the crop, as determined by the Agency, that comprises a basic part of an applicant's total farming operation.
- (3) For physical loss loans, an applicant must have suffered disaster-related damage to chattel or real estate essential to the farming operation, or to household items that must be repaired or replaced.
- (4) If the ownership structure of a family farm changes between the time of a qualifying loss and the time an EM loan is closed, all of the following requirements must be met:
- (i) The applicant, in the new form, including all owners must meet all of the eligibility requirements;
 - (ii) The new individual applicant, or all owners of a new entity applicant, must have had an ownership interest in the farming operation at the time of the disaster; and
 - (iii) The amount of the loan will be based on the percentage of the former farming operation transferred to the new applicant and in no event will the individual portions aggregated equal more than would have been authorized for the former farming operation.

§ 764.353 Limitations.

- (a) EM loans must comply with the general limitations established at § 764.102.

(b) EM loans may not exceed the lesser of:

- (1) The amount of credit necessary to restore the farming operation to its pre-disaster condition;
 - (2) In the case of a physical loss loan, the total eligible physical losses caused by the disaster; or
 - (3) In the case of a production loss loan, 100 percent of the total actual production loss sustained by the applicant as calculated in paragraph (d) of this section.
- (c) For production loss loans, the applicant's actual crop production loss will be calculated as follows:
- (1) Subtract the disaster yield from the normal yield to determine the per acre production loss;
 - (2) Multiply the per acre production loss by the number of acres of the farming operation devoted to the crop to determine the volume of the production loss;
 - (3) Multiply the volume of the production loss by the market price for such crop as determined by the Agency to determine the dollar value for the production loss; and
 - (4) Subtract any other disaster related compensation received by the applicant for the production loss.
- (d) For a physical loss loan, the applicant's total eligible physical losses will be calculated as follows:
- (1) Add the allowable costs associated with replacing or repairing chattel covered by hazard insurance (excluding labor, machinery, equipment, or materials contributed by the applicant to repair or replace chattel);
 - (2) Add the allowable costs associated with repairing or replacing real estate, covered by hazard insurance;
 - (3) Add the value of replacement livestock for which the applicant provided:
 - (i) Written documentation of inventory on hand immediately preceding the loss;
 - (ii) Records of livestock product sales sufficient to allow the Agency to establish a value;
 - (4) Add the allowable costs to restore perennials to the stage of development the damaged perennials had obtained prior to the disaster;
 - (5) Add, in the case of an individual applicant, the allowable costs associated with repairing or replacing essential household contents, not to exceed \$20,000; and
 - (6) Subtract any other disaster related compensation received by the applicant for the loss or damage to the chattel or real estate.
- (e) EM loan funds may not be used for physical loss purposes unless that physical property was covered by

general hazard insurance at the time that the damage caused by the natural disaster occurred. The level of the coverage in effect at the time of the disaster must have been the tax or cost depreciated value, whichever is less. Chattel property must have been covered at the tax or cost depreciated value, whichever is less, when such insurance was readily available and the benefit of the coverage was greater than the cost of the insurance.

(f) EM loan funds may not be used to refinance consumer debt, such as automobile loans, or credit card debt unless such credit card debt is directly attributable to the farming operation.

§ 764.354 Rates and terms.

- (a) *Rates.* The interest rate is the Agency's Emergency Loan Actual Loss rate, available in each Agency office.
- (b) *Terms.* (1) The Agency schedules repayment of EM loans based on the useful life of the loan security, the applicant's repayment ability, and the type of loss.
 - (2) The repayment schedule must include at least one payment every year.
 - (3) EM loans for annual operating expenses must be repaid within 12 months. The Agency may extend this term to not more than 18 months to accommodate the production cycle of the agricultural commodities.
 - (4) EM loans for production losses or physical losses to chattel (including but not limited to assets with an expected life between one and seven years) may not exceed seven years. The Agency may extend this term up to a total length not to exceed 20 years, if necessary to improve the applicant's repayment ability and real estate security is available.
 - (5) The repayment schedule for EM loans for physical losses to real estate is based on the applicant's repayment ability and the useful life of the security, but in no case will the term exceed 40 years.

§ 764.355 Security requirements.

- (a) EM loans made under § 764.351(a)(1) must comply with the general security requirements established at §§ 764.103, 764.104 and 764.155(b).
- (b) EM loans made under § 764.351(a)(2) and (b) must comply with the general security requirements established at §§ 764.103, 764.104 and 764.255(b).
- (c) When adequate security is not available because of the disaster, the loan may be approved if the Agency determines, based on an otherwise feasible plan, there is a reasonable

assurance that the applicant has the ability to repay the loan provided:

(1) The applicant has pledged as security for the loan, all available personal and business security, except as provided in § 764.106;

(2) The farm plan, approved by the Agency, indicates the loan will be repaid based upon the applicant's production and income history; addresses applicable pricing risks through the use of marketing contracts, hedging, or options and includes a marketing plan or similar risk management practice; and

(3) The applicant has had positive net cash farm income in at least 3 of the past 5 years.

(d) For loans over \$25,000, title clearance is required when real estate is taken as security.

(e) For loans of \$25,000 or less, when real estate is taken as security, a certification of ownership in real estate is required. Certification of ownership may be in the form of an affidavit which is signed by the applicant, names the record owner of the real estate in question and lists the balances due on all known debts against the real estate. Whenever the loan approving official is uncertain of the record owner or debts against the real estate security, a title search is required.

§ 764.356 Appraisal and valuation requirements.

(a) In the case of physical losses associated with livestock, the applicant must have written documentation of the inventory of livestock and records of livestock product sales sufficient to allow the Agency to value such livestock or livestock products just prior to the loss.

(b) In the case of farm assets damaged by the disaster, the value of such security shall be established as of the day before the disaster occurred.

§§ 764.357–764.400 [Reserved]

Subpart I—Loan Decision and Closing

§ 764.401 Loan decision.

(a) *Loan approval.* (1) The Agency will approve a loan only if it determines that:

(i) The applicant's operating plan reflects a feasible plan, which includes repayment of the proposed loan and demonstrates that all other credit needs can be met;

(ii) The proposed use of loan funds is authorized for the type of loan requested;

(iii) The applicant has been determined eligible for the type of loan requested;

(iv) All security requirements for the type of loan requested have been, or will be met before the loan is closed;

(v) The applicant's total indebtedness to the Agency, including the proposed loan, will not exceed the maximum limits established in § 761.8 of this chapter;

(vi) There have been no significant changes in the plan of operation or the applicant's financial condition since the time the Agency received a complete application; and

(vii) All other pertinent requirements have been, or will be met before the loan is closed.

(2) The Agency will place conditions upon loan approval it determines necessary to protect its interest and maximize the applicant's potential for success.

(b) *Loan denial.* The Agency will not approve a loan if it determines that:

(1) The applicant's operating plan does not reflect a feasible plan;

(2) The proposed use of loan funds is not authorized for the type of loan requested;

(3) The applicant does not meet the eligibility requirements for the type of loan requested;

(4) There is inadequate security for the type of loan requested;

(5) Approval of the loan would cause the applicant's total indebtedness to the Agency to exceed the maximum limits established in § 761.8;

(6) The applicant's circumstances may not permit continuous operation and management of the farm; or

(7) The applicant, the applicant's operation, or other circumstances surrounding the loan are inconsistent with the authorizing statutes, other Federal laws, or Federal credit policies.

(c) *Overturf of an Agency decision by appeal.* If an Agency loan denial is overturned on administrative appeal, the Agency will not automatically approve the loan. Unless prohibited by the final appeal determination, the Agency will:

(1) Request current financial information from the applicant as necessary to determine whether any changes in the applicant's financial condition or agricultural conditions which occurred after the Agency's adverse decision was made will adversely affect the applicant's operation;

(2) Approve a loan for crop production only if the Agency can determine that the applicant will be able to produce a crop in the production cycle for which the loan is requested;

(3) The applicant's operating plan, as modified based on the appeal decision, reflects a feasible plan, which includes

repayment of the proposed loan and demonstrates that all other credit needs can be met.

§ 764.402 Loan closing.

(a) *General.* (1) Signatures on loan documents are required as follows:

(i) For individual applicants, only the applicant is required to sign the promissory note.

(ii) For entity applicants, the promissory note will be executed to evidence the liability of the entity and the individual liability of all members of the entity.

(iii) Despite minority status, a youth executing a promissory note for a Youth loan will incur full personal liability for the debt.

(iv) A cosigner will be required to sign the promissory note only when the applicant cannot meet the repayment requirements for the loan requested.

(v) All signatures needed for the Agency to acquire the required security interests will be obtained according to State law.

(2) Loan funds will be made available to the applicant within 15 days of loan approval, subject to the availability of funding.

(3) If the loan is not closed within 90 days of loan approval or if the applicant's financial condition changes significantly, the Agency must reconfirm the requirements for loan approval prior to loan closing. The applicant may be required to provide updated information in order for the Agency to reconfirm approval and proceed with loan closing.

(b) *Real estate-secured loans.* The Agency will close a real estate loan only when it determines that the Agency requirements for the loan have been satisfied and when the closing agent can issue a policy of title insurance or final title opinion as of the date of closing. The title insurance or final title opinion must show title vested as required by the Agency, the lien of the Agency's security instrument in the priority required by the Agency, and title to the security property, subject only to those exceptions approved in writing by the Agency.

(1) The Agency must approve agents who will close Agency loans. In order to be approved, closing agents must meet all of the following requirements to the Agency's satisfaction:

(i) Be licensed in the state where the loan will be closed;

(ii) Not be debarred or suspended from participating in any Federal programs;

(iii) Maintain liability insurance;

(iv) Have a fidelity bond which covers all employees with access to loan funds;

(v) Have current knowledge of the requirements of State law in connection with the loan closing and title clearance;

(vi) Not represent both the buyer and seller in the transaction;

(vii) Not be related as a family member or business associate with the applicant; and

(viii) Act promptly to provide required services.

(2) Except as provided in § 764.355 for EM loans, title clearance and legal services are required for all loans and may be completed by the Agency or an approved agent. This requirement may be waived:

(i) For loans of \$10,000 or less;

(ii) When the real estate is considered additional security by the Agency; or

(iii) When the real estate is a non-essential asset.

(c) *Chattel-secured loans.* The following requirements apply to loans secured by chattel:

(1) The Agency will not close a loan secured by chattels until it is satisfied that the loan has been secured;

(2) The Agency requires a financing statement for every loan except when a filed financing statement covering the applicant's property is still effective, covers all types of chattel property that will serve as security for the loan, describes the land on which crops and fixtures are or will be located, and complies with the law of the jurisdiction where filed;

(3) The Agency requires a new security agreement for all new loans prior to the disbursement of loan funds.

(d) *Payment of fees.* The applicant, or in the case of a real estate purchase, the applicant and seller, must pay all filing, recording, notary, lien search, and any other fees necessary to process and close a loan.

(e) *Disbursement of funds.* The Agency or closing agent will be responsible for disbursing loan funds. The Agency may require a supervised bank account in accordance with subpart B of part 761 of this chapter or disburse funds directly to the applicant.

§§ 764.403–764.450 [Reserved]

Subpart J—Borrower Training and Training Vendor Requirements

§ 764.451 Purpose.

The purpose of production and financial management training is to help a direct loan borrower develop and improve skills necessary to:

(a) Successfully operate a farm;

(b) Build equity in the farm business; and

(c) Become financially successful and prepared to graduate from Agency

financing to commercial sources of credit.

§ 764.452 Borrower training requirements.

(a) The Agency will require a loan applicant to agree to complete production and financial management training, unless the Agency provides a waiver in accordance with § 764.453, or the borrower has previously satisfied the training requirements. In the case of an entity borrower:

(1) The Agency will require any individual member holding a majority interest in the entity or who is operating the farm to complete training on behalf of the entity, except as provided in paragraph (a)(2) of this section;

(2) If one entity member is solely responsible for financial or production management, then only that member will be required to complete training.

(b) When the Agency determines that production training is required, a borrower must agree to complete course work covering production management in each crop or livestock enterprise that the Agency determines necessary.

(c) When the Agency determines that financial management training is required, a borrower must agree to complete course work covering all aspects of farm accounting and integrating accounting elements into a financial management system.

(d) The Agency will require a borrower who applies for a loan to finance a new enterprise, such as a new crop or a new type of livestock, to agree to complete production training with regard to that enterprise, even if production training requirements were waived or satisfied under a previous loan request, unless the Agency provides a waiver in accordance with § 764.453.

(e) If a waiver is granted, the Agency will require borrower training as a condition for future loans if Agency supervision provided in 7 CFR 761 subpart C, reflects that such training is needed.

(f) The Agency cannot reject a request for a direct loan based solely on a loan applicant's or borrower's need for training.

(g) Any notification of required training or waiver of training must be in writing.

§ 764.453 Agency waiver of training requirements.

(a) The applicant must request the waiver in writing.

(b) The Agency will grant a waiver for training in production, financial management, or both, under the following conditions:

(1) The applicant submits evidence of successful completion of a course

similar to a course approved under section § 764.457 and additional training is not needed; or

(2) The applicant submits evidence which demonstrates to the Agency's satisfaction the experience and training necessary for a successful and efficient operation.

(c) If the production and financial functions of the farming operation are shared among individuals, the Agency will consider the collective knowledge and skills of the individuals when determining whether to waive training requirements.

§ 764.454 Actions that a borrower must take when training is required.

(a) *Deadline for completion of training.* (1) If the Agency requires a borrower to complete training, at loan closing the borrower must agree in writing to complete all required training within two years.

(2) The Agency will grant a one-year extension to complete training if the borrower is unable to complete training within the two-year period due to circumstances beyond the borrower's control.

(3) The Agency will grant an extension longer than one year for extraordinary circumstances as determined by the Agency.

(4) A borrower who does not complete the required training within the specified time period will be ineligible for additional direct FLP loans.

(b) *Arranging training with a vendor.* The borrower must select and contact an Agency approved vendor and make all arrangements to begin training.

(c) *Payment of training fees.* (1) A borrower is responsible for the cost of training and must include training fees in the farm operating plan as a farm operating expense.

(2) A borrower's payment of training fees is an authorized use of OL funds.

(3) The Agency is not a party to fee or other agreements between the borrower and vendor.

(d) *Borrower evaluation of a vendor.* Upon completion of the required training, the borrower will complete an evaluation of the course and submit it to the vendor. The vendor will forward completed evaluation forms to the Agency for consideration.

§ 764.455 Potential training vendors.

The Agency will contract for training services with State or private providers of production and financial management training services.

§ 764.456 Applying to be a vendor.

(a) A vendor for borrower training services must apply to the Agency for approval.

- (b) The vendor application must include:
- (1) A sample of the course materials and a description of the vendor's training methods;
 - (2) Specific training objectives for each section of the course;
 - (3) A detailed course agenda specifying the topics to be covered, the time devoted to each topic, and the number of sessions to be attended;
 - (4) A list of instructors and their qualifications;
 - (5) The criteria by which additional instructors will be selected;
 - (6) The proposed locations where training will take place;
 - (7) The cost per participant and the cost per organization;
 - (8) The minimum and maximum class size;
 - (9) A description of the vendor's experience in developing and administering training to farmers;
 - (10) A description of the monitoring and quality control methods the vendor will use;
 - (11) A description of the policy on allowing Agency employees to attend the course for monitoring purposes;
 - (12) A description of how the needs of borrowers with physical or mental disabilities or learning disabilities will be met; and
 - (13) A plan of how the needs of borrowers who do not speak English as their primary language will be met.

§ 764.457 Vendor requirements.

Vendors must meet the following requirements.

(a) *Minimum experience.* The vendor must demonstrate a minimum of three years of experience in conducting training courses or teaching the subject matter.

(b) *Training objectives.* The courses provided by a vendor must enable the

borrower to accomplish one or more of the following objectives:

- (1) Describe the specific goals of the business, any changes required to attain the goals, and outline how these changes will occur using present and projected business budgets;
 - (2) Maintain and use a financial management information system to make financial decisions;
 - (3) Understand and use an income statement;
 - (4) Understand and use a balance sheet;
 - (5) Understand and use a cash flow budget; and
 - (6) Use production records and other production information to identify problems, evaluate alternatives, and correct current production practices to improve efficiency and profitability.
- (c) *Curriculum.* At least one of the following subjects must be covered:
- (1) Business planning courses, covering general goal setting, risk management, and planning.
 - (2) Financial management courses, covering all aspects of farm accounting and focusing on integrating accounting elements into a financial management system.
 - (3) Crop and livestock production courses focusing on improving the profitability of the farm.
 - (d) *Instructor qualifications.* All instructors must have:
 - (1) Sufficient knowledge of the material and experience in adult education;
 - (2) A bachelor's degree or comparable experience in the subject area to be taught; and
 - (3) A minimum of three years experience in conducting training courses or teaching.

§ 764.458 Vendor approval.

(a) *Agreement to conduct training.* (1) Upon approval, the vendor must sign an

agreement to conduct training for the Agency's borrowers.

(2) The agreement to conduct training is valid for three years.

(3) Any changes in curriculum, instructor, or cost require prior approval by the Agency.

(4) The vendor may revoke the agreement by giving a written 30-day notice.

(5) The Agency may revoke the agreement if the vendor does not comply with the responsibilities listed in the agreement by giving a written 30-day notice.

(b) *Renewal of agreement to conduct training.* (1) To renew an agreement to conduct training, a vendor must submit in writing to the Agency:

- (i) A request to renew the agreement;
- (ii) Any changes in curricula, instructor, or cost; and
- (iii) Documentation that the vendor is providing effective training.

(2) The Agency will review renewal requests in accordance with § 764.457.

§ 764.459 Evaluation of borrower progress.

(a) The vendor must provide the Agency with a periodic progress report for each borrower enrolled in training in accordance with the agreement to complete training. The reports will indicate whether the borrower is attending sessions, completing the training program, and demonstrating an understanding of the course material.

(b) Upon borrower completion of the training, the vendor must provide the Agency with an evaluation of the borrower's knowledge of the course material and assign a score. The following table lists the possible scores, the criteria used to assign each score, and Agency consideration of each score:

Score	Criteria used to determine score	Agency consideration
1	If the borrower: <ul style="list-style-type: none"> • Attended classroom sessions as agreed, • Satisfactorily completed all assignments, and • Demonstrated an understanding of the course material. 	Training requirement associated with course is complete.
2	If the borrower: <ul style="list-style-type: none"> • Attended classroom sessions as agreed, and • Attempted to complete all assignments, but • Does not demonstrate an understanding of the course material. 	Training requirement associated with course is complete. Additional Agency supervision may be necessary.
3	If the borrower did not: <ul style="list-style-type: none"> • Attend classroom sessions as agreed, or • Attempt to complete assignments, or • Otherwise make a good faith effort to complete the training. 	Training requirement associated with course is not complete. The borrower is ineligible for future direct loans.

§§ 764.460–764.500 [Reserved]

13. Add part 765 to read as follows:

PART 765—DIRECT LOAN SERVICING—REGULAR

Sec.

Subpart A—Overview

765.1 Introduction to Direct Loan Servicing—Regular.

765.2 Abbreviations and definitions.

765.3–765.50 [Reserved]

Subpart B—Borrowers with Limited Resource Interest Rate Loans

765.51 Annual review.
765.52–765.100 [Reserved]

Subpart C—Borrower Graduation

765.101 Borrower graduation requirements.
765.102 Borrower noncompliance with graduation requirements.
765.103–765.150 [Reserved]

Subpart D—Borrower Payments

765.151 Handling payments.
765.152 Types of payments.
765.153 Application of payments.
765.154 Distribution of payments.
765.155 Final loan payments.
765.156–765.200 [Reserved]

Subpart E—Protecting the Agency's Security Interest

765.201 General policy.
765.202 Borrower responsibilities.
765.203 Protective advances.
765.204 Notifying potential purchasers.
765.205 Subordination of liens.
765.206 Junior liens.
765.207 Conditions for severance agreements.
765.208–765.250 [Reserved]

Subpart F—Required Use and Operation of Agency Security

765.251 General.
765.252 Lease of security.
765.253 Operating security.
765.254–765.300 [Reserved]

Subpart G—Disposal of Chattel Security

765.301 General.
765.302 Use and maintenance of agreement of use of proceeds.
765.303 Use of proceeds from chattel security.
765.304 Unapproved disposition.
765.305 Release of security interest.
765.306–765.350 [Reserved]

Subpart H—Partial Release of Real Estate Security

765.351 Requirements to obtain Agency consent.
765.352 Use of proceeds.
765.353 Determining market value.
765.354–765.400 [Reserved]

Subpart I—Transfer of Security and Assumption of Debt

765.401 Conditions for transfer of real estate and chattel security.
765.402 Transfer of security and loan assumption on same rates and terms.
765.403 Transfer of security to and assumption of debt by eligible borrowers.
765.404 Transfer of security to and assumption of debt by ineligible borrowers.
765.405 Payment of costs associated with transfers.
765.406 Release of transferor from liability.
765.407–765.450 [Reserved]

Subpart J—Deceased Borrowers

765.451 Continuation of FLP debt and transfer of security.

765.452 Borrowers with Non-program loans.
765.453–765.500 [Reserved]

Subpart K—Exception Authority

765.501 Agency exception authority.
765.502–765.550 [Reserved]
Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart A—Overview

§ 765.1 Introduction to Direct Loan Servicing—Regular.

(a) *Purpose.* This part describes the general policies for servicing FLP direct loans, except for borrowers who are delinquent, financially distressed, or otherwise in default on their loan.

(b) *Servicing actions described in this part.* Servicing actions described in this part include:

- (1) Limited resource reviews;
- (2) Graduation to commercial credit;
- (3) Application of payments;
- (4) Maintaining and disposing of security;
- (5) Transfer of security and assumption of debt; and
- (6) Servicing accounts of deceased borrowers.

(c) *Loans covered.* The Agency services FLP direct loans under the policies contained in this part. This part is not applicable to Non-program loans, except where noted.

§ 765.2 Abbreviations and definitions.

Abbreviations and definitions for terms used in this part are provided in § 761.2 of this chapter.

§§ 765.3–765.50 [Reserved]

Subpart B—Borrower With Limited Resource Interest Rate Loans

§ 765.51 Annual review.

(a) A borrower with limited resource interest rate loans is required to provide the Agency annually the operation's financial information to determine if the borrower can afford to pay a higher interest rate on the loan. The Agency will review the information in accordance with § 761.104 of this chapter.

(b) If the borrower's operating plan shows that the debt service margin exceeds 110 percent, the Agency will increase the interest rate on the loans with limited resource interest rate until:

- (1) A further increase in the interest rate results in a debt service margin of less than 110 percent; or
- (2) The interest rate is equal to the interest rate currently in effect for the type of loan.

(c) Except as provided in paragraph (d) of this section, the Agency will increase the limited resource interest rate to the current interest rate for the type of loan, if the borrower:

- (1) Purchases items not planned during the term of the loan;
- (2) Refuses to submit information the Agency requests for use in reviewing the borrower's financial condition; or
- (3) Ceases farming, as described in § 765.253.

(d) If the borrower has limited resource interest rate loans that are deferred, the Agency will not increase the interest rate pursuant to paragraph (b) of this section during the deferral period, except under paragraph (c) of this section.

§§ 765.52–765.100 [Reserved]

Subpart C—Borrower Graduation

§ 765.101 Borrower graduation requirements.

(a) In accordance with the promissory note and security instruments, the borrower must graduate to another source of credit if the Agency determines that:

- (1) The borrower has the ability to obtain credit from other sources; and
- (2) Adequate credit is available from other sources at reasonable rates and terms.

(b) The Agency may require partial or full graduation.

(1) In a partial graduation, all FLP loans of one type (*i.e.* all chattel loans or all real estate loans) must be paid in full by refinancing with other credit with or without an Agency guarantee.

(2) In a full graduation, all FLP loans are paid in full by refinancing with other credit with or without an Agency guarantee.

(3) A loan made for chattel and real estate purposes will be categorized according to how the majority of the loan's funds are expended.

(c) The borrower must submit all information that the Agency requests in conjunction with the review of the borrower's financial condition in accordance with § 761.102.

(d) The Agency may provide a borrower's prospectus to lenders in an attempt to identify sources of non-Agency credit and assess the lenders' interest in refinancing the borrower's loan.

(e) If a lender expresses an interest in refinancing the borrower's FLP loan, the borrower must:

- (1) Apply for a loan from the interested lender within 30 days of notice; or

(2) Seek guaranteed loan assistance under the market placement program in accordance with § 762.110(g) of this chapter.

(f) The borrower will be responsible for any application fees or purchase of stock in conjunction with graduation.

§ 765.102 Borrower noncompliance with graduation requirements.

Borrower failure to fulfill all graduation requirements within the time period specified by the Agency constitutes default on the loan. The Agency will accelerate the borrower's loan without offering servicing options provided under 7 CFR 766.

§§ 765.103–765.150 [Reserved]**Subpart D—Borrower Payments****§ 765.151 Handling payments.**

(a) *Borrower payments.* Borrowers must submit their loan payments in a form acceptable to the Agency, such as checks, cash, and money orders. Forms of payment not acceptable to the Agency include, but are not limited to, foreign currency, foreign checks, and sight drafts.

(b) *Crediting account.* The Agency credits a borrower's account as of the date the Agency receives payment.

§ 765.152 Types of payments.

(a) *Regular payments.* Regular payments are derived from, but are not limited to:

- (1) The sale of normal income security;
- (2) The sale of farm products;
- (3) Lease income, including mineral lease signing bonus;
- (4) Program or disaster-related disbursements from USDA or crop insurance entities; and
- (5) Non-farm income.

(b) *Extra payments.* Extra payments are derived from any of the following:

- (1) Sale of chattel security other than normal income security;
- (2) Sale of real estate security;
- (3) Refinancing of Agency debt;
- (4) Cash proceeds of insurance claims received on Agency collateral, if not being used to repair or replace security items;
- (5) Any transaction that results in a loss in the value of any Agency basic security;
- (6) Refunds of duplicate disaster program benefits to be applied on an EM loan; or
- (7) Refunds of unused loan funds.

(c) *Payments from sale of real estate.* Notwithstanding any other provision of this section, payments derived from the sale of real estate security will be treated as regular payments at the Agency's discretion, if the Agency loans will be adequately secured after the transaction.

§ 765.153 Application of payments.

(a) *Regular payments.* A regular payment is credited to a scheduled installment on Agency FLP direct and Non-program loans. Regular payments

are applied to FLP loans in the following order:

- (1) Annual operating loan;
 - (2) Delinquent FLP installments, paying FLP least secured loans first;
 - (3) Non-delinquent FLP installments due in the current operating cycle in order of security priority, paying least secured loans first;
 - (4) Any future installments due.
- (b) *Extra payments.* An extra payment is not credited to a scheduled installment and does not relieve the borrower's responsibility to make scheduled loan installments, but will reduce the borrower's FLP indebtedness. Extra payments are applied to FLP loans in order of lien priority.

§ 765.154 Distribution of payments.

The Agency applies both regular and extra payments to each loan in the following order, as applicable:

- (a) Administrative costs and protective advances plus interest;
- (b) Deferred non-capitalized interest;
- (c) Accrued deferred interest;
- (d) Interest accrued to date of payment; and
- (e) Loan principal.

§ 765.155 Final loan payments.

(a) *General.* (1) If the borrower makes a final payment by one of the following methods, the Agency may release the borrower's security instruments at the time payment is made, unless the Agency has reservations regarding the validity of the payment:

- (i) Cash;
- (ii) U.S. Treasury check;
- (iii) Cashier's check; or
- (iv) Certified check.

(2) Security instruments will only be released when all loans secured by the instrument have been paid in full or otherwise satisfied.

(3) The Agency will return the paid note and satisfied security instruments to the borrower after the Agency processes the final payment and determines that the total indebtedness is paid in full.

(b) *Borrower refunds.* If the borrower refunds the entire loan after the loan is closed, the borrower must pay interest from the date of the note to the date the Agency received the funds.

(c) *Overpayments.* If an Agency miscalculation of a final payment results in an overpayment by the borrower of less than \$10, the borrower must request a refund from the Agency in writing. Overpayments of \$10 or more automatically will be refunded by the Agency.

(d) *Underpayments.* If an Agency miscalculation of a final payment

amount results in an underpayment, the Agency attempts to collect all account balances resulting from its error unless the outstanding balance is less than \$10.

(1) The Agency may initiate court proceedings to collect the balance of a loan if it exceeds \$1,000 and the Agency believes that the borrower has recoverable assets.

(2) If the Agency cannot collect an underpayment from the borrower, the Agency attempts to settle the debt in accordance with 7 CFR 792.

§§ 765.156–765.200 [Reserved]**Subpart E—Protecting the Agency's Security Interest****§ 765.201 General policy.**

All Agency servicing actions regarding preservation and protection of Agency loan security will be consistent with the covenants and agreements contained in all the borrower debt and loan security instruments.

§ 765.202 Borrower responsibilities.

The borrower must:

(a) Comply with all provisions of the loan documents;

(1) Non-compliance with loan provisions, aside from borrower failure to meet scheduled loan repayment installments contained in the promissory note, constitutes non-monetary default of FLP loans by the borrower;

(2) Borrower failure to keep agreements will be considered by the Agency when making eligibility determinations for future requests for assistance and may adversely impact such requests;

(b) Maintain, protect, and account for all loan security;

(c) Pay the following, unless State law requires the Agency to pay:

(1) Fees for executing, filing or recording financing statements, continuation statements or other security instruments; and

(2) The cost of lien search reports;

(d) Pay taxes on property securing FLP loans when they become due;

(e) Maintain insurance coverage in an amount specified by the Agency;

(f) Protect the interests of the Government when a third party brings suit or takes other action that could affect Agency security.

§ 765.203 Protective advances.

When necessary to protect the Agency's security interest, costs incurred for the following actions will be charged to the borrower's account:

(a) Maintain abandoned security property;

(b) Preserve inadequately maintained security;

- (c) Pay real estate taxes and assessments;
- (d) Pay property, hazard, or flood insurance;
- (e) Pay harvesting costs;
- (f) Maintain Agency security instruments;
- (g) Pay ground rents;
- (h) Pay expenses for emergency measures to protect the Agency's collateral; and
- (i) Protect the Agency from actions by third parties.

§ 765.204 Notifying potential purchasers.

(a) *States with a Central Filing System (CFS).* The Agency participates and complies with central filing operations in States where CFS have been organized. In a State with a CFS, the Agency is not required to additionally notify potential purchasers that the Agency has a lien on a borrower's chattel security, unless specifically required by State law.

(b) *States without a CFS.* In a State without a CFS, the Agency follows the filing requirements specified for perfecting a lien on a borrower's chattel security under State law. The Agency will distribute the list of chattel and crop borrowers to sale barns, warehouses, and other businesses that buy or sell chattels or crops. In addition, the Agency may provide the list of borrowers to potential purchasers upon request.

§ 765.205 Subordination of liens.

(a) *Real estate security.* For loans secured by real estate, the Agency will approve a request for subordination if all of the following conditions are met:

- (1) The borrower is not in default or will not be in default on Agency FLP loans by the time the subordination closing is complete;
- (2) The loan will be used for an authorized Agency loan purpose or is made in conjunction with a guaranteed loan;
- (3) The credit is essential to the operation and the borrower cannot obtain the credit without a subordination;
- (4) The borrower can demonstrate, through a current farm operating plan, the ability to repay all debt payments scheduled, and to be scheduled, during the operating cycle;
- (5) The Agency loan is still adequately secured after the subordination, or the value of the loan security will be increased by an amount at least equal to the advance to be made under the subordination;
- (6) The borrower is not able to graduate;
- (7) If the borrower is an entity and the Agency has taken real estate as

additional security on property owned by a member, a subordination for any authorized Agency loan purpose may be approved when it is needed for the entity member to finance a separate operation, provided the subordination does not cause the unpaid principal and interest on the Agency loans to exceed the value of loan security or otherwise adversely affect the security;

(8) The borrower has not been convicted under Federal or state law, within the last five crop years, of planting, cultivating, growing, producing, harvesting, or storing a controlled substance, as defined at 21 CFR part 1308;

(9) The borrower will not use loan funds in a way that will contribute to erosion of highly erodible land or conversion of wetlands to produce agricultural commodities as described in 7 CFR part 799;

(10) There is no other subordination outstanding in connection with the same security;

(11) The subordination is limited to a specific amount and the loan made in conjunction with the subordination will be closed within a reasonable time;

(12) In the case of real property purchase or exchange, the Agency will obtain a valid mortgage and the required lien position on the real property. The Agency will require title clearance and loan closing for the property in compliance with § 764.402 of this chapter;

(13) Any planned development of real estate security will be performed as directed by the creditor, approved by the Agency, and will comply with the terms and conditions of § 761.10 of this chapter;

(14) Subordinations of SAA mortgages may only be approved when there is no increase in the debt which is prior to the SAA debt; and

(15) If a borrower has only a Non-program loan, the Agency does not permit subordination. The Agency may subordinate Non-program security when it is also security for a program loan with the same borrower.

(b) *Chattel security.* (1) For loans secured by chattel, the subordination must meet conditions contained in paragraphs (a)(1) through (11) of this section.

(2) The Agency will approve a request for a second subordination to enable a borrower to obtain crop insurance, if the following conditions are met:

- (i) The creditor to whom the first subordination was given did not provide for payment of the current year's crop insurance premium, and consents in writing to the provisions of the second subordination to pay

insurance premiums from the crop or insurance proceeds;

(ii) The borrower assigns the insurance proceeds to the Agency or names the Agency in the loss payable clause of the policy; and

(iii) The subordination meets the conditions under paragraphs (a)(1) through (11) of this section.

(c) *Appraisals.* An appraisal of the property that secures the Agency loan will be required when the Agency determines it necessary to protect its interest. Appraisals will be obtained in accordance with § 761.7 of this chapter.

§ 765.206 Junior liens.

(a) *General policy.* The borrower will not give a lien on Agency security without the consent of the Agency. Failure to obtain Agency consent will be considered by the Agency when making eligibility determinations for future requests for assistance and may adversely impact such requests.

(b) *Conditions for consent.* The Agency will consent to the terms of a junior lien if all of the following conditions are met:

- (1) The borrower's ability to make scheduled loan payments is not jeopardized;
- (2) The borrower provides the Agency a copy of the operating plans submitted to the junior lienholder, and the plans are consistent with the Agency operating plan;
- (3) The total debt against the security does not exceed the security's market value;
- (4) The junior lienholder agrees in writing not to foreclose the security instrument unless written notice is provided to the Agency;
- (5) The borrower is unable to graduate; and
- (6) The junior lien will not otherwise adversely impact the Agency's financial interests.

§ 765.207 Conditions for severance agreements.

For loans secured by real estate, a borrower may request Agency consent to a severance agreement or similar instrument so that future chattel acquired by the borrower will not become part of the real estate securing the Agency debt. The Agency will consent to severance agreements if all of the following conditions are met:

- (a) The financing arrangements are in the best financial interest of the Agency and the borrower;
- (b) The transaction will not adversely affect the Agency's security position;
- (c) The borrower is unable to graduate;
- (d) The transaction will not jeopardize the borrower's ability to pay all

outstanding debts to the Agency and other creditors; and

(e) The property acquired is consistent with authorized loan purposes.

§§ 765.208–765.250 [Reserved]

Subpart F—Required Use and Operation of Agency Security

§ 765.251 General.

(a) A borrower is required to be the operator of Agency security in accordance with loan purposes and agreements contained in the provisions of loan security instruments.

(b) A borrower who fails to operate the security without Agency consent is in violation of loan and security agreements.

(c) The Agency will consider a borrower's request to lease or cease to operate the security as provided in §§ 765.252 and 765.253.

§ 765.252 Lease of security.

(a) *Real estate leases.* The borrower may lease real estate security provided the following conditions are met:

- (1) The Agency approves the borrower's request to lease;
- (2) The term of consecutive leases does not exceed three years;
- (3) The lease does not contain an option to purchase; and
- (4) The requirements of § 765.253 have been met.

(b) *Mineral leases.* The borrower must request Agency consent to lease any mineral rights used as security for Agency loans.

(1) For loans secured by real estate before December 23, 1985, the Agency has a security interest in any mineral rights the borrower has on the real estate pledged as collateral.

(2) For loans secured by real estate on or after December 23, 1985, the Agency has a security interest in any mineral rights if the mineral rights were included in an appraisal.

(3) The Agency may consent to a mineral lease if the proposed use of the leased rights will not adversely affect either:

- (i) The Agency's security interest; or
- (ii) Compliance with any applicable environmental requirements of 7 CFR 799.

(c) *Lease of chattel security.* Lease of chattel security is not authorized.

(d) *Lease proceeds.* Lease proceeds are considered normal income security and may be used in accordance with § 765.303(b).

(e) *Lease of allotments.* (1) The Agency will not approve any crop allotment lease that will adversely affect its security interest.

(2) The borrower must assign all rental proceeds from an allotment lease to the Agency.

§ 765.253 Operating security.

If the borrower requests Agency consent to cease operating the security or if the Agency discovers that the borrower is failing to operate the security, the Agency will give consent if:

(a) Such action is in the Government's best interests;

(b) The borrower is unable to graduate;

(c) The borrower is involved in the day-to-day operational activities, management decisions, costs and returns of the operation, and will continue to reside in the immediate farming community for reasonable management and farm operation involvement;

(d) The borrower's failure to operate the farm is due to age or poor health, and the borrower continues to reside in the immediate farming community for reasonable management and farm operation involvement; or

(e) The borrower's failure to operate the real estate security is beyond the borrower's control, and the borrower will resume the operation within three years.

§§ 765.254–765.300 [Reserved]

Subpart G—Disposal of Chattel Security

§ 765.301 General.

(a) The borrower must account for all security.

(b) The borrower may not dispose of chattel security for an amount less than its market value. All proceeds, including any amount in excess of the market value, must be distributed to lienholders for application to the borrower's account in the order of lien priority.

(1) The Agency considers the market value of normal income security to be the prevailing market price of the commodity in the area in which the farm is located.

(2) The market value for basic security is determined by an appraisal obtained in accordance with § 761.7 of this chapter.

(c) When the borrower sells chattel security, the property and proceeds remain subject to the Agency lien until the lien is released by the Agency.

(d) The Agency and all other lienholders must provide written consent before a borrower may use proceeds for a purpose other than payment of lienholders in the order of lien priority.

(e) The transaction must not interfere with the borrower's operation or jeopardize the borrower's ability to repay the Agency loan.

(f) The disposition must enhance the program objectives of the Agency loan.

(g) When the borrower exchanges security property for other property or purchases new property with sale proceeds, the acquisition must be essential to the operation as well as meet the program objectives, purposes, and limitations for the type of loan.

(h) All checks, drafts, or money orders which the borrower receives from the sale of Agency security must be payable to the borrower and the Agency, unless all Agency loan installments, and any past due installments, for the period of the agreement for the use of proceeds have been paid.

§ 765.302 Use and maintenance of the agreement for the use of proceeds.

(a) The borrower and the Agency will execute an agreement for the use of proceeds for each production cycle, including proceeds from the sale of milk, crops on hand or in storage, planned proceeds from Government payments, crop insurance and insurance proceeds derived from the loss of security.

(b) The agreement for the use of proceeds will remain in effect until the proper disposition of all listed chattel security has been accomplished, or the remaining chattel security has been transferred to a new agreement for the use of proceeds.

(c) The borrower must report any disposition of basic or normal income security immediately to the Agency.

(d) If a borrower wants to dispose of chattel security not listed or in a way different than provided on the agreement for the use of proceeds, the borrower must obtain the Agency's consent before the disposition.

(e) If the borrower sells security to a purchaser not listed in the agreement for the use of proceeds, the borrower must immediately notify the Agency of what property has been sold and of the name and business address of the purchaser.

(f) The borrower must provide the Agency with the necessary information to update the operation's plan and the agreement for the use of proceeds in accordance with § 761.102 of this chapter.

(g) Changes to the agreement on the use of proceeds will be recorded, dated and initialed by the borrower and the Agency.

(h) The borrower must maintain records of dispositions of property and the actual use of proceeds. The borrower must make these records available to the

Agency at the end of the period covered by the agreement for the use of proceeds.

§ 765.303 Use of proceeds from chattel security.

(a) *General.* Proceeds from the sale of basic or normal income security may be used in accordance with the agreement for the use of proceeds as follows:

(1) Sales proceeds must be remitted to lienholders in order of lien priority.

(2) Proceeds will be applied to the Agency debt if there is no prior lienholder.

(3) Proceeds may be used to pay customary costs appropriate to the transaction.

(4) Security may be consumed as follows:

(i) Livestock may be used by the borrower's family for subsistence;

(ii) If crops serve as security and usually would be marketed, the Agency may allow such crops to be fed to livestock, if this is preferable to marketing, the Agency obtains a lien or assignment on the livestock, and livestock products, at least equal to the lien on the crops.

(5) Proceeds may be used to purchase property better suited to the borrower's needs if the Agency will acquire a lien on the purchased property. The value of the purchased property, together with any proceeds applied to the Agency debt, must at least equal the value of the Agency lien on the old security.

(6) Security may be exchanged for property better suited to the borrower's needs if the Agency will acquire a lien on the new property at least equal in value to the lien held on the property exchanged.

(b) *Additional uses of proceeds from the sale of normal income security.* (1) The agreement for the use of proceeds will allow for release of proceeds from the sale of normal income security to be used to pay essential family living and farm operating expenses. Such releases will be terminated when an account is accelerated.

(2) With the concurrence of all lienholders, proceeds may be used to preserve the security because of a natural disaster or other severe catastrophe, when funds cannot be obtained by other means or with an Agency loan in time to prevent the borrower and the Agency from suffering a substantial loss.

(c) *Basic security.* Proceeds from the sale of basic security may not be used for any family living and farm operating expenses.

§ 765.304 Unapproved disposition.

(a) If a borrower disposes of chattel security without Agency approval, or misuses proceeds, the borrower must:

(1) Make restitution to the Agency within 30 days of Agency notification; or

(2) Provide disposition or use information to enable the Agency to consider post-approval within 30 days of Agency notification.

(b) Failure to cure the first unauthorized disposition in accordance with paragraph (a) of this section, or a second unauthorized disposition, whether or not cured, will adversely impact future borrower eligibility for loans or loan servicing, and may result in civil or criminal action.

§ 765.305 Release of security interest.

(a) When Agency security is sold, exchanged, or consumed in accordance with the agreement for the use of proceeds, the Agency will release its security interest to the extent of the value of the security disposed.

(b) Security interests on wool and mohair may be released when the security is marketed by consignment, provided all of the following conditions are met:

(1) The borrower assigns to the Agency the proceeds of any advances made, or to be made, on the wool or mohair by the broker, less shipping, handling, processing, and marketing costs;

(2) The borrower assigns to the Agency the proceeds of the sale of the wool or mohair, less any remaining costs in shipping, handling, processing, and marketing, and less the amount of any advance (including any interest which may have accrued on the advance) made by the broker against the wool or mohair; and

(3) The borrower and broker agree that the net proceeds of any advances on, or sale of, the wool or mohair will be paid by checks made payable jointly to the borrower and the Agency.

§§ 765.306–765.350 [Reserved]

Subpart H—Partial Release of Real Estate Security

§ 765.351 Requirements to obtain Agency consent.

The borrower must obtain prior consent from the Agency for any transactions affecting the real estate security, including but not limited to, sale or exchange of security, a right-of-way across security, and a partial release. The Agency may consent to such transactions provided the conditions in this section are met.

(a) *General.* (1) The transaction will enhance the objectives for which the Agency loan or loans were made;

(2) The transaction will not jeopardize the borrower's ability to repay the Agency loan, or is necessary to place the borrower's operation on a sound basis;

(3) The amount received for the security being disposed of or the rights being granted is not less than the market value;

(4) Any proceeds in excess of the market value are remitted to lienholders in the order of lien priority;

(5) The transaction must not interfere with the borrower's operation;

(6) The market value of the remaining security is adequate to secure the Agency loans, or if the market value of the security before the transaction was inadequate to fully secure the Agency loans, the Agency's equity in the security is not diminished;

(7) The environmental requirements of 7 CFR 799 part must be met; and

(8) The borrower cannot graduate to other credit.

(b) *Sale of timber, gravel, oil, gas, coal, or other minerals.* (1) Agency lien instruments require that the borrower request and receive written consent from the Agency prior to certain transactions, including but not limited to, cutting, removal, or lease of timber, gravel, oil, gas, coal, or other minerals, except small amounts used by the borrower for ordinary household purposes.

(i) The sale of timber from real estate which secures an Agency loan will be considered a disposition of a portion of the security.

(ii) For loans secured by real estate before December 23, 1985, the Agency has a security interest in mineral products, gravel, oil, gas, coal, or other resources and the sale by unit or lump sum payment will be considered a disposition of security.

(iii) For loans secured by real estate on or after December 23, 1985, the Agency has a security interest in mineral products, gravel, oil, gas, coal, or other resources if the value of such products was included in an appraisal. When the Agency has a security interest, the sale of such products will be considered a disposition of a portion of the security.

(2) Any compensation the borrower may receive for damages to the surface of the real estate security resulting from exploration for, or recovery of, minerals must be assigned to the Agency. Such proceeds will be used to repair the damage and any remaining funds must be remitted to lienholders in the order of lien priority or, with all lienholders

consent, used for an authorized loan purpose.

(3) The disposition of security for an outstanding ST loan will only be authorized if the transaction will result in full repayment of the loan.

(c) *Exchange of security property.* When an exchange of security results in a balance owing to the borrower, the proceeds must be used in accordance with § 765.352.

Property acquired by the borrower must meet program objectives, purposes and limitations relating to the type of loan involved as well as applicable requirements for appraisal, title clearance and security.

(d) *Sale under contract for deed.* A borrower may sell a portion of the security for not less than its market value under a contract for deed subject to the following:

(1) Not less than 10 percent of the purchase price will be paid as a down payment and remitted to lienholders in the order of lien priority;

(2) Payments will not exceed 10 annual installments of principal plus interest. The interest rate will be the current rate being charged on a regular FO loan plus 1 percent or the rate on the borrower's notes, whichever is greater. Payments may be in equal or unequal installments with a balloon final installment;

(3) The Agency's security rights, including the right to foreclose on either the portion being sold or retained, will not be impaired;

(4) Any subsequent payments must be assigned to the lienholders and remitted in order of lien priority, or with lienholder approval, used in accordance with § 765.352;

(5) The mortgage on the property sold will not be released prior to either full payment of the borrower's account or receipt of the full amount of sale proceeds;

(6) The sale proceeds applied to the borrower's loan accounts will not relieve the borrower from obligations under the terms of the note or other agreements approved by the Agency;

(7) All other requirements of this section are met.

(e) *Transfer of allotments.* (1) The Agency will not approve any crop allotment lease that will adversely affect its security interest.

(2) The sale of an allotment must comply with all conditions of this subpart.

(3) The borrower may transfer crop allotments to another farm owned or controlled by the borrower. Such transfer will be treated as a lease under § 765.252.

§ 765.352 Use of proceeds.

(a) Proceeds from transactions affecting the real estate security may only be used as follows:

(1) Applied on liens in order of priority;

(2) To pay customary costs appropriate to the transaction, which meet the following conditions:

(i) Are reasonable in amount;

(ii) Cannot be paid by the borrower;

(iii) Will not be paid by the purchaser;

(iv) Must be paid to consummate the transaction; and

(v) May include postage and insurance when it is necessary for the Agency to present the promissory note to the recorder to obtain a release of a portion of the real estate from the mortgage.

(3) For development or enlargement of real estate owned by the borrower as follows:

(i) Development or enlargement must be necessary to improve the borrower's debt-payment ability, place the borrower's operation on a sound basis, or otherwise enhance the objectives of the loan;

(ii) Such use will not conflict with the loan purposes, restrictions or requirements of the type of loan involved;

(iii) Funds will be deposited in a supervised bank account in accordance with subpart B of part 761 of this chapter;

(iv) The Agency has, or will obtain, a lien on the real estate developed or enlarged;

(v) Construction and development will be completed in accordance with § 761.10 of this chapter.

(b) When liquidation is pending, the Agency may approve transactions only when all the proceeds will be applied to the liens against the security in the order of their priority, after deducting customary costs appropriate to the transaction. Such approval will not cancel or delay liquidation, unless all loan defaults are otherwise cured.

§ 765.353 Determining market value.

(a) *Security proposed for disposition.* (1) The Agency will obtain an appraisal of the security proposed for disposition.

(2) The Agency may waive the appraisal requirement when the estimated value is less than \$20,000.

(b) *Security remaining after disposition.* The Agency will obtain an appraisal of the remaining security if it determines that the transaction will reduce the value of the remaining security by an amount greater than the value of the security proposed for disposition.

(c) *Appraisal requirements.* Appraisals, when required, will be

conducted in accordance with § 761.7 of this chapter.

§§ 765.354–765.400 [Reserved]

Subpart I—Transfer of Security and Assumption of Debt

§ 765.401 Conditions for transfer of real estate and chattel security.

(a) *General conditions.* (1) Approval of a security transfer and corresponding loan assumption obligates a new borrower to repay an existing Agency debt.

(2) All transferees will become personally liable for the debt and assume the full responsibilities and obligations of the debt transferred when the transfer and assumption is complete. If the transferee is an entity, the entity and each member must assume personal liability for the loan.

(3) A transfer and assumption will only be approved if the Agency determines it is in the Agency's best financial interest.

(b) *Agency consent.* A borrower must request and obtain written Agency consent prior to selling or transferring security to another party.

§ 765.402 Transfer of security and loan assumption on same rates and terms.

An eligible applicant may assume an Agency loan under the same rates and terms as the original note if:

(a) The original borrower has died and the spouse, other relative, or joint tenant who is not obligated on the note inherits the security property;

(b) An immediate family member of the borrower's family or an entity comprised solely of immediate family members of the borrower assumes the debt along with the original borrower;

(c) An individual with an ownership interest in the borrower entity buys the entire ownership interest of the other members and continues to operate the farm in accordance with loan requirements. The new owner must assume personal liability for the loan;

(d) A new entity buys the borrower entity and continues to operate the farm in accordance with loan requirements; or

(e) The original loan is an EM loan for physical or production losses and persons who were directly involved in the farm's operation at the time of the loss will assume the loan. If the original loan was made to:

(1) An individual borrower, the transferee must be an immediate family member of the original borrower or an entity that is comprised solely of immediate family members of the original borrower.

(2) A trust, partnership or joint operation, the transferee must have been a member, partner or joint operator when the Agency made the original loan or remain an entity comprised solely of people who were original members, partners or joint operators when the entity received the original loan.

(3) A corporation, including limited liability company, or cooperative, the transferee must:

(i) Have been a corporate stockholder or a cooperative member when the Agency made the original loan or will be an entity comprised solely of people who were corporate stockholders or cooperative members when the entity received the loan; and

(ii) Assume only the portion of the physical or production loss loan equal to the transferee's percentage of ownership. In the case of entity transferees, the transferee must assume that portion of the loan equal to the combined percentages of ownership of the individual stockholders or members in the transferee.

§ 765.403 Transfer of security to and assumption of debt by eligible borrowers.

(a) *Transfer of real estate and chattel security.* The Agency may approve transfers of security with assumption of Agency debt by transferees eligible for the type of loan being assumed if:

(1) The transferee meets all loan and security requirements in 7 CFR part 764 for the type of loan being assumed; and

(2) The outstanding loan balance (principal and interest) does not exceed the maximum loan limit for the type of loan as contained in § 761.8 of this chapter.

(b) *Assumption of Non-program loans.* Applicants eligible for FO loans under 7 CFR part 764 may assume Non-program loans made for real estate purposes if the Agency determines the property meets program requirements. In such case, the Agency will reclassify the Non-program loan as a FO loan.

(c) *Loan types that the Agency no longer makes.* Real estate loan types the Agency no longer makes (*i.e.*, EE, SL, EO, RL, RHF) may be assumed and reclassified as FO loans if the transferee is eligible for a FO loan under 7 CFR part 764 and the property proposed for transfer meets program requirements.

(d) *Amount of assumption.* The transferee must assume the lesser of:

(1) The outstanding balance of the transferor's loan; or

(2) The present market value of the security, less prior liens and authorized costs, if the outstanding loan balance exceeds the present market value of the property.

§ 765.404 Transfer of security to and assumption of debt by ineligible borrowers.

(a) *General.* (1) The Agency will allow the transfer of real estate and chattel security property to borrowers who are ineligible for the type of loan being assumed only on Non-program loan rates and terms.

(2) The Agency will reclassify the assumed loan as a Non-program loan.

(b) *Eligibility.* Transferees must provide written documentation verifying their credit worthiness and debt repayment ability.

(c) *Assumption amount.* The transferee must assume the total outstanding Agency debt or if the value of the property is less than the entire amount of debt, an amount equal to the current market value of the security less any prior liens. The total outstanding Agency debt will include any unpaid deferred interest that accrued on the loan to the extent that the debt does not exceed the security's present market value.

(d) *Downpayment.* Non-program transferees must make a downpayment to the Agency of not less than 10 percent of the lesser of the present market value or unpaid debt.

(e) *Interest rate.* The interest rate will be the Non-program interest rate in effect at the time of loan approval.

(f) *Loan terms.* (1) For a Non-program loan secured by real estate, the Agency schedules repayment in 25 years or less, based on the borrower's repayment ability.

(2) For a Non-program loan secured by chattel property only, the Agency schedules repayment in five years or less, based on the borrower's repayment ability.

§ 765.405 Payment of costs associated with transfers.

The transferor and transferee are responsible for paying transfer costs such as real estate taxes, title examination, attorney's fees, surveys, and title insurance. When the transferor is unable to pay its portion of the transfer costs, the transferee, with Agency approval, may pay these costs provided:

(a) Any cash equity due the transferor is applied first to payment of costs and the transferor does not receive any cash payment above these costs;

(b) The transferee's payoff of any junior liens does not exceed \$5,000;

(c) Fees are customary and reasonable;

(d) The transferee can verify that personal funds are available to pay transferor and transferee fees; and

(e) Any equity due the transferor is held in escrow by an Agency designated closing agent and is disbursed at closing.

§ 765.406 Release of transferor from liability.

(a) *General.* Agency approval of an assumption does not automatically release the transferor from liability.

(b) *Requirements for release.* (1) The Agency may release the transferor from liability when all of the security is transferred and the total outstanding debt is assumed.

(2) If an outstanding debt balance will remain and only part of the transferor's Agency security is transferred, the written request for release of liability will not be approved, unless the deficiency is otherwise resolved to the Agency's satisfaction.

(3) If an outstanding balance will remain and all of the transferor's security has been transferred, the transferor may pay the remaining balance or request debt settlement in accordance with 7 CFR part 792.

(4) Except for loans in default being serviced under 7 CFR part 766, if an individual who is jointly liable for repayment of an Agency loan withdraws from the operation and conveys all of their interest in the security to the remaining borrower, the withdrawing party may be released from liability under the following conditions:

(i) A divorce decree or property settlement states that the withdrawing party is no longer responsible for repaying the loan;

(ii) All of the withdrawing party's interests in the security are conveyed to the persons with whom the loan will be continued; and

(iii) The persons with whom the loan will be continued can demonstrate the ability to repay all of the existing and proposed debt obligations.

§§ 765.407–765.450 [Reserved]

Subpart J—Deceased Borrowers

§ 765.451 Continuation of FLP debt and transfer of security.

(a) *Individuals who are liable.* The Agency will continue the loan with any individual who was liable for the indebtedness provided that the individual complies with the obligations of the loan and security instruments.

(b) *Individuals who are not liable.* The Agency will continue the loan with a person who is not liable for the indebtedness in accordance with subpart I of this part.

§ 765.452 Borrowers with Non-program loans.

(a) *Loan continuation.* (1) The Agency will continue the loan with a jointly liable borrower if the borrower

continues to pay the deceased's loan in accordance with the terms of the loan.

(2) The Agency may continue the loan with an individual who inherits title to the property and is not liable for the indebtedness provided the individual makes payments as scheduled and fulfills all other responsibilities of the borrower under the promissory note.

(b) *Loan assumption.* A deceased borrower's loan may be assumed by an individual not liable for the indebtedness in accordance with subpart I of this part.

(c) *Loan discontinuation.* (1) The Agency will not continue a loan for any subsequent transfer of title by the heirs, or sale of interests between heirs to consolidate title; and

(2) The Agency treats any subsequent transfer of title as a sale subject to requirements listed in subpart I of this part.

§§ 765.453–765.500 [Reserved]

Subpart K—Exception Authority

§ 765.501 Agency exception authority.

On an individual case basis, the Agency may consider granting an exception to any regulatory requirement or policy of this part if:

(a) The exception is not inconsistent with the authorizing statute or other applicable law; and

(b) The Government's financial interest would be adversely affected by acting in accordance with published regulations or policies and granting the exception would resolve or eliminate the adverse effect upon the Government's financial interest.

§§ 765.502–765.550 [Reserved]

14. Add part 766 to read as follows:

PART 766—DIRECT LOAN SERVICING—SPECIAL

Subpart A—Overview

Sec.

766.1 Introduction to direct loan servicing—special.

766.2 Abbreviations and definitions.
766.3–766.50 [Reserved]

Subpart B—Disaster Set-Aside

766.51 General.

766.52 Eligibility.

766.53 Disaster Set Aside amount limitations.

766.54 Borrower application requirements.

766.55 Eligibility determination.

766.56 Security requirements.

766.57 Borrower acceptance of Disaster Set Aside.

766.58 Installment to be set aside.

766.59 Payments toward set-aside installments.

766.60 Canceling a Disaster Set Aside.

766.61 Reversal of a Disaster Set Aside.

766.62–766.100 [Reserved]

Subpart C—Loan Servicing Programs

766.101 Initial Agency notification to borrower of loan servicing programs.

766.102 Borrower application requirements.

766.103 Borrower does not respond or does not submit a complete application.

766.104 Borrower eligibility requirements.

766.105 Agency consideration of servicing requests.

766.106 Agency notification of decision regarding a complete application.

766.107 Consolidation and rescheduling.

766.108 Reamortization.

766.109 Deferral.

766.110 Conservation Contract.

766.111 Writedown.

766.112 Additional security for restructured loans.

766.113 Buyout of loan at current market value.

766.114 State-certified mediation and voluntary meeting of creditors.

766.115 Challenging the Agency appraisal.

766.116–766.150 [Reserved]

Subpart D—Homestead Protection Program

766.151 Purpose.

766.152 Applying for Homestead Protection.

766.153 Eligibility.

766.154 Homestead Protection transferability.

766.155 Homestead Protection leases.

766.156 Conflict with State law.

766.157–766.200 [Reserved]

Subpart E—Servicing Shared Appreciation Agreements and Net Recovery Buyout Agreements

766.201 Shared Appreciation Agreement.

766.202 Determining the shared appreciation due.

766.203 Payment of recapture.

766.204 Amortization of recapture.

766.205 Shared Appreciation Payment Agreement rates and terms.

766.206 Net Recovery Buyout Recapture Agreement.

766.207–766.250 [Reserved]

Subpart F—Unauthorized Assistance

766.251 Types of unauthorized assistance.

766.252 Repayment of unauthorized assistance.

766.253 Unauthorized assistance resulting from submission of false or incomplete information.

766.254 Unauthorized assistance resulting from borrower or Agency error.

766.255–766.300 [Reserved]

Subpart G—Bankruptcy

766.301 Notifying borrower in bankruptcy of loan servicing.

766.302 Loan servicing application requirements for borrowers in bankruptcy.

766.303 Processing loan servicing requests from borrowers in bankruptcy.

766.304–766.350 [Reserved]

Subpart H—Loan Liquidation

766.351 Liquidation.

766.352 Voluntary sale of real property and chattel.

766.353 Voluntary conveyance of real property.

766.354 Voluntary conveyance of chattel.

766.355 Acceleration of loans.

766.356 Involuntary liquidation of real property and chattel.

766.357–766.400 [Reserved]

Subpart I—Exception Authority

766.401 Agency exception authority.

766.402–766.450 [Reserved]

Appendix A to subpart C of 7 CFR 766—FSA 2501, Notice of Availability of Loan Servicing to Borrowers Who Are Current or Less Than 90 Days Past Due

Appendix B to subpart C of 7 CFR 766—FSA 2503, Notice of Availability of Loan Servicing to Borrowers Who Are 90 Days Past Due

Appendix C to subpart C of 7 CFR 766—FSA 2505, Notice of Availability of Loan Servicing to Borrowers in Non-Monetary Default

Authority: 5 U.S.C. 301 and 7 U.S.C. 1981d and 1989.

Subpart A—Overview

§ 766.1 Introduction to direct loan servicing—special.

(a) This part describes the Agency's servicing policies for borrowers who:

(1) Are financially distressed;

(2) Are delinquent in paying direct loans or otherwise in default;

(3) Have received unauthorized assistance;

(4) Have filed bankruptcy or are involved in other civil or criminal cases affecting the Agency; or

(5) Have loan security being liquidated voluntarily or involuntarily.

(b) The Agency services FLP direct loans under the policies contained in this part. The Agency does not service Non-program loans under this part except where noted.

(c) The Agency requires the borrower to make every reasonable attempt to make payments and comply with loan requirements before the Agency considers special servicing.

§ 766.2 Abbreviations and definitions.

Abbreviations and definitions for terms used in this part are provided in § 761.2 of this chapter.

§§ 766.3–766.50 [Reserved]

Subpart B—Disaster Set-Aside

§ 766.51 General.

(a) The DSA program is available to borrowers with FLP direct program loans who suffered losses as a result of a natural disaster.

(b) DSA is not intended to circumvent other servicing available under this part.

(c) Non-program loans may be serviced under this subpart for borrowers who also have FLP program loans.

§ 766.52 Eligibility.

(a) *Borrower eligibility.* The borrower must meet all of the following requirements to be eligible for a DSA:

(1) The borrower must have operated the farm in a county designated or declared a disaster area or a contiguous county at the time of the disaster. Farmers who have rented out their land base for cash are not operating the farm.

(2) The borrower must have acted in good faith, and the borrower's inability to make the upcoming scheduled loan payments must be for reasons not within the borrower's control.

(3) A borrower cannot have more than one installment set aside on each loan;

(4) As a direct result of the natural disaster, the borrower does not have sufficient income available to pay all essential family living and farm operating expenses, and debt to the Agency. This determination will be based on:

(i) The borrower's actual production, income and expense records for the year the natural disaster occurred;

(ii) Any other records required by the servicing official;

(iii) Compensation received for losses; and

(iv) Increased expenses incurred because of the natural disaster.

(5) For the next business accounting year, the borrower must develop a positive cash flow projection showing that the borrower will at least be able to pay all operating expenses and taxes due during the year, essential family living expenses, and meet scheduled payments on all debts, including FLP debts. The borrower must provide any documentation required to support the cash flow projection.

(6) The borrower must not be in non-monetary default.

(7) The borrower must not become 165 days past due before DSA is complete.

(b) *Loan eligibility.* (1) Any FLP loan to be considered for DSA must have been outstanding at the time the natural disaster occurred.

(2) All of the borrower's FLP program and Non-program loans must be current after the Agency completes a DSA of the scheduled installment.

(3) All FLP loans must be current or less than 90 days past due at the time the application for DSA is complete.

(4) The Agency has not accelerated or applied any servicing action to the loan since the natural disaster occurred.

(5) For any loan that will receive a DSA, the remaining term of the loan must equal or exceed 2 years from the due date of the installment set-aside.

§ 766.53 Disaster Set Aside amount limitations.

(a) The DSA amount is limited to:

(1) The first or second scheduled annual installment on the Agency loans due after the disaster occurred; or

(2) The amount the borrower is unable to pay the Agency due to the disaster. Borrowers are required to pay any portion of an installment they are able to pay.

(b) The amount set aside will be the unpaid balance remaining on the installment at the time the DSA is complete. This amount will include the unpaid interest and any principal that would be credited to the account as if the installment were paid on the due date, taking into consideration any payments applied to principal and interest since the due date.

(c) Recoverable cost items may not be set aside.

§ 766.54 Borrower application requirements.

(a) *Requests for DSA.* (1) A borrower must submit a request for DSA in writing within eight months from the date the natural disaster was designated.

(2) For an entity, all obligors of the Agency indebtedness must sign the DSA request.

(b) *Required financial information.* (1) The borrower must submit actual production, income, and expense records for the production and marketing period in which the disaster occurred unless the Agency already has this information.

(2) The Agency may request other information needed to make an eligibility determination.

§ 766.55 Eligibility determination.

Within 30 days of a complete DSA application, the Agency will determine if the borrower meets the eligibility requirements for DSA.

§ 766.56 Security requirements.

If the borrower is not current on all FLP loans when the borrower executes the appropriate DSA Agency documents, the borrower, and all obligors in the case of an entity, must execute and provide to the Agency a best lien obtainable on all of their assets except those listed under § 766.112 (b).

§ 766.57 Borrower acceptance of Disaster Set Aside.

The borrower must execute the appropriate Agency documents within 45 days after the borrower receives notification of Agency approval of DSA.

§ 766.58 Installment to be set aside.

(a) The Agency will set-aside the first installment due immediately after the disaster occurred.

(b) If the borrower has already paid the installment due immediately after the disaster occurred, the Agency will set-aside the next annual installment.

§ 766.59 Payments toward set-aside installments.

(a) *Interest accrual.* (1) Interest will accrue on any principal portion of the set-aside installment at the same rate charged on the balance of the loan.

(2) If the borrower's set-aside installment is for a loan with a limited resource rate and the Agency modifies that limited resource rate, the interest rate on the set-aside portion will be modified concurrently.

(b) *Due date.* The amount set-aside, including interest accrued on the principal portion of the set-aside, is due on or before the final due date of the loan.

(c) *Applying payments.* The Agency will apply borrower payments toward set-aside installments first to interest and then to principal.

§ 766.60 Canceling a Disaster Set Aside.

The Agency will cancel a DSA if:

(a) The Agency takes any primary loan servicing action on the loan;

(b) The borrower pays the market value buyout in accordance with § 766.113; or

(c) The borrower pays the set-aside installment.

§ 766.61 Reversal of a Disaster Set Aside.

If the Agency determines that the borrower received an unauthorized DSA, the Agency will reverse the DSA after all appeals are concluded.

§§ 766.62–766.100 [Reserved]**Subpart C—Loan Servicing Programs****§ 766.101 Initial Agency notification to borrower of loan servicing programs.**

(a) *Borrowers notified.* The Agency will provide servicing information under this section to borrowers who:

(1) Have a current operating plan that demonstrates the borrower is financially distressed;

(2) Are 90 days or more past due on loan payments, even if the borrower has submitted an application for loan servicing as a financially distressed borrower;

(3) Are in non-monetary default on any loan agreements;

(4) Have filed bankruptcy;

(5) Request this information;

(6) Request voluntary conveyance of security;

(7) Have only delinquent SA; or

(8) Are subject to any other collection action except when such action is a result of failure to graduate. Borrowers

who fail to graduate when required and are able to do so, will be accelerated without providing notification of loan servicing options.

(b) *Form of notification.* The Agency will notify borrowers of the availability of primary loan servicing programs, conservation contract, current market value buyout, debt settlement programs and homestead protection as follows:

(1) A borrower who is financially distressed, or current and requesting servicing will be provided FSA 2501;

(2) A borrower who is 90 days past due will be sent FSA 2503;

(3) A borrower who is in non-monetary or both monetary and non-monetary default will receive FSA 2505;

(4) A borrower who has only delinquent SA will be notified of available loan servicing;

(5) Notification to a borrower who files bankruptcy will be provided in accordance with subpart G of this part.

(c) *Mailing.* Notices to delinquent borrowers or borrowers in non-monetary default will be sent by certified mail to the last known address of the borrower.

(d) *Borrower response timeframes.* To be considered for loan servicing, a borrower who is:

(1) Current or financially distressed may submit a complete application any time prior to becoming 90 days past due;

(2) Ninety (90) days past due must submit a complete application within 60 days from receipt of FSA 2503;

(3) In non-monetary default with or without monetary default must submit a complete application within 60 days from receipt of FSA 2505.

§ 766.102 Borrower application requirements.

(a) Except as provided in paragraph (e) of this section, an application for primary loan servicing, conservation contract, current market value buyout, homestead protection, or some combination of these options, must include the following to be considered complete:

(1) Completed acknowledgment form provided with the Agency notification;

(2) Completed Agency application form. In the case of an entity, all entity members must provide current financial statements;

(3) Financial records for the three most recent years, including income tax returns;

(4) Farm operation production records for the three most recent years or the years the borrower has been farming, whichever is less;

(5) Documentation of compliance with the Agency's environmental regulations contained in 7 CFR 799;

(6) Verification of all non-farm income;

(7) The farm's operating plan, including projected cash flow budget reflecting production, income, expenses, and debt repayment plan; and

(8) Verification of all debts and collateral.

(b) In addition to the requirements contained in paragraph (a) of this section, the borrower must submit an aerial photo delineating any land to be considered for a conservation contract.

(c) To be considered for debt settlement, the borrower must provide the appropriate Agency form, and any additional information required under 7 CFR 792.

(d) If a borrower who submitted a complete application while current or financially distressed is renotified as a result of becoming 90 days past due, the borrower must only submit a request for servicing in accordance with paragraph (a)(1) of this section, provided all other information is less than 90 days old and is based on the current production cycle. Any information 90 or more days old or not based on the current production cycle must be updated.

(e) The borrower need not submit any information under this section that already exists in the Agency's file and is still current as determined by the Agency.

(f) When jointly liable borrowers have been divorced and one has withdrawn from the operation, the Agency may release the withdrawing individual from liability, provided:

(1) The remaining individual submits a complete application in accordance with this section;

(2) Both parties have agreed in a divorce decree or property settlement that only the remaining individual will be responsible for all Agency loan payments;

(3) The withdrawing individual has conveyed all ownership interest in the security to the remaining individual; and

(4) The withdrawing individual does not have repayment ability and does not own any non-essential assets.

§ 766.103 Borrower does not respond or does not submit a complete application.

(a) If a borrower who was financially distressed, or current and requested loan servicing and received FSA 2501 but fails to timely respond and subsequently becomes 90 days past due, the Agency will notify the borrower in accordance with § 766.101(a)(2).

(b) If a borrower who is 90 days past due without non-monetary default and received FSA 2503, or is in non-monetary default and received FSA

2505 and fails to timely respond or does not submit a complete application within the 60-day timeframe, the Agency will notify the borrower by certified mail of the following:

(1) The Agency's intent to accelerate the loan; and

(2) The borrower's right to request reconsideration, mediation and appeal in accordance with 7 CFR part 11 and 7 CFR part 780.

§ 766.104 Borrower eligibility requirements.

(a) A borrower must meet the following eligibility requirements to be considered for primary loan servicing:

(1) Any delinquency or financial distress is due to circumstances beyond the borrower's control which reduced repayment ability to the extent that scheduled payments cannot be made as a result of one of the following circumstances:

(i) Illness, injury, or death of a borrower or other individual who operates the farm;

(ii) Natural disaster, adverse weather, disease, or insect damage which caused severe loss of agricultural production;

(iii) Widespread economic conditions such as low commodity prices;

(iv) Damage or destruction of property essential to the operation; or

(v) Loss of, or reduction in, the borrower or spouse's essential non-farm income.

(2) The borrower does not have non-essential assets for which the net recovery value is sufficient to resolve the financial distress or pay the delinquent portion of the loan.

(3) If the borrower is in non-monetary default, the borrower will resolve the non-monetary default prior to closing the servicing action.

(4) The borrower has acted in good faith in accordance with the borrower's loan agreements.

(5) Financially distressed or current borrowers requesting servicing must pay a portion of the interest due on the loans.

(b) Debtors with SA only must:

(1) Be delinquent due to circumstances beyond their control;

(2) Have acted in good faith.

§ 766.105 Agency consideration of servicing requests.

(a) *Order in which Agency considers servicing options.* The Agency will consider loan servicing options and combinations of options to maximize loan repayment and minimize losses to the Agency. The Agency will consider loan servicing options in the following order for each eligible borrower who requests servicing:

- (1) Conservation Contract, if requested;
- (2) Consolidation and rescheduling or reamortization;
- (3) Deferral;
- (4) Writedown; and
- (5) Current market value buyout.

(b) *Debt service margin.*

(1) The Agency will attempt to achieve a 110 percent debt service margin for the servicing options listed in paragraphs (a)(2) through (4) of this section.

(2) If the borrower cannot develop a feasible plan with the 110 percent debt service margin, the Agency will reduce the debt service margin by one percent and reconsider all available servicing authorities. This process will be repeated until a feasible plan has been developed or it has been determined that a feasible plan is not possible with a 100 percent margin.

(3) The borrower must be able to develop a feasible plan with at least a 100 percent debt service margin to be considered for the servicing options listed in paragraphs (a)(1) through (4) of this section.

(c) *Appraisal of borrower's assets.* The Agency will obtain an appraisal on:

(1) All Agency security, non-essential assets, and real property unencumbered by the Agency that does not meet the criteria established in § 766.112(b), when:

(i) A writedown is required to develop a feasible plan;

(ii) The borrower will be offered current market value buyout.

(2) The borrower's non-essential assets when their net recovery value may be adequate to bring the delinquent loans current.

§ 766.106 Agency notification of decision regarding a complete application.

The Agency will notify a borrower of the Agency's decision within 60 calendar days after receiving a complete application for loan servicing.

(a) *Notification to financially distressed or current borrowers.* (1) If the borrower can develop a feasible plan and is eligible for primary loan servicing, the Agency will offer to service the account.

(i) The borrower will have 45 days to accept the offer of servicing. After accepting the Agency's offer, the borrower must execute loan agreements and security instruments, as appropriate.

(ii) If the borrower does not accept the offer, the Agency will renotify the borrower of the availability of loan servicing if the borrower becomes 90 days past due in accordance with § 766.101(a)(2).

(2) If the borrower cannot develop a feasible plan, or is not eligible for loan servicing, the Agency will notify the borrower of the reasons for the adverse decision.

(i) The borrower may request reconsideration, mediation and appeal in accordance with 7 CFR 11 and 7 CFR 780 of this title.

(ii) The Agency will renotify the borrower of the availability of loan servicing if the borrower becomes 90 days past due in accordance with § 766.101(a)(2).

(b) *Notification to borrowers 90 days past due or in non-monetary default.* (1) If the borrower can develop a feasible plan and is eligible for primary loan servicing, the Agency will offer to service the account.

(i) The borrower will have 45 days to accept the offer of servicing. After accepting the Agency's offer, the borrower must execute loan agreements and security instruments, as appropriate.

(ii) If the borrower does not accept the offer, or fails to respond, the Agency will notify the borrower of its intent to accelerate the account.

(2) If the borrower cannot develop a feasible plan, or is not eligible for loan servicing, the Agency will notify the borrower of its intent to accelerate the account in accordance with subpart H of this part, unless the account is resolved through any of the following options:

(i) The borrower may request reconsideration, mediation or voluntary meeting of creditors, or appeal in accordance with 7 CFR part 11 and 7 CFR part 780.

(ii) The borrower may request negotiation of appraisal within 30 days in accordance with § 766.115.

(iii) If the net recovery value of non-essential assets is sufficient to pay the account current, the borrower has 90 days to pay the account current.

(iv) The borrower, if eligible in accordance with § 766.113, may buyout the loans at the current market value within 90 days.

(v) The borrower may request homestead protection if the borrower's primary residence was pledged as security by providing the information required under § 766.152.

§ 766.107 Consolidation and rescheduling.

(a) *Loans eligible for consolidation.* The Agency may consolidate OL loans if:

(1) The borrower meets loan servicing eligibility requirements in § 766.104;

(2) The Agency determines that consolidation will assist the borrower to repay the loans;

(3) Consolidating the loans will bring the borrower's account current or

prevent the borrower from becoming delinquent;

(4) The Agency has not referred the borrower's account to OGC or the U.S. Attorney, and the Agency does not plan to refer the account to either of these two offices in the near future;

(5) The borrower is in compliance with the Highly Erodible Land and Wetland Conservation requirements of 7 CFR part 12, if applicable;

(6) The loans are not secured by real estate;

(7) The Agency holds the same lien position on each loan;

(8) The Agency has not serviced the loans for unauthorized assistance under subpart F of this part; and

(9) The loan is not currently deferred, as described in § 766.109, or set-aside, as described in subpart B of this part. The Agency may consolidate loans upon cancellation of the deferral or DSA.

(b) *Loans eligible for rescheduling.* The Agency may reschedule loans made for chattel purposes, including OL, SW, RL, EE, or EM if:

(1) The borrower meets loan servicing eligibility requirements in § 766.104;

(2) Rescheduling the loans will bring the borrower's account current or prevent the borrower from becoming delinquent;

(3) The Agency determines that rescheduling will assist the borrower to repay the loans;

(4) The Agency has not referred the borrower's account to OGC or the U.S. Attorney, and the Agency does not plan to refer the account to either of these two offices in the near future;

(5) The borrower is in compliance with the Highly Erodible Land and Wetland Conservation requirements of 7 CFR 12, if applicable; and

(6) The loan is not currently deferred, as described in § 766.109, or set-aside, as described in subpart B of this part. The Agency may reschedule loans upon cancellation of the deferral or DSA.

(c) *Consolidated and rescheduled loan terms.* (1) The Agency determines the repayment schedule for consolidated and rescheduled loans according to the borrower's repayment ability.

(2) The repayment period cannot exceed 15 years from the date of the consolidation and rescheduling, except that the repayment schedule for RL loans may not exceed 7 years from the date of rescheduling.

(d) *Consolidated and rescheduled loan interest rate.* The interest rate of consolidated and rescheduled loans will be as follows:

(1) The interest rate for loans made at the regular interest rate will be the lesser of:

(i) The lowest interest rate for that type of loan on the date a complete servicing application was received;

(ii) The lowest interest rate for that type of loan on the date of restructure; or

(iii) The lowest original loan note rate on any of the original notes being consolidated and rescheduled.

(2) The interest rate for loans made at the limited resource interest rate will be the lesser of:

(i) The limited resource interest rate for that type of loan on the date a complete servicing application was received;

(ii) The limited resource interest rate for that type of loan on the date of restructure; or

(iii) The lowest original loan note rate on any of the original notes being consolidated and rescheduled.

(3) At the time of consolidation and rescheduling, the Agency may reduce the interest rate to a limited resource rate, if available, if:

(i) The borrower meets the requirements for the limited resource interest rate; and

(ii) A feasible plan cannot be developed at the regular interest rate and maximum terms permitted in this section.

(4) Loans consolidated and rescheduled at the limited resource interest rate will be subject to annual limited resource review in accordance with § 765.51 of this chapter.

(e) *Capitalizing accrued interest and adding protective advances to the loan principal.* (1) The Agency capitalizes the amount of outstanding accrued interest on the loan at the time of consolidation and rescheduling.

(2) The Agency adds protective advances for the payment of real estate taxes to the principal balance at the time of consolidation and rescheduling.

(3) The borrower must resolve all other protective advances not capitalized prior to closing the servicing actions.

(f) *Installments.* If there are no deferred installments, the first installment payment under the consolidation and rescheduling will be at least equal to the interest amount which will accrue on the new principal between the date the promissory note is processed and the next installment due date.

§ 766.108 Reamortization.

(a) *Loans eligible for reamortization.* The Agency may reamortize loans made for real estate purposes, including FO, SW, RL, SA, EE, RHF, and EM if:

(1) The borrower meets the loan servicing eligibility requirements listed in § 766.104;

(2) Reamortization will bring the borrower's account current or prevent the borrower from becoming delinquent;

(3) The Agency determines that reamortization will assist the borrower to repay the loan;

(4) The Agency has not referred the borrower's account to OGC or the U.S. Attorney, and the Agency does not plan to refer the account to either of these two offices in the near future;

(5) The borrower is in compliance with the Highly Erodible Land and Wetland Conservation provisions of 7 CFR part 12, if applicable; and

(6) The loan is not currently deferred, as described in § 766.109, or set-aside, as described in subpart B of this part. The Agency may reamortize loans upon cancellation of the deferral or DSA.

(b) *Reamortized loan terms.* (1) Except as provided in paragraph (b)(2), the Agency will reamortize loans within the remaining term of the original loan or assumption agreement unless a feasible plan cannot be developed or debt forgiveness will be required to develop a feasible plan.

(2) If the Agency extends the loan term, the repayment period from the original loan date may not exceed the maximum number of years for the type of loan being reamortized as set forth below, or the useful life of the security, whichever is less.

(i) FO, SW, RL, EE real estate-type, and EM loans made for real estate purposes may not exceed 40 years from the date of the original note or assumption agreement.

(ii) EE real estate-type loans secured by chattels only may not exceed 20 years from the date of the original note or assumption agreement.

(iii) RHF loans may not exceed 33 years from the date of the original note or assumption agreement.

(iv) SA loans may not exceed 25 years from the date of the original Shared Appreciation note.

(c) *Reamortized loan interest rate.* The interest rate will be as follows:

(1) The interest rate for loans made at the regular interest rate will be the lesser of:

(i) The lowest interest rate for that type of loan on the date a complete servicing application was received;

(ii) The lowest interest rate for that type of loan on the date of restructure; or

(iii) The original loan note rate of the note being reamortized.

(2) The interest rate for loans made at the limited resource interest rate will be the lesser of:

(i) The limited resource interest rate for that type of loan on the date a complete servicing application was received;

(ii) The limited resource interest rate for that type of loan on the date of restructure; or

(iii) The original loan note rate of the note being reamortized.

(3) At the time of reamortization, the Agency may reduce the interest rate to a limited resource rate, if available, if:

(i) The borrower meets the requirements for the limited resource interest rate; and

(ii) A feasible plan cannot be developed at the regular interest rate and maximum terms permitted in this section.

(4) Loans reamortized at the limited resource interest rate will be subject to annual limited resource review in accordance with § 765.51 of this chapter.

(5) SA payment agreements will be reamortized at the current SA amortization rate in effect on the date of approval or the rate on the original payment agreement, whichever is less.

(d) *Capitalizing accrued interest and adding protective advances to the loan principal.* (1) The Agency capitalizes the amount of outstanding accrued interest on the loan at the time of reamortization.

(2) The Agency adds protective advances for the payment of real estate taxes to the principal balance at the time of reamortization.

(3) The borrower must resolve all other protective advances not capitalized prior to closing the reamortization.

(e) *Installments.* If there are no deferred installments, the first installment payment under the reamortization will be at least equal to the interest amount which will accrue on the new principal between the date the promissory note is processed and the next installment due date.

§ 766.109 Deferral.

(a) *Conditions for approving deferrals.* The Agency will only consider deferral of loan payments if:

(1) The borrower meets the loan servicing eligibility requirements of § 766.104;

(2) Rescheduling, consolidation, and reamortization of all the borrower's loans, will not result in a feasible plan with 110 percent debt service margin;

(3) The need for deferral is temporary; and

(4) The borrower develops feasible first-year deferral and post-deferral plans subject to the following:

(i) The deferral will not create excessive net cash reserves beyond that necessary to develop a feasible plan.

(ii) The Agency will consider a partial deferral if deferral of the total Agency

payment would result in the borrower developing more cash availability than necessary to meet debt repayment obligations.

(b) *Deferral period.* (1) The deferral term will be based on the post-deferral plan which results in the greatest improvement over the first year cash available to service FLP debt, and in no case will exceed 5 years.

(2) The Agency will distribute interest accrued on the deferred principal portion of the loan equally to payments over the remaining loan term after the deferral period ends.

(c) *Agency actions when borrower's repayment ability improves.* (1) If the Agency determines that the borrower's repayment ability has increased to allow the borrower to make some payments during the deferral period, the borrower must make supplemental payments, as determined by the Agency. If the borrower agrees to make supplemental payments, but does not do so, the borrower will be considered to be in non-monetary default.

(2) If the Agency determines that the borrower's improved repayment ability will allow graduation, the Agency will require the borrower to graduate in accordance with part 765, subpart C of this chapter.

(d) *Associated loan servicing.* (1) The Agency must cancel an existing deferral if the Agency approves any new primary loan servicing action.

(2) Loans deferred will also be serviced in accordance with §§ 766.107, 766.108 and 766.111, as appropriate.

§ 766.110 Conservation Contract.

(a) *General.* (1) A debtor with only SA is not eligible for a Conservation Contract.

(2) A current or financially distressed borrower may request a Conservation

Contract at any time prior to becoming 90 days past due.

(3) A delinquent borrower may request a Conservation Contract during the same 60-day time period in which the borrower may apply for primary loan servicing. The borrower eligibility requirements established at § 766.104 will apply.

(4) A Conservation Contract may be established for conservation, recreation, and wildlife purposes.

(5) The land under a Conservation Contract cannot be used for the production of agricultural commodities during the term of the contract.

(b) *Eligible lands.* The following types of lands are eligible to be considered for a Conservation Contract by the Conservation Contract review team:

(1) Wetlands or highly erodible lands, as defined by the Food Security Act of 1985; and

(2) Uplands that meet any one of the following criteria:

(i) Land containing aquatic life, endangered species, or wildlife habitat of local, State, tribal, or national importance;

(ii) Land in 100-year floodplains;

(iii) Areas of high water quality or scenic value;

(iv) Historic or cultural properties listed in or eligible for the National Register of Historic Places;

(v) Aquifer recharge areas of local, regional, State or tribal importance;

(vi) Buffer areas necessary for the adequate protection of proposed Conservation Contract areas;

(vii) Areas that contain soils generally not suited for cultivation; or

(viii) Areas within or adjacent to Federal, State, tribal, or locally administered conservation areas.

(c) *Unsuitable acreage.* Acreage is unsuitable for a Conservation Contract if:

(1) It is not suited or eligible for the program due to legal restrictions;

(2) It has on-site or off-site conditions that prohibit the use of the land for conservation, wildlife, or recreational purposes; or

(3) The Conservation Contract review team determines that the land is not suitable for conservation, wildlife, or recreational purposes.

(d) *Conservation Contract terms.* The borrower selects the term of the contract, which may be 10, 30, or 50 years.

(e) *Conservation management plan.* The Agency, through the recommendations of the Conservation Contract review team, is responsible for developing a conservation management plan.

(f) *Management authority.* The Agency has enforcement authority over the Conservation Contract. The Agency, however, may delegate contract management to another entity if doing so is in the Agency's interest.

(g) *Limitations.* The Conservation Contract must meet the following conditions:

(1) Result in a feasible plan for current borrowers; or

(2) Result in a feasible plan with or without primary loan servicing for financially distressed or delinquent borrowers; and

(3) Improve the borrower's ability to repay the remaining balance of the loan.

(h) *Maximum debt reduction for a financially distressed or current borrower.* The amount of debt reduction by a Conservation Contract is calculated as follows:

(1) Divide the contract acres by the total acres that secure the borrower's FLP loans to determine the contract acres percentage.

$$\frac{\text{Contract acres}}{\text{Total acres}} \text{ divided by } \frac{\text{Contract acres}}{\text{Total acres}} = \frac{\text{Contract acres}}{\text{Total acres}} \text{ Percent of contract acres to total acres}$$

(2) Multiply the borrower's total unpaid FLP loan balance (principal, interest and recoverable costs already paid by the Agency) by the percentage calculated under (h)(1) of this section to determine the amount of Agency debt that is secured by the contract acreage.

$$\frac{\text{Total FLP debt}}{\text{Total FLP debt}} \times \frac{\text{Percent calculated under (h)(1)}}{\text{Percent calculated under (h)(1)}} = \frac{\text{Total FLP debt}}{\text{Total FLP debt}} \text{ FLP debt secured by contract acres}$$

(3) Multiply the borrower's total unpaid FLP loan balance (principal, interest and recoverable costs already paid by the Agency) by 33 percent.

$$\frac{\text{Total FLP debt}}{\text{Total FLP debt}} \times 33\% = \text{Total FLP debt}$$

(4) The lesser of the amounts calculated in (h)(2) and (h)(3) of this section is the maximum amount of debt reduction for a 50-year contract.

(5) The borrower will receive 60 percent of the amount calculated in (h)(4) of this section for a 30-year contract.

$$\frac{\text{Result from (h)(4)}}{\text{Maximum debt reduction for a 30-year contract}} \times 60\% =$$

(6) The borrower will receive 20 percent of the amount calculated in (h)(4) of this section for a 10-year contract.

$$\frac{\text{Result from (h)(4)}}{\text{Maximum debt reduction for a 10-year contract}} \times 20\% =$$

(i) *Maximum debt reduction for a delinquent borrower.* The amount of debt reduction by a Conservation Contract is calculated as follows:

(1) Divide the contract acres by the total acres that secure the borrower's FLP loans to determine the contract acres percentage.

$$\frac{\text{Contract acres}}{\text{Total acres}} \text{ divided by } \frac{\text{Total acres}}{\text{Percent of contract acres to total acres}} =$$

(2) Multiply the borrower's total unpaid FLP loan balance (principal, interest and recoverable costs already paid by the Agency) by the percentage calculated in (i)(1) of this section to determine the amount of FLP debt that is secured by the contract acreage.

$$\frac{\text{Total FLP debt}}{\text{Percent calculated in (i)(1)}} \times \frac{\text{Percent calculated in (i)(1)}}{\text{FLP debt secured by contract acres}} =$$

(3) Multiply the present market value of the total acres, less contributory value of any structural improvements, that secure the borrower's FLP loans by the percent calculated in (i)(1) of this section to determine the current value of the acres in the contract.

$$\frac{\text{Current market value of total acres less contributory value of structural improvements}}{\text{Percent calculated in (i)(1)}} \times \frac{\text{Percent calculated in (i)(1)}}{\text{Current market value of acres in the contract}} =$$

(4) Subtract the current market value of the contract acres calculated in (i)(3) of this section from the FLP debt secured by the contract acres as calculated in (i)(2).

$$\frac{\text{Results from (i)(2)}}{\text{Results from (i)(3)}} - \frac{\text{Results from (i)(3)}}{\text{Difference}} =$$

(5) Select the greater of the amounts calculated in (i)(3) and (i)(4) of this section.

(6) The lesser of the amounts calculated in (i)(2) and (i)(5) of this section will be the maximum amount of debt reduction for a 50-year contract term.

(7) The borrower will receive 60 percent of the amount calculated in (i)(6) of this section for a 30-year contract term.

$$\frac{\text{Result from (i)(6)}}{\text{Maximum debt cancellation for a 30-year term}} \times 60\% =$$

(8) The borrower will receive 20 percent of the amount calculated in (i)(6) of this section for a 10-year contract term.

$$\frac{\text{Result from (i)(6)}}{\text{Maximum debt cancellation for a 10-year term}} \times 20\% =$$

(j) *Conservation Contract Agreement.* The borrower must sign the Conservation Contract Agreement establishing the contract's terms and conditions.

(k) *Transferring title to land under Conservation Contract.* If the borrower or any subsequent landowner transfers title to the property, the Conservation Contract will remain in effect for the duration of the contract term.

(l) *Borrower appeals of technical decisions.* If the borrower appeals any technical decision made in connection with a Conservation Contract, the Natural Resources Conservation

Service's appeal process at 7 CFR part 614 must be followed.

§ 766.111 Writedown.

(a) *Eligibility.* (1) The Agency will only consider a writedown if the borrower:

- (i) Meets the eligibility criteria in § 766.104;
 - (ii) Is delinquent;
 - (iii) Has not previously received debt forgiveness on any FLP direct loan; and
 - (iv) Complies with the Highly Erodible Land and Wetland Conservation requirements of 7 CFR 12.
- (2) Debtors with SA only are not eligible to receive writedown.

(b) *Conditions.* (1) Rescheduling, consolidation, reamortization, deferral or some combination of these options on all of the borrower's loans would not result in a feasible plan with a 110 percent debt service margin. If a feasible plan, including writedown is achieved with a debt service margin of 101 percent or more, the Agency will determine if a feasible plan can be achieved without a writedown. If a feasible plan is achieved with and without a writedown and the borrower meets all the eligibility requirements, both options will be offered and the borrower may choose one option.

(2) The present value of the restructured loan must be greater than or equal to the net recovery value of Agency security and any non-essential assets;

(3) The writedown amount does not exceed \$300,000 excluding debt reduction received through Conservation Contract;

(4) A borrower who owns real estate must execute an SAA in accordance with § 766.201.

(c) *Associated loan servicing.* Loans written down will also be serviced in accordance with §§ 766.107 and 766.108, as appropriate.

§ 766.112 Additional security for restructured loans.

(a) The borrower, and all obligors in the case of an entity, must execute and provide to the Agency a lien on all of their assets, except as provided in paragraph (b) of this section, when the Agency is servicing a loan.

(b) The Agency will take the best lien obtainable on all assets the borrower owns, except:

(1) When taking a lien on such property will prevent the borrower from obtaining credit from other sources;

(2) When the property could have significant environmental problems or costs as described in 7 CFR 799;

(3) When the Agency cannot obtain a valid lien;

(4) When the property is the borrower's personal residence and appurtenances and:

(i) They are located on a separate parcel; and

(ii) The real estate that serves as collateral for the Agency loan plus crops and chattels are valued at greater than or equal to 150 percent of the unpaid balance due on the loan;

(5) When the property is subsistence livestock, cash, special collateral accounts the borrower uses for the farming operation, retirement accounts, personal vehicles necessary for family living, household goods, or small equipment such as hand tools and lawn mowers; or

(6) When a contractor holds title to a livestock or crop enterprise, or the borrower manages the enterprise under a share lease or share agreement.

§ 766.113 Buyout of loan at current market value.

(a) *Borrower eligibility.* A delinquent borrower who has received FSA 2503 may buy out the borrower's Agency loans at the current market value of the loan security, including security not in the borrower's possession, and all non-essential assets if:

(1) The borrower has not previously received debt forgiveness on any other FLP direct loan;

(2) The borrower has acted in good faith;

(3) The borrower does not have non-essential assets for which the net recovery value is sufficient to pay the account current;

(4) The borrower is unable to develop a feasible operating plan through primary loan servicing programs or a Conservation Contract, if requested;

(5) The present value of the restructured loans is less than the net recovery value of Agency security;

(6) The borrower pays the amount required in a lump sum without guaranteed or direct credit from the Agency; and

(7) The amount of debt forgiveness does not exceed \$300,000.

(b) *Buyout time frame.* After the Agency offers current market value buyout of the loan, the borrower has 90 days from the date of Agency notification to pay that amount.

§ 766.114 State-certified mediation or voluntary meeting of creditors.

(a) A borrower who is unable to develop a feasible plan but is otherwise eligible for primary loan servicing may request:

(1) State-certified mediation; or

(2) Voluntary meeting of creditors when a State does not have a certified mediation program.

(b) Any negotiation of the Agency's appraisal must be completed before State-certified mediation or voluntary meeting of creditors.

§ 766.115 Challenging the Agency appraisal.

(a) A borrower considered for primary loan servicing who does not agree with the Agency's appraisal of the borrower's assets may:

(1) Obtain a technical appraisal review of the Agency's appraisal and provide it at the appeal hearing;

(2) Obtain an independent appraisal completed in accordance with § 761.7 as part of the appeals process. The borrower must:

(i) Pay for this appraisal;

(ii) Choose which appraisal will be used in Agency calculations, if the difference between the two appraisals is less than 5 percent.

(3) Negotiate the Agency's appraisal by obtaining a second appraisal.

(i) If the difference between the two appraisals is less than five percent, the borrower will choose the appraisal to be used in Agency calculations.

(ii) If the difference between the two appraisals is greater than five percent,

the borrower may request a third appraisal. The Agency and the borrower will share the cost of the third appraisal equally. The average of the two appraisals closest in value will serve as the final value.

(iii) A borrower may request a negotiated appraisal only once in connection with an application for primary loan servicing.

(iv) The borrower may not appeal a negotiated appraisal.

(b) If the appraised value of the borrower's assets changes as a result of the appealed appraisal or the negotiated appraisal, the Agency will reconsider its previous loan servicing decision using the new appraisal value.

(c) If the appeal process results in a determination that the borrower is eligible for primary loan servicing, the Agency will use the information the appeal officer used in making the decision on the appeal, unless stated otherwise in the appeal decision letter.

§§ 766.116–766.150 [Reserved]

Subpart D—Homestead Protection Program

§ 766.151 Purpose.

The Homestead Protection Program provides an opportunity for borrowers to retain their principal residence and up to 10 acres of adjoining land to maintain their family, through a lease-purchase agreement with the Agency. If the Agency has only chattels as security, homestead protection will not apply.

§ 766.152 Applying for Homestead Protection.

(a) *Pre-acquisition.* (1) *Notification.* If the borrower requested primary loan servicing but cannot develop a feasible plan, the Agency will notify the borrower of any additional information needed to process the homestead protection request. The borrower must provide this information within 30 days of Agency notification.

(2) *Borrower does not respond.* If the borrower does not timely provide the information requested, the Agency will deny the homestead protection request and provide reconsideration and appeal rights.

(3) *Application requirements.* A complete application for Homestead Protection will include:

(i) Updates to items required under § 766.102;

(ii) Information required under § 766.353(b); and

(iii) Identification of land and buildings to be considered.

(b) *Post-acquisition.* (1) *Notification.* After the Agency acquires title to the property, the Agency will notify the

borrower of the availability of homestead protection. The borrower must submit a complete application within 30 days of Agency notification.

(2) *Borrower does not respond.* If the borrower does not respond to the Agency notice, the Agency will dispose of the property in accordance with 7 CFR 767.

(3) *Application requirements.* A complete application for Homestead Protection will include:

(i) Updates to items required under § 766.102; and

(ii) Identification of land and buildings to be considered.

§ 766.153 Eligibility.

(a) *Property.* (1) The principal residence and the adjoining land of up to 10 acres, must have served as real estate security for the FLP loan and may include existing farm service buildings.

(2) The applicant may propose a homestead protection site. Any proposed site is subject to Agency approval.

(3) The proposed homestead protection site must meet all State and local requirements for division into a separate legal lot.

(4) Where voluntary conveyance of the property to the Agency is required to process the Homestead Protection request, the Agency will take title to the property only if it can obtain a positive recovery after paying any outstanding liens of other creditors on the property.

(b) *Applicant.* To be eligible for Homestead Protection, the applicant:

(1) Must be the owner, or former owner from whom the Agency acquired title of the property pledged as security for an FLP loan;

(i) Is a member of an entity who is or was personally liable for the FLP loan secured by the Homestead Protection property and the applicant or entity held fee title to the property;

(ii) Is an entity and the members of the entity are or were personally liable for the FLP loan and have separate homes on the security property, each member possessing and occupying a separate home may apply for homestead protection.

(2) Must have earned gross farm income commensurate with:

(i) The size and location of the farm; and

(ii) The local agricultural conditions in at least two calendar years during the 6-year period immediately preceding the calendar year in which the borrower applied for Homestead Protection;

(3) Must have received 60 percent of gross income from farming in at least 2 of the 6 years immediately preceding the year in which the borrower applied for Homestead Protection;

(4) Must have lived in the home during the 6-year period immediately preceding the year in which the borrower applied for Homestead Protection. The borrower may have left the home for not more than 12 months if it was due to circumstances beyond their control; and

(5) Must demonstrate sufficient income to make rental payments on the homestead property for the term of the lease and to maintain the property in good condition. The lessee will be responsible for any normal maintenance, making any improvements to the property, and replacing systems such as:

(i) Structural;

(ii) Mechanical;

(iii) Electrical;

(iv) Plumbing;

(v) Well;

(vi) Water;

(vii) Septic;

(viii) Sewage;

(ix) Appliance;

(x) Corral;

(xi) Fences;

(xii) Windmills;

(xiii) Outbuildings; and

(xiv) Any other system that is affixed to or a part of the real estate.

§ 766.154 Homestead Protection transferability.

Homestead protection rights are not transferrable or assignable, unless the eligible party dies or becomes legally incompetent in which case the homestead protection rights may be transferred to the spouse only.

§ 766.155 Homestead Protection leases.

(a) *General.* (1) The Agency may approve a lease-purchase agreement subject to obtaining title to the property.

(2) If a third party obtains title to the property:

(i) The applicant and the property are no longer eligible for homestead protection; and

(ii) The Agency will not implement any outstanding lease-purchase agreement.

(3) The borrower may request homestead protection for property subject to third party redemption rights. In such case, homestead protection will not begin until the Agency obtains title to the property.

(b) *Lease terms and conditions.* (1) The amount of rent will be based on equivalent rents charged for similar residential properties in the area in which the dwelling is located.

(2) All leases will include an option to purchase the homestead protection property as described in paragraph (c) of this section.

(3) The lease term will not be less than three years and will not exceed five years.

(4) The lessee must agree to make lease payments on time and maintain the property.

(5) The lessee must cooperate with Agency efforts to sell the remaining portion of the farm.

(c) *Lease-purchase options.* (1) The lessee may exercise in writing the purchase option and complete the homestead protection purchase at any time prior to the expiration of the lease provided all lease payments are current.

(2) The purchase price is the current market value of the property when the option is exercised as determined by a current appraisal obtained by the Agency.

(3) The lessee may purchase homestead protection property with cash or other credit source.

(4) The lessee may receive Agency Non-program financing provided:

(i) The lessee has not received previous debt forgiveness;

(ii) The Agency has funds available to finance the purchase of homestead protection property; and

(iii) The lessee demonstrates an ability to repay such an Agency loan.

(d) *Lease terminations.* The Agency may terminate the lease if the lessee does not cure any lease defaults within 30 days of Agency notification.

(e) *Appraisal of Homestead Protection property.* The Agency will use an appraisal obtained within 6 months from the date of the application for considering homestead protection. If a current appraisal does not exist, the Agency will acquire an appraisal to determine the current market value of the homestead protection property.

§ 766.156 Conflict with State law.

If there is a conflict between a borrower's homestead protection rights and any provisions of State law relating to redemption rights, the State law prevails.

§§ 766.157–766.200 [Reserved]

Subpart E—Servicing Shared Appreciation Agreements and Net Recovery Buyout Agreements

§ 766.201 Shared Appreciation Agreement.

(a) *When a SAA is required.* The Agency requires a borrower to enter into a SAA with the Agency when the borrower:

(1) Owns any real estate that serves or will serve as loan security; and

(2) Accepts a writedown in accordance with § 766.111.

(b) *When SAA is due.* The borrower must repay the calculated amount of

shared appreciation after a term of 5 years from the date of the writedown, or earlier if:

- (1) The borrower sells or conveys all or a portion of the Agency's real estate security, unless real estate is conveyed upon the death of a borrower to a spouse who will continue farming;
- (2) The borrower repays or satisfies all FLP loans;
- (3) The borrower ceases farming; or
- (4) The Agency accelerates the borrower's loans.

§ 766.202 Determining the shared appreciation due.

(a) The value of the real estate security at the time of maturity of the SAA (current market value) shall be the appraised value of the security at the highest and best use, less the increase in the value of the security resulting from capital improvements added during the term of the SAA (contributory value). The current market value of the real estate security property will be determined based on a current appraisal obtained in accordance with § 761.7 of this chapter, and subject to the following:

- (1) The borrower will identify any capital improvements that have been added to the property since the execution of the SAA.
- (2) The appraisal must specifically identify the contributory value of capital improvements made to the Agency real estate security during the term of the SAA to make deductions for that value.
- (3) For calculation of shared appreciation recapture, the remaining contributory value of capital improvements added during the term of the SAA will be deducted from the current market value of the property. Such capital improvements must also meet at least one of the following criteria:

(i) It is the borrower's primary residence. If the new residence is affixed to the real estate security as a replacement for a residence which existed on the security property when the SAA was originally executed, or, the living area square footage of the original residence was expanded, only the value added to the real property by the new or expanded portion of the original residence (if it added value) will be deducted from the current market value.

(ii) It is an improvement to the real estate with a useful life of over one year and is affixed to the property, the following conditions must be met:

(A) The item must have been capitalized and not taken as an annual operating expense on the borrower's Federal income tax returns. The borrower must provide copies of

appropriate tax returns to verify that capital improvements claimed for shared appreciation recapture reduction are capitalized.

(B) If the new item is affixed to the real estate as a replacement for an item that existed on the real estate at the time the SAA was originally executed, only the value added by the new item will be deducted from the current market value.

(b) In the event of a partial sale, an appraisal of the property being sold may be required to determine the market value at the time the SAA was signed if such value cannot be obtained through another method.

§ 766.203 Payment of recapture.

(a) The borrower must pay on the due date or 30 days from Agency notification, whichever is later:

- (1) Seventy-five percent of the appreciation in the real estate security if the agreement is triggered within four years or less from the date of the writedown; or
- (2) Fifty percent of such appreciation if the agreement is triggered more than four years from the date of the writedown or when the agreement matures.

(b) If the borrower sells a portion of the security, the borrower must pay shared appreciation only on the portion sold. Shared appreciation on the remaining portion will be due in accordance with paragraph (a) of this section.

(c) The amount of recapture cannot exceed the amount of the debt written off through debt writedown.

§ 766.204 Amortization of recapture.

(a) The Agency will amortize the recapture into a Shared Appreciation Payment Agreement provided the borrower:

- (1) Has not ceased farming and the borrower's account has not been accelerated;
- (2) Provides a complete application in accordance with § 764.51(a), by the recapture due date or within 60 days of Agency notification of the amount of recapture due, whichever is later;
- (3) Is unable to pay the recapture and cannot obtain funds from any other source;
- (4) Develops a feasible plan that includes repayment of the shared appreciation amount;
- (5) Provides a lien on all assets, except those listed in § 766.112(b); and
- (6) Signs loan agreements and security instruments as required.

(b) If the borrower later becomes delinquent or financially distressed reamortization of the Shared Appreciation Payment Agreement can

be considered under subpart C of this part.

§ 766.205 Shared Appreciation Payment Agreement rates and terms.

(a) The interest rate for Shared Appreciation Payment Agreements is the Agency's SA amortization rate.

(b) The term of the Shared Appreciation Payment Agreement is based on the borrower's repayment ability and the useful life of the security. The term will not exceed 25 years.

§ 766.206 Net Recovery Buyout Recapture Agreement.

(a) *Servicing existing Net Recovery Buyout Recapture Agreements.* Prior to July 3, 1996, the Agency was authorized to offer borrowers to buy out their loans at the net recovery value. A Net Recovery Buyout Agreement was required for borrowers who bought out their loans at the net recovery value. The Agency services existing Net Recovery Buyout Recapture Agreements as described in this section.

(b) *Requirements and terms.* (1) The term of a Net Recovery Buyout Recapture Agreement is 10 years. Net Recovery Buyout Recapture Agreements are secured by a lien on the former borrower's real estate.

(2) If the former borrower sells or conveys real estate within the 10-year term, the former borrower must repay the Agency the lesser of:

(i) The fair market value of the real estate parcel at the time of sale or conveyance, as determined by an Agency appraisal, minus the portion of the recovery value of the real estate paid to the Agency in the buyout;

(ii) The fair market value of the real estate parcel at the time of the sale or conveyance, as determined by an Agency appraisal, minus:

(A) The unpaid balance of prior liens at the time of the sale or conveyance; and

(B) The net recovery value of the real estate the borrower paid to the Agency in the buyout if this amount has not been accounted for as a prior lien;

(iii) The total amount of the FLP debt the Agency wrote off for loans secured by real estate.

(3) If the former borrower does not pay the amount due, the Agency will liquidate the Net Recovery Buyout account in accordance with subpart H of this part.

(4) If the former borrower does not sell or convey the real estate within the 10 year term, no recapture is due.

§§ 766.207–766.250 [Reserved]**Subpart F—Unauthorized Assistance****§ 766.251 Types of unauthorized assistance.**

(a) *Unauthorized loan.* An unauthorized loan is any loan, portion of a loan, interest rate, or interest subsidy that was not processed and approved in accordance with all Agency procedures and requirements.

(b) *Unauthorized loan servicing action.* An unauthorized loan servicing action is any servicing action not made in accordance with all Agency procedures and requirements.

§ 766.252 Repayment of unauthorized assistance.

(a) Except where specified otherwise, the borrower is responsible for repaying any unauthorized assistance in full within 90 days of Agency notice.

(b) The borrower has the opportunity to meet with an Agency representative to discuss or refute the Agency's findings.

§ 766.253 Unauthorized assistance resulting from submission of false or incomplete information.

A borrower is ineligible for continued Agency assistance if the borrower, or a third party on the borrower's behalf, submits information to the Agency that the borrower knows to be incomplete or false.

§ 766.254 Unauthorized assistance resulting from borrower or Agency error.

(a) *Borrower options.* (1) The borrower may repay the amount of the unauthorized assistance in a lump sum within 90 days of Agency notice.

(2) If the borrower is unable to repay the entire amount in a lump sum, the Agency will accept partial repayment of the unauthorized assistance within 90 days of Agency notice to the extent of the borrower's ability to repay. Any remaining balance will be handled in accordance with paragraph (a)(3) of this section.

(3) If the borrower is unable to repay all or part of the unauthorized amount, the Agency will enter into an accelerated repayment agreement with the borrower for such amount under the following conditions:

(i) The borrower did not intentionally provide incomplete or false information;

(ii) Such agreement is in the best financial interest of the Government;

(iii) The debt under the repayment agreement will be subject to the interest rate for Non-program loans;

(iv) The term of the repayment agreement will be as short as feasible, but in no case will exceed:

(A) The remaining term of the FLP loan;

(B) Twenty-five (25) years for real estate loans;

(C) The life of the security for chattel loans.

(v) The debt under the repayment agreement will be serviced as a Non-program loan.

(b) *Borrower refusal to pay.* If the borrower is able to pay the unauthorized assistance amount but refuses to do so, the Agency will notify the borrower of the availability of loan servicing in accordance with subpart C of this part.

§§ 766.255–766.300 [Reserved]**Subpart G—Bankruptcy****§ 766.301 Notifying borrower in bankruptcy of loan servicing.**

If a borrower files for bankruptcy, the Agency will provide written notification to the borrower's attorney with a copy to the borrower as follows:

(a) *Borrower not previously notified.* The Agency will provide notice of all loan servicing options available under subpart C of this part, if the borrower has not been previously notified of these options.

(b) *Borrower with prior notification.* If the borrower had received monetary or non-monetary notification at the time of bankruptcy filing but all loan servicing was not completed, the Agency will provide notice of any remaining loan servicing options available under subpart C of this part.

§ 766.302 Loan servicing application requirements for borrowers in bankruptcy.

(a) *Borrower not previously notified.* To be considered for loan servicing, the borrower or borrower's attorney must sign and return the appropriate response form and any forms or information requested by the Agency within 60 days of the date of receipt of Agency notice on loan servicing options.

(b) *Borrower previously notified.* To be considered for continued loan servicing, the borrower or borrower's attorney must sign and return the appropriate response form and any forms or information requested by the Agency within the greater of:

(1) Sixty days after the borrower's attorney received the notification of any remaining loan servicing options; or

(2) The remaining time from the Agency's previous monetary or non-monetary notification of all servicing options that the Agency suspended when the borrower filed bankruptcy.

(c) *Court approval.* The borrower is responsible for obtaining court approval prior to exercising any available servicing rights.

§ 766.303 Processing loan servicing requests from borrowers in bankruptcy.

(a) *Considering borrower requests for servicing.* Any request for servicing is the borrower's acknowledgment that the Agency will not interfere with any rights or protections under the Bankruptcy Code and its automatic stay provisions.

(b) *Borrowers with confirmed bankruptcy plans.* If a plan is confirmed before servicing and any appeal is completed under 7 CFR part 11, the Agency will complete the servicing or appeals process and may consent to a post-confirmation modification of the plan if it is consistent with the Bankruptcy Code and subpart C of this part, as appropriate.

(c) *Chapter 7 borrowers.* A borrower filing for bankruptcy under chapter 7 of the Bankruptcy Code may not receive primary loan servicing unless the borrower reaffirms the entire Agency debt. A chapter 7 borrower does not have to reaffirm the debt in order to be considered for homestead protection.

§§ 766.304–766.350 [Reserved]**Subpart H—Loan Liquidation****§ 766.351 Liquidation.**

(a) *General.* (1) When a borrower cannot or will not meet a loan obligation, the Agency will consider liquidating the borrower's account in accordance with this subpart.

(2) The Agency will charge protective advances against the borrower's account as necessary to protect the Agency's interests during liquidation in accordance with § 765.203 of this chapter.

(3) The Agency considers liquidation in accordance with paragraph (b) of this section, if a borrower has both Program and Non-program loans.

(4) When no surviving family member or third party assumes or repays a deceased borrower's loan in accordance with part 765, subpart J, of this chapter, or when the estate does not otherwise fully repay or sell loan security to repay a deceased borrower's Agency loans, the Agency will liquidate the security as quickly as possible in accordance with State and local requirements.

(b) *Liquidation for Program borrowers.*

(1) If the borrower does not apply, does not accept, or is not eligible for primary loan servicing, conservation contract, market value buyout or homestead protection, and all administrative appeals are concluded, the Agency will accelerate the borrower's account in accordance with § 766.355.

(2) Borrowers may voluntarily liquidate their security in accordance with §§ 766.352, 766.353 and 766.354.

(i) The Agency will not delay involuntary liquidation action.

(ii) If the conditions of (b)(1) of this section have not been met, the Agency will notify the borrower in accordance with subpart C of this part, prior to acting on the request for voluntary liquidation.

(c) *Liquidation for Non-program borrowers.* If a borrower has both Program and Non-program loans, the borrower's account will be handled in accordance with paragraph (b) of this section. If a borrower with only Non-program loans is in default, the borrower may liquidate voluntarily, subject to the following:

(1) The Agency may delay involuntary liquidation actions when in the Agency's best financial interest for a period not to exceed 60 days.

(2) The borrower must obtain the Agency's consent prior to the sale of the property.

(3) If the borrower will not pay the Agency in full, the minimum sales price must be the current market value of the property as determined by the Agency.

(4) The Agency will accept a conveyance offer only when it is in the Agency's best financial interest.

(5) If a Non-program borrower does not cure the default, or cannot or will not voluntarily liquidate, the Agency will accelerate the loan.

§ 766.352 Voluntary sale of real property and chattel.

(a) *Conditions for voluntary sale of real property and chattel.* A borrower may voluntarily sell real property or chattel to repay Agency debt in lieu of involuntary liquidation. Partial dispositions are handled in accordance with part 765, subparts G and H of this chapter.

(1) The borrower must sell all real property and chattel that secure Agency debt until the debt is paid in full or until all security has been liquidated.

(2) The Agency must approve the sale and approve the use of proceeds.

(3) The sale proceeds are applied in order of lien priority, except that proceeds may be used to pay customary costs appropriate to the transaction as follows:

(i) The costs must be reasonable in amount;

(ii) The borrower cannot arrange to pay the costs from personal funds or cannot have the purchaser pay;

(iii) The costs must be paid to consummate the transaction;

(iv) When it is necessary for the Agency to present the promissory note to the recorder to obtain a release of a portion of the real property from the mortgage, the borrower must pay any

cost for postage and insurance of the note while in transit.

(4) The Agency will approve the sale of property when the proceeds do not cover the borrower's full debt only if:

(i) The sales price must be equal to or greater than the market value of the property; and

(ii) The sale is in the Agency's best financial interest.

(5) If an unpaid loan balance remains after the sale, the Agency will continue to service the loan in accordance with 7 CFR part 792.

(b) *Voluntary sale of chattel.* If the borrower complies with paragraph (a) of this section, the borrower may sell chattel security by:

(1) *Public sale.* The borrower must obtain the agreement of lienholders as necessary to complete a public sale; or

(2) *Private sale.* The borrower may sell chattel security at a private sale if the borrower:

(i) Sells all of the security for not less than the current market value;

(ii) Obtains the agreement of lienholders as necessary to complete the sale;

(iii) Has a buyer who is ready and able to purchase the property; and

(iv) The Agency agrees to the sale.

§ 766.353 Voluntary conveyance of real property.

(a) *Requirements for conveying real property.* The following requirements must be satisfied before the Agency will accept a conveyance.

(1) The borrower must supply the Agency with the following:

(i) An Agency application form;

(ii) A current financial statement. If the borrower is an entity, all entity members must provide current financial statements;

(iii) Information on present and future income and potential earning ability;

(iv) A warranty deed or other deed acceptable to the Agency;

(v) In the case of an entity, a resolution approved by the governing body that authorizes the conveyance;

(vi) Assignment of all leases to the Agency. The borrower must put all oral leases in writing;

(vii) Title insurance or title record for the security, if available;

(viii) Complete debt settlement application in accordance with 7 CFR part 792 before or in conjunction with the voluntary conveyance offer if the value of the property to be conveyed is less than the debt; and

(ix) Any other documentation required by the Agency to evaluate the request.

(2) The Agency will have the property appraised to determine its current market value.

(b) *Conditions for conveying real property.* The Agency will accept voluntary conveyance of real property by a borrower if:

(1) Conveyance is in the Agency's best financial interest;

(2) The borrower conveys all real property securing the Agency loan; and

(3) The borrower has received prior notification of the availability of loan servicing in accordance with subpart C of this part.

(c) *Prior and junior liens.* (1) The Agency will pay prior liens to the extent consistent with the Agency's best financial interest.

(2) Before conveyance, the borrower must pay or obtain releases of all junior liens, real estate taxes, judgments, and other assessments.

(d) *Charging and crediting the borrower's account.* (1) The Agency will charge the borrower's account for all recoverable costs incurred in connection with a conveyance in accordance with § 765.203 of this chapter.

(2) The Agency will credit the borrower's account for the amount of the market value of the property less any prior liens, or the debt, whichever is less. In the case of a Native American borrower whose loans are secured by real estate located within the boundaries of a Federally recognized Indian reservation, however, the Agency will credit the borrower's account at the greater of the market value of the security or the borrower's Agency debt.

§ 766.354 Voluntary conveyance of chattel.

(a) *Requirements for conveying chattel.* The borrower must supply the Agency with the following:

(1) An Agency application form;

(2) A current financial statement. If the borrower is an entity, all entity members must provide current financial statements;

(3) Information on present and future income and potential earning ability;

(4) A bill of sale including each item and titles to all vehicles and equipment, as applicable;

(5) In the case of an entity, a resolution approved by the governing body that authorizes the conveyance;

(6) Complete debt settlement application in accordance with 7 CFR part 792 before or in conjunction with the voluntary conveyance offer if the value of the property to be conveyed is less than the debt.

(b) *Conditions for conveying chattel.* The Agency will accept conveyance of chattel only if:

(1) The borrower has made every possible effort to sell the property voluntarily;

(2) The borrower can convey the chattel free of other liens;

(3) The conveyance is in the Agency's best financial interest;

(4) The borrower conveys all chattel securing the Agency loan; and

(5) The borrower has received prior notification of the availability of loan servicing in accordance with subpart C of this part.

(c) *Charging and crediting the borrower's account.* (1) The Agency will charge the borrower's account for all recoverable costs incurred in connection with the conveyance in accordance with § 765.203 of this chapter.

(2) The Agency will credit the borrower's account in the amount of the market value of the chattel.

§ 766.355 Acceleration of loans.

(a) *General.* (1) The Agency accelerates loans in accordance with this section, unless State law imposes separate restrictions on accelerations.

(2) The Agency accelerates all of the borrower's loans at the same time, regardless of whether each individual loan is delinquent or not.

(3) All borrowers must receive prior notification in accordance with subpart C of this part, except for borrowers who fail to graduate in accordance with § 766.101(a)(7).

(b) *Time limitations.* The borrower has 30 days from the date of the Agency acceleration notice to pay the Agency in full.

(c) *Borrower options.* The borrower may:

(1) Pay cash;

(2) Transfer the security to a third party in accordance with part 765, subpart I of this chapter;

(3) Sell the security property in accordance with § 766.352; or

(4) Voluntarily convey the security to the Agency in accordance with §§ 766.353 and 766.354.

(d) *Partial payments.* The Agency may accept a payment that does not cover the unpaid balance of the accelerated loan if the borrower is in the process of selling security, unless acceptance of the payment would reverse the acceleration.

(e) *Failure to satisfy the debt.* The Agency will liquidate the borrower's account in accordance with § 766.356 if the borrower does not pay the account in full within the time period specified in the acceleration notice.

§ 766.356 Involuntary liquidation of real property and chattel.

(a) *General policy.* The Agency will liquidate the borrower's security if:

(1) The borrower does not satisfy the account in accordance with § 766.355;

(2) The Agency can obtain a positive recovery on a loan; and

(3) The involuntary liquidation is in the Agency's best financial interest.

(b) *Foreclosure on loans secured by real property.* (1) The Agency will charge the borrower's account for all recoverable costs incurred in connection with the foreclosure and sale of the property in accordance with § 765.203.

(2) If the Agency acquires the foreclosed property, the Agency will credit the borrower's account in the amount of the market value of the property less the amount of any prior liens on the date of acquisition.

(3) If the Agency does not acquire the foreclosed property, the Agency will credit the borrower's account in accordance with State law and guidance from the Regional OGC.

(4) For a Native American borrower whose real property secures an Agency loan and is located within the confines of a Federally recognized Indian reservation, the Agency will credit the borrower's account in the amount that is the greater of:

(i) The market value of the security;

or

(ii) The amount of the Agency debt against the property.

(5) If an unpaid balance on the Agency loan remains after the foreclosure sale of the property, the Agency may debt settle the account in accordance with 7 CFR part 792.

(c) *Foreclosure of loans secured by chattel.* (1) The Agency will charge the borrower's account for all recoverable costs incurred by the Agency as a result of the repossession and sale of the property.

(2) The Agency will apply the proceeds from the repossession sale to the borrower's account less prior liens and all authorized liquidation costs.

(3) If an unpaid balance on the Agency loan remains after the sale of the repossessed property, the Agency may debt settle the account in accordance with 7 CFR part 792.

§§ 766.357–766.400 [Reserved]

Subpart I—Exception Authority

§ 766.401 Agency exception authority.

On an individual case basis, the Agency may consider granting an exception to any regulatory requirement or policy of this part if:

(a) The exception is not inconsistent with the authorizing statute or other applicable law; and

(b) The Government's financial interest would be adversely affected by acting in accordance with published regulations or policies and granting the exception would resolve or eliminate the adverse effect upon the Government's financial interest.

§§ 766.402–766.450 [Reserved]

Appendix A to Subpart C of Part 766— Notice of Availability of Loan Servicing to Borrowers Who Are Current or Less Than 90 Days Past Due

FSA 2501

Notice of Availability of Loan Servicing to Borrowers Who Are Current or Less Than 90 Days Past Due

Dear (Borrower's Name)

This notice informs you of servicing options that may be available to financially distressed borrowers or borrowers less than 90 days past due. The Agency's primary loan servicing programs, Conservation Contract Program, Homestead Protection Program, and debt settlement programs may help you resolve your financial distress, repay your loan, retain your farm property or settle your Farm Loan Programs (FLP) debt.

How To Apply

To apply, you must complete, where applicable, and provide all items required in paragraph (e).

Help in Responding to This Notice

The servicing options available to you may become complicated. You may need help to understand them and their impact on your operation. You may want to ask an attorney to help you or there are organizations that give free or low-cost advice to farmers. You may contact your State Department of Agriculture or the USDA Extension Service for available services in your State.

Note: Agency employees cannot recommend a particular attorney or organization.

Who Will Decide if You Qualify?

After you submit a complete application, the Agency will determine if you meet all eligibility requirements and can develop a farm operating plan which shows that you can pay all debts and expenses.

What Happens if You Do Not Apply or Do Not Resolve Your Delinquency?

If you do not timely apply to this notice, or you do not resolve your delinquency, and you become 90 days past due on your loans, the Agency will notify you of available loan servicing by sending you FSA 2503, "Notice of Availability of Loan Servicing to Borrowers Who Are 90 Days Past Due."

Included with this notice you will find information on:

- Primary loan servicing programs;
- Conservation Contract Program;
- Homestead Protection Program;
- Debt settlement programs;
- Forms, documentation, and information needed to apply;
- How to get copies of the Agency's handbooks and forms;
- Reconsideration, mediation, negotiation and appeal rights;
- The right not to be discriminated against.

*(a) Primary Loan Servicing Programs**Eligibility*

You must meet the following eligibility requirements to obtain primary loan servicing:

(a) You are financially distressed due to circumstances beyond your control which reduced your repayment ability to the extent that scheduled payments cannot be made as a result of one the following circumstances:

- (1) Illness, injury, or death of a borrower or other individual who operates the farm;
- (2) Natural disaster, adverse weather, disease, or insect damage which caused severe loss of agricultural production;
- (3) Widespread economic conditions such as low commodity prices;
- (4) Damage or destruction of property essential to the operation; or
- (5) Loss of, or reduction in, your or your spouse's essential non-farm income.

(b) You do not have non-essential assets for which the net recovery value is sufficient to resolve your financial distress. The Agency cannot write down debt that you could pay with the value of your equity in these assets.

(c) If you are in non-monetary default as a result of noncompliance with the Agency's loan agreements, you must resolve the non-monetary default prior to closing the servicing action.

(d) You must have acted in good faith in accordance with your loan agreements.

Time Limits

If the Agency determines that you are eligible for primary loan servicing and can develop a feasible plan, you will have 45 days from notice to accept the Agency's offer for loan servicing.

Lien requirements

If you are offered loan servicing and accept the offer, you must agree to give the Agency a lien on your other assets and you must provide this lien at closing.

Payment of interest

You must pay a portion of the interest that has accrued on your loans prior to closing the servicing action.

Loan consolidation

The unpaid principal and interest of two or more operating loans can be combined into one larger operating loan. When loans are consolidated, the interest rate will be the lesser of:

- (1) the lowest interest rate for that type of loan on the date a complete servicing application was received;
- (2) the lowest interest rate for that type of loan on the date of restructure; or
- (3) the lowest original loan note rate on any of the original notes being consolidated.

In addition, the Agency will consider the maximum loan terms.

Loan rescheduling

The repayment schedule may be changed to cure the financial distress or delinquency and give you new terms to repay loans made for equipment, livestock, or annual operating purposes. When loans are rescheduled, the interest rate will be the lesser of:

(1) the lowest interest rate for that type of loan on the date a complete servicing application was received;

(2) the lowest interest rate for that type of loan on the date of restructure; or

(3) the lowest original loan note rate on any of the original notes being rescheduled.

In addition, the Agency will consider the maximum loan terms.

Loan reamortization

The repayment schedule may be changed to cure the financial distress or delinquency and give you a new schedule of repayment on loans made for real estate purposes. When loans are reamortized, the interest rate will be the lesser of:

- (1) the lowest interest rate for that type of loan on the date a complete servicing application was received;
- (2) the lowest interest rate for that type of loan on the date of restructure; or
- (3) The original loan note rate of the note being reamortized.

In addition, the Agency will consider the maximum loan terms.

Limited Resource Interest Rate

Limited resource interest rates are available for certain types of loans. If you have existing loans which are not at the limited resource rate, and a limited resource rate is available, the Agency will consider reducing the rate of the loans. The limited resource interest rate can be as low as 5 percent, however, this rate may change depending on what it costs the Government to borrow money.

For information about current interest rates, contact this office.

Loan Deferral

Partial or full payments of principal and interest may be temporarily delayed for up to five years. You will only be considered for loan deferral if the loan servicing programs discussed above will not allow you to pay all essential family living and farm operating expenses, maintain your property, and pay your debts.

You must be able to show through a farm operating plan that you are unable to pay all essential family living and farm operating expenses, maintain your property, and pay your debts. The farm operating plan must also show that you will be able to pay your full installment at the end of the deferral period.

The interest that accrues during the deferral period must be paid in yearly payments for the rest of the loan term after the deferral period ends.

Debt Writedown

Debt writedown can reduce the principal and interest on your loan. The Agency offers a writedown only when the loan servicing programs discussed above and the Conservation Contract Program will not result in a feasible plan. To receive debt writedown, the value of your restructured loan must be equal to or greater than the recovery value to the Agency from foreclosure and repossession of your security property.

The recovery value is the market value of:

- (1) The collateral pledged as security for your FLP loans minus expenses (such as the

sale costs, attorneys' fees, management costs, taxes, and payment of prior liens) on the collateral that the Agency would have to pay if it foreclosed, or repossessed, and sold the collateral;

(2) Any collateral that is not in your possession and has not been released for sale by the Agency in writing; and

(3) Any other non-essential assets you may own.

A qualified appraiser determines the value of the collateral and any other assets you own. You may receive a writedown only if you have not previously received any form of debt forgiveness on any other FLP direct loan. The maximum amount of debt that can be written down on all direct loans is \$300,000.

Shared Appreciation Agreement

If you own real estate and receive a debt writedown, you must sign a Shared Appreciation Agreement. The term of the agreement is five years. Under the terms of the agreement you must repay all or a part of the amount written down at the maturity of your Shared Appreciation Agreement if your real estate collateral increased in value. Payment of shared appreciation will be required prior to the maturity of your Shared Appreciation Agreement if you:

- (1) Sell or convey the real estate;
- (2) Stop farming;
- (3) Pay off your entire FLP debt; or
- (4) Have your FLP accounts accelerated by the Agency.

If any of these events occur within the first four years of the agreement, you will have to pay 75 percent of the increase in value of the real estate. If any of these events occur after the fourth anniversary of the agreement, or if the Shared Appreciation Agreement matures without having previously been fully triggered, you will have to pay only 50 percent of the increase in value. You will not have to pay more than the amount of the debt written down.

(b) Conservation Contract Program

You may request a Conservation Contract to protect highly erodible land, wetlands, or wildlife habitats located on your real estate property that serves as security for your FLP debt. In exchange for such contract, the Agency would reduce your FLP debt. The amount of land left after the contract must be sufficient to continue your farming operation.

(c) Homestead Protection Program

Under the Homestead Protection Program, you may repurchase your primary residence, certain outbuildings, and up to 10 acres of land. If you cannot pay cash or Agency financing is not available, you may lease your primary residence. The lease will include an option for you to purchase the property you lease.

This program may apply when primary loan servicing or the Conservation Contract Program are not available or are not accepted.

You must agree to give the Agency title to your land at the time the Agency signs the homestead protection agreement with you. The Agency will compute the costs of taking title including the cost of paying other creditors who have outstanding liens on the

property. The Agency will take title only if it can obtain a positive recovery.

Eligibility Requirements

(1) Your gross annual income from the farming operation must have been similar to other comparable operations in your area in at least two of the last six years.

(2) Sixty percent (60%) of your gross annual income in at least two of the last six years must have come from the farming operation.

(3) You must have lived in your homestead property for six years immediately before your application. If you had to leave for less than 12 months during the 6-year period and you had no control over the circumstances, you may still qualify.

(4) You must be the owner of the property immediately prior to the Agency obtaining title.

Property Restrictions and Easements

The Agency may place restrictions or easements on your property which restrict your use if the property is located in a special area or has special characteristics. These restrictions and easements will be placed in leases and in deeds on properties containing wetlands, floodplains, endangered species, wild and scenic rivers, historic and cultural properties, coastal barriers, and highly erodible lands.

Leasing the Homestead Property

(1) You must pay rent to the Agency to lease the property determined eligible for homestead protection. The rent the Agency charges will be similar to comparable property in your area.

(2) You must maintain the property in good condition during the term of the lease.

(3) You may lease the property for up to five years but no less than three years.

(4) You cannot sublease the property.

(5) If you do not make the rental payments to the Agency, the Agency will cancel the lease and take legal action to force you to leave.

(6) Lease payments are not applied toward the final purchase price of the property.

Purchasing the Homestead Protection Property

You can repurchase your homestead property at market value at any time during the lease. The market value of the property will be decided by a qualified appraiser and will reflect the value of the land after any placement of a restriction or easement such as a wetland conservation easement.

(d) Debt Settlement Programs

You can apply for debt settlement at any time; however, these programs are usually used only after it has been determined that primary loan servicing programs and Conservation Contract cannot help you. Under the debt settlement programs, the debt you owe the Agency under FLP may be settled for less than the amount you owe. These programs are subject to the discretion of the Agency and are not a matter of entitlement or right.

Settlement Alternatives

Settlement alternatives include:

(1) **Compromise:** A lump-sum payment of less than the total FLP debt owed;

(2) **Adjustment:** Two or more payments of less than the total amount owed to the Agency. Payments can be spread out over a maximum of five years if the Agency determines you will be able to make the payments as they become due; and

(3) **Cancellation:** Satisfaction of Agency debt without payment.

Note: The Agency will not finance these alternatives.

Processing and Requirements

If you sell loan collateral, you must apply the proceeds from the sale to your FLP loans before you can be considered for debt settlement. In the case of compromise or adjustment you may keep your collateral, if you pay the Agency the market value of your collateral along with any additional amount the Agency determines you are able to pay. Debt amounts which are collectible through administrative offset, judgment, or by the Department of the Treasury will not be settled through debt settlement procedures. You must certify that you do not have assets or income in addition to what you stated in your application. If you qualify, your application must also be approved by the State Executive Director or the Administrator, depending on the amount of the debt to be settled.

(e) Forms, Documentation, and Information Needed To Apply

A complete application for primary loan servicing must include items 1 through 9. Additional information is required as noted if you want to be considered for the Conservation Contract Program or for debt settlement programs. If you need help to complete the required forms, you may request an Agency official to assist you. The forms for requirements (1) through (6) and (10) are included with this package.

(1) FSA 2502, "Acknowledgment of Available Loan Servicing—Less Than 90 Days Past Due." All individuals and entities liable for the FLP debt must sign FSA 2502 to request servicing.

(2) FSA 410-1, "Application for Agency Services." In the case of an entity borrower, all entity members must provide current financial statements.

(3) FSA 431-2, "Farm and Home Plan," or other acceptable plan of operation.

(4) FSA 440-32, "Request for Statement of Debts and Collateral." Complete the name and address of the creditor, account number, if applicable, and your name. All parties liable to the creditor must sign and date the form. The Agency will mail this form to the creditor to obtain the needed information. Any debts less than \$1,000 can be verified by a credit report. If debts of \$1,000 or more appear on your credit report and no FSA 440-32 is supplied to the Agency to mail to the creditor within the 60-day time period, the application cannot be considered complete.

(5) RD 1910-5, "Request for Verification of Employment." If you have non-farm income, you must complete employer's name and address, employee's name and address, social security number, sign and date the form. The

Agency will send the form to your employer to obtain the needed information.

(6) FSA 1960-12, "Financial and Production Farm Analysis Summary." Complete the form or another similar worksheet to provide production and expense history for crops, livestock, livestock products, etc., for each of the three years immediately preceding the year of application or the years you have been farming, whichever is less and if not already in the Agency case file. You must be able to support this information with farm records.

(7) AD-1026, "Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification." You will be required to complete this form if the one you have on file does not reflect all the land you own and lease.

(8) SCS-CPA-026, "Highly Erodible Land and Wetland Conservation Determination." This form must be obtained from and completed by the Natural Resources Conservation Service office, if not already on file with the Agency.

(9) Copies of your income tax records and any supporting documents for the last three years immediately preceding the year of application. If your copies of tax records are not readily available, you can obtain copies from the Internal Revenue Service.

(10) RD 1956-1, "Application for Settlement of Indebtedness." Complete this form only if you wish to apply for debt settlement. You must also comply with any Agency request for additional information needed to process a debt settlement request.

(11) If you are applying for a Conservation Contract a map or aerial photo of your farm identifying the portion of the land and approximate number of acres to be considered.

Divorced Spouses

If you are an FLP obligor who has left the farm operation due to divorce, you may request release of liability. To be released of liability after a divorce, you must present the Agency with the following within 60 days of receiving this notice:

(1) A divorce decree or property settlement document which states the remaining party will be responsible for all repayment to the Agency;

(2) Evidence that you have conveyed your ownership interest in FLP security to the remaining party; and

(3) Evidence that you do not have any repayment ability for the FLP loan through cash, income, or other non-essential assets.

The Agency will make a determination on your request and will inform you of the decision within 60 days of receiving your request.

If you are not released of liability, you will need to include all of your relevant financial information if applying for primary loan servicing, homestead protection, or debt settlement program.

(f) How To Get Copies of Agency Handbooks and Forms

Copies of the forms for requirements (e)(1) through (e)(6) and (e)(10) have been included in this notice. You may obtain copies of Agency handbooks describing available

programs or additional copies of forms from this office.

(g) Reconsideration, Mediation, Negotiation, and Appeal Rights

Reconsideration, mediation, negotiation, and appeal rights will be provided to you if the Agency makes an adverse decision on your request for loan servicing or prior to acceleration of your FLP account. These options will be provided when required to insure that you are given the reasons for the Agency decision and complete information on how you may request any of these options.

Reconsideration

If you are determined by the Agency to be ineligible for loan servicing, or if you cannot develop a feasible plan, you may request a reconsideration meeting with the Agency decision maker. You must request reconsideration within 30 days of the date you receive the adverse decision. At a reconsideration meeting, you may present additional information to the decision maker and explain why you believe the adverse decision to be in error. If the meeting does not change the Agency decision, you will be notified and provided 30 days to request mediation, negotiation, or appeal as outlined below.

Mediation

Mediation is a process for resolution of a disagreement. A trained neutral mediator assists two or more parties in dispute to look at the issues, consider all available options, and attempt to agree on an acceptable solution. If your State has a mediation program approved by the USDA, the Agency will participate in mediation. If there is no State mediation program, the Agency may help you to set up a meeting with your other creditors. If you wish to request mediation, you must make such request within 30 days of your receipt of an adverse Agency decision. If you request mediation prior to requesting an appeal, the 30-day time period for requesting an appeal will be temporarily suspended. If mediation fails to resolve your dispute with the Agency, only the balance of the 30 days will remain to request an appeal.

Negotiation of the Appraisal

If you timely submit a complete application for primary loan servicing, but disagree with the appraisal used by the Agency for processing your primary loan servicing request, you will have 30 days to obtain, at your own expense, an independent appraisal which conforms to published Agency appraisal standards. If this independent appraised value is within 5 percent of the value of the Agency appraisal, you must choose one of these two appraisals for the Agency to use to continue processing your request. If the appraisals differ by more than 5 percent, you may request a third appraisal for which you must pay half of the cost, and the average of the two appraisals closest in value is taken as the final appraised value to be used in considering your request. If you wish to request both negotiation and mediation, these should be requested at the same time so the negotiation of the appraisal can be concluded prior to

mediation. If not requested at the same time, negotiation of the appraisal must be requested first. Negotiated appraisals are not appealable but other issues can still be appealed after negotiation. If you request negotiation of the appraisal prior to requesting an appeal, the 30-day time period for requesting an appeal will be temporarily suspended. If negotiation of the appraisal fails to resolve your dispute with the Agency, only the balance of the 30-day time frame will remain to request an appeal on issues other than the negotiated appraisal.

Appeal

Appeal is a process under which you present evidence to USDA's National Appeals Division which shows that the Agency's adverse decision is wrong. Subject to the deadline suspensions discussed above, your request for an appeal must be postmarked no later than 30 days from the date you received the Agency's adverse decision.

(h) The Right Not To Be Discriminated Against

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

USDA regulations prohibit discrimination in USDA programs because of your race, color, religion, sex, age, national origin, marital status, familial status, sexual orientation, disability; because all or part of your income is derived from any public assistance program; or because you have filed a program complaint, participated in any program complaint proceeding, or opposed a prohibited practice.

If you believe that you have been discriminated against for any of the reasons stated above, you may file a complaint with the Director, Office of Civil Rights, United States Department of Agriculture, Room 326-W, Whitten Building, 1400 Independence Avenue SW., Washington, DC 20250-9410.

The servicing programs described by this Notice are subject to applicable Agency regulations published at 7 CFR part 766.

For more information, please contact this office.

Title
Office Address
Telephone number

Appendix B to subpart C of part 766—Notice of Availability of Loan Servicing to Borrowers Who Are 90 Days Past Due

FSA 2503

Notice of Availability of Loan Servicing to Borrowers Who are 90 Days Past Due

Dear (Borrower's Name)

This notice informs you that you are seriously delinquent with your Farm Loan Programs (FLP) loan payment and notifies you of options that may be available to you. The Agency's primary loan servicing programs, Conservation Contract Program, current market value buyout, Homestead Protection Program, and debt settlement programs may help you repay your loan and retain your farm property or settle your FLP debt.

How to apply

To apply, you must complete, where applicable, and provide all items required in paragraph (f), within 60 days of the date you receive this notice.

Help in responding to this notice

The servicing options available to you may become complicated. You may need help to understand them and their impact on your operation. You may want to ask an attorney to help you or there are organizations that give free or low-cost advice to farmers. You may contact your State Department of Agriculture or the USDA Extension Service for available services in your State.

Note: Agency employees cannot recommend a particular attorney or organization.

Who will decide if you qualify?

After you submit a complete application, the Agency will determine if you meet all eligibility requirements and can develop a farm operating plan which shows that you can pay all debts and expenses.

What happens if you do not bring the account current or apply within 60 days?

The Agency will accelerate your loan if you do not bring the FLP account current or timely apply for loan servicing. This means the Agency will take legal action to collect all the money you owe to the Agency under FLP. After acceleration of your loan accounts, the Agency will start foreclosure proceedings. The Agency will repossess or take legal action to sell your real estate, personal property, crops, livestock, equipment, or any other assets in which the Agency has a security interest. The Agency will stop all releases of the proceeds from Agency security including, but not limited to, releases of your crops, livestock and milk. The Agency will take, by administrative offset, money or other program benefits which FSA or other Federal Agencies owe you. The Agency will also obtain and file judgments against you and your property or refer your account to the Department of the Treasury for collection.

Included with this notice you will find information on:

- (a) Primary loan servicing programs;
- (b) Conservation Contract Program;
- (c) Current market value buyout;
- (d) Homestead Protection Program;
- (e) Debt settlement programs;
- (f) Forms, documentation, and information needed to apply;
- (g) How to get copies of Agency handbooks and forms;
- (h) Reconsideration, mediation, negotiation, and appeal rights;

- (i) Acceleration and foreclosure;
- (j) The right not to be discriminated against.

(a) Primary Loan Servicing Programs

Eligibility

You must meet the following eligibility requirements to obtain primary loan servicing:

(a) You cannot repay your FLP debt due to circumstances beyond your control which reduced your repayment ability to the extent that scheduled payments cannot be made as a result of one of the following circumstances:

- (1) Illness, injury, or death of a borrower or another individual who operates the farm;
- (2) Natural disaster, adverse weather, disease, or insect damage which caused severe loss of agricultural production;
- (3) Widespread economic conditions such as low commodity prices;
- (4) Damage or destruction of property essential to the operation; or
- (5) Loss of, or reduction in, your or your spouse's essential non-farm income.

(b) You do not have non-essential assets for which the net recovery value is sufficient to pay the delinquent portion of the loan. The Agency cannot reduce or write off debt that you could pay with the value of your equity in these assets.

(c) If you are in non-monetary default as a result of noncompliance with the Agency's loan agreements, you must resolve the non-monetary default prior to closing the servicing action.

(d) You must have acted in good faith in accordance with your loan agreements.

Time Limits

If the Agency determines that you can develop a feasible plan and are eligible for primary loan servicing, you will have 45 days from the date you receive the Agency's offer to accept loan servicing.

Lien Requirements

If you are offered loan servicing and accept the offer, you must agree to give the Agency a lien on your other assets and you must provide this lien at closing.

Loan Consolidation

The unpaid principal and interest of two or more operating loans can be combined into one larger operating loan. When loans are consolidated, the interest rate will be the lesser of:

- (1) The lowest interest rate for that type of loan on the date a complete servicing application was received;
- (2) The lowest interest rate for that type of loan on the date of restructure; or
- (3) The lowest original loan note rate on any of the original notes being consolidated.

In addition, the Agency will consider the maximum loan terms.

Loan Rescheduling

The repayment schedule may be changed to cure the financial distress or delinquency and give you new terms to repay loans made for equipment, livestock, or annual operating purposes. When loans are rescheduled, the interest rate will be the lesser of:

(1) The lowest interest rate for that type of loan on the date a complete servicing application was received;

(2) The lowest interest rate for that type of loan on the date of restructure; or

(3) The lowest original loan note rate on any of the original notes being rescheduled.

In addition, the Agency will consider the maximum loan terms.

Loan Reamortization

The repayment schedule may be changed to cure the financial distress or delinquency and give you a new schedule of repayment on loans made for real estate purposes. When loans are reamortized, the interest rate will be the lesser of:

(1) The lowest interest rate for that type of loan on the date a complete servicing application was received;

(2) The lowest interest rate for that type of loan on the date of restructure; or

(3) The original loan note rate of the note being reamortized.

In addition, the Agency will consider the maximum loan terms.

Limited Resource Interest Rate

Limited resource interest rates are available for certain types of loans. If you have existing loans which are not at the limited resource rate, but a limited resource rate is available, the Agency will consider reducing the rate of the loans. The limited resource interest rate can be as low as 5 percent, however, this rate may change depending on what it costs the Government to borrow money.

For information about current interest rates, contact this office.

Loan Deferral

Partial or full payments of principal and interest may be temporarily delayed for up to five years. You will only be considered for loan deferral if the loan servicing programs discussed above will not allow you to pay all essential family living and farm operating expenses, maintain your property, and pay your debts.

You must be able to show through a farm operating plan that you are unable to pay all essential family living and farm operating expenses, maintain your property, and pay your debts. The farm operating plan must also show that you will be able to pay your full installment at the end of the deferral period.

The interest that accrues during the deferral period must be paid in yearly payments for the rest of the loan term after the deferral period ends.

Debt Writedown

Debt writedown can reduce the principal and interest on your loan. The Agency offers a writedown only when the loan servicing programs discussed above and the Conservation Contract Program, if requested, will not result in a feasible plan. To receive debt writedown, the value of your restructured loan must be equal to or greater than the recovery value to the Agency from foreclosure and repossession of your security property.

The recovery value is the market value of:

- (1) The collateral pledged as security for FLP loans minus expenses (such as the sale

costs, attorneys' fees, management costs, taxes, and payment of prior liens) on the collateral that the Agency would have to pay if it foreclosed, or repossessed, and sold the collateral;

(2) Any collateral that is not in your possession and has not been released for sale by the Agency in writing; and

(3) Any other non-essential assets you may own.

A qualified appraiser determines the value of the collateral and any other assets you own. You may receive a writedown only if you have not previously received any form of debt forgiveness on any other FLP direct loan. The maximum amount of debt that can be written down on all direct loans is \$300,000.

Shared Appreciation Agreement

If you own real estate and receive a debt writedown, you must sign a Shared Appreciation Agreement. The term of the agreement is five years. Under the terms of the agreement you must repay all or a part of the amount written down at the maturity of your Shared Appreciation Agreement if your real estate collateral increased in value. Payment of shared appreciation will be required prior to the maturity of your Shared Appreciation Agreement if you:

- (1) Sell or convey the real estate;
- (2) Stop farming;
- (3) Pay off your entire FLP debt; or
- (4) Have your FLP accounts accelerated by the Agency.

If any of these events occur within the first four years of the agreement, you will have to pay 75 percent of the increase in value of the real estate. If any of these events occur after the fourth anniversary of the agreement, or if the Shared Appreciation Agreement matures without having previously been fully triggered, you will have to pay only 50 percent of the increase in value. You will not have to pay more than the amount of the debt written down.

(b) Conservation Contract Program

You may request a Conservation Contract to protect highly erodible land, wetlands, or wildlife habitats located on your real estate property that serves as security for your FLP debt. In exchange for such contract, the Agency would reduce your FLP debt. The amount of land left after the contract must be sufficient to continue your farming operation.

(c) Current Market Value Buyout

If the analysis of your debt shows that you cannot achieve a feasible plan even if the present value of your FLP debt is reduced to the value of the security, the Agency may offer you buyout of your Farm Loan Programs debt. You would pay the market value of all FLP security and non-essential assets, minus any prior liens. The market value is determined by a current appraisal completed by a qualified appraiser. In exchange, your loans would be satisfied.

Limits

To receive a current market value buyout offer:

- (1) You must not have previously received any form of debt forgiveness from the Agency on any other direct FLP loan;

(2) The maximum debt to be written off with buyout does not exceed \$300,000; and

(3) You must not have non-essential assets with a net recovery value sufficient to pay your account current.

Eligibility

To qualify, you must prove that:

(1) You cannot repay your delinquent FLP debt due to circumstances beyond your control; and

(2) You have acted in good faith in accordance with your loan agreements.

Time Limit

To buyout your FLP debt at the current market value, you must pay the Agency within 90 days of the date you receive the offer.

Method of payment

To buyout your FLP debt at the current market value, you must pay by cash, cashier's check, or U.S. Treasury check. The Agency will not make or guarantee a loan for this purpose.

(d) Homestead Protection Program

Under the Homestead Protection Program, you may repurchase your primary residence, certain outbuildings, and up to 10 acres of land. If you cannot pay cash or Agency financing is not available, you may lease your primary residence. The lease will include an option for you to purchase the property you lease.

This program may apply when primary loan servicing, the Conservation Contract Program, or current market value buyout is not available or not accepted.

You must agree to give the Agency title to your land at the time the Agency signs the homestead protection agreement with you. The Agency will compute the costs of taking title including the cost of paying other creditors who have outstanding liens on the property. The Agency will take title only if it can obtain a positive recovery.

Eligibility requirements

(1) Your gross annual income from the farming operation must have been similar to other comparable operations in your area in at least two of the last six years.

(2) Sixty percent (60%) of your gross annual income in at least two of the last six years must have come from the farming operation.

(3) You must have lived in your homestead property for six years immediately before your application. If you had to leave for less than 12 months during the 6-year period and you had no control over the circumstances, you may still qualify.

(4) You must be the owner of the property immediately prior to the Agency obtaining title.

Property restrictions and easements

The Agency may place restrictions or easements on your property which restrict your use if the property is located in a special area or has special characteristics. These restrictions and easements will be placed in leases and in deeds on properties containing wetlands, floodplains, endangered species, wild and scenic rivers, historic and cultural

properties, coastal barriers, and highly erodible lands.

Leasing the homestead property

(1) You must pay rent to the Agency to lease the property determined eligible for homestead protection. The rent the Agency charges will be similar to comparable property in your area.

(2) You must maintain the property in good condition during the term of the lease.

(3) You may lease the property for up to five years but no less than three years.

(4) You cannot sublease the property.

(5) If you do not make the rental payments to the Agency, the Agency will cancel the lease and take legal action to force you to leave.

(6) Lease payments are not applied toward the final purchase price of the property.

Purchasing the homestead protection property

You can repurchase your homestead property at market value at any time during the lease. The market value of the property will be decided by a qualified appraiser and will reflect the value of the land after any placement of a restriction or easement such as a wetland conservation easement.

(e) Debt Settlement Programs

You can apply for debt settlement at any time; however, these programs are usually used only after it has been determined that primary loan servicing programs and the Conservation Contract Program cannot help you. Under the debt settlement programs, the debt you owe the Agency under FLP may be settled for less than the amount you owe. These programs are subject to the discretion of the Agency and are not a matter of entitlement or right. If you do not have any Agency security, you may apply for debt settlement only. If you do not apply, or do not receive approval of a debt settlement request, your FLP loan accounts will be forwarded to the Department of the Treasury for collection.

Settlement Alternatives

Settlement alternatives include:

(1) **Compromise:** A lump-sum payment of less than the total FLP debt owed;

(2) **Adjustment:** Two or more payments of less than the total amount owed to the Agency. Payments can be spread out over a maximum of 5 years if the Agency determines you will be able to make the payments as they become due; and

(3) **Cancellation:** Satisfaction of Agency debt without payment.

Note: The Agency will not finance these alternatives.

Processing and Requirements

If you sell loan collateral, you must apply the proceeds from the sale to your FLP loans before you can be considered for debt settlement. In the case of compromise or adjustment you may keep your collateral, if you pay the Agency the market value of your collateral along with any additional amount the Agency determines you are able to pay.

Debt amounts which are collectible through administrative offset, judgment, or

by the Department of the Treasury will not be settled through debt settlement procedures. You must certify that you do not have assets or income in addition to what you stated in your application. If you qualify, your application must also be approved by the State Executive Director or the Administrator, depending on the amount of the debt to be settled.

(f) Forms, Documentation, and Information Needed to Apply

A complete application for primary loan servicing must include items 1 through 9. Additional information is required as noted if you want to be considered for the Conservation Contract Program or for debt settlement programs. If you need help to complete the required forms, you may request an Agency official to assist you. The forms for requirements (1) through (6) and (10) are included with this package.

(1) FSA 2504 "Acknowledgment of Available Loan Servicing—90 Days Past Due." All individuals and entities liable for the FLP debt must sign FSA 2504 to request servicing.

(2) FSA 410-1, "Application for Agency Services." In the case of an entity borrower, all entity members must provide current financial statements.

(3) FSA 431-2, "Farm and Home Plan", or other acceptable plan of operation.

(4) FSA 440-32, "Request for Statement of Debts and Collateral." Complete the name and address of the creditor, account number, if applicable, and your name. All parties liable to the creditor must sign and date the form. The Agency will mail this form to the creditor to obtain the needed information. Any debts less than \$1,000 can be verified by a credit report. If debts of \$1,000 or more appear on your credit report and no FSA 440-32 is supplied to the Agency to mail to the creditor within the 60-day time period, the application cannot be considered complete.

(5) RD 1910-5, "Request for Verification of Employment." If you have non-farm income, you must complete employer's name and address, employee's name and address, social security number, sign and date the form. The Agency will send the form to your employer to obtain the needed information.

(6) FSA 1960-12, "Financial and Production Farm Analysis Summary." Complete the form or another similar worksheet to provide production and expense history for crops, livestock, livestock products, etc., for each of the three years immediately preceding the year of application or the years you have been farming, whichever is less and if not already in the Agency case file. You must be able to support this information with farm records.

(7) AD-1026, "Highly Erodible Land Conservation (HEL) and Wetland Conservation (WC) Certification." You will be required to complete this form if the one you have on file does not reflect all the land you own and lease.

(8) SCS-CPA-026, "Highly Erodible Land and Wetland Conservation Determination." This form must be obtained from and completed by the Natural Resources Conservation Service office, if not already on file with the Agency.

(9) Copies of your income tax records and any supporting documents for the last three years immediately preceding the year of application. If your copies of tax records are not readily available, you can obtain copies from the Internal Revenue Service.

(10) RD 1956-1, "Application for Settlement of Indebtedness." Complete this form only if you wish to apply for debt settlement. You must also comply with any Agency request for additional information needed to process a debt settlement request.

(11) If you are applying for a Conservation Contract a map or aerial photo of your farm identifying the portion of the land and approximate number of acres to be considered.

Divorced Spouses

If you are an FLP obligor who has left the farm operation due to divorce, you may request release of liability. To be released of liability after a divorce, you must present the Agency with the following within 60 days of receiving this notice:

(1) A divorce decree or property settlement document which states the remaining party will be responsible for all repayment to the Agency;

(2) Evidence that you have conveyed your ownership interest in FLP security to the remaining party; and

(3) Evidence that you do not have any repayment ability for the FLP loan through cash, income, or other non-essential assets.

The Agency will make a determination on your request and will inform you of the decision within 60 days of receiving your request.

If you are not released of liability, you will need to include all of your relevant financial information if applying for primary loan servicing, homestead protection, or debt settlement program.

(g) How To Get Copies of Agency Handbooks and Forms

Copies of the forms for requirements (f)(1) through (f)(6) and (f)(10) have been included in this notice. You may obtain copies of Agency handbooks describing available programs or additional copies of forms from this office.

(h) Reconsideration, Mediation, Negotiation, and Appeal Rights

Reconsideration, mediation, negotiation, and appeal rights will be provided to you if the Agency makes an adverse decision on your request for loan servicing or prior to acceleration of your account. These options will be provided when required to insure that you are given the reasons for the Agency decision and complete information on how you may request any of these options.

Reconsideration

If you are determined by the Agency to be ineligible for loan servicing, or if you cannot develop a feasible plan, you may request a reconsideration meeting with the Agency decision maker. You must request reconsideration within 30 days of the date you receive the adverse decision. At a reconsideration meeting, you may present additional information to the decision maker and explain why you believe the adverse

decision to be in error. If the meeting does not change the Agency decision, you will be notified and provided 30 days to request mediation, negotiation, or appeal as outlined below.

Mediation

Mediation is a process for resolution of a disagreement. A trained neutral mediator assists two or more parties in dispute to look at the issues, consider all available options, and attempt to agree on an acceptable solution. If your State has a mediation program approved by the USDA, the Agency will participate in mediation. If there is no State mediation program, the Agency may help you to set up a meeting with your other creditors. If you wish to request mediation, you must make such request within 30 days of your receipt of an adverse Agency decision. If you request mediation prior to requesting an appeal, the 30 day time period for requesting an appeal will be temporarily suspended. If mediation fails to resolve your dispute with the Agency, only the balance of the 30 days will remain to request an appeal.

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If you timely submit a complete application for primary loan servicing, but disagree with the appraisal used by the Agency for processing your primary loan servicing request, you will have 30 days to obtain, at your own expense, an independent appraisal which conforms to published Agency appraisal standards. If this independent appraised value is within 5 percent of the value of the Agency appraisal, you must choose one of these two appraisals for the Agency to use to continue processing your request. If the appraisals differ by more than 5 percent, you may request a third appraisal for which you must pay half of the cost, and the average of the two appraisals closest in value is taken as the final appraised value to be used in considering your request. If you wish to request both negotiation and mediation, these should be requested at the same time so the negotiation of the appraisal can be concluded prior to mediation. If not requested at the same time, negotiation of the appraisal must be requested first. Negotiated appraisals are not appealable but other issues can still be appealed after negotiation. If you request negotiation of the appraisal prior to requesting an appeal, the 30 day time period for requesting an appeal will be temporarily suspended. If negotiation of the appraisal fails to resolve your dispute with the Agency, only the balance of the 30 day time frame will remain to request an appeal on issues other than the negotiated appraisal.

Appeal

Appeal is a process under which you present evidence to USDA's National Appeals Division which shows that the Agency's adverse decision is wrong. Subject to the deadline suspensions discussed above, your request for an appeal must be postmarked no later than 30 days from the date you received the Agency's adverse decision.

(i) Acceleration and foreclosure

If you do not appeal an adverse determination, if you appeal, but are denied relief on appeal, or if you do not otherwise resolve your delinquency, the Agency will accelerate your loan accounts and demand payment of the entire debt. You may prevent Agency foreclosure on the loan collateral, if with prior Agency approval, you:

(1) Sell all loan collateral for not less than its current market value and apply all proceeds to your creditors in order of lien priority.

(2) Transfer the collateral to someone else and have that person assume all or part of your FLP debt.

(3) Transfer the collateral to the Agency.

If any of these options result in payment of less than you owe, you may apply for debt settlement. However, applications for debt settlement filed after the 60-day time period provided in this notice will not delay acceleration, administrative offset, and foreclosure. If the Agency determines that you cannot qualify for debt settlement, you can:

(1) Pay your FLP loan accounts current;

(2) Pay your FLP loan accounts in full;

(3) Request reconsideration, mediation or appeal.

If your real estate security contains your primary residence and becomes inventory property of the Agency, Homestead Protection rights will be provided.

(j) The right not to be discriminated against

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

USDA regulations prohibit discrimination in USDA programs because of your race, color, religion, sex, age, national origin, marital status, familial status, sexual orientation, disability; because all or part of your income is derived from any public assistance program; or because you have filed a program complaint, participated in any program complaint proceeding, or opposed a prohibited practice.

If you believe that you have been discriminated against for any of the reasons stated above, you may file a complaint with the Director, Office of Civil Rights, United States Department of Agriculture, Room 326-W, Whitten Building, 1400 Independence Avenue SW., Washington, DC 20250-9410.

The servicing programs described by this Notice are subject to applicable Agency regulations published at 7 CFR 766.

For more information, please contact this office.

Title
Office Address
Telephone number

Appendix C to subpart C of part 766—Notice of Availability of Loan Servicing to Borrowers in Non-Monetary Default

FSA 2505

Notice of Availability of Loan Servicing to Borrowers in Non-Monetary Default

Dear (Borrower's Name):

The Agency has reviewed your Farm Loan Programs (FLP) loan account. Our records show:

You have disposed of property used to secure your FLP loan. You did not get written approval for this. This property is

(Describe property.)

You have stopped farming.

A foreclosure action has been filed against you by _____.

You have

(Insert reasons for proposed action.)

You are also \$ _____ behind on your payments.

This notice informs you that you are in default on your FLP loans. You must resolve this default. The Agency's primary loan servicing programs, Conservation Contract Program, current market value buyout, Homestead Protection Program, and debt settlement programs may assist you in resolving the default.

How to apply

To apply, you must complete, where applicable, and provide all items required in paragraph (f), within 60 days of the date you receive this notice.

Help in responding to this notice

The servicing options available to you may become complicated. You may need help to understand them and their impact on your operation. You may want to ask an attorney to help you or there are organizations that give free or low-cost advice to farmers. You may contact your State Department of Agriculture or the USDA Extension Service for available services in your State.

Note: Agency employees cannot recommend a particular attorney or organization.

Who will decide if you qualify?

After you submit a complete application, the Agency will determine if you meet all eligibility requirements and can develop a farm operating plan which shows that you can pay all debts and expenses.

What happens if you do not resolve the default or apply within 60 days?

The Agency will accelerate your FLP loan if you do not resolve the default, or apply for loan servicing. This means the Agency will take legal action to collect all the money you owe. After acceleration of your FLP loan accounts, the Agency will start foreclosure proceedings. The Agency will repossess or take legal action to take any real estate, personal property, crops, livestock, equipment, or any other assets in which the

Agency has a security interest. The Agency will stop all releases of the proceeds from Agency security including, but not limited to, releases of your crops, livestock, and milk. The Agency will take by administrative offset money, or other program benefits, which FSA or other Federal Agencies owe you. The Agency will also file judgements against you and your property or refer your account to the Department of the Treasury for collection.

Included with this notice you will find information on:

- (a) Primary loan servicing programs;
- (b) Conservation Contract Program;
- (c) Current market value buyout;
- (d) Homestead Protection Program;
- (e) Debt settlement programs;
- (f) Forms, documentation, and information needed to apply;
- (g) How to get copies of Agency handbooks and forms;
- (h) Reconsideration, mediation, negotiation, and appeal rights;
- (i) Acceleration and foreclosure;
- (j) The right not to be discriminated against.

(a) Primary Loan Servicing Programs

Eligibility

You must meet the following eligibility requirements to obtain primary loan servicing:

- (a) You must resolve all non-monetary defaults prior to closing the servicing action.
- (b) You must have acted in good faith in accordance with your loan agreements.
- (c) If you are also financially distressed or delinquent, it must be due to circumstances beyond your control which reduced your repayment ability to the extent that scheduled payments cannot be made as a result of one of the following circumstances:

- (1) Illness, injury, or death of a borrower or another individual who operates the farm;
- (2) Natural disaster, adverse weather, disease, or insect damage which caused severe loss of agricultural production;
- (3) Widespread economic conditions such as low commodity prices;
- (4) Damage or destruction of property essential to the operation; or
- (5) Loss of, or reduction in, your or your spouse's essential non-farm income.

(d) You do not have non-essential assets for which the net recovery value is sufficient to pay any delinquent portion of the loan. The Agency cannot reduce or write off debt that you could pay with the value of your equity in these assets.

Time limits

If the Agency determines that you can develop a feasible plan and are eligible for primary loan servicing, you will have 45 days from the date you receive the Agency's offer to accept loan servicing.

Lien requirements

If you are offered loan servicing and accept the offer, you must agree to give the Agency a lien on your other assets and you must provide this lien at closing.

Loan consolidation

The unpaid principal and interest of two or more operating loans can be combined

into one larger operating loan. When loans are consolidated, the interest rate will be the lesser of:

- (1) the lowest interest rate for that type of loan on the date a complete servicing application was received;
- (2) the lowest interest rate for that type of loan on the date of restructure; or
- (3) the lowest original loan note rate on any of the original notes being consolidated.

In addition, the Agency will consider the maximum loan terms.

Loan rescheduling

The repayment schedule may be changed to cure the financial distress or delinquency and give you new terms to repay loans made for equipment, livestock, or annual operating purposes. When loans are rescheduled, the interest rate will be the lesser of:

- (1) the lowest interest rate for that type of loan on the date a complete servicing application was received;
- (2) the lowest interest rate for that type of loan on the date of restructure; or
- (3) the lowest original loan note rate on any of the original notes being rescheduled.

In addition, the Agency will consider the maximum loan terms.

Loan Reamortization

The repayment schedule may be changed to cure the financial distress or delinquency and give you a new schedule of repayment on loans made for real estate purposes. When loans are reamortized, the interest rate will be the lesser of:

- (1) The lowest interest rate for that type of loan on the date a complete servicing application was received;
- (2) the lowest interest rate for that type of loan on the date of restructure; or
- (3) the original loan note rate of the note being reamortized.

In addition, the Agency will consider the maximum loan terms.

Limited Resource Interest Rate

Limited resource interest rates are available for certain types of loans. If you have existing loans which are not at the limited resource rate, but a limited resource rate is available, the Agency will consider reducing the rate of the loans. The limited resource interest rate can be as low as 5 percent, however, this rate may change depending on what it costs the Government to borrow money.

For information about current interest rates, contact this office.

Loan Deferral

Partial or full payments of principal and interest may be temporarily delayed for up to five years. You will only be considered for loan deferral if the loan servicing programs discussed above will not allow you to pay all essential family living and farm operating expenses, maintain your property, and pay your debts.

You must be able to show through a farm operating plan that you are unable to pay all essential family living and farm operating expenses, maintain your property, and pay your debts. The farm operating plan must also show that you will be able to pay your full installment at the end of the deferral period.

The interest that accrues during the deferral period must be paid in yearly payments for the rest of the loan term after the deferral period ends.

Debt Writedown

Debt writedown can reduce the principal and interest on your loan. The Agency offers a writedown only when the loan servicing programs discussed above and the Conservation Contract Program will not result in a feasible plan. To receive debt writedown, the value of your restructured loan must be equal to or greater than the recovery value to the Agency from foreclosure and repossession of your security property.

The recovery value is the market value of:

(1) The collateral pledged as security for FLP loans minus expenses (such as the sale costs, attorneys' fees, management costs, taxes, and payment of prior liens) on the collateral that the Agency would have to pay if it foreclosed, or repossessed, and sold the collateral;

(2) Any collateral that is not in your possession and has not been released for sale by the Agency in writing; and

(3) Any other non-essential assets you may own.

A qualified appraiser determines the value of the collateral and any other assets you own. You may receive a writedown only if you have not previously received any form of debt forgiveness on any other FLP direct loan. The maximum amount of debt that can be written down on all direct loans is \$300,000.

Shared Appreciation Agreement

If you own real estate and receive a debt writedown, you must sign a Shared Appreciation Agreement. The term of the agreement is five years. Under the terms of the agreement you must repay all or a part of the amount written down at the maturity of your Shared Appreciation Agreement if your real estate collateral increased in value. Payment of shared appreciation will be required prior to the maturity of your Shared Appreciation Agreement if you:

(1) Sell or convey the real estate;

(2) Stop farming;

(3) Pay off your entire FLP debt; or

(4) Have your FLP accounts accelerated by the Agency.

If any of these events occur within the first four years of the agreement, you will have to pay 75 percent of the increase in value of the real estate. If any of these events occur after the fourth anniversary of the agreement, or if the Shared Appreciation Agreement matures without having previously been fully triggered, you will have to pay only 50 percent of the increase in value. You will not have to pay more than the amount of the debt written down.

(b) Conservation Contract Program

You may request a Conservation Contract to protect highly erodible land, wetlands, or wildlife habitats located on your real estate property that serves as security for your FLP debt. In exchange for such contract, the Agency would reduce your FLP debt. The amount of land left after the contract must be sufficient to continue your farming operation.

(c) Current Market Value Buyout

If the analysis of your debt shows that you cannot achieve a feasible plan even if the present value of your FLP debt is reduced to the value of the security, the Agency may offer you buyout of your FLP debt. You would pay the market value of all Agency security and non-essential assets, minus any prior liens. The market value is determined by a current appraisal completed by a qualified appraiser. In exchange, your loans would be satisfied.

Limits

To receive a current market value buyout offer:

(1) You must not have previously received any form of debt forgiveness from the Agency on any other direct FLP loan;

(2) The maximum debt to be written off with buyout does not exceed \$300,000; and

(3) You must not have non-essential assets with a net recovery value sufficient to pay your account current if you are delinquent.

Eligibility

To qualify, you must prove that:

(1) You cannot repay your delinquent FLP debt due to circumstances beyond your control; and

(2) You have acted in good faith in accordance with your loan agreements.

Time Limit

To buyout your FLP debt at the current market value, you must pay the Agency within 90 days of the date you receive the offer.

Method of Payment

To buyout your FLP debt at the current market value, you must pay by cash, cashier's check, or U.S. Treasury check. The Agency will not make or guarantee a loan for this purpose.

(d) Homestead Protection Program

Under the Homestead Protection Program, you may repurchase your primary residence, certain outbuildings, and up to 10 acres of land. If you cannot pay cash or Agency financing is not available, you may lease your primary residence. The lease will include an option for you to purchase the property you lease.

This program may apply when primary loan servicing, the Conservation Contract Program, or current market value buyout is not available or not accepted.

You must agree to give the Agency title to your land at the time the Agency signs the homestead protection agreement with you. The Agency will compute the costs of taking title including the cost of paying other creditors who have outstanding liens on the property. The Agency will take title only if it can obtain a positive recovery.

Eligibility Requirements

(1) Your gross annual income from the farming operation must have been similar to other comparable operations in your area in at least two of the last six years.

(2) Sixty percent (60%) of your gross annual income in at least two of the last six years must have come from the farming operation.

(3) You must have lived in your homestead property for six years immediately before your application. If you had to leave for less than 12 months during the 6-year period and you had no control over the circumstances, you may still qualify.

(4) You must be the owner of the property immediately prior to the Agency obtaining title.

Property Restrictions and Easements

The Agency may place restrictions or easements on your property which restrict your use if the property is located in a special area or has special characteristics. These restrictions and easements will be placed in leases and in deeds on properties containing wetlands, floodplains, endangered species, wild and scenic rivers, historic and cultural properties, coastal barriers, and highly erodible lands.

Leasing the Homestead Property

(1) You must pay rent to the Agency to lease the property determined eligible for homestead protection. The rent the Agency charges will be similar to comparable property in your area.

(2) You must maintain the property in good condition during the term of the lease.

(3) You may lease the property for up to five years but no less than three years.

(4) You cannot sublease the property.

(5) If you do not make the rental payments to the Agency, the Agency will cancel the lease and take legal action to force you to leave.

(6) Lease payments are not applied toward the final purchase price of the property.

Purchasing the Homestead Protection Property

You can repurchase your homestead property at current market value at any time during the lease. The market value of the property will be decided by a qualified appraiser and will reflect the value of the land after any placement of a restriction or easement such as a wetland conservation easement.

(e) Debt Settlement Programs

You can apply for debt settlement at any time; however, these programs are usually used only after it has been determined that primary loan servicing programs and Conservation Contract cannot help you. Under the debt settlement programs, the debt you owe the Agency under FLP may be settled for less than the amount you owe. These programs are subject to the discretion of the Agency and are not a matter of entitlement or right. If you do not have any Agency security, you may apply for debt settlement only. If you do not apply, or do not receive approval of a debt settlement request, your FLP loan accounts will be forwarded to the Department of the Treasury for collection.

Settlement Alternatives

Settlement alternatives include:

(1) Compromise: A lump-sum payment of less than the total FLP debt owed;

(2) Adjustment: Two or more payments of less than the total amount owed to the Agency. Payments can be spread out over a

maximum of 5 years if the Agency determines you will be able to make the payments as they become due; and

(3) Cancellation: Satisfaction of Agency debt without payment.

Note: The Agency will not finance these alternatives.

Processing and Requirements

If you sell loan collateral, you must apply the proceeds from the sale to your FLP loans before you can be considered for debt settlement. In the case of compromise or adjustment you may keep your collateral, if you pay the Agency the market value of your collateral along with any additional amount the Agency determines you are able to pay.

Debt amounts which are collectible through administrative offset, judgment, or by the Department of the Treasury will not be settled through debt settlement procedures. You must certify that you do not have assets or income in addition to what you stated in your application.

If you qualify, your application must also be approved by the State Executive Director or the Administrator, depending on the amount of the debt to be settled.

(f) Forms, Documentation, and Information Needed To Apply

A complete application for primary loan servicing must include items 1 through 9. Additional information is required as noted if you want to be considered for a Conservation Contract or for debt settlement programs. If you need help to complete the required forms, you may request an Agency official to assist you. The forms for requirements 1 through 6 and 10 are included with this package.

(1) FSA 2506 "Acknowledgment of Available Loan Servicing—Non-Monetary Default." All individuals and entities liable for the FLP debt must sign FSA 2506 to request servicing.

(2) FSA 410-1, "Application for Agency Services." In the case of an entity borrower, all entity members must provide current financial statements.

(3) FSA 431-2, "Farm and Home Plan", or other acceptable plan of operation.

(4) FSA 440-32, "Request for Statement of Debts and Collateral." Complete the name and address of the creditor, account number, if applicable, and your name. All parties liable to the creditor must sign and date the form. The Agency will mail this form to the creditor to obtain the needed information. Any debts less than \$1,000 can be verified by a credit report. If debts of \$1,000 or more appear on your credit report and no FSA 440-32 is supplied to the Agency to mail to the creditor within the 60-day time period, the application cannot be considered complete.

(5) RD 1910-5, "Request for Verification of Employment." If you have non-farm income, you must complete employer's name and address, employee's name and address, social security number, sign and date the form. The Agency will send the form to your employer to obtain the needed information.

(6) FSA 1960-12, "Financial and Production Farm Analysis Summary." Complete the form or another similar

worksheet to provide production and expense history for crops, livestock, livestock products, etc., for each of the three years immediately preceding the year of application or the years you have been farming, whichever is less and if not already in the Agency case file. You must be able to support this information with farm records.

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Mediation

Mediation is a process for resolution of a disagreement. A trained neutral mediator assists two or more parties in dispute to look at the issues, consider all available options, and attempt to agree on an acceptable solution. If your State has a mediation program approved by the USDA, the Agency will participate in mediation. If there is no State mediation program, the Agency may help you to set up a meeting with your other creditors. If you wish to request mediation, you must make such request within 30 days of your receipt of an adverse Agency decision. If you request mediation prior to requesting an appeal, the 30 day time period for requesting an appeal will be temporarily suspended. If mediation fails to resolve your dispute with the Agency, only the balance of the 30 days will remain to request an appeal.

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(1) Sell all loan collateral for not less than its current market value and apply all proceeds to your creditors in lien order.

(2) Transfer the collateral to someone else and have that person assume all or part of your FLP debt.

(3) Transfer the collateral to the Agency.

If any of these options result in payment of less than you owe, you may apply or reapply for debt settlement even if you applied before and were denied. However, applications for debt settlement filed after the 60-day time period provided in this notice will not delay acceleration, administrative offset, and foreclosure.

If the Agency determines that you cannot qualify for debt settlement, you can:

(1) Pay your FLP loan accounts current;

(2) Pay your FLP loan accounts in full;

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If your real estate security contains your primary residence and becomes inventory property of the Agency, homestead protection rights will be provided.

(j) The right not to be discriminated against

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

USDA regulations prohibit discrimination in USDA programs because of your race, color, religion, sex, age, national origin, marital status, familial status, sexual orientation, disability; because all or part of

your income is derived from any public assistance program; or because you have filed a program complaint, participated in any program complaint proceeding, or opposed a prohibited practice.

If you believe that you have been discriminated against for any of the reasons stated above, you may file a complaint with the Director, Office of Civil Rights, United States Department of Agriculture, Room 326-W, Whitten Building, 1400 Independence Avenue SW., Washington, DC 20250-9410.

The servicing programs described by this Notice are subject to applicable Agency regulations published at 7 CFR 766.

For more information, please contact this office.

Title
Office Address
Telephone number

15. Add part 767 to read as follows:

PART 767—INVENTORY PROPERTY MANAGEMENT

Sec.

Subpart A—Overview

767.1 Introduction to inventory property management.

767.2 Abbreviations and definitions.

767.3–767.50 [Reserved]

Subpart B—Property Abandonment and Personal Property Removal

767.51 Property abandonment.

767.52 Disposition of personal property from inventory real property.

767.53–767.100 [Reserved]

Subpart C—Lease of Inventory Real Property

767.101 Leasing inventory real property.

767.102 Lease of inventory non-real estate property.

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Subpart F—Exception Authority

767.251 Agency exception authority.

767.252–767.300 [Reserved]

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart A—Overview

§ 767.1 Introduction to inventory property management.

(a) *Purpose.* This part describes the Agency's policies for:

(1) Managing inventory property;

(2) Selling inventory property;

(3) Leasing inventory property;

(4) Managing real and chattel property the Agency takes into custody after abandonment by the borrower;

(5) Selling or leasing inventory property with important resources,

special hazard areas and environmental risks; and

(6) Conveying interest in real property for conservation purposes.

(b) *Basic policy.* The Agency maintains, manages and sells inventory property as necessary to protect the Agency's financial interest.

§ 767.2 Abbreviations and definitions.

Abbreviations and definitions for terms used in this part are provided in § 761.2 of this chapter.

§§ 767.3–767.50 [Reserved]

Subpart B—Property Abandonment and Personal Property Removal

§ 767.51 Property abandonment.

The Agency will take actions necessary to secure, maintain, preserve, manage, and operate the abandoned security property, including marketing perishable security property on behalf of the borrower when such action is in the Government's best financial interest. If the security is in jeopardy, the Agency will take the above actions prior to completing servicing actions contained in 7 CFR 766.

§ 767.52 Disposition of personal property from inventory real property.

(a) *Preparing to dispose of personal property.* If, at the time of acquisition, personal property has been left on the inventory real property, the Agency will notify the former real estate owner and any known lienholders that the Agency will dispose of the personal property. Property of value may be sold at a public sale.

(b) *Reclaiming personal property.* The owner or lienholder may reclaim personal property at any time prior to the property's sale or disposal by paying all expenses incurred by the Agency in connection with the personal property.

(c) *Use of proceeds from sale of personal property.* Proceeds from the public sale of personal property will be distributed as follows:

(1) To lienholders in order of lien priority less a pro rata share of the sale expenses;

(2) To the inventory account up to the amount of expenses incurred by the Agency in connection with the sale of personal property;

(3) To the outstanding balance on the Agency loan; and

(4) To the borrower, if the borrower's whereabouts are known.

§§ 767.53–767.100 [Reserved]

Subpart C—Lease of Inventory Real Property

§ 767.101 Leasing inventory real property.

(a) *When the Agency may lease inventory real property.* The Agency may lease inventory real property in the following situations:

(1) To the former owner under the Homestead Protection Program.

(2) To a beginning farmer who was selected to purchase the property but was unable to purchase it because of a lack of Agency direct or guaranteed loan funds.

(3) When the Agency is unable to sell the property because of lengthy litigation or appeal processes.

(b) *Condition of property.* The Agency will lease inventory real property in an "as is" condition.

(c) *Lease terms.* (1) The Agency will lease property for:

(i) Homestead protection in accordance with part 766, subpart D, of this chapter.

(ii) A maximum of 18 months to a beginning farmer the Agency selected as purchaser when no Agency loan funds are available; or

(iii) For the shortest possible duration for all other cases subject to the following:

(A) The maximum lease term for such a lease is 12 months.

(B) The lease is not subject to renewal or extension.

(2) The lessee may pay:

(i) A lump sum;

(ii) On an annual installment basis;

(iii) On a crop-share basis, if the lessee is a beginning farmer under paragraph (a) of this section.

(3) The Agency leases inventory real property for a market rent amount charged for similar properties in the area.

(4) The Agency may require the lessee to provide a security deposit.

(5) Only leases to a beginning farmer or Homestead Protection Program participant will contain an option to purchase the property.

§ 767.102 Lease of inventory non-real estate property.

The Agency does not lease non-real estate property unless it is attached as a fixture to inventory real property that

is being leased and it is essential to the farming operation.

§ 767.103 Managing leased inventory real property.

(a) *Repairing leased property.* The Agency will pay for repairs to leased inventory real property only when necessary to protect the Agency's interest.

(b) *Handling income from leased inventory real property.* (1) The Agency will apply lease proceeds to the inventory property account.

(2) If the lessee purchases the inventory real property, the Agency will not credit lease payments to the purchase price of the property.

§§ 767.104–767.150 [Reserved]

Subpart D—Disposal of Inventory Property

§ 767.151 General requirements.

Subject to § 767.152, the Agency will attempt to sell its inventory property as follows:

(a) The Agency will advertise all inventory real property that can be used for any authorized FO loan purpose for sale to beginning farmers no later than 15 days after the Agency obtains title to the property. A beginning farmer may apply up through 135 days after the advertisement to purchase inventory property.

(b) If more than one eligible beginning farmer applies, the Agency will select a purchaser by a random selection process open to the public.

(1) All applicants will be advised of the time and place of the selection.

(2) All drawn offers will be numbered.

(3) Offers drawn after the first will be held in suspense pending sale to the successful applicant.

(4) Random selection shall be final and not subject to administrative appeal.

(c) If there are no offers from beginning farmers, the Agency will offer to sell inventory property by auction or sealed bid to the general public between days 136 and 165 after the Agency obtains title to the property. All bidders will be required to submit a 10 percent deposit with their bid.

(d) If the Agency receives no acceptable bid through an auction or sealed bid, the Agency will attempt to sell the property through a negotiated sale at the best obtainable price.

(e) If the Agency is not able to sell the property through negotiated sale, the Agency may list the property with a real estate broker. The broker must be properly licensed in the State in which the property is located.

§ 767.152 Exceptions.

The Agency's disposition procedure under § 767.151 is subject to the following:

(a) If the Agency leases inventory real property to a beginning farmer in accordance with § 767.101(a)(2), and the lease expires, the Agency will not advertise the property if the beginning farmer is approved to purchase the property and the Agency has direct or guaranteed loan funds available to finance the transaction.

(b) The Agency will not advertise a property for sale until the Homestead Protection rights have terminated in accordance with part 766, subpart D of this chapter.

(c) The Agency may allow an additional 60 days if needed for conservation easements or environmental contamination reviews.

(d) If Agency analysis of farm real estate market conditions indicates the sale of Agency farm inventory property will have a negative effect on the value of farms in the area, the Agency may withhold inventory farm properties in the affected area from the market until further analysis indicates otherwise.

§ 767.153 Sale of inventory real property.

(a) *Pricing.* (1) The Agency will advertise property for sale at its current market value, as established by an appraisal obtained in accordance with § 761.7, except for properties containing environmental risks in accordance with § 767.203(b).

(2) Property sold by auction or sealed bid will be sold for the best obtainable price. The Agency reserves the right to reject any and all bids.

(b) *Agency-financed sales.* The Agency may finance sales to purchasers if:

(1) The Agency has direct or guaranteed FO loan funds available;

(2) All applicable loan making requirements are met; and

(3) All non-beginning farmer purchasers make a 10 percent down payment.

(c) *Taxes and assessments.* (1) Property taxes and assessments will be prorated between the Agency and the purchaser based on the date the Agency conveys title to the purchaser.

(2) The purchaser is responsible for paying all taxes and assessments after the Agency conveys title to the purchaser.

(d) *Loss or damage to property.* If, through no fault of either party, the property is lost or damaged as a result of fire, vandalism, or act of God before the Agency conveys the property, the Agency may reappraise the property and set the sale price accordingly.

(e) *Termination of contract.* Either party may terminate the sales contract. If the contract is terminated, the Agency returns any deposit to the bidder or offeror.

(f) *Warranty on title.* The Agency will not provide any warranty on the title or on the condition of the property.

§ 767.154 Conveying easements, rights-of-way, and other interests in inventory property.

(a) *Appraisal of real property and real property interests.* The Agency will determine the value of real property and real property interests being transferred in accordance with § 761.7 of this chapter.

(b) *Easements and rights-of-way on inventory property.* (1) The Agency may grant or sell an easement or right-of-way for roads, utilities, and other appurtenances if the conveyance is in the public interest and does not adversely affect the value of the real property.

(2) The Agency may sell an easement or right-of-way by negotiation for market value to any purchaser for cash without giving public notice if:

(i) The sale would not prevent the Agency from selling the property; and

(ii) The sale would not decrease the value of the property by an amount greater than the price received.

(3) In the case of condemnation proceedings by a State or political subdivision, the transfer of title will not be completed until adequate compensation and damages have been determined and paid.

(c) *Disposal of other interests in inventory property.* (1) If applicable, the Agency will sell mineral and water rights, mineral lease interests, mineral royalty interests, air rights, and agricultural and other lease interests with the surface land except as provided in paragraph (b) of this section.

(2) If the Agency sells the land in separate parcels, any rights or interests that apply to each parcel are included with the sale.

(3) The Agency will assign lease or royalty interests not passing by deed to the purchaser at the time of sale.

(4) Appraisals of property will reflect the value of such rights, interests, or leases.

§ 767.155 Selling chattel property.

(a) *Method of sale.* (1) *Public auctions.* The Agency will use established public auctions for selling chattel. The Agency does not require public notice of sale in addition to the notice commonly used by the auction facility.

(2) *Concurrent sale of real and chattel inventory property.* The Agency may

sell inventory chattel property, including fixtures, concurrently with inventory real estate if, by doing so, the Agency can obtain a higher aggregate price. The Agency may accept an offer for chattel based upon the combined final sales price of both the chattel and real estate.

(b) *Agency-financed sales.* The Agency may finance the purchase of inventory chattel property if the Agency has direct or guaranteed OL loan funds available and all applicable loan making requirements are met.

§§ 767.156–767.200 [Reserved]

Subpart E—Real Property with Important Resources, Special Hazard Areas and Environmental Risks

§ 767.201 Inventory real property with important resources.

In addition to the requirements established in 7 CFR 799, the following apply to inventory property with important resources:

(a) *Wetland conservation easements.* The Agency will establish permanent wetland conservation easements to protect and restore certain wetlands that exist on inventory property prior to the sale of such property, regardless of whether the sale is cash or credit.

(1) The Agency establishes conservation easements on all wetlands or converted wetlands located on inventory real property that:

(i) Were not considered cropland on the date the property was acquired by the Agency; and

(ii) Were not used for farming at any time during the five years prior to the date of acquisition by the Agency.

(A) The Agency will consider property to have been used for farming if it was used for agricultural purposes including, but not limited to, cropland, pastures, hayland, orchards, vineyards, and tree farming.

(B) In the case of cropland, hayland, orchards, vineyards, or tree farms, the Agency must be able to demonstrate that the property was harvested for crops.

(C) In the case of pastures, the Agency must be able to demonstrate that the property was actively managed for grazing by documenting practices such as fencing, fertilization, and weed control.

(2) The wetland conservation easement will provide for access to other portions of the property as necessary for farming or other uses.

(b) *Mandatory conservation easements.* The Agency will establish conservation easements to protect 100-year floodplains and other Federally designated important resources.

Federally designated important resources include, but are not limited to:

(1) Listed or proposed endangered or threatened species;

(2) Listed or proposed critical habitats for endangered or threatened species;

(3) Designated or proposed wilderness areas;

(4) Designated or proposed wild or scenic rivers;

(5) Historic or archeological sites listed or eligible for listing on the National Register of Historic Places;

(6) Coastal barriers included in Coastal Barrier Resource Systems;

(7) Natural landmarks listed on National Registry of Natural Landmarks; and

(8) Sole source aquifer recharge areas as designated by EPA.

(c) *Discretionary easements.* The Agency may grant or sell an easement, restriction, development right, or similar legal right to real property for conservation purposes to a State government, a political subdivision of a State government, or a private non-profit organization.

(1) The Agency may grant or sell discretionary easements separate from the underlying fee or property rights.

(2) The Agency may convey property interests under this paragraph by negotiation to any eligible recipient without giving public notice if the conveyance does not change the intended use of the property.

(d) *Conservation transfers.* The Agency may transfer inventory real property to a Federal or State agency provided the following conditions are met:

(1) The transfer of title must serve a conservation purpose;

(2) A predominance of the property must:

(i) Have marginal value for agricultural production;

(ii) Be environmentally sensitive; or

(iii) Have special management importance;

(3) The Homestead Protection rights of the previous owner have been exhausted;

(4) The Agency will notify the public of the proposed transfer; and

(5) The transfer is in the Government's best financial interest.

(e) *Use restrictions on inventory real property with important resources.* (1) Lessees and purchasers receiving Agency credit must follow a conservation plan developed with assistance from NRCS.

(2) Lessees and purchasers of real property with important resources or real property interests must allow the Agency or its representative to periodically inspect the real property to

determine if it is being used for conservation purposes.

§ 767.202 Inventory real property located in special hazard areas.

(a) *Special hazard areas.* The Agency considers the following to be special hazard areas:

- (1) Mudslide hazard areas;
- (2) Special flood areas; and
- (3) Earthquake areas.

(b) *Use restrictions.* (1) The Agency will use deed restrictions to prohibit residential use of properties determined to be unsafe in special hazard areas.

(2) The Agency will incorporate use restrictions in its leases of property in special hazard areas.

§ 767.203 Inventory real property containing environmental risks.

(a) *Environmental risks.* The Agency considers the following to be environmental risks:

- (1) Hazardous waste;
- (2) Petroleum products and underground storage tank systems;
- (3) Medical waste;
- (4) Lead-based paints; and
- (5) Asbestos.

(b) *Remediation of environmental risk.* (1) The Agency will comply with all applicable Federal, State and local laws, ordinances, codes, and regulations.

(2) The Agency will consult with the appropriate environmental regulatory authority to determine State or local requirements for cleanup or corrective action.

(3) For inventory real properties containing hazardous waste and underground storage tank systems, the Agency will not conduct cleanup or take corrective actions unless:

(i) Any known contamination or underground storage tank leakage presents an immediate threat to the health and safety of neighboring property owners or potential purchasers of the property; or

(ii) The Agency is selling the property to a beginning farmer and providing credit assistance through direct or guaranteed loans.

(4) When the Agency will advertise the property for sale, the sales price of the property is the "as improved value" as determined by an appraisal.

(5) When the property is being sold back to the former owner-borrower, the Agency will not undertake corrective action.

(c) *Use restrictions on inventory real property containing environmental risks.* The Agency will not allow the use of underground storage tank systems on leased inventory properties.

§§ 767.205–767.250 [Reserved]

Subpart F—Exception Authority

§ 767.251 Agency exception authority.

On an individual case basis, the Agency may consider granting an exception to any regulatory requirement or policy of this part if:

(a) The exception is not inconsistent with the authorizing statute or other applicable law; and

(b) The Government's financial interest would be adversely affected by acting in accordance with published regulations or policies and granting the exception would resolve or eliminate the adverse effect upon the Government's financial interest.

§§ 767.252–767.300 [Reserved]

PART 768—[RESERVED]

PART 769—[RESERVED]

16. Add and reserve parts 768 and 769.

Signed in Washington, DC, on January 12, 2004.

James R. Little,
Administrator.

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